

# **Recognising and Respecting ICCAs Overlapped by Protected Areas**

**A Report for the ICCA Consortium**

**Stan Stevens, Neema Pathak Broome and Tilman Jaeger**



With inputs from José Aylwin, Ghanimat Azhdari, Dominique Bibaka, Grazia Borrini-Feyerabend, Marcus Colchester, Nigel Dudley, Cristina Eghenter, Floradema Eleazar, M. Taghi Farvar, Fabrizio Frascaroli, Hugh Govan, Sutej Hugu, Ashish Kothari, Holly Jonas, Giovanni Reyes, Aman Singh, and Leila Vaziri

**August 2016**

**The ICCA  
Consortium**

## Report for the ICCA Consortium

**Series Sponsors:** The Christensen Fund and UNDP GEF SGP

**Citation:** Citation: Stevens, S., N. Pathak Broome and T. Jaeger with J. Aylwin, G. Azhdari, D. Bibaka, G. Borrini-Feyerabend, M. Colchester, N. Dudley, C. Eghenter, F. Eleazar, M. T. Farvar, F. Frascaroli, H. Govan, S. Hugu, H. Jonas, A. Kothari, G. Reyes, A. Singh, and L. Vaziri. 2016. *Recognising and Respecting ICCAs Overlapped by Protected Areas*. Report for the ICCA Consortium, available online at [www.iccaconsortium.org](http://www.iccaconsortium.org).

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**Acknowledgements:** We wish to express our thanks to the many people who shared their insights and comments on drafts of this report. We especially appreciate Grazia Borrini-Feyerabend's comments on multiple drafts and Holly Jonas' copy-editing and formatting assistance.

**Note:** The views expressed in this companion document do not necessarily reflect those of all the members of the ICCA Consortium or of the sponsors.

**Cover image:** Tenzing Tashi Sherpa, one of the leaders of the indigenous Sharwa (Sherpa) people, emphasising the extent of the Sharwa ICCAs overlapped by Sagarmatha (Mt. Everest) National Park and World Heritage Site, Nepal. Photo © Stan Stevens (courtesy of IUCN).

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## **List of Acronyms and Abbreviations**

CBD	Convention on Biological Diversity
CCP	Community Conservation Plan (Philippines)
CFR	Community Forest Resource (India)
CERD	Convention on the Elimination of all Forms of Racial Discrimination
COP	Conference of the Parties
CRTM	Consejo Regional Tsimane Mosenen
FoMMA	Alliance of the Indigenous Peoples of the Kayan Mentarang National Park
FPIC	Free, prior and informed consent
GEF	Global Environment Facility
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICCAs	Territories and areas conserved by indigenous peoples and local communities
ILO 169	ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
ICMBio	Chico Mendes Institute for Biodiversity Conservation
IUCN	International Union for Conservation of Nature
KCA	Kanchenjunga Conservation Area
KCAMC	Kanchenjunga Conservation Area Management Council
KMNP	Kayan Mentarang National Park
NGO	Non-governmental organisation
NBSAP	National Biodiversity Strategy and Action Plan
PAMB	Protected Area Management Board (Philippines)
PoWPA	Programme of Work on Protected Areas
SERNAP	National Service of Protected Areas (Bolivia)
SNP	Sagarmatha (Mt. Everest) National Park and World Heritage Site
TCO	Territorio Comunitario de Origin (Bolivia)
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme

# 1. Introduction and Overview: Redressing a Missed Opportunity for Conservation and Social Justice

Indigenous peoples and local communities throughout the inhabited world have long governed, used, and conserved their territories, areas and resources. They have done so, using indigenous and local knowledge, institutions and systems, in ways that have had and continue to have enormous importance for the management and conservation of biodiversity both on land and on sea (Stevens 1997, 2014b; Borrini-Feyerabend *et al.* 2004; Kothari *et al.* 2012).<sup>1</sup> Many of their territories and areas, which extend across an estimated two-thirds of the earth's land surface (Wiley 2011; Rights and Resources Initiative 2015) are today, are among the richest and most intact ecosystems on the planet (Stevens 1997, 2014b; Sobrevila 2008; Kothari *et al.* 2012).<sup>2</sup> Exactly because of this many have been declared as national parks or other kinds of formal protected areas at all levels from local to national and international; some have been internationally recognized as Ramsar sites, biosphere reserves or as World Heritage sites for their global conservation significance. Accordingly, there are a large number of protected areas in many countries that fully or partially overlap with indigenous peoples' and local communities' territories and areas (Kothari *et al.* 2012; Stevens 2014d).

The governance authorities and arrangements of protected areas<sup>3</sup> that overlap with indigenous peoples' and local communities' territories and areas may or may not be aware of, respect, or formally or informally recognize those peoples' and communities' customary collective tenure, self-governance systems, means of livelihoods, rights, responsibilities, knowledge, and practices. This can be the case regardless of the form of protected area governance and management, and has tremendous ramifications for the well-being of indigenous peoples and local communities, social justice, and the legitimacy, effectiveness, and long term viability of such protected areas.<sup>4</sup>

This report explores multiple scenarios and dimensions of the interface between indigenous peoples' and local communities' conserved territories and areas (hereafter ICCAs), and the governance and management of overlapping protected areas. We focus particularly on ICCAs as this umbrella term encompasses diverse institutions and practices that have conservation outcomes, giving appropriate recognition and respect for territories and areas of particular relevance in protected area situations (see Chapter 2 for discussion of ICCAs).

The report is based on a three-and-a-half year process of gathering information from individuals within the ICCA Consortium network, from published materials, and from discussions at international conferences and conservation venues, including the 11<sup>th</sup> and 12<sup>th</sup> Conferences of the Parties (COPs) to the Convention on Biological Diversity (CBD), the International Union for Conservation of Nature (IUCN) World Conservation Congress 2012, and the IUCN World Parks Congress 2014. Presentations, discussions, and recommendations from the IUCN World Parks Congress 2014 Stream 6 (Enhancing Diversity and Quality of Governance) and Workshop 2.7 (Overlapping Governance Types: dealing with Complexity and Diversity) were particularly rich sources. We also draw on

parallel discussions that led to the development of IUCN World Conservation Congress 2016 Motion 29, “Recognising and respecting the territories and areas conserved by indigenous peoples and local communities (ICCAs) overlapped by protected areas.” The full text of this motion is provided in Annex 4.

This report has six main sections following this introduction, which are briefly presented hereafter:

### ***ICCAs and ICCA/Protected Area Overlap Situations (Chapter 2)***

This chapter introduces the concept of ICCAs, IUCN’s definition of ICCAs, the endorsement of them as a protected area governance type by the IUCN and the Parties to the CBD, and recognition of ICCAs not only as protected areas but also as what the CBD COPs refer to in Aichi Target 11 of the Strategic Plan for Biodiversity 2011-20 as “other effective area-based conservation measures.” We identify four major types of geographical situations in which ICCAs are overlapped by protected areas, two different land tenure situations (those in which indigenous peoples’ and local communities’ collective tenure is and is not officially recognized), discuss four different complex, multi-scale or level governance situations that result from these overlaps, and survey available data on the global overlap of protected areas and indigenous peoples’ and local communities’ territories, including ICCAs.

### ***The Importance of Understanding, Recognising and Respecting ICCAs in Overlap Situations (Chapter 3)***

This chapter describes the additional conservation benefits as well as cultural, social, and economic benefits that can be realised when ICCAs are appropriately recognized and respected in protected area overlap situations and the costs that can be incurred when they are not.

### ***Existing Legal and Policy Framework and Guidance (Chapter 4)***

This chapter analyses those provisions in the CBD, decisions and work programmes of the Parties to the CBD, and IUCN policies and guidance, which are particularly relevant for appropriate recognition and respect for ICCAs that are overlapped by protected areas. This chapter also identifies other pertinent international and regional laws, treaties, and guidance, including articles of the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and considers their implications for overlap situations.

In depth review of existing CBD law and IUCN policy and guidance is important to demonstrate the substantial body of international law, policy, and guidance that supports appropriate recognition and respect for ICCAs in protected area overlap situations, clarify why additional law and policy, and provide suggestions as to what this should incorporate. This includes discussion of the provisions of IUCN World Conservation Congress Motion 29.



## ***Appropriate Governance and Best Practices (Chapter 5)***

This chapter details four governance approaches that we have identified from our research and analysis that we recommend as best practices for appropriately understanding, recognising, respecting, and supporting ICCAs which are overlapped by protected areas.<sup>5</sup> For each of these we present examples, including side-bars on outstanding case studies from around the world, that provide further insights into best practices. These approaches are:

- Recognising indigenous peoples' and local communities governance authority for the protected area, making the protected area itself an ICCA;
- Recognition of the separate, equal governance authorities of both indigenous peoples and local communities for their territory and ICCA and the governance authority of the protected area, creating a double or multiple governance status for the overlapped area;
- Declaration of the overlapped ICCA as a self-governing governance/management subunit or zone within the protected area; or
- Redrawing the boundaries of the protected area to avoid overlap and avoiding overlap when designating new protected areas.

## ***Key Findings (Chapter 6)***

In this chapter we summarise ten key findings from our research. These review and highlight a set of central points from the discussions of the preceding chapters.

## ***Legal and Policy Recommendations (Chapter 7)***

In this last chapter we present a set of recommendations based on our research and analyses. These are presented in two sets, one addressed to states and other governments and the other to the IUCN, the Parties to the CBD, and numerous other actors. This second set includes specific recommendations to the IUCN, some of which are incorporated into the World Conservation Congress 2016 Motion on "Recognising and respecting indigenous peoples' and community conserved territories and areas (ICCAs) overlapped by protected areas," specific recommendations to the parties to the CBD, recommendations to multilateral, bilateral, and other donors and cooperation agencies (appropriately including, among others, the Global Environment Facility (GEF), the World Bank, UN agencies, the World Heritage Committee, the Secretariat and Parties to the Convention on Wetlands of International Importance (the Ramsar Convention), the Rio Conventions other than the CBD, and UNESCO's Man and Biosphere Programme), non-governmental organisations (including conservation organisations and organisations promoting social justice, rights, and development among others), indigenous peoples' organisations and networks, implementers of the Whakatane Mechanism, the Conservation Initiative on Human Rights, and the UN Special Rapporteur on the Rights of Indigenous Peoples and other human rights monitoring mechanisms.

## 2. ICCAs and ICCA/Protected Area Overlap Situations

### 2.1 Background

Across the world an enormous number of formal protected areas with varying governance arrangements and management objectives fully or partially overlap the customary territories and areas of indigenous peoples and local communities. These include protected areas governed and managed by governments at all levels, private protected areas, protected areas whose governance is shared by multiple parties, and protected areas governed by indigenous peoples and local communities. While indigenous peoples' and local communities' customary practices and knowledge systems that foster conservation are as old as human history itself, it is only in very recent times that formal conservation discourse has started recognising their sustainable livelihoods, their contributions towards the conservation of biological and cultural diversity, and their rights and responsibilities. This, together with longstanding assumptions by many conservationists and government officials about the inherent inappropriateness of settlement or use within terrestrial and marine protected areas, has led to many protected areas being created that have banned or sharply curtailed customary livelihood systems and practices or displaced indigenous peoples altogether (see, for example, Brockington *et al.* 2008; Disko and Tughendhat 2014; Stevens 2014b, e; Tauli-Corpuz 2016).<sup>6</sup>

The severe and sometimes violent conflicts between formal protected area authorities and indigenous peoples and local communities that result are well-documented and increasingly criticised, but continue to take place today. Yet in spite of these situations indigenous peoples and local communities in many cases continue to live within protected areas and continue to maintain de facto self-governance and self-management of their land use and marine use. Indeed, even after having been displaced, some indigenous peoples and local communities may continue to use and manage natural resources within protected areas, regardless of legality, and may seek to return. In other cases where indigenous peoples and local communities never resided in a protected area (marine protected areas being one example), they may continue to carry out customary use and management (or seek to re-establish them), despite current law and regulations that prohibit this.<sup>7</sup> Many also maintain cultural or spiritual associations with their customary areas and territories that become incorporated into protected areas, and continue to respect, care for, and protect them in ways that has conservation significance. In recent years there have been an increasing number of protected areas in which indigenous peoples' and local communities' collective land tenure and/or natural resource use and management rights have been recognised, enabling them to maintain customary or new institutions and practices that have cultural, livelihood, and conservation significance while also governing or sharing in the governance of the protected area (Stevens 2014d, f).

The territories that indigenous peoples and local communities continue to manage and use are of immense importance to conservation. Awareness is increasing that these are both more extensive than previously understood, comprising as much as 65% of the terrestrial area of the planet outside of Antarctica by one recent estimate (Rights and Resources

Initiative 2015), and that they contain most of the world's bio-cultural diversity and a substantial amount of its terrestrial biodiversity (Stevens 1997, 2014b; Oviedo *et al.* 2000; Kothari *et al.* 2012).<sup>8</sup>

These conservation contributions are a result of diverse customary institutions and collective practices based on knowledge developed through longstanding interaction with local environments. Such institutions and practices range from self-declared and strictly protected wildlife conservation areas to custodianship of sacred places, collective management of livelihood and economic activities, affirmation of spiritual and cultural values, customary law, and other aspects of sustainable socio-ecological systems. These conservation achievements are often grounded in cultural and political identity, worldviews, and values that differ considerably from those of mainstream societies in their emphasis on collective and territorial well-being, spiritual responsibilities and responsibilities to past and future generations, and the importance of respectful relationships with non-human beings. It is to affirm and continue these associations and interactions that many indigenous peoples and local communities across the world continue to stand in defence of their territories and resources against expropriation by governments and by outside commercial and corporate interests, and to take actions against other threats to their ways of life and the environmental integrity of their lands.

Indigenous peoples and local communities have a myriad of local names for such conserved and protected territories and areas. Internationally, scholars, practitioners, and conservationists increasingly refer to these diverse institutions and practices, with no disrespect or presumption intended, by the umbrella term ICCAs. The abbreviation ICCA stands for indigenous peoples' and community conserved territories and areas (in the IUCN) and indigenous and community conserved areas (in the CBD).<sup>9</sup> According to the IUCN, ICCAs are "natural and modified ecosystems, including significant biodiversity, ecological services and cultural values, voluntarily conserved by indigenous and local communities through customary laws or other effective means" (IUCN World Conservation Congress 2004 Resolution 3.049 Community Conserved Areas).<sup>10</sup>

Many ICCAs also meet both the IUCN's definition of a protected area as a "clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values" (Dudley 2008) and the CBD (1992) definition of a protected areas as a "geographically defined area which is designated or regulated and managed to achieve specific conservation objectives." Such ICCAs are examples of protected area governance by indigenous peoples or local communities – one of four protected area governance types identified by the IUCN along with protected areas governed by governments, privately-governed protected areas, and protected areas whose governance is shared by multiple partners.<sup>11</sup> As indicated in IUCN policies and guidance on protected area governance, and as illustrated by its matrix (Figure 1) of protected area management categories and governance types (Borrini-Feyerabend *et al.* 2013), protected areas of any of IUCN's management categories can be appropriately governed by indigenous peoples and local communities (Dudley 2008; Borrini-Feyerabend *et al.* 2013).

Management Category \ Governance Type	A. Governance by government			B. Shared governance			C. Private governance			D. Governance by indigenous peoples and local communities	
	Federal or national ministry or agency in charge	Sub-national ministry or agency in charge	Government-delegated management (e.g., to an NGO)	Transboundary governance	Collaborative governance (various forms of pluralist influence)	Joint governance (pluralist governing body)	Conserved areas established and run by individual landowners	...by non-profit organisations (e.g., NGOs, universities)	...by for-profit organisations (e.g., corporate landowners)	Indigenous peoples' conserved areas and territories – established and run by indigenous peoples	Community conserved areas and territories – established and run by local communities
<b>I a. Strict Nature Reserve</b>											
<b>Ib. Wilderness Area</b>											
<b>II. National Park</b>											
<b>III. Natural Monument</b>											
<b>IV. Habitat/Species Management</b>											
<b>V. Protected Landscape/Seascape</b>											
<b>VI. Protected Area with Sustainable Use Of Natural Resources</b>											

**Figure 1.** The IUCN matrix, a classification system for protected areas comprising both management categories (based on varying management objectives) and governance types (from Borrini-Feyerabend *et al.* 2013:44).<sup>12</sup>

Both IUCN and the CBD urge that states include ICCAs in national protected area systems when their custodians so wish (see Chapter 3 and Annexes 1 and 2). Many indigenous peoples and local communities may welcome this opportunity for a variety of reasons, among them formal recognition of their tenure and governance authority, acknowledgment of their conservation contributions, strengthened defence of their territory against unsought extractive activities, and increased access to resources. There may also be many cases, however, when indigenous peoples and local communities are wary of inclusion in a national protected area system, including because of distrust of the state and state agencies, concerns that doing so may require adoption of national standards and regulations that are considered to be inappropriate, or because this may make public particular knowledge and beliefs that are not considered appropriate to share openly, such as the location or meaning of sacred sites (Dudley 2008; Kothari *et al.* 2012).

ICCAs that are not considered to be protected areas because they are not explicitly dedicated to achieving conservation objectives or for other reasons (see Dudley 2008; Kothari *et al.* 2012; Borrini-Feyerabend *et al.* 2013) may nonetheless have great conservation importance as a result of having management practices that maintain sustainable livelihoods, care for sacred places, or protect particular animal and plant species. These ICCAs are important examples of what the CBD referred to in 2010 in Aichi Target 11 of its *Strategic Plan on Biodiversity 2011-20* as “other effective area-based conservation measures” (Borrini-Feyerabend *et al.* 2014; Kothari and Neumann 2014). Some – or all, depending on the definition adopted, may also be considered to be “conserved areas,” a term that began to be used by the IUCN in 2014.<sup>13</sup> There is considerable discussion today of how such kinds of conservation measures can be appropriately understood, recognized, and supported, and these discussions will continue at the IUCN World Conservation Congress 2016 and the 13<sup>th</sup> Conference of the Parties to the CBD in 2016 (Jonas *et al.* 2015).

In almost all cases, the overlap of protected areas and ICCAs creates sensitive situations in which indigenous peoples’ and local communities’ rights may or may not be respected, including those to self-governance and their rights to their ownership, use, and management of their lands, waters, and resources. The declaration of overlapping protected areas has typically been without the consent or even the knowledge of these indigenous peoples and local communities and may have had significant adverse ramifications for their well-being and their conservation contributions. At the same time, these situations in which ICCAs and protected areas overlap are spaces where important conservation synergies are possible, as discussed in chapter 3 below, with potentially enormous benefits from conservation connectivity in larger conservation landscapes and seascapes; integration of multiple knowledge systems, institutions, and practices; mutual co-production of new knowledge, institutions, and practices; and shared efforts, resources, and capacities.

## ***2.2 The Global Overlap of State Protected Areas and ICCAs***

The global documentation of the extent of overlap of ICCAs and protected areas is poor.<sup>14</sup> Attempts to provide data on the numbers and areal extent of the overlap situation are very preliminary, but suggest it to be a very widespread phenomenon. Worldwide hundreds, likely thousands, of ICCAs and protected areas appear to have or can reasonably be assumed to have such overlaps.<sup>15</sup> In some cases, including India, Nepal, the Philippines, Taiwan, and Australia, most or all of the protected areas in entire national protected area systems may have overlap with territories and areas that are either recognized as owned by indigenous peoples and local communities or which are part of their customary territories. Some of these territories and areas are represented by their owners and custodians as ICCAs; many more meet IUCN’s definition of ICCAs and could be represented as ICCAs or the equivalent of ICCAs.

While sometimes these overlaps are officially acknowledged and recognized, in most cases they remain unacknowledged or “invisible” realities. Consequently, the data on protected areas and ICCAs overlap broadly fall within two kinds of situations:

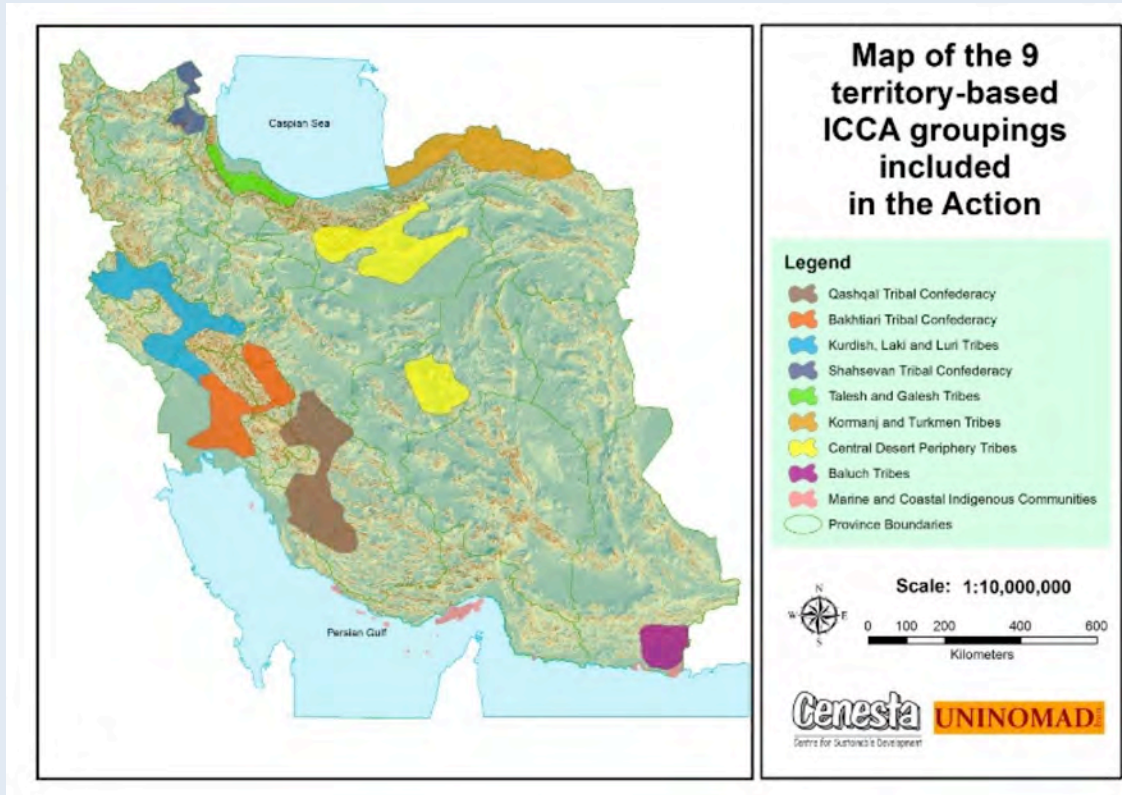
- Lands and waters where protected areas have been created – either with or without free, prior, and informed consent (FPIC) – on territories that are officially recognised and acknowledged as having indigenous peoples’ and local communities’ collective tenure; and
- Lands and waters where protected areas have been created – either with or without FPIC – on territories that the state does *not* recognise as being under indigenous peoples’ and local communities’ collective tenure, regardless of whether indigenous peoples and local communities consider them to be customary territories or whether they continue to inhabit, use, or manage them.<sup>16</sup>

Taking both these situations into account, the overlap of protected areas and the territories of indigenous peoples and local communities is common in many countries. According to some tallies, for example, at least 26 of Colombia’s 58 national parks overlap with indigenous peoples’ and local communities’ territories (the actual number may be even higher), as do 69 of the Philippines’ 99 protected areas, all of the protected areas of Nepal, India, and Australia, 90% of the state designated protected areas in Taiwan (encompassing about 40% of indigenous peoples’ territories), and large numbers in the USA, Canada, Bolivia, Brazil, Chile, Ecuador, Peru, Guyana, Venezuela, China, Kenya, Tanzania, South Africa, Botswana, Namibia, the countries of the Congo basin, and other regions of Africa, Iran (see Box 1), Indonesia (especially in the Kalimantan, Papua, Sulawesi, and eastern islands regions), and Malaysia (in Sabah and Sarawak on the island of Borneo and also in some national parks in peninsular Malaysia) (see preliminary data in Mendoza 2010; Aylwin *et al.* 2011; Veríssimo *et al.* 2011; Kothari *et al.* 2012; Colchester, Eghenter and Hugu, personal communications).<sup>17</sup> A recent examination of 801 national protected areas in South America found that 214 (27%) overlap with indigenous peoples’ territories, including 79 of 305 in Brazil, 16 of 29 in Bolivia, 28 of 96 in Chile, 15 of 40 in Ecuador, and 22 of 95 in Venezuela. This study also noted that the total number of overlaps is much higher than these figures suggest because they do not take into account cases where multiple peoples’ territories overlap with a particular state protected area. The largest number of these South American cases (42% of all overlaps) was with IUCN protected area category II national parks (Cisneros and McBreen 2010).

**Box 1:** Overlapping ICCAs and Protected Areas in Iran (Ghanimat Azhdari, Leila Vaziri and M. Taghi Farvar (Cenesta, 2016: cenesta@cenesta.org))

In Iran ICCAs include territories of indigenous nomadic pastoralist tribes and local communities such as fisher folks. The indigenous peoples of Iran have lived for thousands of years within their ancestral domains ranging from mountaintops to lowlands including coastal areas of the Indian Ocean and the Caspian Sea. Nomadic

pastoralists usually migrate vertically (up and down the mountains) or horizontally. Their territories include summering grounds, wintering grounds, migration routes, and mid-way stations. The combination of all of the above is the ancestral territory of a tribe, which can also be referred to as an ICCA.

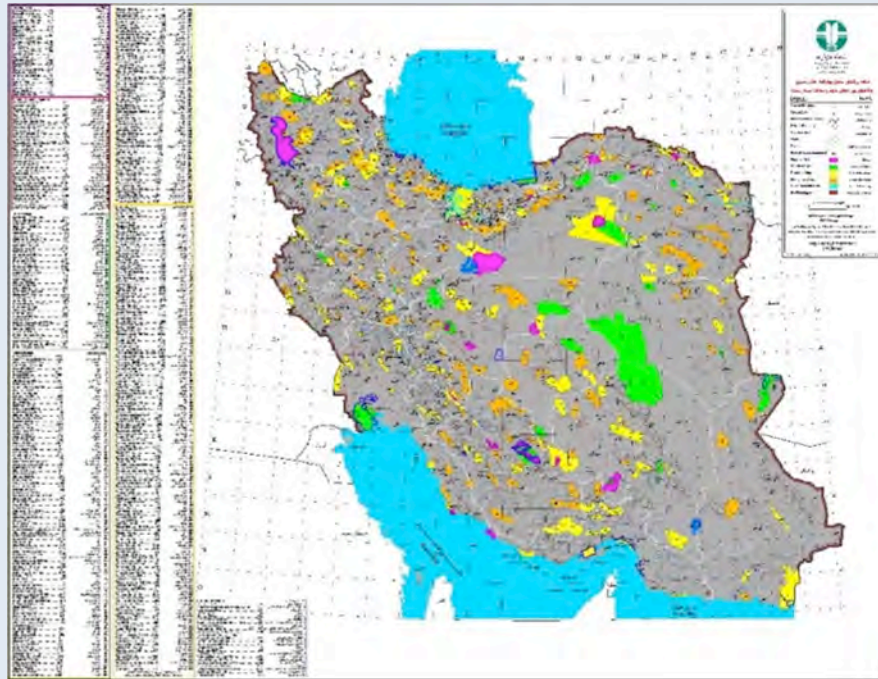


**Figure 2.** Nine territory-based ICCA groupings covering approximately 15% of Iran’s surface area.

Most of the rest of the country has a corresponding concentration of ICCAs. These nine areas constitute the pilot area where Cenesta is working intensively.

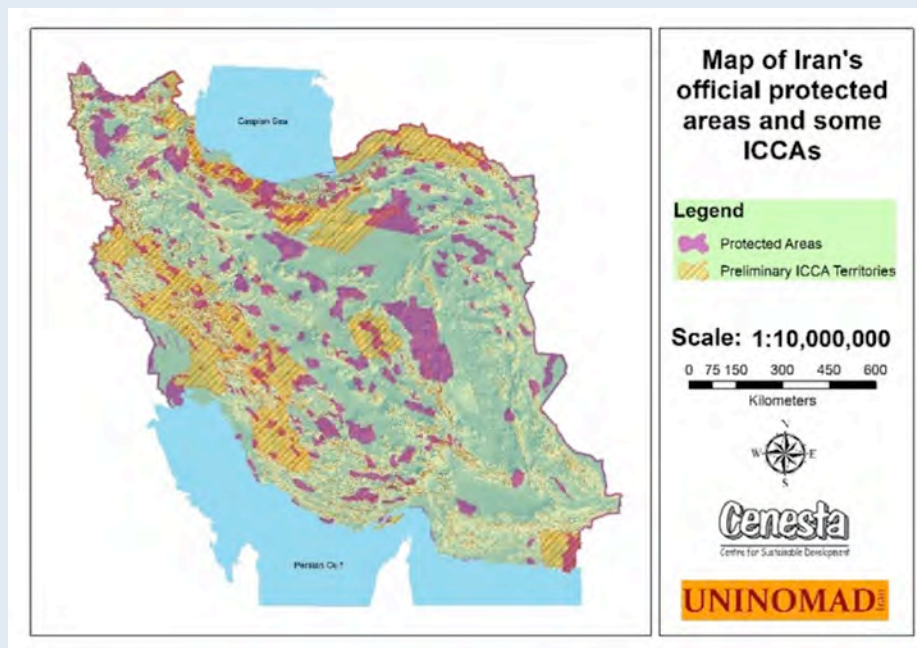
In Iran, there are currently 278 protected areas, all of which are governed by the Department of the Environment. Twenty-eight are national parks – the highest level of conservation. Other protected areas include wildlife refuges, national natural monuments, protected landscapes, and “no hunting areas” (Figure 3).

In numerous cases, official protected areas overlap with ICCAs. During participatory ICCA mapping, community elders told Cenesta that in many cases the Department of the Environment had taken over the ancestral domains of the tribal communities by force, especially under the ex-Shah of Iran (Figures 4 and 5).



**Figure 3.** Official protected areas of Iran under the jurisdiction of the Department of the Environment.

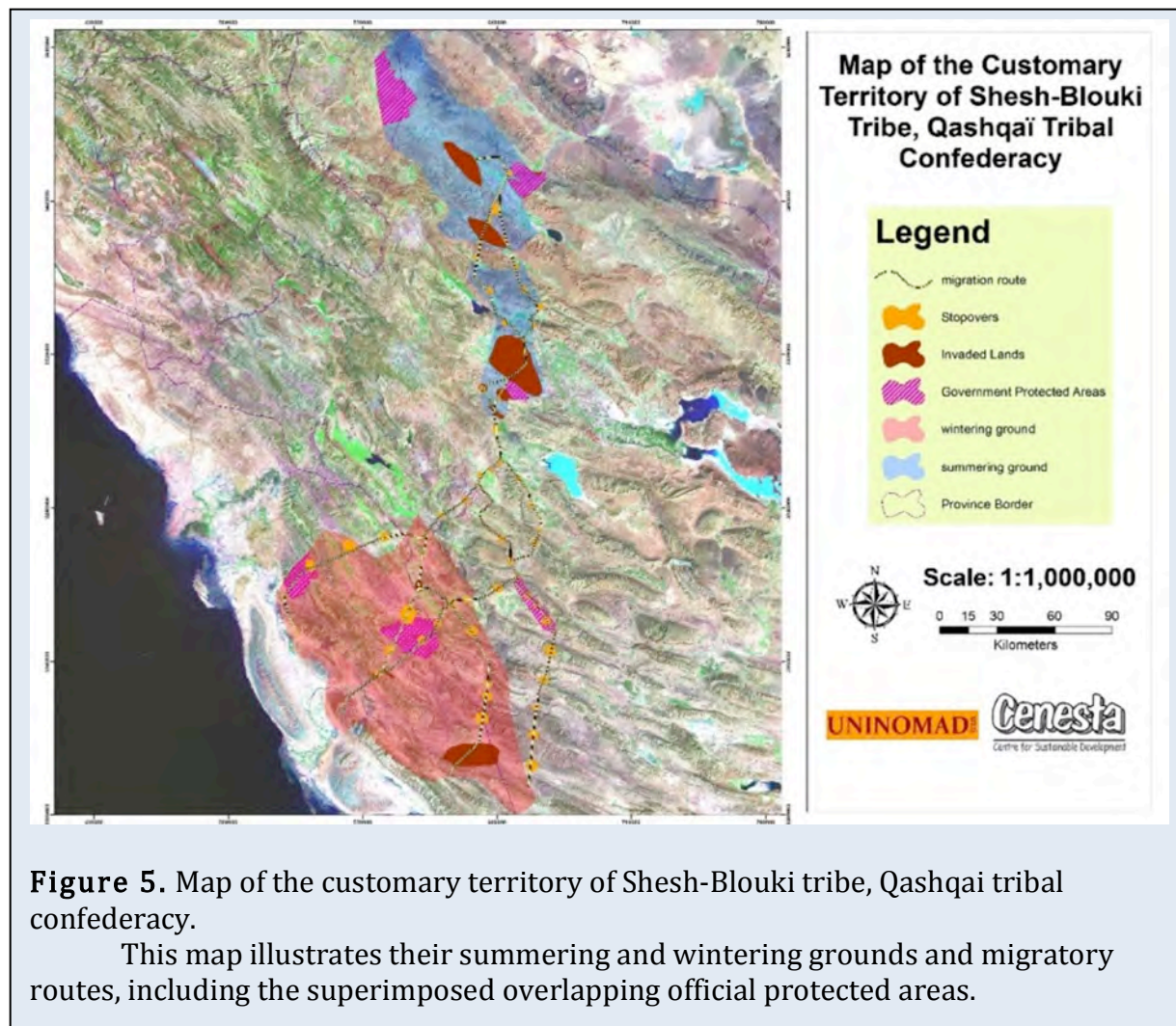
The Department of the Environment is the custodian of official protected areas in Iran, but it often neglects the role of indigenous peoples and local communities in nature conservation, especially in overlapping areas. In addition to the protected areas controlled by that Department, the Forest Range and Watershed Management Organization has also designated Forest Parks and Genetic Reserve areas.



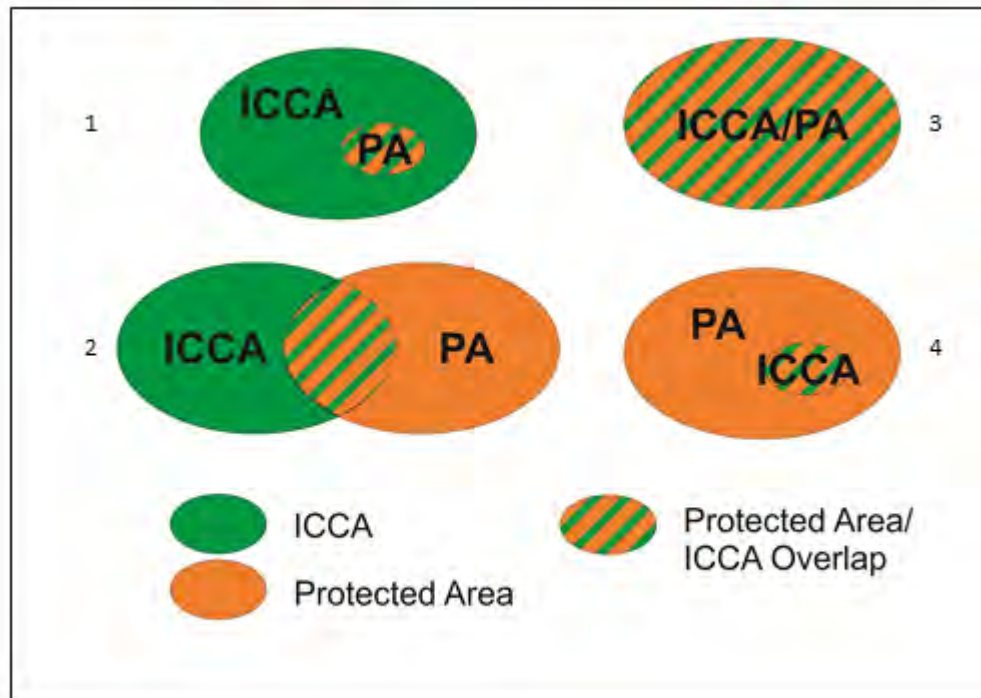
**Figure 4.** Overlapping of Iran's official protected areas and some ICCAs.

This map includes the main ICCA territories spread over the pilot project area of Cenesta, which covers about 15% of Iran's surface area.





In the above context, the overlap of protected areas and ICCAs (including both the situations – where the territorial claims of the indigenous peoples and local communities are recognised and where they are not recognised) create several different overlap geographies and overlapping multi-scale or level governance realities (Figure 6). The overlap geographies include: 1) government and private protected areas overlapping with part of larger ICCAs; 2) protected areas partially overlapping with ICCAs; 3) protected areas that are congruent with ICCAs; and 4) protected areas overlapping with one or more smaller inset ICCAs (these are shown in Figure 6, with corresponding number labels). In all of these cases the protected areas may be superimposed on pre-existing ICCAs or overlap with recently established ones. Examples of these differing situations and appropriate ICCA recognition and respect in their circumstances are discussed below.<sup>18</sup>



**Figure 6.** Diverse configurations of ICCA/protected area overlaps.

Besides the overlaps sketched above, there are other configurations, including ones in which multiple ICCAs or multiple protected areas are involved. Notice that several of the overlap configurations in this figure have considerable conservation connectivity at landscape scales due to ICCAs that extend beyond the borders of existing protected areas, and that ICCAs in some configurations benefit from connectivity and other synergies with surrounding, adjacent, or congruent protected areas.

### ***2.2.1 Examples of protected areas overlapping with part of larger indigenous peoples' and communities' territories and areas, including ICCAs:***<sup>19</sup>

In these situations one or more indigenous peoples and local communities have customary territories, which encompass one or more overlapping protected areas, as illustrated in the following examples:

- Multiple national parks, national monuments, national forests, national grasslands, state parks, and other protected areas declared by the federal government of the United States of America and state governments within the customary territory of the Lakota (Sioux) people in South Dakota and adjacent states;
- A national park reserve, a national marine conservation area reserve, and eleven conservancies established within the territory of the Haida Nation and overlapping with pre-declared Haida Heritage Sites by agreement by the government of the

Haida Nation with the governments of Canada and British Columbia (Archipelago Management Board n.d.; Gwaii Haanas National Marine Conservation Area Reserve and Haida Heritage Site 2010);

- Two national parks - one of them, Sagarmatha (Mt. Everest), a World Heritage Site (which also contains a Ramsar site) - and two conservation areas declared by the government of Nepal in the customary territories of the Sharwa people (see Photo 1; Stevens 2014b). This national park is part of a set of Himalayan national parks and protected areas, all of which entirely overlaps with one or more indigenous peoples' and local communities' customary territories and areas (Stevens 2014c);
- Several state-governed protected areas or protected areas with shared governance, among them a national park and part of the Wet Tropics of Queensland World Heritage Area, established in the territory of the Mandingalbay Yindiji people, recognised by the government of Australia as an Indigenous Protected Area (Australian Government, Department of the Environment n.d.; Rose 2012);<sup>20</sup>
- The Parima-Tapirape National Park, the Upper Orinoco-Casiquiare Biosphere Reserve, and the Serrania de la Neblina National Park established in part of Yanomami territory in Venezuela, and the Monumento Natural Guanacoco, the Monumento Natural Serrania de Maigualida (which also overlaps with the territory of the Hoti), the Jaua Sarisariñama National Park, a Reserva Hidraulica, and a forest reserve established in the Ye'kwana and Sanema peoples' territories (Colchester, personal communication);
- Nearly all protected areas in India, declared on lands which are part of the territories and/or areas traditionally belonging to tribal and non tribal local communities. This includes, for example, Biligiri Rangaswani Temple Tiger Reserve, which overlaps with all or parts of the territories of 62 tribal settlements (Box 6 and Madegowda *et al.* 2013); and
- Kayan Mentarang National Park in Kalimantan and Lorentz National Park and World Heritage Site and Wasur National Parks in Papua, Indonesia declared overlapping parts of larger indigenous territories, in the case of Kayan Mentarang National Park (Box 7) with the customary territories of eleven Dayak communities (Eghenter, personal communication).

The indigenous peoples and local communities in these various cases may choose to represent all or parts of these overlapped territories and areas as ICCAs, although only Sharwa leaders in Sagarmatha National Park and World Heritage Site have thus far done so (Stevens 2014c).

### ***2.2.2 Examples of protected areas partially overlapping with indigenous peoples' and local communities' territories and areas, including ICCAs:***

Partial overlap situations take many forms, and are often not as balanced in the percentage of both the protected area and the indigenous people's or local community's territory or

area that overlap as is depicted in Figure 6. In these cases not all of the protected area overlaps with these territories and areas. Examples of such overlaps include:

- Many of the 44 Territorios Comunitarios de Origen (TCO) in Bolivia overlap with national protected areas;
- Mt. Kalatungan Ranges Natural Park, Philippines, which overlaps with parts of the customary territories of three indigenous peoples (two of whom have declared the part of their territory which is overlapped by the protected area to be an ICCA) (Reyes, personal communication; see Box 7);
- Canaima National Park, Venezuela, established in 1962 and a vast World Heritage Site since 1994, which substantially overlaps with Pemon territory (Colchester, personal communication); and
- Parque Estadual da Serra do Mar and the Parque Nacional da Serra da Bocaina overlap with the small collective territory of the *quilombo* (Afro-Brazilian) community of Camorcy (Firme 2013.)

### ***2.2.3 Examples of protected areas that are congruent or nearly congruent with indigenous peoples' and communities' territories, including ICCAs:***

In some cases an entire indigenous peoples' or local communities' territory or collectively owned lands have been superimposed by a single protected area, including:

- The extensive overlap of the Pilón Lajas Biosphere Reserve and an Indigenous Territory in Bolivia has led to the recognition by the government of Bolivia of the overlapped area both as a part of the national system of protected areas and a Territorio Comunitario de Origen (TCO) of four indigenous peoples (Box 6); and
- Sagarmatha (Mt. Everest) National Park and World Heritage Site, Nepal (Photo 1), one of several protected areas established in Sharwa customary territories, which is nearly congruent with the customary territory and ICCAs of the Khumbu Sharwa (Sherpas) (Stevens 2010, 2013a, b, 2014c).

### ***2.2.4 Protected areas overlapping with one or several smaller inset indigenous peoples' and communities' territories and areas, including ICCAs***

One or several small – or comparatively small – sacred natural sites and collectively managed forests, rangelands, and marine areas may be encompassed within a large government designated protected areas (state, regional, local, and municipal governments). Examples include:

- ICCAs of the indigenous Mapuche in Argentina within Lanín National Park and in other protected areas in Chile and Argentina (Carpinetti and Oviedo 2006; Confederacion Mapuche 2009; Miniconi and Guyot 2010; Aylwin and Cuadra 2011);

- The Abolhassani Tribal Confederacy customary territory within both Iran's Touran Wildlife Refuge and the larger Touran Protected Area that encompasses both (Esteqamat *et al.* 2013);
- The Mata Atlântica Biosphere Reserve Mata Atlantica Biosphere Reserve in Brazil overlaps with hundreds of ICCAs, including those of indigenous peoples (including peoples resettled from other parts of Brazil), *caiçara* (coastal) communities, and *quilombo* communities;
- Community conserved areas within state governed protected areas in India such as the *orans and devbanis* sacred protected sites within Sariska National Park and Tiger Reserve (Singh 2011);
- Collectively owned and governed forest and pasture commons of Cortina d'Ampezzo within Parco Naturale delle Dolomiti d'Ampezzo (Lorenzi and Borrini-Feyerabend 2011; Regole d'Ampezzo 2011); and
- Sacred natural sites and some community-governed forests and rangelands within national parks, national forests, and buffer zones in Nepal including, for example, Sagarmatha National Park, World Heritage Site, and Buffer Zone, Shey-Phoksundo National Park and Buffer Zone, and the buffer zone of Chitwan National Park and World Heritage Site (Jana and Paudel 2010; Sherpa, M.N. 2013; Sherpa, T.T. 2016; Stevens 2010; 2013a, b; 2014c).<sup>21</sup>

## **2.3 Governance Relationships**

Overlap situations create complex governance relationships and dynamics. In the case of ICCAs governed by local communities, and protected areas governed by national, regional, local, or municipal governments, these can be conceptualized as multi-scale or multi-level. When an indigenous people that intends to stress its rights to self-determination governs an overlapped ICCA, however, the governmental relationship is better understood to be one of government-to-government or nation-to-nation, and hence is a bilateral relationship.

Diverse kinds of governance relationships can develop in protected area/ICCA overlap situations.<sup>22</sup> These include, among others:

### **2.3.1 Complementarity: co-existence with recognition and coordination**

Positive and mutually supportive relationships are possible, and are more likely when indigenous peoples' and local communities' collective tenure is recognised, ICCAs are appropriately recognised and respected, and indigenous peoples and local communities fully and effectively participate in the governance of the protected area. Besides mutual respect and trust, clearly defined jurisdictions, processes of mutual coordination among all concerned, and mutually acceptable mechanisms for dispute resolution are critical in these situations. Laws, regulations, policies, and practices can be adopted that support diverse,

mutually acceptable governance arrangements which ensure the integrity of ICCAs by maintaining their independence.

Examples of this include (see Chapter 5 for details):

- Kanchenjunga Conservation Area, Nepal, whose governance was handed over to a new regional management committee constituted of representatives of local elected conservation bodies and local conservation NGOs (see Box 5);
- Parco Naturale delle Dolomiti d'Ampezzo (Natural Park of the Ampezzo Dolomites), Italy, whose governance is the responsibility of a community organisation that is also responsible for the continuing governance of customary community forest and grazing management ICCAs (see Box 5);
- Booderee National Park, Australia, in which the Wreck Bay Aboriginal Community Council now participates in a shared governance arrangement with the understanding that the goal of the current joint management arrangement is ultimate sole management of the protected area by them – a vision that is articulated in detail in the protected area management plan (see Box 5);
- Double-status arrangements in Bolivia, Brazil, and Colombia such as the Pilon Lajas Biosphere and Indigenous Territory, Bolivia (see Box 6) and Isiboro Sécure National Park and Indigenous Territory, Bolivia in which overlapped areas are recognised legally as both indigenous territories and as protected areas within the national protected area system, with provisions for coordination such as the integration of indigenous peoples' *plan de vida* (life plan) in the protected area management plan;
- Mount Kalatungan Range Natural Park, Philippines in which the community management plan for the sacred forest of the Menuvù people, listed as an ICCA in the global ICCA Registry maintained by the United Nations Environment Programme (UNEP)-World Conservation Monitoring Centre, and other ICCAs have been recognised by the protected area's shared governance authority (see Box 7) – in effect creating a governance/management zone within the protected area;
- Kayan Mentarang National Park, Indonesia, where zoning has been implemented that recognises the Dayak people's customary territories and collective management of forest ICCAs (see Box 7);
- Ob Luang National Park, Thailand, where zoning within a recently-adopted shared governance arrangement for the protected area as a whole recognises Karen and Hmong peoples' customary forest use and management areas and sacred places;
- Redrawing protected area boundaries to restore collective land ownership and customary governance authority over the Blue Lake area of the Taos Pueblo in the USA, together with safeguard conditions (see Box 8); and
- Redrawing protected area boundaries to restore collective land ownership and customary governance authority, with all or part of the restituted area subsequently declared a new, indigenous governed protected area in the Mt. Adams area of the

Yakama Reservation in the USA and the case of the Yuukingga Nature Reserve, Australia (see Box 8).

### ***2.3.2 Contradiction and conflict: intentional or inadvertent undermining of ICCAs***

When protected area authorities and/or other concerned government agencies and NGOs do not value and recognise ICCAs they may undermine them by ignoring, banning, or replacing them with new institutions which disrespect and/or conflict with existing ones and promote assimilation. Protected area establishment and administration can also undermine ICCAs by evicting indigenous peoples and local communities from their traditional territories and/or denying them access and rights to these territories, lands, waters, and resources in the name of achieving conservation objectives and/or as an aspect of state territorialisation and national development, a process that may deliberately dispossess indigenous peoples and local communities (Neumann 2004; Brockington *et al.* 2008; Dowie 2009; Stevens 2014b). Collaborations, including recognition and respect for ICCAs in protected overlap situations, may be a remote possibility in such severe conflict or post-conflict situations even when some wish to change existing relationships and conditions. Government authorities and NGO partners may have mindsets and skills which compromise or impede real collaboration and recognition of the value of ICCAs and the importance of respecting their integrity. Indigenous peoples and local communities may have powerful anger, bitterness, and distrust towards protected area authorities because of past and continuing injustices. Considerable time may be required to build mutual trust and both sides have to develop skills and working modes, which they may lack. Effectively implemented legal safeguards for rights and for ICCAs can be crucial in this situation.

Examples:

- Loss of care and protection of sacred sites in protected areas worldwide from which indigenous peoples and local communities have been relocated or denied access and custodianship responsibility;
- Loss of ICCAs regulating land and marine use from collectively owned, governed, and used commons in protected areas worldwide where indigenous peoples and local communities have been relocated, denied access to areas or specific resources, or where specific practices (and their management through customary institutions and law) have been banned, including hunting, fishing, trapping, gathering, farming, herding, and using fire to manage ecosystems and landscapes;
- Displacement without free, prior and informed consent of the indigenous Ogiek people from the Mount Elgon National Reserve in 2000 at the time of its establishment, as well as earlier from the Mount Elgon National Park (established 1968). There has been no Ogiek participation in the establishment and management of these protected areas. In both protected areas regulations have been imposed that have banned or restricted access to cultural sites and to customary use of natural resources. These relations do not acknowledge or respect the Ogiek's

customary law, sustainable management and use of natural resources, or rights (Indigenous Information Network 2008; Whakatane Mechanism 2013);<sup>23</sup>

- Replacement of community governance and management of forests by protected area control, surveillance, and rules and regulations in Nepal national parks, contributing to the abandonment of customary ICCAs as documented for some villages within Sagarmatha National Park (see Box 2) (Stevens 1993); and
- Banning of customary systems of community and customary law regulated rotational forest farming (swidden) in national parks in Nepal and Thailand.

### ***2.3.3 Co-optation: undermining ICCAs by transforming them into shared governance***

In other cases protected area authorities may inadvertently or deliberately undermine the autonomy of ICCAs by replacing them with shared governance and management arrangements in their place. Shared governance can replace indigenous peoples' and local communities' governance authority and reduce their conservation capacities and roles, for example by granting them only a small voice – but no decision making power or authority – within a shared governance body. Conservation interventions through “support” projects by external organisations, including by bi-lateral, multi-lateral, and international and national conservation non-governmental organisations (NGOs), can contribute further to this process. Most external projects pay lip service to participation while often doing very little to promote meaningful sharing of power, much less strengthening indigenous peoples' and local communities' self-governance and predominate authority in their territories. They can also promote assimilation. As a result, the governance institutions and cultural values integral to the ICCAs can be compromised. While indigenous peoples and local communities may sometimes seek shared governance arrangements for a variety of reasons, including to gain collaborations against powerful external forces, they may also be wary of them as possible threats to their ICCAs' integrity and effectiveness.

Examples:

- Conversion of community forests to joint management forests within reserve forests in India; and
- Replacement of customary community forest management and care of sacred forests by new institutions in Nepal buffer zones and the Nepal national forest that are *de facto* shared governance situations (Jana and Paudel 2010; Sherpa 2013).

### ***2.4.4 Neglect: independent operation without legal recognition or coordination***

Indigenous peoples and local communities often maintain identities, self-governance, socio-ecological systems, livelihoods, and culture even in situations in which they do not have legal standing, formal recognition, or even informal acknowledgment to do so from



protected area authorities.<sup>24</sup> While ICCAs sometimes can be maintained by their custodians in such circumstances for years, they remain vulnerable to being suppressed or replaced; their custodians also can remain at risk of being relocated from their traditional territories or areas. ICCAs also can be inadvertently undermined when actions are taken which ignore their existence or otherwise reduce their local legitimacy and capacity, including by more generally diminishing indigenous peoples' and local communities' self-governance or rights recognition. Not only do these processes risk loss of important conservation opportunities but there is also evidence of direct counterproductive effects, especially when the governance and management vacuum is not filled by the government. Undermining of ICCAs creates "tragedy of the commons" situations when it results in 1) *de facto* open access to resources when the incentives break down for community members to use them in accordance with collectively defined customary rights, values, and law and 2) local systems are lost that defended territories, lands, waters, and resources against external users.

#### Examples:

- Khumbu Sharwa custodianship of sacred sites, including forests, protection of all regional wildlife due to Buddhist beliefs and understanding of their territory as a sacred *beyul* (hidden valley), and customarily-governed community forests and grazing lands, within Sagarmatha National Park (Photo 1) without acknowledgment in national park policies, regulations, and management practices (see Box 1) (Stevens 1993, 2008, 2009, 2010, 2013a, b, 2014c; Sherpa, T.T. 2016). Indigenous peoples' ICCAs, including sacred sites and collectively managed commons in other high Himalayan national parks (Stevens 2013b, 2014c);
- Community forests and sacred forests governed and managed by villages under customary law without recognition in buffer zone forest management in Nepal (Jana and Paudel 2010; Sherpa 2013);
- Protection and care of sacred forests in Mt. Kalatungan Ranges Natural Park, Philippine prior to recognition efforts by their custodians (Box 7) and many ICCAs in other Philippines national parks and other protected areas;
- Forest and other ICCAs in Indonesian national parks other than Kayan Mentarang National Park (Box 7);
- Community forests, grazing lands, and sacred sites governed, managed, and cared for within protected areas in India; and
- Sacred sites and community forests and grazing lands within protected areas in Italy (see Box 2) (Agnoletti 2014; Amici *et al.* 2015; Frascaroli *et al.* 2016; Frascaroli and Verschuuren 2016).

## **Box 2: Neglect of Overlapped ICCAs**

**“Invisible ICCAs” lose their conservation values when subsumed under protected areas in Italy** (contributed by Fabrizio Frascaroli and edited by Grazia Borrini-Feyerabend, with additional material on the Simbruini Mountains Regional Park adapted by Stan Stevens from Sacred Natural Sites Initiative n.d.)

Sacred sites tended by local people are a relatively common and striking example of community-conserved areas that has long fallen below the radar of commentators and conservationists in Europe. Along with monastic estates and silvo-pastoral mosaics, these sites possess undeniable ecological value and demonstrate meaningful and resilient bonds between human communities and their life environment. Awareness of such bonds has largely been lost, partly as a consequence of the state-driven processes of modernisation that have led to the suppression of customary laws and collective land tenure rights.

In Italy, a few community-governed areas have survived those trends and are becoming known as ICCAs (e.g., the Regole of the Ampezzo Valley). Other customary sites, however, are much less known. These include many worship and pilgrimage sites that maintain a strong link to local livelihoods and where the key moments of agricultural and pastoral activities are celebrated in annual rites.

One example of environmental change related to lack of recognition of the caretaking and land governance and management roles of traditional custodians and villagers is the Simbruini Mountains Regional Park in central Italy. This protected area includes the sacred site and regional pilgrimage destination of the Shrine of the Santissima Trinità (Very Holy Trinity) and collectively owned forests and pastures where customary agriculture, pastoralism, and understory use and management has created cultural landscapes that include species-rich grasslands dotted with ancient, often pollarded or otherwise managed trees. The recent declines in pastoralism and in customary community land management and conservation practices threaten to undermine these landscapes (Sacred Natural Sites Initiative n.d.).

**Sagarmatha (Mount Everest) National Park and World Heritage Site, Nepal**  
(Stan Stevens)

Many – likely all or nearly all – of Nepal’s protected areas overlap with sacred places, including sacred natural sites and other cultural sites, whose care and protection have conservation significance. Many also overlap with still active, collectively governed and managed commons. These include long-established community forests, rangelands, and transhumance migration routes that predate the establishment of these protected areas. The protection and care of these sacred places and commons by indigenous peoples, local communities, and particular custodian institutions is not recognised in national protected area law or regulations and is rarely mentioned in management plans (Stevens 2013b, 2014c). This can undermine long-standing conservation practices.

Sagarmatha (Mt. Everest) National Park and World Heritage Site (SNP; see Photo1), is a prominent example of such neglect that has gained international attention from IUCN and the ICCA Consortium (Borrini Feyerabend and Kothari 2008; Stevens 2008; Borrini-Feyerabend *et al.* 2010; Borrini-Feyerabend *et al.* 2013). SNP, as noted earlier, is within the traditional territory of the indigenous Sharwa (Sherpa) people and is virtually congruent with the Sharwa region of Khumbu. The Khumbu Sharwa continue to inhabit more than a hundred villages and seasonal settlements within the perimeter of the national park (since 2002 these enclave settlements have been legally designated as part of the national park's buffer zone).

The Khumbu Sharwa maintain many local ICCAs, including village governed and managed community forests. These community forests, some governed by village assemblies for centuries, include some that in recent years have been much more strictly protected than the nationally standardised community forests established in the 1990s outside the national park. There are also individual village and multi-community governed and managed rangelands, transhumance migration patterns, and agropastoral activities, and many protected cultural sites including sacred natural sites (Stevens 1993, 2008, 2013b, 2014c; Sherpa, T.T. 2016).

The region is rich in sacred natural sites that are respected, cared for, and protected by the Sharwa. The Khumbu Sharwa, who follow the teachings of Nyingmapa Buddhism, consider the entire area of the national park to be a sacred, hidden valley (*beyul*) consecrated by Guru Rinpoche (Padmasambhava) 1,200 years ago. Out of respect for the *beyul* they protect all wildlife (Stevens 1993, 2008, 2013b, 2014c; Sherpa, L. 2003, 2006; Spoon and Sherpa 2008; Sherpa, T.T. 2016). Within Khumbu there are also many sacred mountains (including Chomolungma, Mt. Everest, the dwelling of the goddess Jomo Miyolangsangma and Khumbila, the dwelling of Khumbi Yul Lha, the guardian god of the region), as well as sacred lakes, springs, forests, trees, boulders, and caves (Stevens 1993, 2008; Sherpa, T.T. 2016). Sherpa understandings of their proper relationships and interactions with the gods and spirits of these sacred places has afforded the sites a high degree of protection (Sherpa, L. 2003, 2006; Stevens 2003, 2008; Spoon and Sherpa 2008; Sherpa, T.T. 2016).

The commons collectively governed by the Khumbu Sharwa have generally (although not always) been managed in ways that have fostered sustainable use and conservation. Several Sharwa villages continue to maintain and strengthen these institutions despite considerable pressure in recent decades from lack of legal recognition by the government of Nepal, nationalisation of land, changing livelihood practices, tourism development, immigration by non-Sharwa, and generational cultural change (Stevens 1993, 2008, 2013a, 2014b).

The continuing existence and the conservation and cultural significance of these many ICCAs has been largely unappreciated and unrecognised by national park authorities. As a result there has been a lack of coordination and support that has contributed to erosion of social support for the ICCAs. On some occasions park authorities even have

authorised natural resource use by outsiders (including the park's staff and army protection unit) that have violated Sharwa religious belief, customary law, and village authorities' exercise of their conservation responsibilities. There have been cases, for example, of national park authorised tree felling in strictly protected sacred forests and in protected community forests in violation of village law and enforcement efforts. Another issue has been the slaughter by park staff and the army protection unit of domestic animals for Hindu ritual and for consumption, which Sharwa feel violates the sanctity of the *beyul* (Stevens 1993, 2008, 2013a, 2014b; Sherpa, M. N. 2013).

A Sharwa indigenous people's organisation, the Khumbu Sherpa Cultural Conservation Society (Sherpa, T.T. 2016), Sharwa religious leaders, and Sharwa members of the Buffer Zone Management Council all continue efforts to increase the national park authorities' recognition and respect for Sharwa ICCAs.



**Photo 1.** ICCAs maintained by the indigenous Sharwa people (also known as the Sherpa people) in the customary territory of Khumbu in northeastern Nepal overlap Sagarmatha (Mt. Everest) National Park and World Heritage Site.<sup>25</sup> Photo © Stan Stevens.

All of the national park is within the Khumbu *beyul*, a sacred, “hidden” valley and ICCA, within which the Sharwa protect all wildlife. This view of part of eastern Khumbu shows part of the Khumbu *beyul* and some of the other ICCAs nested within it that are governed or cared for by the regional population, particular villages, or groups as sacred mountains, sacred forests, monastery forests, community forests, and community-governed rotational grazing and agropastoral use areas (Stevens 1993, 2008, 2013b, 2014c; Sherpa, T.T. 2016).

### **3. The Importance of Understanding, Recognising, and Respecting ICCAs in Overlap Situations**

The designation of protected areas by governments need not conflict with or undermine already existing ICCAs or indigenous peoples' and local communities' rights and responsibilities. Overlap situations, however, challenge protected area authorities and indigenous peoples and local communities to ensure that indigenous peoples' and local communities' governments, institutions, and practices are understood, respected, effectively coordinated with, and supported and that they effectively carry out their responsibilities and uphold their rights. ICCAs must be understood and appreciated not only as being critical to indigenous peoples' and local communities' conservation of their territories but as central aspects of their self-governance, identities, and culture but as being essential to their well-being, livelihoods, sustainable land and marine use, and realisation of rights. ICCAs accordingly must be appropriately recognised and respected in protected area establishment, goals, governance arrangements, and management plans. This requires securing their custodians' FPIC and their full and effective participation in the development of protected areas within their territories in accordance with international protected area standards and human rights law. Re-visiting and addressing cases where protected area establishment, governance, and management have not adequately recognised and respected ICCAs will significantly redress some of the past and continuing injustices that have been the tragic legacies of the imposition of protected areas in the territories and areas of indigenous peoples and local communities.

When ICCAs are appropriately recognised and respected in overlap situations they provide a range of conservation and social benefits. Indeed such recognition is increasingly being considered as critical to achieving the global conservation goals set by the Strategic Plan in its Aichi Targets, particularly the goals for the total coverage in protected areas and other effective area-based conservation measures established by Aichi Target 11.<sup>26</sup>

Effective recognition and respect for ICCAs in overlap situations can be a critical means of enhancing the defences of protected areas and ICCAs against industrial-scale logging, mining, oil and gas extraction, large scale infrastructure projects, land grabbing, and other threats to regional environmental integrity, and hence to achieving protected area and ICCA goals. Indeed, indigenous peoples, local communities, governments, and NGOs often seek such support and have found that uniting their varying capacities and resources in a shared effort to defend against such threats can lead to success.

#### ***3.1 Potential Benefits of Appropriate ICCA Recognition and Respect***

The potential conservation, cultural, social, and economic benefits of ICCA recognition in protected area overlap situations are many. Conservation benefits may often be entwined and synergistic with cultural, social, and economic benefits. These benefits add to those already realised by protected areas and include:

*Conservation benefits:*

- Maintenance and restoration of bio-cultural diversity and cultural landscapes;
- Increased protected area effectiveness and equity;
- Increased conservation collaborations and synergies between indigenous peoples, local communities, and state agencies, including through shared resources and efforts;
- Enhanced defence and increased resilience of both ICCAs and protected areas against internal and external encroachment;<sup>27</sup>
- Upholding and strengthening indigenous peoples' and local communities' conservation contributions by politically empowering them and by valorising and supporting their sense of responsibility and caring for their territories;
- Maintenance of conservation through supporting indigenous and local knowledge systems, values, institutions, and practices and through the possibility of synergies with non-indigenous ones;
- Strengthening conservation by fostering self-esteem and pride in identity, culture, and conservation achievements, including among youth, and hence encouraging and fostering increased conservation dedication, volunteerism, collective efforts, community solidarity, and inter-generational teaching and transmission of conservation values;
- Support for maintaining and strengthening customary governance and management, including for surveillance and enforcement mechanisms and for negotiating restrictions on access and use among multiple rights-holders;
- Support for research, monitoring, and evaluation that engage indigenous peoples' and local communities' active participation and mutual sharing of knowledge with others;
- Support for conservation connectivity between protected areas and ICCAs that partially overlap with protected areas and also extend beyond their borders to encompass larger conservation landscapes and seascapes, with benefits to both;
- Promotion of strengthened coordination and linkages among multiple ICCAs within and beyond the borders of protected areas, including through encouraging multiple indigenous peoples and local communities to engage in regional land/marine use and management planning; and
- Increased visibility and opportunities for overlapped ICCAs and protected areas, including for national and international funding and for collaborations with conservation organisations.

*Cultural, social, and economic benefits:*

- Advancement of equitable and effective governance of protected areas;

- Upholding indigenous rights, human rights, and rights-based conservation;
- Enhanced moral legitimacy for protected areas and societal support for them;
- Reduced societal expenses for protected area management because of indigenous peoples' and local communities' voluntary contributions;
- Increased societal understanding and respect for the conservation importance of indigenous and local knowledge, values, customary law and institutions, culturally-valued practices, community solidarity and inter-generational responsibility and learning;
- Renewal and strengthening of indigenous peoples' and local communities' sense of responsibility and dedication to caring for their territories;
- Enhanced self-esteem and pride in identity, culture, and conservation achievements, including among youth;
- Maintenance and strengthening of community solidarity;
- Maintenance and enhancement of livelihood security and food sovereignty;
- Increased opportunities for social reconciliation between indigenous peoples and local communities and other conservation actors;<sup>28</sup> and
- Increased opportunities for indigenous peoples and local communities to benefit economically from conservation-based activities.<sup>29</sup>

### ***3.2 Potential Costs of Non-Recognition and Respect of ICCAs or Inappropriate Recognition***

Conversely, failure to appropriately understand, recognise, and respect ICCAs can have adverse consequences for protected areas, conservation, national society, and indigenous peoples and local communities including:

#### *Conservation costs:*

- Loss of bio-cultural diversity and biodiversity due to disempowerment of indigenous peoples and local communities and undermining of their ICCAs' conservation effectiveness;
- Increased exploitation of land and marine resources by local and non-local resource users in situations in which ICCAs are undermined and protected area authorities cannot provide effective surveillance and enforcement;
- Loss of social legitimacy for protected areas, and with it increased environmental degradation, reduction of biodiversity, and alienation-fuelled conflict, non-cooperation, resistance, and litigation;<sup>30</sup> and
- Missed opportunities for conservation collaborations and synergies.<sup>31</sup>

*Cultural, social, and economic costs:*

- Increased injustice and violations of rights;
- Displacement, loss of livelihoods, decreased food security, increased poverty and vulnerability;
- Loss of identity, cultural practices, community solidarity, intergenerational learning, attachment to place, and pride;
- Economic opportunity costs;
- Increased economic costs from degraded environments, including reduction of livelihood resources and diminished ecosystem services;
- Missed opportunities for democratic decision-making;
- Missed opportunities for social reconciliation; and
- Increased conflicts and insecurity.



## 4. Existing Legal and Policy Framework and Guidance

A substantial body of international law, policy, and guidance concerning rights and protected areas strongly supports appropriate recognition of and respect for ICCAs in situations in which protected areas overlap with them. This chapter discusses relevant law, policy, and guidance from the CBD and the IUCN, associated rights affirmed by ILO 169 and UNDRIP, and identifies other applicable international treaties, law, and guidance. This is intended only as an introduction and overview, not as a comprehensive treatment. Readers who seek more in-depth discussion should see Jonas *et al.* 2012b for a survey the entire range of law, policy, and guidance introduced in this chapter, as well as discussion of relevant international case law, and Stevens 2010, 2013a on ILO 169 and UNDRIP.

### 4.1 *The Convention on Biological Diversity and Overlap Situations*

The CBD, an international treaty developed in 1992 that came into force in 1993, is the international treaty that most engages with biodiversity conservation, including ICCAs. It has promoted protected areas as fundamental to *in situ* conservation of biodiversity, and beginning in 2010 also endorsed “other effective area-based conservation measures.” Kothari *et al.* (2012: 35) observe that the CBD is “the primary global agreement which has set the stage for legal recognition of ICCAs.” This has been particularly the case for their recognition as protected area. Increased attention in coming years on “other effective area-based conservation measures” should also enhance appreciation of ICCAs, including those overlapped by protected areas. The Executive Secretary of the CBD has written that “Since ICCAs are often an effective mechanism for conservation, there is a need to recognise their crucial role in implementing the Strategic Plan for Biodiversity 2011-2020, and in particular, in achieving Aichi Targets 11 (on protected areas), 13 (on food security), 16 on the Nagoya Protocol on Access and Benefit Sharing), and 18 (on traditional knowledge and customary sustainable use)” (Ferreira de Sousa 2012:6).

The CBD is legally binding on those countries that are party to it, which now number 196 and include all UN member states except the USA.<sup>32</sup> International law associated with the CBD includes not only the treaty itself but also subsequent decisions of it to the Parties to the CBD that are adopted at its biannual Conferences of the Parties (COP). Also significant are the work plans adopted by COPs, which include the Programme of Work on Protected Areas (PoWPA) and the Plan of Action on Customary Sustainable Use of Biological Diversity. Indeed, the CBD’s PoWPA is perhaps the most progressive international law instrument pertaining to protected areas and includes the first specific ICCA provisions in international law (Jonas, Holly forthcoming; see below and Annex 1), although the main component in which these feature (Element 2) has been relatively poorly implemented (Stevens 2014a). On the CBD and rights also see Jonas, Harry *et al.* 2014b; Springer and Almeida 2015; and Tauli-Corpuz 2015, 2016.<sup>33</sup>

Since 2004 the CBD has endorsed ICCAs in several decisions as well as in PoWPA, and they are widely seen as critical also, as already mentioned, to realisation of the Aichi Targets of the CBD's Strategic Plan for Biodiversity 2011-2020 (Ferreira de Sousa 2012; Kothari *et al.* 2012; Kothari and Neumann 2014). The CBD thus provides a strong foundation for recognising and respecting ICCAs, including in overlap situations. ICCAs are an important means to realise the Convention's goals of the conservation and sustainable use of biodiversity, and they have accordingly been endorsed and promoted in a series of COP decisions and in the PoWPA. The CBD's concern with respect for indigenous peoples' and local communities' knowledge and practices in relation to biodiversity conservation and the sustainable use of natural resources, together with its affirmation of the rights of indigenous peoples and local communities in protected area establishment and management, and promotion of effective and equitable governance of protected areas (including indigenous peoples' and local communities' full and effective participation with respect for their rights), provides a powerful basis for recognising and respecting their customary sustainable use and management of lands and waters through ICCAs in all contexts including situations in which they are overlapped by protected areas.

The issue of appropriate recognition and respect for ICCAs that are overlapped by protected areas is not directly addressed by the CBD in its articles, decisions, or PoWPA.<sup>34</sup> This is striking in view of the fact that the issue of protected areas being established in the territories of indigenous peoples and local communities, often without their FPIC, has been highlighted frequently by indigenous peoples and local communities in international conservation venues since the 1990s, and has been the subject of IUCN policy since 1996 and World Parks Congress guidance since 2003. This may testify to the CBD and its COPs being an intergovernmental body comprised of the representatives of states, many of which may not be eager to embrace rights-based conservation and its endorsement of customary tenure, land restitution, rights, and indigenous peoples' and local communities' self-governance and self-determination as well as their knowledge and contributions to biodiversity conservation and sustainable use of natural resources. In many countries the governance and control of extensive lands and waters is involved, and this may be made highly controversial given unequal multinational/ethnic power relationships as well as problematic relationships between the state and indigenous peoples and local communities.

Despite the lack of direct provisions on ICCA/protected area overlap situations, support for appropriate recognition and respect for ICCAs in these contexts can be inferred from CBD articles and decisions. This includes the two articles of the CBD which particularly bear on indigenous peoples' and local communities' knowledge and practices:

Article 8(j), which enjoins Parties (states) to:

- “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”; and

Article 10(c), which further enjoins Parties to:

- “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”.

ICCAs are important examples of Articles 8(j) and 10(c) as territories and areas in which indigenous peoples and local communities, through their self-governance and culture, manage their use of biological resources in ways which contribute to conservation and sustainable use. Indeed, Braulio Ferreira de Souza Dias (2012), the Executive Secretary of the CBD, has written that “ICCAs can be the living embodiments of Articles 8(j) and 10(c) of the Convention.”

The Parties to the CBD endorsed the recognition of ICCAs as protected areas in its 2004 PoWPA and in several decisions of the Parties since then. The understanding of ICCAs as effective and equitable means of governing protected areas is also integral to the CBD’s Plan of Action on Customary Sustainable Use of Biological Diversity, which was adopted in 2014 by COP 12. Decisions of the parties and the provisions of the PoWPA, the Aichi Targets, and the Plan of Action on Customary Sustainable Use of Biological Diversity also provide support for appropriate recognition of ICCAs as protected areas, and in the case of the latter two instruments also for ICCAs that do not meet protected area definitions. All of these aspects of the CBD are pertinent to situations in which ICCAs – either as protected area in their own right or as “other effective area-based conservation measures” overlap with government or privately established and governed or co-governed protected areas (see Annex 1 for quotations).

The relevant provisions (see also Annex 1), from the broadest to those focused on ICCAs as protected areas, include those that call on Parties to:

*1. Recognise ICCAs, including traditional management systems and cultural and spiritual values and practices, as means to strengthen biodiversity conservation and sustainable use of biodiversity*

COP 10 Decision X/31B Protected areas (par. 31 (b))

COP 11 Decision XI/24 Protected areas (par.1 (e))

COP 12 Decision XII/5 Biodiversity for poverty eradication and sustainable development (par.11)

COP 12 Decision XII/12 Article 8(j) and related provisions (par. B (5))

PoWPA (2.1.3)

Aichi Targets 11, 13, 18

Plan of Action on Customary Sustainable Use of Biological Diversity (III.6.c, f; IV.9; tasks 2, 3)

Chennai Guidance for the Integration of Biodiversity and Poverty Eradication (COP 12 Decision XII/5, Annex (2.d.iii))

*2. Identify best practices for “the application of traditional knowledge and customary use in protected areas,” including by the promotion of community protocols to affirm “customary sustainable use in protected areas, including marine protected areas, in accordance with traditional practices”*

COP 11 Decision XI/14 Article 8(j) and related provisions, section F (par. 10 (c))  
Plan of Action on Customary Sustainable Use of Biological Diversity (IV.9; task 3)

*3. Respect the rights of indigenous peoples and local communities in the context of the establishment and management of protected areas*

COP 7 Decision VII/28 Protected areas (par. 22)

COP 10 Decision X/31/A Protected areas (subsection 1 par.1.h (i))

PoWPA (Goal 2.2 target; 2.2.2)

Plan of Action on Customary Sustainable Use of Biological Diversity (IV.9; task 3)

*4. Ensure indigenous peoples' and local communities' full and effective participation in protected area governance, with full respect for their rights*

COP 7 Decision VII/28 Protected areas (par. 22)

COP 9 Decision IX/18 Protected areas (par. 6 (d))

COP 10 Decision X/31/B Protected areas (par. 32 (c))

PoWPA Goal 2.2 Target

Plan of Action on Customary Sustainable Use of Biological Diversity (task 3)

*5. Recognise ICCAs, as appropriate, as protected areas*

COP 9 Decision IX/18 Protected areas (par. 6 (b))

COP 9 Decision IX/18 Protected areas (par. 19)

COP 10 Decision X/31/B Protected areas (par. 31 (b)).

COP 10 Decision X/31/B Protected areas (par. 32 (a))

COP 10 Decision X/31/B Protected areas (par. 32 (b)).

PoWPA (1.1.4; 2.1.2; 2.1.3; 2.2.4)

Plan of Action on Customary Sustainable Use of Biological Diversity (IV.9; task 3)

*6. Recognise ICCAs, as appropriate, as part of national protected area systems*

COP 9 Decision IX/18 Protected areas (par. 6 (b))

COP 10 Decision X/31/B Protected areas (par. 32 (b)).

These decisions and implementation provisions together provide support for recognising ICCAs as protected areas in their own right, including in situations in which other protected areas overlap with them, and for recognising and respecting them for their role in conservation and sustainable use in overlap situations when they may not meet protected area standards. Overall the CBD's emphasis thus far, however, has been on the recognition of ICCAs as forms of protected area governance, and it has adopted no specific decision that focuses directly on appropriate ICCA recognition in overlap situations. In guidance developed for the CBD, Kothari *et al.* (2012:84), in the CBD Technical Series volume 64 on *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global Overview and National Case Studies*, go beyond current CBD decisions to recommend "recognizing ICCAs that have in the past got embedded within, or converted to, other forms of protected area governance, including through restitution of rights where they were taken away in the past" and further suggest that reviews of policy, legislation, and programmes undertaken to meet the recommendations of the PoWPA should include such measures as "assessing whether any existing government managed, co-managed, or

privately managed PAs would be more appropriate as ICCAs, and moving towards such conversion.” A CBD decision that calls for indigenous peoples’ and local communities’ governance of overlapping protected areas would be a welcome and important step. Such a decision might also endorse other appropriate resolutions of governance and rights issues raised by overlap situations, such as those discussed in Chapter 4, which include recognition and respect for ICCAs within overlapping protected areas as governance and management sub-units of protected areas.

There has also been little or no development of CBD decisions on related matters such as the recognition within protected areas of customary land tenure, restitution of land incorporated into protected areas without indigenous peoples’ and local communities’ FPIC, or the protection of the rights and responsibilities of custodians of sacred sites or stewards of commons. While provisions of CBD articles and decisions can be interpreted to support appropriate ICCA recognition and respect in overlap situations, decisions of the parties that strongly affirm this are needed on protected areas and also on implementing Articles 8(j) and 10(c). CBD decisions clarifying that indigenous peoples and communities should continue to protect and care for sacred sites and collectively govern and manage commons within protected areas as best practices, in accordance with rights, would greatly advance efforts to secure ICCAs, rights, and equitable and effective governance and management of protected areas.

It would be helpful if future CBD decisions on protected areas would further clarify that ICCAs should be recognised in overlap as well as other contexts. Specific provisions could highlight that this is integral to the implementation of PoWPA and the Plan of Action on Customary Sustainable Use of Biodiversity, provide best practice guidance, and advise parties to the Convention that they should report their actions to appropriately resolve overlap issues in their reporting on protected areas and achievement of the Aichi Targets and include measures to advance this in their national biodiversity strategies and action plans (NBSAPs). The Parties to the CBD could also call for more directed funding to resolve injustices, rights violations, and conflicts associated with overlap situations and to increase the protected area governance and management equity and effectiveness through appropriately recognising, respecting, and supporting ICCAs in these contexts through advancing best practice resolutions. This could include requesting that the GEF establish significant, continuing funding to IUCN’s Whakatane Mechanism to help manage governance and rights disputes precipitated by the establishment of government and private protected areas in indigenous peoples’ and local communities’ territories and to publicize best practices for ICCA recognition and respect in these situations. The CBD could also recommend that GEF provide increased, focused funding to indigenous peoples and local communities in support of overlapped ICCAs, including for documentation, mapping, inter-generational transmission of knowledge and responsibilities, and negotiation with protected area authorities. Such funding has been provided to indigenous peoples and local communities through the GEF Small Grants Programme, which has made support for ICCAs a priority but which has not focused a portion of allocations specifically on those that are overlapped by protected areas.

## **4.2 IUCN Policy and Guidance on ICCAs in Protected Area Overlap Situations<sup>35</sup>**

The IUCN, established in 1948, has long been a central institution in international conservation policy-making, with protected area policy as one of its major foci (Holdgate 1999). The IUCN represents itself as “the world’s oldest and largest global environmental organisation, with almost 1,300 government and NGO Members and more than 15,000 volunteer experts in 185 countries” with a vision of “a just world that values and conserves nature” and a mission “to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable” (IUCN 2016). It uniquely brings together national governmental agencies, conservation organisations, and scientists and other experts, including through convening a major international conservation policy-making event every four years (the IUCN General Assembly, since 1996 known as the IUCN World Conservation Congress or WCC), and once a decade convening an international meeting focused entirely on protected areas (the IUCN World Parks Congress) that produces recommendations that inform the policies that are adopted at the WCCs.

IUCN policies are not legally binding on its members or others, but nonetheless are highly influential. As Kothari *et al.* (2012:35) observe, “while IUCN’s decisions, resolutions, and guidance are not binding on countries, they nevertheless provide a crucial context for and guidance to inter-governmental processes and treaties, as also to national level laws, policies, and practices.”

Since the 1990s the IUCN has led the development of international policy promoting rights-based conservation and a larger rethinking of the concept, goals, governance, and management of protected areas sometimes referred to as the “new protected area paradigm” (Stevens 1997, 2014d, e, f; Phillips 2003; Colchester 2004, 2014; Jonas, Harry *et al.* 2014a, b; Springer and Almeida 2015). The IUCN has provided the most progressive and detailed international guidance and policy in these areas, establishing legitimacy for new thinking and standards that can inform actions not only by the IUCN and its member agencies and organisations but also the domestic laws of states and the practices of conservation organisations regardless of whether or not they are IUCN members. Some – but far from all – of these policies have been adopted by the Parties to the CBD or by individual states.

IUCN policy is principally made through the adoption of measures by its Members’ Assembly at the quadrennial World Conservation Congresses. The IUCN also develops guidance on conservation issues. For protected areas this includes a publication series on best practices and other publications, but most especially the recommendations adopted by the once a decade IUCN World Parks Congress. Some World Park Congress recommendations become policy by being adopted in subsequent World Conservation Congress resolutions.

IUCN policy and guidance relevant to ICCA and protected area overlap situations (and to the issues raised by the establishment of protected areas in indigenous peoples’ and local

communities' customary or traditional territories more generally) deserves to be better understood and appreciated. This is the most in-depth, well-articulated extant body of ICCA and progressive protected area policy. As a substantial body of relevant, progressive policy it is a foundation for new law and policy that addresses gaps and limitations and promotes more effective policy implementation both by the IUCN and others. Increased understanding and appreciation of existing IUCN policy, including by IUCN members and experts unfamiliar with it, is critical to inform new and revised law and policy and better implementation both by the IUCN and others. Closer study and analysis of IUCN policy will benefit efforts to promote rights-based conservation, ICCAs, and equitable and effective protected areas by national governments and other governments and governmental agencies, inter-governmental organisations, and NGOs and is vital to addressing issues raised by the overlap of protected areas and indigenous peoples' and local communities' territories and ICCAs.

The following section of this report examines in detail pertinent IUCN policy and relevant aspects of IUCN guidance.<sup>36</sup> Annexes 2-4 provide additional material on ICCA and protected area overlap related IUCN policies and guidance.

IUCN's initial ICCA policies, some of which was incorporated into CBD decisions, focused on recognising ICCAs as a form of protected area governance. However, in contrast to the CBD, since 2008 the IUCN also has adopted policy that explicitly addresses some of the issues raised by the establishment of other protected areas in the territories of indigenous peoples and protected areas, including the status of existing ICCAs. This body of policy, which includes four World Conservation Congress resolutions and many other related ones, is supplemented by direct and contextual guidance from the 2003 and 2014 World Parks Congress, the 2003 *Durban Accord and Action Plan* and the 2013 protected area governance best practice guidelines publication.

Four existing IUCN policies particularly engage with best practices for ICCA recognition and respect in protected area overlap situations. These include one focused on protected area overlaps with the territories of indigenous peoples, one broadly promoting ICCA recognition, respect, and support that includes a provision on overlap situations, and policies that address sacred sites within protected areas, a common form of ICCA:

WCC Recommendation 4.127 (2008) *Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples* recognises an alternative to protected area establishment and governance by non-indigenous governments and others. It "CALLS ON the Director General to promote and support the recognition of Indigenous Conservation Territories as a legitimate model of governance of protected areas superimposed over the territories of indigenous peoples... taking into account the need for the integration of culture and nature, the role of customary law, traditional constituted authority, and the exercise of indigenous authority in such territories." This policy does not extend to the territories, lands, and waters of local communities and no equivalent policy has yet been adopted by the IUCN.

WCC Resolution 5.094 (2012) *Respecting, recognizing and supporting Indigenous Peoples' and Community Conserved Territories and Areas*, the most recent policy on ICCAs adopted by the IUCN, includes a provision calling for "All IUCN Members, Commission members, Secretariat and Council to respect and appropriately recognize and support ICCAs by promoting, adopting and fully implementing laws, policies and programmes that...recognize and support ICCAs in situations where they overlap with protected area or other designations." This is the clearest policy position yet taken by the IUCN on overlap situations and notably applies to all ICCAs. It does not, however, provide any guidance on how this is to be done or call for specific implementation actions by the IUCN or others.

WCC Resolution 4.038 (2008) *Recognition and conservation of sacred natural sites in protected areas* includes in its preamble two statements highlighting problems with the recognition of custodians' protection and care of sacred sites in protected area practices. The first acknowledges "that many sacred natural sites have been integrated into legally declared protected areas without adequate recognition of the local communities' cultural and spiritual values and the traditional beliefs, practices and knowledge that have sustained the associated locations, cultures and resources," while the second expresses concern "that legally recognized protected areas sometimes deny access to sacred natural sites to indigenous peoples or religious groups who have utilized and cared for them for many generations."

In its operative paragraphs this resolution "AFFIRMS that urgent action is needed for culturally appropriate sacred natural site conservation and management within (and near) official protected areas" and in another paragraph calls on "protected area agencies and managers to recognize the cultural and spiritual values of sacred natural sites included within their designated boundaries, and to recognize and facilitate the rights and interests of the communities or organisations concerned to manage and use those sacred natural sites where possible as places for their cultural and spiritual realisation and reverence" (paragraphs 1 and 2(c)).

WCC Recommendation 5.147 (2012) *Sacred natural sites – support for custodian protocols and customary laws in the face of global threats and challenges*, extends the 2008 resolution by including an operative paragraph that promotes more effective implementation of respect for custodians' care and protection of sacred sites in protected areas, urging "State Members of IUCN and other national governments to develop appropriate policies, laws and programmes (for example by adopting at the national level Resolution 4.038 and implementing the IUCN-UNESCO Best Practice Guidelines No. 16 for planning and management of SNS in protected areas) that allows the custodians to continue to maintain and protect their sacred natural sites using their traditional practices and protocols, and in doing so respect the confidentiality of sites and practices" (par. 3). Other paragraphs, while not addressed specifically to protected area situations, are also relevant.

In contrast to the attention to indigenous territories and to sacred sites, there are no IUCN policies (or CBD decisions) as yet that directly address the issue of appropriate recognition and respect for indigenous peoples' and local communities' continuing governance and



management of collectively owned, governed, and managed commons within protected areas.

### *Relevant IUCN guidance*

Besides these policies, there is a large body of relevant IUCN policy and guidelines that supports recognition and respect for overlapped ICCAs without specifically referring to them. This includes policies on rights (including adopting UNDRIP and ILO 169 as standards), rights in protected areas, rights-based conservation, protected area governance, ICCAs, and sacred natural sites.

Recent IUCN guidance on the governance of protected areas in the IUCN's protected areas best practice guidelines series volume on the *Governance of Protected Areas* (Borrini-Feyerabend *et al.* 2013) refers in several places to the issues raised by the overlap of ICCAs and protected areas and in particular to situations in which a smaller ICCA is encompassed by an overlapping protected area. Here it is suggested that it may be appropriate to adopt a “change in the governance type for *part* of the protected area...when an ICCA is recognized *within* a government protected area and its governance is formally attributed to a specific indigenous people or local community” (Borrini-Feyerabend *et al.* 2013:107) (italics added). This is amplified elsewhere in the guidelines, where it is noted that “sometimes an ICCA (Type D) is included within government-governed protected areas (Type A or B)” and that in these cases designation of a protected area management sub-unit can provide “recognition and support to an indigenous people or local community willing to maintain their customary institutions and traditional governance practices for an ICCA within a government established protected area” (Borrini-Feyerabend *et al.* 2013:46, 105).

The latest guidance comes from recommendations developed in the IUCN World Parks Congress 2014. These were incorporated into the “Recommendations for Change” section of the Promise of Sydney. Of particular pertinence are the following:

#### *Stream 6*

Stream 6 developed two recommendations for the Promise of Sydney, with additional governance recommendations for situations in which protected areas overlap with the territories of indigenous peoples and local communities adopted by Workshop 2.7 in that stream (see Annex 3).

“Voluntary conservation. All countries, relevant organisations, protected area managers and rights-holders better recognise and appropriately support voluntary and self-directed conservation efforts, including in the territories and areas conserved by indigenous peoples and local communities (ICCAs) *within* and outside protected areas...” (italics added).

“Governance overlaps. In situations where the land, water, natural resources and coastal and marine areas of indigenous peoples and local communities overlap with established protected areas under any other governance type, all countries and relevant organisations

ensure that *collective rights and responsibilities to own, govern, manage, and use such land, water, natural resources and coastal and marine areas are respected*. Further, they ensure that the indigenous peoples' and local communities' right to free, prior and informed consent is affirmed and their livelihoods and food and water sovereignty are appropriately recognized and supported, *along with their knowledge, institutions, practices, management strategies and plans related to conservation*. They foster, moreover, the full engagement of the concerned indigenous peoples and local communities in the governance of the overlapping established protected areas" (italics added).<sup>37</sup>

### *Stream 7*

Participants in Stream 7 adopted recommendations that strongly support the recognition of ICCAs in protected area overlap situations without using the term (see Annex 1 and 3). These highlighted the importance of recognising indigenous peoples' and local communities' customary ownership of their territories, lands, and marine areas, their application of their traditional knowledge, full recognition of their rights and governance systems in all protected areas, and indigenous peoples' governance of protected areas.

In the preamble to its "strategy of innovative approaches and recommendations for respecting indigenous and traditional knowledge and culture," Stream 7 participants observed that:

For conservation to be effective and enduring, future actions on these [Indigenous Peoples' and local communities'] territories, lands and seascapes must embrace their diversity of knowledge systems, skills and capacities; *they must build on customary land/sea tenure, governance systems and custodianship of natural resources*; recognise the role and practice of women; provide for intergenerational transfer of knowledge; *they must respect and fully protect sacred natural sites and territories*; *they must ensure Indigenous governance of protected areas within their traditional territories*; and they must provide viable and equitable options for sustainable community livelihoods (italics added).

### *Additional applicable IUCN policies and guidance: key themes*

ICCA recognition in overlap situations also is consistent with IUCN policies that affirm rights-based conservation, including the implementation in protected areas of the UN Declaration on the Rights of Indigenous Peoples (Stevens 2010, 2014a, b, c; Jonas *et al.* 2013). Moreover, IUCN has adopted a range of other World Conservation Congress resolutions and recommendations that directly pertain to several aspects of protected area/ICCA overlap situations as well as associated guidance in the form of adopted World Parks Congress recommendations:

1. *Indigenous peoples' self-governance of protected areas as Indigenous Conservation Territories (a type of ICCA) is an appropriate model in situations where state-designated protected areas have been declared in the customary territories of Indigenous peoples.*<sup>38</sup>

World Conservation Congress 2008. Resolution 4.050

2. *Indigenous peoples should participate fully and effectively in protected area governance, consonant with their rights.*<sup>39</sup>

World Conservation Congress 2008. Resolution 4.050 (2)

World Conservation Congress 2008. Recommendation 4.127

World Parks Congress 2003. *Durban Action Plan*, Main Target 9

World Parks Congress 2003. Recommendation V.26 (1.e)

World Parks Congress 2014. Promise of Sydney, Stream 6, "Recommendations for Change" (5)

World Parks Congress 2014. Promise of Sydney, Stream 7, "A Promising Future and Recommendations for Change" (3, 4, 10)

3. *Recognise ICCAs, as appropriate, as protected areas when their custodians so wish.*

World Conservation Congress 2004. 3.049 Community Conserved Areas (par 2(a), 3(a, b))

World Parks Congress 2003. Recommendation V.24 Indigenous peoples and protected areas (1(e, n), 2(b)).

World Parks Congress 2003. Recommendation V.26 Community conserved areas (preamble, 1(b), 4(a-c)).

World Parks Congress 2003 Recommendation V.27 Mobile indigenous peoples and conservation (3(c)).

4. *Include ICCAs, as appropriate, as part of national protected area systems when their custodians so wish.*

World Conservation Congress 2004. Resolution 3.049 Community Conserved Areas (par 2(a))

World Conservation Congress 2012. Resolution 5.077 Promoting Locally Managed Marine Areas as a socially inclusive approach to meeting area-based conservation and Marine Protected Area targets (par. 1)

World Parks Congress 2003 Recommendation V.26 Community conserved areas (1 (b)).

6. *Indigenous peoples' institutions and practices should be integral to protected area governance and management.*<sup>40</sup>

World Conservation Congress 2008. Resolution 4.048 (i-iv).

World Conservation Congress 2012. Resolution 5.094 (par. 1 (b, c))

World Parks Congress 2003. Recommendation V.24 (1.k, l)

World Parks Congress 2014. Promise of Sydney, Stream 6, "Recommendations for Change" (5)

World Parks Congress 2014. Promise of Sydney, Stream 7, "Recommendations for Change" (1, 3, 4, 5)

7. *Custodians' knowledge, practices, and responsibility should be recognised for the care and protection of sacred sites, including those within protected areas.*<sup>41</sup>

World Conservation Congress 2008. Resolution 4.038 (2 (c)).

World Parks Congress 2014. Promise of Sydney, Stream 7, "Recommendations for Change" (5, 10)

### **Box 3: Key IUCN Policy and Guidance Statements**

Several IUCN policies, in addition to the Promise of Sydney recommendations, are particularly relevant to protected area and ICCA overlap situations. These include:

- With regard to "Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples...(b) In the designated protected areas fully or partially within the territories of indigenous peoples: (i) respect the rights of these peoples, ensuring the full and effective participation of their representative organizations in making decisions on the management and protection of these areas"

World Conservation Congress 2008. Recommendation 4.127

- "CALLS ON the Director General to promote and support the recognition of Indigenous Conservation Territories as a legitimate model of governance of protected areas superimposed over the territories of indigenous peoples...independent of the management category, taking into account the need for the integration of culture and nature, the role of customary law, traditional constituted authority, and the exercise of indigenous authority in such territories."

World Conservation Congress 2008. Resolution 4.050 (2)

- "Promote the recognition of indigenous peoples' rights and systems [in protected areas] pertaining to the use, management, conservation and governance of their territories, lands and natural resources"

World Conservation Congress 2008. Resolution 4.048 (i-iv)

- "ACKNOWLEDGE that it may be appropriate for some existing protected areas to be managed as CCAs, including through the transfer of management of such areas to relevant communities"

World Parks Congress 2003. Recommendation V.26 (1.e)

- "Ensure respect for indigenous peoples' decision-making authority and support their local, sustainable management and conservation of natural resources in protected areas, recognizing the central role of traditional authorities, wherever appropriate, as well as their institutions and representative organizations"

World Parks Congress 2003. Recommendation V.24 (1.k)

- “Require protected area managers to actively support indigenous peoples’ initiatives aimed at revitalization and application, where appropriate, of traditional knowledge and practices in land, water, and resource management within protected areas”  
World Parks Congress 2003. Recommendation V. 24 (1.1)
- “By 2020 IUCN and its members, including governments and protected area managers, co-create programmes with the free and prior informed consent and full involvement of traditional knowledge holders for the respectful application and maintenance of traditional knowledge and customary governance systems, ensuring that actions in and around protected areas are built on the combination of diverse knowledge systems, skills and capacities, integrating a rights-based approach”  
IUCN World Parks Congress 2014. Promise of Sydney, Stream 7  
“Recommendations for Change” (3)
- “In accordance with UNDRIP, all protected areas established on the territories, lands or seascapes of Indigenous Peoples fully observe their rights and governance systems, and Indigenous Peoples are fully involved in their creation, designation and management. Where Indigenous Peoples and local communities have been evicted from their lands by the creation of protected areas national laws should be revised to guarantee the restitution of rights and recognise their right to return to and remain on their lands.”  
IUCN World Parks Congress 2014. Promise of Sydney, Stream 7  
“Recommendations for Change” (4).
- “Traditional knowledge, practices and indigenous economies are promoted and applied...in the conservation and management of protected areas and other effective area-based conservation measures, including Indigenous bio-cultural territories, World Heritage Sites and Sacred Natural Sites (SNS).”  
IUCN World Parks Congress 2014. Promise of Sydney, Stream 7  
“Recommendations for Change” (5)

### ***4.3 Other Applicable International Treaties, Law, and Guidance***

Further support for ICCA recognition in protected area overlap situations comes from provisions in international law for recognition of the collective and individual rights and responsibilities of indigenous peoples, human rights, minority rights, and for the rights of local communities and their members. In these legal instruments the term “ICCA” is generally too new to have been used, but there can be no doubt about the relevance. There is a large body of pertinent international law, including international treaties (conventions and covenants), declarations, and case law, as well as non-binding guidance (see in

particular Jonas *et al.* 2012b for treatment of the full range of international law, policy, and guidance, and also Stevens 2009, 2010, 2013a, b; and Kothari *et al.* 2012).

There is a particularly strong body of relevant international hard and soft law on the rights of indigenous peoples. Many articles of ILO 169, an international treaty that is legally binding on those states that have ratified it, and UNDRIP – which while “soft law” has enormous influence (including in international court decisions) in defining minimum standards, can be interpreted to apply to ICCAs. The rights identified in ILO 169, UNDRIP, and other international instruments (see below) that are pertinent to ICCAs arguably apply to all ICCAs maintained by indigenous peoples (and tribal peoples in the case of ILO 169), including those in situations in which they are overlapped by protected areas (see Stevens 2009, 2010, 2013a, b, 2014c). Stevens (2010), drawing on work by James Anaya (2004), former UN Special Rapporteur on the Rights of Indigenous Peoples, has discussed rights pertinent to ICCA recognition and respect in terms of four broad sets of rights affirmed by UNDRIP and ILO 169. These include “rights to self-determination and autonomy; rights to ownership, control, management, and use of land and natural resources; rights to culture, including cultural integrity and participation in the cultural life of the community’ and rights to self-governance and participation in decision-making” (Stevens 2010:185-6:185-6). In subsequent work Stevens (2013a:75-78) discussed “the right to appropriate recognition of and respect for ICCAs” in terms of seven sets or bundles of rights affirmed by UNDRIP and ILO 169 (Box 4) and also suggested that indigenous peoples’ rights to maintain their ICCAs are also entwined with their “right to responsibility” (see below).<sup>42</sup>

While much of this body of international law, policy, and guidance applies especially to indigenous peoples, there are rights provisions in a number of instruments that can apply to local communities in general or to those that identify as or can be considered to be “tribal peoples,” racial groups, or ethnic, linguistic or religious minorities.<sup>43</sup> These include property rights and cultural rights, the latter of which may be interpreted to apply to customary livelihood practices. The Universal Declaration on Human Rights (1948), the American Declaration on the Rights and Duties of Man (1948), the American Convention on Human Rights (1978), and the African Charter on Human and Peoples Rights (1986) all recognize rights to property that have been interpreted by courts and human rights bodies to include collective tenure rights, in some cases in association with non-indigenous communities (Jonas *et al.* 2012b; MacKay 2007; Morel 2010; Forest Peoples Programme 2013; Indian Law Resource Center with Commission on Economic, Social, and Environmental Policy 2015).<sup>44</sup> Collective property rights are also affirmed by ILO 169 (1989) for those communities that can be considered to be “tribal peoples.” The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, a policy of the UN Food and Agriculture Organization (2012), also identifies rights to collective tenure and to customary tenure without limiting these to indigenous peoples.<sup>45</sup> Cultural rights, in some cases with reference to the right to participate in the cultural life of communities, are identified in the International Covenant on Civil and Political Rights (ICCPR) (1966) (see particularly Article 27 on the rights of ethnic, religious, and linguistic minorities), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966), the Convention on the Elimination of all Forms of Racial Discrimination (CERD) (1965), the Universal Declaration on Human Rights (1948),

the Universal Declaration on Cultural Diversity (2001), the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the American Convention on Human Rights (1978), and the American Declaration on the Rights and Duties of Man (1948).<sup>46</sup>

**Box 4: ICCAs, Rights, and UNDRIP and ILO 169**  
(re-published from Stevens 2013a:76)

Note: Particularly pertinent articles of UNDRIP and ILO 169 are indicated in bold.

***Human rights and freedoms***

Individual and collective rights including non-discrimination, dignity, and political, economic, cultural, and civil rights; substantive rights to life, health, food, housing, security, work, and individual and collectively owned property; procedural rights to information, justice, participation in political affairs, culturally-based education

**UNDRIP Preamble, 13 Articles 1, 2, 7, 18, 22, 30, 38, 39, 40, 43, 44, 45, 46**

**ILO 169 Preamble, 8 Articles: 2, 3, 4, 8, 9, 10, 12, 16**

***II: Customary institutions***

Maintain, strengthen, and revitalize customary political, economic, cultural, and juridical institutions and practices; no forced assimilation

**UNDRIP 15 Articles: 5, 8, 9, 11, 12, 13, 14, 15, 20, 31, 33, 34, 35, 36, 40**

**ILO 169 8 Articles: 4, 5, 6, 8, 9, 17, 27, 30**

***III: Self-determination***

Including self-governance; participation in decision-making and policy development; free, prior, and informed consent

**UNDRIP 11 Articles: 3, 4, 5, 18, 19, 20, 23, 32, 35, 39, 40**

**ILO 169 2 Articles: 6, 7**

***IV: Territories, land, resources, and management***

Ownership, use, and management of customary territories, lands, and resources; recognition of own systems of tenure, including collective tenure; no forced removal or deprivation of means to subsistence and development; restitution/compensation for lands taken without consent

**UNDRIP 17 Articles: 10, 18, 19, 20, 23, 24, 26, 27, 28, 29, 32, 34, 35, 36, 37, 39, 40**

**ILO 169 8 Articles: 4, 13, 14, 15, 16, 17, 18, 23**

***V: Culture and religion***

Maintain cultural integrity and maintain and rejuvenate cultural practices; participate in the cultural life of the community; maintain ways of life including natural resource use; recognition of spiritual relationship with territory, access to and care of sacred places

**UNDRIP 17 Articles: 3, 4, 5, 8, 11, 12, 13, 15, 24, 25, 26, 27, 31, 34, 35, 36, 40**

**ILO 169 9 Articles: 2, 4, 5, 13, 27, 28, 30, 31, 32**

***VI: Environment***

Conservation and protection of the environment and productive capacity of territories, lands, and resources; appropriate assistance in maintaining environmental integrity and capacity of territories

**UNDRIP Article 29**

**ILO 169 3 Articles: 4, 7, 15**

***VII: Development (includes sustainable development, conservation)***

Define own development goals consistent with own identities, cultures, and aspirations

**UNDRIP 4 Articles: 21, 23, 32, 39**

**ILO 169 6 Articles: 2, 6, 7, 15, 18, 30**

Provisions of treaties (besides the CBD), international rights-instruments, and UN guidance documents relevant in ICCA contexts (see Jonas *et al.* 2012b) include:

*UN Treaties*

- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO 2005)
- The Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2003)
- ILO 169 (1989)
- The Convention Concerning the Protection of the World Cultural and Natural Heritage (UNESCO 1972)
- CERD (OHCHR 1965)
- ICCPR (OHCHR 1966)
- ICESCR (OHCHR 1966)

*UN Declarations*

- UNDRIP (UN General Assembly 2007)
- The Universal Declaration on Cultural Diversity (UNESCO 2001)



- The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly 1992)
- The Universal Declaration on Human Rights (UN General Assembly 1948)

#### *UN Guidance*

- Outcome Document of the High-Level Plenary Meeting of the General Assembly Known as the World Conference on Indigenous Peoples (2014)
- Food and Agriculture Organization of the United Nations, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012)
- Secretariat of the CBD, Akwé: Kon: voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (2004).

#### *Regional Conventions and Declarations*

- African Charter on Human and Peoples Rights (1986)
- American Convention on Human Rights (1978)
- American Declaration on the Rights and Duties of Man (1948)

## **4.4 ICCAs, Rights, and Responsibilities in Overlap Situations**

Together these international rights and policy instruments affirm diverse rights of indigenous peoples that pertain to ICCAs overlapped by protected areas. Some of these instruments may also affirm particular rights for certain local communities, such as for those who identify as tribal peoples or as ethnic or religious minorities.<sup>47</sup> Relevant rights of indigenous peoples (which in some cases may also apply to particular kinds of local communities) include, among others, rights to:

- Collective ownership and stewardship of territories, lands, waters, and resources, including through customary collective tenure systems;
- Land restitution in cases where land has been expropriated without free, prior, and informed consent;
- Self-governance and self-determination;
- Free, prior, and informed consent to decisions affecting them and their territories;
- Customary law, legal systems, and institutions;
- Culture and participation in the cultural life of the community;
- Spiritual relationships with territories and places and spiritual practices;
- Livelihood security and practice of livelihoods as an aspect of culture;
- Land use and management;

- Life, food, water, shelter, and security;
- A healthy environment; and
- Development consistent with culture and aspirations

Appropriate ICCA recognition and respect in situations where they overlap with protected areas also requires honouring indigenous peoples' right to responsibility (Jonas *et al.* 2013; Stevens 2013a), a right that some local communities – particularly those who identify as tribal peoples or as ethnic or religious minorities – may also share or share in part. This aspect of responsibility is different from the responsibilities of indigenous peoples and local communities to be accountable for conservation obligations they undertake when they take responsibility under national and international institutional arrangement and procedures for maintaining conservation through their ICCAs, such as when they give their FPIC for them to be formally recognised under national law as protected areas and included in national protected area systems. Here we are concerned rather with prior, intrinsic, rights-based responsibilities in the sense of those grounded in commitments to territory, culture, spiritual relationships and practices, community well-being and solidarity, and past and future generations. Maintaining, strengthening, and restoring ICCAs, including in situations in which government-designated or private protected areas overlap them are associated with indigenous peoples' diverse fundamental, rights-entwined responsibilities (Stevens 2013a:77-78), including responsibilities to:

- “[G]overn themselves according to their values and beliefs;
- [M]anage and care for their territories, including their conservation and sustainable development with due regard for their rights;
- [H]onour gods, spirits, ancestors, and descendants, including by transmitting identity, culture, and territory to future generations and by maintaining spiritual relationships with the territory and protecting it from degradation;
- [S]ecure the lives, health, security and welfare of their peoples;
- [P]romote development that affirms their values, institutions, and aspirations, and
- [D]efend their territories against any use that takes place without their free, prior, and informed consent.”

## 5. Appropriate Governance and Best Practices

There is no single best practice for recognising and respecting ICCAs in situations in which government protected areas overlap with them. Rather there are multiple approaches that can be effective.<sup>48</sup> In all cases recognition will be more secure when rights to collective ownership of territory, self-governance, culture, FPIC, and full and effective participation in protected area governance are recognised. As is clear from the sections above, these rights are now well established in international law and policies. Although some countries have passed or are in the process of developing and agreeing upon promising constitutional and legal provisions (the Philippines, Bolivia, and Ecuador are examples), such rights have not generally been recognised or well realised at the national level.<sup>49</sup>

Formal, legally binding ICCA recognition is often critical in such situations, and could include, among other measures, national law and administrative regulations and rules, sub-national (including at the level of regional “states” as in the USA, provinces, autonomous regions, territories, counties, municipalities and local governments) and local law and regulations, contracts, written agreements such as binding memoranda of understanding, and provisions in protected area management plans. Sometimes such formal measures are specific to individual protected areas. While these provide only localised recognition, they may be important for the immediate security and effectiveness of ICCAs as well as for establishing precedents and models for national reform.

Informal measures can also be extremely valuable and sometimes are desired by indigenous peoples and local communities themselves. This may include help with documentation; assistance with gaining greater visibility and security; promotion of increased awareness by all involved of relevant national and international law and policy, including rights; cross-cultural education and interaction training; and promotion of a supportive institutional culture in government agencies associated with protected areas. Informal, non-legally binding, recognition often may be able to take into account local socio-political and institutional complexities much better than narrower, statutory recognition associated with national protected area system law and regulations. Informal recognition may be particularly valuable in mobilising support from protected area authorities, NGOs, and donors in efforts such as safeguarding ICCAs from resource extraction by outside interests or from incompatible infrastructure development. Such informal measures, however, may not be able to provide sufficient security for ICCAs in the case of dispute or conflict between protected area governance authorities and ICCA custodians. Appropriate formal measures may be prerequisites for effective dispute and conflict management.

Another important aspect of appropriate recognition and respect of ICCAs in protected overlap situations is ensuring that the identification, configuration, zonation, and designation of new protected areas are carried out with awareness of overlaps and with the full and effective participation and FPIC of indigenous peoples and local communities and ICCA custodians.

Assessment, evaluation, and reporting about overlapped ICCAs in existing protected areas are also important in many ways, including that they inform the listing of protected areas as World Heritage sites, the inclusion of protected areas in IUN's new Green List of Protected and Conserved Areas, and monitoring of countries' progress towards achieving the CBD's Aichi targets. The World Heritage nomination and listing process (and standards) have been criticised for being insufficiently informed by concern for the rights of indigenous peoples as affirmed in UNDRIP (Disko and Tugendhat 2014). This may also become a concern with the IUCN Green List of Protected and Conserved Areas, which the IUCN launched at the IUCN World Parks Congress 2014 in Sydney, Australia. Good governance is supposed to be one of the criteria for inclusion on the Green List, but how this is evaluated (and by whom), and whether the perspectives of indigenous peoples and local communities are fully and effectively taken into account, including on recognition and respect for ICCAs overlapped by the protected area is not yet clear.

Internationally, the primary emphasis in assessment and evaluation of protected area has often been on the conservation effectiveness of individual protected areas and the ecological representativeness of protected area systems. There have been calls for greater attention to more comprehensive approaches, including "social impact assessments." The IUCN's recent best practice guideline series volume *Governance of Protected Areas: From Understanding to Action* (Borrini-Feyerabend *et al.* 2014) devotes four chapters to assessing and evaluating protected area governance both for individual protected areas and for protected area systems. This includes attention to diversity of governance types – including ICCAs as protected areas - and governance quality. These guidelines raise the issue of appropriate recognition and respect for ICCAs that have overlapped by protected areas in a "speaking case" study on the Sharwa (Sherpa) ICCAs within Sagarmatha (Mount Everest) National Park and World Heritage Site that underscores the challenges that the Sharwa have faced in gaining governmental recognition of their ICCAs (see Borrini-Feyerabend *et al.* 2014). The guidelines also discuss ICCA recognition as a management sub-unit within a protected area, noting that establishing sub-units can have outcomes that "recognition and support to an indigenous people or local community willing to maintain their customary institutions and traditional governance practices for an ICCA within a government established protected area" (Borrini-Feyerabend *et al.* 2013:105). And in evaluating "governance options to strengthen the protected area" the guidelines observe that sometimes a change in governance type is needed for all or part of the protected area, including "change in the governance type for part of the protected area, for instance, when an ICCA is recognised within a government-governed protected area and its governance is formally attributed to a specific indigenous people or local community" (Borrini-Feyerabend *et al.* 2013:107). We identify recognition and respect for ICCAs in governance/management sub-units of protected areas (see below) as one of several approaches to resolving overlaps of ICCAs and protected areas.

Appropriate attention to the status of ICCAs in protected overlap situations can be made standard in assessments, evaluations, reporting, and listing of protected areas by making this an integral part of attention to good governance, equity and benefit sharing, and rights affirmation. It is important that all assessment, evaluation, and reporting on protected areas and protected area systems, and the listing of protected areas in protected area

systems, the IUCN Green List of Protected and Conserved Areas, and as World Heritage sites include attention to whether protected area definitions, laws, administrative regulations, policies, plans, and governance and management systems and practices appropriately recognise and respect overlapped ICCAs. Indigenous peoples and local communities must fully and effectively participate in such assessments, evaluations, and reporting for it to be accurate, and ways must be found for their full testimony and views to inform their conclusions. In many cases indigenous peoples and local communities may find their participation is marginalised, including by not being sought or incorporated at all, by having been subjected to pressure and inducements, by not being representative or having been obtained through their own representative institutions, or by not having informed conclusions and recommendations. It may be important for indigenous peoples and local communities in such circumstances to issue their own assessments, evaluations, and reporting, and for bodies such as the IUCN, the CBD, and the World Heritage Committee to welcome, seek out, and even to require such input.

## **5.1 Best Practices**

There are diverse means through which ICCAs can be appropriately recognised, respected, and supported in protected area overlap situations. The adoption and implementation of a particular approach and associated institutional and procedural arrangements should fully affirm indigenous peoples' and local communities' rights and responsibilities, and should be developed and implemented with their full and effective participation and free, prior, and informed consent. These arrangements and the institutions, policies, rules, plans, and practices – formal and informal – developed to implement them should adhere to the principles of good governance advocated by IUCN for protected and conserved areas (see Borrini-Feyerabend *et al.* 2014; Borrini-Feyerabend and Hill 2015).

Our research identified a relatively small number of good cases of appropriate recognition and respect for ICCAs in situations in which protected areas overlap with them. Indeed, an extensive review of the protected area literature and of protected area management plans, together with consultation with ICCA Consortium colleagues as well as participants in IUCN and CBD meetings led to our identifying barely thirty exemplary cases, some of which had significant limitations or shortcomings.

Analysing these cases, we found that four approaches stood out for addressing overlap situations (or potential overlap situations) in ways that appropriately recognise and respect overlapped ICCAs<sup>50</sup>:

1. Recognition of indigenous peoples' and local communities' governance authority for the protected area, making the protected area itself an ICCA;
2. Recognition of the separate, equal governance authorities of both indigenous peoples and local communities for their territory and ICCA and the governance authority of the protected area, creating a double or multiple governance status for the overlapped area;

3. Declaration of the overlapped ICCA as a self-governing governance/management subunit or zone within the protected area; and
4. Redrawing the boundaries of the protected area to avoid overlap and avoiding overlap when designating new protected areas.

Study of these cases and of past articulations of best practices for recognising and respecting ICCAs generally (for example, Borrini-Feyerabend *et al.* 2004, 2010; Kothari *et al.* 2012; Stevens 2014a) led us to further identify a number of specific best or good practices that cut across the four highlighted general approaches.

### ***5.1.1 Recognition of Indigenous Peoples' and Local Communities' Protected Area Governance Authority***

This approach retains the overlapped area's status as a protected area by recognising indigenous peoples' and local communities' full authority to govern it and the entire protected area of which it is part. In this situation the integrity of the overlapped area as a customary ICCA is maintained, while the protected area as a whole becomes a new kind of overarching ICCA encompassing a greater area (and possibly also a different range of goals and responsibilities). Recognising the protected area as an ICCA may be done in several ways, including by:

- 1) Legally recognising the existing ICCA, with its customary institutions, as a protected area in its own right;
- 2) Legally expanding the ICCA's governance authority and responsibilities in entrusting it with governance of the protected area (see the Parco Naturale delle Dolomiti d'Ampezzo, Box 5); and
- 3) Collaborating with indigenous peoples and local communities governments and organisations to establish new protected area governance institutions such as indigenous peoples' or local community councils or management committees that effectively make the protected area a new ICCA (see Kanchenjunga Conservation Area case study, Box 5); these new governance institutions must not be simply imposed by state agencies but rather be developed with the full and effective participation of concerned indigenous peoples and local communities and ICCA custodians and have their FPIC.<sup>51</sup>

This approach resolves overlap issues by affirming indigenous peoples' and local communities' governance authority for the region, responding to their wish to govern the overlap area as a protected area, and re-envisioning the protected area as an example of IUCN protected area governance type "governance by indigenous peoples and local communities." As the Kanchenjunga Conservation Area in Nepal case (see Box 5) illustrates, this can be a way to resolve overlap situations in which the protected area was established without indigenous peoples' or local communities' FPIC.

Indigenous peoples and communities may govern the overlapping protected area through customary institutions, including through expanding their customary responsibilities, as

illustrated by the example of the role of the assembly of the *Comunanza of the Regole d'Amazzo* in the governance of the *Parco Naturale delle Dolomiti d'Ampezzo*. They may also establish new governance arrangements such as a protected area management council composed of representatives of indigenous peoples' and local communities' governments and organisations, as illustrated by the *Kanchenjunga Conservation Area*. Such innovation may be important, for example, if new kinds of coordination and joint governance are needed when multiple indigenous peoples or local communities and their ICCAs assume responsibility for governance of a large overlapping protected area. The new protected area governance institutions may draw on customary governance arrangements and law, but may also introduce new institutional arrangements and procedures. This can create a kind of dual governance arrangement in that particular areas may be governed by indigenous peoples and local communities through customary institutions at the level of local ICCAs such as community forests while simultaneously be under administration by the protected area through new institutional arrangements.

Recognising existing ICCAs as protected areas includes "Indigenous Conservation Areas," as endorsed by IUCN in 2008 in two World Conservation Congress Resolutions (4.049 and 4.050). This term recognises that indigenous peoples' and local communities' self-governance and management of their territories, including through their ICCAs, itself constitutes a protected area according to the IUCN and the CBD definitions. In this scenario the overlap situation is resolved by indigenous peoples and local communities assuming sole governance of their territory and the protected area, and doing so through maintaining their own institutions.

Indigenous peoples and local communities will have to take into account national protected area standards when they assume governance responsibility for overlapping protected areas that are part of national protected area systems (and these national standards themselves must first enable governance of protected areas by indigenous peoples and local communities as the IUCN and the CBD advise). This may involve taking on new responsibilities and following new procedures (including, for example, securing state approval of protected area management plans; monitoring and reporting requirements; and new financial practices). Additionally, this can require increased coordination among multiple peoples and communities if multiple ICCAs are overlapped. These new institutional arrangements and practices (even if established by indigenous peoples and local communities themselves) should recognise, respect, coordinate with, and support customary ICCA systems and institutions, which may continue to function within their respective areas. When such new governance arrangements are created it may be important to establish safeguards that respect the integrity of customary ICCAs in order to ensure that they are not undermined.<sup>52</sup> This is the situation that now challenges the several indigenous peoples and local communities whose territories and ICCAs are now administered as *Kanchenjunga Conservation Area* (Box 5).

In those cases where the protected area is overlapped by a larger ICCA, there is also the question of whether or not indigenous peoples and local communities wish the entire ICCA to be recognised as part of the state protected area system.

## **Box 5: Protected Area Governance by Indigenous Peoples and Local Communities**

**Kanchenjunga Conservation Area, Nepal** (Stan Stevens, adapted from Gurung 2006, Jana and Paudel 2010, and other sources)

Kanchenjunga Conservation Area (KCA), declared in 1997, encompasses a 2,035 square kilometres that overlaps with the customary territories (nationalised since the 1960s) of the indigenous Sharwa (Sherpa), Walungpa, and Limbu peoples and includes about 35 villages with a total population of about 5,000 people. In 2006 the government of Nepal transferred governance authority for this protected area to a Kanchenjunga Conservation Area Management Council (KCAMC) composed of representatives of seven regional Conservation Area User Committees, 44 User Groups, and 32 Mother Groups.<sup>53</sup> The handover was formalized on 22 September, 2006, through the presentation of a “certificate of authority” by the Minister of Forests and Soil Conservation to Dawa Tchering Sherpa, the chair of the KCAMC. This followed the approval the previous month of a management plan developed by the KCAMC (with technical support by WWF Nepal) by the Cabinet of the government of Nepal. The management plan had been submitted to the Department of National Parks and Wildlife Conservation for its approval in 2004 (Gurung 2006; Wildlife Watch Group 2012).

KCA is the first, and to date only, state-recognised protected area in Nepal to be governed by indigenous peoples and local communities. This is also the first time governance authority has been recognised with a “certificate of authority,” and the only time that the Cabinet of the government of Nepal has approved a protected area management plan (Gurung 2006).

Jana and Paudel (2010) refer to the KCA as an ICCA. The resident peoples govern the protected area as a whole through a new administrative institution, the conservation area management council, under the IUCN governance type “governance by indigenous peoples and local communities,” as well as governing local areas through new local ICCA institutions such as Community Forest Users Groups (Gurung 2006; Jana and Paudel 2010:30-31).<sup>54</sup>

The status of the region’s long-established customary local ICCAs, moreover, is also unclear. There is no legal recognition – or provision in management planning – of customary community forests, collective management of transhumance, or community management of sacred natural and cultural sites. The state continues to consider the forests and mountains to be state land, and customary collective tenure such as the *kipat* system of forest and pasture tenure is not legally recognised. While Kanchenjunga Conservation Area constitutes a historic handover of governance authority of a state-recognised protected area to indigenous peoples and local communities, it thus has not been accompanied either by restitution of collective land ownership or by legal recognition of customary ICCAs. It remains to be seen whether the new Kanchenjunga Conservation Area governance arrangements appropriately recognise and respect customary ICCAs.<sup>55</sup>



**Parco Naturale delle Dolomiti d'Ampezzo (Natural Park of the Ampezzo Dolomites), part of the Dolomites World Heritage Site, Italy)** (contributed by Grazia Borrini-Feyerabend and adapted from Lorenzi and Borrini-Feyerabend 2011 and Regole d'Ampezzo 2011)

The Natural Park of the Ampezzo Dolomites is an example of the establishment of a protected area, in this case by a regional government, which overlaps with part of the collectively owned, governed, managed and conserved forests and pastures (ICCA) of an ancient institution called Regole of Cortina d'Ampezzo. As the result of a negotiated agreement, the regional government's original intention to create a new institution (Ente Parco) for governing the protected area was revised in favour of entrusting the governance of the protected area to the same community institution that runs the ICCA. Doing so required new legislation at the regional government level and a commitment by the Regole to take on the governance of state-owned areas beyond the geographical and jurisdictional limits of its traditional authority.

This protected area, now also part of the Dolomites World Heritage Site, which includes a number of diverse protected areas, extends on a significant part of the collectively-owned and managed forest and pasture lands in the vicinity of the mountain town of Cortina d'Ampezzo. These commons have been governed by a community assembly through local land use rules (*laudo* and *regole*) for more than 800 years. In 1990 a regional nature park was declared by the government of the Veneto region encompassing some of the collective forest and pasture lands administered by the eleven communities of mountain families (approximately 1,000 families) of the Regole d'Ampezzo (11,400 of its 16,000 ha) as well as 4,700 ha of high mountains and waters under state property.<sup>56</sup>

The regional government had initially favoured establishing the usual governance institution for protected areas in Italy (the "Ente Parco"), but the Regolieri (members of the Regole) insisted that the protected area should be administered by the Regole or there would be no protected area at all. After considerable dialogue and negotiation, new regional legislation was adopted to formalise governance by the Regole. The protected area's website attests that the protected area was "established with the approval of the General Meeting of Regolieri [the members of the Regole]: and that "management of the Park has been entrusted by the Region to the Comunanza delle Regole d'Ampezzo 'by virtue of the specificity of the ancient forms of management of the Ampezzo natural heritage, by them preserved and protected for hundreds of years'" (Natural Park of the Ampezzo Dolomites, n.d.).

The ancient Regole d'Ampezzo governs the protected area as a whole through a management plan that includes zoning and uses of community forests and grazing areas. The plan is developed and approved by the Regole's General Assembly before submission for approval by the regional government of Veneto. Importantly, not only customary management but also governance are today fully recognised in national and regional protected area law. As a matter of fact, the regional and national legislations were both modified specifically to accommodate the important case of the Regole.



**Photo 2:** Spring pasture in the Dolomites. Photo © Regole of Cortina d'Ampezzo.

**Booderee National Park, Australia** (Stan Stevens, adapted from Farrier and Adams 2011 and other sources)

Booderee National Park, in coastal New South Wales to the south of Sydney, Australia, is an example of an understanding that governance of a national park established in the territory of an indigenous people will ultimately be transferred to their authority. This will be the culminating step of a process that has already included the restitution of the land and waters of the protected area to the traditional owners, a change in the name of the protected area, a change from governance by the government to shared governance, and agreement on a lease and two management plans that affirm the intention of the indigenous people and the government to work together towards the transfer of full governance to the traditional owners.

Booderee National Park, with a total area of 63.8 km<sup>2</sup>, including 875 marine hectares, was formerly Jervis Bay National Park (established in 1992). It was renamed in 1997 after ownership was restored to the traditional Koori people owners (the name Booderee, in the Dhurga language, means "Bay of Plenty"). After restitution of tenure a shared governance arrangement was established for the national park, with a management board with a majority of members nominated by the Wreck Bay Aboriginal Community Council.

The aspiration of the traditional owners to govern the protected area was acknowledged in the first protected area management plan, which affirms that "in line with the

aspirations of the Wreck Bay Aboriginal Community for sole management of their Park, this Plan aims to develop and enhance the Community’s ability to eventually manage the Park,” and to advance this the lease through which the indigenous owners authorise the operation of the national park further includes provision for the employment of indigenous park staff (Booderee National Park Board of Management and Director of National Parks 2002:26). This was the first time in Australia that such a goal has been articulated in a protected area management plan (Farrier and Adams 2011).

These goals are reaffirmed in the recently completed second management plan (2015-2025). The Wreck Bay Aboriginal Community Council’s “Vision Statement” in the management plan declares that among its primary objectives are “Sole ownership of all lands and waters within the Jervis Bay Territory” and “Sole management of its freehold land and waters, allowing for Community responsibility, empowerment and self determination.” The goal of sole management of the national park is further highlighted in the section of the management plan, which discusses key issues for the Wreck Bay Aboriginal Community, which attests that “The Wreck Bay Aboriginal Community is working towards sole management of Booderee National Park. The requirements of the Lease support progress towards this goal.” Eventual sole management by the Wreck Bay Aboriginal Community is also addressed in the sections of the plan on the current joint management arrangement and in an entire chapter of the management plan on “Working towards sole management.” The plan’s discussion of joint management begins with the statement that “The goal of joint management arrangement at Booderee is eventual sole management of the park by the Wreck Bay Aboriginal Community,” (Australia Government Director of National Parks and Booderee National Park Board 2015: v,10, and 40). The chapter on “Working towards sole management” is devoted to assessing progress under the first management plan towards sole management, reviewing current issues, and discussing priority actions that need to be undertaken – including agreement on a road map.

### ***5.1.2 Double or Multiple Governance Status***

A second appropriate approach to recognising and respecting ICCAs in overlap situations can be to recognise both the governance authority of the protected area and that of indigenous peoples and local communities for their self-governance of their territory and ICCAs. This creates a double or multiple governance status for the overlapped area. In such cases the protected area should have a shared governance arrangement, enabling Indigenous peoples and local communities to continue to govern their own territories and areas through their own, separate institutional arrangements, including ICCAs, while at the same time participating in the governance of the overlapping protected area. Appropriate ICCA recognition and respect will also be more likely when indigenous peoples’ and local communities’ collective tenure over the overlap area is secure.

A double or multiple governance status arrangement is a “polycentric” relationship in which both forms of governance have legitimacy and importance and neither is considered to be “central” or superior. This promotes co-existence with working relationships that

draw on agreed or legally defined jurisdictions and accountability and on agreed means of communication and coordination. Both the ICCA and the overlapping protected area will have conservation related responsibilities – any overlap in these should be carefully worked out and accountability (for example, to community members and to government agencies) should be clarified, including in management plans and in perhaps also in law or in legally-binding agreements. Respectful co-existence and coordination between the protected area and the ICCA should be advanced through measures that secure and facilitate realisation of indigenous peoples’ and local communities’ rights, the responsibilities and the autonomy and integrity of the overlapped ICCA, and establish clear jurisdictions and accountability for the protected area and the ICCA.

Double status arrangements are particularly important in South America, and have enormous potential in India as a result of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act in 2006 (Box 6). In South America Bolivia, Brazil, and Colombia recognise that overlapped areas can have status both a protected area in the national protected area system and an indigenous territory. In Bolivia the Pilón Lajas Biosphere Reserve and Indigenous Territory (see Box 6) and Isiboro Sécure National Park and Indigenous Territory are examples of cases in which an indigenous territory (*Tierras Comunitarias de Origen*, TCOs) continues to have self-governance of areas that are also protected areas (Cisneros and McBreen 2010).<sup>57</sup> Indigenous peoples in these overlap situations prepare their own *plan de vida* (life plan), which is later harmonized in a single document with a separately developed protected area management plan. Indigenous peoples continue to maintain customary use and management of the lands, waters, and resources of their territory. In Brazil protected areas overlap with indigenous lands (*terra indígena*) particularly in the “legal Amazon,” where 414 *terras indígenas* cover 22% of the region, including the complete overlap of Mount Roraima National Park with the Raposa-Serra do Sol indigenous land.<sup>58</sup> The overlapped areas in these cases remain indigenous reserves, while the protected areas have a shared governance arrangement in which indigenous peoples participate together with the National Indian Foundation (FUNAI), and the Chico Mendes Institute for Biodiversity Conservation (ICMBio) (Veríssimo *et al.* 2011). In Colombia, where 59 indigenous and Afro-Columbian territories (*resguardos*) overlap completely or partially with national parks, a special management regime (SMR) for shared governance of the overlap area is developed. This requires consideration of the inputs of both indigenous peoples’ culture or *plan de vida* and the protected area management plan, procedures for joint planning, implementation, and monitoring by indigenous and state authorities, and attention to indigenous peoples’ customs, land use, and conservation objectives in the development of any zoning (Riascos de la Peña *et al.* 2008; see also Cisneros and McBreen 2010; Premauer and Berkes 2012).

Such double or multiple status approaches can considerably increase conservation connectivity beyond the encompassed protected areas by linking them with larger territories and areas conserved by indigenous peoples and local communities. At the same time they provide additional security to indigenous territories from some external threats, such as unwanted resource exploration and extraction or infrastructure development pressure.

Ensuring that indigenous peoples and local communities are able to maintain the autonomy, integrity, and effectiveness of their ICCAs in double or multiple status arrangements, however, may be a challenge. It is important to clarify jurisdictions and establish effective means for communication, coordination, collaboration, and dispute resolution. It is essential that indigenous peoples and local communities fully and effectively participate in the governance of the overlapping protected area through governance arrangements that respect their rights and responsibilities, including through shared governance. Shared governance arrangements must be developed with indigenous peoples' and local communities' full and effective participation and with their FPIC.

A double or multiple status approach should include safeguards for the autonomy of ICCAs. This can be achieved through many means, among them treaties, laws, legally binding administrative rules and agreements, and provisions in protected area management plans that recognize and respect indigenous peoples' and local communities' self-governance of their ICCAs, including their own strategies and plans for them. Appropriate associated measures may include safeguards for indigenous peoples' and local communities' collective tenure, governance authority, and rights; agreed conflict management arrangements; and commitments for maintaining conservation and other standards. All such measures should be developed with the concerned indigenous peoples' and local communities' full and effective participation and adopted only with their FPIC.

## **Box 6: Double Status Arrangements**

**Pilón Lajas Biosphere Reserve and Indigenous Territory, Bolivia** (Stan Stevens, adapted from Peredo-Videa 2008 and United Nations Development Programme 2012)

Pilón Lajas was designated as a biosphere reserve in 1977. The region came to have double status as a protected area and an indigenous territory in 1992 when the government of Bolivia adopted the Indigenous Territory Declaration, Decree No. 23110, which recognized the 4,000 km<sup>2</sup> Pilón Lajas Biosphere Reserve and Communal Lands (RB-TCO Pilón Lajas). The declaration of the region as communal lands as well as a protected area came in response to the 1990 March for the Dignity and Territory of the Indigenous Lowland Villages. In 1992 the Tsimané Mosen Regional Council (*Consejo Regional Tsimane Mosen*; CRTM) was formed, and in 1997 received title to the region as the Territorio Comunitario de Origen (TCO) of four indigenous peoples, the Tsimane, Mosen, Tacana, and Esse-Ejja. As of 2012 the Tsimané Mosen Regional Council represented 22 indigenous communities that reside in the Biosphere Reserve with a population of 336 families (2,080 people). The regional council is now a member of the ICCA Consortium.

This region now has a double legal status, with both the protected area and the indigenous territory recognised by the Bolivian state. Communities self-initiate and govern their land management in their indigenous territory, including through maintaining customary land use and management institutions and practices. They

coordinate with the biosphere reserve administration through their regional council. The biosphere reserve is governed through a shared governance arrangement by the Tsimané Mosen Regional Council and the Bolivian state's National Service of Protected Areas (SERNAP).

Biosphere reserve management – including annual operating plans – is guided by the Management Plan and Life Plan (*plan de vida*) developed by communities and the regional council in 2007. The development of this plan is reported to have been highly participatory, with input from all the communities in the area under the direction of the leadership council of CRTM. It commits the communities and Tsimané Mosen Regional Council to a set of goals over a ten-year timeframe.

### **Biligiri Rangaswani Temple Tiger Reserve and other Cases, India** (Neema Pathak Broome, with a contribution from Aman Singh)

Although in India large part of tribal and non-tribal territories and areas were taken over by the colonial and post-colonial governments over the last century and subsequently declared government controlled forests such as reserved forests and protected areas, these continue to be accessed and used by such communities despite their lack of any formal or legal rights to do so. Many communities continue traditional conservation, use, and management practices, including custodianship of sacred sites and de facto conservation and management of resources, as is the case with the *orans* and other systems of management of forests and rangelands and care of sacred sites in Rajasthan (Singh 2011) and sacred forests, wetlands and other ICCAs in many parts of India (Pathak 2009 and Pathak and Dash 2012). In other cases, however, traditional conservation, use and management practices have broken down.

The enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act in 2006 now provides an opportunity for forest lands including those within protected areas to be reclaimed by local tribal and non-tribal forest dependent communities as their traditional community forest resources. The Act empowers local communities and vests the rights and responsibility with them to use, manage, and conserve these CFRs. This has created a unique overlap situation in many protected areas where CFRs titles have been received or are in the process of being claimed by local communities. For example in Biligiri Rangaswani Temple Tiger Reserve, 25 of the 62 tribal settlements within the protected area have already received Community Forest Resource titles, with the result that most of the total area of the protected area (330 km<sup>2</sup> of 540 km<sup>2</sup>) is now legally under community ownership while such title claims are pending for the remainder (Desor 2012).

Another opportunity for recognition and respect of ICCAs in situations where protected areas overlap with them comes from their legal recognition by the constituent states of India. For example, the state of Rajasthan provides for recognition of *orans* within forest areas. It has proved difficult to recognise them, however, within protected areas (Singh 2011).

### **5.1.3 ICCAs as Protected Area Governance/Management Sub-units or Zones**

Another approach to clarifying and reconciling ICCA/protected area overlap situations results when indigenous peoples and local communities agree for the overlap of their ICCAs and protected areas to continue, with their ICCAs being recognised as self-governed governance/management sub-units or zones of the protected area. It is important that these subunits respect the integrity of ICCAs by ensuring their self-governance, recognising that the custodian indigenous peoples and local communities should govern the sub-unit through their own institutions (including customary ones), and that they decide the sub-unit management goals and practices. These governance arrangements and management goals and practices may usually be the ones already in place for the overlapped ICCA, of indigenous peoples and local communities may choose to modify or expand these. It is critical that such sub-units should not be regarded by protected area authorities as an opportunity to require local leaders and institutions to impose externally-conceived policies and practices.

The mutually agreed designation of an overlapped ICCA as a protected area sub-unit creates a complex governance situation in which indigenous peoples and local communities continue to self-govern their ICCAs as protected area sub-units that, while coordinating with the protected area, retain governance arrangements which are distinct from those of the protected area as a whole. Recent IUCN protected area governance guidelines note that this sub-unit approach may emerge as a result of “recognition and support to an indigenous people or local community willing to maintain their customary institutions and traditional governance practices for an ICCA within a government established protected area” and suggest that “when an ICCA is recognized within a government-governed protected area and its governance is formally attributed to a specific indigenous people or local community” that a “change in governance type for part of the protected area” will be needed (Borrini-Feyerabend *et al.* 2013:105-107).

To some degree the sub-unit approach can be, in effect, a form of double status arrangement as discussed in approach 2 above. In both cases there are two separate, different, overlapping systems of governance. In the case in which ICCAs are a sub-unit of the protected area, however, there may be stronger coordination between the custodian indigenous people or community and the protected area. It is vital that the indigenous peoples and local communities be able to maintain the integrity of their ICCAs in this situation, which requires the ability to self-govern them according to their own values and goals even though the ICCA may to some degree now come under the overall responsibility and oversight of the protected area of which it is a part. This is a very different situation than what can develop when zoning is not governance based. In that case protected area authorities themselves may establish the management goals and authorised uses of protected area zones, and in so doing undermine customary ICCAs by failing to recognise indigenous peoples’ and local communities’ authority to define their own goals and regulations for their territories and areas.

It is important to clarify the specific authority, jurisdiction, rights, and responsibilities accorded to indigenous peoples and local communities for administering their ICCA sub-unit. Safeguards will be required to ensure autonomy and rights, including the right to maintain customary ICCAs rather than to be forced to replace or undermine them with new, standardized protected area institutional arrangements. This should include measures to ensure communication, collaboration, and conflict mediation. Appropriate recognition and respect for ICCAs in this situation will best be secured and guaranteed when the protected area has a strong and effective shared governance arrangement which facilitates indigenous peoples' and local communities' full and effective participation in the governance of the protected area and their free, prior, and informed consent to any decisions affecting their ICCA sub-unit.

There are examples in several countries of indigenous peoples and local communities having recognised governance authority for maintaining ICCAs as protected area sub-units or zones. As illustrated in Box 7, Mount Kalatungan Range Natural Park in the Philippines (Reyes personal communication; UNEP n.d.) and Kayan Mentarang National Park (KMNP) in Indonesia (Eghenter, personal communication; Eghenter and Labo 2003) are both examples of situations in which indigenous peoples' self-governance of ICCAs has been recognised within overlapping protected areas that have shared governance arrangements for the protected area as a whole.

Another important example is Ob Luang National Park in northern Thailand, which overlaps with the territories of the Karen and Hmong peoples. Here a long conflict grounded in Thai law that makes settlement in protected areas illegal was defused by new tolerance and cooperation associated with a shared governance project. This project included community mapping of customary use areas, which was followed by better appreciation of the conservation benefits of Karen and Hmong management of community forests and sacred forests and respect for their use and management of them. In 2012 Ob Luang National Park was one of the pilot assessments of the Whakatane Mechanism, an initiative of IUCN, Forest Peoples Programme, and other partners. While other early Whakatane Mechanism assessments were conflict management efforts carried out in response to indigenous peoples' appeals, Ob Luang National Park was the first example of the use of the Whakatane Mechanism to instead highlight and promote good practices. In the case of Ob Luang National Park the assessment celebrated the new approaches that have been implemented in recent years in the hope of encouraging the Thai government to implement these on a widespread basis (Forest Peoples Programme 2012; Freudenthal *et al.* 2012; Trakansuphakon, personal communication).



## Box 7: Protected Area Governance/Management Sub-units

**Mount Kalatungan Range Natural Park, Philippines** (contributed by Giovanni Reyes; see also UNEP-World Conservation Monitoring Centre n.d.)

In 2000 this interim protected area was declared by presidential decree -- Presidential Proclamation No. 305 -- and awaits official recognition by an Executive Order from the President of the Philippines. The natural park and its buffer zone overlap the customary territories of 12 Indigenous Cultural Communities of the Menuvù/Manobo, Talaandig, and Bukidnon tribes, most of whom have filed claims for Certificates of Ancestral Domain (one of which has thus far been awarded).<sup>59</sup> In 2010 these communities established a Mount Kalatungan Range Council of Elders that strengthened shared governance of the natural park between the Protected Area Management Board (PAMB) and the Indigenous Cultural Communities. One of these, the Menuvù (who have not yet been awarded a Certificate of Ancestral Domain Title, has documented and mapped its customary territory (all of which overlaps the natural park and buffer zone).<sup>60</sup>



**Photo 3:** The Menuvù community's 3-D participatory model of their ancestral domain, part of the documentation of their ICCA. Photo © Glaiza Tabanao.

In 2012, the Menuvù community of Balmar publicly declared approximately 4,000 hectares of the 13,200 hectares of their customary territory as their *Idsesenggilaha* (sacred place) and listed it on the ICCA Registry maintained by the UNEP-World Conservation Monitoring Centre.<sup>61</sup> The Protected Area Management Board (PAMB), a multi-stakeholder body composed of representatives from government agencies, local government units, NGOs, the academe, and indigenous peoples, subsequently recognised these and other ICCAs overlapped by the protected area.

The PAMB revised its protected area management plan to recognise and incorporate Menuvù authority for protecting the *Idsesenggilaha*. The revision was done to integrate the Menuvù's Community Conservation Plan (CCP) as well as the plans of other indigenous peoples' communities living within the park's premises. This should ensure that community-identified plans and programs will be accorded support by the PAMB.

No MoU has been signed between the community and the PAMB. The PAMB however signed a Board Resolution supporting the ICCA and adopting the CCP. As a result, the Protected Area Management Plan has been revised to integrate the CCP into its park protection and development programs. The PAMB now recognises and supports all ICCAs in the protected area in this way.<sup>62</sup>

**Kayan Mentarang National Park (KMNP), Indonesia** (contributed by Cristina Eghenter; see also Eghenter and Labo 2003)

In 1996, an existing strictly protected nature reserve was re-designated as Kayan Mentarang National Park (KMNP) based on the results of research project "Culture and Conservation" which proved that the protected area was inside the customary territories of eleven Dayak indigenous communities and the area had been managed sustainably for centuries.

The new national park status allowed for a zoning system with traditional use for Indigenous communities. Participatory mapping delineated the areas actively used for agriculture and extraction, and traditionally conserved areas (e.g., *tana' ulen*). In 2002, the Management Plan for the KMNP was approved with a decree of the Minister of Forestry which states: "The KMNP shall be managed in collaborative way which involves all stakeholders, it is community-based, based on the approved MP and the principles of sharing responsibilities, sharing benefits, and sharing roles in the management of the park." The communities supported by an NGO (WWF) continued the dialogue with the central authorities and succeeded in instituting a multi-stakeholder board (DP3K) to ensure proper participation and collaboration in the management of the park. The communities represented in FoMMA (Alliance of the Indigenous Peoples of the KMNP), moreover, negotiated with the authorities for a change in the external boundary of the park to exclude village and agricultural areas from the national park.



**Photo 4:** Meeting for discussing the MoU between the national park and the local people for Lalut Birai forest station within the *tana ulen* in 2010. Photo © WWF-Indonesia/Cristina Eghenter.

Subsequently, FoMMA, together with representatives of WWF and the national park authorities, drafted the guideline for criteria and indicators for zonation in KMNP. The document fully recognises that the national park is within eleven larger customary territories, proposes three main domains (zones), one of which is “customary domain” and acknowledges ICCAs (*tana’ ulen* areas) by recognising areas of forest and the watershed of tributaries conserved and protected by Dayak communities with special regulations and practices (*tana’ ulen, tana’ jaka* etc.). It proposes that traditional/customary regulations be adopted and gives local communities full control over issues such as ecotourism and sustainable use of non-timber forest products. The document was approved in 2010 and is the legal basis for the implementation of zonation in the KMNP (Eghenter personal communication). Subsequently one of the several Dayak villages with customary territory within the national park signed its own agreement with the national park authorities to maintain control of the governance of their *tana’ ulen* and of economic benefits generated by its sustainable use (including from ecotourism, research, and education).

#### ***5.1.4 Redrawing the Boundaries of the Protected Area and Avoiding Overlap when Designating New Protected Areas***

Another possible approach to addressing the overlap of protected areas and ICCAs is to realign the boundaries of existing ones to avoid overlap.<sup>63</sup> Avoiding overlap by redrawing boundaries affirms indigenous peoples' and local communities' governance of their territory or areas and the ICCAs within them without these areas also being governed as part of a protected area. Depending on negotiations and the overlap geography (see Chapter 1) redrawing protected area boundaries to avoid overlap with an ICCA can create several different new spatial and governance arrangements, including:

- A smaller protected area is ordered by a recognised ICCA;
- The protected area has a recognised ICCA within its boundaries, but this is an enclave under an indigenous people's separate governance and jurisdiction;
- The protected area becomes an enclave within a surrounding ICCA; and
- The protected area is degazetted or decommissioned, with the entire formerly overlapped area recognised as an indigenous people's territory and ICCA.

There are multiple approaches that can be negotiated, including:

1. Restitution of tenure and full governance authority of the overlapped area to its custodian indigenous peoples and local communities, who continue to govern it as an ICCA (see the Carson National Forest, New Mexico, USA, Box 8) but who do not maintain it as a protected area that is part of the national protected area system; and
2. Restitution of tenure and full governance authority of the overlapped area to its custodian indigenous peoples and local communities, with all or part of the area governed by them as a protected area that may or may not be part of the national protected area system (see the Gifford Pinchot National Forest and Mount Adams Wilderness Area, Washington State, USA and the Mungkan Kandju National Park (now Oyala Thumotang National Park), Australia, Box 8).

In all of these scenarios the degree of future shared conservation goals and coordination between the protected area authorities and the custodians of the ICCA may vary. This depends on existing relationships as well as the legal terms under which the redrawing of boundaries takes place. Among the important factors are whether the act of redrawing protected area borders serves as an impetus to new efforts to respectfully co-exist or work together, what formal or informal understandings and arrangements are reached concerning responsibilities, goals, communication, and coordination of management, enforcement, and other matters, and whether past experience fosters continuing distrust or animosity.

In all of these cases the resolution of the overlap and the recognition of indigenous peoples' and local communities' full governance authority for the area reaffirms for the ICCA custodians their rights and responsibilities towards their territory and acknowledgement of the importance of their stewardship of it as an ICCA. It can also reaffirm their ownership

of the overlapped area, as the boundary change may be seen as validating their customary collective tenure and may be accompanied by formal legal restitution of tenure. Full indigenous peoples' and local communities' governance authority will also often secure, and in some cases re-establish, customary uses and management practices and provide an opportunity to adopt new goals, regulations, and management as seems appropriate to them. The restitution of territorial control and recognition of ICCAs can also be an important impetus for increased community commitment to stewardship and for transmission of knowledge, values, and responsibilities to youth and the creation of new employment opportunities for them in conservation and restoration work as well as in tourism.

One outcome of the redrawing of protected area boundaries can be the declaration of the formerly overlapped territory as a new protected area governed by indigenous peoples and local communities, as illustrated by two of the case studies in Box 7).<sup>64</sup>

Thus far resolutions of overlap situations by redrawing protected area boundaries have been uncommon and when they occur are often outcomes of redress of injustices caused by the establishment of the overlapping protected area without the FPIC of indigenous peoples and local communities. In these situations other resolutions are possible, as discussed above, and the decision to redraw the protected area boundaries may usually reflect an inability to reach agreement on these other arrangements.

The redrawing of boundaries has often been highly controversial, and may be opposed by some conservation organisations as well as by governments and governmental agencies. Often this action is only taken following court decisions or constitutional or legal change, and it may often follow long campaigns by indigenous peoples and local communities (see Box 8). Indigenous peoples' right to self-determination and to FPIC make this a legitimate remedy and redress for past rights violations. In many cases this may be their preferred resolution. Some or all involved parties, however, may have strong concerns about the area's future conservation status and integrity and about the environmental and other ramifications of possible new land management and use policies. There may, for example, be concern that changed protected area status and regulations could allow development that would not have been allowed under protected area status. This will particularly be the case where there is the potential for extractive industrial exploitation or mass tourism development.

In the USA such concerns have been raised by some government officials and legislators as well as some environmental NGOs, leading in some cases to conditions being attached by Congress to some of the land transfers see Box 8).<sup>65</sup> Such conditions, however, should be negotiated prior to government legislative or executive action with the free and full participation of the concerned indigenous peoples and local communities and the resulting agreements would have their FPIC.

Agreements accompanying protected area boundary changes and the restitution of land and governance authority to indigenous peoples and local communities could also include understandings about actions that indigenous peoples and local communities would take in

governing the area, such as affirmations to maintain and strengthening customary ICCAs or through declaring indigenous peoples' and community protected areas (see the case of Mungkan Kandju National Park (now Oyala Thumotang National Park), Australia, in Box 8).

### **Box 8: Redrawing Protected Area Boundaries**

Examples from the USA and Australia illustrate some of the different possible outcomes of the redrawing of protected area boundaries in cases where they overlap with indigenous peoples' customary territories, including the attachment of safeguard conditions and land management and conservation initiatives by indigenous peoples following the land restitution that include declaring their own protected areas and protecting a former overlap area as a sacred place.

#### **Carson National Forest, New Mexico State, USA (Stan Stevens)**

One of the most famous cases of land restitution in the USA from a protected area is that of the return in 1970 of Blue Lake and its surrounding mountain forests and grasslands from a national forest in New Mexico to the Pueblo of Taos. This was done by changing the boundaries of the protected area through an act of Congress after more than half a century of efforts by the tribe to regain control over an area that is highly sacred to them and that they felt was being inappropriately protected and cared for by the U.S. Forest Service.<sup>66</sup>

Blue Lake is an extremely important sacred place for the people of the Taos Pueblo that is the destination of a long-standing multi-day annual pilgrimage that traditionally is closed to non-tribal members. In 1906 the mountain lake and surrounding area, 50,000 acres, were expropriated by the U.S. government and incorporated into Carson National Forest. In 1964 2,000 of these acres were included in Wheeler Peak Wilderness Area as part of the initial development of the national wilderness preservation system (Gordon-McCutchen 2008; Parker 1989).

In 1970, after years of political manoeuvring and over the opposition of the US Forest Service, Congress passed legislation supported by the tribe that returned 48,000 acres from the national forest as trust land for the Pueblo de Taos (2,000 acres remained in Wheeler Peak Wilderness). The Congressional act that transferred this land out of US Forest Service governance and national forest status included several conservation safeguards. These gave conservation oversight responsibility to the area to the Secretary of the Interior (whose department includes the Bureau of Indians Affairs and has responsibilities for federally recognised Indian tribes and reservations), required that the "lands shall remain forever wild and shall be maintained as a wilderness as defined in section 2(c) of the Act of September 3, 1964 (78 Stat. 890)," and specified a traditional, non-commercial uses of the area by tribal members that were authorised subject to any conservation regulations imposed by the Secretary (An Act to Amend Section 4 of the Act of May 31, 1933).

Following the passage of this act Taos Pueblo has exercised customary governance and management over the region under the legal oversight of the Secretary of the Interior. The

act restored customary access and use rights and was compatible with the expressed desire of the pueblo to protect and care for the area as a sacred place. Consonant with protecting the area as sacred the tribe closed the area to non-tribal members under a provision of the Congressional act that stipulated that “with the consent of the tribe, but not otherwise, non-members of the tribe may be permitted to enter the lands for purposes compatible with preservation as a wilderness” (An Act to Amend Section 4 of the Act of May 31, 1933).

### **Gifford Pinchot National Forest and Mount Adams Wilderness Area, Washington State, USA (Stan Stevens)**

According to the Treaty of 1855 the Yakama Nation retained the summit of their sacred mountain, Pahto (Mt. Adams), and its southeast slope. However, due to an 1890 “surveying error” 119,000 acres, including the summit, were nationalised. Most of this, 98,000 acres, had passed into private ownership by the time the original treaty map was rediscovered in 1930. No action was taken to restore any of the land to the Yakama Nation until 1972, when President Richard M. Nixon addressed the violation of the treaty by restoring 21,000 acres of federal land to the tribe by executive order. In 1909 this 21,000 acres had been incorporated into the Mount Rainier Forest Reserve, and later this became part of the Gifford Pinchot National Forest. In 1964 the land was also designated part of the Mount Adams Wilderness, continuing under US Forest Service governance (Anonymous n.d.).

The boundary of the national forest was modified to restore the 21,000 acres that had been wrongly expropriated to the reservation as trust land under the jurisdiction of the Secretary of the Interior (and the Bureau of Indian Affairs). No conditions were attached to this executive order. The Yakama tribe chose to declare their own protected area, the Yakama Nation Mt. Adams Recreation Area. Although the regulations under which they govern it are similar to those in the Mt. Adams Wilderness – including allowing recreational use by non-tribal members (the only part of the reservation on which this is allowed), the tribe chose to discontinue the area’s inclusion in the national wilderness preservation system (Nixon 1970; Yakama Nation nd.)

### **Mungkan Kandju National Park (now Oyala Thumotang National Park), Australia (Stan Stevens)**

In an Australia case of the redrawing of protected area boundaries, ownership of the 456,000 ha Mungkan Kandju National Park was restored during 2011 and 2012 to its customary Aboriginal owners, with the boundaries redrawn in 2011 to revoke a 75,074 ha area from the national park to transfer the land as freehold to the Wik Mungkan, Ayapathu, and Southern Kaanju peoples as freehold title and the handover of ownership of the now smaller national park in 2012. The national park was renamed Oyala Thumotang National Park, with its Aboriginal owners now sharing in its governance. These actions belatedly redressed an injustice in which the Queensland government had prevented the Wik Mungkan People from purchasing the national park area when it had been held as a pastoral lease in the 1970s and then – after a court decision that should have facilitated the purchase – declared it Archer Bend National Park (later renamed Mungkan Kandju National Park (Pearson 2012).

Nearly half of the land restored to Aboriginal ownership in 2011 as freehold by the redrawing of the national park boundaries became a new protected area, the Yuukingga Nature Reserve. This reflected conservation agreement that had been reached prior to the handback by the Oyala Thumotang Land Trust that represents and traditional owners and the government of Queensland. The result was the dedication by the traditional owners of 32,200 hectares to be the Yuukingga Nature Refuge, governed by them as part of the national reserve system (Pearson 2012; Queensland Government, the Queensland Cabinet and Ministerial Directory 2012; Queensland Government Department of National Parks, Sport and Racing n.d.).



## 6. Key Findings

In this report we have explored the phenomenon, ramifications, and possible resolution of issues raised by the widespread overlap of government designated protected areas and the territories and areas of indigenous peoples and local communities, including ICCAs. Our research and analysis has suggested a number of points which can be summarised in nine key findings. This chapter briefly reviews these before we present recommendations in the final chapter.

1. The overlap of government-established protected areas and the territories and areas of indigenous peoples and local communities, including ICCAs, appears to be widespread. Although comprehensive data are not yet available, our extensive literature and protected area management plan survey and consultation with members of the ICCA Consortium and others at IUCN and CBD meetings suggests that this involves a very large number of protected areas in many countries.

2. There are few examples of ICCAs that are appropriately recognised and respected in situations in which protected areas overlap with them. Our extensive survey of the protected area literature and of management plans and our consultations with members of the ICCA Consortium and others at IUCN and CBD meetings identified very few examples (only about thirty) of complementarity in which overlapped ICCAs and protected areas co-existed with mutual recognition and coordination or cases of other means of addressing overlap situations in ways that recognised and respected overlapped ICCAs (Chapter 5). As noted in the case studies, even some of these have significant limitations or shortcomings. Clearly appropriate recognition and respect for overlapped ICCAs is a major challenge and a lost opportunity for achieving effective, equitable, and good governance of protected areas; rights-based conservation; conservation synergies and connectivity; and rectifying past and continuing injustices.

3. These overlaps create complex multi-scale, multi-level, and bi-lateral governance contexts and relationships.<sup>67</sup> Several different patterns can be identified, four of which are identified and discussed in this report:

- Complementarity: co-existence with recognition and coordination;
- Contradiction and conflict: intentional or inadvertent undermining of ICCAs;
- Co-optation: undermining ICCAs by transforming them into shared governance arrangements; and
- Neglect: independent operation without legal recognition or coordination

Of these four, only the first promotes good governance and rights recognition standards and fosters possible conservation synergies and social reconciliation: complementarity can be achieved through several different governance arrangements, as discussed in point 8 below.

4. Appropriate ICCA recognition and respect for ICCAs in overlap situations has many different potential conservation and socio-cultural benefits beyond those already realised

by protected areas. Failing to recognise and respect ICCAs in these overlap situations has significant potential costs – including rights violations and lost conservation opportunities.

5. Articles 8(j) and 10(c) of the CBD provide support for the appropriate recognition and support of ICCAs overlapped by protected areas, as do several decisions of the parties that call for parties to recognise rights in the context of the establishment and management of protected areas, ensuring indigenous peoples' and local communities' full and effective participation in protected area governance, "taking into account" indigenous peoples and local communities' "own management systems and customary use" in protected areas (COP 9 Decision IX/18, par. 19) and "the application of traditional knowledge and customary use in protected areas" (COP 11 Decision XI/14, section F par 10(c)). A number of other decisions of the Parties are relevant to the recognition of ICCAs as types of protected area governance but do not specifically address overlap situations. The adoption of a decision on protected areas and/or on the implementation of articles 8(j) and 10(c) is needed that specifically addresses ICCA and protected area overlap situations. This should include guidance to the parties to include such recognition and respect in implementing the PoWPA and the Programme of Action on Customary Sustainable Use of Biodiversity.

6. Existing IUCN policy, including several IUCN World Conservation Congress resolutions and recommendations, provides support for the appropriate recognition and respect of ICCAs overlapped by protected areas. These include policies on the affirmation of rights-based conservation, UNDRIP, rights in protected areas, governance of protected areas, ICCAs, Indigenous Conservation Territories, and sacred natural sites in protected areas. This body of policy is much more progressive and detailed than what has thus far been adopted by the CBD in its decisions. Moreover, in contrast to CBD provisions and decisions, existing IUCN policy already explicitly endorses the recognition and respect of ICCAs overlapped by protected areas. Gaps and limitations in these policies and their implementation, however, make adoption of new policy urgent. The need for such policy was highlighted in recommendations from the IUCN World Parks Congress 2014. IUCN World Conservation Congress 2016 Motion 29 is targeted to address these issues, including directing the IUCN to implement a number of important measures that it can undertake on its own initiative with transparency and accountability, such as with the Whakatane Mechanism, Green List of Protected and Conserved Areas, reporting to the World Heritage Committee, UN Permanent Forum on Indigenous Issues, and the CBD.

7. International law provides further support for recognising and respecting ICCAs that are overlapped by protected areas. Many of the provisions of the UN Declaration of the Rights of Indigenous Peoples are pertinent for indigenous peoples' ICCAs, and a number of the articles of ILO 169 apply to those of indigenous peoples and tribal peoples.

8. Overlap situations can be addressed and ICCAs can be appropriately recognised and respected in overlap situations by several different governance arrangements, including:

a. Recognising indigenous peoples' and local communities' governance authority for the overlapping protected area to indigenous peoples and local communities;

b. Legally recognising a double or multiple governance status for the overlapped area, including the overlapped ICCA;<sup>68</sup>

c. Recognising the overlapped ICCA as a governance/management subunit or zone of the protected area under the authority of the custodian indigenous people or local community;<sup>69</sup> and

d. Redrawing the boundaries of the protected area to end overlap.<sup>70</sup>

9. ICCAs must be appropriately recognised and respected when new protected areas are being established or existing protected areas expanded or re-designated. The establishment, expansion, or re-designation of the protected area itself must be subject to indigenous peoples' and local communities' FPIC. The governance approaches identified above (point 8) can also be implemented in such situations with the full and effective participation and FPIC of the indigenous peoples and local communities concerned and they should participate fully and effectively in the governance of the protected area itself.

10. Best practices include recognising and respecting:

a. Indigenous peoples' and local communities' ownership or custodianship, including customary collective tenure (see also the conclusions of the ICCA Consortium policy brief and companion paper number 2, Almeida *et al.* 2015a, b);

b. Indigenous peoples' and local communities' continuing self-governance and management of ICCAs;

c. Indigenous peoples' and local communities' livelihoods and livelihood security, including their use of natural resources;

d. Indigenous peoples' and local communities' collective and individual rights, including rights to own, govern, manage, and use their lands, seas, and resources; self-determination; and free, prior, and informed consent;

e. Customary ICCAs as well as recently created ones;

f. Customary management goals and practices as well as those recently or newly adopted by the ICCAs' custodians;

g. Indigenous peoples' and local communities' visions and plans for their territories, areas, resources, lives, and development, including life plans, and ensure that protected area goals, policies, and plans harmonize with them;

h. The conservation contributions of ICCAs by including them in national protected area systems and/or listing them in the World Database on Protected Areas and/or the global ICCA Registry maintained by the UNEP-World Conservation Monitoring Centre with their custodians' FPIC, and provide assistance for this when they request it; and

i. ICCAs as “no go” areas for extractive industrial activities and large-scale infrastructure development when they are thus declared by their custodians.

In the next chapter we will offer a set of legal and policy recommendations towards addressing these issues, promoting best practices, and realising rights.

## 7. Legal and Policy Recommendations

Widespread past failure to appropriately recognise and respect ICCAs in overlap situations has been a significant missed opportunity for conservation and source of injustice in many protected areas across much of the world. Addressing this issue will help ensure that the values and best practices promoted in the CBD's articles 8(j) and 10(c), CBD decisions on protected areas, PoWPA, and the Plan of Action on Customary Sustainable Use of Biodiversity are realised. It will also help advance the commitments made in the Durban Accord and Action Plan, the values and best practices promoted in IUCN World Conservation Congress policies, and the pledges made in the IUCN World Parks Congress 2014 *Promise of Sydney* preamble to “enhance diversity, quality and vitality in governance and management, including the appropriate recognition and support of areas conserved by Indigenous Peoples [and] local communities” and “by working in partnership with and recognising the long traditions and knowledge, collective rights and responsibilities of Indigenous Peoples and local communities to land, water, natural resources and culture...seek to redress and remedy past and continuing injustices in accord with international agreements.”

How the complex governance and other issues created by overlap situations are negotiated and resolved has great significance for conservation, culture, livelihoods, affirmation of rights, and social relations. Accordingly, a focused, international effort is needed that includes more accurate documentation of overlap situations, further development of rights-based approaches to appropriately recognising and respecting ICCAs in these contexts; widespread dissemination of guidance on best practices; adoption of appropriate laws, regulations, and policies; and making standard practice the inclusion of monitoring of overlapped ICCA status standard practice in assessment, evaluation, and reporting on protected areas.

The IUCN can set an example by developing and applying standards for ICCA recognition and respect in protected area overlap situations to decisions about inclusion of protected areas in its new Green List of Protected and Conserved Areas as proposed in the World Conservation Congress 2016 motion on ICCAs overlapped by protected areas. The Green List is supposed to set a “new global standard for protected areas” with the goal of improving the “contribution that protected areas make to sustainable development through the conservation of nature and provision of associated social, economic, cultural, and spiritual values” (IUCN n.d). It is intended to “recognize success in achieving conservation outcomes, as well as measure progress in, and impact of, equitable governance and effective management of Protected Areas” (IUCN n.d). The IUCN could also include attention (as proposed in the WCC 2016 motion on ICCAs overlapped by protected areas) to the status of overlapped protected areas as standard practice in its evaluations of protected areas proposed for listing as World Heritage natural, cultural, or mixed properties and in subsequent evaluation of their governance and management.

The CBD could further appropriate recognition and respect for ICCAs overlapped by protected areas by adopting and placing greater emphasis on IUCN policies and guidance

on rights-based conservation, including strengthening its affirmation that UNDRIP is a minimum rights standard in cases where protected areas have been established in the customary territories of indigenous peoples and endorsing recognition of customary collective tenure and restitution of lands incorporated into protected areas without their owners' FPIC. The parties to the CBD could also specifically endorse the appropriate recognition and respect of ICCAs overlapped by existing protected areas (as well as in new protected areas and in areas of protected area expansion) and in particular could affirm indigenous peoples' and local communities' custodianship of sacred sites and stewardship of livelihood use commons in situations in which they are overlapped by protected areas. It would also be helpful if the Parties to the CBD would include a request in a COP decision for the Secretariat of the CBD to disseminate guidance from the IUCN and ICCA Consortium on appropriate recognition and respect of ICCAs overlapped by protected areas and if the Parties would include reporting on implementation of these practices in their national reporting on protected areas. It is also important to make appropriate recognition and respect for overlapped ICCAs integral to the implementation of PoWPA and the Plan of Action on Customary Sustainable Use of Biodiversity.

The examples and analysis presented in this report suggest a number of best practices and specific actions that national, intergovernmental, and civil society actors can take to foster conservation, well-being, livelihoods, food and water security, and cultural diversity in situations where state-declared protected areas overlap with indigenous peoples' and local communities' territories, lands, waters, and ICCAs.

In this final chapter we present recommendations for law and policy develop as well as for actions that would promote best practices and remedy and redress for past and continuing injustices. These draw on our research, discussions within the ICCA Consortium, and formal and informal discussions at international venues associated with the CBD, the UN, and the IUCN (including a workshop at the IUCN World Parks Congress in 2014 on governance issues raised by the establishment of protected areas in the territories of indigenous peoples and local communities).

We present two sets of recommendations. The first provides guidance to states and other non-indigenous and local community governments; the second proposes further provisions that could be incorporated into decisions of the Parties to the CBD and resolutions of the IUCN, including those to be developed at COP 13 in 2016 and at the IUCN World Conservation Congress 2016.<sup>71</sup>

These principles and measures also can appropriately inform policy and practice by others who are concerned with conservation, ICCAs, protected areas, the well-being of indigenous peoples and local communities, rights, and social justice, including inter-governmental organisations such as UNESCO, treaty bodies, conservation organisations, agencies, foundations, donors, and the private sector.

## **7.1 Recommendations to States and Other Governments**

1. Recognise and respect indigenous peoples' and local communities' ownership or custodianship of their territories and areas that overlap with protected areas, including through recognising customary collective land and sea tenure;
2. Recognise indigenous peoples' and local communities' self-governance through their own institutional arrangements, including through ICCAs;
3. Affirm and facilitate enjoyment of indigenous peoples' and local communities' collective and individual rights, including rights to own, govern, manage, and use their lands, seas, and resources; self-determination; and free, prior, and informed consent, including by:
  - a) Recognising, securing, and promoting the realisation of the rights of indigenous peoples as affirmed in UNDRIP, including within protected areas, and taking this as a minimum standard;
  - b) Ratifying ILO 169;
  - c) Recognising, securing, and promoting the realisation of the rights of indigenous peoples and local communities in relation to protected areas as identified in decisions of the Parties to the CBD and the CBD's PoWPA; and
  - d) Recognising, securing, and promoting the realisation of the rights of indigenous peoples and local communities in relation to protected areas as identified in IUCN World Conservation Congress resolutions and recommendations, IUCN World Parks Congress recommendations, and other IUCN policy and guidance;
4. Recognise indigenous peoples' and local communities' land and sea use and management practices, including their customary institutions and law, in areas overlapped by protected areas and throughout their territories;<sup>72</sup>
5. With their custodians' FPIC, recognise and respect ICCAs as protected areas or "other effective area-based conservation measures" in their own right when these meet international or national standards;
6. Adopt measures to appropriately recognise and respect ICCAs that are overlapped by government or private protected areas, including through laws, regulations, agreements, protocols, plans, and administrative procedures and practices;
7. Adopt measures to ensure that the proposed establishment of new protected areas and expansion or re-designation of existing protected areas which would (or already) overlap with the territories and areas of indigenous peoples and local communities are subject to their FPIC, ensure their full and effective participation in protected area governance, affirm their rights, and identify and appropriately recognise and respect overlapped ICCAs;
8. Promote best practices, including:

- a) Recognition of indigenous peoples' and local communities' governance authorities for the protected area, making the protected area itself an ICCA;
- b) Recognition of the separate, equal governance authorities of both indigenous peoples and local communities for their territory and ICCA and the governance authority of the protected area, creating a double or multiple governance status for the overlapped area;
- c) Declaration of the overlapped ICCA as a self-governing governance/management subunit or zone within the protected area;
- d) Redrawing the boundaries of the protected area to avoid overlap and avoiding overlap when designating new protected areas;
- e) Recognising customary ICCAs as well as those that indigenous peoples and local communities have recently created;
- f) Recognising the governance and management of ICCAs through customary institutions and law; and
- g) Ensuring that protected area laws, policies, plans, and practices ensure the integrity and effectiveness of overlapped ICCAs, including customary ones;

9. Ensure that protected areas that overlap ICCAs are either governed by indigenous peoples and local communities or together with them in shared governance arrangements, and further ensure that these arrangements have indigenous peoples' and local communities' FPIC and that there are clear roles, responsibility, and accountability through legal or other effective mechanisms for all involved in shared governance and that the rights and responsibilities of indigenous peoples and local communities are honoured;

10. Ensure that indigenous peoples and local communities have the resources required to govern and conserve their territories and areas fully and effectively and to participate in processes of reaching agreements and collaborating with states and other actors. Financial resources for this support may include compensation for the past appropriation and exploitation of territory and natural resources;

11. Assist indigenous peoples' and local communities' initiatives to maintain, strengthen, and restore ICCAs, including by providing logistical, technological, legal, and financial support when requested. This may include support for such initiatives as documentation, legal counsel and proceedings, community protocols, and development of their own territorial and community maps, plans, and policies;

12. Ensure that equitable cultural, monetary and other benefits from protected areas and from ICCAs within them accrue to indigenous peoples and local communities when they wish to receive them, and that they receive appropriate payments for ecosystems services, ecological stewardship, and climate change mitigation and adaptation programs;<sup>73</sup>

13. Recognise that ICCA custodians as well as governments and private protected area owners share a responsibility to uphold the conservation goals and standards of protected



areas by defending against incompatible development, including environmentally destructive extractive industrial operations and infrastructure projects, consistent with respecting the rights and responsibilities of indigenous peoples and local communities. Affirming this common responsibility creates synergies from shared interests in defending territories and areas from external pressures and inappropriate use;

14. Ensure that all development planning takes into account ICCAs that are overlapped by protected areas, and that ICCAs that are declared “no go” areas by their custodians are protected against unwanted extractive exploitation or infrastructure development;

15. Promote administrative procedures and practices by protected area authorities, government agencies, and NGOs to appropriately recognise and respect ICCAs in protected area overlap situations. This will entail development of clear and sufficient rules, capacity building, and a supportive organisational or working culture that includes incentives as well as requirements;<sup>74</sup>

16. Establish liaison and ombudsman positions. Liaison positions should be accountable to indigenous peoples and local communities as well as protected area authorities, and have responsibility to facilitate communication, understanding, and coordination between indigenous peoples, local communities, and others involved in protected area administration. Ombudsman positions may also be important in cases where there has been past or current conflict and issues of distrust and limited or lost social capital;

17. When requested, help facilitate and support indigenous peoples’ and local communities’ documentation of their institutions and conservation practices -- including their customary territories, institutions, and law -- throughout their territories, including in areas overlapped by protected areas. Ensure that indigenous peoples and local communities approve the related processes through which documentation, including mapping, is carried out and that they have ownership of the knowledge created;

18. When requested, help facilitate and support indigenous peoples’ and local communities’ development of their own territorial and community maps, plans, and policies and the harmonisation of these with those of overlapping protected areas; and

19. Facilitate the listing of ICCAs in the UNEP-World Conservation Monitoring Centre’s World Database on Protected Areas and global ICCA Registry, as well as in national databases with indigenous peoples’ and local communities’ FPIC.

## ***7.2 Further Recommendations to the IUCN, the Parties to the CBD and Other Actors***

*Recommendations to the IUCN (some are also relevant to the CBD):*

1. Adopt the motion on “Appropriately recognising and respecting indigenous peoples’ and community conserved territories and areas (ICCAs) overlapped by protected areas” at the World Conservation Congress 2016 and promote its implementation;
2. Together with the ICCA Consortium and other partners facilitate identification and documentation of situations of ICCAs that are overlapped by government designated and private protected areas;
3. Together with the ICCA Consortium and other partners develop, disseminate, and urge implementation of best practice and minimum standards guidance on identifying, recognising, and respecting ICCAs overlapped by government designated or private protected areas;
4. Urge governments and NGOs concerned with protected areas to appropriately recognise and support ICCAs, including in situations where protected areas overlap with them. Appropriate means for this include developing and implementing appropriate laws, rules and regulations, agreements, protocols, policies, planning, administrative procedures and practices, awareness and capacity building, and supportive organisational cultures;
5. Call on IUCN members to ensure that attention to the status of ICCAs in situations in which protected areas overlap with them be integral to all assessment and evaluation of protected areas;
6. Encourage indigenous peoples’ organisations and networks to facilitate appropriate recognition and respect of ICCAs overlapped by protected areas;
7. Ensure the Whakatane Mechanism takes into account the status of ICCAs overlapped by protected areas;
8. Require appropriate recognition and respect for overlapped ICCAs, and FPIC from their custodian indigenous peoples and local communities, before including any protected area in IUCN’s Green List of Protected and Conserved Areas or reporting favourably on protected areas in the IUCN’s capacity as one of the formal advisory bodies to the World Heritage Committee;
9. Urge that IUCN’s governmental members to the CBD include attention to the appropriate recognition and respect for overlapped ICCAs in their reporting on protected areas to the CBD;
10. Encourage the Conservation Initiative on Human Rights to advance appropriate recognition and respect for all ICCAs, including those that are overlapped by governmental and private protected areas;
11. Communicate with and encourage the UN Special Rapporteur on Rights of Indigenous Peoples and other human rights monitoring mechanisms to take account of rights issues raised by appropriately recognising and respecting ICCAs overlapped by protected areas in

future country reports and in any thematic reports on conservation, protected areas and the rights of indigenous peoples;

12. Request the IUCN Director General to take action on the preceding paragraphs in communication with the CBD Secretariat and Parties; and

13. Request the IUCN Director-General to report annually on the above actions to the IUCN Council and biennially to the CBD, and to include this information in the IUCN's annual report to the United Nations Permanent Forum on Indigenous Issues.

*Further recommendations to the Parties to the CBD:*

1. Adopt decisions on protected areas and on the implementation of Articles 8(j) and 10(c) that urge recognition and respect for ICCAs overlapped by government protected areas, drawing on best practice and minimum standard guidance from the IUCN;

2. Ensure that work with regards to protected areas and to Articles 8(j) and 10(c), including implementation of the PoWPA adopted by COP 7 in 2004 and the Plan of Action on Customary Sustainable Use of Biodiversity adopted by COP 12 in 2014, advances appropriate recognition and respect for ICCAs overlapped by protected areas. This is pertinent particularly to Element 2 of PoWPA and tasks 2 and 3 of the Plan of Action on Customary Sustainable Use of Biodiversity;

3. Request in a COP decision that the Secretariat of the CBD disseminate guidance from the IUCN and ICCA Consortium on identifying and appropriately recognising and respecting ICCAs overlapped by protected areas;

4. Request in a COP decision that the GEF fund the Whakatane Mechanism at a level that substantially increases its global operation, with the IUCN Whakatane Mechanism Committee as the implementing partner;

5. Request in a COP decision that the GEF fund the Global ICCA Support Initiative; and

6. Request that the Parties, in collaboration with the CBD Secretariat and other relevant actors, include reporting on the implementation of best practices in recognising and respecting ICCAs overlapped by protected areas in their reporting to the CBD Secretariat, including in national reports, progress reports on achievement of the Aichi Targets (particularly Target 11), reports on implementation of the CBD Programme of Work on Protected Areas, and the Global Biodiversity Outlook.

*Recommendations to NGOs and to multilateral, bilateral, and other donors and cooperation agencies:*

17. Call on multilateral, bilateral, and other donors and on cooperation agencies to recognize and respect ICCAs and to develop and fund programs that:

- a. Respect the existence of ICCAs, including those overlapped by protected areas and follow a “do no harm” principle in all projects that might impact them;
- b. Implement awareness and capacity raising regarding appropriate recognition and respect for ICCAs in situations in which state-declared protected areas overlap with them;
- c. Assist indigenous peoples and local communities in listing their ICCAs in the World Database on Protected Areas and the ICCA Registry with their FPIC;
- d. Support international conflict prevention and management mechanisms such as IUCN’s Whakatane Mechanism and community protocols; and
- e. Support the Global ICCA Support Initiative.

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## Annexes

### ***Annex 1. Relevant CBD Decisions and Provisions of the Programme of Work on Protected Areas and the Plan of Action on Customary Sustainable Use of Biological Diversity***

#### **1. Recognise ICCAs (and not only as protected areas)**

- “Recognize the role of indigenous and local community conserved areas and conserved areas of other stakeholders in biodiversity conservation, collaborative management and diversification of governance types”  
COP 10 Decision X/31/B Protected areas (par. 31 (b)).
- “strengthen recognition of and support for community-based approaches to conservation and sustainable use of biodiversity *in situ*, including indigenous and local community conserved areas”  
COP11 Decision XI/24 Protected areas (par.1 (e))
- “Establish policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities.”  
Programme of Work on Protected Areas (2.1.3)
- “*Further encourages* Parties, other Governments, international organizations and relevant stakeholders to support indigenous and community conserved areas and territories, community-based management, customary sustainable use and community governance of biodiversity, and ensure the full and effective participation of indigenous and local communities in decision-making processes, taking into account international instruments and law related to human rights in accordance with national legislation;”  
COP12 Decision XII/5. Biodiversity for poverty eradication and sustainable development (par.11).
- “Invites Parties to include in requests to donors, support for indigenous and local communities to organize themselves to develop community plans and protocols to document, map, and register their community conservation areas, as well as to prepare, implement and monitor their community conservation plans and for support to countries to strengthen recognition of indigenous and community conservation areas;”  
COP12 Decision XII/12 Article 8 (j) and related provisions (B.5)

## **2. Recognise ICCAs as protected areas and include them in national protected area systems when their custodians so wish**

- “Recognize the contribution of, where appropriate, co-managed protected areas, private protected areas and indigenous and local community conserved areas within the national protected area system through acknowledgement in national legislation or other effective means”  
COP 9 Decision IX/18 Protected areas (par. 6 (b)) and COP 10 Decision X/31 Protected areas (par. 32 (b)).
- “Improve and, where necessary, diversity and strengthen protected area governance types, leading to or in accordance with appropriate national legislation including recognizing and taking into account, where appropriate, indigenous, local and other community-based organizations.”  
COP 10 Decision X/31 Protected areas (par. 32 (a))
- “Recognize the role of indigenous and local community conserved areas and conserved areas of other stakeholders in biodiversity conservation, collaborative management and diversification of governance types”  
COP 10 Decision X/31 Protected areas (par. 31 (b)).
- “Recognize and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by indigenous and local communities and private nature reserves. The promotion of these areas should be by legal and/or policy, financial and community mechanisms.”  
Programme of Work on Protected Areas (2.1.2)
- “By 2006, conduct...national-level reviews for existing and potential forms of conservation...including innovative types of governance for protected areas...such as protected areas run by Government agencies at various levels, co-managed protected areas, private protected areas, [and] indigenous and local community conserved areas.”  
Programme of Work on Protected Areas (1.1.4)
- “Establish policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities.”  
Programme of Work on Protected Areas (2.1.3)
- “Promote an enabling environment (legislation, policies, capacities, and resources) for the involvement of indigenous and local communities and relevant stakeholders in decision making, and the development of their capacities and opportunities to

establish and manage protected areas, including community-conserved and private protected areas.”

Programme of Work on Protected Areas (2.2.4)

### **3. Fully respect the rights of indigenous peoples and local communities in the context of the establishment and management of protected areas**

- “*Recalls* the obligations of Parties towards indigenous and local communities in accordance with Article 8(j) and related provisions and *notes* that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations”

COP7 Decision VII/28 Protected areas (par. 22)

- Take note as appropriate of the United Nations Declaration on the Rights of Indigenous Peoples in the further implementation of the programme of work on protected areas;

COP 10 Decision X/31/A Protected areas, (subsection 1 par.1.h (i)).

- Promote... the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect indigenous and local communities”

Plan of Action on Customary Sustainable Use of Biological Diversity (V, task 3 (i))

### **4. Ensure indigenous peoples’ and local communities’ full and effective participation in protected area governance, with full respect for their rights**

- “*Recalls* the obligations of Parties towards indigenous and local communities in accordance with Article 8(j) and related provisions and *notes* that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations”

COP7 Decision VII/28 Protected areas (par. 22)

- “Establish effective processes for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, in the governance of protected areas, consistent with national law and applicable international obligations”

COP 9 Decision IX/18 Protected areas (par. 6 (d)).

- “Establish effective processes for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their

responsibilities, in the governance of protected areas, consistent with national law and applicable international obligations”

COP 10 Decision X/31/B Protected areas (par. 32 (c))

- “Full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas.”

Programme of Work on Protected Areas (Goal 2.2 Target)

**5. Take into account indigenous peoples’ and local communities’ community-based approach to conservation and sustainable use of biodiversity and their “own management systems and customary use” in the context of conservation and development activities, including in protected areas**

- “*encourages* Parties to ensure that conservation and development activities in the context of protected areas contribute to the eradication of poverty and sustainable development...where applicable taking into account indigenous and local communities’ own management systems and customary use.”

COP 9 Decision IX/18 Protected areas (par. 19)

- “Recognize the role of indigenous and local community conserved areas and conserved areas of other stakeholders in biodiversity conservation, collaborative management and diversification of governance types”

COP 10 Decision X/31/B (par 31 (b))

- “Strengthen recognition of and support for community-based approaches to conservation and sustainable use of biodiversity *in situ*, including indigenous and local community conserved areas, other areas within IUCN governance types and initiatives led by indigenous and local communities that fulfil the objectives of Aichi Biodiversity Target 11 and support the voluntary use of the Indigenous and Community Conserved Areas Registry managed by the United Nations Environment Programme World Conservation Monitoring Centre “

COP 11 Decision XI/24 (par 1 e))

- “Cultural, social, economic and ecological elements associated with the traditional management systems of lands, waters and territories of indigenous and local communities and their involvement in the management of these areas should be recognized, secured and protected, as they contribute to customary sustainable use of biological diversity”

Plan of Action on Customary Sustainable Use of Biological Diversity (III.6.f)

- “Customary sustainable use of biological diversity and traditional knowledge can contribute to the effective conservation of important biodiversity sites, either

through shared governance or joint management of official protected areas or through indigenous and community conserved territories and areas.”

Plan of Action on Customary Sustainable Use of Biodiversity (IV.9)

“Minimising adverse impacts, and facilitating participation:

D. Promote, as appropriate, the implementation of safeguard measures, such as mitigation hierarchy, to avoid adverse impacts on biodiversity and ecosystem integrity, and to improve long-term livelihood and well-being of indigenous and local communities, and smallholders, with special attention to women, the poor, marginalized and vulnerable people in particular, according to national circumstances and priorities by:

iii. Strengthening community-based management and the role of collective action in the management of natural resources and traditional indigenous knowledge systems and local communities and smallholders’ traditional knowledge systems;”

COP 12 Decision XII/5 Biodiversity for poverty eradication and sustainable development, Annex: Chennai Guidance for the Integration of Biodiversity and Poverty Eradication (2.D.iii).

## **6. Support the listing of ICCAs in the ICCA Registry**

- “support the voluntary use of the Indigenous and Community Conserved Areas Registry managed by the United Nations Environment Programme World Conservation Monitoring Centre”  
COP 11 Decision XI/24 (par 1 e))
- “supporting the further development of local registries of indigenous and community conserved areas and the Indigenous and Community Conserved Areas Registry maintained by the World Conservation Monitoring Centre”  
COP XI/24 (par. 10)
- “Consider voluntary in-depth reporting using standardized indexes and taxonomies including the proposed global registry of indigenous and community conserved areas, where applicable”  
COP 10 Decision X/31/B (par. 33 (c))

## **7. Initial tasks for work on implementing Article 10(c) should include:**

- (c) To identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives) to:
  - (i) Promote, in accordance with national legislation and applicable international obligations, the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect indigenous and local communities;

(ii) Encourage the application of traditional knowledge and customary sustainable use in protected areas, including marine protected areas, as appropriate;

(iii) Promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use in protected areas, including marine protected areas, in accordance with traditional cultural practices;

COP 11 Decision XI/14 Article 8(j) and related provisions, Annex: Terms of Reference to Advance Task 15 of the Programme of Work on Article 8(j) and Related Provisions, Section F (par.10(c))

- “Promote...the full and effective participation of indigenous and local communities, and also their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas, including marine protected areas, that may affect indigenous and local communities.

- Encourage the application of traditional knowledge and customary sustainable use of biological diversity in protected areas, including marine protected areas... ; and

- Promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use of biological diversity in protected areas, including marine protected areas, in accordance with traditional cultural practices and national legislation.”

Plan of Action on Customary Sustainable Use of Biological Diversity (V.3.i-iii)

- Task 3. To identify best practices (e.g. case studies, mechanisms, legislation and other appropriate initiatives)... In identifying best practices, Parties and other relevant stakeholders may wish to draw on existing international initiatives, reference materials, and tools for best practices in relation to protected areas and customary use of biological diversity, such as the CBD Technical Series No. 64: Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities – Global Overview and National Case Studies on indigenous peoples and community conserved territories and areas, the Whakatane Mechanism, and community protocols.”

Plan of Action on Customary Sustainable Use of Biological Diversity (VI. Task 3)

## ***Annex 2: Relevant IUCN Policies and Guidance***<sup>75</sup>

### **1. Recognise the rights of Indigenous peoples and local communities in all protected areas, with the UN Declaration on the Rights of Indigenous Peoples as the minimum standard for indigenous rights.**

#### *World Conservation Congress policy*

- “Ensure due recognition of the rights of indigenous peoples in existing protected areas.”  
World Conservation Congress 2008. Resolution 4.048 (b). *Indigenous peoples, protected areas and implementation of the Durban Accord.*
- Affirm “the rights of indigenous peoples with regard to their lands or territories and resources that fall within protected areas”  
World Conservation Congress 1996. Resolution 1.53. *Indigenous peoples and protected areas.*
- “Ensure due recognition of the rights of indigenous peoples in existing protected areas.”  
World Conservation Congress 2008. Resolution 4.048 (b). *Indigenous peoples, protected areas and implementation of the Durban Accord.*
- “Promote the recognition of indigenous peoples’ rights and systems [in protected areas] pertaining to the use, management, conservation and governance of their territories, lands and natural resources”  
World Conservation Congress 2008. Resolution 4.048 (i-iv). *Indigenous peoples, protected areas and implementation of the Durban Accord.*
- With regard to “Indigenous peoples’ rights in the management of protected areas fully or partially in the territories of indigenous peoples,” ...“make available the means necessary for the full exercise and effective implementation of the rights recognized in the United Nations *Declaration on the Rights of Indigenous Peoples.*”  
World Conservation Congress 2008. Recommendation 4.127 (a). *Indigenous peoples’ rights in the management of protected areas fully or partially in the territories of indigenous peoples*
- “In the designated protected areas fully or partially within the territories of indigenous peoples:  
(i) respect the rights of these peoples, ensuring the full and effective participation of their representative organizations in making decisions on the management and protection of these areas; and  
  
(ii) apply Article 28.1 of the United Nations *Declaration on the Rights of Indigenous Peoples* which states: “Indigenous peoples have the right to redress, by means that



can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

World Conservation Congress 2008. Recommendation 4.127 (b). *Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples*

- “Respect and appropriately recognize and support ICCAs by promoting, adopting, and fully implementing laws, policies and programmes that: recognize and uphold indigenous peoples’ rights to self-determination, self-governance, full and effective participation in decisions that affect them, equitable sharing of costs and benefits, and other essential rights and responsibilities enshrined in UNDRIP, ILO Convention No. 169 Concerning Indigenous and Tribal Peoples, and other international human rights instruments.”

World Conservation Congress 2012. Resolution 5.094 (par.1(a)). *Respecting, recognizing and supporting Indigenous Peoples’ and Community Conserved Territories and Areas*

#### *Guidance from the World Parks Congress*

- “All existing and future protected areas are established and managed in full compliance with the rights of indigenous peoples, including mobile indigenous peoples, and local communities by the time of the next IUCN World Parks Congress.”

World Parks Congress 2003. *Durban Action Plan*, Main Target 8.

- “Ensure that existing and future protected areas respect the rights of indigenous peoples.”

World Parks Congress 2003. Recommendation V.24 (1.a). *Indigenous peoples and protected areas*.

- “Collective rights and responsibilities. All countries, relevant organisations, protected area managers and rights-holders take concrete steps, through laws, agreements and enforcement mechanisms, to recognise and secure the right of self-determination of indigenous peoples as well as the collective land and resource rights and responsibilities of indigenous peoples and traditional peasant, forest, herder and fishing communities—both sedentary and mobile— for the billions of hectares of forests, rangelands, wetlands, mountains, coastlands and sea they customarily govern and manage on our planet...”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (4).

- “Governance overlaps. In situations where the land, water, natural resources and coastal and marine areas of indigenous peoples and local communities overlap with established protected areas under any other governance type, all countries and

relevant organisations ensure that collective rights and responsibilities to own, govern, manage, and use such land, water, natural resources and coastal and marine areas are respected.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (5).

- “Justice and redress. Governments and UN human rights bodies, in full collaboration with relevant rights-holders, establish effective monitoring, restitution and accountability mechanisms to ensure that rights-based approaches and international standards of justice are applied in all conservation programmes...”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (17).

- “Full implementation of such international instruments as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention on Biological Diversity (CBD), especially with respects to the right to free, prior and informed consent (FPIC) and secure rights, is essential for effective and equitable conservation in and around protected areas.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. “A Promising Future.”

- “In accordance with UNDRIP, all protected areas established on the territories, lands or seascapes of Indigenous Peoples fully observe their rights and governance systems, and Indigenous Peoples are fully involved in their creation, designation and management. Where Indigenous Peoples and local communities have been evicted from their lands by the creation of protected areas national laws should be revised to guarantee the restitution of rights and recognise their right to return to and remain on their lands.

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (4).

- “The implementation of the World Heritage Convention [for World Heritage Sites] is aligned with the principles of UNDRIP and the Outcome Document of the 2014 World Conference on Indigenous Peoples and the Convention’s procedures and Operational Guidelines are amended accordingly, with the full and effective participation of Indigenous Peoples.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (8).

## **2. Protected areas should not be established within the customary territories of Indigenous peoples without their free, prior, and informed consent.**

*World Conservation Congress policy*

- “Ensure that protected areas which affect or may affect indigenous peoples' lands, territories, natural and cultural resources are not established without indigenous peoples' free, prior and informed consent.”

World Conservation Congress 2008. Resolution 4.048 (2.b). *Indigenous peoples, protected areas and implementation of the Durban Accord.*

#### *World Parks Congress guidance*

- “Governance overlaps. In situations where the land, water, natural resources and coastal and marine areas of indigenous peoples and local communities overlap with established protected areas under any other governance type, all countries and relevant organisations ensure that ... indigenous peoples' and local communities' right to free, prior and informed consent is affirmed...”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (5).

### **3. Territory incorporated in protected areas without the free, prior, and informed consent of Indigenous peoples should be restituted.**

#### *World Conservation Congress policy*

- With regard to “Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples”...(ii) apply Article 28.1 of the United Nations *Declaration on the Rights of Indigenous Peoples* which states: “Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent”

World Conservation Congress 2008. Recommendation 4.127 (b (ii)). *Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples*

#### *World Parks Congress guidance*

- “Participatory mechanisms for the restitution of indigenous peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent are established and implemented by the time of the next IUCN World Parks Congress.”

IUCN World Parks Congress 2003. *Durban Action Plan*, Main Target 10.

- “Establish participatory mechanism for the restitution of indigenous peoples' lands, territories, and resources that have been taken over by protected areas without their free, prior informed consent, and for providing prompt and fair compensation, agreed upon in a fully transparent and culturally appropriate manner.”

IUCN World Parks Congress 2003. Recommendation V.24 (1i). *Indigenous peoples and protected areas*

- “Recognise and guarantee the rights of mobile indigenous peoples to the restitution of their lands, territories and resources, conserved and traditionally occupied and used sustainably by them, that have been incorporated into protected areas without their free, prior and informed consent, and recognize that mobility should be restored where appropriate.”

IUCN World Parks Congress 2003. Recommendation V.27 (3h). *Mobile indigenous peoples and conservation*

- “Justice and redress. Governments and UN human rights bodies, in full collaboration with relevant rights-holders, establish effective monitoring, restitution and accountability mechanisms to ensure that rights-based approaches and international standards of justice are applied in all conservation programmes. This should redress past and ongoing injustices suffered by indigenous peoples and local communities, including restitution of lands expropriated without free, prior and informed consent...”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (17).

#### **4. Indigenous peoples and local communities should participate fully and effectively in protected area governance, consonant with their rights, including governing and co-governing protected areas.**

##### *World Conservation Congress policy*

- “CALLS ON the Director General to promote and support the recognition of Indigenous Conservation Territories as a legitimate model of governance of protected areas superimposed over the territories of indigenous peoples ... independent of the management category, taking into account the need for the integration of culture and nature, the role of customary law, traditional constituted authority, and the exercise of indigenous authority in such territories.

World Conservation Congress 2008. Resolution 4.050 (2). *Recognition of Indigenous Conservation Territories*

- With regard to “Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples”...(b) In the designated protected areas fully or partially within the territories of indigenous peoples: (i) respect the rights of these peoples, ensuring the full and effective participation of their representative organizations in making decisions on the management and protection of these areas”

World Conservation Congress 2008. Recommendation 4.127. *Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous peoples*

### *World Parks Congress Guidance*

- “The management of all relevant protected areas involves representatives chosen by indigenous peoples, including mobile indigenous peoples, and local communities proportionate to their rights and interests, by the time of the next IUCN World Parks Congress.”

World Parks Congress 2003. *Durban Action Plan*, Main Target 9.

- “ACKNOWLEDGE that it may be appropriate for some existing protected areas to be managed as CCAs, including through the transfer of management of such areas to relevant communities”

World Parks Congress 2003. Recommendation V.26 (1.e). *Community conserved areas*

- “Governance overlaps. In situations where the land, water, natural resources and coastal and marine areas of indigenous peoples and local communities overlap with established protected areas under any other governance type, all countries and relevant organisations [should] foster, moreover, the full engagement of the concerned indigenous peoples and local communities in the governance of the overlapping established protected areas.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (5).

- “In accordance with UNDRIP, all protected areas established on the territories, lands or seascapes of [Indigenous Peoples fully observe their rights and governance systems, and Indigenous Peoples are fully involved in their creation, designation and management....”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (4).

- “Spatial planning-based decision-making inside and outside protected areas, IPAs, indigenous bio-cultural territories and Sacred Natural Sites and Territories (SNS&Ts) is undertaken with indigenous people in a participatory manner and with their full prior informed consent to ensure that industries and development have a positive impact on biodiversity, people, their well-being and livelihoods.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (10).

### **5. Indigenous peoples’ and local communities’ institutions and practices should be a foundation of protected area management.**

#### *World Conservation Congress policy*

- “Promote the recognition of indigenous peoples’ rights and systems [in protected areas] pertaining to the use, management, conservation and governance of their territories, lands and natural resources”  
World Conservation Congress 2008. Resolution 4.048 (i-iv). *Indigenous peoples, protected areas and implementation of the Durban Accord.*
- In recognising and supporting ICCAs, “recognize indigenous peoples’ and traditional and local communities’ governance of and rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”  
World Conservation Congress 2012. Resolution 5.094 (par. 1 (b)). *Respecting, recognizing and supporting Indigenous Peoples’ and Community Conserved Territories and Areas.*
- In recognising and supporting ICCAs, “recognize and engage accordingly with customary laws, institutions, protocols and decision-making processes and practices, also be using indigenous and local languages”  
World Conservation Congress 2012. Resolution 5.094 (par. 1 (c)). *Respecting, recognizing and supporting Indigenous Peoples’ and Community Conserved Territories and Areas.*
- World Conservation Congress 2012. Recommendation 5.147. *Sacred natural sites – support for custodian protocols and customary laws in the face of global threats and challenges.*
- World Conservation Congress Resolution 4.038. *Recognition and conservation of sacred natural sites in protected areas.*

#### *World Parks Congress guidance*

- “Ensure respect for indigenous peoples’ decision-making authority and support their local, sustainable management and conservation of natural resources in protected areas, recognising the central role of traditional authorities, wherever appropriate, as well as their institutions and representative organizations”  
World Parks Congress 2003. Recommendation V.24 (1.k). *Indigenous peoples and protected areas.*
- “Require protected area managers to actively support indigenous peoples’ initiatives aimed at revitalization and application, where appropriate, of traditional knowledge and practices in land, water, and resource management within protected areas”  
World Parks Congress 2003. Recommendation V. 24 (1.l). *Indigenous peoples and protected areas.*

- “Voluntary conservation. All countries, relevant organisations, protected area managers and rights-holders better recognise and appropriately support voluntary and self-directed conservation efforts, including in the territories and areas conserved by indigenous peoples and local communities (ICCAs) *within* and *outside* protected areas...”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (3) (italics in original).
- “Governance overlaps. In situations where the land, water, natural resources and coastal and marine areas of indigenous peoples and local communities overlap with established protected areas under any other governance type, all countries and relevant organisations ensure that collective rights and responsibilities to own, govern, manage, and use such land, water, natural resources and coastal and marine areas are respected. Further, they ensure that the indigenous peoples’ and local communities’ right to free, prior and informed consent is affirmed and their livelihoods and food and water sovereignty are appropriately recognized and supported, along with their knowledge, institutions, practices, management strategies and plans related to conservation.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 6. Recommendations for Change (5).
- “By 2020 IUCN and its members, including governments and protected area managers, co-create programmes with the full consent and involvement of traditional knowledge holders for the respectful application and maintenance of traditional knowledge and customary governance systems, ensuring that actions in and around protected areas are built on the combination of diverse knowledge systems, skills and capacities, integrating a rights-based approach.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (3).
- “Traditional knowledge, practices and indigenous economies are promoted and applied in responding to climate change, in particular through local adaptation efforts, and in the conservation and management of protected areas and other effective area-based conservation measures, including Indigenous bio-cultural territories, World Heritage Sites and Sacred Natural Sites (SNS).”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (5).
- “Management objectives and actions for all ecosystems must recognise the intrinsic and cultural values of those systems and the inherent right of Indigenous communities to use, develop and control these resources.”

IUCN World Parks Congress 2014, Promise of Sydney. Stream 7. Recommendations for Change (6).

**6. ICCAs, as appropriate, should be recognised as protected areas when their custodians so wish.**

*World Conservation Congress policy*

- “Urges IUCN to provide leadership and supportive roles in local, national, and international recognition of CCAs, including through:
  - (a) promoting the recognition of CCAs as a legitimate form of biodiversity conservation, and where appropriate and communities so choose, their inclusion within national and subnational system of protected areas;”  
World Conservation Congress 2004 3.049 *Community conserved areas* (par. 2(a)).“ensure that the concept of CCAs forms part of the governance dimension in the forthcoming revised *IUCN Guidelines on protected area management categories, ...*”  
World Conservation Congress 2004 3.049 *Community conserved areas* (par. 3(a)).
- “guide relevant bodies in the revisions to, or updating of, the World Database on Protected Areas, the UN List of Protected Areas, the State of the World’s Protected Areas, and any other such databases or documents endure appropriate inclusion of CCAs;”  
World Conservation Congress 2004 3.049 *Community conserved areas* (par. 3(b)).

*World Parks Congress guidance*

- “Recognise the value and importance of protected areas designated by indigenous peoples as a sound basis for securing and extending the protected areas network;”  
World Parks Congress 2003 Recommendation V.24 *Indigenous peoples and protected areas* (1(e)).
- “Develop and promote incentives to support indigenous peoples’ self-declared and self-managed protected areas and other conservation initiatives to protect their lands, waters, territories and resources from external threats and exploitation;”  
World Parks Congress 2003 Recommendation V.24 *Indigenous peoples and protected areas* (1(n)).
- “Provide support and funding to indigenous peoples for community-conserved, co-managed and indigenous-owned and managed protected areas;”  
World Parks Congress 2003 Recommendation V.24 *Indigenous peoples and protected areas* (2(b)).



- “Recognise and promote CCAs as a legitimate form of biodiversity conservation, and where communities so choose, include them within national systems of protected areas, through appropriate changes in legal and policy regimes;”  
World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (1(b)).
- “Acknowledge that it may be appropriate for some existing protected areas to be managed as CCAs, including through the transfer of management of such areas to relevant communities;”  
World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (1(e)).
- “Recognise CCAs in all relevant instruments and databases, including in the United Nations List of Protected Areas, and the World Protected Areas Database;”  
World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (4(1)).
- “Provide adequate space for consideration of CCAs in relevant documents, such as the State of the World’s Protected Areas report, and Protected Areas in the 21<sup>st</sup> Century.”  
World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (4(b)).
- “Promote CCAs through appropriate programmes of work, in particular the Programme of World of the CBD on protected areas.”  
World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (4(c)).
- “Integrate CCAs into the IUCN Protected Areas Management Categories, through the introduction of a governance approach, appropriate interpretations of – and additions to – the definitions and guidelines, especially with regard to cultural values and work towards identifying CCAs that would fit into each of the six IUCN Protected Area Management Categories.”  
World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (4(d)).
- “Recognise mobile peoples’ Community Conserved Areas as a protected area governance type, and build upon their traditional and evolving institutions and customary norms”  
World Parks Congress 2003 Recommendation V.27 *Mobile indigenous peoples and conservation* (3(c)).

**7. ICCAs, as appropriate, should be included as part of national protected area systems when their custodians so wish.**

### *World Conservation Congress policy*

- Urges IUCN to provide leadership and supportive roles in local, national, and international recognition of CCAs, including through: (a) promoting the recognition of CCAs as a legitimate form of biodiversity conservation, and where appropriate and communities so choose, their inclusion within national and subnational system of protected areas”

World Conservation Congress 2004 3.049 *Community conserved areas* (par 2(a)).

- “Calls on the Director General to promote awareness of the Pacific Region’s use of Locally Managed Marine Areas, as well as other similar models of community governance by indigenous peoples, small-scale fishers and local communities, as a critical foundation for achieving global MPAs and other area-based management targets and national MPA systems.”

World Conservation Congress 2012 5.077 *Promoting Locally Managed Marine Areas as a socially inclusive approach to meeting area-based conservation and Marine Protected Area targets* (par. 1).

### *World Parks Congress guidance*

- “Recognise and promote CCAs as a legitimate form of biodiversity conservation,, and where communities so choose, include them within national systems of protected areas, through appropriate changes in legal and policy regimes.”

World Parks Congress 2003 Recommendation V.26 *Community conserved areas* (1(b)).

## **8. Indigenous peoples’ self-governance of protected areas as Indigenous Conservation Territories is an appropriate model for resolution of situations where state-designated protected areas have been declared in the customary territories of Indigenous peoples.**

### *World Conservation Congress policy*

- “CALLS ON the Director General to promote and support the recognition of Indigenous Conservation Territories as a legitimate model of governance of protected areas superimposed over the territories of indigenous peoples...independent of the management category, taking into account the need for the integration of culture and nature, the role of customary law, traditional constituted authority, and the exercise of indigenous authority in such territories.”

World Conservation Congress 2008. Resolution 4.050. *Recognition of Indigenous Conservation Territories* (par. 2).

- “RECOGNIZING that the II Latin American Congress of National Parks and Other Protected Areas (Bariloche, 2007) acknowledged that Indigenous Conservation

Territories are a legitimate governance model for protected areas established in indigenous peoples' ancestral territories, a model whose key features are the integration of culture and nature, the role of customary rights, the traditional institutions and exercise of Indigenous authority in such territory;"

World Conservation Congress 2008. Resolution 4.052 *Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (preamble).

## **9. Custodians' responsibility should be recognised for the care and protection of sacred natural sites, including those within protected areas**

### *World Conservation Congress policy*

- "CALLS ON government agencies and non-governmental organizations (NGOs) to recognize the rights, the skills and the knowledge of local and indigenous custodians...have in managing the resources and ecosystems associated with sacred natural sites;"

World Conservation Congress 2008. Resolution 4.038 *Recognition and conservation of sacred natural sites in protected areas*. (par. 2(a)).

- "CALLS ON protected area agencies and managers to recognize the cultural and spiritual values of sacred natural sites included within their designated boundaries, and to recognize and facilitate the rights and interests of the communities or organizations concerned to manage and use those sacred natural sites where possible as places for their cultural and spiritual realization and reverence;"

World Conservation Congress 2008. Resolution 4.038 *Recognition and conservation of sacred natural sites in protected areas* (par 2(c)).

- "URGES State Members of the IUCN and other national governments to develop appropriate policies, laws and programs (for example by adopting at the national level Resolution 4.038 and implementing the IUCN-UNESCO Best Practice Guidelines No. 16 for planning and management of SNS in protected areas) that allows the custodians to continue to maintain and protect their sacred natural sites using their traditional practices and protocols, and in doing so respect the confidentiality of sites and practices;"

World Conservation Congress 2012. Recommendation 4.147 *Sacred natural sites – support for custodian protocols and customary laws in the face of global threats and challenges* (par. 3).

## ***Annex 3. IUCN World Parks Congress 2014, Promise of Sydney: Selected Recommendations***

### **Stream 6. Enhancing [the] Diversity and Quality of [Protected Area] Governance Recommendations for change**

1. Enhancing governance. All countries, relevant organisations, protected area managers and rights-holders realise the full potential of enhancing governance for the conservation of nature through participatory processes of inquiry, assessment, evaluation and action for systems of protected and conserved areas and territories in the landscape/seascape and for individual sites.

2. Standards and guidance. All countries, relevant organisations, protected area managers and rights-holders inclusively develop standards, guidance and stronger and more supportive legal frameworks, including better integration of customary laws, to enhance the diversity, quality and vitality of governance of protected and conserved areas and territories. This is particularly important in relation to CBD's PoWPA and Plan of Action on Customary Sustainable Use, National Biodiversity Strategies and Action Plans, and IUCN Green Lists.

3. Voluntary conservation. All countries, relevant organisations, protected area managers and rights-holders better recognise and appropriately support voluntary and self-directed conservation efforts, including in the territories and areas conserved by indigenous peoples and local communities (ICCAs) within and outside protected areas, and in privately protected and conserved areas and networks.

4. Collective rights and responsibilities. All countries, relevant organisations, protected area managers and rights-holders take concrete steps, through laws, agreements and enforcement mechanisms, to recognise and secure the right of self-determination of indigenous peoples as well as the collective land and resource rights and responsibilities of indigenous peoples and traditional peasant, forest, herder and fishing communities—both sedentary and mobile— for the billions of hectares of forests, rangelands, wetlands, mountains, coastlands and sea they customarily govern and manage on our planet. This will strengthen their commitment to sustainable livelihoods and foster their engagement in conserving nature.

5. Governance overlaps. In situations where the land, water, natural resources and coastal and marine areas of indigenous peoples and local communities overlap with established protected areas under any other governance type, all countries and relevant organisations ensure that collective rights and responsibilities to own, govern, manage, and use such land, water, natural resources and coastal and marine areas are respected. Further, they ensure that the indigenous peoples' and local communities' right to free, prior and informed consent is affirmed and their livelihoods and food and water sovereignty are appropriately recognised and supported, along with their knowledge, institutions, practices, management strategies and plans related to conservation. They foster, moreover,

the full engagement of the concerned indigenous peoples and local communities in the governance of the overlapping established protected areas.

6. Governance for sustainable use. All countries, relevant organisations, protected area managers and rights-holders recognise and learn from the conservation models and governance conditions by which conservation of nature is complementary to, and mutually supportive of, the presence of people, human development, and sustainable use of natural resources and wildlife.

17. Justice and redress. Governments and UN human rights bodies, in full collaboration with relevant rights-holders, establish effective monitoring, restitution and accountability mechanisms to ensure that rights-based approaches and international standards of justice are applied in all conservation programmes. This should redress past and ongoing injustices suffered by indigenous peoples and local communities, including restitution of lands expropriated without free, prior and informed consent, and application of appropriate processes, such as the IUCN Whakatane Mechanism.

### **Workshop 2.7. Overlapping governance types: dealing with complexity and diversity 18 November, 2014**

#### **Recommendations:**

In order to foster conservation, well-being, livelihoods, food and water security, and cultural diversity in situations where state-declared protected areas overlap with Indigenous peoples' and local communities' territories, lands, and waters, IUCN and the CBD should urge states to:

1. Recognise Indigenous peoples' and communities' collective and individual rights, including rights to own, govern, manage, and use their lands, seas, and resources; self-determination; and FPIC. Secure rights affirmed in UNDRIP, IUCN policies, and in the CBD's Articles 8(j) and 10(c), decisions of the Parties, and PoWPA.

2. Ensure that overlapping protected areas are governed by Indigenous peoples and local communities or have strong co-governance with clear institutions, roles, responsibility and accountability through legal or other effective mechanisms.

3. Ensure that Indigenous peoples' and local communities' knowledge, institutions, and practices that contribute to conservation, livelihoods, food and water sovereignty, and sustainability -- including ICCAs -- together with their management strategies and plans, are appropriately recognised, respected, coordinated with, and supported within overlapping protected areas.

4. When requested, help facilitate and support Indigenous peoples' and local communities' documentation of their institutions and conservation practices -- including their customary territories, institutions, and law -- throughout their territories, including in overlapping protected areas. Ensure that Indigenous peoples and local communities approve the

related processes through which documentation is carried out and have ownership of the knowledge created.

5. Recognise Indigenous peoples' and local communities' governance and conservation practices – including their customary institutions and law – in areas overlapped by protected areas and throughout their territories. Appropriate means of recognition and respect include treaties, constitutional provisions, legislation, and legally binding agreements that inform protected area governance, policies, management plans, and zoning.

6. Ensure that Indigenous peoples and local communities have the resources required to fully and effectively govern and conserve their territories and areas and to participate in processes of reaching agreements and collaborating with states and other actors. These resources may include compensation for the past appropriation and exploitation of territory and natural resources.

### **Stream 7. Respecting Indigenous and Traditional Knowledge and Culture. Recommendations**

#### **“A Promising Future”**

Full implementation of such international instruments as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention on Biological Diversity (CBD), especially with respect to the right to free, prior and informed consent (FPIC) and secure rights, is essential for effective and equitable conservation in and around protected areas.

For conservation to be effective and enduring, future actions on these territories, lands and seascapes must embrace their diversity of knowledge systems, skills and capacities; they must build on customary land/sea tenure, governance systems and custodianship of natural resources; recognise the role and practice of women; provide for intergenerational transfer of knowledge; they must respect and fully protect sacred natural sites and territories; they must ensure Indigenous governance of protected areas within their traditional territories; and they must provide viable and equitable options for sustainable community livelihoods.

#### **Recommendations for Change**

1. By 2020, all governments recognise, strengthen, and appropriately support the collective land and resource rights of Indigenous Peoples and local communities to their lands and seas and achieving their contribution to their countries' conservation, climate resilience and socio-economic goals based on demonstrated evidence that shows a strong connection between secure territorial rights, with their own governance systems, improved conservation values and community well-being.

2. IUCN, the WPCA and Indigenous Peoples develop a new category system for indigenous territories management, including Indigenous Protected Areas (IPAs) and create a committee for the monitoring and implementation of this category system, The Promise of Sydney and other international commitments that fully and effectively engages Indigenous Peoples.

3. By 2020 IUCN and its members, including governments and protected area managers, co-create programmes with the full consent and involvement of traditional knowledge holders for the respectful application and maintenance of traditional knowledge and customary governance systems, ensuring that actions in and around protected areas are built on the combination of diverse knowledge systems, skills and capacities, integrating a rights-based approach.

4. In accordance with UNDRIP, all protected areas established on the territories, lands or seascapes of Indigenous Peoples fully observe their rights and governance systems, and Indigenous Peoples are fully involved in their creation, designation and management. Where Indigenous Peoples and local communities have been evicted from their lands by the creation of protected areas national laws should be revised to guarantee the restitution of rights and recognise their right to return to and remain on their lands.

5. Traditional knowledge, practices and indigenous economies are promoted and applied in...the conservation and management of protected areas and other effective area-based conservation measures, including Indigenous bio-cultural territories, World Heritage Sites and Sacred Natural Sites (SNS).

6. Management objectives and actions for all ecosystems must recognise the intrinsic and cultural values of those systems and the inherent right of Indigenous communities to use, develop and control these resources.

7. By 2020 the conceptual and management gap between natural and cultural World Heritage Site designations is eliminated, and a comprehensive approach taken towards the conservation of natural and biocultural heritage and knowledge systems in all designated sites.

8. The implementation of the World Heritage Convention is aligned with the principles of UNDRIP and the Outcome Document of the 2014 World Conference on Indigenous Peoples and the Convention's procedures and Operational Guidelines are amended accordingly, with the full and effective participation of Indigenous Peoples.

9. Governments implement and enforce appropriate laws, policies and programmes, with the full and effective participation of Indigenous Peoples and local communities to create No-Go areas within World Heritage Sites, Sacred Natural Sites and Territories and in other sites where Indigenous Peoples and local communities are conserving lands and resources, particularly from mining and other extractive and destructive industries. IUCN must establish a Task Force to study and define the "No-Go area" concept, develop a relevant

program of work and prepare a motion for endorsement at the 2016 World Conservation Congress.

10. Spatial planning-based decision-making inside and outside protected areas, IPAs, indigenous bio-cultural territories and Sacred Natural Sites and Territories (SNS&Ts) is undertaken with indigenous people in a participatory manner and with their full prior informed consent to ensure that industries and development have a positive impact on biodiversity, people, their well-being and livelihoods. Governments refrain from granting concessions to extractive industries and megaprojects within protected areas.

11. Innovative financing mechanisms including indigenous peoples economic systems and Access and Benefit Sharing mechanisms are created to support indigenous and local land and sea managers in their efforts to promote indigenous economies and implement enduring, effective territorial management using traditional knowledge including a dedicated funding mechanism to support and strengthen Indigenous Peoples in the management of indigenous areas and special funding windows in existing mechanisms.

14. All governments and the IUCN formally recognize important role that Indigenous women and youth play in developing and maintaining protected areas of all types and give special attention in all of these recommendations to promoting and strengthening their participation at all levels of protected area management from local through to the institutional structure of IUCN.



***Annex 4. IUCN World Conservation Congress 2016: Motion 29. Appropriately Recognising and Respecting the Territories and Areas Conserved by Indigenous Peoples and Local Communities (ICCAs) Overlapped by Protected Areas.***

RECOGNISING that many indigenous peoples and local communities care for, self-govern, manage, protect, sustainably use, restore and enrich – in one word ‘conserve’ – all or parts of their territories and areas, including commons, sacred sites, and locally managed marine areas, in ways that meet IUCN definitions of indigenous peoples' and community conserved territories and areas (ICCAs), IUCN and the Convention on Biological Diversity (CBD) definitions of protected areas, and the CBD's use of the term "other effective area-based conservation measures";

CONCERNED that government-designated and privately protected areas often overlap with ICCAs without appropriately recognising and respecting them;

RECALLING IUCN's affirmation of the United Nations Declaration on the Rights of Indigenous Peoples and of indigenous peoples' collective rights and responsibilities with respect to their territories, lands, water and resources, including within protected areas, and additional prerogatives and responsibilities relevant to participating fully and effectively in protected area governance;

RECALLING that IUCN and the Parties to the CBD affirm the rights of indigenous peoples and local communities to participate fully and effectively in protected area governance and that IUCN guidance encourages fostering governance diversity, quality and vitality in protected and conserved areas;

RECALLING Resolution 5.094 *Respecting, recognizing and supporting Indigenous Peoples' and Community Conserved Territories and Areas* (Jeju, 2012), including its call for recognising and supporting ICCAs "in situations where they overlap with protected area or other designations";

NOTING Recommendation 4.127 *Indigenous peoples' rights in the management of protected areas fully or partially in the territories of indigenous people* (Barcelona, 2008), which calls for indigenous peoples' governance of Indigenous Conservation Territories when protected areas fully or partially overlap with those territories;

MINDFUL OF Resolution 4.038 *Recognition and conservation of sacred natural sites in protected areas* (Barcelona, 2008) and Recommendation 5.147 *Sacred Natural Sites – Support for custodian protocols and customary laws in the face of global threats and challenges* (Jeju, 2012), which call for recognition of custodians' care and protection of Sacred Natural Sites in protected areas;

WELCOMING recommendations of the IUCN World Parks Congress (Sydney, 2014) to recognise and support ICCAs both "within and outside protected areas" and to ensure collective governance rights in overlap situations (Stream 6) and "ensure Indigenous governance of protected areas" in their traditional territories (Stream 7);

RECALLING that the Durban Accord and Action Plan and the Convention on Biological Diversity's Programme of Work on Protected Areas recognise ICCAs and indigenous peoples' and local communities' right to participate in protected area governance;

ACKNOWLEDGING that Native Hawaiian people lived in areas of Hawai'i now designated as national parks and other protected areas and may continue to maintain or wish to restore ICCAs in them; and

APPRECIATING the work of the ICCA Consortium;

**The World Conservation Congress, at its session in Hawai'i, United States of America, 1-10 September 2016:**

1. REQUESTS the Director General, Council, Commissions and Members, together with the ICCA Consortium and relevant partners, to:

a. develop, disseminate, and urge implementation of best practice guidance on identification, recognition, and respect for ICCAs in protected area overlap situations;

b. require appropriate recognition and respect for overlapped ICCAs before including any protected area in IUCN's Green List of Protected and Conserved Areas or before advising the granting of World Heritage status, including by ensuring that the custodian indigenous peoples and/or local communities maintaining these ICCAs give their free, prior and informed consent to the proposed designation;

c. encourage indigenous peoples' organisations and networks and the Whakatane Mechanism to support the recognition and respect of ICCAs overlapped by protected areas, including recognition of indigenous peoples' continuing governance and management of them;

d. encourage the Parties to the Convention on Biological Diversity to implement existing CBD decisions as well as best practice guidance on identifying, recognising, and respecting ICCAs overlapped by protected areas as a means of implementing Articles 8(j) and 10(c) of the Convention, meeting the Aichi Biodiversity Targets 2011-2020, and advancing the Programme of Work on Protected Areas, the Plan of Action on Customary and Sustainable Use of Biodiversity, and the 2014 Chennai Guidance for the Integration of Biodiversity and Poverty Eradication, among other relevant CBD decisions;

e. encourage agencies and donors to promote recognition and respect of overlapped ICCAs and to assist their custodians in including them in the World Database on Protected Areas and the ICCA Registry with their free, prior and informed consent;

f. encourage the UN Special Rapporteur on the Rights of Indigenous Peoples and other relevant rights monitoring mechanisms to take ICCAs into account in their work, including by promoting good practices that affirm and secure rights by appropriately recognising and respecting ICCAs overlapped by protected areas; and

g. report annually on the above actions to the IUCN Council, biennially to the CBD, and in IUCN's annual report to the United Nations Permanent Forum on Indigenous Issues;

2. CALLS UPON IUCN Members, non-member States, and other actors involved with protected areas to develop and implement laws, regulations, agreements, protocols, plans, and administrative procedures and practices that appropriately recognise and respect ICCAs overlapped by protected areas; and

3. CALLS UPON IUCN Members and Parties to the CBD, in collaboration with the CBD Secretariat and other relevant actors, to include reporting on the implementation of best practices in recognising and respecting ICCAs overlapped by protected areas in CBD Parties' reporting to the CBD Secretariat, including in national reports, progress reports on achievement of the Aichi Targets (particularly Target 11), reports on implementation of the CBD Programme of Work on Protected Areas, and the Global Biodiversity Outlook.

## Endnotes

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<sup>1</sup> The term “conservation” is today represented in diverse ways that vary significantly in their interpretations of goals. In this report, following the practice of the ICCA Consortium (itself based on the definition of conservation advanced by IUCN in its 1980 *World Conservation Strategy*), we understand “conservation” to include preservation, sustainable use, and restoration of biodiversity and ecosystems.

<sup>2</sup> Rights and Resources Initiative (2015) found that the amount of land that states recognised as collectively owned and controlled by indigenous peoples and local communities is considerably less than the approximately 65% of all lands that Wiley (2011) estimates that they continue to manage and use. This global assessment examined the amount of land under state-recognised community-based tenure regimes in 64 countries that account for 82% of world land area. The Rights and Resources Initiative study concluded that only 10% of the land in these countries was legally recognised by states as being owned by indigenous peoples and local communities and another 8% was recognised as controlled by them or designated for their use.

<sup>3</sup> In this report, following current practice in the IUCN, we distinguish between governance and management. Governance refers to “the interactions among structures, process and traditions that determine how power and responsibilities are exercised, how decisions are taken and how citizens or other stakeholders have their say” (Borrini-Feyerabend *et al.* 2004:10). Governance is about “who holds power and authority,” “who decides what the objectives are” and what means are taken to achieve them, and “how those decisions are taken” and “who is (or should be) held accountable” (Borrini-Feyerabend *et al.* 2004: 11, table 3). Management refers instead to “what is done in pursuit of given objectives” and “the means and actions to achieve such objectives” (Borrini-Feyerabend *et al.* 2004: 11, table 3). From this perspective the widely used terms “collaborative management” and “co-management” of protected areas are misleading, and such arrangements and authority are better understood to be forms of shared governance or co-governance.

<sup>4</sup> Protected areas are governed through arrangements identified by the International Union for Conservation of Nature (IUCN) as constituting four protected area “governance types:” governance by governments (including by central, regional, and local government agencies), by multiple actors under shared governance arrangements, by private entities, and by indigenous peoples and local communities. This report emphasises complex governance situations that involve the overlap of ICCAs by protected areas governed by governments other than those of indigenous peoples and local communities. Some examples also are provided of overlaps involving protected areas with shared governance (see, for example, the case studies on Mt. Kalatungan Range Natural Park and Kayan Mentarang National Park) and protected area that are governed by indigenous peoples and local communities (see, for example, the case studies on the Natural Park of the Ampezzo Dolomites, part of the Dolomites World Heritage Site, and the Kangchenjunga Conservation Area). While we do not present any case studies of the overlap of privately protected areas and ICCAs, our general discussions of the importance of appropriate recognition and

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support for ICCAs in overlap situations and our presentations of appropriate recognition approaches and best practices are also relevant to these situations.

<sup>5</sup> In this report we refer to “best practices” in accordance with common use in international conservation circles, but these could also be discussed as “good practices” – keeping in mind that so-called “best practices” may be criticised for being subjectively identified, may not be appropriate in all contexts and situations, and/or may overlook valuable alternative practices and by omitting them tend to discourage their adoption.

<sup>6</sup> Indigenous peoples and local communities decry these rights violations, and some question the fundamental premises of the very conception of protected areas. From this perspective the worldview and values embodied in the concept of “protected areas” reflect an ethnocentric and false dichotomisation of humans and nature and a simplistic and wrongful approach to conservation based on zoning the world into protected areas and unprotected ones in which environmental degradation and biodiversity loss is condoned. As members of the Taiwan Indigenous Conserved Territories Union (TICTU) recently put it, this conceptualises the world in terms of protected areas, destructed areas, destructing areas, and destructible areas (personal communication, Sutej Hugu). Alternatively, rather than reject protected area-based conservation, others urge rethinking the concept of conservation to make it less narrow and ethnocentric and re-conceptualising and reforming protected areas to ensure they foster good governance, rights, bio-cultural diversity (see below), and sustainable livelihoods in ways that link and mutually strengthen conservation, culture, and social justice (Stevens 2014b, d, e, f).

<sup>7</sup> A similar situation is the case for protected areas that overlap with areas of indigenous peoples’ and local communities’ hunting, collecting, and transhumant grazing territories which they have customarily seasonally used and managed. In these cases a lack of permanent settlements has often been misinterpreted as a lack of claim to territorial ownership or rights, a circumstance that has sometimes been used as a pretext to deny them continuing governance, access, management, and use of those lands and to misrepresent them as *terra nullius*.

<sup>8</sup> Bio-cultural diversity refers to the association of cultural diversity (particularly as indicated by language) and biological diversity, a spatial correspondence that is entwined with the geography of indigenous peoples’ continuing governance and management of lands and waters (Nietschmann 1992; Stevens 1997, 2014b; Oviedo *et al.* 2000; Maffi 2001).

The global extent of the territories, lands, and waters of indigenous peoples and local communities is a controversial subject. A comprehensive, carefully documented, and nuanced mapping of these territories has yet to be carried out, and will be difficult in that it should include multiple, conflicting, and contested perspectives on traditional or customary territories, current areas in collective customary tenure, territories currently legally recognised by states, collective tenure areas that are titled by states, areas in which indigenous peoples have reserved treaty rights, and areas in which indigenous peoples have aboriginal or native title (exclusive and non-exclusive). Such mapping has enormous ramifications for the ownership/custodianship and management of land and resources, sovereignty, and rights. This is often likely to be highly contentious and politically charged.

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Given this uncertainty about the extent of indigenous peoples' and communities' territories, lands, and waters, it is not possible to assess the percentage of the world's known terrestrial biodiversity for which these lands provide habitat. That it is substantial has been widely suggested and is given credence by mapping that indicates the high level of correspondence of indigenous peoples territories with tropical and other forests, beginning with Mac Chapin's (1992) work in Central America and studies that have mapped correspondences between language diversity and biodiversity (Oviedo et al. 2000; Stevens 2014b). One recent such map establishing striking overlap of cultural and biological diversity, the 2015 IUCN/National Geographic Society "Map of Indigenous Peoples, Protected Areas and Natural Ecosystems of Central America," also established that 39% of the area of 948 protected areas in the seven Central American countries overlaps with indigenous territories – an area larger than the total area of Costa Rica, El Salvador, and Belize combined (IUCN 2015).

<sup>9</sup> While many indigenous peoples' and local communities' territories and areas can be identified as having the key characteristics of ICCAs as articulated by the IUCN, referring to them as ICCAs without those indigenous peoples' and local communities' consent may raise issues of representation, authority, and protocol as well as having possible political and other ramifications because of the association by the IUCN and the CBD of the term with a particular type of protected area governance. Chrissy Grant and Dermot Smyth (personal communication) observe that "Many areas of the Indigenous estate across Australia are likely to have characteristics equivalent to ICCAs, but it would be presumptuous and inappropriate to give them this label without the engagement and informed consent of the Indigenous owners and custodians of these areas."

<sup>10</sup> World Parks Congress 2003 Recommendation V.26, which first presented this definition of ICCAs, also notes that "The term as used here is meant to signify a broad and open approach to categorising such community initiatives, and is not intended to constrain the ability of communities to conserve their areas in the way they feel appropriate." ICCAs are often depicted as having three "essential" characteristics, recently explained by Borrini-Feyerabend and Hill 2105:185 as:

- An indigenous people or local community has a "close and profound relationship" (Borrini-Feyerabend and Hill 2015:185) with a site, area, or territory;
- That indigenous people or local community are "the major players in decision-making related to the site and have de facto and/or de jure capacity to develop and enforce regulations"; and
- The indigenous people's or local community's decisions and practices lead to the conservation of biodiversity "regardless of original or primary motivations".

On characterising ICCAs see also World Parks Congress Recommendation V.26 "Community Conserved Areas" (2003); World Conservation Congress Resolution 3.049 "Community Conserved Areas" (2004); and World Conservation Congress Resolution 4.049 "Supporting Indigenous Conservation Territories and Other Indigenous Peoples and Community Conserved Areas" (2008). The CBD has not defined or characterised ICCAs.

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<sup>11</sup> Most protected areas worldwide are governed by governments other than those of indigenous peoples and local communities. “Governance by government,” one of four protected area governance types identified by the IUCN, refers to governance by bodies at the “federal/state/sub-national or municipal level as well as to government-delegated management authority” (Dudley 2008). The governments of indigenous peoples and local communities, however, have not been included in this governance type. The practice in IUCN publications rather has been to place protected area governance by indigenous peoples’ and local communities’ governments in a different governance type, “governance by indigenous peoples and local communities” (Dudley 2008, Borrini-Feyerabend *et al.* 2011). This distinction can be interpreted as highlighting the importance the IUCN attaches to recognising and respecting governance by indigenous peoples and local communities and its acknowledgement of the legitimacy of protected area governance both by their governments and through other institutions and practices such as shared knowledge, values, beliefs, and customary law. In this report, following IUCN convention, we distinguish protected area governance by indigenous peoples and local communities through their own governmental institutions from other government governed protected areas. We do so to emphasise the importance of protected area governance by indigenous peoples and local communities, and not out of any disrespect for their governance systems. On the important legal differences between indigenous peoples’ governments, which are rights-holders, and NGOs, which are not, and the consequent importance for states and conservation actors to engage with indigenous governments, see Indian Law Resource Center and Commission on Environmental, Economic, and Social Policy 2015.

<sup>12</sup> An earlier version of the IUCN matrix, as represented in Dudley (2008), refers to two sub-types of protected area governance type “D” – governance by indigenous peoples and local communities – as “Indigenous peoples’ protected areas and territories” and “Community conserved areas.” The 2013 version of the matrix in *Governance of Protected Areas* replaces the references to “Indigenous peoples’ protected areas and territories” and “community conserved areas” with “indigenous peoples’ conserved areas and territories” and “community conserved areas and territories.” Because the matrix as a whole refers to protected areas, it can be inferred that the ICCAs referred to in the 2013 version of the matrix are those that meet the IUCN definition of protected area. It should be noted the matrix is an illustrative device that has not been formalised in IUCN policy through inclusion in an IUCN World Conservation Congress resolution.

<sup>13</sup> The CBD concept of “other effective area-based conservation measures” is meant to complement protected areas by recognising the conservation values of other approaches (including many ICCAs) that do not meet the IUCN or CBD definitions of protected area (for example by not being explicitly dedicated to biodiversity conservation). At the IUCN World Parks Congress 2014 another term came into use – “conserved area.” Borrini-Feyerabend and Hill (2015:178) in the recent IUCN and CBD supported book *Protected Area Governance and Management*, use the term “conserved area” to “describe area-based measures that, regardless of recognition and dedication, and at times even regardless of explicit and conscious management practices, achieve *de facto* conservation and/or are in a positive conservation trend and likely to maintain it in the long term.” Conceived in this

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way “conserved areas” include all ICCAs (including those that meet protected area definitions) and many – but not all – protected areas. Some protected areas fall short of being “conserved areas” because they fail to effectively conserve biodiversity. These include “paper parks” that have little or no on-the-ground administrative presence and protected areas that have been compromised by legislation or administration that undermines their conservation goals by allowing incompatible uses such as large-scale infrastructure projects or exploitation by extractive industries (Stevens 2014e). ICCAs by definition are “conserved areas” in the sense used here (although there may be concern that some are not necessarily likely to maintain their conservation effectiveness in the long term in the face of existing pressures and threats).

Discussions held in 2016 by an IUCN task force on “other effective area-based conservation measures,” however, suggested that there is not yet strong agreement on using the term “conserved areas” for “other effective area-based conservation measures,” and moreover that some members of IUCN’s World Commission on Protected Areas advocate a different definition of the term “other effective area-based conservation measures” that would require such areas to be dedicated to biodiversity conservation and have appropriate management plans. If so, some ICCAs will be considered to meet this definition and a large number – likely most – will not. Discussions will continue within the IUCN to develop advice for the Parties to the CBD on appropriate definition or characterisation of “other effective area-based conservation measures.”

<sup>14</sup> This reflects in part the very newness of the ICCA concept. Many indigenous peoples, local communities, government officials, and protected area authorities may not have heard of the term. There may also often be issues of political will. Many governments may be unenthusiastic about acknowledging the overlap of ICCAs and state protected areas because this might encourage demands for appropriate recognition of ICCAs. Many indigenous peoples and local communities, on the other hand, may be reluctant to self-identify their territories and areas as ICCAs for diverse reasons that include concern that increased visibility may bring unwelcome interventions from governments or outside NGOs or lead to unwanted influxes of tourists and associated development.

<sup>15</sup> Understanding of overlap situations is complicated by complex and contested tenures. Overlaps take place in many different tenure situations, not all of which may be recognised by all concerned. States may not legally recognise indigenous peoples’ and local communities’ ownership or custodianship of their territories, and conversely indigenous peoples and local communities may not recognise claims by the state (or private parties) to all or part of their territories. State recognition of indigenous peoples’ territories may encompass only a small part of their traditional territories, which – as articulated in international law (ILO 169 and UNDRIP) – includes rights in lands they traditionally owned, occupied, or used, including areas they have cultural associations with. States may refuse to acknowledge that customary territories include formerly occupied and used lands, and that indigenous peoples who have been coercively displaced retain rights in those territories. The state may or may not recognise customary tenures, including collective tenure, areas with overlapping tenure rights, or usufruct rights, and may or may not recognise the existence of native title (Australia) or Aboriginal title (Canada), in the



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sense of un-extinguished title over lands. States may or may not have made and honoured treaties and comprehensive land claim settlements with indigenous peoples, and they may or may not respect specific retained or “reserved” treaty rights (USA) to occupancy and land use in ceded areas. Indigenous peoples’ and local communities’ reserves may or may not be legally recognised. Tenure over specific areas may be in dispute, or open to future dispute, because of the ways that treaties and land settlements were reached or honoured as well as because of ownership disputes among peoples and communities. Some recent national and global mapping efforts of interest include LandMark, which is said to be “the first online, interactive global platform to provide maps and other critical information on lands that are collectively held and used by Indigenous Peoples and local communities” and which “is designed to help Indigenous Peoples and communities protect their land rights and secure tenure over their lands” (Landmark n.d.) and the non-legally binding U.S. Forest Service’s “Tribal Connection” online interactive mapping tool that maps the overlap of tribal lands and those administered by the U.S. Forest Service, making visible the considerable areas of national forests and grasslands to which Indian tribes retain reserved treaty rights (U.S. Forest Service 2015).

<sup>16</sup> Overlaps with privately governed protected areas can take on the same overlap geographies. It should also be noted that in some cases overlaps may involve transboundary geographies that span multiple territories, administrative units, or countries.

<sup>17</sup> In Papua province and the provinces of Kalimantan (Indonesia), possibly 90% of the protected areas overlap with indigenous territories (Eghenter, personal communication). According to Cisneros and McBreen (2010), in South America (as of 2010) more than 50% of nationally (central or federal government) protected areas in Bolivia and 100% in Guyana had overlap with indigenous peoples’ territories, while in Brazil, Chile, Colombia, Ecuador, Peru, and Venezuela more than 25% of these protected areas had overlap. In Bolivia 16 of 29 nationally protected areas overlap with indigenous territories; in Peru 20 of 65 (including 8 Communal Reserves); Colombia 22 of 55; Brazil 79 of 305; Chile 28 of 96; Ecuador 15 of 40; and Paraguay 9 of 28 (Cisneros and McBreen 2010). The data reported by Cisneros and McBreen include cases of customary occupancy and use as well as indigenous territories that are legally recognised by the state or to which legal recognition is pending. A 2015 IUCN and National Geographic Society map overseen by Mac Chapin, with input from national and regional indigenous peoples’ organisations across seven Central American countries, national mapping teams with indigenous team members, and more than 100 workshops and meetings found that 96,432 km<sup>2</sup> of the 259,957 km<sup>2</sup> in 948 protected areas – 39% -- overlapped with the inhabited territories of indigenous peoples (IUCN 2015). Earlier studies found that up to 90% of the protected areas of the region had at least some overlap with the territories of indigenous peoples (Stevens 2014b).

<sup>18</sup> The examples in this report emphasise cases in which indigenous peoples and local communities maintain custodianship over territories and areas in ways that have conservation significance and could be represented and recognised as ICCAs. This includes examples from North and South America, Asia, Australia, and Europe. The lack of examples

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from Africa reflects widespread past and continuing displacement of indigenous and local communities from protected areas.

In this report we do not discuss cases in which ICCAs are situated outside of and adjacent to protected areas, without any spatial overlap between them and neighbouring protected areas. This situation merits in-depth exploration in its own right. Contiguous contexts can create conservation connectivity across larger conservation landscapes and mutual support for management initiatives, including buffering external impacts, to the benefit of both ICCAs and protected areas. They also have the potential, however, to generate conflict if protected authorities seek to extend their governance authority to adjacent ICCAs in order to ensure coordination of policies, planning, and projects. In some cases, protected area authorities or non-local NGOs may view ICCAs as buffer zones, the management of which should advance the goals of the protected area; this perspective could undermine the integrity and effectiveness of ICCAs. Guidance and examples of best practices are needed that identify appropriate legislation and policies for ICCA recognition and respect in these situations and clarify means of ensuring effective coordination and collaboration between protected areas and neighbouring ICCAs.

<sup>19</sup> Although the examples in this subsection primarily refer to the territories of indigenous peoples, overlaps of protected areas can also take place with the legal or claimed territories of local communities, such as those in India and Nepal whose customary collective forest and rangelands have been nationalised and are part of protected areas and African descent communities who have constitutional rights to collective lands in Columbia, Ecuador, Brazil, Honduras, and Nicaragua. In Nepal the customary territories of many local communities' of the Nepali-speaking, upper caste Hindu caste groups (Nepal's socio-political dominant ethnic groups) are overlapped by the national forest and by national park buffer zones and in some cases also by national parks and wildlife reserves). In India many local communities have customary territories within protected areas and reserve forests.

<sup>20</sup> The Lakota do not refer to their territories and areas as ICCAs. The Mandinglbay Yidinji people similarly have not declared or represented either their territory or their Indigenous Protected Area as ICCAs. Sharwa leaders, by contrast, do refer to the Sharwa customary territory of Khumbu, which is now overlapped by Sagarmatha (Mount Everest/Chomolungma) National Park and World Heritage Site, as an ICCA and have presented it as such in national contexts and in international venues including IUCN's World Conservation Congress 2008 in Barcelona, Spain and the CBD COP10 in 2010 in Nagoya, Japan (Stevens 2010, 2013b, 2014c; Sherpa 2013; 2016).

<sup>21</sup> Some of the more than 16,000 community forests established in Nepal's extensive national forest meet the criteria for ICCAs. Some of these community forests, which all have new, state sanctioned local administrative arrangements and procedures, continue to maintain long-standing customary collective management practices even though the state does not encourage this and there is no provision for it in national administrative rules for community forests. Similarly some "buffer zone forests" within national park and wildlife reserve buffer zones meet criteria for ICCAs because communities maintain self-governance of these areas under nationally standardised governance arrangements that

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allow for the possibility of community management and/or because they maintain customary collective management of forests and rangelands and protection of sacred places. In other cases, however, communities have found that protected area authorities have undermined community self-governance by constraining or intervening in buffer zone forest and community forest management decisions and planning. In many cases, moreover, communities abandoned customary land management institutions after buffer zone and community forest institutional arrangements and requirements were imposed (Jana and Paudel 2010; Kothari *et al.* 2012; Sherpa 2013).

<sup>22</sup> It was not an objective of our research to catalogue or analyse examples and case studies of all of these various governance situations. Rather, following the example of the IUCN World Parks Congress Workshop 2.7 (Annex 3) we focused on case studies that embody best practices of appropriate recognition and respect of ICCAs overlapped by protected areas – and hence provide examples of complementarity.

<sup>23</sup> The Ogiek nevertheless have returned to some of their territory and in 2013 documented their customary bylaws, instituted community rangers, and stopped charcoal burning and elephant poaching by outsiders (Whakatane Mechanism 2013). Further evictions by armed guards of the Kenya Forest Service, including burning of homes, were nonetheless reported in July 2016 (Forest Peoples Programme 2016).

<sup>24</sup> This is common not only in “paper park” situations, where state authorities neglect protected area administration, but also in protected areas with on-the-ground governance and management. Borrini-Feyerabend and Hill (2015:188) observe: “The case of ICCAs within government-governed protected areas is quite common. If the ICCA is maintained under community governance without recognition from or coordination with the government there is a risk the governance practices may be inadvertently or deliberately suppressed and replaced, generating conflicts between governments and communities.”

<sup>25</sup> The Sharwa are an indigenous people with their own identity, culture (including language), and customary territories. Their name was transposed into English and Nepali as “Sherpa”. During the twentieth century the name “sherpa” (with a lower case “s”) became used to designate a mountaineering guide or porter, an occupation today engaged in also by many non-Sharwa.

<sup>26</sup> ICCAs make important contributions to the achievement of all twenty Aichi Targets, as discussed in detail in the ICCA Consortium policy brief, “ICCAs and Aichi Targets: The Contribution of Indigenous Peoples’ and Community Conserved Territories and Areas to the Strategic Plan for Biodiversity 2011-20” (Kothari and Neumann 2014). ICCAs are particularly vital to the achievement of Targets 11 and 18:

By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes. (Target 11)

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The traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels. (Target 18)

<sup>27</sup> Recognising and respecting ICCAs can maintain a strengthened conservation presence on the ground because of indigenous peoples' and local communities' active participation, resulting in enhanced possibilities for surveillance, enforcement, and for alerts and rapid responses to changing situations and conditions.

<sup>28</sup> Social reconciliation may be fostered by improved cross-cultural communication, mutual understanding and respect, shared work and goals, and mutual recognition of rights and responsibilities that can be facilitated by governance relationships that appropriately recognise and respect ICCAs that are overlapped by protected areas.

<sup>29</sup> These include, for example, protected area entrance fees and employment and income from monitoring and restoration ecology work; sustainable livelihood practices including managed forest use, grazing, and marine use; tourism concessions and revenues; and payments for stewardship services, ecosystem services, and climate change mitigation and adaptation.

<sup>30</sup> This may include social protest and nonviolent and violent action that target contested resources such as wildlife and forests as well as protected area personnel, facilities, and legal status.

<sup>31</sup> There are many types of conservation collaborations and synergies that may be lost. Among them are loss of local ecological knowledge, sustainable land and marine use practices, collective land and marine management institutional arrangement, and other cultural and social support for conservation; reduced compliance with conservation regulations or resistance/retaliation against them; decreased community-conducted monitoring and surveillance; decreased awareness of and defence against outside encroachment; and decreased volunteerism and collaboration with protected area programs because of loss of trust, respect, and goodwill.

<sup>32</sup> The CBD has, however, been criticised for having relatively weak compliance measures and lacking a treaty monitoring mechanism. Moreover, while the Convention and the COP decisions are binding international law, these decisions are often framed as guidance and encouragement rather than requirements. This includes language that calls for their implementation to be "consistent with national law and applicable international obligations." Article 8 of the CBD, moreover, includes a caveat that its provisions are subject to its parties' national legislation. Enforcement of the CBD may, however, be enhanced by the 25 November judgment of the Inter-American Court on Human Rights in the case of *Kaliña and Lokono Peoples vs. the Government of Suriname*. In this judgment

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the Court linked human rights and environmental rights and specifically referred to the Convention in discussing protected areas, rights, and appropriate requirements for protected areas established in the territories of indigenous peoples.

<sup>33</sup> Vicki Tauli-Corpuz (2015), the UN Special Rapporteur on the Rights of Indigenous Peoples, in expert testimony to the Inter-American Court of Human Rights in the case of *Kaliña and Lokono Peoples vs. the Government of Surinam*, brought to the court's attention the relevance of the CBD and also of IUCN policy and guidance, including the adoption of the "new protected area paradigm." The case involves two indigenous peoples who seek redress for violations of their rights that include those stemming from the imposition of three protected areas on their territories without their consent. In her testimony the UN Special Rapporteur emphasised the relevance of article 10c of the CBD, together with decisions and plans subsequently adopted by the Parties to the CBD that affirm indigenous peoples' rights regarding the establishment and management of protected areas. She expressed the view that "international environmental and human rights laws should not be seen as distinct bodies of law, but as interrelated and complementary: and observed that there is a "need for a collaborative approach [of protected area governance] or recognition of indigenous peoples' own conservation initiatives within their territories." Tauli-Corpuz highlighted Article 10(c), which protects "customary use of biological resources in accordance with traditional cultural practices," and suggested that this "should also be read to include protection for rights to lands and resources, and to require recognition and protection of indigenous institutions and customary laws." Her testimony also brought to the attention of the Inter-American Court on Human rights the "new protected area paradigm" and its contrast with the "old paradigm" and quoted recommendations from the World Parks Congress 2014 Promise of Sydney. (Also see Tauli-Corpuz 2016, in which she makes some of these observations and arguments in the first thematic report by a UN Special Rapporteur on the Rights of Indigenous Peoples on the impacts on indigenous peoples of conservation measures – including protected areas).

In its judgment the Inter-American Court on Human Rights (2016) noted that "respect for the rights of the indigenous peoples may have a positive impact on environmental conservation. Hence, the rights of the indigenous peoples and international environmental laws should be understood as complementary, rather than exclusionary, rights." The Court significantly cited UNDRIP and the CBD in finding Suriname guilty of violations of Articles 2, 21, and 23 of the American Convention on Human Rights in its governance and management of protected areas in the territories of the Kaliña and Lokono peoples. Drawing on the CBD and on IUCN policy the Court further specified necessary steps for redress – including recognition of the indigenous peoples' access to livelihood and cultural uses, effective participation in protected area governance and in conservation activities, and sharing in benefits. The Court's observation that "the traditional practices of the indigenous peoples that contribute to the sustainable care and protection of the environment should be maintained, protected and promoted. Thus, it is pertinent to support the indigenous peoples' knowledge, institutions, practices, strategies and management plans related to conservation" can be interpreted to support recognition and respect of ICCAs within protected areas. Tauli-Corpuz, (2016:11) in her thematic report on

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conservation, refers to the IACHR judgment in this case as “of particular importance to the rights of indigenous peoples in the context of conservation.”

<sup>34</sup> In 2012, however, the Parties to the CBD adopted two decisions that include provisions that encourage support for ICCAs without reference to them as a form of protected area governance. The language in these two decisions, COP12 XII/5 Biodiversity for poverty eradication and sustainable development (operative paragraph 11) and COP12 Decision XII/12 on Article 8(j) and related provisions (B.5), are thus highly relevant to ICCAs in protected area overlap situations. COP12 XII/5 (par. 11) “*Further encourages* Parties, other Governments, international organisations and relevant stakeholders to support indigenous and community conserved areas and territories, community-based management, customary sustainable use and community governance of biodiversity and ensure the full and effective participation of indigenous and local communities in decision-making processes, taking into account international instruments and law related to human rights in accordance with national legislation.” COP 12 Decision XII/12 Article 8(j) and related provisions (B.5) “*Invites* Parties to include in requests to donors, support for indigenous and local communities to organize themselves to develop community plans and protocols to document, map, and register their community conservation areas, as well as to prepare, implement and monitor their community conservation plans and for support to countries to strengthen recognition of indigenous and local community conservation areas.”

<sup>35</sup> The IUCN adopts policies through a process of voting on proposed resolutions and recommendations at its World Conservation Congress. The recommendations of IUCN World Parks Congresses do not carry the same weight, as they have not been adopted by the vote of IUCN’s members. However, specific WPC recommendations are often incorporated into WCC resolutions and recommendations. This was the case, for example, with the World Parks Congress 2003 *Durban Accord* and *Durban Action Plan*, whose implementation was endorsed in multiple WCC resolutions: Resolution 3.055 “Indigenous peoples, Protected Areas and the CBD Programme of Work” (2004), Resolution 4.048 “Indigenous Peoples, Protected Areas and Implementation of the Durban Accord” (2008), and Resolution 5.099. “IUCN Policy on Conservation and Human Rights for Sustainable Development” (2012).

<sup>36</sup> In presenting relevant IUCN policy and guidance we include quotations of key passages in the belief that close attention to the specific language of existing policy is important not only to appreciate their spirit and specifics but also in order to effectively implement them and to develop further policy and guidance.

<sup>37</sup> The stream recommendations were developed out of recommendations put forward by the many Congress workshops. The recommendations from Workshop 2.7, Overlapping governance types: dealing with complexity and diversity (Annex 3), specifically highlighted appropriate recognition and respect for ICCAs in calling for states to “Ensure that Indigenous peoples’ and local communities’ knowledge, institutions, and practices that contribute to conservation, livelihoods, food and water sovereignty, and sustainability -- *including ICCAs* -- together with their management strategies and plans, are appropriately recognized, respected, coordinated with, and supported within overlapping protected areas” (italics added).

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<sup>38</sup> See WCC Resolution 4.050, “On Indigenous Conservation Territories” (2008) and WCC Resolution 4.049 “Supporting Indigenous Conservation Territories and Other Indigenous Peoples and Community Conserved Areas” (2008). The CBD has not yet endorsed the term Indigenous Conservation Territory.

<sup>39</sup> This was also a key target of the Durban Action Plan, and has been endorsed since by WCC resolutions. It is also affirmed by multiple decisions of the parties to the CBD since 2004 as well as being incorporated in PoWPA. See *Durban Action Plan*, Main Target 9 (2003), WPC Recommendation V.26 (1.e) (2003), and WCC Resolution 4.050 and Recommendation 4.127 (2008). This policy is consistent with CBD articles 8 (j) and 10 (c), and also with the 2008 COP9 decision IX/18 (par. 19).

<sup>40</sup> See WPC Recommendation V.24 (1.k, l) (2003) and WCC Resolutions 4.048 (i-iv) and 4.050 (2) (2008) and 5.094 (par. 1 (b, c)) (2012).

<sup>41</sup> See WCC Resolution 4.038 (2 (c)) (2008). The CBD has not yet called on state parties to take this action.

<sup>42</sup> For examples of the evaluation of the status of ICCAs in situations in which they are overlapped by protected areas from the standpoint of rights affirmed by UNDRIP, ILO 169, and other international law see Stevens 2013b, 2014c for national parks in indigenous peoples’ territories in highland Nepal and Stevens 2008, 2009, 2010, 2013a, b and 2014c for more in-depth analysis of the situation of overlapped Sharwa (Sherpa) ICCAs in Sagarmatha (Mount Everest) National Park and World Heritage Site.

<sup>43</sup> Diverse collective rights of indigenous peoples have been articulated and affirmed in international law, including in international treaties (for discussions of these in relation to protected areas see the Inter-American Court on Human Rights’ 2015 judgment in the case of *the Kaliña and Lokono Peoples v. Suriname* and also Colchester 2004; Disko and Tugendhat 2014; Jonas, Harry *et al.* 2012, 2014; Indian Law Resource Center and the Commission on Environmental, Economic, and Social Policy 2014; MacKay 2007; Makagon *et al.* 2014; Morel 2010; Springer and Almeida 2014; Stevens 2010, 2013a, 2014b, 2014f). The collective rights of local communities, however, have not yet been articulated and affirmed in a dedicated international convention or UN declaration *per se*, although some are identified with regard to tribal peoples (ILO 169), racial groups (CERD), and ethnic, religious, and linguistic minorities (the United Nations Declaration on the Rights of Persons Belong to National or Ethnic, Religious and Linguistic Minorities, CERD, and Article 27 of the ICCPR). Rights recognised for indigenous peoples in ILO 169 and UNDRIP, which are considered to be rights inherent to all “peoples,” cannot necessarily be claimed by all local communities. An in-depth discussion of the identification of the rights of communities as affirmed in international law and guidance is beyond the scope of this report (for a recent overview of these in relation to forest communities, see Forest Peoples Programme 2013; also see Makagon *et al.* 2014).

Discussion of the rights of communities raises issues of conceptualisations or definition of “community” (and also of “local community”), a concept whose use by NGOs in conservation and development work has received much academic criticism (Agrawal and Gibson 1999; Tsing *et al.* 2005). The CBD, however, refer to “local communities” in its preamble and in Article 8(j) and the Parties have routinely used the term in decisions and

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action plans since then, usually in the phrase “indigenous and local communities”. (After a long effort by indigenous peoples to gain acknowledgement of their status as peoples this phrase will be replaced by “indigenous peoples and local communities” in future CBD contexts.) The CBD has never defined “local community.” It convened an expert meeting in 2011 to discuss this matter in order to provide guidance to the seventh meeting of the Working Group on Article 8(j) and Related Provisions. A background paper prepared for this meeting observed that ““Local community” remains, to some extent, an ambiguous term” and that “The issue of cultural identity remains a multidimensional and complex issue. Self-identification is the most appropriate way to establish who may be indigenous and/or a local and/or a traditional community representative” (Convention on Biological Diversity Expert Group Meeting of Local Community Representatives within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity 2011 (par. 6 and 7). On efforts by the CBD to address the ambiguity in the conception of “local community” and the status of the concept in international law more generally see Makagon *et al.* 2014.

Forest Peoples Programme (2013:1) has observed that “there is a lack of clarity about how to conceptualize and address the collective rights of non-indigenous (forest [and other]) peoples or communities. There is also a tendency, particularly by some NGOs, to simplistically and indiscriminately transfer the indigenous rights framework to all local communities. This...is not justifiable on legal grounds given the particular characteristics and needs of indigenous peoples and the rights framework that has [been] concretised to respond thereto.” Moreover, “in the absence of a definition that narrows the scope of the term ‘local communities’, the vast diversity in this category almost certainly means that all local communities are not ‘created equal’ in terms of rights – collective rights, for instance – or in terms of the modalities of exercising such rights” (Forest Peoples Programme 2013:3, note 11).

Local communities are currently differentiated in terms of the applicability of rights recognised by international law. Under ILO 169, tribal peoples have the same collective rights as indigenous peoples. ILO 169 identifies such peoples as “tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations” (Art.1, par 1 (a)) and adds in article 1 (par.2) that “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.” Other local communities may claim specific rights under international law as racial groups or as ethnic, linguistic, or religious minorities. Racial and ethnic groups have rights under CERD, including, for example, rights to own property in association with others that arguably include recognition of customary collective tenure rights and rights to lands and resources more broadly, including customary governance institutions and law, and free, prior, and informed consent. Minorities (which could include ethnic, linguistic, and religious communities) have multiple rights under the United Nations Declaration on the Rights of Persons Belong to National or Ethnic, Religious and Linguistic Minorities and cultural rights under Article 27 of the ICCPR, which has been interpreted by



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the UN Human Rights Committee to include rights to lands, resources, and ways of life (Forest Peoples Programme 2013).

<sup>44</sup> The Inter-American Court on Human Rights (IACHR) in its jurisprudence has upheld collective property rights for tribal peoples, for example in its jurisprudence on the case of the Saramaka community in Suriname. The court found that the Saramaka are not an indigenous people in the strict sense (they are a “maroon” community descended from African slaves), but determined that they are a tribal people whose territorial and collective property rights are protected by ILO 169, Article XXIII of the American Declaration of the Rights and Duties of Man, and Article 21 of the American Convention on Human Rights, which affirm rights to own, use, and enjoy property. It also drew on the ICESCR and the ICCPR. The IACHR made clear that tribal peoples have collective customary tenure rights, and that their territory reflects “the all-encompassing relationship that members of indigenous and tribal peoples have with their territory as a whole, not just with their villages, settlements, and agricultural plots” and that this refers to the full extent of the lands and natural resources that they have traditionally used (*Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007, para. 114 and footnote 63). ILO 169 (Art. 13.2) also affirms that “the use of the term lands...shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.” The Saramaka ruling followed the Inter-American Court on Human Rights 2001 decision in *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* that first applied the right to property in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights to include the customary territories of indigenous peoples. On relevant jurisprudence of the IACHR see Anaya 2004; Anaya and Grossman 2001; and MacKay 2007, 2011.

<sup>45</sup> For discussion of tenure rights and ICCAs see Jonas *et al.* 2012; Kothari *et al.* 2012, Almeida *et al.* 2015 a, b.

<sup>46</sup> Article 27 of the ICCPR holds that in “those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” The UN Human Rights Committee in interpreting Article 27 has observed that the protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned” and that it includes customary livelihood practices and natural resource use – maintaining that culture “manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting...” (United Nations Human Rights Committee 1994, par. 7 and 9; quoted in Sensei 2007:36). This interpretation of rights to culture by the Human Rights Committee is within a statement (Comment 23: Article 27 (Rights of Minorities) which addresses minority communities in general and not only indigenous peoples. This interpretation thus should apply to local communities that are minorities.

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<sup>47</sup> Which of these rights are held by local communities, or by certain kinds of local communities, requires careful attention to existing international law and jurisprudence. The collective rights and responsibilities of communities have not yet been as well identified and articulated as have those of indigenous peoples. It is important not to assume that rights and responsibilities now recognised as held by indigenous peoples under international law necessarily extend to local communities.

<sup>48</sup> Appropriate recognition of ICCAs has been a subject of much discussion because of concern about possible inappropriate recognition. Of particular concern is possible recognition of ICCAs that undermines their cultural integrity, autonomy, and effectiveness (and in doing so violates rights). This includes coercive conversion of ICCAs from self-governing institutions to shared or outside-dominated governance arrangements and the imposition of non-customary, non-culturally appropriate regulations or enforcement mechanisms (Borrini-Feyerabend *et al.* 2010, Kothari *et al.* 2012; IUCN WCC 2012 Res. 5.094; Stevens 2014a).

<sup>49</sup> It is striking, for example, that only 22 states have ratified ILO 169, and a number of these have been criticised for lacklustre incorporation of the convention into implementing national law and administrative regulations. Short of ratification, states can take intermediary steps in the case of some treaties, such as the Convention Concerning the Protection of World Cultural and Natural Heritage, where states may indicate acceptance (Ac), accession (A) or of the notification of succession (S) (see, for example, <http://whc.unesco.org/en/statesparties/>). States can also be signatories to conventions yet fail to legally ratify them (eg. the status of the CBD in the USA).

<sup>50</sup> These same four approaches can also be used to ensure appropriate recognition and respect for overlapped ICCAs are realised in new protected areas, expanded protected areas, and re-designated protected areas.

<sup>51</sup> The establishment of new governing institutions such as indigenous peoples' and local communities' councils can become important, for example, when protected area governance requires joint decision-making by multiple villages who have no customary regional governance institutions or procedures. This was the case, for example, in Kanchenjunga Conservation Area (sidebar 4), whereas in the other case discussed in sidebar 4 a collective institution for regional governance of commons already existed prior to the creation of the Parco Naturale delle Dolomiti d'Ampezzo, Italy. Regional councils should not replace existing customary regional governance institutions or be implemented without the full and effective participation of indigenous peoples and local communities in their design and their free, prior, and informed consent. Representatives to such councils should be freely chosen by indigenous peoples and local communities through their own processes and procedures, consistent with rights as affirmed in UNDRIP.

<sup>52</sup> See the discussion below of double or multiple status arrangements that involve shared governance of the overlapping protected area, as well as the discussion of protected area governance/management sub-units.

<sup>53</sup> Mother groups are new women's NGOs that were introduced by World Wildlife Fund to provide a means for women to participate at the village level in diverse activities including conservation work. Users groups (at village level) and user committees (at multi-village

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level) are new Kanchenjunga Conservation Area institutions that have governance responsibilities for land use and management. All village households are members of the Users Groups, with the heads of these groups participating as members of the regional level Users Committees. No customary governance arrangements, including ICCAs, are represented in these various conservation area institutions. These new institutional arrangements also overlap in area and in some aspects of jurisdiction with elected local governments (multi-village, regional Village Development Committees). This creates a complex governance situation that has not yet been clarified in national law.

<sup>54</sup> The central government, through the Department of National Parks and Wildlife Conservation, however, continues to appoint a Chief Conservation Officer (warden) for the protected area. The role of this official in decision-making may be significant (Sherpa, T.T. personal communication). The Department also plays a role in the governance of the protected area through issuing conservation area rules and regulations and authorizing management plans (Myhrvold 2014).

<sup>55</sup> It would be appropriate to make an evaluation of the status of customary ICCAs within the protected area now that it has been a decade since the 2006 handover of management authority to the Kanchenjunga Conservation Area Management Council.

<sup>56</sup> The Parco Naturale delle Dolomiti d'Ampezzo can in one sense be understood to be a protected area composed of a collection of exemplary ICCAs. Alternatively, the protected area can also be understood to be more than a collection of the Regole's collectively-governed forests and pastures in that it also includes state property (the high mountains, rivers, and lakes) as well as the ICCAs, and has institutional goals and responsibilities that go beyond those of the ICCAs or coordinating them. The protected area moreover includes only part of the territory of the Regole. A significant part of its collectively owned forests and pastures are situated to the south of the protected area, outside its boundaries (Regole d'Ampezzo 2011).

<sup>57</sup> Despite its dual status, the Isiboro Sécure National Park and Indigenous Territory (known as TIPNIS) has been threatened by a proposed national highway, which has been strongly opposed by many resident indigenous peoples.

<sup>58</sup> The data presented in the report by Verissimo et al. (2011) on protected areas and indigenous lands in the Amazon refer to the legal Amazon as of 2010. The legal Amazon consists of all or parts of nine states in Brazil. The 414 indigenous lands identified, which cover 1,086,950 square kilometres, are home to 173 indigenous peoples (and additional uncontacted tribes), with a combined population of nearly 450,000 people. Indigenous lands were nearly as extensive as the total protected areas in the region (federal and state). The overlaps of indigenous lands and protected areas include some recent cases where the government has given double designation to the overlap area as both indigenous lands and a protected area with management responsibility with two different government agencies, including the National Park (Parna) of Mount Roraima in the State of Roraima, which overlaps with the Raposa Serra do Sol Indigenous Land (Verissimo et al. 2011). It should be noted that while indigenous peoples' right to possession of these lands and their residence and exclusive usufruct resource use is constitutionally and legally protected, these rights are vulnerable because ownership is vested in the federal government (Cisneros and

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McBreen 2010). Indigenous lands in Brazil are subject to continuing efforts to downsize and re-designate them to open them to non-indigenous settlement and exploitation, including through changing the enabling legislation, and they are also often vulnerable also to illegal settlement and logging, mining, and other extractive industrial operations.

<sup>59</sup> The natural park has been superimposed over only a part of each of these twelve territories. Only the Talaandig tribe in Talakag municipality has thus far been awarded a certificate of ancestral domain (other applications are in process) (Reyes, personal communication).

<sup>60</sup> The Menuvù are a sub-group of the Manobo tribe.

<sup>61</sup> The Talaandig community of Laindag/ Portulin has also registered its sacred *Inmeleleng* forest (formerly known as *Igmale'ng'en*) with the ICCA Registry. Most of this community's sacred forests are overlapped by Mount Kalatungan Ranges Natural Park (Reyes, personal communication).

<sup>62</sup> The recognition of these ICCAs by the PAMB has facilitated increased coordination between the communities and also the implementation of agreements among the communities and with the other PAMB members. Such inter-village coordination is not new – there have long been relationships based on intermarriage, migration between communities, and common lineage and this and common interests in protecting territories against others and enforcing boundaries has facilitated ongoing communication. Although the ICCAs coordinate, they mostly, however, operate independently (Reyes, personal communication).

<sup>63</sup> It is also a best practice to avoid overlap in the first place by carefully considering the boundaries of prospective protected areas.

<sup>64</sup> Alternatively, the responsible indigenous people or local community may wish to govern the area as an ICCA without explicitly dedicating it as a self-governed protected area. The political and legal circumstances of the redrawing of the protected area boundaries also can play a significant role, however, as the negotiations that precede this may include an understanding about the future status of the area as protected and this may be stipulated in conditions included in the enabling legal action by the government to change the protected area boundaries.

<sup>65</sup> Legislative provisions intended to safeguard conservation status were included, for example, in several cases in the USA where protected areas were degazetted or downsized in order to restore lands to Indian tribes (see also sidebar 6). Examples include the restoration of the Blue Lake area to the Pueblo de Taos from Carson National Forest and Wheeler Peak Wilderness Area, the 1975 transfer of 65,000 acres from Grand Canyon National Park and another 120,000 acres from the adjacent Kaibab National Forest to the Havasupai Reservation, and the 2000 legislation restoring some land within Death Valley National Park to the Timbisha Shoshone tribe (Keller and Turek 1998; An Act to Amend Section 4 of the Act of May 31, 1933 (48 Stat. 108) 1970; Grand Canyon National Park Enlargement Act 1970; Timbisha Shoshone Homeland Act 2000).

<sup>66</sup> Tribal members were offended by the US Forest Service's authorisation of commercial logging, grazing, and tourism development under its objective of "multiple use."

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<sup>67</sup> When a local community governs an overlapped ICCA, a multi-level governance situation is created in which both the local community and another level of government (national, state/provincial, municipal) are involved. When ICCAs are governed by indigenous peoples, a bi-lateral governance context can be created for the overlapped area in which both the indigenous nation and the country's national government bear governance responsibilities. In this case governance relations may be guided by treaty provisions.

<sup>68</sup> Double governance status recognises that the overlapped area has two separate, equal governance authorities: the indigenous peoples' or local communities' governance authority responsible for their territories (and custodianship of their ICCA) and the governance authority of the protected area. This should be accompanied by formal agreements for recognition and respect of the ICCA, shared governance arrangements for the protected area in which indigenous peoples and local communities fully and effectively participate, rights recognition, coordination measures, including harmonising regional planning for the overlap area, and conflict negotiation procedures.

<sup>69</sup> ICCAs can be declared governance/management subunits or zones of protected areas with their custodians' free, prior, and informed consent. Custodians' governance authority and management, including through customary institutions and practices, should be formally recognised, as should indigenous peoples' and local communities' continuing access to and use of resources, access to and custodianship of cultural sites, and protection of territorial, self-governance, cultural, livelihood, and other rights. Ideally the protected area as a whole should have a shared governance arrangement in which indigenous peoples and local communities fully and effectively participate.

<sup>70</sup> This recognises the former overlapped area as being solely the governance responsibility of indigenous peoples and local communities. When appropriate, and with the free, prior, and informed consent of its custodians, the formerly overlapped ICCA can be recognised as a protected area in its own right under the governance authority of its custodians. Redrawing protected area boundaries may also be accompanied by legislation or conservation agreements that clarify tenure and create environmental and rights safeguards. Such measures should be developed with the full and effective participation of the concerned indigenous peoples and local communities and respect for their rights, including those for collective land tenure, self-governance, culture, land/marine governance, management, and use, livelihoods and endogenous development, and their right to free, prior, and informed consent.

<sup>71</sup> Some of these recommendations have been incorporated, in abbreviated form, into a motion on "Recognising and respecting the territories and areas conserved by indigenous peoples and local communities (ICCAs) overlapped by protected areas" for the IUCN World Conservation Congress 2016" (see Annex 4). The more extensive and in-depth discussion of recommendations in this report should inform implementation and best practices for this motion if it is adopted as a WCC resolution.

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<sup>72</sup> This includes ensuring that indigenous peoples' and local communities' knowledge, institutions, and practices that contribute to conservation, livelihoods, food and water sovereignty, and sustainability – including ICCAs – together with their management strategies and plans, are appropriately recognised, respected, coordinated with, and supported within overlapping protected areas. Appropriate means of recognition and respect include treaties, constitutional provisions, legislation, and legally binding agreements that inform protected area governance, policies, management plans, and zonation.

<sup>73</sup> When implementing climate change mitigation programmes, including REDD+ (Reducing Emission from Deforestation and Forest Degradation), all concerned should adhere to principles of “do no harm,” and free, prior, and informed consent. In particular, states, businesses, and organisations should refrain from implementing carbon market based approaches when indigenous peoples and local communities do not want to participate in them or have them applied to their territories and areas, and they should ensure that there is equitable sharing of financial benefits in cases when indigenous peoples and local communities give their free, prior, and informed consent to these approaches.

<sup>74</sup> Appropriate measures include cross-cultural staff training that includes attention to cultural sensitivity; awareness of the rights of indigenous peoples and local communities and associated national and international law; ICCAs; best practices for recognising and respecting ICCAs; opportunity and encouragement for indigenous and local community women and men to be effective protected area administrators and staff members; recognition for protected area administrators who demonstrate effective collaboration with indigenous peoples and local communities; establishment of safeguards and minimum standards for which all protected area administrators are held accountable; provision for monitoring, assessment, and evaluation of protected area governance by indigenous peoples and local communities; and creation of effective complaint mechanisms and dispute/conflict management mechanisms.

<sup>75</sup> IUCN policies in this annex are World Conservation Congress resolutions and recommendations. Guidance is limited to World Park Congress recommendations.