



The Community Conservation Resilience Initiative

Guidance for conducting a review of legal and non-legal aspects of recognising and supporting community conservation initiatives

This guidance complements the Community Conservation Resilience Initiative (CCRI) methodology ([English](#) | [Russian](#)) and toolkit ([English](#) | [Russian](#)). It draws from Natural Justice's methodology for a series of legal reviews undertaken in 2012 for the ICCA Consortium, and it is intended for CCRI partner organisations and support staff of the Global Forest Coalition.

The CCRI aims to respect and promote the rights of Indigenous Peoples and local communities, and groups within them such as women and peasants – particularly to lands, territories and self-determination. The central tenet is that Indigenous Peoples and communities themselves should identify **how their community conservation initiatives should be recognised and supported**. The CCRI process in each country should thus include a **baseline and gap analysis** of relevant laws, policies, institutional arrangements and other dynamics as they relate to these rights. Such a review is an essential part of identifying opportunities to advocate for community recommendations.

In 2012, reviews of legal and non-legal recognition and support for Indigenous Peoples' and community conserved territories and areas (commonly known as ICCAs, see Annex I) were undertaken for more than 15 countries (see Jonas *et al.* 2012a and Kothari *et al.* 2012 in Annex III) and for international law and jurisprudence (see Jonas *et al.* 2012b). Please check the following webpages for your country: http://www.iccaconsortium.org/?page_id=2812 (15 country legal reviews) and <https://www.cbd.int/protected/ts64-country-case-studies/> (19 countries). If a review has already been done for your country, you may wish to update it to reflect latest developments. If a review has not yet been done for your country, please use the guidance in the following pages.

This document provides an outline for a review of legal and non-legal aspects of recognising and supporting community conservation initiatives. **Annex I** provides an introduction to ICCAs and their recognition in international law and policy. **Annex II** provides background information on recognising and supporting ICCAs and other forms of community conservation, drawing from the 2012 legal reviews.¹ This helps provide further context for the suggested review outline. Finally, **Annex III** sets out references for further reading.

The review outline may be adapted as needed to suit your capacities and national context. Certain questions are marked as "Optional" for those wishing to conduct a more detailed review. The expected length is at least 10 pages. Please substantiate statements with full references, using whatever referencing format you prefer. Specific legal provisions and cases should be referenced clearly to allow for cross-checking.

¹ Recognition and support here includes the following: statutory legal measures, non-legal policy measures, social measures (e.g. advocacy, awards, and media coverage), networking and forums for collective action, financial support, and technical support including documentation. Other than official legal/policy measures, all of these can be through government or civil society.

Consultations and Peer Review: It is your responsibility to consult and seek input from relevant experts and resource people to ensure accuracy. This will also help build your network of in-country supporters of the CCRI process. You may wish to begin with seeking assistance from allied NGOs and Indigenous Peoples' Organisations. Others who might provide inputs include in-country lawyers and advocates, academics, and journalists. If you do not yet have contact with in-country lawyers, ask allied NGOs and IPOs and/or search online for national or sub-national bar associations and legal NGOs that focus on communities and the environment.

If you have any questions, please contact your Regional Resource Person and Holly Jonas (holly@globalforestcoalition.org).

Suggested Review Outline

Section 1: National context

a. Overview

- Briefly introduce the country, for example: area, population and demography, key geographical and ecological features, key industries, etc.
- Briefly describe the main Indigenous Peoples, local communities or community-level livelihood strategies in your country (e.g. forest-dependent, livestock keepers, marine, etc.).
- Briefly identify some of the main drivers of biodiversity loss and land/resource appropriation.
- Briefly identify some of the main threats to cultural diversity.

b. Introduction to national legal system

- State whether / how your Constitution recognises the environment or Indigenous Peoples' rights.
- Briefly identify the structure (e.g., federation, republic) and type (e.g., Common law, civil law, religious law) of your country's legal system. Identify any key issues with conflicts between national and sub-national jurisdiction over certain areas of law.
- Optional: Briefly identify key national policies or strategies that direct the country's approach to economic development, the environment and Indigenous Peoples or local communities.

Section 2: Laws that support or undermine ICCAs or community conservation initiatives

Where possible, each of the following sub-sections should address the following:

- (a) Key provisions relevant to community conservation initiatives (whether supportive or harmful);*
- (b) Practical aspects of implementation;*
- (c) Positive or negative implications for community conservation initiatives (e.g., if they provide opportunities for Indigenous Peoples or local communities to secure certain rights, or if they may undermine certain rights in practice); and*
- (d) Key judgements, where applicable.*

a. Human Rights

- Describe any human rights laws or policies that support community conservation (e.g., rights relating to Indigenous Peoples' and/or local communities' self-determination, self-governance, connection with territories or natural resources, freedom of culture and religion/belief, freedom of association, free speech, access to information, etc.). This may include a wide range of procedural as well as substantive rights.
- Specify if your national laws do not provide for such human rights protections.
- Optional: Does your country have a national or sub-national human rights institution? Search for any relevant past or current studies, cases or statements that may provide important precedents or political backing.
- Optional: What grievance mechanisms are available to Indigenous Peoples and local communities (judicial and non-judicial)? Are there any protections for whistle-blowers or for environmental / human rights defenders?

b. Land, Freshwater, Coastal and Marine Laws and Policies

- What are the main forms of title or tenure?
- Does any legislation recognise Indigenous or community territories or collective, Native or Aboriginal title? If so, is it considered 'private' or 'public', in perpetuity or otherwise?
- Who has rights over sub-soil resources?
- To what extent does statutory land/freshwater/coastal/marine law enable or allow customary laws and procedures to be used for community governance or management of ICCAs? Specify any conditions or restrictions.
- Optional: Highlight any tenure-related provisions that require conservation in some way (e.g. areas of high conservation value must be protected).
- Optional: Highlight any tenure-related provisions that require "development" or conversion (e.g. X number of hectares must be cleared within X years or the licence will be revoked).
- Optional: Describe any specific aspects of the existing land/freshwater/marine tenure framework that undermine or hinder community conservation and governance of territories, areas, and natural resources. If applicable, comment on any specific aspects of colonial or religious laws that continue to have significant impacts on community tenure and governance.

c. Protected Areas and Other Area- or Territory-based Conservation Measures

- What laws and policies provide for the gazettement of protected areas? What types of protected areas are provided (e.g., parks, reserves, sanctuaries, etc.)?
- Are any area- or territory-based conservation measures recognised within or outside of the official protected area system?
- To what degree does the protected area framework recognise community conservation initiatives (including sacred sites) and/or allow for governance or management by Indigenous Peoples and local communities?
 - If there are such measures, how are those in power selected (e.g. by election or traditional leadership from within the community, appointed by government, etc.)?
 - Highlight any conditions or restrictions on the types of institutions that are recognised or (customary) laws that can be the basis for local decision-making.
 - Comment on the degree of conflict between communities and protected areas (e.g. community evictions, arrests for collection of forest products, etc.).
- Optional: Does your country have any World Heritage Sites, Biosphere Reserves, Ramsar Sites, Key Biodiversity Areas, or other international designations already recognised or in the process of nomination that overlap with community areas or sacred sites?

d. Natural Resources, Environmental and Cultural Laws and Policies

- Review natural resource or environmental laws, as appropriate. Examples include laws concerning forests, biodiversity, agriculture, fisheries, wildlife, environmental protection, sub-soil resources and climate change. Consider how they support or hinder community conservation initiatives.
- Optional: If any of these laws contain supportive provisions for community governance or management, how are those in power selected (e.g., by election or traditional leadership from within the community, appointed by government, etc.)? Comment on any conditions or restrictions on the types of institutions that are recognised or (customary) laws that can be the basis for local decision-making.
- Optional: Do any laws and policies contain provisions relating to traditional knowledge or communities' culture and intangible heritage (e.g., access and benefit sharing, intellectual property)? To what extent do these provisions allow for self-determination and customary governance systems?

e. Economic Rights

- Is there any legal recognition or non-legal support for the traditional occupations and livelihoods of Indigenous Peoples and local communities?
- Optional: Are there schemes to support subsistence or small-scale economic opportunities? To what extent do they respond to community-determined needs?

Section 3: Non-legal recognition and support

Refer to the types of non-legal recognition listed in Annex II and consider the following:

- How (if at all) do government agencies recognise and support community conservation initiatives through non-legal means (e.g. financial support, technical support, awards, etc.)?
- Optional: How (if at all) do non-governmental agencies recognise and support ICCAs and other community conservation initiatives through non-legal means?
- Optional: What are the key issues related to such recognition and support? For example, is the support appropriate or not, is funding inadequate or excessive, is there an imposition of external institutions, etc.?

Section 4: Analysis and recommendations

- What laws actively undermine or fail to support community conservation initiatives? How?
- What laws support or recognise community conservation initiatives? How?
- What are the interactions between these laws (e.g., in what situations do certain laws take precedence over others)?
- Optional: What institutional, legal and/or policy reforms could better support community conservation initiatives?
- Optional: What changes could be made to the existing legal or policy frameworks to ensure appropriate legal recognition and support of community conservation initiatives?
- Optional: Who and how would these reforms be implemented?

Annex I: Introduction to ICCAs

Features of ICCAs

ICCAs are characterised by three general features:

- (a) A people or community has a close and profound relationship with a particular site (territory, area, or habitat) and/or species, which is inextricably linked to their culture, identity, livelihoods and/or wellbeing;
- (b) The people or community is the predominant or *de facto* decision-maker, with or without other actors; and
- (c) The people's or community's decisions and efforts contribute to conservation of ecosystems, habitats, species and/or genetic diversity and associated cultural values, regardless of their outright objectives (which may be livelihoods, safeguarding cultural or spiritual places, etc.).

Custodians of ICCAs do not necessarily have legal title or tenure. Many documented ICCAs are on state land and waters, but are *de facto* controlled and effectively managed by Indigenous Peoples and local communities.

Diversity of ICCAs

Some ICCAs are of ancient origin; some include continuation, revival, or modification of traditional practices; some are new initiatives such as restoration and innovative uses of resources taken up by Indigenous Peoples and local communities in the face of new threats or opportunities. Some conserve remote ecosystems that have had minimum human influence, while others regulate multiple uses in areas ranging from very small to large stretches of landscapes and seascapes.

ICCAs are governed by Indigenous Peoples, local and mobile communities, and combinations thereof in many countries around the world. The diversity of peoples and communities is the foundation of the diversity of ICCAs themselves.

International and National Recognition of ICCAs

In international law and policy, ICCAs are recognised in many IUCN Resolutions and Recommendations and decisions of the Convention on Biological Diversity (CBD). CBD decisions that recognise ICCAs include those on protected areas, financial mechanisms and resource mobilisation, traditional knowledge and customary sustainable use, sustainable development, ecosystem conservation and restoration, climate change, agricultural biodiversity and taxonomy.

Many Indigenous Peoples, local communities, and civil society organisations are working to strengthen the resilience of ICCAs, including through their documentation and advocacy for their legal and other forms of recognition and support.

Annex II: Background on Recognising and Supporting ICCAs and Other Forms of Community Conservation

More and more countries are recognising and supporting ICCAs and other forms of community conservation (hereafter referred to as simply ‘community conservation initiatives’). A number of lessons are beginning to emerge, especially about the **appropriateness** of various forms of recognition and support. Some forms of recognition and support may actually undermine community conservation initiatives in practice, particularly top-down approaches that impose uniform structures and rules and fail to recognise the diversity and collective nature of local systems. Another example of inappropriate support is the sudden influx of financial resources or tourists if a community is unprepared to handle them.

However, some countries do have laws, policies or other instruments that respect the specificity and diversity of community conservation initiatives, and enable Individual Peoples and communities to continue or establish their own institutions, rules, and activities.

For more information about appropriate recognition and support for ICCAs and other forms of community conservation, see Jonas et al. 2012a and Kothari et al. 2012 (Annex III).

1. Positive Developments

1.1. Legal Recognition

A number of provisions in binding and non-binding **international instruments** support the rights of Indigenous Peoples and local communities over their territories, areas and resources. These rights are found across a range of international human rights, environmental and sustainable development agreements. For more information, see Jonas *et al.* 2012b (Annex III).

Certain countries provide positive forms of recognition and support at the **national level**. When conducting your national review, consider examples such as:

- (a) Participation of well organised Indigenous Peoples’ institutions, alliances and organisations in policy-making and legislative processes that affect them.
- (b) Application of human rights standards by government, development and environment agencies in their engagements with Indigenous Peoples and local communities, including by respecting procedural rights such as free, prior and informed consent, and recognising customary laws.
- (c) Land restitution and land tenure reform programmes (see Almeida *et al.* 2015 in Annex III). These can significantly contribute to Indigenous Peoples’ and local communities’ rights over their territories and resources, if they provide for such rights and collective community tenure.
- (d) New laws on protected areas, wildlife, environment, freshwater, and marine issues that are more inclusive, providing greater and more appropriate rights to Indigenous Peoples and local communities in relation to nature conservation, and wildlife and tourism benefits.
- (e) Better coordination among government agencies, leading to more integrated implementation of laws and policies, for example, concerning socio-economic rights, Indigenous Peoples’ territories, and wildlife management.

1.2. Non-legal Recognition

At both international and national levels, community conservation initiatives receive non-legal recognition and support. You could consider the following general forms, among others:

- (a) *Administrative and programmatic recognition*: community conservation initiatives are provided space in governmental programmes or schemes, with or without specific legal measures to do so.
- (b) *Financial, technical and developmental support*: Indigenous Peoples and local communities receive funding, inputs for building capacity, locally appropriate developmental facilities, and technical assistance to map their territories and areas.
- (c) *Documentation, research and database support*: Various aspects of community conservation initiatives are studied and documented. For example, at the global level, the UNEP World Conservation Monitoring Centre has initiated an ICCA Registry (www.iccaregistry.org).
- (d) *Social recognition and support*: Indigenous Peoples and local communities are granted awards, and have access to media coverage and platforms to tell their stories. A number of international institutions also provide such recognition, such as the Equator Initiative.
- (e) *Networking support*: Relevant peoples and communities exchange information and ideas, join or establish larger federations or associations, and synergise with others in various other ways.
- (f) *Advocacy support*: Peoples and communities and supporting civil society groups undertake lobbying, direct action and other methods to influence government policy and programmes.

Many of these forms of non-legal recognition and support intersect with each other and are interrelated with legal recognition. For example, social recognition, networking and advocacy have been crucial in achieving legal and policy recognition of community conservation initiatives in some countries.

2. Continuing Negative Trends

Despite greater recognition, respect and support for community conservation initiatives in certain areas, significant gaps and weaknesses continue in most countries. When conducting your national review, consider the influence of the factors below.

2.1. The development, implementation and enforcement of national law is discriminatory

Legal systems – including laws themselves as well as processes and institutions for developing, implementing and enforcing laws – discriminate against Indigenous Peoples and local communities in a number of ways. When conducting your national review, try to identify laws and policies that:

- (a) Did not include the participation of Indigenous Peoples and local communities in their drafting.
- (b) Do support their rights on paper but are undermined by ineffective implementation.
- (c) Fail to hold governments accountable for their actions or inactions.
- (d) Retain the conventional sectoral approach to the law, i.e. laws that address singular elements (land, wildlife, water, protected areas, etc.) of otherwise interconnected systems.
- (e) Are favourable to Indigenous Peoples and local communities but are disregarded where they conflict with laws that facilitate industrial resource extraction.
- (f) Are discriminatory to Indigenous Peoples' or communities' rights. Such rights are often of a weaker value or made subject to other rights and interests in a way that does not happen to other under the law (for example, concerning property rights or the rights of corporations).

- (g) Create gaps or overlaps between laws and their implementing institutions, leading to an ineffective legal framework.

Many Indigenous Peoples and local communities are legally deprived of their customary land and resource rights for these reasons, among others. Even where they are granted such rights constitutionally or legislatively, they are often still dispossessed in practice because of administrative barriers and other systemic issues such as lack of respect for the rule of law.

2.2. Inappropriate legislation undermines community conservation initiatives

Certain types of laws are often biased against Indigenous Peoples and local communities, further undermining the resilience of their community conservation initiatives.

When reviewing your country's laws, identify laws that:

- Do not recognise customary laws and traditional authorities, institutions and decision-making processes, which undermines community cohesion;
- Do not recognise customary and collective land and resource rights;
- Do not recognise Indigenous peoples' or local communities' rights over sub-soil resources, which enables prospecting and mining;
- Provide only marginal or ineffective rights-based approaches to natural resources and the environment; and
- Fall behind international standards that otherwise support community conservation (e.g. protected areas laws).

2.3. Non-legal recognition and support of community conservation initiatives remains absent, weak or inappropriate

Although some countries provide non-legal recognition and support, significant gaps and weaknesses remain in most countries.

In your national review, you may wish to highlight examples of:

- Lack of administrative and programmatic recognition;
- Limited financial, technical and developmental support;
- Inadequate documentation, research and database support;
- Inadequate social recognition and support; and
- Limited or ineffective networking and advocacy support.

Annex III: References and Further Reading

Almeida, F., et al. 2015. *Collective Land Tenure and Community Conservation*. Policy Brief of the ICCA Consortium No. 2. The ICCA Consortium in collaboration with Maliasili Initiatives and Cenesta: Tehran. [Available online](#).

Borrini-Feyerabend, G., et al. 2010. *Bio-cultural Diversity Conserved by Indigenous Peoples and Local Communities – Examples and Analysis*. Available online in [English](#), [Español](#), [Français](#).

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Elias, S., et al. 2016. *Reconocer y apoyar a los TICCA en Mesoamérica— ¿por qué y cómo?* Resumen de Políticas del Consorcio TICCA, No. 3. Consorcio TICCA: Tehran, Iran. [Disponible en línea](#).

Jonas, H.D., et al. 2013. *The Living Convention: A compendium of internationally recognised rights that support the integrity and resilience of indigenous peoples' and local communities' territories and other social-ecological systems*. Natural Justice: South Africa. Available online in [English](#), [Español](#).

Jonas, H.D., et al. 2012a. *Legal and Institutional Aspects of Recognizing and Supporting Conservation by Indigenous Peoples and Local Communities: An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities* [the “Legal Review”]. Natural Justice and Kalpavriksh: India. Available online in [English](#), [Español](#), [Français](#). International, regional and national reviews from which the synthesis report was drawn are all [available online](#).

Jonas, H.D., et al. 2012b. *An Analysis of International Law, National Legislation, Judgements, and Institutions as They Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities: Report No. 1: International Law and Jurisprudence*. Natural Justice and Kalpavriksh: India. [Available online](#).

Kothari, A., and Neumann, A. 2014. *ICCA's and Aichi Targets: The Contribution of Indigenous Peoples' and Local Community Conserved Territories and Areas to the Strategic Plan for Biodiversity 2011-20*. Policy Brief of the ICCA Consortium No. 1. Co-produced with CBD Alliance, Kalpavriksh and Cenesta and in collaboration with the IUCN Global Protected Areas Programme. [Available online](#).

Kothari, A., et al. 2012. *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global Overview and National Case Studies*. CBD Technical Series Volume 64 [the “Recognition Study”]. [Available online](#).

Martin, G., et al. 2010. “Negotiating the Web of Law and Policy: Community Designation of Indigenous and Community Conserved Areas in Mexico”. *IUCN-CEESP Policy Matters* 17: 195-204. [Available online](#).

Stevens, S., et al. 2016. *ICCAs and Overlapping Protected Areas: Fostering Conservation Synergies and Social Reconciliation*. Policy Brief of the ICCA Consortium, Issue No. 4. ICCA Consortium: Tehran, Iran. [Available online](#).