

ICCAs as “No Go” zones for destructive industries and safe havens for environmental and human rights defenders

Draft Policy Position of the ICCA Consortium

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Most of the planet’s remaining biodiversity is found within territories and areas conserved by indigenous peoples and local communities (broadly referred to as “ICCAs”). However, ICCAs are under increasing threat from industrial activities such as monoculture plantations and mining, as are their custodians and defenders. This document provides a basis for the ICCA Consortium to clarify its position, key messages and priority actions – as well as the international legal and policy context – for declaring and protecting ICCAs as (a) “No Go” areas for destructive industries and (b) safe havens for defenders of ICCAs.

1. ICCAs and Destructive Industries: At the nexus of global trends in biodiversity loss and threats to environmental and human rights defenders

Indigenous peoples and local communities are on the frontlines of the struggle to defend, protect and restore the “commons” against companies that exploit land, natural resources and people for economic and political gain. Under particular threat are the territories and areas that indigenous peoples and communities collectively conserve on the basis of their traditional and local knowledge and customary practices, laws and institutions (also known as “ICCAs”). Such territories and areas exist in all global regions, are extremely diverse and encompass some of the world’s most precious biological and cultural heritage.

Despite close correlations between ICCAs and the planet’s remaining biodiversity, broader trends paint a dark picture for the rest of the world. Most if not all of the main trends – including widespread habitat loss and degradation, species decline and extinction, pollution and climate change – are attributable to the industrialisation and intensification of human production and consumption, the rapid growth of the human population and the increase of inequality. These are also impacting ICCAs, particularly where their custodians’ and defenders’ rights to self-determination and free, prior and informed consent are not recognised and enforced. Of particular harm to ICCAs and their defenders are industrial agriculture, forestry, fisheries, and mineral and hydrocarbon extraction, and large-scale infrastructure and energy projects. These destructive industries are embedded within an economic model that contrasts starkly with the ways of life and alternative development paths embodied in ICCAs.

Since 2014, Global Witness has documented an alarming rise in deadly violence against people defending their lands, rivers and forests against destructive industries – also known as

¹ This draft is based on initial discussions and inputs of the ICCA Consortium’s Policy and Programme Committee. It will undergo a broader consultation process with the rest of the Consortium’s membership and further discussion at the General Assembly from 25-26 November 2017.

“**environmental and human rights defenders**”.² Its most recent report, “[Defenders of the Earth](#)” (2017), found that nearly four people were murdered every week in 2016 protecting their land and the natural world from industries such as mining, logging and agribusiness. (The true number is likely much higher, given many killings are unreported.) Indigenous peoples are one of the most vulnerable groups of defenders, comprising nearly 40% of the documented victims in 2016. In its latest [Annual Report on Human Rights Defenders at Risk](#) (2016), Front Line Defenders similarly found that 49% of the documented murders of 281 human rights defenders in 2016 were defending land, indigenous and environmental rights. Criminalisation was the “first choice” tactic of governments to silence defenders, and warnings, death threats and intimidation tactics reported to police before these murders were routinely ignored.

With destructive industries posing increasing threats to biodiversity and to human rights and environmental defenders around the world, ICCAs have never been more crucially important – as safe havens not only for the nature and biodiversity within them, but also for their custodians and defenders.

2. Key Messages

- Territories and areas conserved by indigenous peoples and local communities (in short, *ICCAs*) are fundamental for both **individual and collective human rights** (including indigenous peoples’ and minorities’ rights) as well as to the **conservation of nature** (including biological diversity and ecosystem processes); they embody values above and beyond their directly concerned custodians and contribute to sustaining life on the planet
- Territories and areas conserved by Indigenous peoples and local communities should be **spared and protected** (partially or totally) **from any destructive industrial activities** imposed against their will and without their FPIC
- Protecting ICCAs against destructive industries is crucial for achieving the **Sustainable Development Goals** (including Goals 14, 15 and 16, among others) and the CBD **Aichi Biodiversity Targets** (including Targets 3, 11, 14 and 18)
- All public and private sector actors should adopt a “**zero tolerance**” approach to all forms of intimidation, harassment and violence against environmental and human rights defenders (including defenders of ICCAs)
- An **international list** of ICCAs should be established as basic reference for “No Go” zones for destructive industries and safe havens for ICCA defenders (perhaps in conjunction with the UNEP-WCMC ICCA Registry)
- Both **voluntary commitments** in specific situations as well as **legally binding obligations** at national, regional and international levels are potentially relevant in different contexts and can be mutually reinforcing; precise strategies should be decided on a case-by-case basis

3. Core Elements of the ICCA Consortium’s Position

² According to the 2016 report of the UN Special Rapporteur on human rights defenders (A/71/281), “environmental human rights defenders” are individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. The report is available in all UN languages at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281.

3.1 Why

- Territories and areas conserved by indigenous peoples and local communities (in short, *ICCAs*) are **fundamental for collective life, livelihoods, identity, culture and self-determination**
- *ICCAs* are also **fundamental for the conservation of nature, including the ecosystem processes that are essential for all life on Earth**, and for mitigation and adaptation to climate change
- Indigenous peoples and communities with a crucial bond of caring for their *ICCAs* – i.e., as custodians and defenders of such territories and areas – have a **fundamental collective right to self-determination and self-governance, and to have their rights and *ICCAs* respected by all other actors** (including States, individuals, business enterprises and other communities or peoples)

3.2 What

In his 2016 report ([A/HRC/31/55](#)), the UN Special Rapporteur on human rights defenders identified seven principles that underpin effective protection practices for human rights defenders. They should be rights-based, inclusive, gender-sensitive, focused on “holistic security”, oriented to individuals and collectives, participatory and flexible. He also outlined protection initiatives in three interrelated areas: (i) practices that strengthen the resources and capacities of defenders; (ii) measures that foster an enabling environment for the defence of their rights; and (iii) regional and international initiatives that support their protection at the local and national levels.

Drawing inspiration and guidance from the Special Rapporteur’s 2016 report, the ICCA Consortium will focus on the following:

- (a) Supporting ICCA custodians and defenders who wish to **self-declare** their territories and areas (or parts thereof) as “**No Go**” zones for destructive industries and **safe havens for their defenders**, including by developing an international list of the same;
- (b) Assisting defenders of *ICCAs* to **strengthen their capacities and networks** and **access practical mechanisms and tools** to secure their rights, continue their work without interference and harm, and seek redress in the case of violations; and
- (c) Promoting multiple forms of **legal and non-legal recognition and support** to foster an **enabling environment** for *ICCAs* as “No Go” zones for destructive industries and safe havens for their defenders.

3.3 How

In pursuing the above, the ICCA Consortium (which includes its Members, Honorary members, Committees and Secretariat) will undertake, facilitate or otherwise support activities such as:

- **Prevention:**
 - Support community mapping and demarcation of territorial boundaries
 - Support legal empowerment and advocacy strategies to secure collective legal rights to territories and ways of life (tailored to each specific context)
 - Promote reform of legal frameworks that undermine *ICCAs*
 - Promote adoption and effective implementation and enforcement of legal frameworks that support *ICCAs*
 - Participate in relevant decision-making processes at all levels (including negotiation of binding UN instrument on human rights and transnational corporations)
 - Help ICCA defenders adopt physical and digital security measures

- Encourage public and private sector actors (including financiers and operational level enterprises) to undertake proper due diligence and risk assessments, and commit to refraining from / halting activities that affect ICCAs in the “No Go” list
- **Protection:**
 - Build a global alliance (including indigenous peoples, local communities, custodians of sacred sites and territories, enlightened policy makers, civil society organisations, conservationists at large and others) that commits to recognising and defending a “No Go” list of ICCAs
 - Help ICCA defenders access emergency support grants and emergency mechanisms and interim measures (UN special procedures, IFC CAO, etc.)
 - Conduct a feasibility assessment on the possible establishment of a Solidarity Action and Fund for the Defenders of the Commons and ICCAs (SAFE)
 - Contribute to urgent appeals and campaigns
 - Provide ongoing communications support to build the profile and legitimacy of ICCA defenders
- **Redress:**
 - Participatory documentation of violations
 - Judicial and non-judicial mechanisms for accountability of public and private sector actors (e.g. UN special procedures, national and regional human rights institutions, company and financial mechanism grievance mechanisms, transnational litigation, etc.)

3.4 When

- **October-December 2017:**
 - Participate in the “Week of Peoples’ Mobilisation” and the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (23-27 October 2017) and identify strategic opportunities for the Consortium’s engagement in these processes [Secretariat]
 - Participate in the UN Forum on Business and Human Rights (27-29 November 2017) and related ICCA Consortium-hosted events [members and Secretariat]
 - Further develop the present “No Go” position and engage with UN and other experts [Secretariat]
 - Link with UNEP-WCMC about the ICCA Registry and “No Go” list [Secretariat]
- **2018:**
 - Share and utilise the new resource portal for environmental human rights defenders: <https://www.environment-rights.org> [Secretariat]
 - Continue to develop “SAFE” as a direct complement to this “No Go” position [Secretariat and members]
 - Develop a working paper and series of case studies on defending ICCAs against industrial activities (agriculture, forestry, fisheries, extractives, infrastructure, etc.), and develop a concise policy brief to summarise it [Secretariat and members]
 - Seek states and businesses willing to respect the ICCAs in the list [members]
 - Identify cases of ICCAs and other conserved areas impacted by destructive industries that wish to utilise judicial or non-judicial mechanisms to seek redress and contribute to the growing body of ‘case law’ [Secretariat and members]

ANNEX. International Legal and Policy Context (in brief)

International human rights law provides an extensive basis for the protection of defenders of ICCAs and the commons, through both individual and collective rights and across the core human rights treaties and other relevant instruments. A key principle of human rights law is that all human rights are universal, indivisible and interdependent.

In addition, international environmental law and conservation policy provide a strong basis for the recognition and support of ICCAs. Identifying the linkages and synergies between these areas of law and policy, as well as promoting further developments, will strengthen the legal backing for ICCAs and their defenders as well as the potential for corporate accountability and redress for human rights and environmental violations. A preliminary and non-exhaustive list of instruments and related reports is considered below.

1. Individual and Collective Human Rights

There are nine core international human rights treaties.³ Perhaps the most directly relevant to ICCAs and defenders of the commons are the following, including the jurisprudence of their treaty bodies:

- [International Convention on the Elimination of All Forms of Racial Discrimination](#) (1965) and the Committee on the Elimination of Racial Discrimination (CERD)
- [International Covenant on Civil and Political Rights](#) (1966) and the Human Rights Committee (HRC)
- [International Covenant on Economic, Social and Cultural Rights](#) (1966) and the Committee on Economic, Social and Cultural Rights (CESCR)
- [Convention on the Elimination of All Forms of Discrimination against Women](#) (1979) and the Committee on the Elimination of Discrimination against Women (CEDAW)
- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1984) and the Committee against Torture (CAT)
- [International Convention for the Protection of All Persons from Enforced Disappearance](#) (2006) and the Committee on Enforced Disappearances (CED)

According to the [2016 report](#) of the UN Special Rapporteur on the situation of human rights defenders⁴, duties of the State include (*inter alia*): respecting the right of everyone to promote and protect a safe, clean, healthy and sustainable environment; refraining from violating the rights of human rights defenders; protecting people from violations committed by both State and non-State actors; and acting with due diligence to prevent and investigate human rights violations and bring the perpetrators to justice. Business enterprises, the media and other non-State actors are also obliged to respect human rights obligations and refrain from contributing to or committing human rights violations.

Human rights and environmental defenders have the rights to (among many others) self-determination and fundamental freedoms such as the rights to expression, privacy, association and peaceful assembly, and to carry out their work without interference. They also have the rights to receive information, participate in decision-making processes that affect them and access effective remedies for violations of their rights.

³ See: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>. Each has a committee of experts to monitor implementation of the treaty provisions by state parties and some are supplemented by optional protocols dealing with specific concerns.

⁴ A/71/281. Available in all UN languages at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281.

The [UN Declaration on human rights defenders](#) (1998) and the most recent Resolutions on human rights defenders adopted by the UN General Assembly (2015) and Human Rights Council (2016) also provide a crucial basis for such defenders. The 1998 Declaration states that everyone has the right to:

- Seek the protection of human rights at the national and international levels;
- Form associations and to meet or assemble peacefully;
- Criticise the government and to make complaints or proposals concerning government policies;
- Provide legal and other assistance in defence of human rights;
- Attend public hearings, proceedings and trials in order to assess the government's compliance with national law and international human rights obligations; and
- Solicit, receive, and utilise funds and other assistance for the purpose of promoting and protecting human rights through peaceful means.

2. Rights of Indigenous Peoples and Minorities

International instruments pertaining to the individual and collective rights of specific populations, namely, indigenous peoples and minorities, include:

- [UN Declaration on the Rights of Indigenous Peoples](#) (2007), especially Article 32⁵, among many others
- [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#) (1992)
- [ILO Convention No. 169](#) (1989)

In addition to these instruments, UN mechanisms and special procedures and regional human rights bodies have issued reports on topics related to ICCAs and destructive industries. These include, among others:

- African Commission on Human and Peoples' Rights and IWGIA report: "[Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights](#)" (2017)
- OAS/Inter-American Commission on Human Rights report: "[Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities](#)" (2016)⁶
- Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Human Rights Council (A/HRC/24/41): "[Extractive industries and indigenous peoples](#)" (2013)
- UN PFII report by Victoria Tauli-Corpuz and Parshuram Tamang (E/C.19/2007/CRP.6): "[Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods](#)" (2007)

⁵ **UNDRIP Article 32: 1.** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. **2.** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. **3.** States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

⁶ As of 17 October 2017, this link appeared to be broken. A summary of the IACHR report (by the Due Process of Law Foundation) is available at:

http://www.dplf.org/sites/default/files/ddhh_extractivas_digital_en_v1.pdf.

According to the draft guidelines on human rights and the environment (prepared by the UN Special Rapporteur on human rights and the environment in October 2017⁷), State obligations to indigenous peoples and local communities include:

- Ensuring the legal recognition and protection of their rights to the lands, territories and natural resources that they have traditionally occupied or used
- Consulting with them and obtaining their FPIC before relocating them or approving measures that may affect their lands, territories or natural resources; and
- Ensuring that they receive a fair and equitable share of the benefits from development activities that affect their land, territories or natural resources.

The draft guidelines also state that every State has heightened obligations to identify and protect those who are most vulnerable to environmental harm (such as women, children and indigenous peoples, among others). These include, *inter alia*: ensuring that normative frameworks prevent, reduce and remedy environmental harm; and facilitating their access to effective remedies for violations and abuses of their rights.

3. Conservation of Nature and Biological Diversity

ICCAs are crucial for the conservation of nature and biological diversity. This is well established in a number of decisions of the Conference of the Parties to the Convention on Biological Diversity (CBD COPs) since 2007, as well as a wide range of resolutions and recommendations of IUCN World Conservation Congresses and World Parks Congresses since 2003.⁸

Of specific relevance to ICCAs and destructive industries are the CBD [Akwe: Kon voluntary guidelines](#) for the conduct of cultural, environmental and social impact assessment regarding developments on sacred sites, lands and waters of indigenous peoples and local communities (2004). These guidelines provide an important basis within the CBD framework for indigenous peoples and local communities to set out the impacts of all developments on their ICCAs.

In addition, the following resolutions and recommendations of conservation-focused organisations are of direct relevance:

- IUCN [Resolution 6.088](#): “Safeguarding indigenous lands, territories and resources from unsustainable developments” (2016)
- IUCN [Recommendation 6.102](#): “Protected areas and other areas important for biodiversity in relation to environmentally damaging industrial activities and infrastructure development” (2016)⁹
- WILD10 Congress, [Resolution 12](#): “Building a Global Alliance to assert ‘No-Go Areas’ for Mining and other Extractive Industries and destructive activities threatening World Heritage Sites, and Protected Areas, including Indigenous Peoples’ and Local Communities Conserved Areas and Territories (ICCAs) and Sacred Natural Sites and Territories” (2013)

4. Non-binding Instruments on Human Rights, Environment and Business

⁷ Available online for public consultation until 11 November 2017 at:

http://www.ohchr.org/Documents/Issues/Environment/SREnvironment/DraftGuidelinesEnvironment_EN.docx.

⁸ For more detail, please refer to the entries under “Key International Instruments, Mechanisms and Reports” at: <https://www.iccaconsortium.org/index.php/international-en/conservation-en/>.

⁹ Other IUCN Recommendations on ‘No-Go areas’ include: Recommendation 2.82: “Protection and conservation of biological diversity of protected areas from the negative impacts of mining and exploration” (2000); Recommendation 4.136: “Biodiversity, protected areas, indigenous peoples and mining activities” (2008); and Recommendation 5.147: “Sacred Natural Sites – support for custodian protocols and customary laws in the face of global threats and challenges” (2012).

The following instruments, among many others, provide additional bases for human rights in the context of business activities:

- [UN Guiding Principles on Business and Human Rights](#) (2011)
- World Bank [Operational Policy 4.10: “Indigenous Peoples”](#) (revised 2013)
- OECD [Guidelines for Multinational Enterprises](#) (revised 2011)
- [Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights](#) (2013)

In particular, the three pillars of the UN Guiding Principles (also known as the “Protect, Respect and Remedy” framework) are: (a) the State duty to protect against human rights abuses by third parties, including businesses; (b) the corporate responsibility to respect human rights; and (c) the need for access to an effective remedy for victims of business-related human rights abuses.

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