

Indigenous and Community Conserved Areas:

The Legal Framework in India

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Abstract

India has a large range of indigenous and community conserved areas (ICCAs), covering diverse ecosystems and species, and providing interesting models of integrated conservation and livelihood security. But most such areas lack formal recognition. They also face a number of challenges, including the lack of tenure security and threats from development projects, which makes the need for legal recognition especially urgent.

A number of laws in India are relevant for ICCAs. These include instruments that directly concern protected areas as well as legislation governing other subjects. Certain types of ICCAs are provided some legal backing, but the relevant legislation does not cover the entire range of ICCAs in India, and has serious shortcomings. Although some policy documents provide support for legal recognition of ICCAs, to date these policies have not been implemented in law.

This case study provides examples of ICCA types that are covered by, or could be covered by, legislation. It analyses the pros and cons of such coverage, and concludes with recommendations on what is further needed to provide sound legal backing for ICCAs in India.

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1 Introduction

- 1 In recent years, indigenous and community conserved areas (ICCAs) have been recognized in international forums as an important tool for conservation. The Convention on Biological Diversity (CBD) Programme of Work on Protected Areas, for example, explicitly mandates countries to recognize ICCAs and integrate them into national protected area systems.
- 2 ICCAs are sites of biodiversity significance that are voluntarily conserved¹ by indigenous peoples and local communities. According to IUCN's guidelines for applying protected area management categories,² ICCAs possess the following essential characteristics:
 - The indigenous peoples or local communities concerned have close ties to the ecosystems being conserved, either culturally or for livelihood reasons, or because the area is a traditional territory managed under customary law.
 - Indigenous peoples or local communities have the power to make and implement decisions concerning the management of the area, with the implication that an institution exists to exercise authority and enforce regulation.
 - Management decisions and work in an area contribute to the conservation of habitats, species, ecological functions and associated cultural values, although the original intention for such efforts may not have been directly related to the protection of biodiversity.
- 3 In India, ICCAs include indigenous and mobile people's territories, catchment forests, coastal and marine fishery reserves, heronries and waterfowl wintering areas, turtle nesting sites, and sacred sites, among others. In line with the IUCN definition, many Indian ICCAs demonstrate a high level of community control and decision making, as well as significant potential for the conservation of important ecosystems or biodiversity elements.³

2 History of natural resource, wildlife and protected area management

- 4 Prior to the early 19th century, land and natural resources across most parts of India were the property of large landlords (known as *zamindars* or *jagirdars*) or local rulers (*rajas*). Their primary interest was the tax revenue that could be collected from the land in their control. Day-to-day management was left to the people who lived and depended on the land. Their deep cultural and economic relationship with the land and its resources led to the development of intricate systems of management, including the development of customary rules and institutions. Among many tribal communities, particularly hunter-gatherers or those practising shifting cultivation, there was no concept of individual land ownership.
- 5 Under British colonial rule, the primary focus on maximizing revenues remained more or less unchanged. Taxes were levied on private land and the colonial administration extracted resources from lands which were not privately owned. In the 1800s, the colonial authorities began the process of 'survey and settlement', which involved documenting land under private ownership. A 1986 report on tribal landownership in India notes that it was a policy decision at the time of survey and settlement not to recognize lands held under customary tenure.⁴ Areas not 'settled' on individuals vested in the state.

1 The term 'conservation' here includes a range of actions from strict protection to sustainable or rational use, as defined in the IUCN World Conservation Strategy of 1980.

2 Dudley, 2008.

3 For details, see the documents listed on the ICCA Consortium web site.

4 Government of India, 1986.

To administer forest areas vested in the state, a centralized bureaucracy in the form of a forest department was established in 1864.⁵ The Indian Forest Act was enacted in the following year, and a forest service within the department was set up in 1867. The law and those in charge of its implementation demonstrated a clear mistrust of local communities who were seen as encroaching on and destroying government forests. According to this view, forests were to be ‘protected’ from the local people, and reserved for state use and commercial exploitation. In keeping with the broader policy of not recognizing customary tenure, government forests designated as ‘reserved forest’ and ‘protected forest’ were governed by resource use regimes that excluded local communities and their customary practices. This was particularly so in reserved forests, which formed the majority of designated forests. The Indian Forest Act of 1865 was eventually replaced by the Indian Forest Act of 1927, which remains in force to this day.

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The Act of 1927 and Rules framed under this law provided penalties for nearly all activities related to local livelihoods. Large-scale clearing was encouraged in forests considered ‘non-productive’⁶ and traditional practices such as shifting cultivation, and community land and resource management, were discouraged. Community resource management institutions found no place in colonial governance structures. Local uprisings against these policies were brutally suppressed or settled through piecemeal solutions. Meanwhile, extensive hunting by Indian and British elites wiped out many wild animal and bird populations. This large-scale degradation, coupled with policies that sidelined the traditional practices and subsistence needs of local communities, had serious implications both on the ecology and on the livelihoods of forest-dependent peoples.

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From the 1880s onwards, attention began to be paid to the rapidly decreasing population of wild animals across the country. Discussions began in official circles about ways in which some species could be protected. The earliest law enacted for this purpose was the Wild Birds and Game Act of 1887, which was replaced by the Wild Birds and Wild Animals Protection Act of 1912 (amended in 1935).⁷ These laws reflected the same attitude as was shown in the case of forest resources. Decisions concerning the species to be protected and the means of protection were taken from the point of view of the colonial administration and its allies within the local elite. There was strong condemnation of local hunters and trappers, with their entry into forest areas being linked to forest fires.

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In the 1930s, efforts began to designate protected areas for wildlife conservation. The Hailey (now Corbett) National Park was the first such protected area, designated in 1936.⁸ By 1970, 10 parks and 127 sanctuaries had been declared.⁹ In protected areas, the presence of local communities or their use of resources was not permitted, thus further dispossessing peasants and tribal communities who lived in or depended for their subsistence on such areas.

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This approach, based on the policy decision of the colonial administration not to recognize customary tenure and the resulting exclusionary management practices, continued in the period following Indian independence in 1947. The first, and much quoted, national forest policy of 1952 revealed what was to be the government’s stance on the rights of forest-dependent communities over the next three decades. It stated: “The accident of a village being situated close to a forest does not prejudice the right of a country as a whole to receive benefits of a national asset.”¹⁰

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5 For history, see Indian Forest Service web site.

6 Saberwal et al., 2000.

7 Department of Forests and Wildlife Preservation, Punjab, undated; World Bank, 1996.

8 See Corbett National Park web site.

9 World Bank, 1996, p. 1.

10 Apte and Pathak, 2003.

- 11 The 'colonial approach' severely restricted the access of communities to resources on which their livelihoods were based.¹¹ It also withdrew from communities all responsibility to protect the natural environment, leaving them apathetic or even hostile towards official management and protection initiatives. The unofficial use of forests and other resources continued, often with locals required to bribe forest staff or face harassment, and hostility towards forest department officials mounted. This was manifested in many ways, including non-cooperation and the deliberate destruction of forests.
- 12 After independence, a significant step towards biodiversity conservation came in the form of the 42nd amendment to the Indian Constitution, enacted in 1976, which made the protection and improvement of the environment, and safeguarding forests and wildlife, one of the "directive principles of state policy". This amendment also transferred the subject of wildlife and forest protection from the exclusive legislative jurisdiction of state governments to the concurrent list, enabling both central and state governments to enact laws governing such matters, with central law superseding state laws.¹²
- 13 The government's stance on forestry began to change in the late 1980s, as a result of grassroots struggles across the country demanding forest rights, along with environmental non-governmental organizations seeking forest protection and donor-driven international pressure. It was during this time that the idea of devolving powers to local communities emerged in debates related to forest management and in the thinking of decision makers. For the first time, the Forest Policy of 1988 stated that the domestic requirements of forest dwellers for fuel wood, fodder, minor forest produce and construction timber was to be "the first charge on forest produce". The Policy also specified that the primary task of forest management agencies would be "to associate the tribal people closely in the protection, regeneration and development of forests".¹³
- 14 The Forest Policy provided the basis for the joint forest management (JFM) programme, a government initiative launched in 1990 (see Box 1). JFM was not enabled by national law. The programme was promoted through the Forest Policy and implemented through resolutions at the state level. By the year 2000, JFM was operating in 22 of India's 28 states. Currently, JFM is operating in all 28 states, with 106,479 forest protection committees (22 million participants) covering 22.02 million hectares of forest.¹⁴ The area under JFM is now comparable to the area under the protected areas network.¹⁵
- 15 Wildlife populations, meanwhile, continued to decline after Independence, leading eventually to the enactment of the Wild Life (Protection) Act of 1972. As amended, the Act provides for the creation of national parks, sanctuaries, conservation reserves and community reserves.
- 16 To date, more than 600 protected areas have been declared, covering about 4.6 per cent of the country's total land mass. The Wildlife Act has served to protect vital ecological habitat as well as threatened species of plants and animals, particularly from development projects. But its provisions have also displaced many communities that lived on or managed land that was incorporated into a protected area. Villagers were evicted from national parks (which by law do not allow for settlements within them) and from some sanctuaries. Those residing outside protected areas were prevented from entering such areas to pursue subsistence activities.

11 Apte and Pathak, 2003.

12 World Bank, 1996, p. 39.

13 Government of India, 1988.

14 Government of India, 2008, p. 193.

15 See Resource Unit for Participatory Policy (RUPFOR) web site.

With no provisions in the Wildlife Act for people to participate in planning and declaration, protected areas were created without consultation or sharing information. Communities often learned about the changed status of their area, and the threat of being evicted, indirectly or when they were prevented from resource collection.

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Box 1: Joint forest management

The Forest Policy of 1998 provided impetus for the introduction of joint forest management (JFM) in India. Two years after the policy was adopted, the central government issued a circular to all state governments,¹ recommending the involvement of local communities in the management of degraded forests and urging state governments to involve non-governmental organizations to facilitate the process. No legislation was enacted to enable JFM. It was operationalized at the state level through resolutions passed by individual state governments, declaring their intent to adopt JFM and specifying details regarding the composition of village institutions, the areas to be taken up under JFM, the rights and responsibilities of the partners, and benefit-sharing arrangements.²

Under JFM, local communities participate in the regeneration, management and conservation of degraded forests, in partnership with government forest departments, through the establishment of joint committees. Village communities are entitled to share in the benefits arising from such forests, but the extent and conditions of sharing arrangements are determined by state governments.³

In general, JFM involves the handing over of degraded forest land to villages for the purpose of raising valuable timber species. Plantations are created and forests regenerated, with forest departments and village communities jointly responsible for forest management. After a period of five to 10 years, timber is harvested and the villages involved are entitled to receive a share of the revenue generated. This amount varies from state to state, with some communities receiving as little as 25 per cent, as is the case in West Bengal.⁴

JFM has had varying success in different parts of the country. Its success or failure has depended on individual state policies and methods of implementation, and often on individual forest officers or local communities. The local context has also played an important part in the outcome of JFM initiatives. In states where community rights over resources had been totally extinguished through earlier government actions, JFM has provided an opportunity for communities to participate in forest use and management.⁵

But where indigenous systems of forest use and management had survived, JFM has in many cases given rise to conflict and proved detrimental to community interests.⁶ As opposed to an entire village making decisions, under JFM decisions were taken by a few selected individuals along with the forest staff concerned. This left ample scope for non-transparent financial dealings and corruption, consequently encouraging distrust and politicizing the entire initiative. JFM has also been criticized for taking a top-down approach in general, and for not handing over decision-making power to communities.⁷

1 Circular No. 6.21/89-F.P. dated 1 June 1990.

2 RUPFOR web site.

3 Apte and Pathak, 2003.

4 Saigal, 2001.

5 Palit, 2001.

6 Sain, 2001.

7 Sundar et al., 2001.

The Wildlife Act was amended in 1991 when a new section was added,¹⁶ providing for the continuance of rights over land within a sanctuary. This provision did not apply to land being set aside as a national park. A 2002 amendment added another new section,¹⁷ which required state governments to make alternative arrangements to provide fuel, fodder and other forest produce to those whose rights were affected by the declaration of a sanctuary until rights in such areas were settled. The 2002 amendment also introduced two new protected area categories, conservation reserves and community reserves, with limited provisions for the participation of communities in the declaration and management of such areas.

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16 Sec 24(2)(c): "If such claim is admitted in whole or in part, the collector may [...] allow in consultation of any right of any person in or over any land within limits of the sanctuary."

17 Sec 18A(2): "Till such time as the rights of affected persons are finally settled [...] the State Government shall make alternative arrangements required for making available fuel, fodder and other forest produce to the persons affected in terms of their rights as per the Government records."

- 19 Even though, since 2002, there are at least limited provisions in the law that require consultation with communities and some attempt to settle their rights, in general the Wildlife Act continues to be viewed by many communities as an ‘anti-people’ law, provoking stiff resistance and making it difficult for state governments to declare protected areas.
- 20 Adding to the complexities on ground, the judiciary has in recent years become one of the main tools to deal with the ineffectiveness of laws and policies related to conservation (see Box 2). This has occurred, to a great extent, in response to the inability of the legislative and executive branches of government to create an enabling legal environment for protected areas of all types, and to implement and enforce it.

Box 2: The role of the judiciary

An important case concerning protected areas is *Centre for Environmental Law v Union of India*.¹ Given the complex nature of land tenure it is not surprising that by the mid-1990s, and more than 20 years after the enactment of the Wildlife Act, the process of settlement of rights had not been completed in the majority of protected areas. Seeing this as one of the major reasons for the ineffective management of protected areas, WWF-India’s Centre for Environmental Law filed a case in the Supreme Court urging it to direct states to implement the Wildlife Act in spirit and letter. The resulting orders have had a significant impact on forest and protected area management across the country. In 1997, the Court issued an order which stated:

The concerned State Governments/Union Territories are directed to issue the proclamation under section 21 in respect of the Sanctuaries/natural parks within two months and complete the process of in termination of rights and acquisition of land or rights as contemplated by the Act within a period of one year.²

In their hurry to finish the process, states either ignored a huge number of existing rights or accepted all uses. Pre-existing ICCAs in such protected areas were not recognized. The process of settlement of rights, both because of its nature and the haste with which it was carried out, also ignored customary rights and conservation practices.

Another public interest case that has affected the livelihoods of those residing in protected areas, as well as community conservation efforts in such areas, is the *Godavarman* case.³ An application filed in the Supreme Court, as part of this Writ Petition, alleged that tree felling activities were being carried out inside national parks and sanctuaries in Karnataka, under the guise of removing dead and decaying wood. The Court issued an order dated 14 February 2000, restraining the state government from ordering the removal of dead, diseased, dying or wind-felled trees, driftwood, and grasses from any national park, game sanctuary or forest. On 28 February 2000 the order was modified to remove the word ‘forest’. The Order ignored the fact that several million people living in and around protected areas across the country⁴ derive livelihood support from the collection and sale of non-timber forest products.

The Order was followed by a 2002 amendment to the Wildlife Act, which prohibited the commercial use of forest produce taken from protected areas. A subsequent circular issued by the Ministry of Environment and Forests clarified that henceforth “rights and privileges cannot be enjoyed in protected areas”.⁵ These measures led to a complete ban on the removal of non-timber forest products from national parks and sanctuaries for any commercial purpose, including minor local transactions, all over India. As a result, many forest dwellers are reportedly dying of starvation or suffering from acute malnutrition.⁶

Forest rights in India have also been affected by a number of other orders under the *Godavarman* case which concern, among other things, ‘encroachment’ in forests and the legal definition of ‘forest’. With respect to community-based conservation efforts, the denial of access to forest products alienates communities from the ecosystems they have traditionally conserved and managed.

1 *Centre for Environmental Law v Union of India and Others*, WP(C) No. 337 of 1995.
 2 Supreme Court Order dated 22 August 1997.
 3 *T.N. Godavarman Thirumulkpad v Union of India and Others*, Writ Petition No. 202 of 1995.
 4 Saigal, 2001.
 5 Circular F.No. 2-1/2003-FC, dated 20 October 2003.
 6 Wani and Kothari, 2007.

- 21 While the declaration and management of protected areas remains a contentious issue, attempts have been made to implement alternative schemes that address some of the concerns that arise in protected areas. In 1995, for example, the India Ecodevelopment Project was launched with World Bank funding

in and around seven protected areas.¹⁸ There was no legal basis for this project, which was testing a particular approach. It aimed, among other things, to eliminate the dependence of people on forests by creating alternative sources of income. In some cases, 'ecodevelopment' has been successful in reducing the pressure on forests or in removing conflict.¹⁹ But in general the ecodevelopment approach has remained largely within the conventional bounds of top-down conservation, with little or no involvement of local people in protected area management, no reinforcement or granting of traditional resource rights, and little encouragement of traditional resource conservation practices or knowledge.

3 The diversity of indigenous and community conserved areas

In contrast to the history of alienation from land and the loss of livelihoods, vibrant examples exist of communities that have independently taken the initiative to protect forests and other areas for religious, cultural, political or economic reasons. Such areas have been established across the country to protect individual species, sacred sites, migratory birds, forested areas, grassland or communal resources (see Table 1). This broad range of ICCAs reflects the diversity of ecosystems in which they exist, the variety of motives behind their creation and differing objectives for their care. In addition, many different types of institutional arrangements, and a wide variety of rules and regulations, are involved in the management of such areas.

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Box 3: Creating an ICCA

In 2001, Sendenyu village (Nagaland), where most land is privately or community-owned, created a local wildlife reserve to revive populations of wild species such as Hoolock gibbons (*Hylobates hoolock*) and great hornbills (*Buceros bicornis*), which are no longer found in the village. The idea was the result of discussions in the village council, initiated by village members who had studied outside the state and are currently serving as government officials. The village council selected an area of 10 sq km for the reserve, based on its low productivity, high gradient and rocky geology. The land belonged to individual owners who used it for timber and firewood collection. The owners originally objected to the plan but the village council persuaded them to donate the land for the reserve. In return, the owners received natural gas connections from the forest department, paid for with Forest Development Authority funds. The village council is considering other, similar benefits for the landowners.

To create the reserve, the village council issued a written resolution on 1 January 2001, along with a map specifying the boundaries of the reserve. The resolution specifies that the area will be managed by a committee consisting of one chairman and one secretary, with village elders and the presidents of the Youth Organization, Sendenyu village council and New Sendenyu village council as ex-officio members of the committee.

Source: Thong, 2009.

It is worth noting, however, that despite this variety in governance arrangements, a large percentage of ICCAs exist on government-owned land.²⁰ A recent survey of 150 ICCAs in India shows that 53 per cent of such areas were on government-owned land. The ownership status of a further 22 per cent was

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18 Five of these were tiger reserves (Buxa, Palamau, Pench, Periyar and Ranthambhore), one was an elephant reserve within a national park (Gir) and the last was a national park (Nagarhole). See World Bank, 1996.

19 One of the sites included in the project, the Periyar Tiger Reserve in Kerala, is perhaps the best such example but its success has depended on the innovative way in which local staff have used the project, rather than something inherent in the project design (Kothari and Pathak, 2004). Officials worked with villagers to irradiate their debt, obtain better prices for agricultural products, introduce new income-generation activities linked to wildlife tourism, and even to help with social problems such as the trafficking of drugs and women. In response, villagers have taken to patrolling the reserve, reporting poaching and wood theft, managing a part of the large tourist inflow, and assisting with management in other ways. See Lockwood et al., 2006.

20 Pathak, 2009.

unknown, but is likely to be government-owned as well, while about 12 per cent were on private land, held by individuals or communities. Exceptions exist in a few states, such as Nagaland, where most land is under community or private ownership (Box 3).

24 ICCAs were not legally recognized in India until relatively recently. A 2002 amendment to the Wildlife Act provides for the declaration of ‘community reserves’, a new category of protected area that may be established in private or community-owned land that is not already part of a protected area (section 36C(1)). This new category does not provide for ICCAs that exist on government land.

Table 1: The diversity of ICCAs in India

IUCN management categories	Indian ICCA types
Category Ia (strict nature reserve): strictly protected areas set aside to protect biodiversity and also possibly geological/geomorphological features, where human visitation, use and impacts are strictly controlled and limited to ensure protection of the conservation values.	Sacred, ‘forbidden’ or other no-use groves, lakes, springs, mountains and islands, with prohibition on use except for particular occasions
Category Ib (wilderness area): usually large unmodified or slightly modified areas, retaining their natural character and influence, without permanent or significant human habitation, which are protected and managed so as to preserve their natural condition.	
Category II (national park): large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.	Sacred, ‘forbidden’ or other ‘minimal-use’ areas, with minimal and strictly regulated use (collection of dry and fallen wood, collection of sap, ecotourism)
Category III (natural monument or feature): areas set aside to protect a specific natural monument, which can be a landform, sea mount, submarine cavern, geological feature such as a cave or even a living feature such as an ancient grove.	Natural monuments (caves, waterfalls, cliffs, rocks) protected by communities for religious, cultural or other reasons
Category IV (habitat/species management area): areas that aim to protect particular species or habitats and management reflects this priority.	Heronries, village tanks, turtle nesting sites, community-managed wildlife corridors, riparian vegetation areas
Category V (protected landscape/seascape): areas where the interaction of people and nature over time has produced an area of distinct character with significant ecological, biological, cultural and scenic value, and where safeguarding the integrity of this interaction is vital to protecting and sustaining the area and its associated nature conservation and other values.	Traditional grounds used by pastoral communities or mobile peoples (rangelands, water points and forest patches); sacred or cultural landscapes and seascapes; collectively managed river basins with multiple land and water uses
Category VI (protected area with sustainable use of natural resources): areas that conserve ecosystems and habitats, together with associated cultural values and traditional natural resource management systems.	Resource reserves (forests, grasslands, waterways, coastal and marine stretches, including wildlife habitats) under restricted use and communal rules for sustainable harvesting
<i>Source: Adapted from Dudley, 2008; Pathak, 2009.</i>	

3.1 Establishment

25 Communities initiate ICCAs for a variety of reasons, many of which are not necessarily or primarily concerned with biodiversity conservation. These include the maintenance or enhancement of resources, the need to counter ecological threats or fight development plans, and political movements for self-rule or social equity, as well as religious sentiments.

While some ICCAs are initiated by communities themselves, others come into being as a result of external intervention but take root within the community. Community-initiated efforts, begun recently or reviving an age-old practice, can arise from impetus provided by a local leader or a group of community members (women's groups, youth groups, traditional elders), or as a result of discussions within the village as a whole. Externally initiated efforts often involve the presence of a sympathetic official implementing a government scheme, a non-governmental organization initiating a programme, or an outsider who commands respect within the community such as a doctor, teacher or spiritual leader. Some ICCAs established in this manner become independent fairly quickly while others may require continued support. Governance arrangements in such cases also differ, with varying degrees of community participation and decision-making power. A key difference between ICCAs initiated by external parties, including co-management attempts by the government or other agencies, and ICCAs that come into being primarily through initiatives taken by communities themselves is that in the former the outside agents are the primary decision makers rather than the communities. 26

3.2 Governance and management practices

Institutional arrangements for the governance of ICCAs range from a single body that takes all decisions to multiple entities established for different purposes. These could include gram sabhas (village assemblies), women's groups, youth groups, or community representatives either elected or selected by consensus. Women are not necessarily excluded but the traditional social set-up does not facilitate their participation in decision making in most situations. Where committees are established, they might be set up by the village itself, by external agencies or through a combined effort. In some cases, the decision-making institution is not the same as the one that initiated the conservation effort. And sometimes conservation activities are carried out without any institution established specifically for that purpose. 27

The management of ICCAs varies as well, depending on a number of factors. In some places, traditional systems are used. Elsewhere, traditional systems are adapted to suit new situations. In many ICCAs completely new systems of management are adopted. 28

3.3 Ecosystems and species conserved

ICCAs conserve a variety of species and ecosystems. They have been established in forests, grassland, wetlands, coastal and marine areas, high-altitude pastures or a combination of land types. Some have been established in sacred sites. Their purpose may be to protect a landscape, a patch of forest, or a specific species or its habitat. In fact, many ICCAs focus on conserving a specific species rather than an ecosystem. Some aim to protect migratory species during their passage through a particular area. 29

Community initiatives often integrate the conservation of wild species with domesticated varieties, which are viewed as part of a continuum. Traditional practices, such as raising home gardens, are part of the management system in many ICCAs. Similarly, in some ICCAs farmers involved in forest conservation are also reviving a range of agro-biodiverse practices, including trying out several hundred varieties of rice, beans and other crops. This also reinforces the argument that conservation needs to take place within a landscape rather than in isolated, highly protected islands, and that it needs to occur in conjunction with measures that address livelihood issues. 30

3.4 Regulated resource use by communities

- 31 There are many ways of regulating resource use within ICCAs. Broadly, these can be categorized as follows: ICCAs with elaborate rules (written or oral), and specific systems of monitoring; and ICCAs where members of the community share an understanding about what is and is not permitted, with social taboos and personal relationships serving to monitor activities.
- 32 Within these two categories, rules governing resource use range from a strict ban on all use to extraction permitted during specific periods, along with restrictions on quantities that may be taken or prohibitions on extraction for commercial purposes. In some ICCAs, traditional resource use practices are adopted, while in others new rules are developed. Enforcement is strictly monitored in some areas, and not in others. Penalties include social sanctions and fines, or direct confrontation with offenders. In general, where livelihoods depend on the resource being conserved and threats to the resource are greater, customary regulatory systems are more strict and more closely monitored.
- 33 In nearly all ICCAs, there is a strong link between conservation and local livelihoods. In some cases, communities may voluntarily forego direct livelihood benefits. But in most ICCAs, people tend to integrate conservation and livelihoods, deriving ecological benefits or direct extractive benefits.

3.5 Financing

- 34 Many successful ICCAs have received no external funding. Some communities set up a fund with contributions from within the community, or through money raised by imposing fines and penalties. Others have managed to obtain funds from local line agencies through van panchayats (forest councils)²¹ or JFM programmes. In some cases, external funding has proved to be a powerful incentive for communities to undertake conservation activities. Where financial sustainability has been built in, such ICCAs do well when donor funding is concluded. But there are also numerous examples of donor-driven community conservation programmes which collapsed as soon as the donor pulled out.

4 Legal and policy framework for ICCAs

- 35 There is no comprehensive law to deal exclusively or predominantly with ICCAs in the country. Statutory recognition for community conserved areas is relatively new and the current legal framework does not cover the range of ICCAs that exist in India. Provisions in a number of laws could be interpreted to enable ICCAs, although few communities have been able to use these provisions to their advantage. At the policy level, the need to recognize and support community conservation efforts is beginning to be articulated. This policy support will need to be incorporated into the law.

4.1 National laws

4.1.1 Indian Forest Act 1927

- 36 This Act allows reserved forests to be transferred to village communities for management as ‘village forests’. Local communities must submit a request to the relevant authorities and fulfil certain requirements. They are then vested with the “rights of the government” (section 28(1)) but the government retains the power to make rules concerning the management of village forests (section 2

²¹ Village-level forest councils established for the management of forests under the Van Panchayat Act 1931 in the present state of Uttarakhand.

8(2)). All of the prohibitions and restrictions that apply to reserved forests apply to village forests as well, as long as they are consistent with the rules “so made” (section 28(3)).

Rules governing village forests are to spell out the role of communities in forest protection and improvement activities, and prescribe the conditions under which communities “may be provided with timber or other forest-produce or pasture” (section 28(2)), suggesting that some flexibility is available with respect to restrictions of use rights in the case of such forests. Since rules are to be made by the government, the participation of communities in their formulation may well depend on the discretion of individual forest officials.

The section of this Act enabling village forests was, for decades, the only option for communities seeking legal cover for their traditional forest management practices. Enacted in 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act offers the possibility of more secure rights for Scheduled Tribes and other forest dwellers who meet the Act’s specified criteria. Although the Ministry of Tribal Affairs is responsible for implementation, the Act does not have overriding force (section 13), which means that any powers and functions assigned to the forest department by other laws are concurrently effective.²²

4.1.2 Wild Life (Protection) Act 1972

This Act provides for the designation of sanctuaries and national parks (sections 18 and 35). A 2002 amendment of the law created two new protected area categories, conservation reserves and community reserves (sections 36A and 36C), both of which allow varying degrees of community involvement.

Conservation reserves may be declared by state governments on any government-owned land, “after having consultations with the local communities” (section 36A(1)). In the case of land owned by the central government, its “prior concurrence” is to be sought.

The chief wildlife warden controls and manages a conservation reserve (sections 33, 36B(1)), advised by a reserve management committee. The management committee for a conservation reserve includes one representative from each village within the jurisdiction in which the reserve is located, as well as representatives of non-governmental organizations working in wildlife conservation (section 36B(2)).

Although conservation reserves may be declared in any government land, the law states that they may also be designated to create buffer zones and corridors, providing for their establishment “particularly [in] the areas adjacent to national parks and sanctuaries and those areas which link one protected area with another, as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat” (section 36A(1)).

Many of the restrictions that apply to sanctuaries apply “as far as may be” to conservation reserves (section 36A(2), read with sections 27(2)–27(4), 30, 32 and 33). These include requirements to prevent the commission of an offence and to assist the authorities in identifying and apprehending offenders (sections 27(2)(a) and 27(2)(b)). There are no provisions that allow for traditional or subsistence use of resources by communities residing in the vicinity of conservation reserves.

Community reserves may be declared by state governments on private or community-owned land, in areas where a “community or an individual has volunteered to conserve wild life and its habitat”

²² For a detailed discussion of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, see section 4.1.7 below.

(section 36C(1)). The purpose of establishing a community reserve is to protect flora and fauna, as well as “traditional or cultural conservation values and practices” (section 36C(1)).

- 45 The community reserve management committee is responsible for “conserving, maintaining and managing” the reserve (section 36D(1)). The committee prepares and implements a management plan for the area, and takes “steps to ensure the protection of wildlife and its habitat in the reserve” (section 36D(3)). It regulates its own procedures (section 36D(5)) and elects a chair, who serves as an honorary wildlife warden for the reserve (section 36D(4)). The committee is made up primarily of community members: five representatives nominated by local village governance bodies (village panchayat or gram sabha), and one representative from the forest or wildlife department under whose jurisdiction the community reserve is located (section 36D(2)). ICCAs, however, operate within a diversity of institutional structures. The provisions for management committees do not provide space for community institutions to continue to be in existence or for the institutional structure to be decided in consultation with the local people. In managing an area owned by a community, the presence of a forest officer is also a serious deterrent for many ICCAs.
- 46 As with conservation reserves, many of the restrictions applicable to sanctuaries also apply “as far as may be” to community reserves (section 36C(2), read with sections 27(2)–27(4), 30, 32 and 33). This includes requirements to prevent offences and to assist in apprehending offenders (sections 27(2)(a) and 27(2)(b)).
- 47 Conservation reserves are a landmark in Indian wildlife law since they allow, for the first time, local residents to be consulted before a protected area is declared. Community reserves are an equally significant development, allowing communities themselves to be responsible for conservation in such areas.
- 48 For ICCAs, these new protected area categories represent an opportunity as well as a challenge. Most documented ICCAs in India exist on government land. As such, they do not qualify for community reserve status, where communities would retain management responsibilities. There is currently no provision for community-managed government land to be declared a protected area. If such ICCAs were to seek legal recognition under the law, as a conservation reserve, management responsibilities would then pass to the government. As the law currently stands, only ICCAs in private or community land can seek designation as a community reserve.
- 49 As far as other protected area categories are concerned, there is no scope for ICCAs to be included since national parks and sanctuaries exclude communities from management and decision making, and community reserves cannot be declared in existing national parks or sanctuaries (section 36C(1)).
- 50 It is worth noting, however, that the law allows for some use for subsistence purposes even within national parks and sanctuaries. While removing wildlife or forest produce from a national park is strictly forbidden, except with a permit (section 35(6)), forest produce removed from a national park may be used “for meeting the personal bona fide needs of the people living in and around the National Park and shall not be used for any commercial purpose.” Identical provisions apply in the case of sanctuaries (section 29), where the grazing or movement of livestock may also be permitted (section 29, read with section 33(d)).

4.1.3 Environment (Protection) Act 1986

- 51 This Act provides for the protection and improvement of the environment and related matters, and awards the central government broad powers in this regard (section 3). These include the power to restrict industrial and other operations and processes in certain areas (section 3(2)(v)).

Factors the central government may consider in restricting such activities are spelled out in the Environment (Protection) Rules 1986 (section 5). Besides a number of environment- and pollution-related concerns, these factors include: biological diversity of the area which needs to be preserved (section 5(1)(v)); proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act 1958, or a protected area under the Wildlife Act, or places protected under any treaty, agreement or convention (section 5(1)(viii)); “environmentally compatible land use” (section 5(1)(vi)); and “any other factors” the government considers to be relevant (section 5(1)(x)).

Together, these provisions have been used since 1989 to prevent industrial and development operations from taking place in specific sites across the country. Such areas have come to be known as ‘ecologically sensitive areas’. Apart from restricting commercial and industrial development, the Environment Act and its Rules do not specify any other restrictions on community access or use in such areas. The notification and rules for each ecologically sensitive area are site-specific and based on the local context.

4.1.4 Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996

This Act provides for the extension of the panchayat local governance system to ‘Scheduled Areas’ referred to in Article 244(1) of the Indian Constitution, which are areas with predominantly tribal populations. It requires state laws to be made “in consonance with the customary law, social and religious practices and traditional management practices of community resources” (section 4(a)). A gram sabha is to be established in every village (section 4(c)), and is “competent to” protect community resources (section 4(d)). Gram sabhas approve development plans and projects at the village level (section 4(e)(i)). They also have the power to control “local plans and resources for such plans including tribal sub-plans” (section 4(m)(vii)). This Act was, however, much diluted in state adaptations and limited rights were eventually granted to the communities concerned.

4.1.5 Biological Diversity Act 2002

This law regulates access to biological diversity for commercial use and other specified purposes. It provides for the protection of intellectual property rights with respect to biological resources and associated knowledge, the sharing of benefits arising from their use, the conservation of biological diversity, and related matters.

The central government is responsible, inter alia, for developing “measures for identification and monitoring of areas rich in biological resources, promotion of in situ, and ex situ, conservation of biological resources” (section 36(1)). Where it has reason to believe that an area “rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect”, it has the power to direct the state government concerned to “take immediate ameliorative measures” (section 36(2)). The central government must also “endeavour to respect and protect the knowledge of local people relating to biological diversity” (section 36(5)).

The law allows state governments to declare “biodiversity heritage sites” in areas of “biodiversity importance” (section 37(1)). This is done “in consultation with the local bodies”. Rules for the management and conservation of such areas are framed by state governments in consultation with the central government (section 37(2)). State government may “frame schemes” to compensate individuals or communities “economically affected” by the designation of biodiversity heritage sites (section 37(3)).

- 58 The central government has the power to declare, in consultation with the concerned state government, “any species which is on the verge of extinction or likely to become extinct in the near future” as a threatened species, to prohibit or regulate its collection for any purpose, and to take “appropriate steps to rehabilitate and preserve those species” (section 38). The central government may also exempt from the provisions of this Act certain biological resources, “including biological resources normally traded as commodities” (section 40).
- 59 Most of these provisions either directly or indirectly exclude ICCAs and local communities. All powers lie with the central or state government. Moreover, the provision for schemes to compensate those who are “economically affected” by the declaration of biodiversity heritage sites (section 37(3)) is a strong indication that use rights in such areas will be restricted, and implies that local communities will be excluded. It also implies that communities can be moved out of areas that are so declared. This could include ICCAs where communities protect the area but also make use of its resources for subsistence purposes.
- 60 The declaration of biodiversity heritage sites, therefore, does not appear to be of direct benefit for ICCAs unless there are no communities living in or benefiting from the resources in such areas, and unless communities managing such areas are willing to relinquish their decision-making powers.
- 61 The law does contain certain provisions that may be of relevance to ICCAs. First, every local governance body is required to constitute a biodiversity management committee to promote “conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity” (section 41(1)). In taking decisions related to the use of biological resources and associated knowledge, national and state-level authorities established under this Act must consult these committees (section 41(2)). Within their areas of jurisdiction, biodiversity management committees are allowed to charge a fee for access to or collection of any biological resource for commercial purposes (section 41(3)).
- 62 Second, the Act provides for the creation of local biodiversity funds in areas where “any institution of self-government” is functioning (section 43(1)). Grants and loans from national and state-level authorities, fees collected by local biodiversity committees and monies received through other sources, as may be decided by state governments, are paid into the fund (section 43(1)). The fund is to be used for the “conservation and promotion of biodiversity” and for the “benefit of the community in so far such use is consistent with conservation of biodiversity” (section 44(2)).
- 63 Third, the National Biodiversity Authority established under this Act must ensure that benefits arising from the commercial exploitation of biological resources are shared equitably, according to “mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers” (section 21(1)). ‘Benefit claimers’ are “conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application” (section 2(a)).
- 64 Finally, state biodiversity boards established under this Act may, in consultation with local bodies, prohibit any commercial activities concerning access to or use of biological resources if such activities are deemed “detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity” (section 24(2)).
- 65 Biodiversity management committees can be authorized to deal with intellectual property rights, and can claim benefits from the use of local resources and knowledge. The Act provides for village communities to carry out detailed resource mapping and biodiversity inventories, which would be

crucial for establishing management strategies. But the mechanical process of documenting local knowledge on biodiversity could also be prone to misuse and biopiracy, in the absence of clear legal protection of such knowledge.

The Act does not address the rights of biodiversity management committees or their access to the resources they manage. Biodiversity management committees have the potential to be robust local institutions for conservation but their potential has been curtailed in the rules framed under the Act, limiting their role to the preparation of biodiversity registers and advising the state authorities on matters related to granting approvals. The Act does not specify whether biodiversity management committees have the power to deny access to resources that higher bodies have permitted.

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4.1.6 Biological Diversity Rules 2004

In considering applications for commercial access to biological resources and associated knowledge, the National Biodiversity Authority must consult the local bodies concerned (section 14(3)). It may restrict or refuse such an application on a number of grounds, including if access to biological resources is likely to result in an “adverse effect on the livelihoods of the local people” (section 16(1)(iii)).

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Benefit-sharing arrangements are decided in consultation with local bodies and ‘benefit claimers’ (section 20(5)). In cases where biological resources or knowledge are accessed from a specific individual, group of individuals or organization, the Authority “may take steps to ensure that the agreed amount is paid directly to them through the district administration” (section 20(8)).

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The main function of biodiversity management committees is to prepare registers of biodiversity, in consultation with local communities (section 22(6)). They also advise state authorities on matters related to granting approvals, and maintain data concerning local “practitioners using the biological resources” (section 22(7)). Membership of biodiversity management committees must include women and individuals belonging to Scheduled Castes or Tribes (section 22(2)).

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States like Karnataka and Sikkim have enacted their own rules, providing for greater empowerment of communities by delegating responsibilities for biodiversity conservation and management.²³

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Draft guidelines for biodiversity heritage sites have recently been finalized and circulated as a model for state governments. These guidelines were drafted by a multi-stakeholder committee and aim to address the limitations of the Act. If followed by state governments, the guidelines may help provide backing for ICCAs or landscapes in which ICCAs are embedded.

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4.1.7 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

This Act provides for recognition of the rights of forest-dwelling communities. Its provisions apply only to “forest dwelling Scheduled Tribes” (defined in section 2(c) as “members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities”) and “other traditional forest dwellers” (defined in section 2(o) as “any member or community who has for at least three generations²⁴ prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs”).

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²³ See the Karnataka Biological Diversity Rules 2005 and the Sikkim State Biological Diversity Rules 2006.

²⁴ For the meaning of ‘generation’, see explanation in section 2(o): “For the purpose of this clause, “generation” means a period comprising of twenty-five years”.

- 73 A wide range of rights to access and occupy forests and use forest resources are specified in section 3. These include the right to protect, regenerate, conserve or manage “any community forest resource” that has been traditionally protected and conserved (section 3(1)(i)), and “any other traditional right customarily enjoyed” except for the traditional right to hunt or trap animals or extract “a part of the body of any species of wild animal” (section 3(1)(l)).
- 74 Although the Act does not specifically mention ICCAs, these provisions create an opportunity for ICCAs established by communities to be recognized by recognising their right to protect and manage the area. They are strengthened by provisions in section 5 related to the powers of forest rights holders, which state that rights holders as well as local gram sabhas and village-level institutions in such areas have the power to protect wildlife, forests and biodiversity (section 5(a)); ensure that adjoining catchment areas or “ecological sensitive areas” are adequately protected (section 5(b)); and ensure that the area is protected from “any form of destructive practices affecting [the] cultural and natural heritage” of forest dwellers (section 5(c)). Decisions taken in the gram sabha to regulate access to community forest resources or prevent activities with an adverse affect on wildlife or biodiversity must be complied with (section 5(d)).
- 75 It is worth noting that the decision to initiate proceedings for the grant of forest rights is taken in the gram sabha (section 6(1)), an assembly comprised of all adult members of a village (section 2(g)) which may not necessarily include forest-dwelling tribal peoples. This is particularly true in areas where a gram sabha consists of representatives from more than one settlement. Those who qualify to claim rights under this Act are specific Scheduled Tribes listed in the Constitution (section 2(c)), or pastoral communities that must prove at least 75 years of residence in or dependence on the forest area for “bona fide livelihood needs” (section 2(m)).
- 76 The process involved in granting forest rights as outlined in section 6, including the procedure for appeals, involves various stages of approval and clearance starting with the gram sabha (section 6(1)) and including a number of divisional, sub-divisional and district-level committees. These divisional and sub-divisional authorities consist of representatives of the tribal welfare department, and the land and revenue department, as well as people’s representatives from local panchayats and a forest department official. This ensures that decision-making powers are not held exclusively by the forest department with jurisdiction over the forests in question.
- 77 It is possible to grant forest rights under this Act in declared protected areas. The Act does not state this explicitly but provides that “forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled” (section 4(2)) with the written consent of the gram sabhas in the areas concerned (section 4(2)(e)).
- 78 Forest rights holders cannot be resettled, nor can their rights be “in any manner affected for the purposes of creating inviolate areas for wildlife conservation”, unless a number of specific conditions are satisfied (section 4(2)). It must be “established” by the state agencies exercising powers under the Wildlife Act that the activities of rights holders or the impact of their presence on “wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat” (section 4(2)(b)), and the state government must have “concluded that other reasonable options, such as, co-existence are not available” (section 4(2)(c)).
- 79 In addition, a resettlement or “alternatives package” must be prepared and communicated, providing a secure livelihood for the affected individuals and communities (section 4(2)(d)). The “free informed consent” of the gram sabhas in the area must be obtained in writing, with respect to the proposed resettlement and the package offered (section 4(2)(e)). Facilities and land allocation at the resettlement

location must be complete before resettlement takes place (section 4(2)(f)). The Act also states that the “critical wildlife habitats” from which rights holders are relocated for the purposes of conservation cannot be subsequently diverted to any other use (section 4(2)).

The law recognizes the existence of “community forest resources”, which are defined as “customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities”, and may include “reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access” (section 2(a)). Among the rights that can be granted under this Act is the right to “protect, regenerate or conserve or manage any community forest resource” that communities have been “traditionally protecting and conserving for sustainable use” (section 3(1)(i)). As such, communities to whom this law applies may be able to seek rights to protect forest lands that have traditionally been in their care, including forest lands situated within designated protected areas, but to do so they must follow the same procedure, outlined in section 6, that applies to the grant of all rights under this Act. In areas where rights have been granted under this Act, gram sabhas and other village-level institutions have the power to protect forests, wildlife and biodiversity (section 5(a)); ensure the protection of catchment areas, water sources and other “ecological sensitive areas” (section 5(b)); ensure that the habitat of forest dwelling communities is “preserved from any form of destructive practices affecting their cultural and natural heritage” (section 5(c)); and ensure compliance with decisions taken in the gram sabha concerning access to community forest resources and preventing activities that adversely affect forests, wildlife and biodiversity (section 5(d)).

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Where such rights are acquired in a designated protected area, such as a sanctuary or national park, it is not clear how the interface is to be managed between the rights of forest dwelling communities to protect and conserve an area, and the powers of wildlife officials and statutory authorities created under the Wildlife Act.

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The Act allows the gram sabha to play a role in a number of areas, from initiating proceedings for the recognition of forest rights (section 6(1)) to providing consent to resettlement plans (section 4(2)(e)).

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Community or individual rights under section 3(a), to live in or cultivate land in a forest for livelihood purposes, can only be granted in land that was already under the occupation of an individual, family or community on the date of commencement of this Act, is restricted to the area under actual occupation and cannot exceed an area of four hectares (section 4(6)).²⁵

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4.2 Policies and action plans

4.2.1 National Forest Policy 1988

The “principal aim” of the Forest Policy is to ensure “environmental stability and [the] maintenance of ecological balance” (section 2.2). Direct economic benefits are “subordinated to this principal aim”. Basic objectives of the Policy include conserving natural heritage, preserving the “remaining natural forests”, and meeting subsistence requirements of rural and tribal populations (section 2.1).

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The Forest Policy states that the country’s network of protected areas should be “strengthened and extended” (section 3.3), and that forest management plans should provide for corridors linking

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²⁵ A July 2009 Ministry of Environment and Forests circular directs state governments to seek the consent of village communities for any externally proposed development projects that require clearance under the Forest Conservation Act 1980, a law which requires the central government’s permission for the diversion of forest land to other uses. The provisions of this circular could provide communities with a powerful tool to prevent destructive projects and to protect forests.

protected areas (section 4.5). It notes that forest management should “associate” tribal peoples in the protection, regeneration and development of forests, and should safeguard their customary rights and interests (section 4.6). These provisions support the idea of community-level conservation efforts, particularly with respect to tribal peoples.

- 86 The strategy outlined in the Policy includes social forestry, recommending that village and community land “not required for other productive uses” should be used to develop tree crops and fodder resources, with the revenues generated from such activities going to local panchayats or communities (section 4.2.3). The Policy suggests that vesting in individuals “certain ownership rights over trees, could be considered”, with the beneficiaries entitled to “usufruct” and in turn responsible for “security and maintenance”. In this connection, it mentions “weaker sections” of the population “such as landless labour, small and marginal farmers, scheduled castes, tribals, [and] women”.
- 87 Rights and concessions in state forests “should always remain related to the carrying capacity of forests” (section 4.3.4.1), and “should primarily be for the bonafide use of the communities living within and around forest areas, specially the tribals” (section 4.3.4.2). The rights and concessions enjoyed by “tribals and other poor living within and near forests” should be “fully protected”, and their domestic requirements should be “the first charge on forest produce” (section 4.3.4.3). Scheduled Castes and other poor communities living near forests should be given similar consideration, but always “determined by the carrying capacity of the forests” (section 4.3.4.4). Holders of customary rights and concessions in forested areas should be “motivated to identify themselves with the protection and development of forests from which they derive benefits” (section 4.3.4.2).
- 88 Government-approved management plans are required for state forests “to be worked” (section 4.3.2). Schemes and projects that “interfere with [...] ecologically sensitive areas should be severely restricted. Tropical rain/moist forests [...] should be totally safeguarded” (section 4.3.1).
- 89 Although the Policy supports the recognition of customary and traditional rights, and endorses subsistence use by forest-dependent communities, it takes a dim view of the traditional practice of shifting cultivation, advising that it be discouraged and alternative livelihood activities provided (section 4.7). It also calls for the regulation of grazing in forest areas with the involvement of communities, some areas to be “fully protected” and the levy of grazing fees (section 4.8.3). The Policy notes that “encroachment” on forest lands must be curbed, and no regularization of existing encroachments should be permitted (section 4.8.1).
- 90 It was under this policy that the Government Resolution on Joint Forest Management was issued in 1990.²⁶ However, JFM continues to be implemented in project mode, without institutionalizing participation in forest management.

4.2.2 National Wildlife Action Plan 2002–2016

- 91 This action plan outlines policy imperatives and strategic actions for a wide range of matters related to wildlife conservation within and outside protected areas, including the management of protected areas, the prevention of illegal trade in endangered species and the promotion of ecotourism. It stresses the importance of in situ conservation and recognizes that the livelihoods of millions are deeply tied to forest resources. It aims to ensure community participation in conservation generally, and supports the involvement of communities residing in and around protected areas in particular. Local communities are also to be included in the development of ecotourism in wildlife areas.

26 Circular No. 6.21/89-FP dated 1 June 1990.

One of the policy imperatives outlined in the action plan is “Peoples’ Support for Wildlife”. It states: “Local communities traditionally depend on natural biomass and they must, therefore, have the first lien on such resources. Such benefits must be subject to assumption of a basic responsibility to protect and conserve these resources by suitably modifying unsustainable activities.” It goes on to say that conservation programmes must attempt to reconcile livelihood security with wildlife protection through “creative zonation” and by adding new protected area categories “such as an inviolate core, conservation buffer, community buffer and multiple use areas” in consultation with local communities. 92

While the plan encourages community involvement in the formulation of management plans and community representation in management committees, it does not explicitly call for decision-making powers to be transferred. The role of communities in conservation is supplementary to that of government wildlife protection bodies and agencies. The plan specifically endorses the idea of community reserves and conservation reserves, the two new protected area categories created by the Wildlife Act Amendment of 2002, which was awaiting enactment at the time. This is the only specific recognition of ICCAs (or potential ICCAs) in the plan, apart from recommendations for two “priority projects”: one for the restoration of degraded habitats outside protected areas, which involves identifying “sites of community managed areas [...] where endemic or localised threatened species may continue to exist” and supporting their continued conservation (section IV-1.2); and the other for ensuring people’s participation in wildlife conservation, which involves “encouraging” people to help protect and manage wildlife habitats outside protected areas, “including community conserved forests, wetlands, grasslands and coastal areas” (section VIII-9.3). 93

The action plan does contain a number of provisions that could benefit ICCAs. Key among them are the recommendations concerning benefit sharing from tourism activities (section X-1.1), and the provision of financial and other incentives to communities participating in conservation efforts (section VIII-2.3 and VIII-9.2). 94

Also of potential relevance for ICCAs are recommendations concerning the creation of a new central government-sponsored scheme to assist state governments in protecting wildlife and habitat outside protected areas (section III-2.1); and the development of special schemes for the welfare of local people outside protected areas “where critically endangered species are found” (section III-2.3). 95

The recommendations for studies of “ethnic knowledge” to apply this knowledge to wildlife management and to obtain intellectual property rights to benefit local communities (section VI-4.1) may be of relevance in ICCAs with a long history of traditional management. 96

The action plan also calls for “time bound” programmes to assist voluntary relocation and rehabilitation of communities living in national parks and sanctuaries (section I-2.2); comprehensive guidelines on voluntary relocation from protected areas, starting with national parks in the first phase and including sanctuaries in the second phase (section VIII-6.1); the identification of strict conservation zones within protected areas (section II-1); all identified areas around protected areas and wildlife corridors to be declared as ‘ecologically fragile’ under the Environment Act (section III-5.2); and ‘ecologically fragile’ status also for crucial ‘wildlife corridors’, all biosphere reserves, world heritage sites, Ramsar sites and other areas declared or notified under international environmental treaties (section XI-5.2). Despite the fact that specific timelines have been identified for achieving these objectives, there are few cases in which moves have been made for implementation. This is mainly because of the absence of specific legal provisions under which the action plan could be implemented. The action plan’s recommendations to involve people in the management of wildlife are not supported by the provisions of the Wildlife Act. 97

- 98 The action plan notes that the settlement of rights of those affected by the creation of protected areas has not been carried out and that relocation programmes have not been implemented. It estimates that a sum of nearly “Rs. 2,000 crores” would be needed for the purpose (section XII), but does not recommend specific actions in this connection.

4.2.3 National Environment Policy 2006

- 99 As with most policy documents, the National Environment Policy contains many broad statements concerning the importance of community participation in various initiatives aimed at conservation. The Policy recognizes that communities have traditionally protected common resources such as “water sources, grazing grounds, local forests [and] fisheries” through “various norms” but notes that such norms have weakened (section 2). It acknowledges that the exclusion of local communities from the protected area declaration process and the loss of traditional rights in such areas have undermined wildlife conservation. It calls for expanding the country’s network of protected areas, “including Conservation and Community Reserves” (section 5.2.3), but does not specify how community rights and participation are to be ensured. The eco-development model is to be promoted in “fringe areas” of protected areas, to compensate communities for access restrictions within protected areas (section 5.2.3).

- 100 What may be of particular relevance to ICCAs is the idea of ‘incomparable values’:

Significant risks to human health, life, and environmental life-support systems, besides certain other unique natural and man-made entities, which may impact the well-being, broadly conceived, of large numbers of persons, may be considered as “Incomparable” in that individuals or societies would not accept these risks for compensation in money or conventional goods and services. A conventional economic cost-benefit calculus would not, accordingly, apply in their case, and such entities would have priority in allocation of societal resources for their conservation without consideration of direct or immediate economic benefit (section 4.vi).

- 101 The Policy calls for the establishment of mechanisms and processes to identify such entities (section 5.1.2), and recommends the inclusion, under this nomenclature, of “forests of high indigenous genetic diversity” (section 5.2.3), “several charismatic species of wildlife” (section 5.2.3), “ancient sacred groves and ‘biodiversity hotspots’” (section 5.2.4), “particular unique wetlands” (section 5.2.5), and “particular unique mountain scapes” (section 5.2.6).

- 102 The Policy also states that “Environmentally Sensitive Zones” should be defined as areas with resources of “incomparable value” (section 5.1.3). It recommends the formulation of “area development plans” for such zones, and the creation of “local institutions with adequate participation for the environmental management of such areas” (section 5.1.3).

4.2.4 Eleventh Five-Year Plan 2007–2012

- 103 The ‘Development of National Parks and Wildlife Sanctuaries’ scheme was introduced in the 10th five-year planning period to support state governments in carrying out conservation activities in wildlife areas. Under the 11th Five Year Plan, this scheme is re-named, ‘Integrated Development of Wildlife Habitats’, and its scope is widened to include the “management, protection, and development” of protected areas (volume 3, chapter 3).

- 104 Among the initiatives to be taken under this scheme is the establishment of a system for surveys, inventories and socio-economic analysis to be used in management planning for protected areas, including community reserves and conservation reserves. The 11th Five-Year Plan calls for “participatory management with village eco-development [as a] component of the programme.” It states that assistance

should be provided for the management of “identified special vulnerable habitats of high conservation value” outside protected areas.²⁷ While support for conservation outside protected areas may directly benefit ICCAs that operate without formal recognition, the promotion of the eco-development model could hinder community conservation, depending on the manner in which the initiative is implemented on the ground.

4.2.5 National Biodiversity Action Plan 2008

The National Biodiversity Action Plan recognizes the importance of community-led conservation efforts and calls for their promotion.²⁸ It notes that a “substantial chunk of India’s biodiversity exists outside the precincts of ‘formally declared conservation zones’, which are owned and managed by the local communities” and acknowledges that any future plans to expand the protected areas network will “depend significantly in recognizing such Community Conserved Areas” (section 5.1). 105

The Plan calls for an expansion of the country’s network of protected areas, “including conservation and community reserves”, with the participation of local communities, and the implementation of partnerships to enhance wildlife habitat in conservation reserves and community reserves. 106

Important from the perspective of ICCAs in India, the Plan recommends the promotion of biodiversity conservation “outside the [protected area] network, on private property, on common lands, water bodies and urban areas”, and for the implementation of conservation programmes for “endangered species outside [protected areas]” (section 5.1). It notes that community-led initiatives to protect sacred groves, neighbourhood forests and common lands need to be supported (section 3.1). 107

But as with many other aspects of the legal and policy framework governing protected areas, the National Biodiversity Action Plan also supports the “relocation of villagers from critical habitats” and envisions the exclusion of local communities from “areas of high endemism of genetic resources (biodiversity hotspots)”, with the provision of “alternative livelihoods” for communities that may be affected by these restrictions (section 5.1), ruling out the possibility of co-existence in such areas. Similarly, the Plan supports the eco-development model, and calls for its implementation in “fringe areas” of protected areas, to compensate communities for “access restrictions” in protected areas. 108

The Plan contains many broad statements concerning community involvement in a range of activities and initiatives that have the potential to affect ICCAs. These include the integrated conservation and wise use of wetlands and river basins (section 5.1); the decentralized management of biological resources (section 5.2); the promotion of best practices based on traditional sustainable uses of biodiversity (section 5.2); the reclamation of wasteland and degraded forest land (section 5.2); sustainable tourism initiatives (section 5.5); the documentation, application and protection of biodiversity-associated traditional knowledge (section 5.8); and the revival and revitalization of sustainable traditional practices and other folk uses of components of biodiversity (section 5.8). 109

27 Although the Eleventh Five-Year Plan does not mention financial support for ICCAs, a government report prepared in 2006 notes that “several community initiated and driven conservation programmes” exist, and recommends that budgetary support is provided to them:

Such CCAs exist in a wide spectrum of legal regimes ranging from government owned lands (both forest department as well as revenue department owned) as well as private owned lands. Such CCAs [community-conserved areas] may not necessarily be officially notified but should still be eligible for financial support as an incentive for community-led conservation practices (Government of India, 2006).

This recommendation is reiterated in a report released in the following year (see Government of India, 2007).

28 The Final Technical Report of the National Biodiversity Strategy and Action Plan contained detailed recommendations on ICCAs that were not included in the approved Plan of 2008 (see TPCG and Kalpavriksh, 2005).

- 110 Among the objectives of the National Biodiversity Action Plan is the need to protect and conserve “entities of incomparable value” (section 4.8). Such areas are defined as “sites containing unique natural or man-made entities (living and/or non-living), that provide critical life support environmental services and/or are essential for the well-being, broadly conceived, of a large number of people of present and future generations.” Criteria specified for the identification of such sites include unique biodiversity, and “cultural, aesthetic and religious significance to a large number of people”, specified as “at least” 100,000.
- 111 The National Biodiversity Action Plan strongly supports JFM but recognizes that its implementation has varied from state to state and has, in some cases, led to conflict (section 5.2).

4.3 Implementation issues

- 112 Forest-based ICCAs as well as communities protecting forests under JFM have long demanded that the areas under their care be declared ‘village forests’ under the Forest Act. In 2006, such communities received a better opportunity under the Forest Rights Act to use the provisions of that law to seek legal rights in forest areas that have traditionally been in their care. But communities who are not members of a Scheduled Tribe, and are not considered to be “other traditional forest dwellers” as defined in that Act (section 2(o)), or are protecting ecosystems other than forests will need to explore other legal spaces. To date, a few forest-based ICCAs have opted to use the provisions available under the Forest Rights Act. But they constitute a small fraction of the number of forest ICCAs that could make use of this law. This is partly because it is a relatively new law and knowledge of its potential is limited, but also because a number of state governments are dragging their feet with regard to implementation of the provisions related to such claims. Greater focus on the community forest rights provisions of this law, with appropriate capacity being built among communities and forest officials, could go a long way in providing legal backing to forest ICCAs.
- 113 The designation of protected areas under the Wildlife Act has always been a contentious issue, given the traditional approach to managing such areas that has involved the exclusion of local communities and, in many cases, their eviction from areas so declared. There have also been cases where a national park or sanctuary has been declared without taking into account the possible existence of patches being protected by local communities, such as in Sariska Tiger Reserve in Rajasthan, which is composed of a cluster of grazing grounds protected for religious reasons. Wildlife Act provisions related to the declaration of national parks and sanctuaries have in some cases operated to the detriment of ICCAs.
- 114 More recently, a few attempts have been made to bring ICCAs under the ambit of the new conservation reserve and community reserve categories introduced in the Wildlife Act. But these measures have so far proved to be unsuccessful because communities were not properly consulted, or because communities engaged in conservation were unwilling to comply with statutory obligations to include government officials in their management committees (see Box 4). By using such provisions, communities risk losing much of their decision-making authority. It is worth recalling as well that in its current form the Wildlife Act only recognizes community conservation efforts in private or communally owned land. This makes it all the more difficult for the majority of Indian ICCAs, which are established on government land, to seek legal recognition.
- 115 The interaction between government programmes and legal regimes applicable to different areas also creates problems with respect to implementation. This has been the case, for example, in some villages in Maharashtra where JFM was operating successfully until the jointly managed forests were

included within the boundaries of a newly designated protected area, ignoring the conservation work carried out by local communities and sidelining local resource management institutions. Similarly, during implementation of the government's Ecodevelopment Programme, local institutions that were engaged in protection activities in a sanctuary in Rajasthan were co-opted and eventually rendered ineffective.

Box 4: Implementation issues

In some cases the process of declaring a protected area has taken place without recognizing the existence of an ICCA already functioning in the same area. The declaration of protected areas under the Wildlife Act does not require an exploration of local systems of management and conservation already in place, and the process for declaring national parks and sanctuaries does not require the involvement of communities. These provisions have operated to the detriment of ICCAs. For example, a traditional bird conservation site in Nellapattu (Andhra Pradesh) was declared as a wildlife sanctuary, a category that imposes strict restrictions on use by local communities. The area is still a sanctuary, much to the dissatisfaction of the local people who have traditionally protected the birds.

A few attempts have been made in the recent times to bring some ICCAs under the framework of the Wildlife Act as community reserves or conservation reserves. This experience has not been particularly encouraging. In the case of Kokare Bellure (Karnataka), a traditional bird protection site, an attempt was made to declare the area as a community reserve. The proposal was mooted by the Karnataka forest department without consulting the community involved in conservation. As a result, the proposal and declaration were rejected by the community when the issue came to their notice.

In fact, none of the documented existing ICCAs have so far opted for any of the legal options available to them under the Wildlife Act. The only exception is Chakrashila (Assam), which was declared a wildlife sanctuary in 1994 at the behest of the local community.

Meanwhile, the WWF started the process for the declaration of Thembang (Arunachal) as a community reserve but the communities concerned were unwilling to have a forest officer on the management committee (a requirement under the Act) and so rejected the option.

5 Recommendations

It may never be practical to frame a single law that provides adequate legal cover for the wide range of ICCAs in India. Indeed, a single law of this sort may not even be desirable, given the diversity of objectives, ecosystems, species and management practices involved. It is perhaps more important to ensure that key provisions required to support and strengthen ICCAs are included in the legal framework, and that provisions which undermine the operation of ICCAs and the rights of communities are not legally sanctioned. Whether this is done through piecemeal amendments to statutory instruments or achieved by framing new laws is a matter that continues to be debated. 116

Just about a handful of ICCAs have been able to show that it is possible to make creative use of legal provisions by combining available rights under different laws. But most communities have not been successful in acquiring rights or securing their ICCAs in this manner. This is partly because of the lack of knowledge and awareness about such provisions, but more importantly because of a lack of faith in statutory law and government institutions. These and other issues described in sections 5.1–5.7, below, need to be taken into account in any initiative for legal reform to enable ICCAs. 117

5.1 Recognition of rights

Formal recognition of a community's rights to land, water and other natural resources is critically important. This may take various forms including:²⁹ 118

²⁹ See IUCN-CEESP, 2008.

- formal ownership for communities and title deeds to land or resources;
- recognition of an ICCA as an indigenous reserve, indigenous territory or ancestral domain, implying inalienable communal rights;
- legal recognition of use rights for communities;
- legal recognition of community management institutions and practices;
- recognition of a community's declaration of an ICCA as a protected area, to be formally linked to the national protected areas system and offered support; or recognition as an area where indigenous peoples prefer to remain in voluntary isolation.

119 The Indian experience shows that a sense of belonging or custodianship towards an area, its resources or the species being protected is one of the most important factors in a community's decision to carry out conservation. This sense of belonging develops over time through subsistence, livelihood, economic, social, cultural and spiritual association and interaction with these resources.

120 Legal backing for community rights is not a pre-requisite for conservation to be initiated. But for the initiative to be sustainable, particularly in the face of growing internal and outside threats and challenges, community rights and conservation systems must be secure. It is also important to ensure that communities cannot be deprived of legal recognition, and that changes to the status of the area are not made without consultation.

121 It is worth noting that in some villages, communities offered the option of acquiring statutory rights have opted not to do so (see Box 5). Such cases are, however, exceptional. In most instances, there is no question that communities require legal backing for their conservation activities. The law must therefore ensure that communities engaged in such activities have legal rights in the land they are protecting.

Box 5: Communities' options

In Baripada village (Maharashtra), residents have the option to claim rights over government-owned forests they have been protecting, making use of the provisions of the Forest Rights Act. But they do not see any immediate threat to their rights to use and protect these forests and so have not exercised this option. According to their leader, Chairtram Pawar, "as long as our right to use and protect is not questioned by anyone it is better to have dual custodianship (communities and forest department in this case) as it maintains check and balances against internal and external threats".

5.2 Recognition of customary law

122 The strength of long-standing ICCAs in India comes in large part from the customary laws and rules or more contemporary local laws and rules used for their protection. Where statutory law has provided backing to local rules, this has been an effective means to secure the continuity of conservation initiatives and ensure social justice (see Box 6). But in general the statutory regime governing conservation in India does not recognize or endorse customary law. This is one area where legal amendments or implementing regulations are urgently needed. Meanwhile, laws such as the Forest Rights Act contain broad provision for the recognition of customary practices, but rules or guidelines to operationalize these provisions have yet to be developed.

123 It is also important to keep in mind that not all customary laws necessarily ensure equity or social justice (for example, traditional rules that exclude women from decision making). Issues of equity and

fairness, where they arise, will need to be resolved case by case, in consultation with the communities concerned.

Box 6: Community conservation in Nagaland

In some states, the law allows communities greater authority to manage and conserve biodiversity resources. In Nagaland, for example, the Nagaland Village and Area Council Act of 1978 allows village councils (local governance bodies) to manage forests within their areas of jurisdiction. Unlike the rest of India, in Nagaland most land is under community or private ownership. Using the powers awarded to them under the Village and Area Council Act, dozens of village councils across the state have created ICCAs, including the Khonoma Nature Reserve and Tragopan Conservation Reserve in Khonoma village; a wildlife reserve in Luzuphuhu village; and a wildlife conservation area in Sendenyu. The Act indirectly provides support to ICCAs and gives communities a possible legal tool to combat commercial and industrial pressures. But state laws of this sort are rare in India, so this potential is limited.

Source: Pathak, 2009; Thong, 2009.

5.3 Protected areas

Laws governing protected areas need to be more flexible, to encompass the wide variety of ICCAs not only with respect to management categories but also, importantly, with respect to land ownership arrangements. 124

Under the Wildlife Act there is just one statutory category, the community reserve, that can accommodate ICCAs, with limited space for the existing institutions. Additionally community reserves cannot be declared on government-owned land. Because of these limitations and others mentioned above, there is still no statutory category to properly cover most ICCAs. 125

As far as the Biodiversity Act is concerned, there is a strong implication that communities will lose their rights once a biodiversity heritage site is declared under that law. Rules for such areas are to be framed by state governments, which opens up the possibility that communities may be allowed to retain their decision-making powers. But equally, rules may place that authority in the hands of government bodies or officials, as is the case with much of the statutory regime. 126

Meanwhile, ecologically sensitive areas declared under the Environment Act provide for commercial activity and industrial development to be restricted. The Act and its Rules do not specify other restrictions, suggesting that subsistence use by communities may be permitted. The Rules provide for the possibility of a site-specific declaration process. This could be a good option for ICCAs facing threats from industrial development in the vicinity. 127

The Forest Rights Act provides the strongest support for ICCAs, and for forest-dwelling communities, specified Scheduled Tribes and pastoral communities. However, given the complex nature of land occupation and ownership, as well as the migration and movement of communities, the success of this Act will depend largely on how it is implemented in each state, and that state's ability to deal with local complexities. Additionally, this Act applies only to forest resources and no other ecosystems or land types are covered. 128

The legal regime is already broad in its scope with respect to the objectives for establishing protected areas. These include biodiversity conservation, the protection of landscapes, the creation of corridors or buffer zones, the preservation of cultural heritage and sacred sites, and the protection of indigenous knowledge. The language of most laws is thus broad enough to encompass all of the many purposes for which ICCAs are established. 129

- 130 What is required, then, is to allow government-owned lands to be included in community reserves declared under the Wildlife Act, to ensure that communities engaged in conservation retain their decision-making powers in areas that are protected under the Biodiversity Act or the Environment Act, and to broaden the scope of the Forest Rights Act to include other types of land and resources. In seeking legal recognition for their protection and conservation activities, communities must not be forced to forego their decision-making powers. This should be done while ensuring that principles of good governance, including equity, transparency, accountability, information and dialogue, are adhered to at all levels.

5.4 Site-specific approaches

- 131 A uniform system of institutions, rules and regulations cannot be applied to ICCAs in India, since community initiatives in this country are decentralized, highly site-specific and varied in their objectives and approaches.
- 132 In the past, government entities and non-governmental agencies have in general favoured a centralized, top-down approach, working under uniform legal and management prescriptions, and failing to take into account site-specific needs. This approach has not always been successful. But where the local context has been understood and approaches tailored accordingly, conservation efforts have achieved far greater success.
- 133 The law must recognize the importance of site-specific management, and allow for the existence of variety of institutions and practices. Systems of management and community institutions already in place and operating successfully should be strengthened and supported, rather than supplanted by new statutory arrangements. In general, a broad framework enabling conservation and ensuring social justice is important, within which there should be room for site-specific variations. The law must also allow for measures to create innovative financing mechanisms.
- 134 An important common theme that emerges from the Indian experience of ICCAs is that the regulatory system for a particular area works best when it is devised locally, with the full participation of local communities. The more closely such regulations are tied to local cultural, religious and economic values, the less likely it is that use regimes will require external monitoring.

5.5 Landscapes, buffer zones, connectivity

- 135 The new category of conservation reserves created under the Wildlife Act is broad enough to encompass a range of conservation objectives not covered in other statutory designations. Conservation reserves may be created in areas adjoining national parks and sanctuaries, on land that links one protected area with another, or to protect landscapes and seascapes. This in effect allows for the creation of buffer zones, connectivity corridors and protected landscapes.
- 136 The purpose for which biodiversity heritage sites may be declared under the Biodiversity Act is also defined broadly to cover areas of biodiversity importance, without specific criteria for assessing “importance”. Criteria for the establishment of ecologically sensitive areas under the Environment Act are equally broad, encompassing the preservation of biological diversity as well as the proximity of a site to an established protected area, a designated ancient monument or archaeological site, or a site protected under international treaty. In addition, environmentally compatible land use and any other factors may also be taken into consideration under this Act.

The statutory framework established under these laws appears already to be addressing concerns related to landscape protection, buffer zones and the creation of connectivity between protected areas. For ICCAs, therefore, the issue is to ensure that communities are able to take maximum advantage of these provisions, especially by linking them, to obtain legal recognition for community conserved areas, using the principles and suggestions mentioned above. 137

Similarly, protected areas in general are vulnerable to the impact of activities taking place outside their perimeters. ICCAs are particularly at risk from such factors since in most cases they do not have the machinery of the state operating in their favour. Provisions in the law already provide for some measure of control over such harmful activities. Here, too, the issue for ICCAs is to be able to make use of these provisions effectively, which would require amendments in the law to facilitate the participation of people and provide recognition for ICCAs. 138

5.6 Livelihood issues

For many communities, conservation is not an isolated activity but encompasses an entire way of life, and includes the carefully managed use of resources for subsistence purposes. In fact, the success of many ICCAs across India comes from the fact that community conservation efforts take place in tandem with livelihood activities. Conversely, experience has shown that in many statutory protected areas conservation efforts have failed because the livelihood needs of local communities have been neglected. 139

Many communities also invest a great deal of time and effort in carrying out conservation activities, often at the expense of income they could earn from other activities, including employment. This makes it all the more important to ensure that communities engaged in conservation are able to derive some measure of benefit from these activities. A legal regime for ICCAs must ensure that, in providing legal backing for community conservation, community livelihoods are not sidelined. 140

5.7 Technical and other support

Given the diversity of ICCAs in India and the variety of landscapes in which they exist, it is essential for the law to make provisions for mandatory coordination between various government agencies. This would include, for example, measures to improve coordination between wildlife and forest departments, and agencies responsible for land administration. It would also include a mechanism to ensure that development or conservation projects implemented by the government do not undermine conservation efforts and institutions that are already operating in such areas. 141

The law must also take into account financial mechanisms and technical support. The kind of support provided must be decided in consultation with communities and with their consent. Similarly, where funding is involved, systems of accountability and transparency need to be developed at all levels, in consultation with communities. Implementation mechanisms must provide for a participatory system of monitoring as well as for external evaluation if a need is felt by the conserving communities. 142

As the analysis above has shown, limited provisions already exist in the law to support ICCAs. But with the exception of a few communities, knowledge about legal provisions and the rights that communities may claim is generally poor. Procedures allowing rights to be claimed are difficult to navigate, and it is likely to be especially difficult for traditional forest-dwelling tribes and indigenous communities to claim rights without an informed facilitating agent. In implementing legal provisions for ICCAs, it is also important that efforts are made to develop or strengthen community leadership. 143

References

- Apte, T. and N. Pathak. 2003. International forestry networks in India. Report for CIFOR. Bogor, Indonesia.
- Corbett National Park. Web site. <http://www.corbettnationalpark.com/about-corbett-park.htm>.
- Das, P. 2009. Kailadevi wildlife sanctuary, Karauli. In Pathak, N. (ed.), *Community Conserved Areas in India—A Directory*. Pune: Kalpavriksh.
- Department of Forests and Wildlife Preservation, Punjab. (Undated.) Wildlife (Protection) Act, 1972: a historical perspective, online <http://www.pbforests.gov.in/overview.html>. Accessed 20 December 2009.
- Dudley, N. (ed.). 2008. *Guidelines for Applying Protected Area Management Categories*. Gland: IUCN. Available at <http://www.iucn.org/dbtw-wpd/edocs/PAPS-016.pdf>
- Government of India. 1986. Report of the study group on land holding systems in tribal areas. New Delhi: Planning Commission.
- . 1988. National Forest Policy. New Delhi: Ministry of Environment and Forests.
- . 2006. Report of Working Group on Wildlife, Biodiversity, Traditional Knowledge and Animal Welfare for the Eleventh Five Year Plan 2007–2012. Planning Commission, Government of India. New Delhi. Available at http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_wildlife.doc.
- . 2007. Report of the Steering Committee on the Environment and Forests Sector for the Eleventh Five Year Plan (2007–2012). New Delhi: Planning Commission. Available at http://planningcommission.nic.in/aboutus/committee/strgrp11/str11_E&F.pdf.
- . 2008. *Eleventh Five Year Plan (2007–2012)*. Volume I. Planning Commission, Government of India. New Delhi: Oxford University Press.
- ICCA Consortium. Web site. <http://www.iccaforum.org>.
- Indian Forest Service. Web site. <http://ifs.nic.in>.
- International Union for Conservation of Nature, Commission on Environmental, Economic and Social Policy (IUCN-CEESP). 2008. Recognising and supporting indigenous and community conservation—ideas and experiences from the grassroots. CEESP Briefing Note No. 9, September.
- Kothari, A. and N. Pathak. 2004. Periyar Tiger Reserve: of people and participation. *The Hindu Survey of the Environment* 2004.
- Kothari, A., N. Singh and S. Suri. 1995. Conservation in India: A new direction. *Economic and Political Weekly*, 30(43): 2755–66.
- Lockwood, M., G. Worboys and A. Kothari (eds.). 2006. *Managing Protected Areas: A Global Guide*. London: Earthscan.
- Palit, S. 2001. Overview of JFM Status in West Bengal. Draft paper.
- Pathak, N. (ed.) 2009. *Community Conserved Areas in India—A Directory*. Pune: Kalpavriksh.

- Pathak, N., A. Islam, S.U.K. Ekaratne and A. Hussain. (Undated.) Lessons learnt in the establishment and management of protected areas by indigenous and local communities in South Asia. Available at http://cmsdata.iucn.org/downloads/cca_npathak.pdf
- Resource Unit for Participatory Policy (RUPFOR). Web site. <http://www.rupfor.org/jfm.asp>.
- Saberwal, V., M. Rangarajan and A. Kothari. 2000. *People, Parks and Wildlife: Towards Coexistence*. New Delhi: Orient Longman Limited.
- Saigal, S. 2001. Joint Forest Management: A Decade and Beyond. Paper Presented at a Workshop at Institute of Economic Growth, Delhi, India, September 2001. Available at <http://www.rupfor.org/downloadq/jfm-nationaloverview.pdf>.
- Sain, M. 2001. Disempowerment in the name of 'participatory' forestry—village forests joint management in Uttarakhand India. *Forests, Trees and People*, Newsletter No. 44. World Rainforests Movement, Uruguay.
- Sundar, N., R. Jeffery and N. Thin. 2001. *Branching Out: Joint Forest Management in India*. New Delhi: Oxford University Press.
- Technical and Policy Core Group (TPCG) and Kalpavriksh. 2005. Securing India's Future: Final Technical Report of the National Biodiversity Strategy and Action Plan. Delhi/Pune: Kalpavriksh.
- Thong, G. 2009. Case study on Sendenyu. In Pathak, N. (ed.), *Community Conserved Areas in India—A Directory*. Pune: Kalpavriksh.
- Wani, M. and A. Kothari. 2007. "Protected areas and human rights in India." In *Policy Matters*, Issue 15, July. IUCN Commission on Environmental, Economic and Social Policy. Available at <http://cmsdata.iucn.org/downloads/pm15.pdf>.
- World Bank. 1996. India: Ecodevelopment Project. Project document, September 1996. South Asia Department II, Agriculture and Water Division. Available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1996/09/01/000009265_3970311115210/Rendered/PDF/multi0page.pdf.

Legal instruments

Most legal instruments discussed in this case study are available online. Readers may view the full text on the ECOLEX web site (www.ecolex.org) using the hyperlinks below, or at the URL provided.

Central Acts

Ancient Monuments and Archaeological Sites and Remains Act 1958 (Act No. 24 of 1958)	LEX-FAOC094090
Biological Diversity Act 2002 (Act No. 18 of 2003)	LEX-FAOC040698
Environment (Protection) Act 1986 (Act No. 29 of 1986)	LEX-FAOC021695
Forest (Conservation) Act 1980 (Act No. 6 of 1980)	LEX-FAOC003172
Indian Forest Act 1865 (not in force)	
Indian Forest Act 1927 (Act No. 16 of 1972)	LEX-FAOC003171

Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (Act No. 40 of 1996) http://hppanchayat.nic.in/pdf%20files/Pesa.pdf	
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No. 2 of 2007)	LEX-FAOC077867
Wild Birds and Game Act 1887 (not in force)	
Wild Birds and Animals Protection Act 1912 (Act No. 8 of 1912)	LEX-FAOC080041
Wild Life (Protection) Act 1972 (Act No. 53 of 1972)	LEX-FAOC021932
Wildlife (Protection) Amendment Act 2002 (Act No. 16 of 2003)	LEX-FAOC040069

Central Rules

Biological Diversity Rules 2004 (Notification No. G.S.R. 261(E), 15 April 2004)	LEX-FAOC053983
Environment (Protection) Rules 1986 (Notification No. S.O. 844(E), 19 November, 1986)	LEX-FAOC008236

Regional instruments

Nagaland Village and Area Council Act 1978 (Act No. 1 of 1979)	LEX-FAOC094094
Karnataka Biological Diversity Rules 2005 (Notification No. FEE 151 ENV 2005, 3 May 2006)	LEX-FAOC094093
Sikkim State Biological Diversity Rules 2006 (Notification No. 504/F, 14 September 2006)	LEX-FAOC094092

Cases and court orders

Centre for Environmental Law v Union of India and Others, WP(C) No. 337 of 1995	
T.N. Godavarman Thirumulkpad v Union of India and Others, Writ Petition No. 202 of 1995	
Supreme Court Order dated 22 August 1997 (directing state governments/ union territories to issue proclamation under the Wild Life (Protection) Act, section 21, in respect of sanctuaries/natural parks)	
Supreme Court order dated 14 February 2000 (restraining the state government from ordering the removal of dead, diseased, dying or wind fallen trees, drift wood and grasses from any national park, game sanctuary or forest)	
Supreme Court Order dated 28 February 2000 (modifying order of February 14 to remove the word 'forest')	