



Revised preliminary report, October 2010

Territories and Areas Conserved by Indigenous Peoples and Local Communities (ICCAs): How Far Do National Laws and Policies Recognize Them?

A Rapid Assessment

*(Note: This is a revised version of a preliminary report released at the
CBD SBSTTA14 in May 2010. Critical feedback and additional
information are requested from readers)*

TABLE OF CONTENTS

1. INTRODUCTION	3
2. METHODOLOGY	4
3. DISCUSSION OF SURVEY RESULTS	5
3.1. Have ICCAs been recognized/implemented in national or sub-national law?	6
<i>i. Countries with legal recognition</i>	6
<i>ii. Predominant forms of recognition</i>	6
<i>iii. Unique or best practice examples</i>	7
<i>iv. Major issues and challenges</i>	7
3.2. Have ICCAs been recognized/implemented through State protected area laws, policies, and systems?	7
<i>i. Countries with recognition of ICCAs as PAs</i>	8
<i>ii. ICCAs as a distinct PA type</i>	9
<i>iii. Major issues and challenges</i>	9
3.3. Have ICCAs been recognized/implemented through general laws and policies?	9
<i>i. Countries with general legal recognition</i>	10
<i>ii. Predominant forms of recognition</i>	10
4. KEY ISSUES AND CHALLENGES FACING LEGAL RECOGNITION OF ICCAS	11
5. RECOMMENDATIONS	13
6. CONCLUSION	14
ANNEX I: List of Respondents	15
ANNEX II: National Legal Recognition of ICCAs: Country-wise Summaries	16

Territories and Areas Conserved by Indigenous Peoples and Local Communities (ICCAs): How Far Do National Laws and Policies Recognize Them?

A Rapid Assessment
(A revised preliminary report, October 2010)

Prepared by: Ashish Kothari and Manju Menon, with Sheelagh O'Reilly¹

This report builds on:

- i. Country surveys by respondents (listed in Annex I)
- ii. Preliminary compilation (2008) by Tasneem Balasinorwala
- iii. Inputs and comments by Grazia Borrini-Feyerabend, Neema Pathak, Hanna Jaireth, Stan Stevens, Seema Bhatt, and Vivienne Solis

1. Introduction

Indigenous peoples and local communities across the world have traditionally conserved biodiversity in many of the territories they occupy or use. Whether formally recognized by the state or self-designated, these initiatives are known by various names, including indigenous protected territories, bio-cultural heritage sites, locally managed marine areas, and many others. Collectively and for the sake of convenience, they have been called Territories and Areas Conserved by Indigenous Peoples and Local Communities (in short, Indigenous and Community Conserved Areas, or ICCAs). A statement of what an ICCA might be and key elements are contained in Box 1.

The Fifth World Parks Congress (2003) and subsequently the Seventh Conference of Parties to the Convention on Biological Diversity (2004) endorsed the need to recognize and support ICCAs.² Within the latter, Element 2 of the Programme of Work on Protected Areas (PoWPA) urges parties to recognize different governance models for protected areas, including ICCAs, Private Protected Areas, and Shared Governance or Co-managed Protected Areas. The PoWPA also mandates actions to enable participation, equity and benefit sharing. ICCAs have gradually emerged as a powerful area of study and action, through which the global conservation community can support indigenous peoples and local communities who are conserving biodiversity based on their cultures and traditional and local knowledge, practices and beliefs.³

Since the CBD PoWPA is considered a crucial step towards meeting the global target of reducing the rate of biodiversity loss by 2010, it is important to assess how far its implementation has progressed. Specifically in the context of ICCAs, such an assessment has been carried out for a selection of countries by the IUCN Strategic Direction on Governance, Equity, and Livelihoods in Relation to Protected Areas (TILCEPA), a joint group of the World Commission on Protected Areas (WCPA) and the Commission on Environmental, Economic, and Social Policy (CEESP).

1 Ashish and Manju are with Kalpavriksh – Environmental Action Group, India; Ashish is also former co-chair of TILCEPA. Sheelagh is with the International Organisation Development Ltd. (IODPARC).

2 <http://www.cbd.int/protected/pow/learnmore/intro/>.

3 For case studies and analyses from several countries, see www.iccaforum.org.

Box 1. What are Indigenous and Community Conserved Areas (ICCAs)?⁴

ICCAs are natural and/or modified ecosystems containing significant biodiversity values, ecological services and cultural values, voluntarily conserved by indigenous peoples and local communities, through customary laws or other effective means. ICCAs can include ecosystems with minimum to substantial human influence. They can be cases of continuation, revival or modification of traditional practices or new initiatives by communities in the face of new threats or opportunities. Several of them are inviolate zones ranging from very small to large stretches of land and waterscapes.

Three features can be taken as defining characteristics of ICCAs:

1. A community is closely connected to a well-defined ecosystem (or to a species and its habitat) culturally, politically, and/or because of survival and dependence for livelihood;
2. The community management decisions and efforts lead to the conservation of the ecosystem's habitats, species, ecological services and associated cultural values (even when the conscious objective of such management may be different than conservation per se, and be, for instance, related to material livelihood, water security, safeguarding of cultural and spiritual places, etc.);
3. The community is the major player in decision-making (governance) and implementation regarding the management of the site, implying that community institutions have the capacity to enforce regulations; in many situations there may be other stakeholders in collaboration or partnership, but primary decision-making rests with the concerned community.

2. Methodology

The authors planned to undertake a Rapid Survey using volunteers and this approach, of necessity, limited the extent and depth of the country studies. The 3 questions developed for the survey focused on:

- Are ICCAs explicitly recognized in the country's laws?
- Are ICCAs legally recognized as protected areas in this country?
- Are ICCAs given legal backing through the country's general laws, even if not explicitly as ICCAs?

The survey purpose and questionnaire were sent out on a number of relevant networks including:

- World Commission on Protected Areas (www.iucn.org/wcpa);
- The Commission on Environmental, Economic and Social Policy (www.iucn.org/ceesp)
 - TILCEPA (www.iucn.org/about/union/commissions/ceesp/wg/tilcepa)
 - TGER (www.iucn.org/about/union/commissions/ceesp/wg/tger);
- In addition, specific people known to be working on the issues of conservation, land rights and/or indigenous peoples' issues were sent the questionnaire (A full list of respondents is given in Annex 1).

The responses received were checked for consistency and clarity of information, and supplementary queries made for clarification or to plug gaps. In some cases, the responses were sent for review or supplemented by peers, mostly from the ICCA Consortium and networks like TILCEPA and TGER. Additional information, where available, was supplemented through Internet sources by the authors and by an intern, Antoine Lasgorceix.

This synthesis report is based on the country surveys and is informed by wider work ongoing on ICCAs (see www.iccaforum.org, in particular, the downloadable briefing notes on ICCAs). Section 3 presents a

⁴ See www.iccaforum.org.

discussion of the findings from the country studies with section 4 highlighting a number of key challenges that emerge from this rapid study. The conclusion makes a number of recommendations on how to take the findings from this partial rapid survey forward so that they can be deepened and used to inform ongoing policy dialogues at sub-national, national and international levels around indigenous and community rights that contribute to effective biodiversity protection in a changing climate.

Limitations of the survey:

The nature of the survey, i.e. a ‘self-selecting’ set of countries using volunteers, does present a number of challenges for both carrying out the survey in a neutral manner and for analyzing and presenting the results. This rapid survey was not intended to be a comprehensive global picture, but to provide a ‘snap-shot’ of the situation of ICCAs in domestic legal and policy frameworks. The key limitations of this approach are highlighted below:

- ***Country self-selection.*** Each country study was ‘self-selected’ by a volunteer with detailed knowledge of the legal and policy framework of the country under analysis. However, in most cases the study was not ‘validated’ by a peer review by different stakeholders in country and provides a statement of the legal and policy framework.
- ***Clarity around definitions?*** The survey questions did not distinguish clearly enough between ICCAs and protected areas under shared governance or where the state retains intervention powers around management of ICCAs, perhaps over and beyond those relating to their ability to intervene in any private property relationship. This was borne out in responses, especially where the state legally owns most of the country’s land and natural resources.
- ***Complexity of interpreting linkages in legal and policy frameworks.*** Using volunteers with limited time has led in some situations to a lack of detailed information, and more importantly to a depth of analysis that would enable a better understanding of the often complex relationships between different elements of the legal and policy framework of a state. This might include issues of constitutional interpretation, land tenure changes, protected area/forest management requirements for users/managers, as well as the ability of the state (if it retains ownership) to change land use planning in favor of economic development objectives.
- ***Legal and policy frameworks are constantly changing.*** Legal and policy frameworks change over time as a result of internal pressure e.g. rise of civil society and governments. In addition new external pressures including REDD+ , EU-FLEGT Voluntary Partnership Agreements and changing international legal requirements for Indigenous Peoples Free Prior Informed Consent present challenges to existing approaches to land tenure and protected area development.
- ***Date of surveys.*** A number of the survey reports date back to 2006. Original authors are no longer in a situation to update. However, this information does provide a valuable dated baseline that will be useful for further studies.

3. Discussion of Survey Results

The survey was undertaken in 27 countries, and one sub-national region (French Guyana). For the sake of convenience, we will refer to these as 28 countries. Summaries of the country survey results are given in Annex 2⁵ in relation to the three questions above.

⁵ The full surveys are available at: www.iccaforum.org/index.php?option=com_content&view=article&id=84&Itemid=100.

In this synthesis report, however, the results and discussion are presented in a different way, covering what are three **distinct but overlapping** situations.

- The first section is a presentation from those countries where ICCAs have been explicitly recognized and where there are ongoing processes, often in relation to constitutional recognition, around indigenous territories.
- The second section then presents information around where ICCAs are officially recognized as part of the state's official protected area system.
- The third section presents information on the more general cases where ICCAs might be possible through general legislation in relation to communities' rights and territories or to natural resource management that might facilitate the creation of ICCAs.

3.1. Have ICCAs been recognized/implemented in national or sub-national law?

Of the 28 countries, 17 can technically recognize ICCAs in national or sub-national law. However, given that here is a continuum in the ways that management of land and water resources can be framed, it is problematic to be exact about this number. The overlap with community managed areas, on or in which conservation of resources is a critical issue, means that there is substantial overlap with the responses given to the third question around the applicability of wider laws.

The way a state approaches ICCAs will vary especially if there are indigenous peoples within the borders. Here, movements for the recognition of ICCAs are closely linked with movements for constitutional recognition and rights over indigenous territories. Where indigenous peoples have been successful in being conferred constitutional recognition and territorial rights, different mechanisms of recognition of ICCAs have evolved or are in the process of taking place, including Australia, Canada, and Brazil, although the path to recognition is still fraught with obstacles.

In some countries, there are laws relating to community-based conservation or management of natural resources, under which ICCAs could get recognition; it is, however, unclear whether any of these can move beyond a shared governance situation (where the state plays a key role as partner or regulator) into an actual ICCA situation (where the community is the predominant decision-maker).

i. Countries with legal recognition

ICCAs have legal recognition (though different terminology may apply) in the countries of Australia, Bolivia, Brazil, Canada, Costa Rica, Federated States of Micronesia, Morocco, Guyana, India, Mauritania, Namibia, Nigeria, Papua New Guinea, Peru, Philippines, South Africa, and Vanuatu. In addition, the new protected areas legislation in Solomon Islands has the potential to recognize ICCAs as protected areas (PAs) (see 3.2 below).

In Bolivia, the possibilities of recognizing ICCAs exist within the new Constitution. There is, however, some uncertainty of how secure ICCAs can be, given that the state is still the owner of all natural resources and can presumably grant resource use permits to outsiders who would undermine the status of an ICCA.

ii. Predominant forms of recognition

The predominant form of recognition, other than as part of the protected area system (see 3.3 below), is through:

- The rights over indigenous territories, e.g. in Bolivia and Costa Rica (though poorly implemented in the latter);
- Community ownership of land, e.g. in countries such as Guyana, the communities are the collective title-holders of land and are free to manage it as per their decisions; and
- Rights to community use and management (for lands and/or resources under state ownership), e.g. in Brazil, Cambodia, Costa Rica (for marine artisanal areas), French Guyana, Namibia, and Tanzania, ICCAs are recognized through the granting of use and management rights. These rights may be conferred collectively or individually to those belonging to certain communities or for certain uses. In Taiwan, the indigenous communities' rights over resources are theoretically recognized and protected under the law, but implementation is lacking. In Nepal, institutional arrangements between communities and the government range from predominant control with the former to situations of co-management; often rights granted are subject to conditions and policy reversal.

iii. Unique or best practice examples

The Indigenous Protected Areas (IPAs) of Australia are voluntary and negotiated, and do not require communities to compromise rights to sustainably use, control, and manage their lands and resources. IPAs are effectively contractual. The Australian Government's IPA Program is recognized as innovative and successful. It has been awarded a significant increase in funding for the five years of 2008-09 to 2012-13. Future funding cuts or a change in government priorities could undermine their achievements.

In Guyana, collective legal title enables Amerindian communities to declare protected or conservation areas, with village councils enabled to make their own rules and no need for state permission. In Namibia, officially recognized communal conservancies are a spreading form of wildlife conservation.

iv. Major issues and challenges

Few countries have given explicit legal recognition to ICCAs, *per se* (using, broadly, the definition given in Section 1 above). However, it has been possible to use other laws to support activities that could be characterized as ICCAs, e.g. community forestry (e.g. Nepal), artisanal fishery areas (e.g. Costa Rica), or the securing of indigenous territories. This opportunistic development has required a great deal of work to identify opportunities and support community-based conservation initiatives. Unfortunately, in many cases, the future of these initiatives remains uncertain as they are based mostly on indirect recognition or on commitments of the present local administrative offices, NGOs, or political parties. Management plans and conservation and sustainable use programmes without the formal recognition of the state through either constitutional means and/or legal contractual arrangements may not be adequate, especially when the use or conservation of ICCAs is in direct conflict with larger interests of the state or of private entities (e.g. for extractive industry).

In Bolivia, for instance, communities are allowed to determine land use for their needs and develop management plans; in Cambodia 'indigenous and community protected areas', community forestry, and community fisheries are voluntary and negotiated. But in both cases, there are no contractual agreements between communities and the state, leaving such areas and initiatives open to interventions that may not be in the interests of conservation or communities.

3.2. Have ICCAs been recognized/implemented through state protected area laws, policies, and systems?

Of the 28 countries, 9 countries recognize (or propose to recognize) ICCAs as part of the official protected area system. However there is no clarity around when an ICCA should be considered part of the national protected area network (and possibly eligible for support through external funding) based either on the purpose of the ICCA or the outcome of the establishment of the ICCA.

i. Countries with recognition of ICCAs as PAs

ICCAs are recognized as PAs in Australia, Brazil, Canada, Federated States of Micronesia, India, Papua New Guinea, Solomon Islands, South Africa, and Vanuatu, though this would not apply to all ICCAs, and in some cases like Brazil, India, and Micronesia, it may apply to a very small subset. In Brazil, Extractive Reserves and Sustainable Use Reserves are part of the national PA system, but lands of aboriginal and afro-descendent communities are not. In India, recent amendments to the law on PAs include a category of Community Reserves, under which ICCAs that are under community or private ownership can be included. In the case of Micronesia, only Pohnpei State has a PA system in place, and one ICCA has been recognized as a marine sanctuary. In Solomon Islands, the Protected Areas Act 2010 provides for land-owners to request inclusion of their area as a PA, and they can exclusively manage it if the national authorities so decide.

ICCAs are a very prominent part of the PA network of Papua New Guinea; thirty of the current fifty-two official protected areas are Wildlife Management Areas (WMA), which are predominantly under the control of indigenous peoples.

In Peru, Private Conservation Areas (which could include community lands) are considered as Natural Protected Areas and it is expected that they will soon be part of the PA network. Samoa considers them included as they are not expressly barred from the PA network, and customary rights are allowed to continue within many PAs.

The situation in Bolivia raises an important question: if the state retains ownership of all natural resources, can a protected area management by indigenous peoples under the new constitution be considered an ICCA? For an answer to this question, it would be necessary to know what the wider processes were in relation to State decision-making and how stakeholders are consulted, or in the case of indigenous peoples, how their right to free, prior and informed consent to any changes is recognized and implemented. A far more detailed study would be required to answer that question, as well as assess the gap between the legal framework and its implementation.

Among countries that do not recognize ICCAs as PAs are Cambodia, Nepal (there is lack of clarity regarding Kanchenjunga Conservation Area, recently handed over to communities for management, but characterized as co-management by local observers), and Tonga. In Namibia, the conservancies, though accepted as contributing to the overall PA network, are not legally a part of this network.

In China, private and community areas are recognized by forest and PA laws, however, decisions on management and conservation cannot be taken by the owners alone. Decision-making rights range from belonging only to the state to being shared by the state and owners, implying that the situation is more of co-management than of ICCAs *per se*. (This does not mean that all situations in which the site is managed within an overall state-set framework would be co-management; if *de facto* control over day-to-day decision-making is with the community, it would count as a ICCA.)

The recognition of ICCAs as PAs is unclear in the cases of Mauritania, where sites may be transferred to the authority of the local group based on agreements. Whether these areas then remain part of the PA network is unclear. In Morocco, ICCAs are not legally recognized, though there might be other forms of recognition. In Tanzania, there is also no specific reference to ICCAs in relation to the PA system, but the possibility of community-based natural resource management of parks is open in some PA categories.

ii. ICCAs as a distinct PA type

In Papua New Guinea and South Africa, communities could ask for their lands to become protected areas and be involved in their management. In the case of South Africa, however, this seems to be more a situation of co-management than an ICCA. In some cases, communities have been restituted lands from within official PAs and facilitated to maintain their conservation status.

Among countries where ICCAs are not recognized as PAs, certain mechanisms for involvement of communities in management and use of PA resources by them exist. The majority of these would then be seen as co-management, but where *de facto* the overall control is with the community, it could be considered as an ICCA, albeit one that might be subject to arbitrary changes in the situation due to the lack of formal agreements. Such arrangements exist in Cambodia, Canada, China, Costa Rica, and Indonesia.

Proposed protected areas legislation of Guyana would contain a mechanism by which Amerindian Communities can choose whether to have their protected areas recognized legally as part of the national protected areas system and thereby become eligible for technical support. How this will work in relation to the moves by the national government to take on board REDD+⁶ will need to be established. Similarly in Namibia, under proposed new legislation, land holders, including communal area conservancies, will be able to apply to have their land proclaimed as one of three categories of protected areas.

iii. Major issues and challenges

Given that global recognition of ICCAs as being eligible for inclusion in official PA systems is very recent, it is not surprising that most countries have not yet changed their PA-related legislations to accommodate this, as required under the PoWPA.

Additionally, in a few cases where ICCAs are being included as official PAs, conditions of recognition are problematic; e.g. in India this can only happen on private or community lands (which characterize very few ICCAs, since most common land in India is owned by the state), and that too only under a uniform management structure. Fear of state interventions and imposition of conditions such as standard management practices, are making communities in many countries, such as The Philippines, resistant to inclusion of their ICCAs in the official PA system.

In countries where communities manage sites WITHIN recognized protected areas e.g. Nepal it is usual that these sites are not recognized as an ICCA. There is significant debate as to whether the communities are involved in co-management of the site or whether other formal arrangements need to be in place.

3.3. Have ICCAs been recognized / implemented through general laws/policies?

6 Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD). See: www.un-redd.org.

Several countries (21 of the 28 surveyed) may neither explicitly recognize ICCAs in law nor include them in official PA systems, but they may have more general laws relating to community rights and territories or to natural resource management that enable the continuation or creation of ICCAs.

i. Countries with general legal recognition

The following countries have legal recognition of indigenous territories, community areas, or peoples' rights that can support the creation and continuation of ICCAs: Australia, Bolivia, Cambodia, Canada, Costa Rica, Federated States of Micronesia, Fiji, Guyana, India, Indonesia, Mauritania, Namibia, Nepal, Peru, Papua New Guinea, Samoa, Solomon Islands, South Africa, Tanzania, The Philippines, and Tonga.

ii. Predominant forms of recognition

Countries such as Australia, Cambodia, Tanzania, and Tonga recognize community-based conservation initiatives through laws, policies and programmes for partnership or joint management of resources with the state. In these cases, though the ownership of resources lies strictly with the state (or the king, in the case of Tonga), several mechanisms may be arrived at such as through zoning and differentiated roles and responsibilities in management of resources. In Mauritania, under a new forestry code, the authority over forest management is transferred to local rural councils and further delegated to local user associations. In Nepal, there are several examples of community-based conservation initiatives where local communities hold primary governance authority in principle, but in practice the forms of management often need to conform to state regulations or 'best practices' prescribed by NGO partners.

In many countries, the recognition of community-based conservation is linked to recognition of traditional or indigenous lands and customary laws. In Guyana, lands are owned by Amerindian communities and they have full rights to decide how it is to be used. In Namibia, the creation of community forests is allowed on approval from traditional authorities. A Board is established and rights are allocated and powers are separated between Chiefs and traditional authorities. In India, recent legislation gives rights to communities to manage and protect forest lands that they have traditionally managed, which could potentially give legal backing to many forested ICCAs. In the Philippines, the law enables indigenous peoples to claim their ancestral domains and completely control them, which has already been used in a few cases to protect ICCAs.

Bolivia and Costa Rica have rules for creation of indigenous territories where resources within the region are managed by the communities themselves. However, in both of these cases, there is scope for governmental intervention. In the case of Costa Rica, this includes the use of an externally imposed institutional structure which could conflict with the traditional management institutions. The question of ownership of these resources is still open as the state holds the right to decide how and when resources such as oil are utilized.

The complexity of the arrangements for indigenous and community management can be seen in the following examples:

- **In Samoa**, customary lands are held by titles, but the state can claim these lands at anytime. Also, the customary laws regarding use and management are applicable only to those from the specific village. Outsiders are subject to national law.
- **In Morocco**, rangelands are owned and managed by communities, but forest conservation law only offers use and management rights to communities.
- **In Peru**, communal reserves are co-managed.
- **In South Africa**, ownership of communal lands by communities and their co-management is

allowed.

- **Taiwanese laws** offer special resource use rights to indigenous peoples on traditional lands and protection to indigenous knowledge concerning conservation and biodiversity. However, these are yet to be effectively implemented.
- **In Canada**, land claim agreements allow for the creation of indigenous territories, which can also be managed to achieve conservation goals.
- **In Fiji and Indonesia**, customary law and traditional rights are recognized as long as they are not inconsistent with the state regulations. Although indigenous communities are granted inalienable titles to community land, they are held in trusteeship by the state. The communities thus enjoy only user rights.
- **Nigeria** is reviewing its current Forest policy and it is hoped that it will recognize the role of communities in forest conservation and management.
- **In the French Guyana**, certain zones are demarcated for use by specified communities to meet their subsistence needs.

4. Key Issues and Challenges Facing Legal Recognition of ICCAs

This document is based on a limited ‘snap-shot’ survey. Whilst recognizing this, there are a number of issues that have emerged from the countries that need to be considered both as part of the PoWPA and for other stakeholders as ICCAs are developed in the next few years. Some of the observations below may seem obvious to people who are closely involved in the process of developing and establishing ICCAs, but probably will stand further articulation.

- **Who are the communities?** It is critical that a clear analysis is undertaken at each site of the different types of communities (and individuals within the community) who are likely to be engaged. The ICCA survey has shown that communities involved can include:
 - Forest indigenous peoples;
 - Nomadic pastoralists;
 - Fishing communities (fresh- and saltwater);
 - Forest-dependent communities;
 - Transhumant communities; or
 - A combination of one or more of the above.
- **Acknowledging differences and change.** Legislation that is out-of-date or split between various acts is unlikely to sufficiently recognize the context in which an ICCA may be being implemented or the changing relationships between the groups undertaking the implementation. Flexibility is a requirement for effective ICCA management. Linking traditional/local knowledge with formal technical knowledge of resource management will be required to facilitate new approaches to conservation, including eco-tourism, sustainable resource use, and adapting practices to climate change.
- **Variation in management categorization?** There is a continuum of management types from state management, co-management, and management by communities by themselves or in partnership with other organizations such as NGOs. It is also important to consider the differences between the land owner consulting with the community as a stakeholder and overall decision-making powers. In many contexts, what is vital is not the terminology but the level of engagement of the community with the management of the site over time. The situation for indigenous communities is obviously different and the links between management of the land resource and self-determination should not be

underestimated.

- **State ownership.** In the majority of cases, the state retains the overall ‘ownership’ of the site even if various forms of use rights are vested in the community. Without clear property rights and effective rights of appeal to changes in those rights, state ownership can be a cause for concern, especially when this may clash with forms of self-determination and decentralization. This is particularly important in states with a strong federal nature. Linking ICCA creation with improvements in governance in the natural resources sector will be critical to ensure rights to participation in decision-making, access to appropriate information, and if all else fails, access to justice (Principle 10 of the Rio Declaration).
- **Relationship between formal management and community structures.** In many cases, traditional resource management structures are not utilized when developing the management framework for the protected area or other community conserved resource. This can lead to tensions between different groups within the community and, if not respected, can lead to conflicts. This is also related to the way that changes in production systems can lead to a reduction in the validity of traditional structures and knowledge.
- **Clarity on whom or what is legally recognized.** In many situations, the community authorities are not recognized as a legal entity for inclusion in the management structures of a protected area, unlike local councils and other state bodies. However, can the legal recognition process also lead to a form of ‘stasis’ in that changes necessary to meet new challenges are difficult to put into practice?
- **Accessing rights?** Even if the rights are recognized into a legal framework, the process of accessing these rights is often so complex and difficult that it is not possible to exercise them. This can also apply to the strictures placed on the development of the management plans for the site to be approved by the competent authority. Are the requirements such that the authorities themselves would not be able to undertake them with the level of capacity available? Is too much expected of the community management team? In countries such as India, legal categories for the greater role and recognition of communities in conservation and PA management exist but are underutilized. New legislation providing full legal right to communities to manage and protect forests has yet to be assessed for its impact. In the Philippines, a number of other statutes and executive issuances are still in conflict with the provisions of legislation which guarantee the rights of indigenous peoples in the management and control of their own ICCAs.
- **Arbitrariness and lack of transparency.** Many respondents indicated that there was a lack of certainty even if use rights have been granted to communities. Processes to change land use are often arbitrary and subject to un-transparent processes, especially if the resource is deemed valuable (e.g. is found to have valuable mineral rights). The ability of a state to change the designation of an ICCA without effective consultation is inappropriate, especially if this change is to move the site into a state management protected area.
- **Wide range of legislation which may be applicable?** This is an important area as without a degree of certainty in the legislation and clarity around what is applicable there are likely to be conflicts and exploitable loop-holes for stakeholders who might not view ICCAs as a positive force for conservation. This short survey has shown how hard it is for even competent professionals to document ‘applicable law’ for ICCAs spread as it is through legislation on wildlife management, forestry, community-based management, and decentralization.

- **Land tenure arrangements and transparency within states.** Considering that ownership of natural resources in most countries has been claimed by the state, even if indigenous territories are constitutionally allowed, of critical importance is the devolution of powers to people rather than to government tiers at the local level for the management of resources on a day-to-day basis. One of the main weaknesses of the lack of tenure is uncertainty over the arrangement arrived at between the government and community. In Namibia, under the Communal Land Reform Act, communities do not enjoy group tenure over the land. Communities could theoretically apply for leases over their land, but overall government policy on such an approach is ambiguous. In the case of community forests, the Minister may revoke a notice that declares a community forest if there has been failure to comply with the agreement made.

5. Recommendations

Coming from this rapid assessment and the observations above are a number of recommendations, aimed at the upcoming CBD COP10 and beyond:

1. That a decision on the PoWPA at COP10 includes a comprehensive legal and policy review of the legislative frameworks at the national, regional, and international levels, as well as their capacity for implementation, that enable (or not) ICCAs to be established, recognized, and included in national protected area systems. CBD Secretariat should consider sponsoring an appropriate organization or a network to carry out such a more extensive and in-depth survey, which is validated with a wide range of stakeholders, with results being presented at the 11th Conference of Parties.
2. That the decision on PoWPA at COP10 also includes a mandate to CBD Secretariat to sponsor the development of technical guidance, including a toolkit or guidelines on the appropriate recognition of ICCAs in national law and policy, building on relevant material on this already developed by IUCN and other organizations. The decision could include the next step of CBD parties using this guidance to work for the effective legal recognition of ICCAs in ways that are appropriate, as well as to help strengthen them in countries where this has not yet taken place or where the recognition is inappropriate or incomplete.
3. The relationship between the PoWPA and the establishment of ICCAs is not clear. It is important for the long-term monitoring of the PoWPA that a baseline is established on ICCAs so that influence can be identified in future evaluations. What is clear is that in countries like Australia, the recognition of ICCAs as PAs preceded the PoWPA; in others like Peru, it is more recent or proposed. But whether the latter are caused by the government's desire or need to meet the requirements of PoWPA is not immediately clear; at least in some cases (such as India and Nepal), it may be due to ongoing movements or debates on the need for community-led conservation, or to donor conditionalities.
4. CBD Secretariat and other relevant international organizations and networks to facilitate a series of regional workshops on governance of protected areas, in which ICCAs could be a major component. Additionally, these organizations/networks should facilitate the exchange of available expertise and experience of ICCA-related communities and agencies across relevant networks, between countries and regions, through the internet and civil society media, and other means.
5. That the CBD Secretariat and other stakeholders disseminate the information around ICCAs to wider stakeholders, so that the latter are aware of the ability of ICCAs to provide a framework for biodiversity

conservation within a governance and management structure that supports livelihoods and social/cultural values.

6. Networks like the ICCA Consortium should help develop a set of trainers and educators on ICCAs who can become resource persons in regional and national workshops, or be available to countries desiring to provide appropriate legal recognition to ICCAs.

6. Conclusion

Though countries of the world agreed to the recognition of ICCAs in the bold and forward-looking Programme of Work on Protected Areas in 2004, and though international networks like IUCN have been advocating such recognition since at least 2003, progress with implementing this goal has been slow and halting. The survey presented here cannot be said to be fully representative of the countries of the world, but the subset covered is fairly substantial and provides a flavor of the various degrees or levels at which different countries are in meeting their requirements under international obligations.

There is increasing evidence⁷ that ICCAs have an important role not only in social/cultural and biodiversity conservation, but also in livelihood development of communities and individuals within those communities. In countries where ICCAs are part of the protected area network, there is an opportunity for skills and practices to be shared amongst different management stakeholders as part of joint learning initiatives.

It is critical that the CBD PoWPA facilitates the documentation and dissemination of key lessons and best practices around the legal recognition and management of ICCAs. This should include to PoWPA focal points, relevant country agencies, and ICCA-related communities and civil society (in local languages); a convenient and useful platform for such dissemination would be the proposed regional and national training workshops relating to implementation of PoWPA.

7 See www.iucn.org/about/union/commissions/ceesp/topics/governance/icca/.

ANNEX I: LIST OF RESPONDENTS

AUSTRALIA	Hanna Jaireth, Penny Figgis, James Igoe	Hanna.Jaireth@parliament.act.gov.au ; penelope.figgis@ozemail.com.au
BOLIVIA	Jordi Surkin, Gonzalo Zambrana	jsurkin@gntp.org ; gzambrana@lidema.org.bo
BRAZIL	Lea. M. Scherl	lea.scherl@bigpond.com
CAMBODIA	Meng Monyrak	mmonyrak@gmail.com
CANADA	Jim Johnston	jim.johnston@pc.gc.ca
CHINA	Antoine Lasgorceix	antoine.lasgo@hotmail.com
COSTA RICA	Vivienne Solis, Patricia Madrigal Cordero, James Igoe	vsolis@coopesolidar.org ; pmadrigal@coopesolidar.org
FIJI	Shauna Troniak, Erica Techera, Hugh Govan	shaunatron@hotmail.com ; Erika.Techera@law.mq.edu.au ; hgovan@gmail.com
FRENCH GUIANA	Ana Rachel Teixeira Cavalcante	anarachell@hotmail.com
GUYANA	Melinda Janki	mmjanki@yahoo.co.uk
INDIA	Neema Pathak, Ashish Kothari, Erica Taraporewala	Neema.pb@gmail.com ; ashishkothari@vsnl.com
INDONESIA	Jason Morris, James Igoe	jasonmorris@fastmail.fm ; jmorris@nature.berkeley.edu ; james.igoe@cudenver.edu ; jigoe@mwekawildlife.org
MAURITANIA	Karl P Kirsch-Jung, Kirsten Hegener	karl-peter.kirsch-jung@gtz.de ; eco-pnba@gmx.net
MICRONESIA	Alissa Takesy	fsm_pan@mail.fm
MOROCCO	Haddane Brahim, Abdellah Herzenni	abherzenni@wanadoo.net.ma
NAMIBIA	Brian T B Jones	bjones@mweb.com.na ;
NEPAL	Stan Stevens	sstevens@geo.umass.edu
NIGERIA	Edwin Ogar, James Igoe	ekuril@yahoo.com ; james.igoe@cudenver.edu ; jigoe@mwekawildlife.org
PNG	Susi Menazza	smenazza@tnc.org
PERU	Bruno Monteferri	bmonteferri@spda.org.pe
PHILIPPINES	Dave De Vera	ddevera@zpdee.net
SAMOA	Shauna Troniak	shaunatron@hotmail.com
SOLOMON IS.	Shauna Troniak, Hugh Govan (updated 2010, Ashish Kothari)	shaunatron@hotmail.com ; hgovan@gmail.com
SOUTH AFRICA	Phillipa Holden, James Igoe	phillipa@hixnet.co.za ; james.igoe@cudenver.edu ; jigoe@mwekawildlife.org
TAIWAN	Dau-Jye Lu	djlu@ntu.edu.tw
TANZANIA	Yves Hausser, James Igoe	yves.hausser@hesge.ch ; james.igoe@cudenver.edu ; jigoe@mwekawildlife.org
TONGA	Erica Techera	Erika.Techera@law.mq.edu.au
VANUATU	Jess Feehely, Roy Hills, Hugh Govan	hgovan@gmail.com

ANNEX II: NATIONAL LEGAL RECOGNITION OF ICCAs: COUNTRY-WISE SUMMARIES

(Note: These datasheets are summarized from fuller reports, available at http://www.iccaforum.org/index.php?option=com_content&view=article&id=84&Itemid=100. The year in brackets after the country name refers to the year the reports were sent in. In some cases, updates in 2010 have been added only to these summary sheets and not yet to the full report)

Australia (2006, partially updated 2010)

Recognition of ICCAs by national or sub-national law

Yes. Recognized within the National Reserve System (NRS), provided they meet the IUCN PA definition and the six standards of NRS. However, state and territory governments have yet to amend legislation to explicitly recognize ICCAs. State and territory legislations have allowed several mechanisms of co-management, financial and technical support to ICCAs.

Recognition of ICCAs as part of PA network

Yes.

Other laws/policies that allow CBC

EP and BC Act 1999 allows for public participation in management of PAs; Regional Forest Agreements for 20 years for sustainable forest use.

Kinds of recognition given to ICCAs and comments

IPAs are voluntary and negotiated, and do not require communities to compromise rights to sustainably use, control and manage their lands and resources. IPAs are effectively contractual; they are not necessarily secure in perpetuity. The Australian Government's Indigenous Protected Area Program is recognized as innovative and successful. It has been awarded a significant increase in funding for the five years 2008-09 to 2012-13. Future funding cuts or a change in governments' priorities could undermine their achievements.

Bolivia (2010)

Recognition of ICCAs by national or sub-national law

The new Political Constitution of the State, promulgated in February of 2010, recognizes explicitly the rights of the indigena originario campesino nations and peoples, to their free determination in their territories.

Recognition of ICCAs as part of PA network

No. However, there are several national PAs that overlap wholly or partially with indigenous lands. In these cases, these indigenous lands are still considered as part of the PA. Where there is a full overlap, there is currently a move towards co management (or what the Bolivian government calls shared management) between indigenous groups and the government. What has been recognized in Bolivia even before the current government is that indigenous management and use of their lands and natural resources is compatible with conservation objectives in PAs. Under the new political constitution of the state, not only are overlapping areas recognised, but indigenous communities have rights to declare PAs within their territories. These new areas will be managed by the communities themselves.

Other laws/policies that allow CBC

Since 1996, Bolivia has recognized the right of indigenous people to Tierras Comunitarias de Origen (TCOs) which means they that they have rights to own territory (in most cases ancestral land) and to manage it, including natural resources. In many cases, indigenous groups have developed their own management plans for the TCO, including conservation areas. However, according to the new constitution all natural resources belong to the government. So even when indigenous people own their TCO they could and are having their natural resources expropriated.

Kinds of recognition given to ICCAs and comments

ICCAs are voluntary and do not involve any formal or contractual agreement. The land owners define land use according to their livelihood strategies and needs as well as what is legally permissible. The territorial management plans are usually developed with outside technical and financial support.

Brazil (2006)

Recognition of ICCAs by national or sub-national law

Yes, some kinds of ICCAs are characterized by long-term agreements that are made with local and traditional communities to have the right to manage, use and monitor resources in areas of state land ownership. The Strategic National Plan for Protected Areas, which has been recently adopted by federal decree (on 13 April 2006) contemplates indigenous and afro-descendants' lands as part of this national system.

Recognition of ICCAs as part of PA network

Some are recognized, such as Extractive Reserves and Sustainable Use Reserves, the two categories within this national system. Legislation does not recognize aboriginal and afro-descendant communities' lands as protected areas.

Kinds of recognition given to ICCAs and comments

Ownership and the use of those areas occupied by traditional populations need to be regulated through contractual agreements. Use of genetic resources that have an economic or commercial use need to be authorized.

Cambodia (2010)

Recognition of ICCAs by national or sub-national law

No. However, local communities and indigenous rights over utilization and management of natural resources are recognized in some sub-national legislation, but there is still need comprehensive laws for implementation on the ground.

Recognition of ICCAs as part of PA network

No. But provisions recognize that communities and indigenous groups will execute their customary rights and use in community development zone of each PA and in other types of protected areas through participatory approaches. Laws do not exclude the possibility of community based natural resource management.

Other laws/policies that allow CBC

PA law and related legislation for protection of natural resources (forests and fisheries) allow for public participation in management of PAs. These legislations have recognized the customary rights of indigenous people and communities to use and manage land and natural resources including biodiversity. Indigenous groups and communities have developed their own management plans for protection and conservation areas of resources adjacent to and surrounding PAs. However decision making is facilitated and coordinated by the government institution which has the mandate to manage and administer resources. According to Cambodia's constitution all natural resources belong to the government.

Kinds of recognition given to ICCAs and comments

Cambodia has several forms of co-management of forests, fisheries and other related biodiversity resources. Indigenous and community protected areas, community forestry and community fisheries are voluntary and negotiated, and are promoted for sustainable utilization of lands and resources including biodiversity. These areas need to register, recognize and agree with the government institution, which has a mandate over these regions. The use of resources and areas needs to be regulated through contractual agreements with the government. Utilization of resources for subsistence is not prohibited, but utilization for commercial and economic purpose requires authorization. The rights of indigenous and local communities to manage and control are still subject to the regulatory framework of the government.

Canada (2008)

Recognition of ICCAs by national or sub-national law

Yes, formal recognition of ICCAs.

Recognition of ICCAs as part of PA network

Recognized. The national status report of 2006 documented five aboriginal PAs created through land claims agreement and other legal instruments. Though not officially recognized as PAs, these are treated as such. ‘Conservancies’ created by provincial and territorial governments recognize the cultural, social and ceremonial uses of Parks. In 2008 a new cooperatively managed protected area was created (Saoyú-Æehdacho National Historic Site of Canada). It has many of the characteristics of a community protected area, however, the formal protected area status is achieved through national legislation, at the urging of the community that is most closely associated with the site. This new protected area is a cultural landscape of 5600 sq km in northern Canada. It will be cooperatively planned and managed by the community of Déline, Northwest Territories and Parks Canada, according to the terms of the Saoyú-Æehdacho National Historic Site of Canada Protected Area and Cooperative Management Agreement.

Other laws/policies that allow CBC

Land claim agreements protected by the national constitution allow CBC on indigenous lands, but they are not necessarily created for the purpose of conservation.

Kinds of recognition given to ICCAs and comments

Though not declared as ICCAs, a number of PAs, public lands and indigenous lands are conserved with a high degree of involvement from communities.

China (2006)

Recognition of ICCAs by national or sub-national law

No.

Recognition of ICCAs as part of PA network

No. But joint management of PAs is recognized and allowed in some PAs.

Other laws/policies that allow CBC

The law on PAs and forests allows land ownership by non government parties but only activities that are allowed by PA authorities are to be undertaken. This may include conservation that is to be done in partnership and use of natural resources. However, decision making rests in the hands of government. Ownership and management of grasslands can be devolved to communities.

Costa Rica (2008, partial update 2010)

Recognition of ICCAs by national or sub-national law

Yes. Formal policies recognize indigenous territories and rights of their peoples over the use of natural resources in these areas. In 2008, the Institute of Fisheries and Aquaculture approved a decree that opens up the possibility of recognizing Marine Community Areas for responsible artisanal fishing.

Recognition of ICCAs as part of PA network

Not yet. But clause 32 of the legislation allows the possibility of creating new management categories by which ICCAs could become part of the PA network. There is a Draft Law of Protected Areas, No. 17,111, where Title VII provides the coordination that must exist between the indigenous territories and the protected areas national system (SINAC) to achieve conservation objectives. It includes a chapter on co-management and establishes regulations for private reserves but not for forms of community conservation.

Other laws/policies that allow CBC

Law recognizing ‘indigenous reserves’ with inalienable rights though vulnerable to amendments and violations is one. The country is also signatory to the ILO convention on Indigenous and Tribal peoples that recognizes their right to territory. The biodiversity law offers incentives for community participation in conservation. The new INCOPECA’s

recognition of Marine community artisanal responsible fishing areas offers new governance models for the management of the marine territory.

Kinds of recognition given to ICCAs and comments

A draft for a new indigenous act has been in discussion for five years that seeks to give territorial status to ‘indigenous reserves’. The draft law has not been approved yet. It is a controversial project that has failed to obtain majority in the Legislative Assembly.

Fiji (2008)

Recognition of ICCAs by national or sub-national law

No. But statutes and clauses in laws on forests, fisheries and natural resources allow the local communities the right to control natural resources.

Recognition of ICCAs as part of PA network

There is no legislation on PAs and therefore no formal PA network.

Other laws/policies that allow CBC

The constitution act recognizes customary law and traditional rights as long as they are not inconsistent with other laws of the state. Certain rights and privileges on customary lands and fisheries are exempted from the equality principle. The native lands and land trust acts grant inalienable registered titles of customary land to individuals of native clans and tribes. But this ownership is held in trusteeship by a Native Land trust Board. In effect the indigenous people only have user rights. The Fisheries Act grants decision making rights to local individuals who hold fishing rights in designated areas.

French Guiana (2010)

Recognition of ICCAs by national or sub-national law

According to the principle of unity and indivisibility of the French Republic and equality of the French people (Constitution of 1958, article 1), France is composed by an undivided and unique people: the French people. All ethnic distinction is for this reason prohibited, which rules out any statistical study based on these criteria. Therefore, the communities above are not recognized as indigenous people, but only as French citizens having special rights. Designated as “communities pulling their traditional livelihood of the forest in Guiana”, the Maroons and the indigenous people from French Guiana have special rights fixed by the French legislation concerning the land’s use. These rights consist the grant of Domianial/Public Lands for their traditional use. These areas are called Zones of Common Use Rights– the Zones de droit d’usage collectif- ZDUC. The ZDUC consists of a collective right conferred to the Community constituted as an association or a society over a delimited area.

Recognition of ICCAs as part of PA network

No, but in some cases there are superposition of ZDUCs and Protected Areas.

Other laws/policies that allow CBC

The regulations concerning these zones are defined in the General Code of Public Institutions Property and the Forest Code. The beneficiary communities or “communities pulling their traditional livelihood of the forest” are strictly allowed the use of these zones with the specific aim of meeting their subsistence needs through hunting, fishing, slash and burn for traditional agriculture. Economical activities are excluded from the ZDUC, even those such as eco-tourism or agro-forestry practices for commercial purposes. Activities that are not considered as traditional and for their subsistence are forbidden in the ZDUC.

Guyana (2008, updated 2010)

Recognition of ICCAs by national or sub-national law

Yes. Under the laws of Guyana Amerindian communities hold collective legal title to their lands. The Amerindian Act 2006 gives Amerindian communities the legal right to manage their lands and to preserve, protect and conserve their

lands or any resources on those lands. The Amerindian Village Councils have power to make legally binding rules and to fine offenders. Amerindian communities therefore have legal power to create protected areas over their lands without having to get recognition or permission from the State.

Recognition of ICCAs as part of PA network

There is no PA network in Guyana. There is no single agency with responsibility for protected areas. There are 2 PAs created by the State under 2 site-specific laws that respect traditional Amerindian rights such as rights to hunt, fish, farm, or gather forest products. Any restrictions on traditional rights have to be agreed with the Amerindian community. In the Iwokrama protected area there are arrangements for including Amerindians in the management of the area. There is an Amerindian representative on the board and a memorandum of understanding with an Amerindian organization relating to community involvement. There is a third protected area which has been created by the WaiWai using the Amerindian Act 2006. The WaiWai own, control and manage this PA and the State may not interfere.

Other laws/policies that allow CBC

The Environmental Protection Act 1996 gives Amerindian communities the right to challenge environmentally destructive development on lands which they do not own e.g. lands owned by the State. Amerindian communities have control over the lands they own, and it is their decision what kind of development to allow on their lands.

Kinds of recognition given to ICCAs and comments

The Government of Guyana has announced its intention to set up a national protected areas system. Consultations were held with Amerindian Communities before the start of the drafting in order to identify Amerindian concerns from the outset. It is expected that the protected areas legislation would contain a mechanism by which Amerindian Communities can choose whether to have their protected areas recognized legally as part of the national protected areas system and thereby become eligible for technical support. The draft legislation was submitted to the Office of the President 2 years ago. It is expected that the draft will be sent out for another round of public consultations with Amerindian communities but the timetable is not known.

India (2008, 2010)

Recognition of ICCAs by national or sub-national law

Yes and policy documents have begun to recognize their need.

Recognition of ICCAs as part of PA network

Yes, Community Reserves is a category under the Wildlife Protection Amendment Act 2002 of India, which can be used by communities. These reserves can provide legal support to those community conserved areas which are under private or community ownership. However, most ICCAs in India are on government lands.

Other laws/policies that allow CBC

The clauses of the Forest Act allow the creation of Village Forests so that communities may manage these forests. The Scheduled Tribes and Other Forest Dwellers Act allows for the establishment of rights for tribal and forest dependent communities and declaration of areas conserved by them as Community Forests, or greater possibility of community involvement in government managed PAs, and of legal backing of forested ICCAs. The Biodiversity Act may also allow ICCAs through the devolution of decision making powers shared by local level committees for biodiversity conservation, or the declaration of Biodiversity Heritage Sites. However, they have no ownership over these resources. The Environment Protection Act allows for the declaration of ESAs which could be ICCAs.

Kinds of recognition given to ICCAs and comments

Though a number of provisions for legal backing exist, most are relatively new, or inappropriate for the ground situation of ICCAs.

Indonesia (2006)

Recognition of ICCAs by national or sub-national law

No.

Recognition of ICCAs as part of PA network

No, but PA laws allow for some PAs to be managed as ICCAs. The legal framework for the country's PA system allows for Human Use Zones within Protected Areas so long as human activities do not alter or negatively impact the ecology of the core zones of Nature Conservation Areas.

Other laws/policies that allow CBC

The state recognizes and respects customary entities and traditional rights of people, and the rights of traditional communities to self-govern at the village level, provided that these are in accordance with national law and the underlying principles of the state. Community forests and social forests managed by local people are allowed by laws. However, ownership of resources is with the state. The law on water states says that state control of water must respect traditional and customary rights of local communities. These communities have the rights to use water resources and receive compensation if they cannot use them.

Kinds of recognition given to ICCAs and comments

The Ministry of Forestry is currently holding discussions about revising the Forestry Management Law so that it would require the establishment of Forest Management Units for all forests in Indonesia. It could bring significant opportunities to indigenous peoples and local communities to obtain formal rights over forest areas.

Mauritania (2008)

Recognition of ICCAs by national or sub-national law

Terrestrial ICCAs are recognized.

Recognition of ICCAs as part of PA network

No. However, under the legal framework of the pastoral and the forestry code, in the context of local resource management agreements, there is provision to recognize local groups and to transfer authority over the site to them (it is not clear whether they then remain part of the PA network). The Banc D'Arguin national park is now governed by an institution that has local and pastoral communities as formal members. IUCN and USAID have proposed co-management arrangements for two PAs and a PA law to be developed.

Other laws/policies that allow CBC

The new forestry code provides for the transfer of authority over forest lands to local rural councils, which can delegate the rights to use sustainably to local user associations. A new code on pastoralism seeks to involve the participation of pastoral communities in management of pastoral landscapes. Internationally funded projects have helped the formation of natural resource user associations which negotiate with the state on rights to decentralized management of these resources.

Micronesia (2010)

Recognition of ICCAs by national or sub-national law

Yes. The 4 States/sub-national laws recognize ICCAs either are recognized under pre-existing traditional tenure systems under current constitutions (e.g. Chuuk and Yap State) or through co-management scheme (e.g. Kosrae and Pohnpei State).

Recognition of ICCAs as part of PA network

Currently the Federated States of Micronesia does not have a national PA network system in place yet, this will be an outcome of the ongoing UNDP-GEF Supporting Country Action on CBD-PoWPA Project www.protectedareas.org. Only Pohnpei State has a PAN system in place and it does recognize ICCAs as recently exemplified through the Ant Atoll Marine Sanctuary.

Morocco (2008)

Recognition of ICCAs by national or sub-national law

Yes. But community action is supervised by the state on these lands.

Recognition of ICCAs as part of PA network

Yes, but there is no legal or institutional basis.

Other laws/policies that allow CBC

Management of communal rangelands, held as inalienable rights by communities, is left to them. The law on forest conservation grants management and user rights to communities. There is a decree offering compensations to forest users that protect forests.

Namibia (2008)

Recognition of ICCAs by national or sub-national law

Yes. In July 2008 there were 52 communal area conservancies. As per national law, a conservancy must have defined boundaries, a representative committee, a benefit distribution plan, a constitution, and be committed in its constitution to the sustainable management and utilization of wildlife. Conservancies are self-defined common property management and social units. Communal land is tribal land, ownership of which is vested in the State on behalf of traditional communities. The Communal Land Reform Act of 2002 defines areas of communal land and assigns traditional authorities the right to allocate land for residential and crop growing purposes and to control common grazing land.

Recognition of ICCAs as part of PA network

No. Conservancies are not part of the government's formal protected area system (i.e. as provided for in protected area legislation), although they are recognized as informally contributing to the overall PA network. Existing legislation only makes provision for State run protected areas (National Parks, Game Reserves and Recreational Areas). However, under provisions in the draft Parks and Wildlife Management Bill (which will replace the outdated Nature Conservation Ordinance), land holders, including communal area conservancies, will be able to apply to have their land proclaimed as one of three categories of protected area in order to increase the conservation status of the land. The draft legislation also makes provision for contractual parks where government and land holders (including communal conservancies) establish a new protected area through signing a contractual agreement.

Other laws/policies that allow CBC

The forest act allows the creation of community forests to be managed by the communities themselves after receiving approval from the traditional authority. The Communal land Reform Act provides for the allocation of rights in respect of communal land, the establishment of Communal Land Boards and for the powers of Chiefs and Traditional Authorities and boards in relation to communal land. Namibia has a national Community-based Natural Resource Management (CBNRM) Programme that provides support to communal area conservancies and increasingly, Community Forests.

Kinds of recognition given to ICCAs and comments

One of the main weaknesses of the Communal land reform Act is that communities do not enjoy group tenure over the land, ownership of which is vested in the State. Under the communal Land Reform Act, communities could theoretically apply for leases over their land but overall government policy on such an approach is ambiguous. In the case of community forests, the Minister may revoke a notice that declares a community forest if there has been failure to comply with the agreement made.

Nepal (2008, partial update 2010)

Recognition of ICCAs by national or sub-national law

No recognition of ICCAs as such, or of customary ICCAs. All community lands have been nationalized and traditional institutions and customary law are no longer recognized. However, there are many customary ICCAs within PAs and forest areas. There are also standardized, government-designed local institutions in "conservation areas," buffer zones, and community forests which arguably sometimes constitute legally-recognized ICCAs. In many cases, however,

these may be more accurately considered to be shared governance arrangements rather than ICCAs. In 2006 the governance of Kangchenjunga Conservation Area was handed over to a management council of representatives from local governments and NGOs - the first time a government-recognized protected area can be considered to be an ICCA.

Recognition of ICCAs as part of PA network

No, with the exception of Kangchenjunga Conservation Area.

Other laws/policies that allow CBC

Yes. Community forest user group governance of community forests in the national forest; buffer zone users group governance of forests and other lands in buffer zones; and conservation area management committee governance of forests in conservation areas are examples of community-based conservation in cases where communities hold primary governance authority. In many cases, however, governance is in effect shared because of strong government or outside NGO oversight and influence on planning and policy. Indigenous peoples have gained national legal recognition since 1999, but there are no indigenous territories, and no customary ownership of any land. Many customary indigenous territories have been turned into PAs (national parks, wildlife reserves, conservation areas, buffer zones) and national forests. Community governance or shared governance is allowed by the government in some cases (community forests; buffer zones; conservation areas).

Kinds of recognition given to ICCAs and comments

Nepal has several forms of co-governance (in some cases constituting governance by indigenous peoples and local communities) at local scale of community forests, buffer zones, and conservation areas, but there is no legal recognition of community ownership of land under conservation and very little use has been made of legal means to recognize customary ICCAs as “religious forests” in buffer zones and the national forest or as “users groups” in national parks.

Nigeria (2008)

Recognition of ICCAs by national or sub-national law

Yes. In principle and policy guidelines, but very few in practice.

Recognition of ICCAs as part of PA network

The Federal Forestry Policy provides the basic guidelines for states legislation. However, the management of forest estates in Nigeria is mainly in the hands of the state governments. Federal forestry Policy (currently under review and at the point of being passed by the Nigeria National Assembly) gives recognition to the role of communities in forest management. So although there is currently no act supporting this policy, one will almost certainly be passed in the near future. The Cross River State Forest Law, Cap 47 is almost the same as Cap 55 of 956 Eastern Nigeria forest law & regulations. It recognizes community forests as protected forests or communal lands for community uses.

Other laws/policies that allow CBC

No. The forest Legislation and policy do not guarantee full tenure security yet but it provides opportunities for benefit sharing most particularly in timber royalties, technical support in form of forest resource enumeration and community based land use planning. The forest law also allows for the continuation of community traditional rights over forest reserves during the process of their creation, if they can be proved, but this is a long and tedious process. The national park Service Decree allows communities to participate in the National Park Service Governing Board

Papua New Guinea (2010)

Recognition of ICCAs by national or sub-national law

Yes. ICCAs (not with that specific title, but as defined by IUCN in terms of areas conserved by indigenous peoples and local communities) are recognized under Papua New Guinea’s national and sub-national legislation.

Recognition of ICCAs as part of PA network

Yes. ICCAs are a very prominent part of the PA network of Papua New Guinea; thirty of the current fifty-two official protected areas are Wildlife Management Areas (WMA), which are predominantly under the control of indigenous

peoples.

Peru (2009)

Recognition of ICCAs by national or sub-national law

Yes, as Private Conservation Areas (PCA), however this is not for marine areas.

Recognition of ICCAs as part of PA network

Not yet but soon to be expected, presently PCAs considered as natural protected areas under the Natural Protected Areas Law (Law 26834) of 1997.

Other laws/policies that allow CBC

Communal reserves for co-management, regional communal conservation areas, conservation concessions based on management plans.

Kinds of recognition given to ICCAs and comments

PCA require a zoning and also, the determination by their owners of the conditions of use and restrictions that will be established for conservation purposes. The declaration of ICCAs is limited by the lack of land rights for indigenous communities that have traditionally occupied areas.

Philippines (2009)

Recognition of ICCAs by national or sub-national law

Yes, the Indigenous Peoples Rights Act (RA 8371) and the National Integrated Protected Areas System Law (RA 7586) SEP law, Republic Act 7611.

Recognition of ICCAs as part of PA network

No.

Other laws/policies that allow CBC

No.

Kinds of recognition given to ICCAs and comments

The rights of IPs and local communities to manage and control CCAs are still subject to the regulatory structure of the state. a number of other Statutes and Executive issuances are still in conflict with the provisions of IPRA which guarantee the rights of IPs in the management and control of their own CCAs.

Samoa (2008)

Recognition of ICCAs by national or sub-national law

No.

Recognition of ICCAs as part of PA network

ICCAs are not specifically included but they are not barred from the PA network either. Customary rights are allowed to continue within PAs.

Other laws/policies that allow CBC

The Constitution provides for a system of customary lands held by title in accordance with customary law and practice. Under Article 102, customary land may be taken up by the government for public purposes by negotiation or unilaterally. Customary laws and structures are recognized under the Village Fono Act, a national law enacted for the purpose of reinforcing the authority of village fono (council of chiefs) to use and apply the custom of the village. The jurisdiction of the fono is therefore limited to planning and management of its own lands and enforcement against members of its

own community. Individuals from outside the village are subject only to government laws and law enforcement while on village lands, and the decisions of the fono do not necessarily affect land management and attendant environmental issues at the district or regional level. The Fisheries Act allows village representatives, fishermen and industry to prepare by-laws in consultation with the Fisheries Department.

Solomon Islands (2008, updated 2010)

Recognition of ICCAs by national or sub-national law

Not explicitly (however, see below).

Recognition of ICCAs as part of PA network

The Protected Areas Act 2010 provides for land-owners to request designation of their area as a PA; potentially this could enable recognition of ICCAs.

Other laws/policies that allow CBC

Community conservation is possible as the parliament recognizes customary law and rights of land owners. The fisheries legislation too recognizes customary fishing rights.

South Africa (2008)

Recognition of ICCAs by national or sub-national law

Yes. The National Environmental Management Protected Areas Act allows for the creation of parks on government or private lands and co-management of these parks. Communities could ask for their lands to become protected areas and be involved in their management.

Recognition of ICCAs as part of PA network

Yes, provision is made in the act for communities to have their land declared a protected area and to participate in the management of its natural resources.

Other laws/policies that allow CBC

Legislations allow for the co-management of communal lands as parks, for the transfer of communal lands to communities, the joint management of forests. The policy of the government is to ensure the involvement of local communities and other interested and affected parties in decisions concerning the designation of new protected areas, the adjustment of protected area boundaries, and the development and implementation of management plans. A legislation for “the restitution of rights in land in respect of which persons or communities were dispossessed” during the period of racial discrimination is also in place.

Taiwan (2007, reconfirmed 2010)

Recognition of ICCAs by national or sub-national law

No. Local communities’ rights over natural resources are recognized in some national laws, but there is still no concrete implementation of these laws on the field.

Recognition of ICCAs as part of PA network

Information not available.

Other laws/policies that allow CBC

Three laws mention that indigenous people have special rights on their traditional lands. As there is no process to regulate the definition and recognition of the traditional lands of the indigenous people, the traditional lands still remain a special term on paper. The traditional hunting, gathering and fishing (only for non-commercial use) rights of the indigenous people in their traditional lands is protected by Law. Knowledge concerning conservation of biodiversity and intellectual creations of the indigenous peoples is also legally protected. Forest produce within the territories of indigenous peoples can also be legally harvested by them. However, all these provisions are yet to be implemented effectively.

Tanzania (2006)

Recognition of ICCAs by national or sub-national law

There is no explicit reference to ICCAs in any Tanzanian legislation. However, the promotion of community based management regimes is achieved through a combination of sectoral policies (Wildlife, Forestry, Bee Keeping and Fisheries), land policies and laws.

Recognition of ICCAs as part of PA network

There are no explicit references to ICCAs in Tanzania's PA system. However, certain protected area categories do not exclude the possibility of community based natural resource management.

Other laws/policies that allow CBC

Special localized regulations such as the Ngorongoro conservation area ordinance allow Maasai pastoralists and local communities to live within the conservation area. Legislation also allows people living in the proximity of a marine park or reserve to be involved in all phases of planning, development, and management. The Environment Policy provides support to processes of decentralization of environmental management. The forest policy and Act also promotes joint forest management possibilities. The land Act creates the possibility of Community-Based Natural Resources Management (CBNRM) through the recognition of village land as one of three legal categories of land, the other two being general land and conservation land. The Wildlife Management Area regulations allows the Minister of Natural Resources and Tourism to declare land set aside by a village government as a WMA, which gives people some control over the wildlife resources on their land. Tourism and wildlife policies together support the earning of revenues by local communities through tourism related activities.

Tonga (2008)

Recognition of ICCAs by national or sub-national law

ICCAs are not specifically recognized in national legislation.

Recognition of ICCAs as part of PA network

The Parks and Reserves Act does not specifically mention ICCAs. Protected areas can also be declared under the Birds and Fish Preservation Act 1988 and the Forests Act, but no reference is made in these Acts to community-based conservation.

Other laws/policies that allow CBC

Under the Constitution all land vests in the King and he may grant hereditary estates to nobles and titular chiefs. However, these lands cannot be sold and are subject to allotment. Under the Fisheries management Act, the Minister may then designate any local community in Tonga to be a 'coastal community' for the purposes of community based fisheries management. Thereafter, the Minister may allocate to the coastal community the responsibility for management of any Special Management Area and prescribe the rights and responsibilities of the coastal community in respect of that Area. The management and development of aquaculture too may be designated to a local community or any coastal community.

Kinds of recognition given to ICCAs and comments

It appears that community based conservation projects are operating in Tonga. However, neither custom nor customary law are mentioned in the Constitution. Nor is customary marine tenure exercised in Tonga and access to fishery resources is open. Therefore, the legal status of these areas is uncertain. The above provisions, which provide for community management, are within fisheries legislation rather than the broader protected area management law.

Vanuatu (2008)

Recognition of ICCAs by national or sub-national law

Under the Environmental Management and Conservation Act, 2002, the Director of Environment can register an area as an ICCA. Identification of such sites is made by negotiation between the Director and customary landowners.

Communities must agree to establish the CCA. It is also subject to the satisfaction of the Director that the area is ecologically valuable and worthy of protection. A registered ICCA must have an approved management plan, and a management committee (comprising representatives from each community within the protected area) who will be responsible for implementing and enforcing the management plan. However, enforcement relies on respect for custom rules and chiefly powers. This is particularly difficult where the offenders are not from the ICCA.

Recognition of ICCAs as part of PA network

Yes. Registered ICCAs are entered into the Environmental Registry, after which they receive government recognition along with all other PAs. But there are some weaknesses to be noticed. As above, management of a ICCA is the responsibility of the landowners, rather than the government.

Other laws/policies that allow CBC

There are a number of options for recognizing PAs in Vanuatu – including conservation areas under the Forestry Act, 2001, marine reserves under the Fisheries Act, 2005, protected sites under the Protection of Sites and Artifacts Act and national parks and nature reserves under the National Parks Act, 1993. The Provincial Councils are also empowered to create environmental protection zones under the Decentralization and Local Government Regions Act, 1994. However, these options tend to be under-used.