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*Front cover:* With no road access, suspension bridges serve as critical links between communities located along the Papar River in Sabah, Malaysia. Neighbouring villages share extensive systems of ecosystem management and conservation that are deeply rooted in cultural values and practices and customary laws. © Holly Shrumm

*Back cover* (clockwise, from top left): India, Papua New Guinea, and China © Cristina Mittermeier; Bamboo stalks. © Holly Shrumm

**Section 1 Introduction (page 15)**

Top left: A Tamil woman picks tea leaves on an inter-cropping plantation near Avissawella, Sri Lanka. © Holly Shrumm

Top middle: Bamboo groves are protected by the Indigenous Dusun people of Buayan (Sabah, Malaysia). Bamboo is valued for a variety of uses, including musical instruments. © Global Diversity Foundation

Top right: India. © Cristina Mittermeier

Bottom: © Cristina Mittermeier

**Section 2 Introduction (page 101)**

Top left: A home herbal garden supported by the NGO Grama Swaraj in Mayurbanj, Orissa, India. © B. Nair

Top middle: The nomadic Raika pastoralists of Rajasthan, India, are working to secure their grazing rights and regain customary access to the Kumbalgarh Forest. © Ilse Köhler-Rollefson

Top right: Splitting rattan, one of the forest resources still commonly used in Indigenous Dusun communities for housing and handicrafts. © Alexzander Bulangai (community research from Kiau Nuluh, Sabah)

Bottom: The Ulu Papar community usually erect a sulap (small hut), made of resources harvested from the forest, as a resting place while they are working on their fields. © Ephraem Lompoduk (community researcher from Buayan, Sabah)

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Top left: Brazil. © Cristina Mittermeier

Top middle: An elder from Pongobonon, Sabah, shows her collection of jars, which are part of a rich cultural heritage of artifacts passed down through generations and preserved for the future. © Eansus Sipail (community member from Terian, Sabah)

Top right: Communities around the Golden Gate Highlands National Park in South Africa eke out a living through tourism. © Holly Shrumm

Bottom: Brazil. © Cristina Mittermeier

**Design and Layout:** Holly Shrumm (holly@naturaljustice.org)

**Printing:** EBiz Design & Communications
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<tbody>
<tr>
<td>ABS</td>
<td>Access and benefit sharing</td>
</tr>
<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>AWG-LTC</td>
<td>Ad Hoc Working Group on Long-term Cooperative Action</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
</tr>
<tr>
<td>CBNRM</td>
<td>Community-based natural resource management</td>
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<tr>
<td>CCI</td>
<td>Community conservation initiative</td>
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<tr>
<td>CEEESP</td>
<td>Commission on Environmental, Economic and Social Policy</td>
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<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CERD</td>
<td>Convention on the Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>CI</td>
<td>Conservation International</td>
</tr>
<tr>
<td>CIHR</td>
<td>Conservation Initiative on Human Rights</td>
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<tr>
<td>CORENCHI</td>
<td>Regional Committee for Chinantla Alta Natural Resources (originally in Spanish)</td>
</tr>
<tr>
<td>CSICH</td>
<td>Convention on the Safeguarding of Intangible Cultural Heritage</td>
</tr>
<tr>
<td>COP</td>
<td>Conference of the Parties</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<tr>
<td>FCCC</td>
<td>Framework Convention on Climate Change</td>
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<tr>
<td>FFI</td>
<td>Fauna &amp; Flora International</td>
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<tr>
<td>GIS</td>
<td>Geographic Information System</td>
</tr>
<tr>
<td>GPS</td>
<td>Global Positioning System</td>
</tr>
<tr>
<td>ICCA</td>
<td>Indigenous peoples’ and community conserved area</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>IGC</td>
<td>Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore</td>
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<tr>
<td>IIED</td>
<td>International Institute for Environment and Development</td>
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<tr>
<td>ILO 169</td>
<td>International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries</td>
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<tr>
<td>IPACC</td>
<td>Indigenous Peoples of Africa Coordinating Committee</td>
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<tr>
<td>ITT</td>
<td>Ispingo-Tiputini-Timbochacha</td>
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<tr>
<td>IUCN</td>
<td>International Union for Conservation of Nature</td>
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<tr>
<td>LFA</td>
<td>Land and Forest Allocation</td>
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<tr>
<td>MAB</td>
<td>Man and Biosphere Programme</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NAILSMA</td>
<td>North Australian Indigenous Land and Sea Management Alliance</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>PoWPA</td>
<td>Programme of Work on Protected Areas</td>
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<tr>
<td>PTG</td>
<td>Particularly vulnerable tribal group</td>
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<tr>
<td>RBA</td>
<td>Rights-based approach</td>
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<tr>
<td>REDD</td>
<td>Reducing Emissions from Deforestation and Forest Degradation in Developing Countries</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<td>---------</td>
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</tr>
<tr>
<td>SNP</td>
<td>Sagarmatha (Chomolungma/Mount Everest) National Park</td>
</tr>
<tr>
<td>TNC</td>
<td>The Nature Conservancy</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNDRIP</td>
<td>United Nations Declaration on the Rights of Indigenous Peoples</td>
</tr>
<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
</tr>
<tr>
<td>U.S.</td>
<td>United States of America</td>
</tr>
<tr>
<td>USD</td>
<td>American dollars</td>
</tr>
<tr>
<td>WCMC</td>
<td>World Conservation Monitoring Centre</td>
</tr>
<tr>
<td>WCPA</td>
<td>World Commission on Protected Areas</td>
</tr>
<tr>
<td>WCS</td>
<td>Wildlife Conservation Society</td>
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<tr>
<td>WGABS</td>
<td>Working Group on Access and Benefit Sharing</td>
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<tr>
<td>WI</td>
<td>Wetlands International</td>
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<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
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<tr>
<td>WWF</td>
<td>World Wide Fund for Nature/World Wildlife Fund</td>
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First and foremost, we must recognize and thank all of the community members, practitioners, policymakers, and lawyers who dedicate their lives to human rights and environmental causes. In the face of seemingly insurmountable challenges, your passion and tenacity provide inspiration and hope that we can indeed make our world a better place for future generations.

Many volunteers have enabled this issue of Policy Matters to come to fruition. The authors of the 35 articles and 4 book reviews responded to a call for contributions on rights-based approaches to conservation in early 2010 with enthusiasm and rigour. The experiences that they have written about elicit thought-provoking insights into the challenges and opportunities that we face in the application of rights-based approaches to conservation law, policy, and practice.

The peer review and article selection process was conducted anonymously and according to the areas of expertise of the editorial team members. All images have been used with the permission of the photographers and individuals in them. In this issue, you may notice two things in particular: we have chosen to capitalize “Indigenous peoples” and have strongly encouraged the limited use of acronyms. These are not just stylistic preferences to increase inclusivity and readability, but also modest statements about reclaiming the meaning of the words we use to communicate our experiences and thoughts.

I extend my heartfelt appreciation and thanks to the incredible editorial team that I had the pleasure of working with this year. Jessica Campese and Barbara Lassen in particular provided invaluable advice and overall support. Every member of the editorial team has dedicated countless hours to peer selection, review, and editing amidst their own extremely busy schedules. Thanks to Stan Stevens and Sandy Gauntlett for their ‘ad hoc’ editing assistance, to Janet Shrumm and Armelle Guignier for their French-English translations, and to Diego Noguera for his design expertise.

For their generous assistance with navigating the logistics of producing Policy Matters, thanks to Aroha Te Pareake Mead, Elizabeth Erasito, Claire Neri, Grazia Borrini-Feyerabend, Taghi Farvar, and Jeyran Farvar.

Last, but certainly not least, special thanks to Harry Jonas for his unending support, patience, and encouragement throughout this whole process.

I sincerely hope that you enjoy this issue of Policy Matters and that it stimulates critical and constructive ideas, dialogue, and action. I welcome any and all feedback and look forward to furthering the discourse on the right to diversity in conservation law, policy, and practice with you.

Holly Shrumm
Editor-in-Chief, Policy Matters 17
holly@naturaljustice.org
Tena koutou katoa, Greetings CEESP Members and partners,

It is with great pleasure that I have the honour of introducing you all to this latest edition of Policy Matters, which explores the theme of rights and diversity in conservation law, policy, and practice. The editorial team and contributing authors are to be congratulated for presenting you with a fascinating range of papers that examine and analyze new concepts, tools, initiatives, and mechanisms that promote pluralism in environmental law and conservation policy and practice.

I would like to acknowledge the peer review and editorial team of Holly Shrumm (Editor-in-Chief), Grazia Borrini-Feyerabend, Jessica Campese, Armelle Guignier, Wim Hiemstra, Harry Jonas, Barbara Lassen, Gary Martin, Elisa Morgera, Gonzalo Oviedo, Nonette Royo, Suneetha Mazhenchery Subramanian, and Terry Sunderland. I extend special thanks to all of the contributing authors, who, in spite of incredibly hectic schedules and commitments, contributed their time, analysis, and insight to write the papers included in this edition.

The concept and practice of pluralism and diversity is as old as human history. Indeed, the accommodation of multiple religious and cultural traditions, languages, and ways of knowing and interacting with the environment has been at the very core of human survival. Yet, there has been a tendency to ignore this history and advocate for unilateral or so-called ‘universal’ approaches to many national and international standard-setting instruments and processes. There is growing evidence to suggest that this approach is not working and has brought about devastating consequences for biological and cultural diversity, as well as the overall status of our environment.

In response to this, there are increasing numbers of civil society groups, particularly Indigenous communities and nations, who are attempting to reclaim and re-establish diversity as a constructive pathway for conservation law, policy, and practice. Global initiatives such as the Earth Charter, the World Assembly of Inhabitants, the World Parks Congress Durban Accord, the United Nations Declaration on the Rights of Indigenous Peoples, the Bariloche Declaration, the Draft Universal Declaration of the Common Good of the Earth and Humanity, and, more recently, the draft Declaration on the Rights of Mother Earth signal the desire to approach environment and development in different ways to meet different outcomes than what past processes have delivered. These initiatives, while diverse in origin, networks, and approach, share a common desire to build another possible world in which diversity and pluralism are embraced.

Diversity is well-understood by CEESP. The vision of CEESP is: “A world where equity is at the root of a dynamic harmony between people and nature, as well as among peoples; A world of diversity, productivity and integrity of natural systems; A world in which production and consumption patterns are sustainable; A world where cultural diversity is intertwined with biological diversity and both generate abundant livelihoods opportunities.” Members of CEESP have long promoted rights-based approaches to conservation. If one issue is central to the conservation of biodiversity and
the sustainable and equitable use of natural resources, this is undoubtedly governance. The CEESP Theme on Governance, Equity and Rights explains it in this way: “Clearly, governance depends on formal institutions, processes, tenure and access to resources and other legal rights. For instance, governance settings change dramatically when authorities open up to pluralism and recognize multiple interests and values in society. But governance also depends on history, culture, customary rights, access to information, presence of markets, financial flows and a variety of informal influences on decisions. Governance affects the achievement of the relevant management objectives (effectiveness), the sharing of costs and benefits (equity) and the generation and sustenance of community, political and financial support towards sound management of natural resources.”

This edition of Policy Matters elaborates these and many other issues associated with rights and diversity. I have every confidence that readers will benefit from the rich thoughts and experiences in the following pages.

The release of this edition coincides with the 10th Conference of the Parties of the United Nations Convention on Biological Diversity in Nagoya. A few months later, CEESP will be convening our first global conference in Whakatane, New Zealand, from January 11-15, 2011. Entitled “Sharing Power: A New Vision for Development”, the conference is a partnership between IUCN and CEESP and two Maori Indigenous organizations, Te Runanga o Ngati Awa (a tribal authority) and Te Whare Wananga o Awanuiarangi (a tribal university). The Conference will bring together scientists, economists, Indigenous leaders, youth, environmentalists, academics, policy makers in national governments, and international agencies to further explore many of the issues raised in this edition of Policy Matters, as well as other issues inherent in ‘Sharing Power’. I look forward to your feedback on this edition and to welcoming you to New Zealand for the Sharing Power Conference.

Aroha Te Pareake Mead
Chair, Commission on Environmental, Economic & Social Policy
EDITORIAL

EXPLORING THE RIGHT TO DIVERSITY IN CONSERVATION LAW, POLICY, AND PRACTICE

Holly Shrumm with Jessica Campese

THE EMERGENCE OF RIGHTS-BASED APPROACHES TO CONSERVATION

The conservation of biodiversity is critical not only to the viability of local livelihoods, but also to the very survival of our planet. However, global targets to significantly reduce rates of biodiversity loss by 2010, the International Year of Biodiversity, are far from being met. As the exploitation of natural resources for economic gain intensifies, biodiversity and the subsequent resilience of life-supporting systems are increasingly threatened. Many approaches to conservation have repeatedly failed to achieve their goals, often because they exacerbate the very underlying inequalities that drive the degradation of biodiversity. Overly simplistic approaches that perpetuate unfounded notions of terra nullius neglect to acknowledge the millennia of human interaction with nature and result in the widespread dispossession, marginalization, and impoverishment of Indigenous peoples, local communities, and minorities.

The current face of biodiversity conservation is a complex and dynamic interplay of legal, political, economic, and social-cultural factors. It is also increasingly driven by neo-liberal economic concepts such as payment for ecosystem services, which can, particularly when poorly designed or implemented, further contribute to dispossession and marginalization. Such policies often fail to recognize and respect the inextricable relationships between cultural and biological diversity, particularly between many Indigenous peoples’ and local and mobile communities’ customary ways of life (including traditional knowledge, innovations, and practices) and the conservation and sustainable use of biodiversity.

It is against this backdrop that an urgent focus has been placed on exploring the multi-dimensional linkages between rights and conservation. With a deepening understanding of the intricacies of biodiversity systems and their interactions with social and cultural systems, local communities, human rights advocates, conservationists, and law- and policy-makers alike are forging previously untenable relationships and testing new approaches to integrating their respective and collective aims. Consequently, international environmental law and policy is increasingly shifting away from the protectionist paradigm and towards a more realistic and socially responsive approach. This new paradigm is rooted within the acknowledgment that the pursuit of biodiversity conservation and human rights in isolation of each other will likely undermine both. Instead, they must be pursued simultaneously and in mutually supportive ways that contribute to the collective aims of environmental sustainability and human well-being.

There are various ways to engage with the myriad of linkages between rights and conservation, including: legal and advocacy campaigns and grassroots movements targeting alleged rights abuses linked to environmental destruction and biodiversity/natural resources conservation; case study documentation and academic reviews of conservation-related displacements; existing efforts, and further support for new and revitalized efforts, by Indigenous peoples and other local and mobile communities to secure their rights and bio-cultural diversity; and policy and practice changes by states.

4 See, for example, the work of the Centre for International Environmental Law (CIEL), the Federation of Community Forest Users, Nepal (FECOFUN), Kalpavriksh, Survival International, and many other organizations working at the intersections of human rights and the environment.
7 On forest tenure regimes, for example, see, Rights and Resources Initiative, 2008. Seeing People Through The Trees: Scaling Up Efforts to Advance Rights and Address Poverty, Conflict and Climate Change. RRI: Washington, D. C.
the private sector\(^9\), and civil society\(^8\) to better ensure tenure security and respect for rights in ecosystem management and conservation. As a cross-cutting theme, rights-based approaches to conservation, defined and operationalized in various ways\(^10\), are being developed and widely promoted.

Despite some important progress, substantive change in realizing rights and livelihood security through conservation initiatives remains elusive in many cases. Further, many communities face new and exacerbated threats due to, *inter alia*, climate change, biodiversity loss, and increased competition for and exploitation of land and other scarce resources. The integration of rights into conservation, including through rights-based approaches, is an emerging, challenging, and contested arena. Much work remains to be done to better understand the benefits, practical implications, limitations, risks, and opportunities of such approaches.

**Overview of Policy Matters 17**

The 17\(^{th}\) issue of Policy Matters builds upon the experiences and lessons of Policy Matters 15 (*Conservation and Human Rights*) and the 2009 volume, *Rights-based Approaches: Exploring Issues and Opportunities for Conservation*\(^11\), among other recent publications on related topics.\(^12\) As listed in the original call for contributions, the aims of Policy Matters 17 were:

- To discuss recent developments in rights-based approaches to conservation in relation to environmental law and policy;
- To constructively critique current environmental laws and policies from a rights-based perspective;
- To illustrate and analyze innovative *sui generis* systems and processes that recognize and uphold Indigenous peoples’ and local communities’ rights; and
- To propose practical ways forward to ensure the local integrity of environmental law and policy.

This issue of Policy Matters demonstrates significant and constructive advances in the integration of a diversity of rights into conservation law, policy, and practice. Although this progress continues against a backdrop of complex and sometimes seemingly insurmountable challenges, rights-holders and duty-bearers alike are creating new opportunities with which to overcome them, and raising fundamental questions to be further explored.

The opening section of articles reviews new and emerging initiatives that help duty-bearers ensure respect for and further fulfillment of rights. States and international governance organizations have advanced a variety of new laws and policies supporting community rights, including towards greater recognition of and protection for Indigenous customary law, bio-cultural heritage, and traditional knowledge internationally (Tobin) and in the South Pacific (Techera) and French Guiana (Karpé and Tiouka). In the context of forests and global climate change adaptation and mitigation, new policy and practice innovations are being developed and adopted by states internationally (Lovera) and in India (Dash), Vietnam (Sikor and Nguyen), Laos (Takahashi and Liang), and Ecuador (Warnars). Emerging initiatives, policies, and tools are also being promoted and carried out by non-state duty-bearers, particularly non-governmental conservation organizations and communities. These include efforts to advance new rights boundaries (Munson), raise awareness of and implementation capacity for rights-based approaches (Hitchner *et al*., Maffi, and Denier), and integrate rights into conservation practice, including monitoring and enforcing agreements and standards for conservation organizations (Springer *et al*., and Bennett and Woodman, extractive industries (Steiner), and urban areas (Alfsen *et al*.). While the effectiveness of these new and emerging laws, policies, and practices is mixed, they clearly indicate an emerging trend of duty-bearers themselves taking initiative to further advance and protect rights and diversity in conservation.

In the second section, articles address both long-standing and emerging ways to protect and promote the diversity of rights and customary ways of life of Indigenous peoples and local and mobile communities in relation to the sustainable use and

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\(^11\) Campese *et al*., 2009.

management of their territories and resources. Understanding and exercising rights can be a challenging but empowering process (Jonas et al.). Communities are gaining significant ground in the recognition and realization of rights related to livestock keepers (Köhler-Rollefson and Matthias), sacred sites in Guatemala (Gomez et al.) and Canada (Mameamskum et al.), protected areas in the United States (Villalba), Indigenous peoples’ and community conserved areas in Australia (Kennett et al.) and India (Mishra), forests in Indonesia (Johnstone), Cameroon (Oyono et al.), and Brazil (Gomes et al.), and access and benefit sharing in India (Hariramamurthy and Nair). These experiences and insights illustrate the complexities of applying rights-based approaches within local realities, as well as innovative ways that communities and other rights-holders are taking ownership over the diversity of laws, policies, and practices that affect their lives.

The articles in the final section deal most directly with challenges and barriers to the recognition and realization of a diversity of rights. Some of the mechanisms put in place to conserve biodiversity may in fact undermine the rights of Indigenous peoples and local communities (Morel), including those related to Indigenous peoples’ and community conserved areas in Nepal (Stevens) and Mexico (Martin et al.), access and benefit sharing (McDermott and Wilson) and marine protected areas (Gardner and Morales) in Canada, and protected areas (Madzwamuse), traditional knowledge (Crawhall), and natural resource governance (Nelson) in Africa. Against a backdrop of legal, political, economic, and social-cultural limitations and risks, the transition from the theory, law, and policy to the practice of rights-based approaches is no small feat. Even where de jure recognition exists, the de facto realization of rights requires significant political will, financial, technical, and human resources, and a genuine commitment to power-sharing that is, in practice, rare. It is clear that rights-based approaches to conservation are not a panacea. In some cases, they may even contravene other efforts to secure local livelihoods and conservation objectives if situations are viewed only from a rights-based perspective. However, within every challenge lies an opportunity, and duty-bearers and rights-holders must engage in constructive dialogue to understand and seek innovative synergies to mutual responsibilities and benefits.

This issue of Policy Matters raises many critical questions that should continue to be explored, including:

- What are the fundamental aims, elements, and strengths of rights-based approaches to conservation? How can they be fulfilled in practice?
- What is the value or advantage of rights-based approaches to conservation in relation to other approaches?
- What are the fundamental limitations and risks of rights-based approaches? How can they be overcome?
- What are the relationships between international, national, and customary law? In what contexts do they contravene each other? In what contexts can they be mutually reinforcing?
- What are the rights, responsibilities, and duties of various stakeholders in the conservation, sustainable use, and sharing of benefits of biodiversity (for example, communities, researchers, extractive industries, non-governmental organizations (NGOs), and government agencies)? How can overlapping or conflicting rights, responsibilities, and duties be addressed?
- What methodologies and sui generis systems can be used to uphold the substantive and procedural rights of Indigenous peoples and local communities? What are their common features?
- How can a diversity of local rights-based approaches be supported in law, policy, and practice without undermining their integrity?
- What are the fundamental and structural changes that need to occur to ensure the local integrity of conservation law, policy, and practice?
- What role can or should the concept of pluralism play? What are the risks and opportunities of calling for pluralism in conservation?
- Is there an emerging right to diversity in conservation law, policy, and practice? What would the right to diversity mean and how would it be operationalized?

Overall, Policy Matters 17 exemplifies some of the substantial and promising advancements around the world to realize a wide range of rights under customary, national, and international law. While some of these rights are implicitly linked to communities’ customary systems of ecosystem management, others are being innovated upon and adapted to local contexts in response to emerging challenges and opportunities. Many of the articles also provide persuasive arguments for engaging in constructive dialogue with other stakeholders towards shared aims; this is a notable advancement from the earlier, more adversarial discourse on rights-based approaches. It is clear that significant traction has been gained and that rights-holders and duty-bearers alike are carving out new spaces in law, policy, and practice for the pursuit of mutual aims.
Rights, Responsibilities, and Duties

The discourse on rights-based approaches to conservation is increasingly focusing on the linkages between rights and corresponding responsibilities and duties. According to renowned World War II-era scholar Simone Weil, rights only exist in relation to corresponding duties and obligations, which transcend the world of competing interests in the pursuit of justice. As such, every right is accompanied by responsibilities and duties to the self and to other individuals and collectives, including non-human. In this sense, rights-based approaches to conservation are not simply defensive demands by marginalized groups, but are commitments to work constructively towards consensus on the basis of mutual recognition of parties’ respective rights, responsibilities, and duties.

There are challenging questions about the nature and scope of these rights, responsibilities, and duties. Respecting, protecting, and fulfilling human rights have typically been the responsibility of states. However, what are the practical implications of these responsibilities in the context of ecosystem management systems that are driven by a diversity of local, national, international, and inter-generational uses and values? When states fail to sufficiently fulfill their duties, what are the obligations of non-state actors such as businesses and NGOs to respect rights? How (and by whom) is their compliance ensured?

The international conservation community should be encouraged to explore these questions in practice, particularly where conservation and rights objectives are indeed in conflict. In such cases, difficult trade-offs must be made and internationally accepted standards are likely to be replaced by social rules and regulations that are more nuanced to the local context. In some cases, integrating rights into conservation objectives may be an obvious and fairly straightforward undertaking. However, it is precisely the complex and uncertain situations in which we must all become more politicized and engaged, as those situations likely have the most at stake for the mutual aims of human rights and well-being and conservation. It is arguably no longer acceptable for conservationists to claim to be impartial, third party bystanders. Agreement is emerging that non-state actors have the responsibility to not infringe upon people’s enjoyment of their basic rights, even in the absence of state enforcement. Some argue that third parties such as NGOs also have responsibilities to help ensure their own partners and those who they influence also respect rights.

Additional difficulties arise in the context of competing rights, responsibilities, and duties. Customary, state, and international legal regimes all have different sets of values, norms, and priorities that define rights and responsibilities in different contexts. For example, what are the rights to development, particularly when an individual or community’s development vision is not easily reconciled with conservation objectives? What are the mutual responsibilities of communities sharing or competing for scarce resources? What are our obligations towards future generations, and how can these be reconciled with present needs? In a context of global scarcity and climate change, what are the responsibilities of high-consumption countries to create an enabling environment in which all peoples can enjoy a diversity of rights? It is impossible to give an unequivocal answer about which legal system and corresponding interpretation of rights, responsibilities, and duties is ‘correct’ and in what context. In cases of conflict, even if certain international standards are available, each situation should be dealt with on a case-by-case basis in light of the local legal, political, economic, environmental, and socio-cultural realities. In general, it is imperative to continue to explore the linkages between rights and corresponding responsibilities and duties, particularly in complex situations with multiple legal realities at play.

The Right to Diversity in Conservation Law, Policy, and Practice

Diversity is key to survival and well-being; any attempts to conserve diversity must be diverse themselves. For example, many Indigenous peoples’ and local and mobile communities’ customary laws, norms, and values uphold systems of ecosystem management on the basis of social equity, endogenous development, self-governance, and self-determination. Many such communities view humans as just one part of the broader Earth system and have customary rights, responsibilities, and duties enshrined within diverse understandings of the laws of nature. In this sense, some customary systems are expressions of the plurality of approaches to conservation and offer invaluable insights into the social ties that serve as

checks and balances to our use of natural resources.

Our world boasts a great deal of biological, cultural, and linguistic diversity, but we are losing them quickly, along with the corresponding capacity to adapt to change. If diversity and adaptation are a foundation of our survival and well-being, then a legal system that attempts to regulate them but instead undermines them is destined to fail, lacks integrity, and is inherently unjust. In a time of increasing uncertainty and environmental and social change, legal and policy systems must themselves be diverse and adaptive. What is needed is legal resilience and recognition of the right to diversity – in essence, the right to challenge the structural status quo that marginalizes pluralism in conservation law, policy, and practice. Although it may not be a right in itself, the right to diversity could be conceptualized as a call for recognizing that, when asserted concurrently and in mutually reinforcing ways, the totality of the bundle of procedural and substantive rights already enshrined in customary, national, and international law is greater than the sum of their parts.

In the context of rights-based approaches to conservation, pluralism should be reclaimed as an enabling framework for constructive dialogue that acknowledges and respects diversity as inherently valuable and necessary to our survival and well-being. Subscribing to pluralism in this sense means subscribing to a framework of open-mindedness in which a diversity of conservation approaches (including customary uses, local institutions, and so on) have the opportunity to be manifest, supported, critiqued, and further innovated upon. Adaptive dialogue and social learning enable the negotiation of new legal spaces and rights and contribute to the groundswell of local efforts to reclaim the law and take ownership over the mechanisms that are in place to regulate our lives. Doing so establishes a positive feedback loop of recognizing and valuing a diversity of approaches to conservation at the local level that is necessary to enable the corresponding adaptation and innovation of diversity within legal and policy frameworks.
