

Conservation with Justice

Rights-based Approach

Thomas Greiber, Melinda Janki, Marcos Orellana,
Annelisa Savaresi, Dinah Shelton



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C : G, T (E.) 2009. *Conservation with Justice. A Rights-based Approach.* IUCN, G, S + 118

ISBN: 978-2-8317-1144-7

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I	A C R - A	88
II	U P A	91
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III	I RBA P A	92
1	U S A	93
2	P I	103
3	E P	105
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(RBA) 61(..)--1()61(71)- 8

"Principles concerning human rights in conservation prepared by the IUCN Environmental Law Centre (ELC):

1. Promote the obligation of all state and non-state actors planning or engaged in policies, projects, programmes or activities with implications for nature conservation, to secure for all potentially affected persons and peoples, the substantive and procedural rights that are guaranteed by national and international law.

2. Ensure prior evaluation of the scope of conservation policies, projects, programmes or activities, so that all links between human rights and the environment are identified, and all potentially affected persons are informed and consulted.

3. Ensure that planning and implementation of conservation policies and actions reflect such prior evaluation, are based on reasoned decisions and therefore do not harm the vulnerable, but support as much as possible the fulfilment of their rights in the context of nature and natural resource use.

4. Incorporate guidelines and tools in project and programme planning to ensure monitoring and evaluation of all interventions and their implications for human ara-207(f)-ns of o38(ch)-80(ected 1(all)-1

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P... A... D... 2007

W... F... B... G... S... L... C... IUCN ELC, C...
S... , D... C... F...



Edited by Thomas Greiber, IUCN Environmental Law Centre

Chapter 1 Introduction
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Chapter 2 A Rights-based Approach to Conservation
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Chapter 3 A Rights-based Approach to Climate Change Mitigation
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Chapter 4 A Rights-based Approach to Forest Conservation
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Chapter 5 A Rights-based Approach to Protected Areas
M. EU a Ja, IUCN Environmental Law Centre; IUCN Environmental Law Centre

Chapter 6 Conclusion and Outlook
Thomas Greiber, IUCN Environmental Law Centre

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CDM	C D M
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EB	E B (CDM)
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ITTO	I T T O
IUCN	I U C N
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MDG	M D G
NGO	
PDD	P D D
PIC	
RBA	-
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SATIIM	S T I I M
UNDP	U N D P
UNFCCC	U N F C C
UNFF	U N F F
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International Development Goals (MDG), (MDG 1), (MDG 3), (MDG 7). WMDG
T (RBA) RBA ()

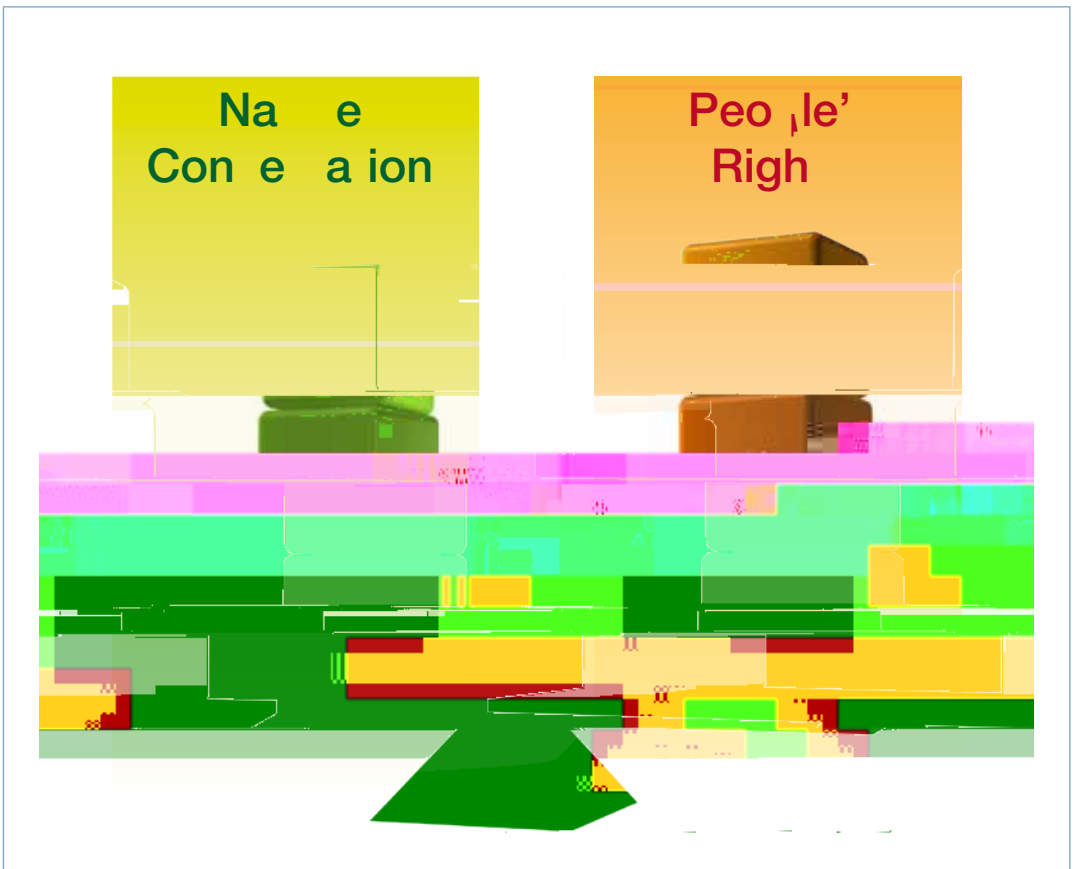


Figure 1: Visual Representation of an RBA to Conservation Objective

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 T RBA F ,
 W C B
 (CBD), F P W
 F B D , CBD P T
 CBD P W P A ,³T

- Describing the implications and the advantages and challenges of applying a rights-based approach to conservation ;
- Suggesting a step-wise approach for applying an RBA to conservation and providing a checklist ;
- Discussing this step-wise approach within the context of three key topics of biodiversity : ;
- Illustrating examples of legal and policy measures that have been taken to achieve particular ;

I. Introduction, C 2. RBA. C 3, 4, 5

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RBA. I. RBA

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Box 1: Definitions

Conservation with justice

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I Advantages and Challenges of a Rights-based Approach

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II Understanding Rights

1 Sources of Rights

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2 Rights and Obligations

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Box 2: Positive and Negative Obligations to Secure Rights

Respect for rights

Protection of rights

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3 Substantive and Procedural Rights

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Substantive Rights

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D 1966)

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T C R C (N Y , 20 N 1989)
A 24

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24 (2) ().

ILO C N . 169 I T P I C
(G , 27 J 1989)

(, A 2, 6, 7, 15). T S
(A 4). I
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T UN , U N D R I
P (N Y , 13 S 2007) G A

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(A 10, 25 27) (A 23, 26),
(A 18) (PIC) (A 19)
. A 29 :

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16 I A C H R , *Report on the Situation of Human Rights in Ecuador*, OAS
OEA/S.L/V/II.96. 10 . 1, 24 A 1997, . 92.

2. S
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3. S
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O A C H P ' R (B , 26 J 1981)
A 24 A

T A P A C H R E , S
C R (S S , 17 N 1988)
17 A 11, R H E :

1.

Box 3: List of Relevant Substantive Rights

- Nondiscrimination and equal protection of the law
- Right to life
- Prohibition of force and child labour
- Freedom of movement and residence
- Right to privacy and home life
- Right to property
- Freedom of religion
- Right to an adequate standard of living (food, medicine, clothing, housing, water)
- Cultural rights
- Minority rights
- Right to safe and healthy working conditions
- Freedom of assembly and expression/opinion
- Right to health
- Right to privacy
- Right to self-determination of peoples (controversial)
- Right to a certain quality of environment (controversial; certain aspects of this right have a

Procedural Rights

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18 S C A I , P P A J E -
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A P C C E V O C T T
F (G , 18 N 1991), A 2 (3) (4); C P U
T R L (H , 17 M 1992), A 16; C C R -
D R A E (L , 21 J 1993), A
13 16; U N F C C C (R , 9 M 1992), A
6; P W H 1992 C P U T
W I L (L , 17 J 1999); C T E
I A (H , 17 M 1992); A 5 7 1

T U N C C D C E S D
/ D , P A (P , 17 J 1994),
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T R C P I C P C H
C P I T (R , 10 S 1998) A 15 (2)
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Box 4: List of Procedural Rights

- Access to information
- Participation in decision making
- Access to justice/judicial review
- Due process/fair hearing
- Substantive redress
- Noninterference with international petition (where applicable)

4 Rights in Practice

(P) T (A)

The Rights to Religion and Culture

T. 200. A. T.

A. E. F. T. T.

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T. A. S. R. H. R. E. :

I. M. E. T. I. ³⁶

I. *Toledo Maya*. A. C. ³⁷

T. *Apirana Mahuika et al. v. New Zealand*.³⁸ | N. Z.

O. N. Z. T. H. R. C.

36 C. H. R., H. R. E., P. R. P. Mrs. Fatma Zhora Ksentni, Special Rapporteur, E/CN.4/Sub.2/1991/8, 2 August 1991, para. 25.
 37 *Maya Indigenous Communities of the Toledo District v. Belize*, R. N. 40/04, C. 12.053 (M.), 12 O. 2004, 150.
 38 C. N. 547/1992, *Apirana Mahuika et al. v. New Zealand*, U.N. CCPR/C/70/D/547/1993, 16 N. 2000.

1 S ; S

2 S ; S

3 S ; S

I , C UN H R C ILO⁴⁴

C N . 169, W B ,⁴⁵ 2007 UND R I

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The Rights to Information and Participation

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 I *Claude Reyes et al. v. Chile*,⁵² (NGO)
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III Implementing the Rights-based Approach

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B . F / T
C G W C D (WCD)
WCD S F WCD, WCD S
68 36
NGO

59 C J., S , T., G , T. O , G. (.), . . 2, . 12.

60 J P I . 138. / / / /WSSD_POI_PD/
E /POI 11.

61 U N O H C H R , *FAQ on a human rights-based approach to development cooperation* (N Y : G : 2006) . 10, 16.

.T RBA -

Required Action Points:

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64 T A

Action 2.2: Disseminate General Information Regarding the Action

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Action 2.3: Disseminate Specific Information Regarding Legal Rights, Claims, and Duties of

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 D VI/24 C P A 2002. T

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4. C () S T

Action 3.3: Provide and Use Conflict Resolution Mechanisms to Secure Rights

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4 Take Reasoned Decisions

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Required Action Points:

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Required Options for Decision-making Result:

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5 Monitor and Evaluate Application of the RBA

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Required Action Points:

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69 I B L F I F C , G H R I A M R -T D (J 2007) . 58. :// . / / ? =123946 . T -2010.

70 J UNEP-OHCHR E S H R E 4-16 2002, G : B . P N . 1: *Human Rights and Environment Issues in Multilateral Treaties Adopted between 1991 and 2001*, 15 16. :// . / / 1.

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- T RBA.

6 Enforce Rights

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 T P (P , 11 M 1976),
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Possible Options for Remedies:

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Action 1.1: Identify Actions, Stakeholders, and Roles

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Box 2: Hydropower Projects in China

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D D , . 2 3, 4 5; W B . C F U , S A : D M S
W UNFCCC R N : 0545.

Action 2.1: Compile and Publish Information in an Understandable and Easily Accessible Way

CDM . T . I CDM .³¹

T CDM , , *inter alia* .

T CDM DOE PDD

E B T CDM³²

CDM

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Action 2.2: Disseminate Specific Information Regarding Legal Rights, Claims, and Duties of Potentially Affected Persons

A CDM' E B I , W , T RBA

A CDM A , PDD CDM PDD T

PDD T

31 CDM_P R P CDM P A , (V 02, N . 2003), /R /P /_ 01_ 02. .

32 CDM M & P , . 27, A . 37() (2005).

33 CDM_ G () C 2.8)TJT(M)14(C -113()14(-246(018()14(A 018D A 018D)-31('3G)-2-

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3 Ensure Participation

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Box 5: The Jepirachi Wind Power Project in Colombia

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 ... W... B... P... C... F... C...
 ... M... M... E... ;...
 F... 2004. T...
 1,168,000... 21-...
 F... W...
 T... 150...

S... V... T... -C... A... L... *Impact of Climate Change Mitigation Measures on Indigenous Peoples and on Their Territories and Lands* (N... Y... : U... N... E... S... C... , M... 2008).

A... CDM... UN F... Convention on Climate Change nor the Kyoto Protocol provide much indication of what these public

35 J... E... P... P... D... B... , J... B... E... H... , .. *The Oxford Handbook of International Environmental Law* (N... Y... : O... U... P... , 2007), ... 681, 688.

M A 2001, CDM 36

Action 3.1: Undertake Consultations

A M A , CDM 37 T CDM :

CDM E B . S PDD
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. P , E B
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 B I A C H R
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1 F A O (FAO), *State of the World's Forests 2007* (R 2007).
 2 S J. B, , *World Agriculture: Towards 2015/2030 – An FAO Perspective*

U S
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Box 1: Forest Conflicts

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I Advantages and Challenges of a Rights-based Approach

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 F S C P C F M¹⁷
 W B O P F¹⁸ G S
 M N T F I T T O (ITTO)¹⁹
 T

12 F. R. D. R., *Understanding Forest Tenure: What Rights and for Whom?* (R FAO, 2006).

13 A. W. A. M., *Who Owns the World's Forests? Forest Tenure and Public Forests in Transition* (W , DC: F T , 2002).

14 F , R , . . . 12, .1.

15 M. C., *Beyond Tenure. Rights-based Approaches to Peoples and Forests. Some Lessons from the Forest Peoples Programme*, I C P R F : T M P R , B . , T , 3 7 S 2007.

16 U N F F (UNFF), *Non-legally Binding Instrument on All Types of Forests. A U N G A , 17 D 2007, A/RES/62/98, P II () V.6 () ,*

17 F S C (FSC), *Principles and Criteria for Forest Stewardship* (W , DC: 2002), P 2 3 .

18 S W B . , . . . 4, . 4; I B . ' . . . ; , , -

19 I T T O (ITTO), *Revised ITTO Criteria and Indicators for the Sustainable Management of Tropical Forests Including Reporting Format*, P D S N . 15 (Y . , ↓ : 2005), . 13; ITTO, *Guidelines for the Restoration, Management and Rehabilitation of Degraded and Secondary Tropical Forests*, P D S N . 13 (Y . , ↓ : 2002), . 34.

A RBA .O .O . F .²⁰

T A RBA RBA C 2 . T

II RBA in the Community Forest Management Context

A .²¹ G

I *Chief Bernard Ominayak and the Lubicon Lake Band v Canada*, UN H R C -
 . A , *Maya Indigenous Communities of the Toledo District v Belize*,
 I A C , B . I *Mary and Carrie Dann*, C -
 S U N ' C ' E R D (CERD) S D -
 1(69) (2006) 1(67) (2005) CERD/C/DEC/SUR/2 CERD/C/DEC/SUR/5; *Chief Bernard Ominayak
 and the Lubicon Lake Band v. Canada*, C N . 167/1984, U.N. D . CCPR/C/38/D/167/1984
 (1990); *Maya Indigenous Communities of the Toledo District v Belize*, C 12.053, IA C.H.R. R 40/04
 (2004); CERD/C/64/CO/9/R 2, 12 M 2004; *Mary and Carrie Dann* (U S), C 11.140 IA
 C.H.R., R 75/02 (2002).

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Box 4: Combination of Conservation, Carbon Sequestration, and Pro-Community Policies

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Kempff Mercado National Park. The project has been described as “a carbon emissions and

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A C D M (CDM),
REDD CDM

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T . I . B , . A

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29 F , L. P . , D. H . , E. B -J , G. E . J. B , *Making REDD Work for the Poor* (G . , S : IUCN, 2008).

30 E S , N. S . , *The Economics of Climate Change: The Stern Review* (C UK: Cambridge University Press, 2006), p. 16.

I . S . F . S . T . J (JFM) . T .

Box 5: Successful Joint Forest Management in India

J . I 1988 F P . T . S . B 2005 JFM 27 . A S S . M . R , JFM . I S O , JFM . T O G . A S . T / JFM, JFM . A JFM .

Sources: K. D. Singh, J. P. Singh, and B. Sinha, "Trends in Forest Ownership, Forest Resources Tenure and
 I . A : A C B F M P R ? C S O , I , FAO, *Understanding Forest Tenure in South and Southeast Asia* (R 2006), pp. 81–114; K. S. Murali, I. K. Murthy, and N. H. Ravindranath, "Joint Forest Management in India
 I E I , *Environmental Management and Health*, 13, 5 (2002), 512–28; A. Khare et al., *Joint Forest Management: Policy, Practice and Prospects* (L : IIED, 2000).

36 F , R R , . . 12, .7.

A I , - ,
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 H , , - .

3 Common Obstacles

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- *Fragility of rights:* O , , - , . M
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- *State control in disguise:* D , S
- *Limited management capabilities:* W
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- *Lack of transparency and accountability:* I
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- *Poor quality of resources allocated to local holders:*
- *Need to combine sustainable livelihoods and income generation with forest conservation:*

III Implementing an RBA in Community Forest Management

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Box 6: Community Forests in Nepal

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40 S.S.J. V. M. :H R C A P A N. Policy Matters (IUCN), .15 (2007), .87-100; N.S. P. S.G H.R. O H R AG P O C ? Policy Matters (IUCN), .15 (2007), .299-310.

- Third parties who do not have a title to land but still have a legitimate interest to the forest resources
- Local advocacy groups and NGOs may be important vehicles to voice the concerns of local

International NGOs, such as Conservation International, (), D F O F , NGO . O

Action 1.2: Identify Applicable Legal Rights, Claims, and Duties

A . T . I . 41 | :42

- Do communities have ownership or tenure rights over the forest area?
- If so, are these clear, legally recognized, and protected?
- How long is the period of tenure?
- What are the reasons behind investing or not investing in forest and tree management?
- Do communities have clear rights to gain access to products from the forest?
- Is access hindered by costly and complex requirements for inventories, management plans, or
- Are there any conflicting rights or unresolved claims?
- Are there restrictions for selling forest products, including price restrictions?

W . T

- The right to an adequate standard of living;
- The right to adequate housing;
- The prohibition of discrimination; and
- The right to freedom of movement.

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41 FAO. . . 11, . .
 42 FAO, . . 9, . 9-10.

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. A P 3,
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2 Provide Information

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Action 2.1: Compile and Publish Information in an Understandable and Easily Accessible Way

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Action 3.2: Seek and Promote Free and Prior Informed Consent

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Box 7: Key Elements to Achieve Tenure Security

- Security requires clarity of the content of rights over forests. Confusion over rights can
- Security requires certainty that rights may not be revoked or changed unilaterally and
- Security is enhanced if the duration of rights is either in perpetuity or for a period that is

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4 Take Reasoned Decisions

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52 F. C. E., *Mapping People's Forests: The Role of Mapping in Planning Community-Based Management of Conservation Areas in Indonesia* (Washington, DC: B. S. P., 2000).

53 B. K. Singh and D. P. Chapagain, "Community and Leasehold Forestry for the Poor: Nepal Case Study," in FAO, *Understanding Forest Tenure in South and Southeast Asia*, Forest Policy and Law Series No. 14 (Rome, 2006), p. 75.

54 O. R. C. W., M. B., *Development-Induced Displacement and Resettlement* (Oxford: B., 2006), pp. 71-104.

55 I. C. C. P. R., A. 12. C. H. R. C., *General Comment No. 27: Freedom of Movement (Art. 12)*, 02/11/99CCPR/C/21/R.1/A.9.

7.13 E

- Is indigenous knowledge used?
- If so, how?
- Describe any constraints and proposals for improvements.

7.14 E

- Describe the extent of involvement in forest management of:
 - Capacity-building;
 - Consultation processes;
 - Decision-making; and
 - Implementation (e.g. financial and economic aspects of forest utilization).
- Indicate the legal basis of this involvement.
- Describe shortcomings and proposals for improvement.

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IV Conclusions

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1. The Convention on Biological Diversity (CBD) is a global treaty that provides a framework for action to conserve biological diversity. It was adopted at the Earth Summit in Rio de Janeiro in 1992.

II Understanding Protected Areas

1 Terminology

The Convention on Biological Diversity (CBD) defines a protected area as a clearly defined geographical space, which is dedicated to the protection and management of the natural and cultural heritage and to promoting sustainable development.

Box 2: Terms for Protected Areas in International Law

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1972 C. P. W. C. N. H.

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E. E. A. R. :

1992 C. B. D. :

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16 W. R. I. *Global Biodiversity Strategy: Guidelines for Action to Save, Study, and Use Earth's Biotic Wealth Sustainably and Equitably* (Washington, DC: 1992), p. 230.

17 D. , . 6, . 8.

2 Characteristics

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Musical notation for AS and .T, including notes, rests, and bar lines.

AS  ,  .I  S 
Musical notation for AS, comma, .I, and S, including notes, rests, and bar lines.

• Legal framework:

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Action 1.1: Identify Actions, Stakeholders, and Roles

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Box 3: Protected Areas Stakeholder Groups

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S A F. J. H., *Communication, Education and Public Awareness, a Toolkit for the Convention on Biological Convention* (M : S C B D , 2007), . 161.

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23 F. J. H., *Communication, Education and Public Awareness, a Toolkit for the Convention on Biological Convention* (M : S C B D , 2007), . 161.

24 S B C, *Oregon Jack Creek Indian Band v. Canadian National Railway* 34 B.C.L.R. (2) 344. I C I T ,

Action 1.2: Identify Applicable Legal Rights, Claims, and Duties

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Action 1.3: Identify Potential Impacts of the Proposed Project

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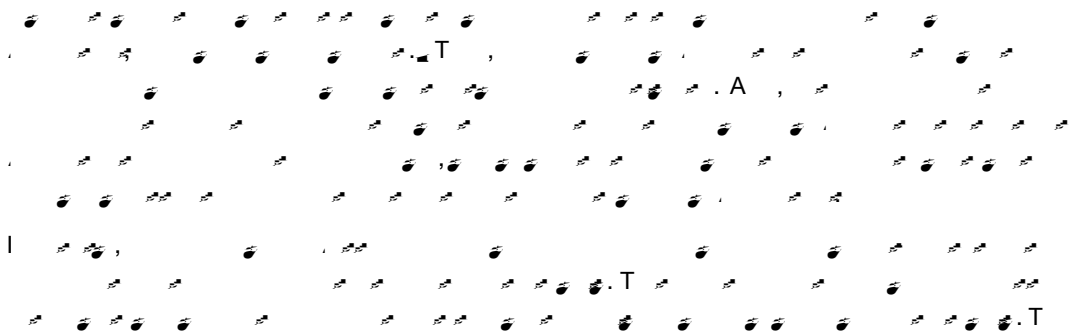
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Box 7: Canadian Experiences with Rights Restrictions

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Box 9: Legal Duty to Consult in the Cobourg Peninsula Aboriginal Land, Sanctuary, and Marine Park, Northern Territory of Australia

Under section 4(1) of the Cobourg Peninsula Aboriginal Land Act 1984 (CPAL Act), the Northern Territory Government (NTG) has a legal duty to consult with the Cobourg Peninsula Aboriginal Community (CPAC) in relation to the proposed development of the Cobourg Peninsula Marine Park (CPMP) and the Cobourg Peninsula Sanctuary (CPS).

The CPAL Act requires the NTG to consult with CPAC in relation to the proposed development of the CPMP and the CPS. The CPAL Act also requires the NTG to consult with CPAC in relation to the proposed development of the CPMP and the CPS.

The NTG has a legal duty to consult with CPAC in relation to the proposed development of the CPMP and the CPS. The CPAL Act also requires the NTG to consult with CPAC in relation to the proposed development of the CPMP and the CPS.

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Action 3.2: Seek and Promote Free and Prior Informed Consent

Free and Prior Informed Consent (FPIC) is a principle that requires the free, prior and informed consent of the peoples concerned to be obtained before any project affecting their lands, territories and resources is undertaken. The FPIC principle is a key element of the right to self-determination of peoples.

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31 S. Haida Nation v British Columbia (Minister of Forests) [2004] 3 S.C.R. 511.

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A . S , *Mayagna (Sumo) Awas Tingni Community v Nicaragua*,
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5 Monitor and Evaluate Application of the RBA

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IV Conclusions

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- Establish a mechanism for exchanging information about planned and ongoing projects and
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- Provide wide coverage of the biodiversity-related sectors

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