



Community conserved forest named Erobeke ("the belly") in the Southwest of Madagascar.  
(Courtesy Grazia Borrini-Feyerabend)

# Collective Land Tenure & Community Conservation

**Policy Brief** of the **ICCA Consortium**

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The ICCA  
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# Exploring the linkages between collective tenure rights & the existence & effectiveness of territories & areas conserved by indigenous peoples & local communities (ICCAs)

In recent decades, new approaches have been emerging for protected areas and conservation in general. At the heart of these approaches are: a) the increased legal recognition of **collective customary tenure rights** of indigenous peoples and local communities<sup>1</sup> to their territories and lands (including those from which they have been displaced to establish protected areas), and b) the increased recognition of the multi-faceted (including ecological and social) values of **collective governance by indigenous peoples and local communities**, which is now accepted by the International Union for Conservation of Nature (IUCN) and parties to the Convention on Biological Diversity (CBD) as a main type of governance for both protected and conserved areas.<sup>2</sup> Despite such advances, strong challenges remain for implementation of appropriate legal recognition of collective tenure rights, both nationally and

internationally, and appropriate support for community conservation.

This Policy Brief outlines evidence and arguments that affirm a robust positive relationship between the legal recognition of collective customary tenure rights (especially in the case of forests) and the existence and effectiveness of territories and areas conserved by indigenous peoples and local communities (hereafter referred to as ICCAs). It is argued that **the recognition of collective tenure rights represents an important enabling factor for communities to achieve positive conservation outcomes**. It is also argued that **positive conservation outcomes can foster recognition and implementation of collective tenure rights**. Recommendations are directed towards legislators, policy makers, donors and indigenous and community leaders, among others.

result in or contribute to conservation outcomes. While this is the case under an immense variety of customary institutions and local names, **the generic term 'ICCA'<sup>7</sup> is increasingly used<sup>8</sup> to characterize the territories and areas that embody the following three characteristics:**

- ▶ A well defined people or community possesses a **close and profound relation** with an equally well defined site (territory, area, habitat) and/ or species – a relation embedded in local culture, sense of identity and/or dependence for livelihood and well being;
- ▶ The people or community is the major player in decision-making and implementation regarding the management of the site and/ or species, implying that a local institution has – **de facto and/or de jure – the capacity to develop and enforce decisions**. Other stakeholders may collaborate as partners, especially when the land is owned by the state, but the local decisions and management efforts are predominant; and
- ▶ The people's or community's **management decisions and efforts lead towards the conservation** of habitats, species, genetic diversity, ecological functions/benefits and associated cultural values, even when the conscious objective of management is not conservation alone or *per se* (e.g., objectives may be livelihood, security, religious piety, safeguarding cultural and spiritual places, etc.).

It has been suggested that, globally and collectively, ICCAs may equal or exceed the entire area now classified under formal protected area status.<sup>9</sup> It is also generally recognized that they face greater threats than formal protected areas, threats that can only intensify as "development" advances and biodiversity becomes scarcer and more precious.<sup>10</sup>

Despite increasing efforts to document the global extent of ICCAs,<sup>11</sup> challenges remain with classifying the exact extent of both community lands (claimed and recognized) and ICCAs, and the extent of their overlap. Four categories can be identified:

- 1 Territories and areas under community control but not legally recognized as such:** this is an overarching category that comprises

all areas regulated by collective customary tenure systems. It is likely to include all other categories proposed below.<sup>12</sup>

- 2 Territories and areas legally recognized under collective customary tenure:** this category refers to the fraction of the areas customarily controlled by communities that has been legally recognized. They include, for example, territories of indigenous peoples legally recognized under collective ownership in Latin America.

- 3 De facto ICCAs without legal recognition for their conservation values:** overlapping both categories described above, communities can govern and manage *de facto* ICCAs, referred to by a variety of local names. The defining factors for this category are: 1) the three fundamental characteristics of ICCAs are met; and 2) the government does not legally recognize ICCAs for their conservation values.

- 4 Legally recognized ICCAs:** some countries have specific legal frameworks that recognize the conservation and other contributions of territories and areas conserved by communities. In many cases, if not in all, this recognition builds upon the legal recognition of collective community control over said territories and areas, which are referred to by a variety of local names.

## Status and overlap of customary tenure rights & ICCAs

Customary land tenure rights can be understood as systems that: "operate to express and order ownership, possession, and access, and to regulate use and transfer. [...] Although the rules which a particular local community follow are known as customary law, they are rarely binding beyond that community. Customary land tenure is as much a social system as a legal code and from the former obtains its enormous resilience, continuity, and flexibility."<sup>13</sup> Customary rights can relate to both collective rights and individual rights held by community members. The source of the right, which derives from the community itself, not from the state or other external authority, is the most important element in determining a right as customary.

Collective customary tenure systems cover large areas of land and coasts and regulate the lives of at least 1.5 billion people around the world.<sup>4</sup> Notwithstanding the methodological challenges with different ways of recording land typology and use, communities are reported to own, control or otherwise claim under customary ownership up to 6.8 billion hectares or about 52 percent of the global land area.<sup>5</sup> Doubts remain about the exact extent of areas regulated by customary tenure systems, but there is growing consensus that such areas are vastly larger than those formally recognized by governments.<sup>6</sup>

With or without legal recognition, the effective community control of land and territories can

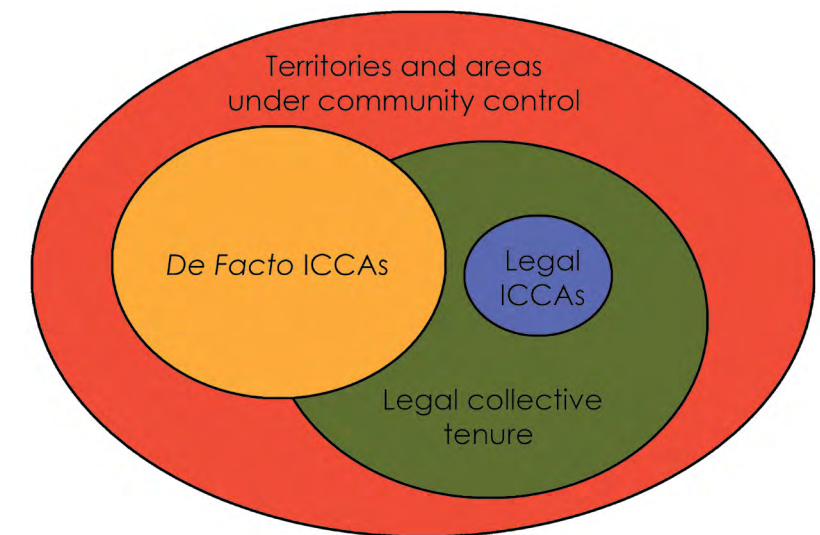


Figure 1. Four proposed categories of community lands and ICCAs, and their overlap.



# Collective customary tenure rights & ICCAs:

## an analysis of five country cases

The categories described above are found in innumerable legal frameworks and *de facto* local arrangements throughout the world. The ICCA Consortium recently commissioned an analysis that specifically looked at the situations in the following five countries as case examples: **Australia, Cameroon, Mexico, Philippines** and **Tanzania**. The analysis, a full report of which is available online,<sup>13</sup> sought to understand whether the selected countries' legal systems recognize collective customary tenure rights in general and/or as ICCAs in particular and to evaluate the consequences of such legal recognition. The following questions were addressed:

### 1 Are collective tenure rights legally recognized? If yes:

- a How strong is the recognized "bundle of rights"?
- b To which resources do communities have recognized rights?

- c Are communities' rights to self-governance recognized?
- d Has the recognition been implemented and to what extent (in hectares)?
- e Is there evidence that *de facto* ICCAs have been established within the area covered by collective tenure rights recognition?

### 2 Are ICCAs<sup>14</sup> legally recognized for their conservation value? If yes:

- a Does that build on identified collective tenure rights recognition?
- b Has the recognition been desired and felt by communities and to what extent (in hectares)?
- c Is there additional technical and financial assistance for communities opting for ICCA recognition?



Coron Island is a legally recognized Ancestral Domain and Community Conserved Area in The Philippines, which includes terrestrial, wetland and marine components. (Courtesy Grazia Borrini-Feyerabend)

- d Are restrictions for mining, oil and other extractive activity associated with ICCA recognition for their conservation values?

In summary, the analysis found that:

- ▶ The legal systems of four of the five countries recognize the rights of indigenous peoples and/or local communities to their lands and territories. In Australia, Mexico, Philippines and Tanzania, the law recognizes a strong bundle of rights of communities as well as the right to self-govern their territories and areas. In Cameroon, there is limited recognition of community rights to forest resources.
- ▶ In all of the four analyzed countries **where rights are recognized and there is a high degree of self-determination, there is also strong evidence of community conservation.**
- ▶ The Philippines' recognition of the Ancestral Domains of indigenous peoples is the only legal framework among the five analyzed that also covers collective customary tenure rights over the sub-soil, although such recognition is both legally challenged and hardly implemented.<sup>15</sup> In the cases of Australia and Mexico, customary rights are recognized to land as well as to water. In Tanzania, rights to water are limited to subsistence needs.
- ▶ Of the five countries analyzed, three have legal frameworks that also specifically recognize the conservation value of community collective territories and areas (under different local names): Australia, Mexico and Tanzania. In all three cases, **specific legal recognition of such "ICCAs" builds on previous broader recognition of collective tenure rights.**
- ▶ Successful implementation of the legal recognition of ICCAs appears related to



Community forest in Mexico (Courtesy Carlos del Campo)

- additional forms of recognition and support received by communities. This may include, among other things, stronger control of territories and resources (as in the case of Tanzania) or influxes of technical and financial benefits (as in the case of Australia).
- ▶ On the other hand, as exemplified by the case of Mexico, communities do not welcome instruments that recognize their contributions to conservation in the absence of their effective involvement in ICCA certification/recognition processes or when the recognition imposes management practices that undermine traditional knowledge and/or are not in harmony with traditional uses of natural resources.
- ▶ In the countries analyzed, mining and other extractive activities are reportedly among the biggest obstacles to implementation of communities' recognized collective tenure rights.<sup>16</sup> **Legal recognition of ICCAs for their conservation values appears to provide additional protection against threats from extractive industries.**



# Recommendations

Our findings and conclusions (see page 8) point to at least three recommendations that we would like to address to national legislators, policy makers, donors and indigenous and community leaders, among others. The aim is to secure collective tenure rights, ICCAs and their benefits for the relevant indigenous peoples and local communities, and for society at large. All of the recommendations are intended to support the rights to self-determination and self-governance and be undertaken only where culturally appropriate and compatible with community plans and priorities.

## 1 Support the visibility of indigenous peoples' and communities' territories and areas *per se* and for their contributions to conservation

- ▶ Support community research, mapping, biodiversity inventories, resilience assessments and other efforts to demonstrate collective community rights and responsibilities for land, water and natural resources, including traditional knowledge, governance institutions and management practices, and their conservation results.
- ▶ Support the documentation, development and enforcement of community by-laws and protocols as a way to communicate and strengthen community governance and management, and their conservation results.
- ▶ Support the registration of community conserved territories and areas in dedicated national and international ICCA Registries.

## 2 Strengthen communities by recognizing both their collective tenure rights and their ICCAs across various legal processes

- ▶ Support implementation of all existing options for the legal recognition of customary tenure rights, as appropriate in the given context, such as by:
  - ▷ Increasing communities' knowledge and understanding of the



Mapping community territories and natural resources in Sichuan, China. (Courtesy Grazia Borrini-Feyerabend)

processes and benefits of legal recognition of their collective customary tenure rights;

- ▷ Assisting communities to self-define (i.e., define who is or is not a member of the community) and obtain legal recognition as such;
  - ▷ Assisting communities to secure legal collective rights to land, water and natural resources that are inalienable, indivisible, and established in perpetuity; and
  - ▷ Assisting communities to navigate complex legal systems and access judicial and non-judicial mechanisms to redress past or ongoing injustices.
- ▶ Use evidence of community conservation to promote legal recognition and protection of collective customary tenure rights beyond conservation laws and policies.

## 3 Alongside legal recognition, enhance community capacity to conserve nature through community-defined and –determined forms of support

- ▶ Support programs, agreements and plans that recognize ICCAs and respect their customary institutions, regulations and practices.
- ▶ Provide desirable visibility and social recognition and support to ICCAs, with due regard to community privacy and mechanisms to prevent unwanted influxes of outsiders such as tourists.
- ▶ If and when necessary and desired, provide technical and financial support to communities governing ICCAs, in particular to support the realization of their own plans and priorities.



Harvesting grass from an un-recognized community customary territory in Nepal. (Courtesy Krishna Prasad Oli)

# Notes & References

- 1 Hereafter, in most cases we abbreviate "indigenous peoples and local communities" as "communities".
- 2 This governance type could also include sacred sites, where appropriate. For more on the distinction between protected and conserved areas, see: Jonas, H. D., V. Barbuto, H. C. Jonas, A. Kothari and F. Nelson, 2014. "New Steps of Change: Looking beyond protected areas to consider other effective area-based conservation measures", pages 111-128 in *PARKS* (20.2).
- 3 Alden Wily, L., 2011. *Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa*. RRI. On-line resource accessed May 14, 2014.
- 4 Commission of Legal Empowerment of the Poor (CLEP), 2008. "Making the Law Work for Everyone" in: Alden Wily, L., 2011. *The tragedy of public lands: the fate of the commons under global commercial pressure*. International Land Coalition and CIRAD, Rome.
- 5 Alden Wily, L. 2011 (op. cit.). See in particular the Executive Summary.
- 6 See, for example: Alden Wily, L., forthcoming. "The fate of custom and commons in Africa: unfinished business" in Kaimeri-Obote, P., and C. Odote, (eds), *Essays in Honour of Professor HWO Okoth Ogendo: Thoughts on Land Law in Theory and Practice*, CASELAP, Nairobi.
- 7 The generic term "ICCA" is used here only for communication purposes – particularly at the international level – and is not meant as a label or to subsume or replace the myriad of local terms used by the relevant indigenous peoples and local communities. The definition of ICCAs according to the three characteristics is embraced by the ICCA Consortium (see Borrini-Feyerabend, G. et al. 2010. *Bio-cultural diversity conserved by indigenous peoples and local communities – examples and analysis*. ICCA Consortium and CENESTA for GEF SGP, GTZ, IIED and IUCN-CEESP, Tehran).
- 8 See Dudley, N., 2008. *Guidelines for Applying Protected Area Management Categories*. IUCN. Gland (Switzerland); and Kothari, A., with C. Corrigan, H. Jonas, A. Neumann and H. Shrumm (eds), 2012. *Recognising and Supporting Territories and Areas Conserved by Indigenous People and Local Communities-- Global Overview and National Case Studies*. Technical Series No. 64, Secretariat of the Convention on Biological Diversity, ICCA Consortium, Kalpavriksh, and Natural Justice, Montreal, Canada.
- 9 Kothari, A., and A. Neumann, 2013. Number and Extent of Indigenous Peoples and Local Community Conserved Territories and Areas (ICCAs) in the World. Unpublished table, updated from Kothari et al., 2012 (op. cit.). While "official protected area status" is defined and listed by specific countries, the IUCN definition of protected areas (Dudley, 2008 op. cit.) encompasses areas and territories beyond national recognition.
- 10 Borrini-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith, 2013. *Governance of Protected Areas: From understanding to action*. Best Practice Protected Area Guidelines Series No. 20, IUCN. Gland (Switzerland).
- 11 Garnett et al., unpublished preliminary results of a project conceived as contribution to the World Parks Congress, November 2014 (personal communication with G. Borrini-Feyerabend).
- 12 Historically, communities that were removed from the territories they had originally occupied had land rights recognized over the territories of reallocation, rather than those of origin. This has happened, for example, in the process of colonizing the East of the United States and the Brazilian Atlantic forests. See, for example, Da Cunha, C. M., 2012. *Índios no Brasil História, Direitos e Cidadania*. Companhia das Letras. Claro Enegima. Sao Paulo (Brazil).
- 13 See <http://www.iccaconsortium.org/wp-content/uploads/ICCA-Briefing-Note-2-collective-tenure.pdf>
- 14 See note 7.
- 15 There are legal controversies regarding mining rights in Ancestral Domains. The Indigenous Peoples' Rights Act (IPRA) of 1997, which recognizes Ancestral Domains (Republic of the Philippines, 1997. Republic Act No. 8371 (*The Indigenous Peoples' Rights Act of 1997*), Metro Manila, Philippines) establishes that indigenous peoples have sub-soil rights in their ancestral domains. However, the Philippine Mining Act of 1995 (Republic of the Philippines, 1995. Republic Act No. 7942 (*The Philippine Mining Act of 1995*), Metro Manila, Philippines) contradicts IPRA and explicitly declares that all mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State.
- 16 Pedragosa, S., 2012. *An Analysis of International Law, National Legislation, Judgments, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities. The Philippines (Report No. 16)*. Natural Justice and Kalpavriksh: India.



# Lessons learned & conclusions

The following lessons and conclusions are derived from a review of existing literature and the results of the five-country analysis summarized above:

- ▶ **The legal recognition of collective customary rights promotes and enables conservation.** The identified examples of legal recognition of ICCAs have all built upon previous legal recognition of collective tenure rights. Recognition of the latter contributed to the conditions necessary for communities to manage their land in a way that achieves conservation results. Thus, the legal recognition of collective customary rights to land, waters and natural resources promotes and enables conservation by communities and the resilience and proliferation of *de facto* ICCAs.
- ▶ **The quality of such legal recognition counts.** The stronger the legal recognition (for instance, in terms of the bundle of rights, rights to self-governance and coverage of resources), the greater the chance that the community governance and management of their lands, waters and natural resources will contribute to conservation outcomes.
- ▶ **Respect and support for traditional governance and management practices are important.** Legal recognition of local forms of ICCAs should be done with caution and respect for certain conditions to enhance the benefits for both communities and the conservation of nature. These include, in particular, communities' ownership, leadership and active engagement in ICCA recognition processes as well as respect and support for traditional knowledge and related governance and management practices.

Planning about restoring community land in Casamance, Senegal. (Courtesy Christian Chatelain)



- ▶ **ICCA recognition for their conservation values can decrease the risks faced by communities on their territories and lands, and promote conservation.** On the one hand, ICCA recognition decreases the risk of expropriation of community lands for the creation of official/strictly protected areas. On the other hand, it can impose community-determined restrictions to infrastructure development and extractive and other industrial activities, providing additional protection against threats to both collective customary rights and conservation.

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**Orders:** [publications@iccaconsortium.org](mailto:publications@iccaconsortium.org) and [info@iccaconsortium.org](mailto:info@iccaconsortium.org)

**Author:** Fernanda Almeida

**Inputs:** Grazia Borrini-Feyerabend, Stephen Garnett, Holly Jonas, Harry Jonas, Ashish Kothari, Emma Lee, Michael Lockwood, Fred Nelson and Stan Stevens

**Design, layout and publication supervision:** Jeyran Farvar ([jeyran@cenesta.org](mailto:jeyran@cenesta.org))

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