

EMRIP Side Event Discusses Relationship of ICCAs and Access to Justice

Synthesis report by Natural Justice and the ICCA Consortium

At the Sixth Meeting of the Expert Mechanism on the Rights of Indigenous Peoples ([EMRIP](#)) a side event was hosted on 11 July by Natural Justice, the [ICCA Consortium](#) and the Indigenous Peoples of Africa Coordinating Committee ([IPACC](#)) to discuss the relationship of “Access to Justice and Indigenous Peoples and Local Community Controlled Territories and Conserved Areas (ICCAs)”.

Grazia Borrini-Feyerabend from the ICCA Consortium opened the expert panel with an introduction to the concept of ICCAs on the basis of examples from around the world. Two local examples followed. The first, about the Batwa Peoples of North Kivu, was offered by Joseph Itongwa ([PIDP-Kivu](#), REPALF and ICCA Consortium) and the second, about the Ogiek peoples of Kenya, was offered by Daniel Mpoiok Kobei ([Ogiek Peoples’ Development Program](#)). Marie Wilke from Natural Justice then offered the “access to justice” perspective. The panel was closed by two initial discussants: Nigel Crawhall, representing the IPACC Secretariat, and Kanyinke Sena, current Chair of UNFPII. All stressed the important opportunities provided by the legal recognition of ICCAs as a means of environmental conservation and realization of indigenous peoples’ collective rights.

ICCAs are areas containing significant biodiversity and cultural values voluntarily conserved by indigenous peoples (IPs) and local communities (LCs) through customary laws and/or other effective means. They possess three features: 1. there is a strong bond between a people/community and a territory/ area or body of natural resources; 2. a local institution of that community is capable *de facto* of taking the key management decisions over that territory/area; and 3. Those decisions lead to the conservation of nature. ICCAs always relate to natural resources held as “commons” as well as to peoples’ livelihoods, culture and identity. By definition, they are examples of “effective conservation”, which may mean, according to circumstances, strict preservation, sustainable use or restoration and enhancement of the natural environment. Often indigenous peoples and local communities obtain this by a combination of local care and resistance to external pressures. As Borrini-Feyerabend pointed out, ICCAs are seriously affected by external and internal threats. She mentioned that the ultimate external threat is the expropriation of land and natural resources—often by a combination of private interests and state powers, and that the ultimate internal threat is the loss of the local institutions capable of governing the commons. But, she said, a powerful renaissance of ICCAs is taking place today throughout the world. IPs and LCs have been strengthening themselves, enhancing their capacities and demanding that their own institutions are recognized as rightful governing bodies for their ancestral domains and ICCAs. Crucial elements of international policy and international networks—such as the ICCA Consortium – are on their side. The Consortium has actually distilled lessons learned in the recognition of ICCAs and a list of “Do’s and Don’ts” that should be consulted by all those concerned.

Joseph Itongwa discussed the struggles faced by the Batwa peoples in the province of North Kivu in the Democratic Republic of Congo (DRC). For centuries, sophisticated governance systems have ensured that the land was governed as commons through sustainable use thus preserving the rich local biodiversity. Modern attempts by the government to establish protected areas and to grant licenses for logging and mining have been met with disbelief by the Batwa, who fail to understand the state’s claims. In Itongwa’s words, denying access to the

customary lands has a similar effect as denying Swiss people access to Coop and Migros (local supermarkets): it destroys livelihoods and forces migration which results in the gradual dissolution of the traditional institutions and governance systems, leaving free room for others – guerrilla people, poachers and other resource exploiters of all sorts—with undeniable detrimental effects for conservation. Efforts to achieve recognition of the traditional relationship of the Batwa with their lands “as ICCAs” have been identified as a promising avenue to advocate for human rights, land rights, cultural rights and conservation *per se*.

Daniel Mpoiok Kobei from the Ogiek Peoples` Development Program strongly resonated on this last point when speaking about the experience of the Ogiek peoples in Kenya. While Kenya has experienced an important land rights reform in 2008, further strengthened by the new Constitution, to date no real changes have been observed, as implementation efforts are still very limited. Kobei presented the recognition of indigenous people’s conservation efforts through ICCAs as a way to focus on the positive contributions of indigenous peoples rather than on the need to repair the violations of past rights.

Marie Wilke from Natural Justice supported this last point when placing the discussion into the broader legal context. The relationship of ICCAs and access to justice is twofold: while access to justice is a prerequisite for achieving legal recognition of ICCAs, legal recognition of ICCAs can improve access to justice as it is a crucial step towards self-determination. Recognizing ICCAs eventually means recognizing indigenous peoples’ collective rights, the legal standing of their institutions and their customary laws. Most clearly and immediately, recognizing the ICCAs of an indigenous people means recognizing a physical space in which its substantive collective and individual rights can be realized. According to Wilke, the main legal threats to ICCAs are poor recognition of customary land titles combined with lack of rights over sub-soil resources. The latter can be used even to violate otherwise recognized land titles. The differential treatment of indigenous peoples and local communities and their different recognition of their collective land and resources rights under environmental and human rights law can also be legal obstacles to a fuller access to justice. In closing, Wilke discussed how bio-cultural community protocols (www.community-protocols.org/) can be used to support the ICCA recognition process. Both the Batwa and the Ogiek peoples are currently working, with the support of Natural Justice, towards that end.

Nigel Crawhall from IPACC pointed out that the world is now facing a major opportunity as, for the first time in history, the recognition of intellectual property rights, land rights, other environmental rights and customary laws appear to come together. ICCAs, which very much represent this holistic view for indigenous peoples and local communities, do receive important support at the international level.

Kanyinke Sena, current Chair of UNFPPII, further stressed that the struggle for legal recognition of ICCAs represents an important advocacy shift for indigenous and local communities. By not focusing on rights violations but on the value of the communities’ activities for the society at large, IPs and LCs have the opportunity to present themselves as valuable partners rather than mere aid recipients. He pointed out, however, that this is one avenue and not an exclusive approach. “As human rights discussions have often antagonized people, the new environmental rights agenda provides new and important opportunities. It can lead to the realization of the most fundamental human rights, including the right to life” he argued in the discussion. Using the example of REDD+ he further argued that often it is crucial to start a discussion... In the case of REDD, governments were willing to discuss forest conservation but not human rights. Once the programme was in place, however, the human rights dimension followed.

In the ensuing discussion, participants agreed that the ICCA concept effectively encapsulates many issues of concern to IPs and LCs and provides a crucial platform to advocate for their collective rights.