

Proceedings of the Indigenous and Community Conserved Areas (ICCAs) side event and Policy Forum on Indian Forest Rights Act and Community Forestry¹

International Association for the Study of the Commons (IASAC), Hyderabad, India, January, 2011

13th Biennial Conference of the International Association for the Study of Commons (IASC)
10th-14th January 2010

Exploring the issues related to the conservation of the commons by the local and Indigenous Communities¹

Introduction

In order to explore the issues related to the conservation of the commons by the local and indigenous communities and recent legal development towards the same in India, two events were organised during the IASC.

1. Side event: 'The Commons and Indigenous and Community Conserved Areas', 10.30- 16.30, 12 January, 2011.

Organised by Kalpavriksh and ICCA Consortium with support from the Foundation for Ecological Security (FES)

2. Policy Forum: 'Forest Rights Act, Community Forest Rights & Management/Community Conserved Areas', 16.30- 18.00, 14 February, 2011. Jointly organised by Kalpavriksh and FES

¹ Minutes prepared by Vanessa Reid, Neema Pathak Broome and Milind Wani, Kalpavriksh, Pune

The side event - **The Commons and Indigenous and Community Conserved Areas** - hosted a panel of speakers, spanning the environment and Indigenous rights world, whose purpose was to address current issues relating to ICCAs and their relationship to the Commons. The event sought to discuss:

1. The current frameworks for supporting ICCAs,
2. Present examples of ICCAs across the world and
3. Critically examine the status, threats, needs and solutions within them.

The event saw the participation of a culturally and politically diverse group of speakers, each of whom gave a fifteen minute presentation (see power-points attached). Each presentation was followed by a ten minute interactive discussion with the audience.

The policy forum - **Forest Rights Act, Community Forest Rights & Management/Community Conserved Areas** - incorporated the broader issues from the aforementioned side event but had a particular focus upon the Indian Forest Rights Act (FRA), particularly in relation to its implication vis-à-vis ICCAs. It hosted five speakers who raised specific points relating to

ICCAs. This was followed by an interactive discussion with the audience.

The forum also sought to explore how the Act could be used (and replicated across world) as an example of a socially-rooted model for acquiring rights/tenure over commons - especially those pertaining to natural resource in parts of the world where such transformations are difficult to achieve.

It also explored what experiences in policy formulations relating to ICCAs are available from other countries, relevant to India, while also looking at the internal and external challenges faced by ICCAs.

Given below are some of the key issues that emerged from these two events:

THE GLOBAL ICCA SITUATION

ICCAs exist throughout the world and provide extensive socio-cultural and environmental functions. They can range from sacred spaces and cultural landscapes, to territories and migration routes of nomadic herders and mobile indigenous peoples. They can also take the form of

sustainably-managed wetlands, fishing grounds and water bodies as well as sustainably-managed resource reserves and habitats for sacred and culturally valuable species.

To date, around 420 million hectares of forests (11% of the world's total) are under community ownership or administration. Of this, about 370 million hectares are under some level of conservation management by communities. If given the appropriate recognition, ICCAs could double the world's protected area coverage! (See 'ICCA Intro' power-point.).

In recent times, ICCAs have been recognized by international and national policies. However, recognition, while in some cases have been extremely useful, in many other cases; have caused serious hurdles for ICCAs. There is now taking place, much thinking and discussion, on appropriate ways of recognizing ICCAs. An institution called the ICCA Consortium has recently been established with the intention to help provide recognition and support to ICCAs globally (see www.iccaforum.org for more details). Presented below in brief are the case studies that got discussed during the side event.

Pastoralists in Rajasthan, India

Rajasthan has a considerable nomadic and sedentary pastoralist population whose livelihood is becoming increasingly endangered. However, attempts are being made to show to both the Indian Government and the International conservation world how valuable a contribution pastoralists make to supporting biodiversity. As part of such attempts, paragraph 8j of the CBD (Convention on Biological Diversity) - a document stating 'pastoralist rights'- is being used by pastoral groups to assert their eligibility as rights holders to tenure or grazing land. Through an effective medium of bio-cultural protocols (explained below), many groups have begun to learn of these rights available to them and assert themselves as traditional knowledge (TK) holders. So far, five bio-cultural protocols have developed for the pastoralists in India. A suggestion was made to formulate a 'roadmap/action-plan'- that will be needed for pastoralists for COP-11 India. (See 'Rajasthan' power-point.)

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Arunachal Pradesh, India

65% of land in Arunachal Pradesh is under community conservation. However, customary management systems are not equipped enough to deal with current processes of degradation and need modifications if they are to survive and be effective. Many ICCAs do exist within Arunachal Pradesh. There is legal recognition for the local communities (LCs) enabling their claim as rightful land owners, or at least maintainers. Over the years, there has been a noticeable decline in local community control and self-reliance with a corresponding increase in dependency upon the government and money to access market goods. This has impacted negatively on livelihoods as well as on the social dynamics of these ICCAs. One main observation of the ICCAs within this areas, is that there is little empowerment and incentives to counter external pressure that in many a case is extremely fierce. (See 'Arunachal' power-point.)

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Somaliland

Somaliland is not internationally recognized and is therefore not a part of any international environmental convention. Thus the organization and protection of natural resources is more or less in the hands of communities. However, political instability makes this situation complicated as there is never enough security for people to think about long term conservation. The main traditional conservation practice is nomadic movement between summer and wintering grazing areas and seasonal reserves. Colonialism brought a land property shift from community ownership to state ownership. The introduction of **taxation and commercial livestock trade** led to overuse of land. Political instability could be one of the greatest threats to indigenous and community territories, access rights and conservation practices.

Mexico

In the case of the state of Oaxaca, nearly 82% of the total forest cover is owned and managed by Indigenous and Mestizo communities (with 126 communities, from 2003 to

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2009, establishing their own conserved areas). Mexico as a whole is one of few countries to have created and implemented policy in favour of ICCAs with very strong initiatives for supporting customary laws. There are a number of laws, within the agrarian, the environmental and the local State Laws of Mexico, which support Indigenous community-based tenure systems, natural resource rights for community members, and the setting aside of land for conservation areas. (See 'Mexico' power-point.)

Assam, India

Extensive commercial tree felling is one of the main causes of forest degradation in Assam. However, a very positive ICCA has emerged as a counter-weight. It is the Kakoijana Reserve Forest and is widely known as the 'Golden Langur Conservation Programme'. There are seven villages surrounding the forest whose inhabitants contribute to the conservation programme. These also include a number of 'self-help' groups. A range of projects now exist, including training for capacity building, veterinary training, sapling distribution and multi-cropping programmes. These communities also take

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part in weeding to avoid forest fires and have also started developing small-scale industries such as pickle making and betel leaf cultivation. (See 'Assam' power-point.)

Nepal

Within Nepal there are a good many examples of effective ICCAs with members attempting to fight for their rightful community resources rights. However, despite a number of promising examples such as Kangchiej, there is no official recognition as of yet. (See 'Nepal' power-point.) There is in-fact an infrastructure established for a formal national network to exist. However, at present registration has not been able to occur and has halted this process. The 'native title' land ordinance recognises native land tenure; however, of late there has been a freeze upon all native titles. One of greatest challenges seems to be a forest department which believe that communities will degrade conservation areas and that communities cannot manage conservation sites on their own.

Odisha, India

Currently, there are around 12,000 groups throughout Odisha protecting around two million hectares of forest land. ICCAs cover most of the protected areas, tiger

reserves and elephant reserves in the state and much of the endangered wild flora and fauna is protected under community-led initiatives. In terms of rights however, only JFM (Joint Forest Management) - a government endorsed initiative- has been used to provide local people with land tenure rights, whereas what is needed - is for the forest department to merely play a monitoring role and allow the LCs to manage their own sites with their own TK. However, unfortunately and contrary to this, outmoded and old bureaucratic systems are still used to implement new and radical provisions of the FRA. In terms of LCs using FRA, so far there have been approximately 1000 community forest resource rights (CFR²) claims, including claims for communities to entirely manage the some PAs. (See 'Odisha' power-point.)

Sabah, Malaysia

LCs have access and property law with some communal laws recognised with mechanisms having been established to support ICCAs. However these are not yet implemented. There are positive practical experiences however - such as

² A provision (section 3(1) i) provided for, under the FRA

the ecological linkages recently created between Kinabalu Park and Crocker Range Park (see 'Malaysia' power-point.) The Sabah Government has accepted, via the International Union for the Conservation of Nature (IUCN), that governance by Indigenous Peoples and local communities is a legitimate form of conservation management. In line with this, there has been an overall push to recognise ICCAs within their own category and as a way to gain land tenure under the title of 'native communal title.'

Sub-Saharan Africa

LCs do not have rights to land tenure and only 1.6% of forests are under secure Community tenure. Within the African context, high relative value of many natural resources (timber, wildlife, minerals, petroleum, fisheries, and agricultural land) create strong incentives for private control or exploitation by political elites over Common land; this is made worse by weak legislative and judicial checks by local authorities as well as the centralized discretionary authority being in the hand of the Head of State. Through this process local and indigenous communities receive no consultation upon

decisions relating to their surrounding environments. Further to this, the numerous forms of social control inhibit the emergence of social movements which discourages local communities to take action into their own hands. Citizens and local communities are also limited in their means of holding political leaders accountable for their actions and decisions. A dramatic reshaping therefore needs to occur of existing political institutions if commons are to be secured. In this context Acts like the FRA can be used as a model which could be adapted to create an act appropriate for Sub-Saharan Africa. (See 'Sub-Saharan' power-point.)

Kenya

There has been an emergence of wildlife conservancies and community managed marine areas within Kenya. Other community-led initiatives - such as butterfly farming, trout farming, bee-keeping, and eco-tourism have also emerged and are having success for generating local revenue. UNDP's SGP³ has funded over 327 community projects country-wide with communities expected to contribute 50%

³United Nations Development Programme - Small Grants Programme

in co-financing. Within the new constitution of Kenya, recognition is given to community rights but people now need to be made aware of the opportunities and powers that the new constitution provides for them. (See 'Kenya' power-point.)

MAIN DISCUSSIONS

The discussions that followed the above presentations covered the following issues:

Terminology: ICCAs are ancient, diverse and bio-culturally valuable. And yet such practices are currently grappling with the need for identifying themselves, in line with appropriate terminology, within the context of international conservation world. It is being felt by many indigenous communities that "ICCAs" as a term does not reflect their concern effectively. The words "conservation" and "area" are both alien to indigenous cultures. Conservation is inherent to the ethos and biocultural value systems of the local and indigenous communities yet separated from the lives of people it is rarely used in indigenous and local cultures. Conservation cannot be isolated from rights and access to their

territories. For way too long this term has been used to disposses people of their resources hence indigenous peoples do not feel comfortable by its use. In the similar manner indigenous peoples do not think in terms of pieces of lands and areas. Their culture is supported by their ancestral territories. Similarly, marine communities may not identify with a fixed area but a larger marine territory which is co-inhabited by the marine life that a particular community is dependent upon. The terminology "ICCAs" therefore needs to be further discussed and revised to incorporate the above concerns.

A realistic approach to ICCAs: When considering ICCAs in general, there is a danger of classifying them as conservation panaceas and forget some of the socio-cultural and environmental problems that accompany them, such as the inequities within the communities, breaking down of community systems, as also the fact that livelihood concerns sometimes ignore the specific needs of threatened local wildlife species and ecosystems.

Recognition: One of the biggest threats currently facing ICCAs is the lack of social and legal recognition

nationally. Some believe that this lack of recognition can make ICCAs vulnerable to outside threats and greater recognition of ICCAs would improve the legitimacy deficit (which thus far has been a subject of the state and not in the hands of the people). On the other hand ICCAs are internationally being recognized very rapidly. This has slowly started trickling down to national recognition. However, the manner in which this recognition is happening is a matter of grave concern to many. Instead of ICCAs being understood and recognized as such, top down systems of recognition are being devised leading to co-optation and sometimes social and political disruption of such sites. There are other threats related to recognition as well - such as making hitherto unknown ICCAs subject to sudden outside attention; increasing their vulnerability to outside threats (such as governments claiming the land for development of natural resources); among others.

The Forest Rights Act in India- FRA in India is being implemented since 2006, some of the provisions of the Act are being used by groups working on rights based approach to conservation. However, in order to realize the full potential of FRA for conservation and communities, existing

institutional barriers created by conventional state structures need to be overcome. In terms of implementing the FRA, transparent and effective leadership and communication is crucial. Also important is an effective system of awareness raising about the act and its facilitation by the Indian government. So far the FRA has not been implemented where NGOs do not exist which suggests that local communities have very poor access to the act and further still, implies that there is no system of attaining all relevant information about the act. One of the key hurdles commonly arising with the FRA is that communities need to prove their legitimacy as Indigenous communities or legal claimants to land tenure but often cannot do so. There are some examples though where the communities have been able to use the provisions of the act to assert their rights over a territory to stop unsustainable development projects (that are harmful for the ecosystems but are still being promoted by the government agencies such as the forest departments). In order to implement a revolutionary and bottom up Act like the FRA much of the institutional structure at the top level will need to change.

Governance of ICCAs in India: Government laws within India carry an undemocratic colonial legacy and thus do not represent the voice of Indigenous Peoples (IPs) and LCs and this serious lacuna needs to be addressed. India needs to focus on the process of negotiations within FRA in addition to its implementation and effect. It also needs a multitude of institutions regulating the achievements of conservation attempts by IPs and LCs, and not just one state mechanism.

Economic threats to conservation: Currently, there are huge pressures on ICCAs from beneficiaries of 'growth' such as private companies and government's vested, economic interest. Conservation needs to be appropriate to the economic needs and situation of LCs also. This is an issue that cannot be forgotten and it is also unrealistic to try to do so. One means to achieve this could be via regulated community-based tourism to increase economic growth of the ICCAs.

Community empowerment and governance: The decline in LCs' control and self-reliance has resulted from an increased dependency upon government and new monetary systems to access market goods. Communities, in general, receive

little incentives or economic encouragement by their governments to conserve their natural environments. However, in cases where real changes have occurred at the ground level, it has been from social movements and actions by LCs, and not from governments or state intervention. Such examples generally have strong leadership systems within them adding to their success. If such strong leadership does not exist, social movements can die-out in the face of external threats however. Thus, a demand is needed for stronger organisational empowerment within the communities who are at high risk. A pattern of weakness within traditional governance structures is being seen more frequently with communities either collapsing, or minority opinions being wholly submerged and thus only a small percentage of the community's voice is heard. One of the key emergent conclusions is that communities need rights. These rights must not to be homogenized however, but rather they need to be context specific with a focus not only on rights of people in forests, but also that of marginalised people in non-forest areas. Greater investment is also needed in capacity building within local communities which can be one of the most effective ways to disseminate information regarding bio-cultural values from community to

community. A strong focus is also needed on community-initiated projects, such as forest weeding to avoid forest fires, which in-turn empowers communities to take actions into their own hands rather than rely on the government or State authorities. Many conservationists now believe that laws are not the problem. The problem rather lies at the level of leadership within communities, and non will at the implementation level. If people within the community are aware of their rights (e,g within the acts such as FRA) then they can support and take actions by themselves and not rely on external forces to do so.

Bio-cultural protocols (BCP) and their value:

In Kumbhalgarh sacntuary in India BCPs are documents created by livestock keepers, along with lawyers and specialists on Indiegnous knowledge and detail the community's breeds, its traditional knowledge of the animals, and its lifestyle in relation to the environment. They can be a useful tool for a number of reasons, such as: affirming the rights for community conservation; increasing self-confidence and raising awareness of the community involved (About thier rights and value of their resources); and also as powerfull

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documents when interacting with forest officials and parliamentary committees. BCPs can also be used in conjunction with FRA as the two complement one another.

Some of the questions/issues for future discussions of ICCAs and the Forest Rights Act -that need a consideration - are as follows:

- **How to develop BCPs** for a wide variety of ICCAs and how such protocols could help and/or compliment within the implementation of FRA.
- **How to implement FRA more effectively** within different conservation systems across India, and how accessible/transparent is it for LCs at present?
- **Define** what type of institutional mechanisms are needed to implement FRA effectively.
- **Ensure** local communities are made aware of their rights within and exactly elaborate how to implement these rules.
- **Encourage** governments to give incentives to local communities to conserve their own forests.

- **Document** the process of social movements within ICCAs examining the exchange of successes and failures along with the emerging cross-cultural challenges and the ways in which they can be overcome.
- **Give** respect to the rights of the rest of creation while maintaining social equity.
- **Develop** mechanisms for ensuring a rights-based approach to conservation and CCA management.

Explore in more detail:

- **What is** appropriate and inappropriate recognition for ICCAs and LCs?
- **How to** develop innovative institutional mechanisms for implementing the FRA by employing a flexible, context specific approach.
- **How to** raise awareness within the global environmental arena and at policy level - the ecological and social importance that ICCAs bring to conservation in order to give them the appropriate recognition they deserve.
- **Create** an 'understanding of the wider web of policy related to macro-economic and human rights issues and

their implications for community rights and conservation'.

List of participants to the side event

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