Conservation’s engagement with human rights—“traction”, “slippage”, or avoidance?

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Abstract. Human rights (HR) have become a smoking-gun issue threatening conservation’s public legitimacy and long-term funding. Globally there are rising frustrations that large conservation non-governmental organizations (NGOs) do not seem to be collaborating with civil society movements promoting democratization. They rather appear to associate closely with governments and other actors with poor HR records. HR abuses or allegations of abuse that arise in conservation contexts include violation of due process, massive forcible resettlements, destruction of property and farms, torture, and extrajudicial killings. In addition, conservation agents are increasingly perceived as HR ‘duty bearers’ that do not fulfil their responsibilities. Many biodiversity hotspots overlap with poverty hotspots where HR abuses occur, and in such areas conservation organizations have an excellent opportunity to towards addressing such abuses. Their responsibilities are guided by international and domestic law, yet their record of action is uneven. In some local cases, conservation agencies have demonstrated ‘traction’ in supporting HR. Evidence of ‘slippage’ and avoidance in assuming HR responsibilities, however, suggest that the biodiversity conservation community has yet to mature towards a commitment to HR, which would require systematic changes at multiple levels. This paper places unspoken issues on the table and encourages their open discussion, hoping to promote the positive changes essential for sustainable conservation. We address the following questions:

- Who are the duty-bearers in conservation?
- Where do they engage in conservation?
- What guidance exists to assist and encourage such duty-bearers to develop and implement a rights-based approach to their work?
- What are some indicators of their engagement, or lack thereof, with HR?
- What are illustrative examples of HR ‘traction’ and/or ‘slippage’ behaviour?
- How and by whom can conservation actors’ HR engagement be monitored?

Critiques of conservation and protected areas have raised global press attention to questions about the legitimacy of protected areas created and managed in violation of human rights. A recent global review of conservation work found widespread frustrations that large conservation non-governmental organizations (NGOs) aren’t joining civil society movements promoting democratization, but rather work side by side unprogressive governments that function through rule of power. They do not appear to perceive or agree about the need to build civil society coalitions and rule of law to support long-term conservation. In many fora and conversations, these concerns have been shared by conservation fieldworkers, as well as by local NGOs, indigenous organizations, community representatives, and the donor community. As a result of these perceptions, the international biodiversity conservation agenda is losing ground with indigenous peoples (IP) and other sectors of society in local and global arenas.

Large conservation NGOs have opportunities to influence decision-makers,
because they are part of elite circles, with access to politicians and national authorities beyond the reach of rural citizenry. Hence rural people and advocacy NGOs can view conservation programs as choosing to be complicit with the HR violations arising from government actions. They can point to the armed “nature keeping forces” that occupy protected areas and a long history of other cases that together reflect a general lack of concern for HR.

Some conservation analysts cherry-pick good cases to defend a positive assessment of conservation’s HR record. Others say, “It’s a mixed bag”, as though supporting human rights in some cases is good enough. Others respond that conservation has nothing to do with human rights. Some international conservation NGOs are even seeking to counter these charges of HR neglect by defining the existence of biodiversity as a human right of humanity. This would shift the frame of engagement from questions about violations of the rights of individuals and communities to a frame defending the legitimacy of conservation NGOs impinging on other human rights in order to achieve this goal. This apparent attitude of putting sectoral/ organizational interests before human rights extends beyond protected areas. For example, a recent analysis of payments for environmental services (PES) states: “If we impose a lot of side objectives on PES (poverty alleviation, gender, indigenous people, human rights, and other noble causes), PES would become the new toy of donors, NGOs, and government agencies. At the same time, the outreach to the private sector would be much more limited, thus losing new financing options.”

These reactions are interpreted by critics as misguided efforts of conservationists to avoid legal and moral responsibilities while seeking to maintain and expand funding for conservation.

**Human rights and responsibilities**

Human rights are universal and indivisible, whether or not governments acknowledge these rights. The indivisible bundle of human rights includes civil, economic, cultural, political, property, and environmental rights. Individuals and groups holding the rights are ‘rights-holders’, and those with whom they interact are ‘duty-bearers’ carrying obligations to act to protect human rights directly and to create the conditions for other duty-bearers to fulfill their responsibilities, even in the absence of national legislation or regulations protecting human rights. According to international law, human rights cannot be negated by states, nor can states negate duty-bearers’ responsibilities to uphold human rights.

Duty-bearers can fulfill their obligations by engaging in actions that assist right-bearers to demand and fulfill their rights. Rights-bearers have the right and obligation to demand that duty-bearers fulfill their duties. Human rights are only protected when both rights-bearers and duty-bearers work together nurturing a positive feedback circle to consolidate norms and public accountability that in turn support a healthy civil society. Avoidance of duty-bearer responsibilities has negative effects on
human rights. Duty bearers’ behaviour, directly and indirectly, determines whether human rights are respected or abused. Rights are violated as much by failure to address past wrongs as by ongoing actions. Hence, duty-bearers carry a major obligation to redress past wrongs.

An example of the complementary nature: rights-holders require access to legal and judicial processes to exercise their right to demand remedies; duty-bearers, in turn, are responsible to ensure that rights-bearers have access to remedy. Actions taken by NGOs, civil society, and the media to implement this duty include monitoring courts and filing relevant cases. Few human rights NGOs understand the issues in rural settings, and this enhances the duty-bearer obligations carried by conservation NGOs, religion-based groups, and donors, who operate in remote areas far from the watchful eye of the press and other observers.

Given the growing awareness of conservation’s human rights obligations, it could be useful for conservation NGOs to develop their own ‘conservation code of conduct’ that incorporates human rights commitments. Sanderson suggested that conservation NGOs should assist the private sector to develop a ‘conservation code of conduct’ to expand ethical guidance to incorporate conservation into existing codes of conduct that include social justice and human rights. In this vein, it could be useful for conservation NGOs to develop their own ‘conservation code of conduct’ that incorporates human rights commitments, building on the Caux Round Table Principles for Business.

In the spirit of opening a discussion to help conservation actors assess and guide their performance as HR duty-bearers, we put the following questions on the table:

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- What are some indicators of their engagement, or lack thereof, with HR?
- What are illustrative examples of HR engagement with ‘traction’ and/or ‘slippage’?
- How and by whom can conservation actors’ HR engagement be monitored?

In our replies to these questions, we use specific illustrative cases. These are but a few examples taken from our experience and the existing literature. They are not necessarily the best or worst possible cases, but illustrate how conservation actors’ engagement with HR has been inconsistent over time and across countries. The intention is not to point a finger at particular international NGOs or places, but to ground the discussion of the need for new institutional guidance to achieve consistently positive performance.

Who are the duty-bearers in conservation?

The sheer size and global distribution of areas under conservation agreements puts a significant burden of responsibilities on international conservation programs. Twelve percent of the
Earth is under protected areas (20 million square kilometres) including 40% of rural lands in some African nations, and more areas are being declared. The national governments with sovereignty in these places are among the human rights duty-bearers, but they are not the only ones. Areas of high biodiversity concern are largely in nations with unclear property rights, weak judicial systems, and governments with uneven human rights records. Conservationists are among the few actors linking capital cities and remote areas, and, as duty-bearers, they need to act on human rights responsibilities in these situations.

International nongovernmental organizations (NGOs) can be particularly influential as they bring significant resources. In 2002, three major conservation NGOs (CI, TNC, WWF) had annual revenues of over $1.28 billion. They spent $487 million outside the US, more than the GEF. Their funding partners include bilaterals and multilaterals, industries, private donors, trust funds and other financial mechanisms. The Conservation Finance Alliance (CFA), established in 2002, includes UNEP, UNDP, UNESCO, USAID, Danida, GTZ, major US-based conservation NGOs, and private firms. The political influence of the conservation organizations is reflected in the International Conservation Caucus Foundation (ICCF) that recommends strategic direction to members of the US Congress, for example.

The high level of funding positions conservation actors to influence policy in the poor countries where they operate. Globally an estimated $4.5 billion per year, ($45 billion over the next ten years), will be used to finance the global protected area system covering 15% of terrestrial and 30% of marine ecosystems. National parks’ budgets run around $1.3-2.6 billion. Foreign aid contributes some $350-420 million to conservation in developing countries. Of the estimated $893/square kilometre/year—which is the average cost of managing protected areas—foreign assistance from countries that maintain high human rights standards contributes approximately $600/square kilometre/year. In this way, foreign assistance donors transfer significant financial weight, which indeed could be used to encourage implementing agencies, NGOs, and host governments to honor their HR duty bearer responsibilities in conservation contexts.

Where do duty-bearers engage in conservation?
Conservation is a multifaceted endeavour, offering a range of settings for exercising duty-bearer responsibilities. Governments and conservation NGOs have responsibilities in site-specific protected areas (parks, reserves, etc.), in design and management of conservation initiatives, in protected areas policy, debt-for-nature swaps and trust funds, certification of forestry products, conservation concessions and private reserves, conservation agreements/contracts with local communities, land use zoning, corridor and landscape management, ecotourism, wildlife
management, environmental education, collaboration with industry, policy development, conservation ‘offsets,’ safari hunting, and payments for environmental services. Partnerships with industry are a cross-cutting theme. For example, protected areas systems may be national, private, or parastatal with industries raising funds through luxury hotels and wildlife sales. Some conservation NGOs implement protected areas directly, and in some cases, provide armed guards to protect parks. All these situations put significant HR responsibilities on conservation NGOs.

Human rights abuses and allegations which arise in conservation contexts include violation of due process, massive forcible resettlements, destruction of property and farms, torture, extra-judicial killings and other violations of social, cultural, political and economic rights. Rural poor bear a disproportionate share of conservation costs, and landscape approaches have extended conservation’s impacts far beyond protected area borders. Nineteen of twenty-five biodiversity hotspots include 1.1 billion people who live on less than $1 per day, and sixteen of twenty-five biodiversity hotspots include areas where 20% of the population is malnourished.

... as biodiversity hotspots overlap with poverty hotspots and governments with high corruption indices, conservation actors have major opportunities to act on their HR responsibilities.

Donors who fund conservation activities are another key duty-bearer. Donors have significant policy and project oversight opportunities in which to carry out their responsibilities to shape the HR engagement of conservation. A recent commentary in Philanthropy News Digest, summarizes the basis for growing donor concern: "Unfortunately, conservationists and environmental NGOs routinely carve protected areas out of indigenous land ... As their lands are stripped, Indigenous Peoples’s sources of food, trade and traditional medicine are taken away and their very livelihoods threatened, putting them at increased risk of poverty, disease, social unrest, and, in some cases, cultural extinction. ... If (donors) were aware that .. conservation efforts are ... driving Indigenous cultures to extinction, they would demand changes in conservation programs."

What guidance exists to assist and encourage duty-bearers to develop and implement a rights-based approach to their work? Human rights must be addressed as an integrated whole, as they are indivisible and interdependent. To properly support human rights, the overall strategies and goals must be modified to effectively assume the organisation’s responsibilities. Duty-bearers cannot simply add human rights as another objective among the others, but rather need to incorporate this objective across the board as a minimum standard for all actions.
Given the need for duty-bearers to take an integrated approach, the United Nations has mandated that human rights responsibilities be mainstreamed into all UN programs through “rights-based approaches.”

“The human rights based approach (HRBA) is premised on the understanding that human rights principles guide all programming in all phases of the programming process, including assessment and analysis, program planning and design, implementation, monitoring and evaluation. These principles include universality and inalienability, indivisibility, interdependence and inter-relatedness, non-discrimination and equality; participation and inclusion; accountability and rule of law.”

Major development NGOs, such as CARE, OXFAM, and Save the Children, have embraced rights-based approaches, as described in other articles in this volume, and offer examples of how systemic, institutional change can be catalyzed.

HRs are defined in international conventions and declarations, and in national Constitutions. Key rights include the right to free speech, rights to property, freedom from persecution, freedom to make a living, freedom of association, right to self-determination, and the right to freedom from harm.

Duty-bearer actions are mandated and governed by international hard and soft law. International hard law indicates a broad global consensus that affects non-signatories and provides a practical, ethical guide to encourage other duty-bearers (including states) to implement mechanisms for guaranteeing human rights. International law is used through rights-holders’ and duty-bearers’ recourse to arbitration as prescribed in each particular convention. Rights holders and duty bearers ideally rely on national law that provides mechanisms for enforcement, if such law exists. International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries is of particular relevance for conservation.

Soft law lies between policy and hard law. Soft law provides ethical guidance principles but does not have enforcement mechanisms. It emerges from meetings sponsored under international auspices, and serves as a moral barometer and emerging global consensus on what is legitimate and what is not. Soft law often foreshadows the development of hard international law on the subject. Typical of relevant soft law are “Declarations”. In addition, expert bodies as well as committees associated with the hard law conventions also create soft law. An expert seminar convened by the Office of the High Commissioner for Human Rights recently gave the expert recommendation:

“Experts call upon States to address inconsistencies in their national laws, recognizing indigenous peoples’ rights over their lands and resources are not overridden or extinguished by other legislation, in particular in relation to extractive industries, natural resource use, and the creation of ‘protected areas.’ Experts also call upon States to ensure that their national laws and policies... are not discriminatory or inconsistent with international human rights laws and standards.”

There is no broad policy guidance designed specifically for conservation’s engagement as a human rights duty-bearer.
Are there indicators of duty-bearers avoiding engagement?

Red flags indicating *avoidance* arise when duty-bearers:

- say that they do not concern themselves with human rights because they are not human rights organizations;
- fail to point out gaps in addressing basic due process rights in conservation policies and laws;
- frame rights issues as if they were technical and management issues;
- speak of human rights issues in terms of ‘social trade-offs’ as though human rights have a relative and tradeable value;
- use terms and processes that are rights-neutral, such as focusing on stakeholders\(^4\) instead of ‘rights-holders’;
- give awards and otherwise enhance the legitimacy of government agencies or private industry accused of violating human rights;
- rely on inserting Free Prior Informed Consent as a fix-all in key documents without investing resources in its application in key processes, and without addressing larger issues in the system itself;
- pass implementation work to local partners who do not comply with HR standards;
- refuse to forge new patterns in new protected areas instead of repeating HR violating processes of the past; and/or otherwise
- directly violate human rights or stand silent while their collaborators violate human rights.

In addition, recent trends in foreign assistance for conservation, as reported by the CBD Secretariat, show an increased focus on sustainable use and equitable benefit sharing.\(^41\) This rise in poverty eradication programs is a potential red flag; programs linking conservation and poverty eradication generally avoid rights issues and in the end may fail in both aims, because they avoid addressing root causes and dimensions of poverty and biodiversity loss beyond income. While a more complete assessment of the long-term conservation and HR implications of linking conservation to poverty eradication is needed before making any conclusions, it is evident that this linkage has contributed to weakening of rights in those cases where poverty alleviation actions have reduced people to co-managers or targets for income replacement instead of recognizing them as property owners.\(^42\)

Are there illustrative examples of HR ‘traction’ and ‘slippage’?

Duty-bearers are obligated to carry out their responsibilities in difficult circumstances, where forward movement can be slow even when ‘traction’ is achieved. It is best practice to honestly monitor and evaluate ongoing conservation work in order to improve performance and achieve objectives.

This section covers conservation’s engagement with various pieces of the integrated whole for which duty-bearers are responsible. Eleven categories of conservation activity have been taken as headings to represent the complexity and breadth of conservation’s reach; these categories are not mutually exclusive nor exhaustive, but rather overlap and inter-relate. Their order of
presentation should not be interpreted to reflect any meaningful order or hierarchy among them.

Under each of the eleven headings, rather than make a judgement of success or failure, we offer illustrative examples of “traction” (where good effort is being made toward HR compliance and assumption of duty-bearer obligations) and “slippage” (where obligations are not being met through inaction or false action).

The mixed record of slippage and traction across the board in international conservation NGOs and their private sector partners (e.g., The International Council on Mining and Metals noted below) is reason for concern, because in today’s interconnected world, global duty-bearers’ obligations are to engage consistently across the whole.

1. Protected Areas— resettlement and restriction of access

Protected areas are the keystone of conservation work, and a key area of HR concern. Policy reforms in protected areas management can encourage but do not guarantee change on the ground.

Traction. Co-management instead of resettlement is a step toward improving conservation’s engagement. Some contend that co-management is impossible given the power relations difference, yet this engagement can offer a significant arena for systemic change in power relations if the duty-bearer assumes their responsibilities. Kaa Iya National Park in Bolivia offers an example of co-management where the indigenous Guarani government (CABI) collaborates with the Wildlife Conservation Society (WCS) and the national parks agency SERNAP, using funds from a trust fund endowed by a gas pipeline crossing the park to manage indigenous territory historically claimed by Ayoreos, Chiquitanos, and Guarani, who provide park guards (see Picture 1).

Slippage. Conservation’s poor duty-bearer performance can be measured by the number of conservation refugees. People who are forcibly resettled suffer multiple stresses and psychological trauma, cultural disruption, suicides, loss of access to livelihood resources and property, and impoverishment— clear violations of human rights conventions. Indigenous peoples have suffered the brunt of conservation impacts, but millions who do not identify themselves as “indigenous” have also been affected. In this context, it is unproductive to focus solely on indigenous rights as much as it is wrong to ignore indigenous rights where they are claimed.

Estimates have placed the global number of conservation refugees at 130 million. If the people currently “illegally” resident inside protected
areas or using protected area resources were evicted or had their resource access restricted, the potential number of negatively affected people would run into the hundreds of millions.

In Africa, the situation is best-documented: 600,000 refugees in Chad;\textsuperscript{48} 100,000 in Kenya and Tanzania in the past 30 years;\textsuperscript{49} 120,000 (5\% of the population) displaced since 1990 and an additional 170,000 facing displacement in Nigeria, Gabon, Cameroon, Republic of Congo, Equatorial Guinea, and Central African Republic—being moved into lands already occupied and managed by 250,000 people;\textsuperscript{50} and 30,000 forced from Kibale Forest Reserve and Game Corridor in Uganda.\textsuperscript{51} In addition, an unidentified number of local and indigenous people have been removed from Central Kalahari Game Reserve, Chobe National Park, Etosha National Park, Moremi Game Reserve, Tsodilo Hills World Heritage Site, West Caprivi Game Park, Wankie National Park, and Gemsbok National Park.\textsuperscript{52} In protected areas in Gabon, Cameroon, and DRC, communities have lost access and control over their traditional forests (valued at $1.4 billion) and lost income opportunities of $21 million per year.\textsuperscript{53} In the case of GEF-funded protected area projects, 65\% have impoverished people with no evidence of conservation benefits. More severe human rights impacts are expected over the next six years\textsuperscript{54} if protected area establishment procedures are not changed. Despite the seriousness of the problem, as illustrated by the above African data, none of the major conservation NGOs has a policy on resettlement,\textsuperscript{55} an obvious opening for improving conservation’s image and engagement.

### 2. Recognition of customary rights

Property and other customary rights are critical human rights considerations in conservation activities. Tenure is a relationship between/among people regarding their access to natural resources. It comprises a bundle of rights and responsibilities, and may include symbolic rights, rights of direct and indirect use, economic gain, control, and residual rights.\textsuperscript{56} Property rights bundles are also sometimes classed as rights of exclusion, access, management, and alienation.\textsuperscript{57}

Customary rights, recognized in many Constitutions, include grazing rights, rights to sacred places, partitioned rights to areas over the year, rights to forests, rights to govern according to customary laws, as well as land rights. The majority of rural Africans hold land under customary rights.\textsuperscript{58} Customary rights systems, present in many high diversity areas, do not mean that all is communal, but rather they include individual and group rights\textsuperscript{59} that should be respected by duty-bearers.

Regardless of a national government’s disregard for local and communal property rights, conservation organizations have obligations to fairly assess and support local rights in areas demarcated as protected areas. Customary rights are part of indigenous territorial rights (which include rights to govern themselves, etc.,) but in situations where territorial rights are not recognized, engaging in recognition of customary rights is a good move forward.

**Traction.** Community Conserved Areas (CCAs) have been proposed as one among four main "governance types"\textsuperscript{60} in recent IUCN documents (Guidelines...
Conservation and Human Rights

11) and in the CBD Programme of Work on Protected Areas. Expanded acceptance of the CCA governance type could increase recognition of communities’ customary rights to access and manage their resources, and provide greater support for those reserves in nations that already recognize customary rights to collective management of community forests and biodiversity reserves, e.g., Bolivia, Canada, Colombia, Mexico, Papua New Guinea, and Namibia. Indigenous peoples are recognized to have “time immemorial” rights over protected areas, under the National Integrated Protected Areas Systems Law of the Philippines. The many programs supporting community rights to wildlife in Eastern and Southern Africa are also illustrative of traction in supporting customary rights (see Picture 2).

Slippage. Conservation organizations’ purchase of state or private lands that were established by ignoring or extinguishing customary rights, is an example of bad faith slippage by avoidance of HR obligations. The buyer ends up with a title and ownership rights while the indigenous and other rural communities with customary rights have no formal title and are forced off their lands as squatters. The Mapuche in Chile and Argentina, and Mbyaa Guarani in Paraguay are among those who have faced this insidious form of forced resettlement.

In the case of San Rafael National Park in Paraguay (see Picture 3), neither land purchases nor a bilateral debt-swap addressed human rights violations and obligations. Local communities protested the local vigilante landowners NGO’s cutting of their traditional forests after they been taken over under the NGOs management plan in 2002, and conflict ensued when the NGOs’ armed guards responded.

Another form of related slippage around property rights is seen where debt swaps are used to purchase lands that are claimed by peasants and indigenous peoples (including uncontacted people), as in the case of San Rafael National Park in Paraguay. In an ideal scenario, the NGO facilitating land purchase, or the donor behind the debt swap, investigates the tenurial situation prior to making any commitment and chooses not to disenfranchise the indigenous and local people of their human rights by purchasing lands in conflict.
but rather seeks to support a solution that recognizes local rights-holders.

Their agreement with the government may be read as requiring the government to displace people from Nech Sar before the NGO took over that park. Their actions are threatening the Mursi, Dizi, Suri, Me’en, Nyangatom and other tribal peoples who have lived, farmed and sustainably pastured their animals in the Omo River valley for centuries. African Parks Foundation and their international funders have not yet assumed their duty-bearer responsibilities by taking advantage of opportunities to forge new collaborative patterns for conservation. International HR activists are lobbying to encourage APF’s foreign funders to require APF to assume their HR responsibilities.

Due to the significant overlap between indigenous territories and areas of high biodiversity, IP are especially vulnerable to having their special and prior rights violated by conservation. As a result of their experiences with conservation, IP increasingly view conservation as the major threat to their survival and territories. The problems and divisions between the two are deep and longstanding. IPs have sometimes described conservation as “ecofascist.” Conservation documents refer to indigenous peoples as local “populations” “inhabiting” protected areas, rather than using terms that recognize their territorial rights and their rights to negotiate collaboration. They use other terms that prejudice against good relationships, e.g., rural people “survive” by farming and “poaching” rather than “derive their livelihoods by farming and hunting.” Human rights issues are also evident when conservation organizations take insufficient action to protect endangered peoples and “uncontacted” peoples while doing conservation work in their territory or declaring protected areas over their territories. This division between IPs

3. Indigenous territories

*Traction:* In Bolivia, Brazil, Colombia, and Panama, large indigenous territories are recognized and carry out their own conservation activities with technical assistance from conservation organizations or technicians. Indigenous Protected Areas (IPA) have been encouraged in Australia since 1996, under the federal Environment Protection and Biodiversity Conservation Act. In this latter case, aboriginal people retain usage rights, and the Commonwealth minister negotiates conservation agreements with them.

**Slippage:** In Ethiopia, African Parks Foundation has contracted with the Ethiopian government to manage two parks—Nech Sar and Omo, and is not following ICCP and CERD guidance. Their agreement with the government may be read as requiring the government to displace people from Nech Sar before the NGO took over that park. Their actions are threatening the Mursi, Dizi, Suri, Me’en, Nyangatom and other tribal peoples who have lived, farmed and sustainably pastured their animals in the Omo River valley for centuries. African Parks Foundation and their international funders have not yet assumed their duty-bearer responsibilities by taking advantage of opportunities to forge new collaborative patterns for conservation. International HR activists are lobbying to encourage APF’s foreign funders to require APF to assume their HR responsibilities.

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*Policy Matters* 15, July 2007
Conservation and Human Rights

and conservation is growing, despite the glossy public relations efforts of some international conservation NGOs to paint a cozy picture of collaboration. This is particularly counterproductive for conservation success as at least 80% of the world’s high biodiversity areas are home to IPs.

4. Protected Areas implementation
This is the heart of conservation action, and hence it is the area with the greatest slippage and the area with the greatest ground for traction. A few illustrative examples show the range of traction and slippage.

Traction. Starting in the early 1990s, Wildlife Fund Thailand collaborated with other local NGOs and universities to prevent resettlement and resource restrictions by documenting the impacts and resource management practices of Karen in Thung Yai –Huay Kha Khaeng reserve. They fought narrow restrictions implemented under the aegis of a World Heritage Site designation that did not acknowledge indigenous rights, and they struggled against other conservation NGOs’ efforts and coercive pressures to remove the Karen from their territory despite political risks to themselves, opened venues for dialogue and learning, and worked with the Karen to support their traditional cultural practices and to represent themselves to Thai government and international agencies.

Over the past ten years, Indonesia’s civil society organizations have taken advantage of post-Suharto dictatorship era openings to push the envelope of reform, working with conservation groups like WWF Indonesia (Sahul office, Lorentz National Park), Birdlife Indonesia (in Sumba’s Laiwangi Wanggameti National Park) as well as with park management authorities of Lore Lindu National Park in Central Sulawesi, Palu, Tangkoko Nature Reserve in North Sulawesi, and Meru Betiri National Park in East Java, to negotiate recognition of community-managed zones and village conservation initiatives as part of park management planning.  

Slippage. A global evaluation of two hundred protected areas recently noted: “One depressingly consistent problem is a failure to manage relations with people. Problems are evident in terms of effectively channelling the input of local communities and indigenous peoples and securing their voice and participation in management decisions. ... In spite of all this, respondents identified work with communities among the top critical management activities.”

Park guards with "shoot to kill" orders...
are involved in extrajudicial killings. In some African countries, this is common; but this practice recently expanded to Indonesia where it met with public outcry.\textsuperscript{77}

Many protected areas lie in zones of civil conflict and war, and it is easier to lose sight of HR responsibilities in zones of long-term armed conflict. When international conservation NGOs seek funds to arm helicopter gunships to herd refugees out of parks, or arm one faction to kill others who are inside a park in Congo, conservation has lost its way as a human rights duty-bearer.\textsuperscript{78}

\textit{Slippage}. Transboundary protected areas offer the opportunity to use the country with highest common denominator tradition of recognizing human rights instead of lowest as the point of departure. In the GLT (Kruger and Limpopo) between Mozambique and South Africa, the Makulele of Kruger, who recently had their land rights restored, were excluded from bi-national park management meetings until they asserted their own rights.\textsuperscript{79} On the Limpopo side, people are facing resettlements— hence the lowest common denominator was used in the binational situation. The joint enforcement patrols for enforcement in TNS (Cameroon, Congo, CAR) and TRIDOM, follow the norms of Congo, replicating patterns of human rights violations instead of raising standards.\textsuperscript{80}

In Paraguay, Ayoreos’ indigenous territories, including settled and uncontacted Ayoreos (Photo 5), lie within a recently declared, 330 square mile, UNESCO Biosphere Reserve covering Defensores del Chaco National Park, Medanos National Park, and the Cerro Cabrera-Timane National Park Reserve in Paraguay, and Bolivia’s vast Kaa Iya National Park— an initiative that has been promoted by TNC,\textsuperscript{81} WCS, and their local implementing organizations. The area is on a trajectory to become a binational park that covers Ayoreo territory in Bolivia and Paraguay, without recognizing Ayoreo territorial and human rights. A World Conservation Congress resolution\textsuperscript{82} encouraged action on this human rights concern, but this issue has not yet been incorporated into published plans of WCS and TNC, financed by USAID. Ayoreos who live in Paraguayan society have formed a federation, yet the international NGOs have not actively engaged them. Human rights NGOs are actively agitating for conservationists to support HR in this Paraguayan case. In Bolivia (see above), WCS actively worked with the Bolivian government to establish the neighboring, co-managed Kaa Iya park with full recognition of IP rights and acknowledging the presence of the uncontacted bands of Ayoreoade protected inside the park, which would seem to offer a good base from which to establish a binational co-managed park, recognizing Ayoreo territory. Also in Bolivia, TNC and its local counterparts have supported private reserves owned by indigenous communities. However, when conservation NGOs and international donors do not take the opportunity to apply their positive approach in other countries to perform their duty bearer responsibilities in Paraguay, it raises significant questions about institutional commitments.

\textbf{5. National policy engagement}

The IUCN leverages considerable in-
Conservation and Human Rights

Traction. In Cameroon, NGOs promoted new procedures with Free Prior and Informed Consent (FPIC) for developing and approving protected areas management plans. In Brazil, WWF incorporated indigenous territories and extractive reserves, together with protected areas, into a USAID conservation project with national policy engagement, and won an award for exemplary collaborative governance. The Indonesian Forestry Ministry, working with Indonesian civil society and conservation organizations incorporated community participation and empowerment in its recent revisions of protected area and nature reserve regulation.

Slippage. Slippage often occurs around conflating "stakeholder" with "rights holder," and substituting “participation” for “decision-making”. Many conservation agency documents (including IUCN’s new governance types and proposed principles) and methodologies for participation in protected areas and other conservation activities frame the issues/actions in terms of stakeholders as opposed to rights-holders, ignoring the different stakeholders’ different rights and relative levels of marginalization/power to assert rights.

When conservation organizations lobby national Presidents to urgently declare new protected areas in conflicted zones without considering the prior claims of indigenous peoples in the area, as occurred for example, in 2001, when Conservation International and Field Museum offered funding and lobbied for outgoing Peruvian President Paniagua’s rapid signature declaring Cordillera Azul National Park, disregarding an Indigenous Federation’s rapid prior submission of a claim for an uncontacted peoples’ reserve in the area, their actions support...
a national executive policy of bypassing democratic processes. It seems that rather than reflect on the seriousness of choices made in the face of such high-level opportunities to meet, or fail to meet, duty-bearer obligations and collaborate with civil society to consolidate systemic reforms in such cases, the international conservation organizations tend to say their plan is to get the park declared and then sort out “stakeholder” concerns by incorporating them into a park management plan, as though participation in a park management plan is the framework that offers a process for working out larger societal issues. A similar situation is being played out in other places in the rush to consolidate protected areas, as for example, in 2006, in Ethiopian National Parks, with APF’s response to criticism from HR advocates. APF said that a management plan will later sort things out with the pastoralists groups whose traditional rights over the land were not considered by APF when it became involved in negotiations with the government to obtain concessions to manage some protected areas.87

6. Forestry Certification

Traction. Forest Stewardship Council and other certification protocols include attention to property rights. This is a growing nexus of conservation organizations’ influence in the world’s forests. It is rumoured that a new multi-million dollar World Bank partnership with WWF, CI, and TNC to expand the IFC-funded Global Forest and Trade Network is in preparation.

Slippage. In Madre de Dios, Peru, the indigenous federation FENEMAD has complained that certified small loggers are using rivers to cross indigenous community lands to illegally enter and bring out logs from a reserve established for uncontacted peoples, and then selling those logs as certified.88 Lack of significant action on this problem is an instance of a neglect of duty-bearer responsibilities by a chain of certification experts and organizations, including conservation organizations (WWF and ACA) working in the area.

In the Forest Law Enforcement and Governance and Trade (FLEGT) process, there is a tendency to emphasize the enforcement of laws that directly address issues such as illegal logging, illegal trade and forest conversion, when in fact all laws and human rights related to access and control over natural resources in forest areas should be equally considered and enforced.89

7. Collaborations with private sector

Private sector partnerships are a burgeoning area of conservation fund-raising, including oil and gas companies, mining companies, and timber companies with negative human rights records, and this challenges conservation organizations to leverage changes in business.

Traction. IUCN collaborated with The International Council on Mining and Metals (ICMM) to develop a sustainable development framework which includes Principle #3, “uphold fundamental human rights and respect cultures, customs, and values in dealings with employees and others who...
are affected by our activities.” ICMM Assurance Procedures include the requirement that ICCM members are audited for adherence to the principles and guidelines in the sustainable development framework.

Slippage. IUCN provided leadership for the ICMM’s development of guidelines for working with indigenous peoples, but those guidelines do not rule out forced resettlement.

8. Advocacy

Advocacy offers a wide arena where conservation could publicly or quietly join broad-based local movements struggling to build civil society and strengthen rule of law.

Traction. In India, in the late 1990s, US bilateral assistance (USAID) supported a WWF-led broad-based coalition linking biodiversity conservation to the development of a law for freedom of information—an example of supporting systems and laws necessary for guaranteeing human rights. The Act to this effect was passed in 2002 and the resulting transparency has produced significant, positive changes. Support was also given to an analysis of the national laws and policies to identify strategic options for openings to assert local people’s rights during conservation decision-making.

Slippage. Conservation agencies are widely criticized, around the world, for not taking a position when many other civil society organizations take on rights issues and struggle to support systemic changes. For example, in Russia, RAIPON indigenous federation sought to engage WWF in civil society networks focusing on legal and policy reforms on many occasions, but it felt rebuffed.

9. Seeking recourse in courts to create jurisprudence

Efforts to build jurisprudence in international courts are one option for strengthening human rights. Yet no case was found where conservation joined the claimant, rather cases were found where conservation was associated with the defendant being sued.

Slippage reversed. UN Committee on the Elimination of Racial Discrimination (CERD) expressed their concern about the forced resettlement of Basarwa/San people from their lands within the Central Kalahari Game Reserve. Subsequently the Botswana High Court ruled against the Botswana government, demanding that the government allow San people to return to their territory in the Central Kalahari Game Reserve, ruling that they were “dispossessed forcibly, unlawfully and without their consent” from their ancestral lands. This is a significant decision, setting precedent for other human rights cases involving resettlement for conservation.

10. Free prior informed consent (FPIC)

FPIC is a procedural right that is enjoying widespread insertion into processes to enable rights bearers to assert their own rights. Duty-bearers bear the burden of ensuring that the criteria for “free,” “prior,” and “informed” are met, preventing sloppy or coercive implementation of FPIC, and upholding rights-bearers’ rights to say “no.”

Philippines, Malaysia, Australia, Venezuela, and Peru have national legislation on free, prior and informed consent of indigenous peoples for all activities affecting their lands and territories. Colombia’s Constitutional Court has upheld the right to FPIC.
What ARE Human Rights, anyway?

Conservation can undermine Human Rights...

FPIC is included in processes associated with the CBD and many guidelines for "local participation." This can be a first step toward assuming obligations or a red flag demonstrating avoidance of assuming more significant responsibilities.

The FPIC concept has been incorporated into the ICMM mining and biodiversity guidelines. The development of the guidelines by proxy (without indigenous and local representation) through ICCM collaboration with IUCN and large conservation NGOs led to criticism of the conservation organizations not fully assuming their duty-bearer responsibilities by not enabling indigenous peoples to represent themselves as rights-holders.

It is rare for conservation organizations to provide para-legal training and hire legal advisers to integrate human rights obligations into organizational operations. Conservation organizations often lack understanding of the fundamental legal frameworks that deal with land, and other natural resources access and management in the countries where they are operating. In conflict situations over access and management, conservation groups need to take seriously the need for due process, including the free and prior informed consent procedures. For example, recent legal and policy research in Indonesia has revealed that a majority of protected areas have in fact not been fully gazetted, as required by law, and the question of who has prima facie over these areas remains unanswered and often disputed.

11. Restitution of lands taken for conservation

Under international law, indigenous peoples have right to restitution of lands taken for protected areas. The general remedy is legal recognition of property rights, demarcation and titling of collective property, and compensation for damages.

Land restitution in the Kruger National Park was initially perceived to be a threat to South African parks and reserves. However, land restitution has produced new models for conservation, increased participation of indigenous peoples, and extended legally conserved land in South Africa. In Tasmania some lands were returned to their aboriginal owners as fee-simple titles in 1995. In Thailand, part of Huai Nam Dan National Park was degazetted and returned to villagers due to corrupt government agencies’ use of the area. The Philippine’s NIPAS law effectively provided impetus to national policy implementation of indigenous peoples land rights in protected areas systems.

In Australia, rights recognition has been conditional; many states required lease-back to the state as a condition for recognition of aboriginal rights.

How can the public, conservation agencies, and donors monitor conservation’s performance in its role as human rights duty-bearer? Organizational policy enforcement, external monitoring, and self-as-
Assessments can be helpful for ensuring that conservation agencies act on their HR responsibilities in ways that consistently produce traction in the move forward. While media attention and ad hoc public monitoring has increased, as yet formal monitoring and feedback processes are largely under construction, and there is insufficient experience to evaluate what is being promoted or implemented. Fresh ideas and renewed commitment to evaluation are needed.

The World Bank’s new resettlement policy incorporates a “process framework” for addressing the HR issues on an ongoing basis. The African and Asian Development Banks rapidly followed with similar policies. On the other hand, while the World Bank and the regional multilateral development banks have Indigenous Peoples’ policies that include provisions for protecting human rights, these policies and their application have been severely criticized by indigenous and rural peoples’ advocates.

WWF, the only conservation organization with a significant policy on indigenous peoples—WWF’s Statement of Principles on Indigenous Peoples and Conservation, carried out a self-assessment on the impacts of the policy after ten years in 2005. WWF’s management response has been in preparation since early 2006. Other conservation organizations have not yet demonstrated similar serious, in-depth attention to these issues. WWF’s review of 200 protected areas identified problems with local people as major challenges, but the evaluation instrument used management and poverty lenses, and did not gather data on local people’s concerns or explore HR issues contributing the management problems that were identified.

The MacArthur Foundation requires conservation project proponents to complete a questionnaire about whether resettlement is likely. Other private foundations assume their HR responsibilities by supporting indigenous and local communities to conserve and manage their resources, bypassing big conservation NGOs as middlemen. Most bilateral donors have statements of principles supporting human rights. Some have specific guidance on indigenous peoples. For example, Canadian CIDA has extensive policy guidance on Human Rights. DANIDA has developed a much-lauded, detailed toolkit for working with Indigenous Peoples.

The International Labour Organization carried out an audit of Poverty Reduction Strategy Papers (PRSP) to identify regional tendencies and factors contributing to the recognition of indigenous and tribal peoples’ human rights. Transparency International also identifies opportunities and weaknesses where HR duty-bearers need to take on their responsibilities. These are resources that could be used by conservation organizations to develop monitoring.
and evaluation tools.

If successful rights-based approaches are to be developed, they must be evaluated against criteria that differentiate them from efforts to tweak the system to promote “participation” within the existing conservation management paradigm without taking on the challenge of broader democracy issues where governments have not assumed HR responsibilities. The criteria should reflect an effort to enable rights-bearers to assert their own rights.

“Rights-based programming holds people and institutions who are in power accountable to fulfil their responsibilities toward those with less power. It also supports right holders to demand their rights and to be involved in political, economic and social decisions in society. It aims to increase impact and strengthen sustainability by addressing root causes, bringing about policy and practice changes, working together with others towards common goals and by changing power relations.”

In sum, to prevent continuing inconsistent performance, rights-based programming must integrate human rights-based activities and incentives into all the sectoral approaches of conservation to create systemic change at organizational, national and global levels. Bad things are done by good people in institutional settings that do not provide adequate guidance, feedback mechanisms, and transparency in uncertain situations. Institutional change is a hard road to travel, but the journey is not impossible. Top-level decisions, budget commitments, resolve, individual initiative, and open two-way communication will be required to make and maintain the radical changes necessary to overcome normal institutional inertia. Any effort to evaluate this progress must take these elements and processes into account, in order to build the governance systems and accountability necessary to achieve long term, sustainable conservation.

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Notes
1 Chapin, 2004; NGOs’ responses in WorldWatch Jan, 2005; Colchester, 2001; Dowie forthcoming; Geisler, 2003; Ngowi, 2006; Pacheco, 2006.
3 Springer and Alcorn, 2007.
4 Examples are drawn from literature and thirty years experience in the field around the world. People in the field (conservation and other NGO workers, rural people, government workers,
Conservation and Human Rights

Conservation is an ongoing process and there are constant changes in site situations. In some illustrative cases, there may have been changes at the site since the situation was reported or observed, but the point for discussion in this paper is that these negative situations have arisen and will very continue to arise unless there are reforms. Likewise the positive moments illustrated in this paper may have led to more positive effects, or may have been countered by other actions.

An exception would be Amnesty International’s Human Rights Learning Group at IIED to explore the linkages between poverty and protected areas. See http://www.povertyandconservation/information/en

An anonymous source working for a European development agency noted that the words “environmental” and “conservation” have become associated with anti-poor and elitist agendas, and hence were not being included in new programs; also c.f., Adamson, 2007.

Indigenous and tribal peoples, as defined by ILO Convention No. 169, self-identify themselves as “peoples”—societies with their own languages, customs, and identities. They have prior rights to territories. The term tribal was included in ILO 169 to cover a social situation of discrimination and marginalization, rather than basing it on length of residence/use of an area.

See Tolei and Swepton, 1996.

An exception would be Amnesty International’s partnership with Sierra Club to protect HR of local conservation activists. Survival International responds to others’ complaints about HR violations in protected areas. EarthRights supports grassroots action on environmental justice issues. Native Solutions to Conservation Refugees raises global public awareness of HR violations related to conservation.

In many countries, rural social justice activists have links to religions that encourage people not to be indifferent to injustice. In Central America and Philippines, for example, the Catholic Church has used its institutional strengths to support local people in their struggle for human rights reforms.

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Draulans and van K., 2002.

Wunder, 2006.

c.f., Lynch and Maggio, 2002.

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Conservation can undermine Human Rights...

regional Charters, associated with their own processes and mechanisms; and Conservation on Biological Diversity (CBD) Article 8(j), Article 10 c.

34 e.g., in response to a Nicaraguan case of Awas Tingl, the Inter-American Court recently ruled that the American Convention on Human Rights, Article 21 section on property rights extends to protect traditional indigenous tenure even when tenure is not authorized by the state, Pasqualucci, 2006.

35 More information can be found in the ILO Newsletter, April 2005, The ILO and Indigenous & Tribal Peoples.

36 Policy is general normative guidance that is legally unenforceable and nonbinding unless linked to law.

37 Among the relevant soft law Declarations are: UN Universal Declaration of Human Rights (UDHR); Draft Declaration on Rights of Indigenous Peoples; InterAmerican Draft Declaration on the Rights of Indigenous Peoples; Draft Declaration of Principles on Human Rights and the Environment; and the Belem Declaration for the Protection of Isolated Indigenous Peoples. See Lynch and Maggio, 2002, for elaboration of definitions and more examples of relevant policy, soft law and hard law.


39 In 2004, the World Conservation Congress passed a weak resolution on “conserving nature and reducing poverty by linking human rights and the environment” indicating that the IUCN Commission on Environmental Law (CEL) was to establish an Environmental Law and Human Rights Specialist Group to provide future World Conservation Congresses with a summary of relevant developments in human rights law and litigation, but not directing that any concrete action be taken on the information thus gathered.

40 Framing the issues and actions around stakeholders focuses on stakes instead of rights, as a Mohawk representative complained publicly over ten years ago—anyone who comes “to the table” with a T-bone steak in hand is a stakeholder—i.e., the rights of local poor people are not treated with priority, but rather the big oil companies and other sectors who come with money and power are given seats at the negotiation and decision-making table when claimed stakes are privileged over prior rights. This is not to say that stakeholders should be ignored, but duty bearers should encourage use of a “seating” framework that first and foremost supports rights-holders to claim and exercise their rights.

41 Emerton et al., 2006.

42 Alcorn, 2005.

43 False actions are actions that appear to respond to issues without taking real action; c.f., endnote 37 above.


45 Alcorn, 1997.

46 Brockington et al., 2005. The African Commision on Human and Peoples Rights has recommended that in Africa, the term “indigenous” be applied to the structurally subordinate position of hunter-gatherers and pastoralists. The largest group are the pastoralists; Ethiopia has 7-8 million pastoralists, Kenya has 6 million, and Tanzania approximately 3.7 million, Tomei, 2005.


49 Dowie, 2006.

50 Schmidt-Soltau, 2005.


52 Hitchcock, 2005.

53 Schmidt-Soltau, 2005.

54 Schmidt-Soltau, 2006.

55 Schmidt-Soltau, 2005.

56 Crocombe, 1971.


58 Veit et al., 2006.


60 For a source on background for this distinction, please see http://www.iucn.org/themes/wcpa/theme/categories/summit/papers/papers/Governancepaper4.pdf


62 The global profile of the human rights issues of tiger protection policies has expanded in recent years, even serving as key story elements in bestselling popular novels, c.f. Ghosh, 2004.


64 Anonymous personal communication to JBA, 2005.

65 In response to the violation of indigenous rights through land sales, Argentina showed international leadership on this issue by recently passing an emergency national law stopping all forced resettlement, including those brought about by land sales, and demanding that all states develop mechanisms for evaluating indigenous land claims. El Senado y Camara de Diputados de la Nacion, 112-S-06 OD 1301 2/.


67 http://www.nature.org/wherewework/southamerica/paraguay/work/art5110.html

68 Semino et al., 2006; see also Notario, 2006 and USAID/Paraguay operational plan, 2006.

69 In worst case scenarios, NGOs can be drawn into situations where funding for land purchase (or other direct project funding) feeds creative diversion of funds within national circles of power, and NGOs can be quietly pressured to accept this as the price of collaboration. Likewise, when tax free status is granted to a park management concession expecting significant revenues, as when safari or other business
deals such as gasoline concessions are granted by governments, the actors are in danger of entering side-deals that support rule of power over rule of law. A discussion of the indirect HR impacts related to the acceptance of these “transaction costs” of doing conservation business in corrupt circles is beyond the scope of this paper. See Baker, 2005 for general reflection on this problem.

70 Turton, 2006.
71 Oviedo et al., 2000.
72 Dowie, 2005.
73 A typical international conservation document’s choice of language in aspects relating to people can be found on the UNEP-WCMC Protected Areas Programme website, c.f., description of Salonga National Park in DRC.
74 Brackelaire, 2006.
75 Lynch and Harwell et al., 2002.
78 Anonymous personal communication to JBA, 2006.
79 Anonymous personal communications to JBA; Steenkamp et al., 2006.
80 Anonymous personal communication to JBA, 2005.
81 http://www.nature.org/wherewework/south-america/paraguay/work/art5109.html
84 ARPA and Amazoniari projects, USAID/Brazil.
85 Sudrajat, 2006. Resulting Law No. 6, 2007 for the first time in Indonesian history provides long term tenure, up to 35 years, renewable, by local community co-managers of parks and protected areas, together with village forests, and social forestry managers.
86 As proposed in World Parks Congress and World Conservation Congress in 2004, Johnson and Pansky, 2005.
88 Personal communication to JBA from FENEMAD indigenous peoples federation of Madre de Dios, 2005.
89 Colchester, 2006.
90 ICMM, 2006.
91 ICMM, 2006.
92 We participated in quiet, effective efforts while working with WWF and USAID in Indonesia, but the efforts were effective precisely because they were, and remain, off the record at very high political levels. Opportunities for quiet action abound if conservation NGOs are willing to use political capital to protect HR.
93 Singh et al., 2002.
95 Anonymous personal communication to JBA, 2005.
96 Committee on the Elimination of Racial Discrimination, 2002.
97 Hitchcock, 2005.
99 c.f., Perault et al., 2007.
100 Substantive and methodological issues related to FPIC have been explored in “Standard Setting: Legal Commentary on the concept of free, prior and informed consent, working paper for the Commission on Human Rights, E/CN.4/ Sub.2/AC.4/2005/WP.1
103 ICMM, 2006.
104 IUCN, 2005.
105 Contreras-Hermosilla, 2005.
107 Fabricius and d.Wet, 2002; Steenkamp and Uhr 2000; R.Witter personal communication to JBA, 2006.
111 Down To Earth et al., 2005.
115 Tomei, 2005.
116 c.f., Dillon et al., 2006; Figari, 2006, see also http://www.transparency.org.
118 Social settings and institutional systems are the “bad barrels” where human rights failures occur—Warzo, 2006; Zimbardo, 2006.

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Conservation can undermine Human Rights...
Conservation and Human Rights


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