



# Meanings and more...

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The ICCA  
Consortium



In 2018 the Council of the ICCA Consortium decided to develop a **lexicon of meaningful**, and at times complex, **concepts and terms** frequently used in its work, policies and relations with its Members and Partners. A few specific papers had been commissioned and prepared before, but no attempt had been made to collate working definitions of frequent use, while many felt a need for such a reference compendium. This need was evident also because the Consortium has highlighted and adopted new ways of referring to phenomena that, historically, had not been conceptually analysed. First among these phenomena are the very ICCAs—**territories of life** at the heart of the Consortium’s work.

**This document** is the result of the Council’s decision. It is a rich beginning, **expected to evolve** and be further integrated and enriched in the years to come. We decided to publish it as part of our Policy Brief Series, as many of the concepts and terms collected here are crucial in the policies of the Members, Partners and international institutions that the Consortium is hoping to positively influence through its work. Most of all, this document is meant to **stimulate thinking, debate, joint analysis, learning and action within the Consortium’s membership**. It is only as a result of these collective discussions and concrete initiatives that the ‘meanings’ of our collective language will emerge (and evolve).

The concepts and terms collated here are relatively few. We thus decided to list them not in alphabetical order but in our suggested order of reading or glancing through (one of the many possible ones). Kindly consult the index below to reach the desired items.

We encourage all readers to offer comments and propose additions and corrections by writing to [thomas@iccaconsortium.org](mailto:thomas@iccaconsortium.org) and [gbf@iccaconsortium.org](mailto:gbf@iccaconsortium.org), placing ‘Meanings and more...’ comments to version 16 November 2019 as reference subject.

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## Abbreviations and Acronyms

**CBD – Convention on Biological Diversity**

**COP – Convention of the Parties**

**CSOs— Civil Society Organizations**

**DRC – Democratic Republic of Congo**

**GEF-SGP – Small Grants Program of Global Environment Facility**

**GSI – Global Support Initiative (to ICCAs)**

**ILO – International Labour Organization**

**IUCN – International Union for the Conservation of Nature**

**NGOs – Non-governmental Organizations**

**OECMs – Other Effective Area-based Conservation Measures**

**UN – United Nations**

**UNDRIP – UN Declaration on the Rights of Indigenous Peoples**

**WCMC – World Conservation Monitoring Centre (of UN Environment)**

**WDPA – World Database of Protected Areas**

**WWF – World Wide Fund for Nature**

### **Cover picture:**

*Datu Hawudon Tinuyan exploring the territory of life of the Manobo people of Soté (Mindanao, The Philippines) – Courtesy Glaiza Tabanao.*

### **Back-cover picture:**

*Dr. M. Taghi Farvar and other representatives of Members of the ICCA Consortium addressing a press conference during CBD COP 11 (Cancun, Mexico, 2016). Courtesy Grazia Borrini-Feyerabend.*

# ICCAs— territories of life

For the ICCA Consortium, the term ‘ICCAs—territories of life’ stands for “**territories and areas governed, managed and conserved by custodian indigenous peoples and local communities**”.<sup>1</sup> This refers to an age-old, widespread, diverse and dynamic phenomenon that has many different manifestations and names around the world. Examples include: *wilayah adat, kaw, himas, agdals, tagal, yerli qorukh, faritra ifampivelomana, oran, ili, asang, rumah, qoroq, qoroq-e bumi, sapari, baldíos, crofts, regole, aschii...* In diverse political contexts, they may be referred to as ‘commons’ and ‘greens’, ancestral domains, ‘country’, community conserved areas, *territorios autonomos comunitarios, comunales, territorios de vida, territorios del buen vivir*, sacred natural sites, locally managed marine areas and fishing grounds, and many more. For the custodians of such ‘territories of life’, the connection between their community and territory is much richer than any single word or phrase can express. It is a bond of livelihood, energy and health. It is a source of identity and culture, autonomy and freedom. It is a link among generations, preserving memories from the past and connecting to the desired future. It is the ground on which communities learn, identify values and develop relationships and self-rule. For many, it is also a connection between visible and invisible realities, material and spiritual wealth. With territory and nature go community life and dignity, and self-determination as peoples.

Territories of life are at the core of the purpose of the ICCA Consortium and its Members. Drawing a synthesis from their worldwide characteristics and existing analyses,<sup>2</sup> the Consortium has adopted a working definition:

An **ICCA—territory of life** exists wherever:

- ▶ There is a **close and deep connection** between a territory or area and its custodian indigenous people or local community. This relationship is usually embedded in history, social and cultural identity, spirituality and/or people’s reliance on the territory for their material and non-material wellbeing.<sup>3</sup>
- ▶ The custodian people or community makes and enforces<sup>4</sup> (alone or together with other actors) decisions and rules about the territory or area through a **functioning governance institution**<sup>5</sup> (which may or may not be recognised by outsiders or by statutory law of the relevant country).
- ▶ The governance decisions and rules<sup>6</sup> (*e.g.*, regarding access to, and use of, land, water, biodiversity and other gifts of nature)<sup>7</sup> and the management efforts of the concerned people or community overall positively contribute to the **conservation of nature** (*i.e.*, the preservation, sustainable use and restoration, as appropriate, of ecosystems, habitats, species, natural resources, landscapes and seascapes),<sup>8</sup> as well as to **community livelihoods and wellbeing**.

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1 As explained in the text, the term ICCAs is not an acronym but an abbreviation. Two decades ago the term was actually ‘CCAs’, an acronym for ‘Community Conserved Areas’ (IUCN, 2004). It was later completed with an I to emphasize the role of indigenous custodians, who also highlighted they have ‘territories’ rather than mere ‘areas’. The more recent formulation ‘territories of life’ was later adopted by many custodians in the Consortium to express the rich and multi-dimensional character of the environments they care for. ICCAs, however, is retained as the formulation has entered international policy, providing visibility to the phenomenon.

2 These include Borrini-Feyerabend *et al.*, 2004a; 2010; IUCN, 2004; Kothari *et al.*, 2012.

3 The strong relationship may refer to the entire territory or only special places within it.

4 #Governance Institutions.

5 Throughout this lexicon, the term ‘gifts of nature’ is used in place of ‘natural resources’ to describe both living and non-living natural elements with value beyond the purely economic.

6 Decisions and rules may or may not be written, and at times simply merge with what is culturally perceived as proper and acceptable behaviour.

7 Throughout this lexicon, the term ‘gifts of nature’ is used in place of ‘natural resources’ to describe both living and non-living natural elements whose values are perceived beyond the purely economic.

8 Importantly, conservation is achieved as a result of management practices... but may not reflect a stated objective of the custodians.

Territories of life across diverse contexts and regions demonstrate these three key characteristics to varying degrees. Their community custodians have called attention to their importance, wishing for them to be maintained and strengthened. **Defined ICCAs—territories of life** fulfil these three characteristics, while **disrupted ICCAs—territories of life** are known to have fulfilled them in the past but are unable to do so today because of historical processes and disturbances that can still be reversed or counteracted. **Desired ICCAs—territories of life** have the potential of developing the three characteristics, and their custodian communities are ready to work for this.

## Do territories of life need ‘recognition’?

Separate from being ‘defined’, ‘disrupted’ or ‘desired’ is the element of **recognition of the ICCAs—territories of life**. This has to be, first and foremost, **self-recognition** by the custodian community itself—a matter of internal discussion and self-awareness and pride.<sup>9</sup> Then recognition can take place by peers, such as other indigenous peoples and local communities, who are often essential in providing support and advice. Further steps involve the recognition<sup>10</sup> **by local authorities, the concerned municipality(ies), regional government(s), national government(s),<sup>11</sup> international organisations or other social actors, such as court(s).**<sup>12</sup>

While it is rare that a thriving ICCA is not self-recognised, ICCAs can flourish while being fully recognised, partially recognised, or not recognised at all by peers, by various levels of government or by other external actors. A case for concern is when ICCAs—territories of life are badly or inappropriately recognised.

**ICCAs Registries** are lists of **mutually recognised territories of life**, which are established through **peer-support and review processes**, which vary in diverse situations and cultures. The international ICCA Registry held by the World Conservation Monitoring Centre (WCMC) of the UN Environment agency was started by gathering a disparate set of individual cases.<sup>13</sup> It is being enriched, and will also be reviewed, with the help of peer-support and review processes in various countries. ICCAs—territories of life are also listed in less specific databases, such as the World Database of Protected Areas (WDPA), also hosted by WCMC.

Beyond being appropriately or inappropriately recognised, ICCAs—territories of life can be appropriately or inappropriately *supported*. Again, inappropriate support is a cause for concern. The ICCA Consortium has devoted much attention to understanding ways by which ICCAs—territories of life can be appropriately recognised<sup>14</sup> and supported<sup>15</sup>—at the heart of its statutory mission and reason to be.

## Examples of defined, disrupted and desired ICCAs—territories of life

### ***A defined ICCA***

- ▶ **A self-recognized ICCA— the Yapú ‘Umu-Kaya Yepa’ Resguardo (Vaupès region, Colombia).**<sup>16</sup> Colombia recognizes political and administrative autonomy of indigenous lands framed under the Resguardos title. Indigenous peoples are recognized as having collective land rights that are

9 Corntassel notes that focusing primarily on self-recognition allows communities to bypass the reproduction of colonial, racist and patriarchal practices embedded in a ‘politics of recognition’ by settler states (see Coulthard, 2014).

10 Borrini-Feyerabend *et al.*, 2010. See also #Appropriate recognition.

11 Several territories of life are trans-boundary, and particularly so those of mobile indigenous peoples.

12 An important judgement of the Supreme Court of India has recently concerned the recognition of orans in Rajasthan.

13 #Conserved areas. See also UNEP-WCMC, 2016.

14 #Appropriate recognition.

15 #Appropriate support.

16 Asatrizy and Riascos de la Peña, 2008.

inalienable, non-seizable and held in perpetuity. All this guarantees long-term security of tenure.<sup>17</sup> Moreover, they receive funds to autonomously develop their own health and education systems. The 150000-hectare tropical forest of the Yapu territory of life has historically been governed and managed by local spiritual leaders (Kumuã), applying customary laws according to traditional values (though the establishment of the Resguardo dates back only to 1982). The Yapu ICCA is not part of the national protected areas system and thus would not be protected should the Colombian government agree to mining, oil and gas concessions on its subsoil – which could be highly destructive. The custodian community, however, possesses collective land rights. Its customary institution can proclaim and enforce customary norms and its people have the freedom to live according to their traditional knowledge, values and rites. All this has so far allowed for the territory to remain well conserved while its biodiversity is sustainably used by its custodians.

## ***Disrupted ICCAs***

- ▶ **ICCAs destroyed by ‘development’ – the territories of life of indigenous pastoralists in Southern Ethiopia.**<sup>18</sup> For centuries, the pastoral and agro-pastoral communities of Ethiopia’s drylands have lived in a harsh environment by making careful use of several complementary natural resources – water, pasture, forests, land, and wildlife. Access to such resources was based on individual and collective customary rights, variably exercised at different levels in society at different times, combined with mobile lifestyles, mechanisms of mutual assistance and solidarity within and across groups, and specific norms to protect trees and other key environmental features. The territories of pastoral communities included areas of high biodiversity value that remained well conserved for centuries, such as the juniper forests and tulaa wells areas of the Oromo Borana, the wet plains of the Daasanach in the Omo Delta, the oxbow lake forests of the Kara and gallery forest of the Mursi, in the upper reaches of the Omo Valley. When the territories of these communities were incorporated within the Ethiopian State, in the late 19<sup>th</sup> Century, their systems of communal rights and governance by customary institutions were not recognized. Furthermore, ‘development’ initiatives undermined the food systems and overall livelihoods of the communities, which resulted in food-scarcity. Today, the communities still wish to reinstate their governance institutions and land-based practices.<sup>19</sup> But the construction of the Gibe 3 dam has blocked the regular flooding of the Omo River, drying up the territories of all traditional communities of the lower Omo Valley. As if this was not enough, other large portions of their territories, including parts that were under official conservation in national parks, have been confiscated or leased out for irrigated agriculture. As a result, the ancient territories of life of the lower Omo Valley can no longer sustain the traditional livelihoods of their custodian communities.

## ***A disrupted ICCA seeking restoration***

- ▶ **An ICCA that was and today cannot fully be – the Herero of the Ehi-rovipuka Conservancy, Namibia.**<sup>20</sup> In Northern Namibia some Herero communities have recently established the Ehi-rovipuka Conservancy as an area where, according to Namibia law, wildlife can be sustainably managed by a custodian community. The Conservancy borders with Etosha National Park, one of the most important protected areas of Namibia and the ancestral land of Herero communities, who were evicted from their homelands a century ago. The communities are currently asking to obtain certain access and use rights over the park lands and resources to re-create their original ICCA and restore the integrity of their sustainable land-based practices. While the road for recognition is long, the existence of the ICCAs – territories of life movement can support their claims with the Namibian government.

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17 One of the principles identified by E. Ostrom as needed for well-functioning commons. See also Robinson *et al.*, 2018; #Governance Institutions.

18 Bassi 2002; Bassi and Tache, 2011.

19 See the ‘Yaaballo Statement on the Borana Conserved Landscape’ and the attempt to establish the Mursi-Bodi Community Conservancy [http://coolground.org/?page\\_id=163](http://coolground.org/?page_id=163).

20 Hoole and Berkes, 2009; Borrini-Feyerabend *et al.*, 2010.

## ***From a disrupted towards a restored ICCA***

- ▶ **The ‘engineered’ restoration of a sacred ICCA— the Warriparinga Wetlands, Australia.**<sup>21</sup> The Kurna Aboriginal People of the Adelaide Plains have lived and celebrated their dreaming tradition in Warriparinga, a sacred natural site, for thousands of years. Today, the Warriparinga comprises 0.035 km<sup>2</sup> of wetland running along the Sturt River (Warriparri) and is part of a regeneration project. The initiative was developed by a collaboration between the Kurna and the City of Marion, applying novel engineering tools to reduce the pollution of the Patawalonga river system and restore native vegetation and wildlife. The project worked in tandem with the establishment of the Living Kurna Cultural Centre, engaged in the conservation and transmission of Kurna heritage and the Dreaming Story of the Land to new generations. The centre develops indigenous cultural tourism, education and training activities in the spirit of reconciliation between Aboriginal and European communities.

## ***From a disrupted to a fully restored ICCA***

- ▶ **Back to the future—Kawawana Community Conserved Area.**<sup>22</sup> At the beginning of the new millennium, the territory of life of the eight Djola communities of the Mangagoulack Rural Municipality (Casamance region, Senegal) had been thoroughly disrupted. Overfishing, rising salinity and deforestation of mangroves had contributed to the degradation of the estuarine environment, closely accompanied by a downward spiral in the local economy. Both fish biodiversity and overall catches had plummeted. All this took place as fishers from outside the area had been coming for years with powerful motor engines and destructive gear, exhausting the local fisheries. The local communities wanted to go back to their traditional territorial governance and management practices... but had no way to enforce any fishing rules. Based on their local knowledge and spiritual world view, they were convinced they could restore plentifulness to their ecosystem and their lives... but, would they be allowed? In fact, they manage to do just that, and their hopes proved fully justified. In 2009, empowered by the knowledge that Senegal is Party to the Convention of Biological Diversity (CBD) and that the CBD encourages the recognition of ‘community conserved areas’, they managed to re-create their own governance structure and management plan for the territory they considered their “local heritage to be preserved by us all” (in Djola language *kapoye wafwolale wata nanang*, abbreviated as Kawawana). Though feats of patience and diplomacy, and also by stressing their adherence to Senegal’s Decentralisation Law— they then succeeded in getting Kawawana recognised by their Rural Municipality, the Regional Council and the Governor of Casamance.<sup>23</sup> By 2010, they were again able to enforce their restored fishery rules. And today their riverine ecosystem is again full of fish, oysters and wildlife... and their livelihoods and food systems have been fully restored.

## ***From a disrupted to a defined ICCA***

- ▶ **An ICCA in Europe— the Froxán Common Woodland, Galicia, Spain.**<sup>24</sup> The Froxán community has a long history of life and cultural development in the Galician municipality of Lousame, Nordwest Spain. Although the community commons is reflected in manorial deeds dating 1409, 1527 and 1709, the land was usurped by the State in the 1930s. In 1977, the community was again recognized as legitimate holder of the Froxán Common Woodlands –100 hectares over which they were granted governance rights. The area had previously been subjected to mining and the introduction of exotic tree species by state forest services. Once in control, the Froxán community began restoration activities (*e.g.*, refilling mine pits and shafts to stop acid drainage, restoring native

21 <http://www.iccaregistry.org/en/explore/Australia/warriparinga-wetlands—living-kaurna-centre>.

22 <https://www.iccaconsortium.org/index.php/2014/12/15/an-icca-in-casamance-the-story-of-kawawana/>; <http://kawawana.icca-consortium.org/>

23 The recognition refers to a Community Conserved Area (*Aire du Patrimoine Communautaire*) established within the fluvial public domain.

24 Cidrás *et al.*, 2018; Serrano *et al.*, 2018.



forest species and habitats, eradicating invasive species and recovering a peat-land that had been drained in the 1970s) while continuing its traditional use (such as gathering firewood, using spring water and collecting chestnuts and mushrooms) and cultural-spiritual practices (using aromatic herbs and medicinal plants in festivities such as Midsummer Solstice or Mayday). Moving beyond traditional activities, the community also engaged in educational activities in nearby schools and with adults and non-governmental organizations, mobilizing hundreds of volunteers through the Brigadas deseucaliptizadoras. The community has also participatorily developed a biodiversity inventory and a management plan for wetland restoration that was selected as a national pilot case for climate change adaptation experiences. Today, the Froxán Common Woodland is listed in the ICCA Registry<sup>25</sup> and the World Database of Protected Areas.

### ***A desired ICCA that emerged via a democratic process***

- ▶ **An island important as bird habitat adopted by local communities in Lake Victoria (Uganda).**<sup>26</sup> Musambwa islands have long been an important bird habitat and nesting site in Lake Victoria. In recent years, the collection of bird eggs by visiting fishermen had become excessive and had engendered severe environmental consequences. The concerned communities responded to this by submitting resolutions to their sub-county Councils, which were then consolidated at District Council level in a few local rulings (by-laws) and an ordinance establishing Musambwa islands as a bird sanctuary. This is an example of conservation initiative from the grassroots up... which made excellent use of democratic processes and the possibility of decentralised decisions responding to the desires and needs of the local communities. The initiative was supported by a GEF SGP project, but the impulse was genuinely local.

### ***Towards a 'secured' ICCA?***

- ▶ **An ICCA in the Thar Indian desert— the Aain Mata Oran.**<sup>27</sup> The Thar Desert of India is one of the most densely populated deserts in the world. The village is Sodakore— comprising 236 households dedicated to animal husbandry and agriculture— is custodian of the Aain Mata Oran, dedicated to the Jagdamba / Kumtarai Jogmaya deity. The oran is viewed as both common property and a sacred area, used for grazing but where tree felling is forbidden. The vegetation in the oran, in fact, is in much better conditions than in its surroundings, which are unfortunately very degraded. In India, a legislative provision for the formal recognition of community conserved areas exists with the Forest Rights Act. In 2018, the Supreme Court has declared all orans as 'deemed forests', hopefully providing protections from pressures of encroachment and mining. The implementation procedures of this ruling, which is not yet available, should secure all orans under the governance and stewardship of their custodian communities. This is very much the hope for the Ain Mata Oran.

### ***Key references***

Borrini-Feyerabend *et al.*, 2010 (reprinted 2012); Kothari *et al.*, 2012; Borrini-Feyerabend and Campese, 2017; Farvar *et al.*

See also: [ICCA Consortium web site](#); [ICCAs and the ICCAs Consortium— Conserving the Territories of Life – short movie](#); [Emblematic ICCAs descriptions from the ICCA Website](#); [ICCA Registry](#).

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25 #Appropriate support.

26 John Stephen Okuta, quoted in Borrini-Feyerabend *et al.*, 2010, page 55.

27 Aman Singh, personal communication, 2019.

# Indigenous Peoples

In the words of a representative of a federation of indigenous peoples Member of the ICCA Consortium: “Indigenous peoples live in nearly all countries on all continents of the world and form a spectrum of humanity, ranging from traditional hunter-gatherers and subsistence farmers to legal scholars. Indigenous peoples number between 300-500 million, embody and nurture 80% of the world’s cultural and biological diversity, and occupy 20% of the world’s land surface”.<sup>28</sup> Descriptions in UN websites are similarly broad: “Indigenous peoples are inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live”.<sup>29</sup> A precise estimate of the number of indigenous peoples alive today is, thus, rather problematic.

In 1986, the United Nations Commissioner on Human Rights<sup>30</sup> proposed to identify indigenous peoples as peoples having “historical continuity with pre-invasion and pre-colonial societies that developed on their territories”. Following the 1989 International Labour Organization Convention No. 169, Concerning Indigenous and Tribal Peoples, the ‘time factor’ has been further emphasized and indigenous peoples have been noted as traditional peoples “who hold an unwritten corpus of long-standing customs, beliefs, rituals and practices that have been handed down from previous generations”.<sup>31</sup> The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) suggests a set of guiding characteristics that may assist in the identification of indigenous peoples, which include: self-identification as indigenous nations and/or peoples; a shared history of suffering injustices, colonization and land dispossession; a complex web of place-based relationships; language, traditional practices, knowledge, and legal and cultural institutions distinct from those dominant in the national state where they reside;<sup>32</sup> and knowledge, culture and practices that contribute to sustainable governance and management of human relationships with the natural world and beyond. Additionally, some stress the following characteristics as clear indicators of indigeneity: “having preserved the customs and traditions of their ancestors which are similar to those characterized as indigenous” and “being, even if only formally, placed under a state structure which incorporates national, social and cultural characteristics alien to their own”.<sup>33</sup>

UNDRIP refers to indigenous peoples (versus people singular), since peoples are recognized as subjects of international law, whose collective right to self-determination are upheld by two International Covenants of 1966— the one on Civil and on Political Rights and the one on Economic, Social and Cultural Rights. Regardless of the international recognition of their collective rights, at the national level, not all indigenous peoples are today recognised as holders of collective rights to land and natural resources.<sup>34</sup>

## Cases of over/under-inclusiveness

### The Philippines

The definitions of indigenous peoples listed above include a range of criteria for inclusion or exclusion, which may result in over/under-inclusion. Under a definition solely based on link to pre-colonial

28 Reyes, 2017. The figures quoted by Reyes are reported by several other authors. It is difficult, however, to trace them back to robust analyses beyond the claims made by Sobrevila (2008, page 5 and 50), which refers to WRI (2005) where the supposed backing cannot be traced. The ICCA Consortium has no reason to believe that the figure quoted is incorrect, but it suggests referring to the work of Alden Wily (2011) and Garnett *et al.* (2018) to corroborate it. For what regards cultural diversity, the reference to Sobrevila (2008, page 3 and 52) is similarly clear but scarcely referenced (Sobrevila actually speaks of 95% of cultural diversity being represented by the 5000 ethnic groups that represent only 4 percent of the world population).

29 United Nations website on indigenous peoples, <https://www.un.org/development/desa/indigenouspeoples/about-us.html>.

30 In its 1986 Study of the Problem of Discrimination Against Indigenous Populations.

31 Mugabe, 1998.

32 This notwithstanding the fact that in some countries (like Papua New Guinea and Bolivia) indigenous peoples constitute the majority of the population (Reyes, 2017).

33 Reyes, 2017.

34 #Collective rights.

societies, all the people living in colonized countries would be considered indigenous (apart from immigrants or those who are the direct descendants of the colonizers). For example, in the Philippines, all Filipinos would be indigenous since they are “existing descendants of the peoples who inhabited the present territory”.<sup>35</sup> However, colonisation led many Filipinos to abandon their cultural traditions, become disconnected from their territories of life and part of a majority population that can even be insensitive toward indigenous minorities... This is not, however, the case for many Igorots of the Cordillera and Lumad of Mindanao. Unlike most of the rest of the Philippines’ population, the Igorot have “preserved intact the customs and traditions of their ancestors”<sup>36</sup> and, in fact, according to Reyes (2017): “such peoples are the groups generally entitled to specific rights of indigenous peoples under international law”.<sup>37</sup>

## **Nepal**

Contextual factors are especially important in order to distinguish the indigenous versus non-indigenous population. James Anaya, former Special Rapporteur on the Rights of Indigenous Peoples, noted that “it is difficult to divide the population of Nepal into indigenous versus non-indigenous sectors if the term ‘indigenous’ is taken in a general sense and without regard to certain contextual factors”. Nepal, for example, does not have a past of colonization by foreign power, hence either all or no part of the population, regardless of their strong sense of connection and belonging to their land, may be formally identifiable as indigenous. Yet, Anaya identified the Adivasi Janajati, unlike the majority of other Nepali people, as indigenous peoples on grounds of their self-identification, historical exclusion from the dominant social and religious hierarchy, and distinct language and traditional customs.<sup>38</sup>

The ICCA Consortium emphasizes self-identification as a necessary element of indigenous identity and recommends referring to indigenous peoples by their self-designated nation name.

### ***Key references***

United Nations Commission on Human Rights, 1986; Mugabe, 1998; Corntassel, 2003; Niezen, 2003; UNDRIP, 2007; Reyes, 2017; Carino and Tamayo, 2019.

See also: IWGIA *International Working Group for Indigenous Affairs*; *United Nations website on indigenous peoples*; *Indigenous navigator*.

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35 Reid, 2009.

36 Ibid.

37 Reyes, 2017.

38 Anaya, 2009.

# Local communities

One of the first and foremost questions that arises when dealing with an ICCA—territory of life concerns the ‘who’. Who has singled it out and established it as a special place? Who has given it a name? Who has kept governing, managing and caring for it through time? At times the answer involves distant historical origins and sacred narratives of indigenous peoples... but when the answer is ‘the local community’, it may appear vague. Yet, ‘local community’ has crucial significance not only in anthropological, social and economic terms but also, and increasingly so, in legal terms. The definitions of ‘local community’ available in the literature are numerous and diverse. In the ICCA Consortium, we use the working definitions and understand the differences between ‘local communities’ and ‘indigenous peoples’, which are described briefly below. In general, we consider local communities those communities that do not identify themselves as indigenous (at times even for strategic reasons, to avoid the marginalisation and stigma associated with indigenous peoples in some countries). For some commentators, however, there exist objective distinctions and a local community differs from an indigenous people as it “does not fit a strict test of indigeneity”.<sup>39</sup> In some countries, including countries signatories of UNDRIP, indigenous peoples are even generically referred to as ‘local communities’ to avoid having to respect procedures such those included in ILO 169.<sup>40</sup>

In 2011, the CBD Conference of the Parties convened an ad-hoc expert meeting to shed light on the use of the term ‘local communities’.<sup>41</sup> The CBD report stated that the term is ambiguous and differently interpreted by different state legislations (*e.g.*, a group of people with collective legal personality or a group of people legally represented by a CSO or NGO). The report stressed self-identification as the most appropriate way to establish who may be indigenous and local and/or traditional communities and highlighted that, in international law, a definition is not a pre-requisite for protection. Wherever CBD uses the term ‘local communities’ it thus refers to communities with a long association with the lands and waters that they have traditionally lived on or used, whose collective rights should be recognised regardless of the existence of a universally accepted definition.

As a working definition used by the ICCA Consortium, a local community is: “a self-identified human **group that acts collectively in ways that contribute to defining a territory and culture through time.**” A local community can be long-standing (‘traditional’) or relatively new, can include a single ethnic identity or multiple ones, and it usually ensures its own continuity by natural reproduction and care for kinship and its life environment. Communities can be permanently settled or mobile. While their attachment to specific localities may be as strong as that of settled communities, mobile communities<sup>42</sup> are usually not referred to as ‘local’, as their locality may change dramatically with the seasons.

The members of a local community have frequent opportunities of direct (possibly face-to-face) encounters and usually possess **shared social and cultural elements**, such as common history, traditions, language, values, life plans and/or sense of identity that bind them together and distinguish them from other sectors of society.<sup>43</sup> It is usually clear who is part of the community and contributes and/or responds to its governance system, and who is and does not. Most members of a community possess clear and strong (historical, cultural, spiritual, etc.) **links with a specific territory or area**, which typically derive from a history of settlement and use of natural resources (permanently, seasonally, in transhumance patterns or nomadically) combined with cultural and spiritual attachment and sense of responsibility.

A community’s economic organization also reflects its common interest in the local environment and

39 Bessa, 2015, page 332. Noticeably, there is an important difference between self-definition and specific test requirement.

40 Ghanimat Azhdari, personal communication, 2019.

41 Convention on Biological Diversity, 2011a.

42 Farvar, 2003.

43 Some modern communities, on the other hand, pride themselves of including a rich variety of languages, cultures and backgrounds.



resources, with locally adapted rules for common pool resource management,<sup>44</sup> and rules to allocate resources adapted to local conditions. A sense of cohesion, common identity and shared interests is essential for community members to be able to “act collectively to enhance mutual interest”.<sup>45</sup>

A functional community possesses **local ‘administrative’ institution(s) and a ‘political’ leadership perceived as legitimate** by its members. Through those, it can usually foster compliance with agreed rules and practice conflict-resolution. Many community members also recognize themselves as sharing a common political identity, which enables them to exercise, and/or claim for, collective rights and responsibilities with respect to their territory and neighbors.<sup>46</sup> Leadership, legitimacy, and cohesion generally also require the demarcation of communities’ jurisdictional boundaries, either spatially or through inclusion/exclusion rules on access to resources.

Community institutions, rules and even their territories of reference are **dynamic, adaptable and evolving**—a fact that fosters their relevance and resilience through time.

## Is it important to distinguish between indigenous peoples and local communities? A matter of recognised rights

While indigenous peoples and local communities share many features, their self-identification as one or the other brings along important legal consequences. **Indigenous peoples** are recognized as **subjects in international law**. Furthermore, in international and often also in national law, they are **recognised as holders of collective rights**. Such collective rights are centred upon their self-determining authority and grounded on their indigeneity. These rights, which are usually not accorded to local communities, are *not conditional* to ‘**living sustainable lives**’.<sup>47</sup>

Interestingly, the Inter-American Court on Human Rights recently treated two cases of local communities as holding the same rights as indigenous peoples. Specifically, in the 2005 *Moiwana Village v. Suriname* case, and in the 2007 *Saramaka People v. Suriname* case, the Court recognized two local communities, composed of descendants of former African slaves, as legitimate owners of their ancestral lands regardless of their lack of legal title. This followed the same rationale applied in the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001) which, instead, focused on indigenous peoples.<sup>48</sup>

Despite these court rulings, international law still appears to distinguish between local communities and indigenous peoples in terms of recognised collective rights. On the other hand, echoing principle 22 of the Rio Declaration,<sup>49</sup> the concept of ‘local communities’ has been acknowledged in international law by article 8j of the Convention on Biological Diversity (CBD) and has surfaced in many other international agreements, conventions, resolutions, policy documents and guidelines<sup>50</sup> issued by UN bodies, UN treaties and other international organizations.<sup>50</sup> Noticeably, in all these international documents, **local communities are considered because of their relationship with the environment, rather**

44 Ostrom, 1990. #Governance Institutions.

45 Barrow and Murphree, 2001.

46 #Collective Rights; #Collective Responsibilities.

47 Jonas, Makagon and Shrumm, 2013.

48 #Rightsholders.

49 Principle 22 of the Rio Declaration states that: “Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

50 Example include: the Nagoya Protocol; the International Tropical Timber Agreement; the Food and Agriculture Organization’s International Treaty on Plant Genetic Resources for Food and Agriculture; the Agreement for the Implementation of the UN Convention on the Law of the Sea; the Convention to Combat Desertification; Resolutions of the Conference of the Parties and Guidelines of the Ramsar Convention on Wetlands; Resolutions, policy documents and guidelines of the International Union for the Conservation of Nature (IUCN) and the World Wide Fund For Nature (WWF); and, recently, the UN Declaration on Peasants and other People Working in Rural Areas.

than simply because of their existence as communities.<sup>51</sup>

The ICCA Consortium respects the self-definition as indigenous people or local community. Regardless of such definition, it strives towards securing their tenure of the territories of life for which they act as custodians.

## Is it straightforward to distinguish between indigenous peoples & local communities?

Distinguishing between Distinguishing between indigenous peoples and local communities may be important, but at times difficult. The Democratic Republic of Congo (DRC) offers an example of such difficulties and complications.<sup>52</sup> In the DRC, only Pygmies groups are legally recognized as indigenous peoples, while all others are regarded as local communities. The rationale stands on the fact that the Pygmies are considered as the first inhabitants of the DRC. Some non-Pygmies, however, claim to have occupied certain forests before the arrival of the Pygmies. The national law, on the other hand, does not foresee different treatment for indigenous peoples and local communities, disregarding the mandate of international law to recognise the special rights of indigenous peoples. In addition, there are strong cultural bonds between Pygmies and other ethnicities living together in the same localities. And yet, in mixed communities, roles may be asymmetrical and exploitative, ranging from disrespect to virtual enslavement of Pygmies. There are also cases in which non-Pygmies claim to be Pygmies in order to share some of their traditional spiritual powers and roles, in particular those related to territories and natural resources.

### ***Key references***

Ostrom, 1990; Becker and Ostrom, 1995; Barrow and Murphree, 2001; Borrini-Feyerabend, Kothari and Oviedo, 2004; Antkowiak, 2013; Jonas, Makagon and Shrumm, 2013; Bessa, 2015.

**See also:** *La Via Campesina*; *Rangeland Initiative of ILC*; *International Collective in Support of Fishworkers*.

### ***Court cases***

- ▶ Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-American Court on Human Rights, No.79, Ser. C (2001).
- ▶ Moiwana Village v. Suriname, Inter-American Court on Human Rights, No 124, Ser. C (2005).
- ▶ Saramaka People v. Suriname, Inter-American Court on Human Rights, No. 172, Ser. C (2007).

51 Jonas, Makagon and Shrumm, 2013, page 26. See #Biocultural rights for further info on the difference between rights of local communities and indigenous peoples.

52 Bikaba, 2013.

# Traditional communities

Traditional is a term used to characterise those communities or peoples that maintain livelihoods, beliefs and values, knowledge, languages and institutions in some **continuity with the past**.<sup>53</sup> What is traditional is most often perceived as symbolically close to the past, or as the ancestors used to practice, live, believe, know. It can refer to all sorts of aspects of cultural, social, spiritual or economic practices (such as customs, ceremonies, customary laws, stewardship role for the territory of life...). The term 'traditional', however, should not be equated with 'static', pre-determined and never changing, in particular referring to knowledge, practices or beliefs that indeed adapt over time to varying circumstances even for very traditional communities or peoples. Traditional thus stands for **linked to the past**, as in a continuum that binds the past to the present but that has seen, and will continue to see, **changes to respond to the evolving history of the community**.

The concept of cultural continuity similarly highlights the continuum of experiences from past to present, onward and into the future. Continuity combines innovation with convention<sup>54</sup> and has been found to have direct impacts on the communities' sense of wellbeing, including health, as measured by both social and economic indicators.<sup>55</sup> **Cultural continuity** also has been used to describe a "culture [...] potentially enduring or continuously linked through processes of historical transformation with an identifiable past of tradition".<sup>56</sup>

Communities that have a strong bond with their past generally also have a **strong bond with their territories**. When they stress that they are traditional, they tend to reclaim both their past and its values, but also their traditional knowledge and rich relationship with their territories.<sup>57</sup>

## **Key references**

Wagner, 1981; Chandler and Lalonde, 1998; Posey, 1999; Kirmayer *et al.*, 2007; Oster *et al.*, 2014; Raymond-Yakoubian, Raymond-Yakoubian and Moncrieff *et al.*, 2017.

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53 A similar term, mostly used to underline the existence of historical rights to lands, water and other gifts of nature is historical community.

54 Wagner, 1981.

55 See, *e.g.*, Chandler and Lalonde, 1998; Oster *et al.*, 2014; Foggin, 2011; Foggin, 2014.

56 Kirmayer *et al.*, 2007, cited in Oster *et al.*, 2014.

57 #Traditional Knowledge.

# Traditional knowledge

Traditional knowledge<sup>58</sup> is a living body of knowledge, usually held by traditional custodian communities, which explains both the universe and everyday life<sup>59</sup> and can “provide information, methods, theory and practice for sustainable ecosystem management.”<sup>60</sup> Traditional communities pride themselves of maintaining their traditional knowledge alive and strong, with ethical and practical implications for social relations and relations between humans and nature. The metaphor of ‘being in a cultural tradition’ resonates strongly with many traditional communities, even when they daily successfully provide new answers to new challenges.<sup>61</sup>

Many definitions of traditional knowledge have been offered by international organizations and scholars. While with time they appear to converge, there is not yet a consensus definition. A list of recognised main features includes: **developed and transmitted in a traditional context** – where traditional does not refer to antiquity but to the way it is acquired and used;<sup>62</sup> **place-based; experience-based;** constantly **adapted to the local culture and environment** (and often associated with genetic resources);<sup>63</sup> attached to a specific spiritual, cultural, ethno-medical or legal system; often **collectively held** within a community and among communities; most **often orally transmitted** from generation to generation.<sup>64</sup>

In the context of ICCAs—territories of life, traditional knowledge constitutes **one of the strongest fibres of the bond between a community and its territory**, embodying memories of the past and cultural continuity with the future, while providing guidance for the effective governance and management of the territory.

The Convention on Biological Diversity and its Nagoya Protocol<sup>65</sup> state that indigenous peoples and local communities are entitled to the fair and equitable sharing of the benefits arising from the use of their traditional knowledge and associated resources, the right to prior informed consent before the access and use of the traditional knowledge, and the right to negotiate mutually agreed terms on its access and use.<sup>66</sup> Traditional knowledge is valuable in bioprospecting— the development of products from biodiversity components (from drugs and cosmetics to beverages and foods). The misappropriation and unagreed use by someone external to the community custodian of that knowledge is referred to as biopiracy.

## **Key references**

Scott, 1996; Berkes, 1999; Posey, 1999; Carneiro de Cunha, 2009; Scott, 2013; Morgera, Buck and Tsioumani, 2014; Raymond-Yakoubian, Raymond-Yakoubian and Moncrieff *et al.*, 2017.

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58 Also referred to as ‘traditional ecological knowledge’, ‘indigenous knowledge’ or ‘bio-cultural knowledge’.

59 Raymond-Yakoubian, Raymond-Yakoubian and Moncrieff, 2017.

60 IPBES Glossary, definition of Indigenous knowledge/local knowledge systems, available online at <https://www.ipbes.net/glossary>

61 Scott 1996; Scott, 2013.

62 Carneiro de Cunha, 2009, page 82.

63 Berkes, 1999.

64 These characteristics, while being often present, are not to be considered as mandatory for the identification of traditional knowledge.

65 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS); see <https://www.cbd.int/abs/about/default.shtml/>

66 Morgera, Buck and Tsioumani, 2014.



# Custodians/Stewards/Guardians

Many indigenous peoples and local communities around the world act as custodians, stewards and guardians of the land, water, sky, soil, mineral deposits, natural resources and biodiversity traditionally occupied or used by them. The idea of custodianship/stewardship/guardianship<sup>67</sup> builds on their relationships with their territories, which include cultural, spiritual, and social practices directed towards the protection of natural cycles, ecosystems, species and landscape features. For the CBD Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities custodianship<sup>68</sup> recognises “the holistic interconnectedness of humanity with ecosystems and obligations and responsibilities of indigenous and local communities, to preserve and maintain their traditional role as traditional guardians and custodians of these ecosystems through the maintenance of their cultures, spiritual beliefs and customary practices”.

The custodianship role of indigenous peoples and local communities is fundamentally different from the mechanism whereby authorities designate areas to be officially ‘protected’ constraining the use of natural resources by regulatory means alone. Acting as custodian means “**conserving nature willingly, while living with it and from it, and holding it in trust for future generations.**”<sup>69</sup> In many ways being custodian of a territory is synonymous with **governing** it – *de facto* if not also *de jure* – **for the long term**, with a **sense of responsibility and care**. Indigenous or local community custodianship may include the use of state legislation and regulatory instruments, and state authorities may enter into shared governance custodianship arrangements with indigenous peoples and local communities. The custodian role generally adapts to the context, and it needs to be understood in context.

The custodianship role of indigenous peoples and local communities has been noted by states at the international level. The 1992 Rio Declaration acknowledged for the first time the communities’ special and ‘vital role in environmental management and development, thanks to their knowledge and traditional practices’. Since then, international law has increasingly recognized the need to support community custodianship. These recognitions build on the understanding that, in order to maintain such role, indigenous peoples and local communities need to exercise their capacities and rights related to knowledge, practices and natural resources.<sup>70</sup>

## Recognition of custodians of ICCAs— territories of life

For a territory to qualify as ICCA—territory of life it is necessary that an indigenous people or local community acts as custodian of its lands, waters, biodiversity and other gifts of nature. The custodianship role of indigenous peoples and local communities is essential both to protect and perpetuate the territories of life that are well defined and to seek to improve the condition of those that are disrupted or desired. It might be the case that the people or community is no longer, or not yet, able to fulfil its desire to take care of the territory. The desire and commitment to act as custodians, however, might be impaired by conditions that are external to the community or people. Examples of those problematic conditions range from polluting factors or poachers originating from outside the territory to conflicts with state or private agents that impede the community governance institutions from implementing and applying rules.<sup>71</sup> If this is the case, some **legal recognition**, or even just some **social recognition** by the State, neighbouring communities, civil society, and/or international organizations of the role and

67 We acknowledge that different peoples and communities use different terms not only for their territories of life but also for their own roles related to those (e.g., ‘custodians’, ‘stewards’, ‘guardians’ and others). The ICCA Consortium has historically used the term ‘custodians’ and it mostly employs it here for simplicity. In various contexts, other terms are more appropriate and should be used.

68 Convention on Biological Diversity 2011b.

69 Borrini-Feyerabend *et al.*, 2010.

70 #Biocultural rights.

71 #Governance institutions.

self-determining authority can offer valuable support.<sup>72</sup> In general, **secure collective tenure**<sup>73</sup> to land, water and natural resources (*e.g.* by the recognition of **biocultural rights**<sup>74</sup>) is a powerful pathway to encourage, protect, recreate and enhance the collective capacity, will and self-assumed responsibility to act as custodian of an ICCA-territory of life.

## Spirituality, mainstream faiths and conservation

More than 80% of world population identifies itself as having religious/spiritual beliefs<sup>75</sup> and many world faiths share the idea, expressed in distinctive but compatible ways, that human beings have custodianship duties and collective responsibilities<sup>76</sup> towards the environment. This may be because nature is perceived as a divine gift, or because it is the very incarnation of the creator god/god(s) or spirits.

Local spiritual beliefs are often better described as indigenous than as mainstream, or as “folk variants of mainstream religions”.<sup>77</sup> Many of them have developed and transmitted traditional environmental knowledge, practices and customs— such as a profound respect for specific places and ‘sacred sites’, or the prohibition to damage or eat certain species— that promote sustainable lifestyles and nourish a sense of belonging to a territory.

Several mainstream faiths (such as Christianity, Islam, Hinduism, or Buddhism) call the faithful to fulfil their stewardship/custodianship duties and contribute to support them in caring for their environment— locally and globally. Mainstream faiths, however, have highly diverse ‘streams of thought’. The values of hierarchical elites may not be embodied by lower clergy and believers. And the custodianship/stewardship duties may not be easily translated into practice.<sup>78</sup>

Since the 1986 Assisi Meeting of Prayer for Peace where leaders of all major world religions expressed their views on the importance of protecting the environment, recognition of the role of faiths for environmental collective actions has been increasing. As an example, the UN Faith for Earth Initiative aims at inspiring faith-based conservation and the achievement of Sustainable Development Goals. The Alliance of Religions for Conservation also supports environmental initiatives by faith communities.<sup>79</sup> Opportunities to support territories of life seem to exist at the interaction between faith initiatives and indigenous peoples struggles (see, for instance, the Interfaith Rainforest Initiative, the Vatican Dicastery for Promoting Integral Human Development, the *Laudato Si* Encyclica of 2014).

### **Key references**

Borrini-Feyerabend *et al.*, 2010; Verschuuren *et al.* (eds.), 2010; Convention on Biological Diversity, 2011; Ruiz and Vernooy, 2012; Mcleod and Palmer, 2015; Frascaroli, 2016; Frascaroli and Fjeldsted, 2017.

**See also:** Pope Francis, 2015; and a short film on Culture, Spirituality and Conservation by the SCB Religion and Conservation Biology Working Group and the IUCN CEESP Theme on Culture, Spirituality and Conservation at <https://vimeo.com/349593871>.

72 #Appropriate recognition.

73 #Tenure and security of tenure.

74 #Biocultural rights.

75 Verschuuren *et al.*, 2010, page 2.

76 #Collective responsibilities.

77 The distinction between mainstream and indigenous faiths is useful but also problematic, as many mainstream faiths are indigenous to certain places and cultures, such as Zoroastrianism, Daoism, and Jainism (Verschuuren *et al.*, 2010, page 3).

78 Frascaroli and Fjeldsted, 2017.

79 <http://www.arcworld.org>.

# Rightsholders

In judicial language, a rightsholder is a subject who holds a right. This implies that the subject's interests are sufficiently important to raise a legal/moral duty (or set of duties) on the part of one or more other subjects. In other words, the rightsholders' wellbeing and interests have an intrinsic value, they "are a sufficient reason for holding some other person(s) under a duty".<sup>80</sup>

In the context of protected and conserved areas and territories of life, we can refer to 'rightsholders' as "actors socially endowed with legal or customary rights with respect to land, water and other natural resources".<sup>81</sup> This means that land, water and other natural resources are so important for the needs, interests or desires of the right-holders that it would be morally and/or legally wrong to deny access to them, regardless of the advantages or disadvantages to someone else.<sup>82</sup> Naturally, who is entitled to count as a 'rightsholder' is often hotly disputed. And increasingly, there are demands to recognize as rightsholders even non-human beings (see below).

Importantly, rights are constructed by States and often do not reflect the deeper relational accountabilities and responsibilities that many indigenous peoples and traditional communities feel towards one another, the natural world, and more-than-human relations. In this sense, the qualities that make some people rightsholders have to do with their perceived cultural and spiritual connection with nature more than anything else. The Consortium stresses that **rights should be grounded in responsibilities**.

## May only human beings be rightsholders?

Subject, when referred to the right-holder, may be a person, a group of persons, but also, depending on the legal or moral system of reference, a juridical person (such as a corporation), as well as an animal, plant, natural element, nature itself (Mother Nature), or a sacred natural site. However, the ability of such various subjects to be considered rightsholders is still very contested, based on the anthropocentric beliefs that only human beings or groups composed of human beings may be considered legal subjects, *i.e.* may be recognized to have subjectivity. Nevertheless, jurisprudence, laws and constitutions around the world (such as the Ecuador's and Bolivia's Constitutions, court cases and Acts in India, Colombia and New Zealand)<sup>83</sup> are paving the way for the recognition of intrinsic value, subjectivity and rights to more than human beings alone.

The extension of legal subjectivity to natural elements, and hence the ability to regard them as rightsholders, may be used as a means to promote the conservation of ICCAs—territories of life, further justifying their importance not only for the protection of nature as a human interest (instrumental value), but also for the protection of nature (or elements of it) as holder of intrinsic value and rights. The case of Whanganui river (2017, Aotearoa/ New Zealand), clearly shows how it may also further the worldviews, relationships, and interests of indigenous peoples. The Te Awa Tupua Act recognizes the Whanganui River, all its tributaries, and their beds, as an indivisible and living whole possessing legal personality, and as one of the ancestors of the Whanganui iwi (tribes) which is to be protected, respected and guarded upon for their physical, cultural and spiritual survival. The river now holds all the powers, rights, duties, and liabilities of a legal person (it is a rights-holder as well as a duty-holder) and exercises them through a joint action of the Whanganui *Iwi* and the Crown.<sup>84</sup>

80 Raz, 1988, page 116.

81 Borrini-Feyerabend and Hill, 2015, page 180.

82 The fulfilment of the duty may also benefit other subjects (which may be called beneficiaries). However, the fact that they benefit from the fulfilment of the duty does not justify the existence of the right (and consequently, of the duty).

83 For a collection of cases, see: [www.naturerightswatch.com](http://www.naturerightswatch.com).

84 Other cases include Te Urewara in New Zealand, which is a region (mountains, lake, forests) recognised as having personhood and status as 'conserved area' by the Te Urewara Act of 2014, and the Atrato river in Colombia.

## Indigenous peoples, local communities and their territories of life— rightsholders because of property titles?

When referring to ICCAs—territories of life, the governance rights of the people or community most often do not derive from a property title. Instead, their rights originate from even stronger factors of social, economic and environmental nature. Those include **‘collective use and occupation from time immemorial’, ‘historical rights’, ‘customary rules’, special *de facto* governance, commitment to govern a given territory, charter myths and forms of social consensus built over centuries.**

In the 2001 case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the InterAmerican Court of Human Rights stated, that “in the case of indigenous communities who have occupied their ancestral lands in accordance with customary practices – yet who lack real title to the property – mere possession of the land should suffice to obtain official recognition of their communal ownership”. In the 2007 case of *Saramaka People v. Suriname*, which dealt with local communities, the same Court explained that it is “because they share distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories”. Such land and resource rights may clash (as in the mentioned court cases) with current national laws, or with state concessions to external actors (such as corporations) based on processes of nationalization or privatization of land and resources.

### ***Key references***

Stone, 1972; MacCormick, 1976; Kramer, 1988; Raz, 1988; Berry, 1996; Mejido Costoya, 2013; Kauffman and Martin, 2017; Kotzé and Calzadilla Villavicencio, 2017; Surrallés, 2017; Studley and Bleisch, 2018; Kauffman and Sheehan, forthcoming.

### **Court cases**

- ▶ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-American Court on Human Rights, 2001. No.79, Ser. C.
- ▶ *Saramaka People v. Suriname*, Inter-American Court on Human Rights, 2007. No. 172, Ser. C.
- ▶ *Mohd. Salim v State of Uttarakhand and Others*, 2017. Writ Petition No. 210 of 2017 (M/S). Uttarakhand High Court.
- ▶ Parliament of Aotearoa New Zealand, 2017. Te Awa Tupua (Whanganui River Claims Settlement) Bill.
- ▶ Plurinational State of Bolivia, 2009. The Constitution of the Plurinational State of Bolivia.
- ▶ Plurinational State of Bolivia, 2010. Ley de Derechos de la Madre Tierra – No. 071.
- ▶ Republic of Ecuador, 2008. The Constitution of the Republic of Ecuador.



# Stakeholders

'Stakeholders' possess direct or indirect interests and concerns about a certain asset or situations, but do not necessarily enjoy a morally, legally or socially recognised entitlement to them.<sup>85</sup> They are potential rightsholders<sup>86</sup> who hold interests that may or may not be considered as sufficiently important to raise a right, and its consequent duties, on someone else. The evaluation concerning whether a stakeholder should or should not be recognized to be/become a rightholder may be moral/social, as well as purely legal. It could be argued, in a certain case, that a stakeholder is also a moral rightholder but the local (or national or international) competent legal authority has refused to give legal recognition to such moral right turning it into a legal right. In this case, it may be politically convenient to refer to the stakeholder as rightsholder in order to advocate for such missing legal recognition.

Indigenous peoples and local communities traditionally living in a territory, sustainably using its natural resources, and exercising collective responsibilities over it, might sometimes be considered by a national government as stakeholders with respect to activities to be undertaken in the area. However, considering them as mere stakeholders denies and neglects the rights recognized to them by international law and, in some cases, also by national law. This is particularly true for indigenous nations and peoples but also for local communities who can demonstrate their role in conserving the territory and its biodiversity through time. Hence, it is important to determine when the concept of 'stakeholder' is inappropriately used, in particular when dealing with governing, managing, recognising and supporting ICCAs—territories of life. At other times it might instead be important to state the mere stakeholder role of certain actors, such as a corporation interested in using a certain land for crop production. In summary: the distinction between stakeholders and rightsholders is important and should be treated with great care.

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85 Borrini-Feyerabend and Hill, 2015, page 180.

86 #Rightsholders.

# Tenure and security of tenure

Tenure is ‘the holding of something of value for a length of time’. Tenure can be by private, communal and public actors (the government at various levels). **Communal tenure can be legal** (based on state laws and registries) **or customary** (based on local legitimacy<sup>87</sup> and oral history).<sup>88</sup> Tenure comprises a bundle of rights that normally include access and use (for subsistence or income generation), management and exclusion of others. Only certain types of tenure (*e.g.*, private property) also include the right of alienation, due process and compensation (*e.g.* subdividing the unit under tenure, selling the rights, claiming for compensation). In general, **exercising tenure means governing, managing and regulating access and use**, and it can go with or without a formal title. Many indigenous peoples and local communities are more interested in securing the exercise of their tenure than in legally owning land, fearing all sorts of problems with the latter (property taxes, gender inequality, debt traps and exposure to unwanted investors, conflicts among communities with overlapping claims for the same territory, etc.).

For many indigenous peoples and traditional communities, **customary land tenure** without a formal title is the main form of land regulation, including access, use and transmission of tenure itself.<sup>89</sup> Land tenure is deeply entrenched in social and cultural customs and implemented through collective (community, group, family) arrangements. In the last centuries, colonial powers, national governments and businesses have commonly ignored (or mis-recognized) customary tenure rights. This has led to the extensive dispossession of indigenous peoples and local communities from their territories, lands, waters and biodiversity (land and water grabbing), including for the creation of protected areas (green grabbing). At the base of this misrecognition and dispossession stands the colonial doctrine of the conquered ‘no-men’s land’ (*terra nullius*), which is only slowly being supplanted by more appropriate understandings.<sup>90</sup>

Still today, when State agencies meet customary land tenure situations, they commonly suppress customary tenure rights or distort them in ways that endanger their long-term viability (for example, transmission rules are changed, large commons are subdivided into smaller privately-owned parcels, etc.). When they do allow for the formalisation of tenure, this usually requires complex and costly transactions, poorly accessible to indigenous peoples and local communities.

In at least two cases, the recognition of community tenure rights encounters further additional challenges. The first is the one of **mobile indigenous peoples**, who generally need vast territories for their transhumance or nomadic mobility patterns and, in particular, secure access to the wetlands necessary for their herds. The situation of mobile indigenous peoples has been plagued by lack of recognition of collective rights—a fact sustained and compounded by a variety of myths about mobility,<sup>91</sup> and by a general lack of understanding regarding its crucial benefits for nature conservation and sustainable livelihoods.<sup>92</sup> The second case is the one of **customary sea tenure** of indigenous peoples and local communities. Notwithstanding the obvious ecological integration of land and sea and the connectedness embedded in customary systems of territorial governance and livelihoods, most regimes of state and international law treat coastlines as hard jurisdictional divides. As a result, indigenous and community tenure in offshore areas is subject to conditions and rules even more restrictive than those that apply in terrestrial areas.<sup>93</sup>

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87 *E.g.*, visual signs placed ceremonially in determined places.

88 *E.g.*, elders’ promises and agreements.

89 Alden Wily, 2011b.

90 High Court decision in the *Mabo v. Queensland (No.2)*, Australia, 1992.

91 Farvar, 2003.

92 Chatty and Colchester, 2002. See also Dana Declaration.

93 Mulrennan and Scott, 2000; Scott and Mulrennan, 2010.

We speak of security of tenure when the tenant of land, waters or other natural resources believes that its tenure will be upheld and defended by society. When tenure is secure, neither the grabbing of land, waters and natural resources nor the eviction of peoples and communities from their territories can take place. Tenure security is fundamental for the rights to life, food and culture, including traditional knowledge and local sustainable use practices that prevent land degradation and poverty.<sup>94</sup> While for much of history customary tenure has probably felt relatively secure,<sup>95</sup> contemporary changes in political economy—from trade globalisation to the resurgence of authoritarian and populist regimes—appear to foster and spread tenure insecurity all over the planet. Indigenous peoples and local communities are thus seeking ways to apply for formal tenure rights that could integrate (or ‘double-lock’) their customary rights and strengthen their capacity to protect their land and sea.<sup>96</sup>

It has been estimated that 65% of the terrestrial surface— mostly forests, rangelands, grasslands, savannas and shrublands— consists of ‘commons’, *i.e.*, lands possessed and used collectively by rural communities in accordance with their customary norms.<sup>97</sup> The extent of lands legally owned by communities or officially designated for community use, however, is much smaller, amounting to only 18% of global terrestrial surface.<sup>98</sup> Mapping and registration of land generally involve laborious and costly processes that do not always end up guaranteeing tenure security. Custodian communities are nevertheless increasingly embarking on the process, considering that benefits may outweigh the costs.<sup>99</sup> Formal titles and documents appear more convincing than social legitimacy, especially when communities need to negotiate with companies and state agencies.

The process of providing some **official recognition of land tenure** (which is not to be equated to land ownership only), is likely to strengthen the bond between human communities and their territories of life, provided that internal and external conflicts can be avoided. In turn, one can expect that the bonds of tenure will foster the sound governance, management and care of the land, contributing to conserving nature and supporting community livelihoods and wellbeing. Conversely, if communities can demonstrate that their territories show a good conservation status, this is likely to strengthen their demands for tenure rights. This is a major reason why the ICCA Consortium promotes the ‘appropriate recognition’ of territories of life: to secure the collective tenure of their community custodians.<sup>100</sup>

### ***Key references***

Mulrennan and Scott, 2000; Chatty and Colchester, 2002; Farvar, 2003; Scott and Mulrennan, 2010; Alden Wily, 2011b; FAO, 2012; Rights and Resources Initiative, 2015; Alden Wily, 2017.

**See also:** [\*WRI page on indigenous and community land rights\*](#); [\*The Tenure Facility\*](#); [\*Landmark\*](#); [\*Indigenous navigator\*](#); [\*International Land Coalition\*](#); [\*La Via Campesina\*](#); [\*Rangeland Initiative of ILC\*](#); [\*The Dana declaration website\*](#);

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94 In 2012 FAO has issued the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

95 The exception made of episodes of wars, conflicts and foreign invasions.

96 Alden Wily, 2017.

97 Alden Wily, 2011a.

98 Ibid. See also: Oxfam, International Land Coalition and Rights and Resources Initiative, 2016.

99 Notess *et al.*, 2018.

100 #Appropriate recognition.

# Collective rights

Most human rights treaties and covenants protect individual rights, and only a few protect collective rights. Among the latter are the UN instruments that protect languages and cultures, ensure the right to association and religion, and—notably—the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Collective rights are rights held by a community, a people or a group rather than single individuals. They should not be confused with the rights held by the members of a certain category of individuals and not by the rest of humankind (such as woman rights, which are held by women severally, not women as a group). Collective rights are both overlapping and interdependent with the individual rights of the single members of a group, such as an indigenous people, not as an alternative to them.

Some confusion may arise over which groups are or should be entitled to be holders of collective rights. Not all groups of people (*e.g.*, those attending a concert or those with green eyes) may be considered to have a value worth of legal protection through the instrument of rights. Collective rights are, in fact, justified on the protection of the group *per se* because it is perceived to have intrinsic value. Indigenous peoples and ethnic minorities are the groups most commonly argued to be holders of collective rights.<sup>101</sup> On the one hand, their collective rights stem from their capacity to hold, maintain and let flourish cultural diversity in society. On the other, they often find themselves in particularly vulnerable positions. The “effective realization of equality requires in many instances differential treatment of ethnic groups in ways not necessary for, or even relevant to, other types of groups”.<sup>102</sup>

For what concerns the ICCA Consortium, among the most interesting collective rights are the customary and/or legal tenure rights to a territory, implying access, use, management and the power of excluding others.<sup>103</sup>

## Are local communities holders of collective rights?

Indigenous peoples are now widely considered by international law and several national laws as holding intrinsic value collectively (not only as an aggregation of single members). In contrast, local communities are still struggling to see their collective rights recognized. Local communities, it is at times argued, are not *per se* holders of intrinsic value, hence they do not have collective rights *per se*. The debate on the recognition of rights to local communities has currently reached the stage of recognizing local communities as holders of collective rights only insofar as their lifestyles contribute to achieve internationally agreed values, such as conserving biodiversity or securing the right to life, food or culture. An important step towards such increased recognition is the adoption by the UN General Assembly of the Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). Acknowledging their role for food security and sovereignty, UNDROP aims at promoting specific collective ways of life, as well as their contribution to conserving biodiversity.

The ICCA Consortium is keen to understand and highlight all the instances by which local communities could argue for their collective rights to territory on the basis of customary tenure as well as contributions to broadly agreed international values, such as the conservation of biodiversity<sup>104</sup> but also the right to life, food<sup>105</sup> or the preservation of cultural diversity.

101 Some indigenous peoples are vehemently opposed to being referred in any way as ‘ethnic minorities’.

102 Anaya, 1997, page 223.

103 #Tenure and security of tenure.

104 #Biocultural rights.

105 Pimbert and Borrini-Feyerabend, 2019.



## What is a 'person'?

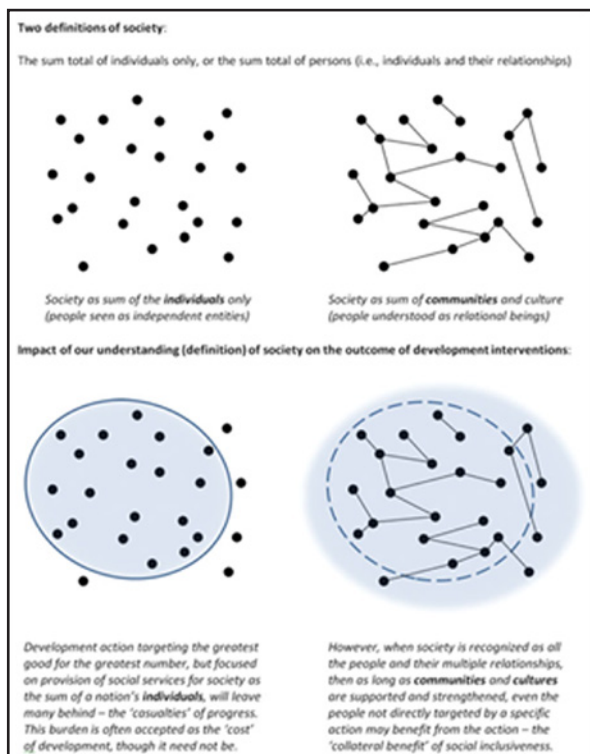
What makes or constitutes a 'person', or an 'individual', is not as straightforward as one might think. Western predominant view has considered, and entrenched into law, the fact that individuals are bio-physical beings detached from one other. It has focused on their single isolated concerns, needs, rights and duties.

Non-Western cultures and worldviews have often reflected a wider and less mono-centred view of 'person'. As expressed by Torrance:<sup>106</sup> "Just as the words 'father', 'mother', 'husband', 'wife', 'brother', 'sister' are relational terms, so could be the word 'person'." In this sense a person would be "someone who finds his or her true being in relation, in love, in communion [with others]". If 'persons' are perceived in a symbiotic relationship with one another and the world at large, there are profound implications for what society is and what social wellbeing implies.<sup>107</sup> For instance, this symbiotic vision would much more easily conceive territorial rights and responsibility as residing in custodian communities rather than individual landowners.

### Key references

Torrance, 1996; Anaya, 1997; Holder and Corntassel, 2002; Waldron, 2002; Stevens, 2010; Jonas, Makagon and Shrumm, 2013; Foggin, 2014; Reyes, 2017.

For more info on the collective rights of indigenous peoples see [UNDRIP](#) and for the Declaration on the Rights of Peasants and Other People Working in Rural Areas, see: [La Via Campesina](#)



**Figure 1.** The definition of 'society' and its far-reaching impact on the outcomes of development. (Foggin, 2014).

106 Torrance, 1996.

107 From Foggin, 2014.

# Collective responsibilities

Collective responsibilities are essential to characterize ICCAs—territories of life. The ability and willingness of a community to uphold its collective responsibilities towards its territory generate the very relationship that defines an ICCA—territory of life. Governance and management of land, water, air, biodiversity and all other gifts of nature within a territory of life are guided by the sense of common responsibility that the community shares, transmits to future generations, and reflects in its institutions and cultural, social and spiritual norms.

Collective responsibilities prompt the community to maintain its practices that are beneficial for nature as well as for its own livelihoods and wellbeing and **ground their request for appropriate recognition and support of their role as custodians**. The perpetuation of collective responsibilities highlights the relevance of ICCAs—territories of life for conservation, while offering a radical alternative to those approaches that are based on dispossession, and the consequent removal of responsibility of local communities. Reserving conservation action to the state (government, protected area agencies), holders of concessions, or private landowners alone is surely a waste of opportunities and capacities.<sup>108</sup>

The ICCA Consortium aims at promoting the conservation of nature while nurturing the livelihoods and wellbeing of indigenous peoples and local communities through their sustainable self-determination and full respect of their collective rights *and responsibilities*.

## ***Key references***

Corntassel, 2008; Corntassel, 2012; Corntassel J. and C. Bryce. 2012.

# Self-determination

The right to self-determination is “the right of a cohesive national group (‘people’) living in a territory to choose for itself a form of political and legal organization for that territory. It is a collective right of indigenous peoples to freely determine their own social, political, cultural and economic status.”<sup>109</sup>

Self-determination has frequently been associated with the will of a people to obtain secession from the state it resides in.<sup>111</sup> For this reason, states have often been reluctant to recognize the right to self-determination of indigenous peoples.<sup>110</sup> However, indigenous peoples have often called for forms of self-determination that do not entail secession.<sup>112</sup> They called for forms of autonomy that include ‘internal self-determination’, predominantly aimed at asserting nationhood, perpetuating indigeneity, preserving languages and cultural practices, honouring place-based relationships, respecting territorial integrity and maintaining traditional governance structures.<sup>113</sup>

The right to self-determination of indigenous peoples is the core precept and principle that all other indigenous rights are based on. Both the UN Declaration on the Rights of Indigenous Peoples and Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization describe the right to self-determination as the right of indigenous peoples to “**exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live**”, and as the prerequisite for the realisation of the **right to be equal but different**: *i.e.* the right to maintain cultural, religious and economic traditions and social institutions separate from those of the dominant part of the society.

The right to self-determination entails the right to free, prior, informed consent (FPIC)<sup>114</sup> in all cases when lands, water, air, biological diversity and all other gifts of nature might be affected by external measures, projects and public policies. This also concerns other sectors such as education, justice, or social security programmes that may affect indigenous peoples. An insightful elaboration of the concept of ‘self-determination’ is described below as ‘sustainable self-determination’

## ***Key references***

Anaya, 1996; Xanthaki, 2007; Anaya, 2009; Tomaselli, 2016.

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109 Reyes, 2017.

110 Anaya, 1996, page 98, note 4.

111 Xanthaki, 2007, page 140.

112 *Ibid*, page 146; Anaya 1996, page 111.

113 This, however, is “more than merely choosing among what is on offer from one political or economic position only.” (Cassese 1995, page 101).

114 #Free, Prior and Informed Consent.

# Sustainable self-determination

Claims of self-determination of indigenous peoples (and local communities) are generally dealt with by state governments and international human rights lawyers. They depend in many ways on the presence and role of state governments and/or international systems of law, such as UN Conventions and treaties. The nuanced concept of 'sustainable self-determination' provides a profoundly diverse understanding of indigenous peoples and their complex relationships to place and the natural world. The concept, developed by the Cherokee scholar Jeff Corntassel and readily welcomed and adopted by the ICCA Consortium, proposes an alternative to state-led processes of 'allowing self-determination' that remain entrenched in patterns of colonialism (the State – perpetuator of violence – supposedly becomes the saviour that provides solutions to indigenous struggles; these solutions are based on liberalism and fragmented rights frameworks, detached from indigenous identities and custodianship roles).

Sustainable self-determination proposes to regain sight of the centrality of relational responsibilities, as opposed to a strict focus on a rights-based system where nature and people – the community, family, clan, kinship, homelands – are detached one from the other, taken for granted, and only used to respond to the needs of individuals. According to Corntassel, the transmission of indigenous and local knowledge to future generations, and the generation of new forms of community knowledge – something that happens, or should happen, in the daily relations of maintaining livelihoods – are the necessary ground to express sustainable self-determination. Importantly, such responsibilities extend beyond humans alone, to the rest of nature. Such relational responsibilities, rooted in place and kinship and often contained or expressed through customs and norms rather than codified in legal statutes and/or court decisions, characterise mature communities, ready to both command respect for their rights and fulfil their responsibilities.<sup>115</sup>

The concept rebalances attention towards the local, the community, the reality of the lives and identity of indigenous peoples and local communities rather than towards national and international fora, which are not part of the history, institutions or culture of many such peoples and communities. The process of sustainable self-determination focuses on the myriad ways in which indigenous nations and local communities act every day to protect and perpetuate their territories of life while nurturing and strengthening their own community health and well-being. In this sense, sustainability, care for the environment and care for future generations are at the same time goals and means of regeneration and renewal.

The re-discovery and implementation of customary law may lead to a resurgence of indigenous peoples and local communities beyond the state, as distant as possible from the processes of assimilation into mainstream culture that currently endangers indigenous and community identities and sustainable ways of life. Sustainable self-determination means regaining vision and control of indigenous and community cosmo-visions, livelihoods, sacred sites and rites, languages, culture and economic systems. By maintaining (or regenerating) the ability to transmit them to future generations, it sets in motion a virtuous cycle of thriving nature through responsibility and care. In this sense, sustainable self-determination is at the very heart of the concept and practice of 'territories of life' and of the ICCA Consortium as an organisation devoted to their appropriate recognition and support.

## ***Key references***

Corntassel, 2008; Corntassel, 2012; Corntassel and Bryce, 2012; Farvar *et al.*, 2018.

<sup>115</sup> Importantly, as stressed by Kothari *et al.* (2012) such mature communities should also be open to enhance their own internal equity, including regarding classes of age, socio-economic status and gender (#Gender).



# Sustainable use of biodiversity

According to the Convention on Biological Diversity, sustainable use entails the “use of biodiversity components in a manner in which ecological processes, species and genetic variability remain above thresholds needed for long-term viability”.<sup>116</sup>

Article 10(c) of the same Convention calls on Parties to: “...protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”. The use of biological resources may concern grasslands established and maintained to allow seasonal grazing of livestock, which also provide habitats for other species. It may relate to fisheries managed as to maintain fish biodiversity, or to agricultural practices that conserve traditional crop diversity. In all these and many other cases, sustainable uses are “developed over generations, based on experience with specific places and species within the territory, the seasons and climate” and are “closely linked both to traditional knowledge as well as to a particular territory”.<sup>117</sup>

Many ICCAs—territories of life embed communities’ cultural and spiritual values that guide practices for the sustainable use of the various gifts of nature they contain. Such practices are rooted in the past in order to fulfil present responsibilities towards the environment and guarantee the well-being of future generations (intergenerational equity). They are a powerful tool to meet many of the UN Sustainable Development Goals,<sup>118</sup> including eradication of poverty and hunger, and the promotion of sustainable communities, which conserve and restore biodiversity because of the social, cultural and economic benefits they derive from it.

## What promotes communities’ sustainable use of biodiversity?

Sustainable uses and practices are greatly supported whenever custodian indigenous peoples and local communities are effectively engaged in decision making, have security over the long-term tenure of their territory and biodiversity,<sup>119</sup> and remain capable of exercising their self-determining authority over them.<sup>120</sup> The presence of local governance institutions and their ability to create and enforce rules responding to changing circumstances is essential to secure sustainable use.<sup>121</sup>

When communities do not hold, or are not perceived to hold, long-term rights to their territories of life, when they are denied or unduly limited in the use of its natural resources and/or when they are denied access to their traditional lands, the sustainable practices they hold are in danger of being impaired, forgotten or replaced by resentment and unsustainable attitudes. The important role for state governments is to make sustainable uses more locally beneficial than unsustainable ones. When communities are entrusted with local governance and when the benefits arising from local resources are fairly and equitably shared, sustainable use is more likely to occur.<sup>122</sup>

On a global scale, indigenous peoples and local communities find themselves embedded in the current capitalist economic system, whose main goal is the rapid maximization of economic profits, driving ecologically unsustainable growth. At the core of the disregard for the social and environmental impacts of profit maximization stands the occupation and colonization of collective lands and waterways and the unsustainable exploitation of gifts of nature in territories of life. All this discourages, when it does not impede, sustainable uses, even in the case of well-established communities.

### **Key references:**

Convention on Biological Diversity, 2004b; Bélair *et al.*, 2010; Forest People Programme, 2011; Hodges *et al.*, 2014; Tengö *et al.*, 2017; Wittman *et al.*, 2017; Cooney *et al.*, 2018; Robinson *et al.*, 2018; Child and Cooney, 2019; Dacks *et al.*, 2019.

116 Convention on Biological Diversity 2004b, Addis Ababa Principles.

117 Forest Peoples Programme, 2011, page 6.

118 The Sustainable Development Goals (SDGs) are the United Nation’s set of 17 goals for a sustainable future, each with its respective targets (on poverty, inequality, climate, etc.), to be reached by 2030; see: <https://www.un.org/sustainabledevelopment/>

119 Cooney *et al.*, 2018.; see also #Appropriate recognition, #Land Tenure.

120 This latter point has been highlighted by Marshall Murphree (Murphree, 2009) and stressed by Jeff Corntassel (Corntassel, 2012).

121 #Governance vitality.

122 Cooney *et al.*, 2018.

# Sustainable livelihoods

“A livelihood comprises the capabilities, assets (including both material and social resources), and activities required to secure the means of living. A livelihood is sustainable when it can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base”.<sup>123</sup> Living sustainably (‘having a sustainable livelihood’) is an important component and indicator of individual and community wellbeing.

Understanding whether sustainable livelihoods are in place requires a holistic approach, able to look at the interactions between biodiversity and the ecological functions of the natural environment and the cultural, social, institutional and economic practices of the relevant community. The assets, capabilities and activities required to secure the means of living generally include natural resources (*e.g.*, farmland, water, livestock, forests, wildlife – including pollinators and fisheries – minerals...), economic resources (*e.g.*, buildings, stored goods, machineries, utensils, equipment, cash...), intangible assets (*e.g.*, institutional capacities, knowledge and know-how, respect...), social resources (*e.g.*, networks, relationships, social cohesion...) and communal practices (*e.g.*, enforcement of rules, surveillance activities...).

In the context of ICCAs—territories of life, sustainable livelihoods comprise all those assets, capabilities and activities that a community requires to be able to maintain its own livelihoods but also to maintain the web of relationships that promote its well-being and ensure the exercise of its collective responsibility towards the local environment – including the conservation of ecosystem functions and biological diversity. For that, ‘sustainable livelihoods’ requires the maintenance of the diversity of life – human as well as not human. It requires the functioning of governance institutions that regulate access to, and use of, land, water, air, biodiversity and other gifts of nature.<sup>124</sup> And it requires national and international policy regimes that are favourable and not detrimental to livelihoods. Sustainable livelihoods demand the engagement of the custodian communities, or representatives trusted by them, at all these levels.<sup>125</sup>

## ***Key references***

Chambers and Conway, 1992; Singh, 1996; Krantz, 2001; Cooney *et al.*, 2018.

See also: [\*Sustainable Development Goals\*](#)

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123 Chambers and Conway, 1992.

124 #Governance.

125 Cooney *et al.*, 2018.

# Conservation

The ICCA Consortium has adopted the definition of ‘conservation’ established by the World Conservation Strategy of 1980, namely: “...[conservation is] a positive endeavour including: maintenance of ecological process and life-support systems; preservation of genetic diversity; sustainable utilization of species and ecosystems; restoration and enhancement of the natural environment”.<sup>126</sup> While the practice of conserving nature is as old as people, the concept of ‘conservation’ is relatively recent, has gone through profound changes, and remains today diverse and contested. The beginning of the concept may be found in royalist and colonial attitudes, aimed at creating areas with abundant wildlife that could be easily hunted by a privileged few.<sup>127</sup> The nascent tourism industry brought the promotion of a ‘nature wilderness’ mystique, with national parks as its beacons, accessible only to privileged customers.<sup>128</sup> And, throughout the last century, conservation has been shaped by anthropocentric approaches oriented towards “efficient, scientifically informed management of natural resources”<sup>129</sup> and the preservation of wildlife by professionalised agencies and dedicated policies.

Today, the idea of pristine ecosystems untouched-by-humans has mostly been abandoned, but the notion and practice of ‘**fortress conservation**’<sup>130</sup> unfortunately remains relatively frequent.<sup>131</sup> More comprehensive attitudes can also be found in both literature and practice. In the last few decades, community- and rights-based conservation has become more popular among governmental agencies and conservation organisations – in name if not always in deeds.<sup>132</sup> Although translation between the concept of conservation and indigenous outlooks is not straightforward,<sup>133</sup> some indigenous peoples and local communities have even been willing to appropriate the concept for themselves and adapt it to their own practices. In this sense, **conservation by indigenous peoples and local communities** (‘**indigenous conservation**’)<sup>134</sup> is self-determined, rooted in local contexts, and has led to **sustaining innumerable territories of life throughout the world**. This is what many indigenous peoples and local communities have been practicing for generations, applying their adaptive knowledge and skills, and negotiating, deciding and enforcing their customary laws and collective rules about access to and use of land, water, biodiversity and other gifts of nature.

Indigenous conservation does not distinguish between conservation and community wellbeing, as setting them in opposition would undermine the social relations and cultural norms that have successfully conserved nature through time. Indigenous conservation is not technocratic nor implemented through state institutions and laws. It is conservation based on local collective capacities and rights, and the free assumption of collective responsibilities as part of cultural, spiritual and social practices.<sup>135</sup> Indigenous conservation and the perpetuation of relationships that sustain a community’s territories of life are central to territories of life and sustainable self-determination.

## Can ICCAs-territories of life deliver conservation results on a par with ‘fortress conservation’?

Fortress conservation approaches and conservation by indigenous peoples and local communities may lead to similar results, but their means and objectives are radically different. While fortress conserva-

126 IUCN, 1980.

127 Adams, 2004.

128 Colchester, 2002.

129 Sodhi and Ehrlich, 2010, page 10.

130 Brockington, 2002.

131 Wilshusen *et al.*, 2002. For the current debate on resurging strict conservation actions, see Wilson (2016) and the critiques raised, among the others, by Fletcher and Büscher (2016).

132 See, for instance, Gavin *et al.*, 2015.

133 Nadasdy, 2005; Feit, 2007.

134 Farvar *et al.*, 2018.

135 Berkes, 1999.

tion requires the fencing-off of peoples and communities from designated territories, indigenous and community conservation acts through the maintenance of equilibrium and synergy between human and natural elements, or their re-creation when disrupted. While in fortress conservation management is delegated to professional experts and guards, in indigenous and community conservation the concerned people themselves define and implement conservation measures. There are innumerable examples of territories of life where the management practices are very similar to those that pertain to conventional protected areas. These include: securing strict protection levels that avoid any type of disrespect, disturbance or change to specific sites; securing sustainable use of resources while guaranteeing the preservation of large ecosystems; conserving specific natural features, species or habitats.<sup>136</sup> These examples of management practices in indigenous and community conservation are found in sacred sites, the territories of peoples in voluntary isolation, community-based wildlife sanctuaries and the many areas where customary rules regulate access and use of biodiversity. Overall, the contribution of territories of life to conservation, both within and outside protected areas, is today undisputable and broadly recognised.<sup>137</sup>

***Key references:***

Muir, 1901; IUCN, 1980; Stevens, 1997 (and Nietschmann quoted therein); Berkes, 1999; Posey, 1999; Colchester, 1994; Chatty and Colchester, 2002; Wilshusen *et al.*, 2002; Murombedzi, 2003; Adams, 2004; Nadasdy, 2005; Feit, 2007; Sodhi and Ehrlich, 2010; Kothari, Camill and Brown *et al.*, 2013; Gavin *et al.*, 2015; Oldekop *et al.*, 2015; Jonas, Makagon and Roe, 2016; Corrigan *et al.*, 2018; Farvar *et al.*, 2018; Garnett *et al.*, 2018; Büscher and Fletcher, 2019.

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<sup>136</sup> Borrini-Feyerabend *et al.*, 2010. For similarities and differences between types of ICCAs and types of protected areas, see: Kothari *et al.*, 2012.

<sup>137</sup> Corrigan *et al.*, 2018 and Garnett *et al.* 2018, and references therein.



# Biocultural diversity

A long-term sustainable and mutually beneficial relationship with their life environment characterizes the existence of many indigenous peoples and local communities.<sup>138</sup> Such **inextricable link between their cultural diversity and biological diversity** was framed by Darrel Posey under the term ‘biocultural diversity’. Based on Posey’s work, the Code of Ethics of the International Society of Ethnobiology defines biocultural heritage as “the cultural heritage (both tangible and intangible, including customary law, folklore, spiritual values, knowledge, innovations and practices) and biological heritage (diversity of genes, varieties, species and ecosystem provisioning, regulating, and cultural services) of Indigenous Peoples, traditional societies and local communities”. It further recognises that the cultural and biological heritage “are inextricably linked through the interaction between peoples and nature over time and shaped by their socioecological and economic context”.

The term ‘biocultural diversity’ denotes the idea that “**maintaining and restoring the diversity of life means sustaining both biodiversity and cultures**, because the two are interrelated and mutually supportive”.<sup>139</sup> Collectively held and transmitted from one generation to the next, biocultural diversity is the foundation and essential feature that makes ICCAs—territories of life possible. The very role of indigenous peoples and local communities as custodians of their life environment is entrenched in the existence of biocultural diversity, the diverse governance and management practices and institutions that sustainably use and conserve nature in the long-term.<sup>140</sup>

## ***Key references:***

Posey (ed.), 1999; Borrini-Feyerabend, MacDonald and Maffi, 2004; Maffi, 2007; Maffi and Woodley, 2010; Kothari *et al.*, 2012; Wilson, 2016; First North American Dialogue on Biocultural Diversity, 2019.

See also: [\*IIED page on Cultural Heritage; International Society of Ethnobiology\*](#)

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138 Garnett *et al.*, 2018; Corrigan *et al.*, 2018.

139 Maffi, 2007, page 1. See also Borrini-Feyerabend, MacDonald and Maffi, 2004 and First North American Dialogue on Biocultural Diversity, 2019.

140 #Sustainable use #Conservation #Sustainable self-determination.

# Biocultural rights

The term ‘biocultural rights’ has been introduced relatively recently. It describes a bundle of collective rights of indigenous peoples and local communities grounded in the recognition of their custodianship of the environment. The concept of biocultural rights “denote(s) **all the rights required to secure the stewardship role of communities over their lands and waters** [...] irrespective of whether or not they have a formal title to it”.<sup>141</sup> Biocultural rights are not, as yet, part of international law, but are the result of the interpretation of international multilateral environmental agreements, court cases and policies – such as the Convention on Biological Diversity and its Nagoya Protocol, the Endorois Welfare Council v. Kenya, the UN Forum on Forests, and documents of the UN Food and Agriculture Organization (FAO) and International Union for the Conservation of Nature (IUCN).

Biocultural rights are a bundle of rights with a **double foundation**. On the one hand, we find the promotion and **conservation of the cultural identity and self-determination** of indigenous peoples and local communities. On the other hand, we find the **conservation of nature**. Since each people or community has different needs depending on chosen lifestyle and livelihoods, the biocultural rights bundle can hardly be conceptualised as a static set of pre-defined rights. Nevertheless, rights may be clustered under four categories: 1. protection of cultural integrity; 2. self-determination; 3. access to, and use of, lands, waters and other gifts of life;<sup>142</sup> and 4. relevant procedural rights. Their double foundation, *i.e.* the fact that conservation of nature acts as one of their justifications, makes biocultural rights a *sui generis* category of **emerging human rights**, one by which the same actors— indigenous peoples and local communities— are not only recognised as holders of collective rights but also as collective holders of the duty to maintain their role as custodians of nature. In other words, when rights are recognized *because of* a custodianship role, such role needs to be maintained for the relevant actor to remain holder of biocultural rights. Interestingly, Gandhi used to stress that rights follow responsibilities and not the other way round: we hold rights only insofar we fulfil responsibilities towards other humans and the rest of nature.<sup>143</sup>

## Can biocultural rights promote ICCAs—territories of life & the sustainable self-determination of their custodians?

With regard to some specific ICCAs—territories of life, the custodian indigenous peoples or local communities may find it useful to ask for the recognition of the right to fully govern and manage their lands and territories because they demonstrate their capacity to achieve, or move towards, the conservation of ecosystems, habitats, species and genetic diversity. In such specific cases, the concept of biocultural rights could well suit their needs. This is particularly true for local communities. As yet, local communities<sup>144</sup> are not subjects of international law, but their recognition as collective rightsholders<sup>145</sup> could be linked to their role as custodians of the environment. Hence, the concept of biocultural rights is suitable to apply to their case.

The case of indigenous peoples is more complex. Indigenous peoples are already holders of rights recognized by international law and by many (though not yet all) states. Such rights are grounded on their indigeneity, not on their role as environmental custodians. Thus, biocultural rights are to be considered with caution *vis à vis* indigenous peoples, as they require an environmental **conditionality** that they may not be ready to accept. Because of this conditionality, some would consider them as a ‘second-best option’, to be strategically adopted *only if* indigenous rights are denied. On the contrary, many in the ICCA Consortium believe that the **collective responsibility freely assumed** by local communities and indigenous peoples to care for their environment of life is a privileged choice, assumed willingly and proudly and **one of the main pathways to ‘decolonise’ themselves in sustainable self-determination**.<sup>146</sup> Claiming bio-cultural rights *per se* or, as the case may be, in addition to indigenous rights is a strategic choice increasingly considered by indigenous peoples and local communities aiming at sustainable self-determination.<sup>147</sup>

### Key references

Jonas, Makagon and Shrumm, 2013; Bavikatte, 2014; Bavikatte and Bennett 2015; Sajeva, 2018.

See also: *Biocultural Community Protocol*; *John Knox message to the ICCA Consortium*

141 Bavikatte, 2014, page 16 and page 143.

142 ...what some would call ‘natural resources’.

143 Ashish Kothari, personal communication, 2019.

144 #Local Communities.

145 #Collective rights.

146 #Sustainable self-determination.

147 See the case of the Integral Autonomous Territory of the Wampis Nation, Peru. Lacking ownership titles for core parts of its

ancestral territory, the Wampis Nation now claims collective rights over its ‘integral territory’ (including all lands, waterbodies, underground, and the sky), based on the right to maintain their lifestyle and spiritual relationships with non-human beings. In addition to international law, this claim is also justified through the custodian role that these beings, and the Wampis themselves, are assuming for the conservation of ecosystems and biodiversity. See: <https://www.servindi.org/actualidad/144577>; *Surrallés, 2017; Niederberger, forthcoming*.

# Indigenous customary law & community protocols

Indigenous customary law has been defined as “that body of customs, norms and associated practices, which have been developed or adopted by indigenous peoples or local communities, whether maintained in oral or written format, to regulate their activities and which they consider to be binding upon them without the need for reference to national or other temporal authorities”.<sup>148</sup> Most indigenous peoples around the world still rely on their customary law and institutions to govern and manage their lands, territories and environmental resources. Indigenous “customary law serves to bind and strengthen communities and acts as a foil to the erratic toss and turn of state law.”<sup>149</sup> Not all indigenous law – *i.e.* all norms, institutions, decision making procedures, means of enforcement, etc – are customary, as they may also include laws derived from state sources, from collective deliberations or from natural law. Customary law in today’s world exists in a condition of ‘inter-legality’.<sup>150</sup>

International law (*e.g.*, ILO Convention 169, UNDRIP) explicitly recognizes the indigenous right to their own institutions and legal custom. However, different peoples enjoy different levels of national recognition of customary law, ranging from officially accepted to openly opposed. The relationship with state law and with international (human rights) law is complex and often problematic, but it is essential for the protection and thriving of indigenous peoples’ ways of life, as it is intertwined with their identities, practices and self-determination. Well-functioning and long-lasting ICCAs—territories of life are often accompanied by some form of state recognition of customary/indigenous law.

One of the many challenges concerning the interaction between customary/indigenous law and state law is the fact that the first, in order to maintain its adaptive and dynamic character, is often resistant to be codified (which is, instead, the classic form of statutory law). Thanks to the advocacy by indigenous representatives and NGOs, however, international law has incorporated an instrument to address that reluctance: community protocols.

Articles 12 and 22 of the Nagoya Protocol to the Convention on Biological Diversity call on parties to implement their obligations taking into consideration the customary laws of indigenous and local communities and their **community protocols** when dealing with the access and use of natural resources and traditional knowledge.<sup>151</sup> Community protocols are instruments in the form of documents in which communities assert specific rules and regulations regarding their territories of life, and the access to, and use of, biodiversity based on their rights, goals, and worldviews. These rules can be derived from customary as well as non-customary indigenous law. Community protocols are compiled after extensive internal consultations and legal awareness raising, usually facilitated by NGOs or community-based organizations. Although this entails a certain formalization of rules embedded in customary practice and oral transmission, such protocols are **context-specific and can be revised by the community itself, unlike statutory laws**. They are important as they can increase the capacity of a community to reflect upon and possibly regenerate customary laws, values, principles, needs and custodianship roles, and can promote local implementation of international and national environmental laws. In a broader sense, protocols are useful to show to others (*e.g.* local governments or protected area managers) that the custodian communities, and their customary/ indigenous law, have important roles to play in governing and managing territories and conserving nature, which deserve appropriate forms of recognition and support.

## ***Key references***

Santos, 2001; Bavikatte and Jonas, 2009; Shrumm and Jonas, 2012; Swiderska *et al.*, 2012; Tobin, 2013; Tobin, 2014; Weitzner, 2018.

**See also:** [\*Biocultural Community Protocols; IIED page on Cultural Heritage.\*](#)

148 Tobin, 2014, page 10.

149 Ibid, page 1.

150 Santos, 2001; Weitzner 2018.

151 #Traditional knowledge.

# Protected areas

Protected areas have been identified by the Convention on Biological Diversity (CBD) as one of the fundamental instruments for the promotion of in-situ conservation, acting as positive drivers of biodiversity protection, preservation of environmental services, and climate change mitigation. For the CBD a protected area is a “geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.” The IUCN has a broadly equivalent, although richer, definition. For IUCN a protected area is “a clearly defined geographical space, **recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature** with associated ecosystem services and cultural values”<sup>152</sup>.

**IUCN Matrix of protected area categories and governance types** (IUCN Guidelines, 2008)

| Governance type  | A. Governance by Government            |  |   | B. Shared Governance     |   |   | C. Private Governance                     |  |   | D. Governance by Indigenous Peoples & Local Communities                             |   |
|--|--|--|---|--------------------------|---|---|---|--|---|---|---|
|  | Federal or national ministry or agency | Local/municipal ministry or agency in charge | Government-delegate management (e.g. to an NGO) | Transboundary management | Collaborative management (various forms of pluralist influence) | Joint management (pluralist management board) | Declared and run by individual land-owner | ...by non-profit organisations (e.g. NGOs, univ. etc.) | ...by for-profit organisations (e.g. corporate land-owners) | Indigenous bi-cultural areas & Territories - declared and run by Indigenous Peoples | Community Conserved Areas - declared and run by traditional peoples and local communities |
| I - Strict Nature Reserve/ Wilderness Area                               |  |  |   |                          |   |   |   |  |   |   |   |
| II - National Park (ecosystem protection; protection of cultural values) |  |  |   |                          |   |   |   |  |   |   |   |
| III - Natural Monument   |  |  |   |                          |   |   |   |  |   |   |   |
| IV - Habitat/Species Management  |  |  |   |                          |   |   |   |  |   |   |   |
| V - Protected Landscape/ Seascape  |  |  |   |                          |   |   |   |  |   |   |   |
| VI - Managed Resource  |  |  |   |                          |   |   |   |  |   |   |   |

The IUCN also stresses that, in order to qualify as ‘protected’, an area must be managed with conservation of nature as a conscious management objective, which “must prevail in case of conflict with other, equally legitimate, objectives”<sup>153</sup>. Protected areas currently encompass 14.9% of world land (over 20 million Km<sup>2</sup>) and 7.3% of marine areas (over 6 million Km<sup>2</sup>),<sup>154</sup> under diverse management categories and governance types. The IUCN has identified **six management categories**, each characterised by a main management objective (e.g., to protect the long-term ecological integrity of an area; to protect a representative ecosystem or a valuable natural feature; to maintain or restore a species, habitat, landscape, or the sustainable use of some natural resources; etc.). The IUCN also distinguishes **four main governance types**

**Figure 2.** The IUCN Matrix of management categories and governance types (Dudley 2008).

for protected areas, depending on who holds main authority, responsibility and accountability for the key decisions (government agencies; private or corporate landowners; indigenous peoples and local communities; or several of them together).<sup>155</sup>

Regardless of management category, protected areas may belong to any governance type. Conversely, regardless of governance type, they can be managed to fit any management category. The many possible combinations of management category and governance type (see Figure 2 below) add flexibility to the protected area instrument for different aims and circumstances.<sup>156</sup>

Territories and areas governed, managed and conserved by their custodian indigenous peoples and local communities – in fewer words ‘**ICCAs – territories of life**’ – are today one of the **four main governance types officially recognised for protected areas by both the IUCN and the CBD**.<sup>157</sup> Given that they were nowhere to be found in the mental landscape of conservationists up to the end

152 Dudley, 2008, page 8.

153 Borrini-Feyerabend and Hill, 2015, page 177.

154 UNEP-WCMC, IUCN and NGS, 2018, page 6.

155 Borrini-Feyerabend *et al.*, 2013; #Governance

156 Borrini-Feyerabend and Hill, 2015, Box 7.5.

157 Convention on Biological Diversity, 2004a; Convention on Biological Diversity, 2018a; Convention on Biological Diversity 2018b; Dudley, 2008; IUCN, 2003; IUCN, 2014.



of the past millennium, this recognition is very important. But the requirement of the paramount conservation objective is an obstacle for some custodians. They may be conserving their territories, but the objective may be their own livelihoods or spiritual fulfilment or anything else they chose. In this sense they may have 'conserved territories or areas' but do not fit in the protected area label under the IUCN definition. This very fact is in good part responsible for the coming to prominence of the term 'conserved areas' in conservation circles.<sup>158</sup>

CBD Aichi Target 11 requires protected areas to be equitably managed (a fact that should be better expressed as 'equitably governed').<sup>159</sup> CBD decisions at various COPs have explained that this entails recognition and respect for the rights of indigenous peoples and local communities as well as their positive involvement in governance and management. This is expected to ensure that their knowledge, capacities and institutions do contribute to conservation, while they also receive fair benefits from it. In line with this, the CBD Programme of Work on Protected Area recommended enhancing diversity of governance in protected area systems, thus recognising and supporting ICCAs. And CBD COP 14 has recently approved a Voluntary guidance on effective governance models for management of protected areas, including equity.<sup>160</sup> While steps forward have been made, a policy-to-practice lag remains and emerging international principles struggle to be translated in domestic legal systems. The historical 'command and control' approach to protected areas is still too often reflected in current processes of establishment and implementation. Most protected areas have been set-up by imposition, excluding pre-existing rightsholders and custodians. Today, even in the countries that have tried to overcome past negative approaches, one can still perceive a nature-culture dualism<sup>161</sup> at odds with the values and conservation practices of many indigenous peoples.<sup>162</sup>

Importantly, even though they are widespread and encompass very diverse areas, protected areas are under serious pressure,<sup>163</sup> and certainly do not encompass all areas valuable for the conservation of nature.<sup>164</sup>

## Protected areas overlapping with ICCAs: negotiating borders & governance types

Frequently, protected areas have been established over pre-existing ICCAs—territories of life.<sup>165</sup> In such cases of 'overlaps', the local customary governance and management practices that achieved conservation through time are at risk of being undermined or impaired, and particularly so when there is little recognition of the value of the role of their custodian indigenous peoples or local communities. These problematic practices can be improved through dialogue and negotiated agreements and arrangements between governments and ICCA custodians, often as a result of affirmation of indigenous peoples' and local communities' collective rights and responsibilities and possible revisions of national laws and administrative rules and regulations.<sup>166</sup>

158 #Conserved areas.

159 The 20 Aichi Biodiversity Targets are to be reached by 2020, in order to achieve the 5 strategic goals of the CBD. See: <https://www.cbd.int/sp/targets/>

160 Convention on Biological Diversity, 2018b.

161 'Nature-culture dualism' is the understanding that human culture is separate from, and superior to, nature. This belief is foundational for Western modernism and enabled colonialism, *i.e.*, the dominance over the 'natural world' as well as peoples considered 'close to nature'. See Blaser, 2013.

162 Lee, 2016.

163 Jones *et al.*, 2018.

164 #Conserved areas.

165 Stevens *et al.* 2016. ICCAs can be overlapped not only by protected areas but also by concessions granted by the State to extractive industries, even within protected areas. All ICCAs are vulnerable to overlap of extractive industrial concessions and State promotion of large-scale infrastructure projects. Some indigenous peoples and local communities have sought protected area status for their territories and lands in the hope of preventing these external impacts on their ICCAs. But in many countries even protected areas are not necessarily safe from these threats (Stevens *et al.*, 2016 and Stevens, Pathak Broome and Jaeger, 2016).

166 See, for example, Mulrennan, Scott and Scott, 2019.



Overlapped ICCAs can be recognised through diverse means. An ICCA can be recognised as a protected area governed by its custodians, with their free, prior and informed consent and, where needed, by providing assistance to local governance institutions, as in the case of the Indigenous Protected Areas of Australia.<sup>167</sup> A shared governance arrangement could be developed for the entire protected area with provisions ensuring respect for the overlapped ICCAs, as in the case of Yapoporis National Park of Colombia.<sup>168</sup> The custodians may be recognised an official governance role in a given section of the protected area. Or the protected area borders may be modified to exclude the ICCA territory.

IUCN has adopted multiple policies calling for recognition and support for ICCAs,<sup>169</sup> which include ICCAs within protected areas as stressed by IUCN Resolutions,<sup>170</sup> the World Conservation Congress of 2016<sup>171</sup> and CBD Decisions.<sup>172</sup> Guidelines are now in development by IUCN and the ICCA Consortium to provide best practice guidance for recognising and respecting overlapped ICCAs in protected areas of all governance types and management categories.<sup>173</sup>

## Can protected areas work in isolation?

Aichi Biodiversity Target 11 of the Strategic Plan for Biodiversity 2010-2020 calls the Parties to the Convention to achieve the following: “By 2020, at least 17% of terrestrial and inland water areas and 10% of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape”.<sup>174</sup> The CBD thus calls for the promotion of systems of protected areas and other effective area-based conservation measures – recognising that isolated areas are unable to fulfil meaningful conservation objectives. One can also interpret ‘systems’ as referring to a desirable multiplicity of management categories and governance types in the landscape/seascape.

### ***Key references***

IUCN, 2003; Dudley, 2008; Borrini-Feyerabend *et al.*, 2013; IUCN, 2014; Stevens *et al.*, 2016; Stevens, Pathak Broome and Jaeger, 2016; World Conservation Congress, 2016; Convention on Biological Diversity 2018a; Convention on Biological Diversity, 2018b; Garnett *et al.*, 2018; UNEP-WCMC, IUCN and NGS, 2018. Mulrennan, Scott and Scott, 2019.

See also: [\*Protected planet\*](#)

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167 See: <https://www.environment.gov.au/land/indigenous-protected-areas>.

168 See: <http://www.parquesnacionales.gov.co/portal/es/parques-nacionales/parque-nacional-natural-yaigoje-apaporis/>.

169 IUCN, 2004.

170 IUCN, 2012.

171 IUCN, 2014.

172 Convention on Biological Diversity, 2016.

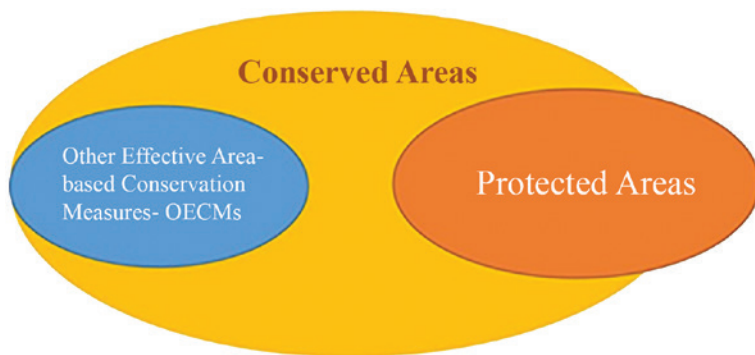
173 Steven *et al.*, forthcoming. Two ICCA Consortium publications already provide some guidance: the ICCA Consortium Policy Brief no. 4, which summarises concerns and discussions related to ICCAs overlaps with protected areas, and an in-depth report that includes greater attention to relevant international law and policy (Stevens *et al.* 2016; Stevens, Pathak Broome and Jaeger, 2016).

174 Convention on Biological Diversity, 2010; see also Convention on Biological Diversity 2011c.

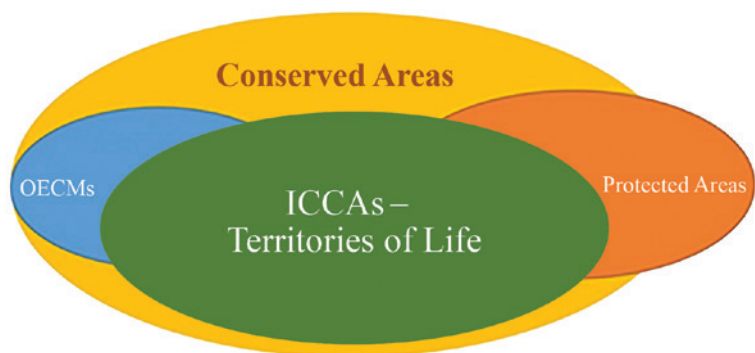
# Conserved areas

In an intuitive sense, ‘conserved areas’ are territories or areas that **achieve conservation *de facto***. They were defined in 2015 as areas that “regardless of recognition and dedication, and at times even regardless of explicit and conscious management practices, achieve conservation *de facto* and/or are in a positive conservation trend and likely to maintain this trend in the long term”.<sup>175</sup> In this sense, conserved areas are clearly not one and the same with protected areas, but they have overlaps, *e.g.* wherever a protected area manages to achieve its conservation objectives. In some cases, however, protected areas do not achieve their conservation mission – *i.e.* they are protected but not conserved. In other cases, however, areas that are not listed as protected do achieve conservation. Many ICCAs—territories if life are examples of the latter situation: they conserve nature *de facto*, as part of biocultural systems, without being listed in an official protected areas system (other ICCAs are included in the protected areas system, with or without the consent of the original custodians).

Since 2010, the Convention on Biological Diversity has used the term ‘other effective area-based conservation measures’ (OECMs), which are defined as “geographically defined areas other than protected areas, which are governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity, with associated ecosystem functions and services and, where applicable, cultural, spiritual, socio-economic, and other locally relevant values”.<sup>176</sup> ‘Conserved areas’ should not be used as synonymous for OECMs for more than one reason. As conservation happens also in areas that are not at all governed or managed, the overlap cannot be complete. But conservation also happens in protected areas, and OECMs are defined as being entirely separate from protected areas. Thus, equating OECMs with ‘conserved areas’ would have the paradoxical consequence that the terms ‘protected’ and ‘conserved’ would be incompatible in CBD parlance. A more logical conceptual arrangement is shown in figure 3 and 4 below:



**Figure 3.** Schematic overlap of conserved areas, protected areas and other effective area-based conservation measures (OECMs). (The size of shapes is not reflecting estimates of coverage).



**Figure 4.** Schematic overlap of conserved areas, protected areas, other effective area-based conservation measures (OECMs) and ICCAs—territories of life. (The size of shapes is not reflecting estimates of coverage).

175 Borrini-Feyerabend and Hill, 2015, page 178.

176 Convention on Biological Diversity, 2018b.

In Figure 4, ICCAs— territories of life are shown as fully overlapping with conserved areas but also with protected areas or OECMs. It is up to the community custodians of the specific territories of life to decide whether they wish to be recognised as protected areas, as OECMs or do not wish any such recognition and overlap. Conserved areas whose borders, governance institutions, and management practices are not recognised could be more vulnerable, but inappropriate recognition may be worse than no recognition at all. The ICCA Consortium strives for the appropriate recognition of ICCAs— territories of life at local, national and international levels, and for providing them with appropriate support.<sup>177</sup>

Despite the crucial role of conserved areas, their total extent on our planet is currently not known or monitored. The organisation dedicated to monitor global conservation (World Conservation Monitoring Centre of UN Environment, or WCMC) has focused for decades only on data about protected areas submitted by state governments<sup>178</sup> and only recently opened-up to listing various forms of governance of protected areas and OECMs. Interestingly, it accepts today data on ICCAs— territories of life and encourages directly submission by their community custodians. In association with the ICCA Consortium, WCMC has been recommending that community custodians organise their own peer-support and peer-review networks to provide data comparability and quality control.<sup>179</sup>

Of major value for understanding both conserved areas and territories of life is the question of the extent of their overlap. In her pioneer analysis, Liz Alden Wily (2011a) spoke of up to 8.54 billion hectares being under some form of communal, collective control or legitimate claim ('commons'). Alden Wily stressed that this, which represents 65% of terrestrial surface, includes most of the world's forests (woodlands and mangroves), wetlands, and rangelands. Logically, the commons include most of the biodiversity and 'conserved areas' on our planet. If we reduce her estimate and take a very conservative value of only 6 billion hectares of commons existing on our planet and an even more conservative estimate that only half of that possesses an active local governance institution, we still obtain an estimate of 3 billion hectares (about one quart of planetary terrestrial surface) of territories of life or 'conserved areas' governed by their custodian indigenous peoples and local communities. Recently, Garnett *et al.* (2018) have confirmed these estimates. They noted that indigenous peoples alone have tenure rights over at least 3.8 billion hectares in 87 countries, intersecting with about 40% of all terrestrial protected areas and ecologically sound landscapes (for example, boreal and tropical primary forests, savannas and marshes). More analyses are needed but it is today impossible to doubt the significance of territories of life for both conservation of nature and human cultures, livelihoods and wellbeing.

### ***Key references***

Alden Wily, 2011a; Jonas *et al.*, 2014; Borrini-Feyerabend *et al.*, 2014; Borrini-Feyerabend and Hill, 2015; Convention on Biological Diversity, 2018; Garnett *et al.*, 2018; UNEP-WCMC, IUCN and NGS, 2018.

See also: [\*Landmark; WRI page on indigenous and community land rights\*](#)

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177 #Appropriate recognition, #Appropriate support.

178 In this way it was relatively easier to gather data, and the data reflected the power base of UN agencies: state governments. See UNEP-WCMC, IUCN and NGS, 2018.

179 #Networks focusing on ICCAs—territories of life.

# Management

Management and governance – while closely intertwined in practice – are best understood as separate activities. Management pertains to **using the means and carrying out the actions to achieve a certain objective**, *i.e.* “the process of assembling and using sets of resources in a goal-directed manner to accomplish tasks in an organization”.<sup>180</sup> For example, a given territory can be managed to ensure the maintenance of its ecological functions through various steps: planning; organising; budgeting and allocating resources; carrying out various activities, including surveillance and enforcement of rules; monitoring results; evaluating and re-adjusting plans according to lessons learned; etc. The necessary resources may include human resources with relevant capacities, experience and skills; financial resources; various types of information (*e.g.*, legislation, ecological data, financial markets); as well as natural resources (*e.g.*, land, water, seeds, animal and plant species, pollinators).

In the context of processes by which ICCAs—territories of life are maintained and strengthened by their custodians, management usually includes mapping the territory of life; demarcating its borders and essential features; understanding, as a group, what is needed to achieve the goals identified by the community; enforcing the rules of access and use agreed by the community (possibly compiled into a community protocol),<sup>181</sup> carrying out surveillance to secure respect of the rules; stopping and retributing violators; gaining some income for the community to sustain surveillance and other on-going necessary activities; etc.

**While a community governance role is necessary to have an ICCA—territory of life, a management role is not.** Thus, if a state ‘delegates’ the management of a territory of life to an indigenous people or local community, or proposes a co-management arrangement to them, this generally falls short of true recognition of their rights of self-determination.

Some custodian peoples and communities chose not to directly manage their territories and areas and the natural resources found therein. This could be for technical reasons (lack of technology or equipment), legal reasons (safety requirements) or practical reasons (lack of manpower). Their **custodian-ship role is exercised through their governance**, while the implementation of the decisions (management) is entrusted to others.<sup>182</sup>

## **Key references**

Hitt, Black and Porter, 2011; Kothari *et al.*, 2015; Worboys and Trzyna, 2015.

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180 Hitt, Black and Porter, 2011, page 4.

181 #Indigenous customary law and community protocols; #Appropriate support.

182 For instance, they may not be the ones who cut or harvest trees, leaving such activities to hired professionals, or they may sign a land stewardship agreement with an NGO in charge of monitoring key species in their territory.

If management is what is done, in a given environment, to reach desired results based on given means and resources, governance is about *who decides* about the management activities (and budget), *how those decisions are taken*, and *whether they are ultimately implemented* (which includes ensuring that appropriate and sufficient resources are available).

Governance has more roundly been defined as the process of “interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decisions are taken and how citizens or other stakeholders have their say”.<sup>183</sup> Practically, for a given territory or area, governance is about “holding authority and responsibility and being accountable for the key decisions according to legal, customary or otherwise legitimate means”.<sup>184</sup> It is about “taking decisions and ensuring the conditions for their effective implementation”, *i.e.*, “the process of developing and exercising authority and responsibility over time [...], including in relation to learning processes and evolving institutions in society”.<sup>185</sup>

Governance is possibly the most crucial element necessary to define ICCAs—territories of life. Rather than depending exclusively on property rights and titles (which are important but not essential), territories of life are rooted in the **effective capacity and will of indigenous peoples and local communities to govern their territories**. In ICCAs—territories of life we find indigenous peoples and local communities that, through their own governance institutions,<sup>186</sup> do (or strive to) make decisions, implement their own rules of access and use, achieve goals, learn, share, live and embody their own values and sense of identity in relation to nature, other humans and other spiritual (more-than-human) beings.

The CBD and IUCN distinguish **four broad governance types for protected and conserved areas**<sup>187</sup> according to which actors have main authority and a responsibility to make and enforce decisions. Those types are: (A) governance by government (as for a conventional national park, run by a government agency); (B) shared governance by various actors together (*e.g.*, for a protected landscape, where decisions are taken by a board that includes national ministries, local municipalities, universities and conservation NGOs); (C) governance by private individuals or organizations (*e.g.* for a private protected area, where decisions are taken by the landowners); and (D) governance by indigenous peoples and/or local communities (*e.g.* for an ICCA—territory of life, where decisions are taken by the relevant people or community). The recognition of a specific type of collective governance by indigenous peoples and local communities in international conservation policy is extremely important, because it pays tribute to their crucial role in conserving nature and maintaining biodiversity on our planet – with benefits for the entire humankind.

The ‘**appropriateness**’ of a given governance type depends on the history of occupancy and rights of each territory or area, as well as in the nature of place-based relationships and practices of sustainable self-determination of their possible custodian communities. As noted in the voluntary guidelines adopted by CBD Parties in 2018, the type should be “tailored to the specific context, socially inclusive, respectful of rights, and effective in delivering conservation and livelihood outcomes”.<sup>188</sup> In the last decades, the IUCN and the Parties to the CBD have increased their recognition of the “multi-faceted values of collective governance by indigenous peoples and local communities”<sup>189</sup> and identified ‘good governance’ principles and values to be respected and fostered. These include: “appropriate procedures and mechanisms: for the full and effective participation of indigenous peoples and local communities; [...] for the effective participation of and/or coordination with other stakeholders; for [the recognition and accommodation of] customary tenure and governance systems [...]; for transparency

183 Graham, Amos and Plumtre, 2003.

184 Borrini-Feyerabend *et al.*, 2013.

185 Borrini-Feyerabend *et al.*, 2014.

186 #Governance institutions.

187 #Protected area; #Conserved area.

188 Convention on Biological Diversity, 2018b.

189 Almeida, 2015.



and accountability; for equitable sharing of benefits and costs, [and for] consistency with Articles 8(j) and 10(c) [of the CBD] and related provisions, principles and guidelines".<sup>190</sup> In other words, decisions about protected and conserved areas should be taken and implemented "legitimately, competently, inclusively, fairly, with a sense of vision, accountably and while respecting rights".<sup>191</sup>

According to the Centre for First Nations Governance,<sup>192</sup> there are five pillars for effective (and likely appropriate) governance: 1. People (joint strategic vision, sharing of meaningful information and participation in decision-making); 2. Land (territorial integrity, economic realization, respect for the spirit of the land); 3. Laws and jurisdiction (expansion of jurisdiction and rule of law); 4. Institutions (cultural alignment of institutions and effective inter-governmental relations, results-based organizations, transparency and fairness); and 5. Resources (human resource capacity, financial management capacity, performance evaluation, accountability and reporting, and diversity of revenue sources).

## What is governance diversity?

We speak of governance diversity when a variety of actors are engaged in a conservation system. For instance, a national system of protected areas that includes areas governed by **different types of actors** (e.g., municipalities, private entities, indigenous peoples, associations, NGOs, diverse ministries and agencies) **under different arrangements** (e.g., shared governance, delegated management) is more diverse than a system that, let us say, includes only national parks under the same park agency.

A system of diverse territorial units can be identified also within a single protected area, such as when the area was established in overlap with pre-existing territories of life under their own governance authorities. Promoting and recognising and the collaboration of diverse governance actors in such overlaps can also be considered as 'enhancing governance diversity'.<sup>193</sup>

Systems with high governance diversity require concerted and systematic efforts to coordinate among players. They are, however, more inclusive and generally perceived as more legitimate. As they may devise and implement a larger variety of solutions to problems, they are also likely to be more resilient and sustainable.

## What is governance quality?

We speak of governance quality or 'good governance', when **decisions are made while respecting a number of principles** enshrined in the constitution, legislation, policies, cultural practices and customary laws of a given country, and/or internationally agreed as part of international decisions and conventions. The IUCN principles of good governance for protected areas comprise: **legitimacy and voice; direction; performance; transparency; accountability; and fairness and respect of rights.**<sup>194</sup> 'Quality' is a property that can refer to the governance of a system of territorial units, but most often refers to the governance of single territories or areas.

## What is governance vitality?

Recently, discussion has gone beyond governance diversity and quality to explore the concept of governance vitality.<sup>195</sup> The concept was introduced as the ability of a governance setting "to learn, evolve and meet roles and responsibilities in ways that are timely, intelligent, appropriate and satisfactory for everyone concerned".<sup>196</sup> The term 'vitality' comes from the Latin word *vita*, which means **life**. In some

190 Convention on Biological Diversity, 2018b.

191 Borrini-Feyerabend *et al.*, 2013, quoted in Convention on Biological Diversity, 2018b.

192 National Centre for First Nations Governance, 2013.

193 Stan Stevens, personal communication, 2019.

194 #Governance and references therein.

195 The discussion on the concept was initiated around the 2014 Sydney World Parks Congress (see IUCN, 2014 and Borrini-Feyerabend *et al.*, 2014). A succinct volume dedicated to governance vitality for protected and conserved areas is currently in preparation.

196 Borrini-Feyerabend, and Hill, 2015, page 192 and following.

way, it links the agency of people with the agency of the rest of nature... the vitality of nature itself. A governance system that has vitality **maintains functionality** through time and changing circumstances. It has **stamina** (capacity to persist) and is **resilient** in facing problems and challenges, but is also **resourceful and pro-active**, showing the will and capacity to seize opportunities in any given context or set of circumstances. Vitality of governance is very apparent in such **positive agency**—action taken autonomously towards meaningful, purposeful goals. This, if necessary, reaches the capacity for **transformative change**.

A vital system of governance **generates and circulates knowledge** relevant to the decisions at stake. At least two types of knowledge appear fundamental to well-informed governance for conservation: local traditional knowledge,<sup>197</sup> at times passed-on among generations and knowledge produced by relevant purposeful research and technological innovation (not last, sophisticated means such as remote sensing and geo-spatial observation of change).<sup>198</sup> Drawing from knowledge of different type and origin, a vital governance system prevents problems and threats and derives benefits from opportunities. This implies that it is **well-informed, discerning** regarding the meaning and importance of diverse types of information— **strategic and timely**.

Further, a governance system that manifests strong vitality needs to be capable of remaining steadfast in the face of appeals (*e.g.*, short term gains, easy and selfish choices, corrupting factors, etc.) that would spell out disaster in the long run. In other words, the decisions it makes are **meaningful** and positive in the long term, as appropriate to the context. A possible interpretation of this sees vitality of governance as necessarily rooted in a system of ethics, or at least a worldview capable of drawing from and offering **inspiration and moral guidance** to society about the decisions to be taken for the territory or area at stake. Some of us refer to this as being **'life-affirming'**, where life refers to nature and biodiversity but also to society in general, and to the persistence and wellbeing of custodian communities in particular.

Finally, another element of vitality of governance that may not be immediately apparent and rarely fully present, is the capacity for **empathy and care**. Agents of decisions that are knowledgeable and morally sound can be functioning well, but a deep appreciation of nature and people adds something intangible but extremely powerful to their will and capacity to collectively conserve nature. Beyond 'governing a territory or area', becoming its **custodians**<sup>199</sup> means cherishing and nurturing in that specific place a respectful and enduring relation between humans and non-humans— something more akin to an umbilical connection or a bond of love than a scientific or economic relationship. Drawing from its capacity to function, being resilient, pro-active, creative, well informed, discerning, meaningful, life-affirming and caring, a vital governance system is likely to make sound choices, that deliver positive outcomes for both nature and people.<sup>200</sup> Through that, it should normally gain a measure of **social trust and respect**, solidarity and collective support. Yet, what may be locally positive may not be appreciated at a different geographical scale, or vice-versa. This is why even governance that has gained a measure of institutional strength at a particular level **needs to be secured** at diverse levels.

### ***Key references***

Graham, Amos and Plumtre *et al.*, 2003; Dudley (ed.), 2008; Borrini-Feyerabend *et al.*, 2013; National Centre for First Nations Governance, 2013; Almeida *et al.*, 2015; Borrini-Feyerabend and Hill, 2015; Convention on Biological Diversity, 2018a; Convention on Biological Diversity 2018b.

For a synthesis of rapid consultation on governance of protected and conserved areas, see: Borrini-Feyerabend *et al.*, 2014. **See also:** *Governance for the Conservation of Nature – three short films; IUCN page on Governance, equity and rights*

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197 #Traditional knowledge.

198 This is clearly fundamental with regard to climate change and other global change impacts, and for that governance vitality requires ongoing monitoring, adaptation, and information gathering for near and long-term planning and action, besides the wisdom and capacity to work with communities to support decisions and implement adaptation measures.

199 #Custodians/ stewards/ guardians.

200 At least in the long term, when immediate sacrifices are necessary to achieve long term goals.

# Governance institutions

One of the characterizing features of ICCAs—territories of life is the presence of functioning governance institutions able to make and enforce decisions and rules about access to the territory and use of its natural resources. Local institutions in charge of ICCAs—territories of life are very diverse, ranging from councils of elders to elective committees and village assemblies, from traditional to modern institutions or combination thereof, from small informal user groups born to care for a single specific resource to organisations with formal headquarters, large staff and multimillion dollar annual budgets. Governing institutions are part of the biocultural heritage of any community and, when well-functioning, promote the conservation and sustainable use of its life environment. Without a functioning governance institution, the sustainable use of local natural resources would often not be possible, as there would be no collective body capable of expressing and implementing the shared desires, needs, concerns and interests of the community.

Local governance institutions may or may not be officially recognized by the state (or states) where the ICCA—territory of life is placed; they may find themselves overpowered by other governance institutions (including because of action by police and the military); or they may work in collaboration with them. For a well-functioning ICCA—territory of life, external recognition can be important. Nothing, however, is possibly more important than a governing institution that is **fully self-recognised, i.e. perceived as legitimate by its relevant community/people**. Such an institution is likely to exhibit governance vitality<sup>201</sup> and be an integral part of the shared identity of the community.

## Should ICCAs—territories of life fear the ‘tragedy of the commons’?

Indigenous peoples and local communities generally hold the land, water and natural resources in their territories of life as commons, under a collective governance institution. In 1968, Garret Hardin made commons (in)famous by linking them to what he called the ‘tragedy of the commons’. According to him, natural resources managed as commons – or common pool resources – were doomed to be overexploited and exhausted by the members of their own communities because of a combination of individual greed and free-rider’ attitudes. His theory and the remedies he suggested – transforming commons into private property or state-controlled systems – were extensively used to justify the eviction of indigenous peoples and local communities from their lands to create privately owned parcels or government holdings for both productive use and conservation purposes.

Hardin’s case was based upon a-historical, self-serving and politically-driven limitations. His assumption was that commoners cannot talk or achieve agreements and that they are unable to implement rules or demand fines from violators. In fact, Hardin’s so-called ‘commons’ were deprived of what makes the commons meaningful, *i.e.* the **social bonds that create governing institutions and agreed rules**. His ‘commons’ were a strawman, a caricature, a criminally sour account that owed its fortune to a memorable title and generated untold misunderstanding and misery.<sup>202</sup> In the 1990s, the work of Elinor Ostrom showed that Hardin’s analysis was not only inaccurate, but utterly mistaken.<sup>203</sup> She paved the way to the recognition of the governance institutions of real ‘commons’, where local communities and indigenous peoples are not doomed to devastate natural resources but, on the contrary, can use them sustainably and conserve them through time. Through the study of the relationship between

201 #Governance.

202 Significantly, Hardin was also a white nationalist, considered as “one of the intellectual pillars of modern scientific racism”, with a mission of “transforming environmentalism into a weapon to use against immigrants, minorities and poor nations.” See: <https://www.splcenter.org/fighting-hate/extremist-files/individual/garrett-hardin>

203 Others also discussed this, in particular McCay and Acheson, 1987.

indigenous peoples and local communities and their commons around the world (nowhere featured in Hardin's paper), Ostrom identified the conditions (or principles) that allow governance institutions to rule long-surviving resource pools: clearly defined boundaries; rules adapted to local conditions that allocate resources to users; resource-users participation in the decision-making processes; external authorities recognition of rules; accountability of the users; systems of graduated sanctions; local and low-cost conflict-resolutions mechanisms; and long-term tenure rights. These conditions encompass what many Members of the ICCA Consortium aim at achieving or maintaining to promote the good functioning of ICCAs—territories of life.

***Key references***

Hardin, 1968; Ostrom, 1990; Becker and Ostrom, 1995; McCay and Acheson, 1997; Ostrom, 2005; Kothari *et al.*, 2012; Borrini-Feyerabend and Hill, 2015; Farvar *et al.*, 2018.

# Appropriate recognition

Many ICCAs—territories of life have been seriously damaged or are under threat from a variety of factors: expropriation of land, waters and natural resources; imposed forms of resource exploitation; encroachment by newcomers and migrants; cultural assimilation (e.g. by education programmes, missionaries, the media), as well as imposed changes in institutions, economic burdens and conflicts. At the root of these problems and threats often lies a lack of appropriate recognition of their existence and values. Appropriate recognition, however, is not trivial nor a one-size-fits-all set of procedures. Regardless of good intentions, inappropriate recognition may be worse than no recognition at all, and approaches to recognition should be as much as possible tailored to the context. For example, a government that recognizes an ICCA as a ‘protected area’ may provide some financial support and better respect of the ICCA rules, but it may also usher a loss of control and weakening of the community governance institution. In particular this is true when the institution is forced to comply with generic structures and procedures that undermine its own governance traditions and values.

The recognition of an ICCA—territory of life needs to be directed at a **coherent socio-ecological unit**, *i.e.* a territory identified on the ground of history, ecology and the cultural and social characteristics of the relevant communities. Any external recognition should be based on the **prior recognition (self-recognition) by the communities who are legitimate custodians**. If recognition responds only to an external rationale (political, economic or for conservation), the chances of failure and conflicts increase. Given the diversity, complexity and sensitivity of issues regarding territories of life and their governance institutions, their appropriate recognition should be based on the consent of the custodian community—fully informed about the consequences, modifiability, and potential economic, political, social and cultural impacts of the form of recognition proposed.

For what concerns ICCAs—territories of life, even though flexibility and fitness to the context remain paramount, the most appropriate form of legal recognition has been proposed as “**inalienable, indivisible and imprescriptible collectively-held rights**”<sup>204</sup> to an “**integral territory**” held by the **legitimate autonomous governance institution**.<sup>205</sup> Interestingly, these rights do not necessarily involve formal property but **security of collective governance and tenure through time**.<sup>206</sup> Ownership is just one of the several ways by which governance can be achieved in territories of life, and often it is not possible or even desired, as it introduces rigidities that block the social and convivial practices of communities. This is true, in particular, when the territories of life of communities concerned with potentially complementary natural resources (e.g. pastoralists and agriculturalists) do overlap.

Collective governance rights that cannot be lost or prescribed free the governing institution from pressures for sale and division of the territory and foster a vision for the long term and the good of present as well as future generations. Ideally, they are **combined with various forms of social recognition**, in particular for the conservation benefits stemming from the work of governing, managing and conserving nature in the territory of life.

**Social recognition** can be understood as appropriate public attention, acknowledgement and praise. It can take the form of official mentions and inscriptions, honours and awards, and media exposure for desired visibility. Social recognition is very important for many indigenous peoples and local communities and can provide a variety of platforms to make their territory of life initiatives publicly known, if desired, and better respected. But social recognition can also be damaging, as when it engenders unwanted exposure or generates or exacerbates tensions. For instance, this may happen when some communities, or individuals within a community, are singled out for prize and honours over equally deserving others.<sup>207</sup>

Ultimately, **recognition in practice** is the most important and effective form of social recognition. Recognition in practice means that the rules and regulations decided by the custodian community are honoured, respected and appreciated by the state administrative authorities, the police and judicial powers. This is crucially effective when the **community enforcement** of its own rules and regulations is actively **backed-up and supported** by such state powers.

204 Borrini-Feyerabend *et al.*, 2010.

205 Borrini-Feyerabend *et al.*, 2010. The concept of integral territory implies rights to: “...not just land but also water and other gifts of nature, from the centre of the Earth to the top of the Sky...” as stated by Wrays Perez Ramirez for the Integral Autonomous Territory of the Wampis Nation (communication at the XIII General Assembly of the ICCA Consortium, Bishoftu, Ethiopia, 2018).

206 #Security of tenure. The need to secure tenure and governance rights and not necessarily property right is stressed by European Members of the ICCA Consortium (Sergio Couto, personal communication, 2019).

207 Kothari, Camill and Brown, 2013.



Much of the work of the ICCA Consortium is about promoting and/or enhancing the appropriate recognition of ICCAs—territories of life by a variety of actors in local, national and international contexts. Recognition that does not honour the capacity, dignity and self-determining authority of the custodians as indigenous nations and unique communities is likely problematic and can be harmful. Most countries lack specific legislation about ICCAs, but many do have sets of norms, such as those concerning indigenous peoples' rights, nature conservation, communal forests, or tourism, which can be interpreted as relevant to ICCAs and useful to recognise them. In order to transform these options of recognition into appropriate instruments to promote the flourishing of ICCAs—territories of life and to overcome the 'legal fragmentation' of landscapes (see below), appropriate support is usually also needed.<sup>208</sup>

## An international ICCA Registry for appropriate recognition of territories of life

As an instrument to promote appropriate recognition to ICCAs—territories of life, the ICCA Consortium has been working for many years with the World Conservation Monitoring Centre of the UN Environment and the UNDP GEF SGP to develop and populate a global ICCAs Registry<sup>209</sup> and to include ICCAs in the World Database of Protected (and Conserved) Areas.<sup>210</sup> By properly documenting them, the Registry aims at enhancing national and international political and public awareness on the value of ICCAs—territories of life for conserving biodiversity, ecosystem functions and nature in general, as well as for maintaining cultural diversity and combating climate change. Started as a disparate set of cases that were informally and individually submitted, the Registry is being reviewed with the help of peer-support and review processes in various countries.

## Are relevant laws and policies 'appropriate'? From legal fragmentation to comprehensive legal support

In contemporary states (whether adopting civil law or common law systems), legislation is essentially fragmented or compartmentalized<sup>211</sup> in many different topics/issues/realms. Regarding indigenous peoples and local communities and their territories of life, legislation often remains unable to coherently and comprehensively address existing challenges. Often, such challenges are, *de facto*, scattered among many unrelated pieces of different legislation. For example, in many national legislations, agriculture and religion are ruled by separate sets of laws that hardly interact one with the other and may, even, require to abide to different courts. On the contrary, for indigenous peoples and local communities the 'sacred' may be embedded in agricultural practices: seed custodianship undertaken by religious leaders, sacred ceremonies aimed at crop development, taboos on unsustainable practices, and the likes.

More integrated approaches are needed to bring appropriate attention to the interconnection between spiritual, linguistic, cultural and economic aspects of the different biotic and a-biotic elements of landscapes. Following Darrel Posey's Traditional Resources Rights approach, the ICCA Consortium is promoting global and national overviews of laws and policies that are relevant for the recognition and support of territories of life, and its Member Natural Justice has developed The Living Convention, a compendium of international binding and non-binding laws relevant for the protection of indigenous peoples. The aim is to guide indigenous peoples, local communities and their representatives to deal with different laws together, and thus respond to challenges in a more comprehensive way.

### ***Key references***

Posey, 1995; Corntassel, 2008; Borrini-Feyerabend *et al.*, 2010; Jonas, Kothari and Shrumm, 2012; Jonas and Shrumm, 2012; Kothari *et al.* (eds.), 2012; Jonas, Makagon and Shrumm, 2013; Jonas, Jonas and Makagon, 2014.

See also: [www.iccaconsortium.org](http://www.iccaconsortium.org) ; *ICCA Registry*

208 #Appropriate support.

209 [www.iccregistry.org](http://www.iccregistry.org).

210 <https://www.protectedplanet.net/>. See also UNEP-WCMC, 2016.

211 Jeff Corntassel points out that the focus on rights discourse "has resulted in the compartmentalization of indigenous powers of self-determination by separating questions of homelands and natural resources from those of political/legal recognition of a limited indigenous autonomy within the existing framework of the host state(s)." (Corntassel, 2008, page 107).

# Appropriate support

Besides appropriate recognition, the custodians of territories of life need various types of **political, social, legal, economic and other forms** of ‘appropriate support’. Many relevant actors in society, such as governments, private industry, NGOs and activists are generally willing to offer it... but is that support always what the custodians need or see as a priority? The providers of support may be powerful and determined enough that the custodians may find it difficult to refuse what they offer, and thus end up receiving support that is undesired or inappropriate. Unfortunately, most support organisations have rigid programmatic lines to follow and are usually poorly equipped to deal with the idiosyncratic governance institutions and culturally-diverse approaches of the custodians of territories of life. Due to strong power differentials, even the best-meaning interventions risk resulting in some forms of social engineering and can have unintended detrimental impacts. Therefore, it is essential that actors willing to support ICCAs **intervene in response to requests by the custodian communities** and treat them with respect and care. Actors willing to support ICCAs should intervene in response to requests by the custodian communities and treat them with respect and care. Obtaining their Free, Prior and Informed Consent (as international law requires for indigenous peoples) is the first step towards a fair relationship between a community and the actors offering ‘appropriate support’.<sup>212</sup>

Civil society organizations often support **communication and negotiation processes** between communities and governments, private corporations and others. Acting as ‘translators’, moderators, information providers and legal advisors, they may reduce the power-gap between the parties and build capacities and self-confidence within the communities. They can also help communities to be fully informed, in a language they can understand, about projects or processes that affect them, and provide experts’ information on the possible consequences of accepting this or that initiative. Such support may also mean help in **interpreting relevant legal norms**, such as about indigenous peoples’ rights, local communities conserving nature,<sup>213</sup> customary law and use, the commons, protected areas, decentralization and subsidiarity, as well as agriculture, tourism, mining, forestry, fisheries, finance and economic development. In case of lack of specific ICCA norms, appropriate support may also mean promoting the recognition of ICCA-friendly legislation and policies at the governmental level.

Legal support can also take the shape of **appealing for the respect of states’ international obligations** towards ICCAs—territories of life.<sup>214</sup> The **negotiation of projects** giving application to international programs, such as the Global Support Initiative to ICCAs (GSI) implemented by UNDP GEF SGP<sup>215</sup> and various initiatives involving payments for ecosystem services may provide useful contexts. All interventions involving financial support to ICCAs—territories of life need to be treated with extra care not to fuel internal conflicts or promote the abandonment of traditional livelihoods with associated knowledge, practices and institutions. The custodian communities should be well aware of the pros and cons of initiatives, capable of internally discussing those and taking decisions without undue intimidation or pressure.

## Where does the ICCA Consortium come from?

For more than two decades, the main global experiment to provide appropriate support to ICCAs—territories of life has been an international movement for equity in conservation that coalesced first around the IUCN Commission on Environmental, Economic and Social Policy<sup>216</sup> and later created the

212 #Free, Prior and Informed Consent.

213 #Biocultural Rights.

214 Which can be derived/ interpreted from, among others: the Convention on Biological Diversity, the Man and the Biosphere program of UNESCO, the ILO Convention no.169, the Aarhus Convention, the Ramsar Convention, the UN Convention to Combat Desertification, the Convention on Cultural and Natural Heritage, and the UN Declaration on the Rights of Indigenous Peoples.

215 See: <https://sgp.undp.org/about-us-157/partnerships/icca-gsi.html>

216 This took place in 2000-2008 and is reflected in the experiences and debates published in Policy Matters (especially volumes 10, 12, 13, 14 and 15 – all available at <https://www.iucn.org/commissions/commission-environmental-economic-and-social-policy/resources/policy-matters>).

ICCA Consortium.<sup>217</sup> The movement has been working at various levels, fostering at the same time **supportive international policy, capacity building at regional level, enhanced visibility for emblematic ICCAs—territories of life** and, at national level, the generation of a **critical mass for advocacy and change in as many countries as possible**.

The movement is today a membership-based civil society organisation with Members representing indigenous peoples, local communities and their supporters spanning all continents. With no property and no offices, staffed by volunteers and semi volunteers and commanding a minimal budget, the ICCA Consortium has achieved a number of results, including: a growing number of recognised emblematic ICCAs (visibility, international listing by the UN Environment WCMC, awards, grants for self-strengthening); hundreds of people with enhanced self-awareness of their roles as custodians, as well as enhanced capacities and mutual support; more than thirty ICCA-related national networks functioning in very diverse countries;<sup>218</sup> and relevant issues articulated and technically backed in a variety of publications, videos and on-line resources.<sup>219</sup> The Consortium has also actively promoted a suite of international policies<sup>220</sup> that recognise the values of governance of nature by indigenous peoples and local communities, and of ICCAs—territories of life in particular.

Since mid-2015 a Global Support Initiative for ICCAs (GSI), implemented by UNDP GEF SGP with funding from the German government, has provided some support to the ICCA Consortium. In turn, the Consortium has provided technical backing to the initiative. Small grants have been disbursed to national catalytic organisations and communities in a variety of countries, with very diverse engagements and results. The international ICCA Registry hosted by WCMC<sup>221</sup> was supported to foster communication and experience sharing among different ICCAs around the world. The IUCN was supported to provide technical backing in assessing governance of protected and conserved areas at national level in a few countries. And Natural Justice was supported to coordinate reviews of national legislation vis-à-vis ICCAs. While assisting all partners, the Consortium has focused on a strategic approach of facilitating processes of ‘self-strengthening’ of ICCAs—territories of life from local enhanced self-awareness to national advocacy for recognition and support.<sup>222</sup>

### ***Key references***

Borrini-Feyerabend *et al.*, 2010; Jonas, Kothari and Shrumm, 2012; Kothari *et al.* (eds.), 2012; Jonas, 2017; Borrini-Feyerabend and Campese, 2017.

See also: [www.iccaconsortium.org](http://www.iccaconsortium.org); [ICCA Registry](#)

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217 [www.iccaconsortium.org](http://www.iccaconsortium.org).

218 <https://www.iccaconsortium.org/index.php/creating-a-critical-mass-of-support/>.

219 <https://www.iccaconsortium.org/index.php/category/publications-en/key-resources-en/consortium-key-resources-en/>.

220 Jonas, 2017; ICCAs in international policy.

221 See #Appropriate recognition.

222 Borrini-Feyerabend and Campese, 2017.

# Self-strengthening processes for community custodians of territories of life

Throughout history, custodian communities have done all they can to strengthen themselves and care for the territories that underpin their livelihoods and identity. Their on-going self-strengthening efforts are, and have long been, part of the flow of everyday life, shaping socio-cultural, economic and diplomatic approaches to the betterment of each community and its environment. Today, custodian communities and their ICCAs—territories of life face unprecedented stresses and threats arising from socio-ecological changes sweeping the world. Concerns for the conservation of nature merge with concerns for the conservation of cultural diversity, knowledge and wisdom still found (albeit diminishing) in human communities living close to nature.

The ICCA Consortium is determined to support custodian communities in their efforts to strengthen their capacity to govern and manage their conserved territories. These efforts usually begin by increasing **self-awareness and knowledge** about their territories of life' significance, which usually involve an enhanced appreciation and documentation of one's own history, culture and governance institutions. Further, the journey may lead to an **analysis of issues, trends, opportunities and threats**. It may lead to **enhanced communication** with other communities, partners and allies. It may lead to joining or establishing new relevant **networks**<sup>223</sup> and collective **advocacy efforts** for improved national policies and appropriate support. If the process is successful, the communities become not only stronger but also wiser, more united, responsible and active. As a consequence, their territories of life are better conserved (*e.g.*, protected, sustainably used and/or restored) and provide better support for the custodian communities' livelihoods and well-being. Finally, and importantly, self-strengthening processes are expected to enhance the connection between the custodian communities and their territories.

While specific approaches vary, for the ICCA Consortium a self-strengthening process is necessarily grounded in one main method: **grassroots discussions**. These are discussions that provide occasions for collective reflection and analysis, which take place in ways consistent with the everyday life of a community. Examples include a traditional general assembly, gatherings among elders or in existing women's groups or youth associations. Such discussions can be initiated spontaneously, stimulated by a new problem or opportunity or encouraged by facilitators from within or outside the community. Grassroots discussions need to find a meaningful balance between letting the discussion flow freely and keeping it focused to ensure that the key issues at stake are covered in an exhaustive and meaningful way. Ideally, they are an integral part of community life and of the institutions that govern territories of life.

## ***Key reference***

Borrini-Feyerabend and Campese, 2017.

See also: [www.iccaconsortium.org](http://www.iccaconsortium.org)

# Networks focusing on ICCAs– territories of life

Networks focusing on ICCAs– territories of life are formal or informal groups of communities, organizations and individuals that decide to collaborate on relevant practices and policies of common concern.<sup>224</sup> For instance, diverse organizations and individuals may create an informal **working group** to share experiences about their territories of life and pool resources to understand and act upon a topic of common interest. Several communities may create a formal **federation** or **association** of custodians of territory of life and other allies to advocate for a change in policy that concerns them all. Or an existing federation of indigenous peoples may create a **committee** to pull together all those ready to act about policies to provide territories of life with effective backing and support. While a working group or a committee may be flexible and relatively informal, dedicated associations or federations are usually more formal and need to fit national legal requirements.

**Coalitions** and **platforms** are other important forms of network, usually created with a specific goal in mind and focused on one or more specific territories of life. Such coalitions are especially useful for addressing pressing issues, such as opposing a dam or mining project, but could continue after the primary goal is achieved to take care of underlying issues, such as lack of recognition of customary land and natural resource rights in the relevant watershed.

The available human and organizational capacities inform the types of territory of life networks that are possible and desirable in any given context. In general, however, **networks at national level** are particularly useful to engage in **advocacy for legislation and policy** that appropriately recognises and supports ICCAs– territories of life.<sup>225</sup> Another crucial role for such national or sub-national networks is the provision of **peer-support and peer-review** for the submission of data to a National Registry of territories of life and/or to the international databases and registries hosted by WCMC. In association with the ICCA Consortium, WCMC has recommended that community custodians organise their own networks to provide data comparability and quality control.<sup>226</sup>

At the end of 2019, networks focusing on ICCAs– territories of life exist in more than 30 countries, and peer-support and peer-review processes are functioning in countries as diverse as Spain, the Philippines, Iran, Ecuador and China.<sup>227</sup>

## ***Key reference***

Borrini-Feyerabend and Campese, 2017.

See also: [www.iccaconsortium.org](http://www.iccaconsortium.org)

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224 The role of networks in the politics of self-determined territoriality is powerfully illustrated and analyzed in Escobar, 2008.

225 #Appropriate recognition; #Appropriate support.

226 #Networks focusing on ICCAs– territories of life.

227 For on-going reports about the networks focusing on ICCAs– territories of life, see the Yearly report on the work of the ICCA Consortium available from the Consortium main web site: [www.iccaconsortium.org](http://www.iccaconsortium.org).



# Free, Prior and Informed Consent (FPIC)

Being able to say “yes” or “no” to any action or proposal that will impact a community’s lands, waters, bio-cultural diversity or rights is usually comprised under the expression ‘Free, Prior and Informed Consent’ – FPIC for short. If FPIC is ensured, a community can make decisions free from coercion, threats, or deceit; prior to any action that anticipates the decision; and based on all relevant information about the various options available, in accessible languages and formats. The decision-making processes should be determined by the community and provide ample time to reach broad consensus. And communities should have access to legal and technical assistance if requested.<sup>228</sup>

While consent must be verified before any activities start, FPIC should not be a ‘one-off’ event or a matter of ticking a box. Consent should be maintained over time, including by having processes in place to check-in or monitor that the agreement is being upheld as expected, and that a community can raise new concerns or grievances if unexpected developments become apparent.

FPIC is an integral element of self-determination and a collective right of indigenous peoples— recognized in UNDRIP and other international legal instruments. It is also a widely-agreed-upon ethical best practice with regard to non-indigenous communities. Unfortunately, the FPIC standard is rarely honoured in practice. State domestic laws and policies often resort to consultation and accommodation practices that fall short of actual consent. In other words, consent is treated as an aspirational goal rather than a prerequisite for state-approved interventions on indigenous territories.

## ***Key reference***

Hill, Lillywhite and Simon, 2010.

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228 See Hill, Lillywhite and Simon, 2010.

# Gender

Gender is a set of social, cultural, political, psychological, legal, and economic characteristics that society assigns to each individual as part of its socially constructed and biologically determined identity. Gender roles and behaviors vary widely within and across cultures, and intra- and inter-gender relationships can be more or less dynamic. While for some, gender is a binomial factor (male/female), for others, gender refers to a multi-variable continuum of characteristics that enrich and enliven our being in the world.

Gender equity is realized when no one is dis-favoured because of gender-related prejudices. In this sense, equity is not simply synonymous with 'having equal opportunities', as positive opportunities (programs of affirmative or positive action) may be required to correct gender biases. Gender equality is achieved when women, men and non-binary gender have equal rights, opportunities and life prospects as well as the power they wish and need to shape their own identities and contribute to society.

## A gender perspective for ICCAs—territories of life

Understanding gender roles and possible biases is crucial in designing, implementing, monitoring and evaluating policies and projects dealing with territories and natural resources and the environment in general. To adopt a gender perspective means going beyond the 'no harm' principle and focusing on overcoming gender biases. This includes measures to promote gender equality and the empowerment of oppressed genders, such as women may be.

A primary characteristic of ICCAs—territories of life is the strong and profound connection between a people or community and a territory or area. This characteristic is promoted and strengthened through the effective engagement in governance of all who feel, live, and demonstrate that connection. It is linked to the conservation of traditional knowledge<sup>229</sup> and sustainable practices<sup>230</sup> related to particular ecological contexts. A gender perspective can add to this the enhanced awareness of the specificities of each gender, help to identify biases and, if needed, envision and implement corrections or compensations. As part of good governance practices, a gender perspective for ICCAs—territories of life can foster enhanced relations across generations, within communities, and among genders. It can promote the continuation and evolution of traditional knowledge in all sectors of a community, along with stronger capacities, social recognition and respect.

### ***Key reference***

Mikkola, 2019.

229 #Traditional knowledge.

230 #Sustainable use of biodiversity.

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## Useful links and websites

[Biocultural Community Protocols](#)  
[Coalition against Land Grabbing](#)  
[Convention on Biological Diversity](#)  
[The Dana declaration website](#)  
[Emblematic ICCAs descriptions from the ICCA Website](#)  
[Forests Peoples Programme](#)  
[Foundation for Ecological Security](#)  
[Global Diversity Foundation](#)  
[Global Forest Coalition](#)  
[Governance for the Conservation of Nature – three short films](#)  
[ICCA Consortium](#)  
[ICCAs and the ICCAs Consortium – Conserving the Territories of Life – short movie](#)  
[ICCA Registry](#)  
[IIED page on Cultural Heritage](#)  
[Indigenous navigator](#)  
[International Collective in Support of Fishworkers](#)  
[International Land Coalition](#)  
[International Right of Nature Tribunal](#)  
[International Society of Ethnobiology](#)  
[IUCN International Union for the Conservation of Nature](#)  
[IUCN page on Governance, equity and rights](#)  
[IWGIA International Working Group for Indigenous Affairs](#)  
[John Knox message to the ICCA Consortium](#)  
[La Via Campesina](#)  
[Landmark](#)  
[LMMA International](#)  
[Maliasili](#)  
[NAMATI](#)  
[Natural Justice](#)  
[NTFP-EP](#)  
[Protected planet](#)  
[Rangeland Initiative of ILC](#)  
[Rights & Resources Initiative](#)  
[Snowchange](#)  
[Survival International](#)  
[Sustainable Development Goals](#)  
[The Global Support Initiative to ICCAs of the GEF Small Grants Programme](#)  
[The Tenure Facility](#)  
[United Nations Declaration on the Rights of Indigenous Peoples](#)  
[United Nations website on indigenous peoples](#)  
[WRI page on indigenous and community land rights](#)



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