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Legal Empowerment of Local Communities: a Role for International Environmental Law?

## ABSTRACT

The international arena has seen, in the last few decades, the emergence of a variety of non-state actors, including, in the area of environment, the ill-defined entity of "local communities. A gradual emphasis on bottom-up approaches to sustainable development has entered the scholarly literature and penetrated the prescriptions of international agencies to establish these groups as indispensable actors and their empowerment a necessary condition in the struggle against global challenges. The definition of local communities and prescriptions for their empowerment are examined in international environmental soft and hard law instruments, in particular such as the Rio Declaration, Agenda 21 and the Convention on Biological Diversity. From this the concepts of indigenous issues and traditional knowledge appear particularly relevant. The reflection then proceeds to establishing how these sub themes translated and adapted into the national legal systems of Costa Rica, Mongolia and Tanzania. It follows that XX. A series of prescriptions is derived from these case studies. Those are directed at the state parties of the Convention on Biological Diversity, already at the forefront of reflection on the issue. The author also suggests provisions directed at the parties of the Kyoto Protocol, seeking to use and improve the mechanisms of carbon finance so that they benefit local rural and forestry while providing them incentives to conserve and sustainable exploit natural resources that can function as carbon sequestration. Underlying the issue is a need for secure tenure in developing countries.

## GLOSSARY OF ACRONYMS AND TERMS

CAMPFIRE: Zimbabwe's "Communal Areas Management Programme For Indigenous Resources"

CBD: Convention on Biological Diversity

CBNRM: Community-based Natural Resource Management

CDM: Clean Development Mechanisms

COP: Conference of the Parties

FAO: Food and Agriculture Organization

UN: United Nations

UNCCD: United Nations Convention to Combat Desertification

UNDP: United Nations Development Programme

UNFCCC: United Nations Framework Convention on Climate change

*In situ*: refers to on-site conservation.

*Sui generis*: unique in its characteristics

## Introduction

The international arena has seen, in the last few decades, the emergence of a variety of non-state actors, such as non-governmental organizations and the private sector. A gradual shift towards a combination of top-down and bottom-up approaches to sustainable development has entered the scholarly literature and penetrated the prescriptions of United Nations (UN) agencies, the World Bank, and countless NGOs. Local communities are also increasingly seen as indispensable actors and their empowerment a necessary condition in the struggle against global challenges<sup>1</sup>, be they peace-building activities<sup>2</sup>, epidemics initiatives<sup>3</sup>, disaster relief<sup>4</sup>, education endeavors<sup>5</sup> or poverty reduction<sup>6</sup>. With regards to environmental issues in particular, involvement of local communities is addressed in a flourish of enthusiastic scholarly work on community-based natural resource management (CBNRM) and conservation on topics as varied as eco-agriculture, beekeeping or coral reef management. Such groups, because of their close relationships with the natural resources they depend upon, are now considered not only as users but also as potential environmental stewards, and their efforts are promoted or rewarded by international institutions<sup>7</sup>, complementing - and at times by-passing- the actions of the nation state.

Who exactly is referred to when discussing local communities from a global, policy-oriented perspective? Merriam-Webster defines community as "a group of people with a common characteristic or

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<sup>1</sup> United Nations "Community Commons"- Local Perspectives on Millennium Development Goals," Press Conference, 20 June 2005, 22 Mar. 2007 <[http://www.un.org/News/briefings/docs/2005/MDGs\\_Press\\_Conference\\_050620.doc.htm](http://www.un.org/News/briefings/docs/2005/MDGs_Press_Conference_050620.doc.htm)>.

<sup>2</sup> International Crisis Group, "Egypt's Sinai Question," Middle East/North Africa Report 61 (2007), 22 Mar. 2007 <[http://www.crisisgroup.org/library/documents/middle\\_east\\_north\\_africa/egypt\\_north\\_africa/61\\_egypts\\_sinai\\_question.pdf](http://www.crisisgroup.org/library/documents/middle_east_north_africa/egypt_north_africa/61_egypts_sinai_question.pdf)>.

<sup>3</sup> Ann Leonard and Armandbanu Khan, eds. Community-Based AIDS Prevention and Care In Africa: Building On Local Initiatives, Case Studies from Five African Countries, Population Council, 1 May 2006, 29 Mar. 2007 <<http://www.popcouncil.org/ebert/wellbriefing.html>>

<sup>4</sup> United Nations, "Building Sustainable Communities Key to Reducing Vulnerability to Natural Hazards, Secretary General Says on International Day for Disaster Reduction," Press Release SG/SM/8909, 30 Sept. 2003, 22 Mar. 2007 <<http://www.un.org/News/Press/docs/2003/sgsm8909.doc.htm>>.

<sup>5</sup> Save the Children, Mission and Programs, 22 Mar. 2007 <<http://www.savethechildren.org>>.

<sup>6</sup> United Nations Development Programme, Capacity Development Group, "UNDP and Community Action: The Concept Behind the Community Action 2015 Group," (2003), 22 Mar. 2007 <[http://www.undp.org/community/concept2\\_CA.htm](http://www.undp.org/community/concept2_CA.htm)>.

<sup>7</sup> Arun Agrawal and Clark G. Gibson, "Enchantment and Disenchantment: the Role of Community in Natural Resource Conservation," World Development 27.4 (1999): 631. Examples of organizations supporting community-based natural resources management are the World Bank, IDRC, SIDA, CIDA, Worldwide Fund for Nature, Conservation International, the Nature Conservancy, the Ford Foundation, the Mac Arthur Foundation and USAID.

interest living together within a larger society"<sup>8</sup>. The "local" qualifier adds a spatial requirement that rules out broader definition focusing solely on common interest. Case studies focus on the particular<sup>9</sup>, prompting Murphree to remark that "community is an ambiguous term that eludes unequivocal definition. Nevertheless, the concept persists, indicating that it subsumes certain enduring and relatively ubiquitous organizational and institutional principles".<sup>10</sup> Yet amongst the recurring characteristics that seem most salient to development scholars are a small spatial unit, a homogeneous social structure and shared norms, as catalogued by Agrawal and Gibson.<sup>11</sup>

The systematic penetration of this bottom-up approach in global policies has led to a codification in international environmental law. From the seminal 1992 Rio Declaration to the working mechanisms of the Convention on Biological Diversity, empowerment of local communities is slowly being sketched. This paper will seek to show how international environmental legal regimes are defining and refining the fluid concept of local communities and the tools to grant them new rights and responsibilities, and under which conditions these can be claimed. To which extent the national legislative systems in Costa Rica, Mongolia and Tanzania have embraced these prescriptions will then be examined and will provide a basis for prescriptions for legal environmental regimes.

One assumption will be that community involvement, in its large majority, is beneficial to sustainable development. This idea is still widely debated<sup>12</sup>: a brief look at the 25 finalists of the 2006 Equator Prize, a United Nations Development Programme (UNDP) initiative recognizing community action

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<sup>8</sup> "Community," def.1.d, Merriam-Webster Dictionary, 2004 ed. (Merriam-Webster).

<sup>9</sup> Western and Wright, eds., Natural Connections: Perspectives in Community-based Conservation (Washington, DC: Island Press, 1994).

<sup>10</sup> Marshall W. Murphree, "The Role of Institutions in Community-Based Conservation," Natural Connections: Perspectives in Community-Based Conservation. Western and Wright, eds. (Washington, DC: Island Press, 1994) 403-427.

<sup>11</sup> Agrawal 630. The authors strongly objected to these conceptions, noting instead the heterogeneity of actors and interests within groups, and the relevance of the influence of internal and external institutions on local decision-makers.

<sup>12</sup> Anna Knox and Ruth Meinzen-Dick, "Collective Action, Property rights, and Devolution of Natural Resource Management," CAPRI Working Papers 11 (2001), 22 Mar. 2007 <<http://www.capri.cgiar.org/pdf/capriwp11.pdf>>.

towards the conservation of biological diversity and poverty reduction<sup>13</sup>, clearly paint stories of communities overexploiting their resources before their members established more sustainable practices. Yet this paper will assume that traditional wisdom had in these cases ceded to the perverse incentives of open and unregulated access areas precisely because communities were not formally given more control over them. Proper impulse, support, incentives and guidance, this paper will presuppose, can be provided by legal systems. A second and related assumption will be that national legislative systems are essential to establishing solid grounds for community participation, as opposed to the case-by-case approaches often put forward in the development literature.

## **Part 1: Communities and Empowerment in International Environmental Law**

Understanding of the concept of legal empowerment of communities implies deconstructing it into the questions of: 1) how do international environmental instruments, soft or hard, address and define communities? and 2) how do they prescribe empowerment?

### **I.1 A brief review of relevant international instruments**

#### **I.1.1 Soft laws**

The Rio Summit<sup>14</sup> marked the first codification of the role of local communities in environmental matters, starting with the seminal Principle 22 of the Rio Declaration:

*“Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”<sup>15</sup>*

Agenda 21, the UN blueprint for sustainable development resulting from the Rio Summit, further emphasized the importance of rethinking environmental management with approaches involving local interests and talents. As a result, “local communities” are ubiquitous throughout the document. Whether

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<sup>13</sup> Equator Prize 2006 Finalists, *Equator Initiative*, ed. United Nations Development Programme, 29 Mar. 2007 <<http://www.undp.org/equatorinitiative/equatorprize/EquatorPrize2006/2006-finalists.htm>>.

<sup>14</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3 to 14 June 1992.

<sup>15</sup> Rio Declaration on Environment and Development Principle 22, Aug. 12, 1992, United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I) (1992) [hereinafter Rio Declaration].

under the phrasings local communities, local community organizations, or local community level, Agenda 21 uses the concept over seventy times, as shown in Annex I. The phrase is at times equated to a type of organization: “international, non-governmental and local community organizations”<sup>16</sup> or “private sector, local communities, NGOs and scientific institutions”<sup>17</sup>. At times it is utilized as a term encompassing others: “local communities and resource users [...] particularly relevant for rural and urban populations, indigenous, women and youth groups”<sup>18</sup>. Chapter 3, centered on poverty reduction, has a section on empowering communities, here defined as “people’s organizations, women’s groups and NGOs”. Quite interestingly, although the term is omnipresent throughout section I and II, it does not appear in Section III, which calls for “strengthening the role of major groups” such as indigenous people (Chapter 26), non-governmental organizations (Chapter 27), workers and trade unions (Chapter 29), farmers (Chapter 32) and other actors of sustainable development. This may be taken as an indication that “local communities” encompasses any such organization as long as it responds to the local constraint. For example, when Agenda 21 calls directly on local communities to enact a series of measures<sup>19</sup> against desertification, it may simply be envisioning the lowest level of government.

As another landmark non-binding document, the 2002 Report of the World Summit on Sustainable Development mentions indigenous and local communities with regards to agriculture, ecotourism, biodiversity, forestry and health<sup>20</sup>. Yet the related Johannesburg Declaration, which only mentioned the “vital role of indigenous peoples” in a one-line article contrasting with the Rio Declaration<sup>21</sup>, failed to extend the recognition to local communities. One can speculate that this rather vague and incomplete phrasing reflects the persistent North/South divide regarding intellectual property. The argument would be supported

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<sup>16</sup> Agenda 21: Programme of Action for Sustainable Development art 3.8, June 14, 1992, UN Doc A/Conf.151/26 (1992) [hereinafter Agenda 21].

<sup>17</sup> Agenda 21 art 5.14.

<sup>18</sup> Agenda 21 art 40.11.

<sup>19</sup> Agenda 21 art 12.23.

<sup>20</sup> Report of the World Summit on Sustainable Development art 40, 43, 44, 45 and 53, Sept. 4, 2002, A Conf. 199/20 (2002).

<sup>21</sup> Johannesburg Declaration on Sustainable Development art 25, Sept. 4, 2002, A Conf. 199/20 (2002).

by the fact that members of civil society present at the Summit drafted their own “Johannesburg Declaration on Biodiversity, Biopiracy and Community Rights”<sup>22</sup>, a document focused on the protection of traditional knowledge that expressed in powerful language the relevance of “local communities, indigenous peoples, farmers and in particular women”.<sup>23</sup>

### 1.1.2 International conventions

The Rio Summit saw the signature of two major conventions, the UN Framework Conference on Climate Change (UNFCCC)<sup>24</sup> and the Convention on Biological Diversity (CBD)<sup>25</sup>, and accelerated negotiations towards the 1994 UN Convention to Combat Desertification (UNCCD)<sup>26</sup>. The UNCCD and CBD drew from Agenda 21 and integrated definite language on a role for local communities. Although in its exhortation to states to engage all levels of civil society the UNCCD refers to local *populations*, rather than *communities*, the Regional Implementation Annexes, and in particular Annex 1 for Africa<sup>27</sup>, use “local populations”, “local communities” at and times “local groups”.<sup>28</sup>

Yet few legal regimes have honed on the concept of local communities in more details than the Convention on Biological Diversity and documents arising from its Conferences of Parties (COPs). The CBD, whose main areas of focus are the conservation and sustainable use of biodiversity as well as fair and equitable sharing of benefits arising from its use, is the first legal document that expressly recognized, in its preamble, the “close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources.”<sup>29</sup> National obligations towards indigenous and

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<sup>22</sup> Johannesburg Declaration on Biodiversity, Biopiracy and Community Rights, Aug. 2002, 28 Mar. 2007 <<http://72.14.205.104/search?q=cache:yEzHwdaqJM0J:joburgmedia.net/docs/200209010848145343.rtf+Johannesburg+declaration+local+communities&hl=en&ct=clnk&cd=1&gl=us>> [hereinafter Johannesburg II].

<sup>23</sup> Johannesburg II Preamble.

<sup>24</sup> United Nations Framework Convention on Climate Change, May 9, 1992, 1771 UNTS 107 (1992) [hereinafter UNFCCC].

<sup>25</sup> Convention on Biological Diversity, Jun. 5, 1992, 1760 UNTS 79 (1992) [hereinafter CBD].

<sup>26</sup> United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Jun.17, 1994, 1954 UNTS 3 (1994) [hereinafter UNCCD].

<sup>27</sup> UNCCD Annex I uses term “communities” in six articles, while the much shorter Annex II (Asia) and Annex III (Latin America) list it only once, both in article 4.

<sup>28</sup> UNCCD Annex I art 4.2.b, 6.2, 8.1, 8.2.c, 8.3.c.ii, 9.a, 11.g, and 19.a.

<sup>29</sup> CBD preamble.

local communities are above all promoted in the oft-discussed article 8(j) related to *in situ* conservation, which reads:

*“Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”<sup>30</sup>*

Interpretation of the provisions of article 8(j) is still ongoing and the working group devoted to its clarification has informed three important sets of non-binding guidelines. First, the 2002 Bonn Guidelines<sup>31</sup>, meant to assist parties in establishing legislative and policy measures on access to genetic resources and benefit-sharing, refer to local communities as stakeholders that deserve special attention. Although they are not legally binding, the Guidelines were adopted unanimously by more than 180 state parties at COP6, a quasi consensus on the international scene that gives them a certain legal authority and may inform the work of the World Trade Organization and World Intellectual Property Organization on related matters<sup>32</sup>. The development of an International Access to Benefit-Sharing regime<sup>33</sup> that will draw on the Bonn Guidelines and would be legally binding is an ongoing, and animated, debate. Second, the Akwé: Kon Guidelines suggest a ten-step process to assess the cultural, environmental and social impact of proposed development on sites that are “sacred” or have been “traditionally occupied”<sup>34</sup> by indigenous and local

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<sup>30</sup> CBD art 8(j).

<sup>31</sup> Conference of the Parties to the Convention on Biological Diversity, The Hague, Netherlands, 7-19 Apr. 2002 [CBD COP6] Decision VI/24 “Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization,” Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Sixth Meeting UNEP/CBD/COP/6/20 (2002) <<http://www.biodiv.org/doc/decisions/COP-06-dec-en.pdf>> [hereinafter Bonn Guidelines].

<sup>32</sup> David Vivas, “CBD & the Bonn Guidelines on Access & Benefit-Sharing,” South Bulletin 48, 2 May 2002, 22 Mar. 2007 <<http://www.southcentre.org/info/southbulletin/bulletin48/bulletin48-03.htm>>.

<sup>33</sup> Paragraph 1 of COP6 Decision VIII/19 D mandates the *ad-hoc* working group on article 8 (j) to elaborate and negotiate such a regime to effectively implement the provisions of article 15 and 8(j).

<sup>34</sup> Conference of the Parties to the Convention on Biological Diversity, Kuala Lumpur, Malaysia, 9–20 Feb. 2004. [hereinafter CBD COP7], Decision VII/16.F. “Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities” Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting UNEP/CBD/COP/7/21 (2004). <<http://www.biodiv.org/doc/decisions/COP-07-dec-en.pdf>>.

communities. Third, and finally, the 2004 Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity employ the phrase “indigenous and local communities” no less than five times<sup>35</sup>, the introduction placing them on equal footing with governments, private sector and resource managers under the general term of ‘stakeholders’.

Other recent legal regimes have carved a role for local communities. In 1999, a resolution emerging from the COP to the 1971 Ramsar Convention on Wetlands<sup>36</sup>, which provided a framework for international cooperation on the use of wetlands and their resources, adopted “Guidelines for establishing and strengthening local communities’ and indigenous people’s participation in the management of wetlands”<sup>37</sup>. Since the original convention language did not specifically mention local communities, one can speculate that this new language was inspired by the landmark environmental regimes spurred by the Rio Summit. The phrase “local and indigenous peoples”, it is explained, is interchangeable with “indigenous and local communities”<sup>38</sup>, and efforts were made to clarify the terms as will be detailed below. It may also be relevant to note that the 2001 International Seed Treaty<sup>39</sup> draws from the CBD and complements the Bonn Guidelines to recognize the “enormous” contribution by local and indigenous communities and farmers<sup>40</sup>. It calls on states to “promote and support, as appropriate, farmers and local communities’ efforts”<sup>41</sup> to conserve on-farm genetic resources, and indigenous and local communities’ initiatives for *in situ* conservation of wild plant species<sup>42</sup>.

### **I.1.3 Other sources of international law**

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<sup>35</sup> CBD COP 7, Decision Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity Decision VII.12 (2004) [hereinafter Addis Ababa Guidelines].

<sup>36</sup> Convention on Wetlands of International Importance especially as Waterfowl Habitat, Feb. 2, 1971, 996 UNTS 245 (1971) [hereinafter Ramsar Convention].

<sup>37</sup> Conference of the Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, San José, Costa Rica, 10-18 May 1999, Decision VII.8, Annex “Ramsar Guidelines for Establishing and Strengthening Local Communities’ and Indigenous People’s Participation in the Management of Wetlands” (1999) [hereinafter Ramsar Guidelines].

<sup>38</sup> Ramsar Guidelines art 9.

<sup>39</sup> Food and Agriculture Organization International Treaty on Plant Genetic resources for Food and Agriculture, Nov. 3, 2001, 128 parties as of April 2007 <[ftp://ftp.fao.org/ag/cgrfa/it/ITPGRRe.pdf](http://ftp.fao.org/ag/cgrfa/it/ITPGRRe.pdf)> [hereinafter International Seed Treaty]

<sup>40</sup> International Seed Treaty art 9.1.

<sup>41</sup> International Seed Treaty art 5.1.c.

<sup>42</sup> International Seed Treaty art 5.2.d.

The decisions from international courts, which constitute a subsidiary source of international law, are scarce on matters of local communities. The Permanent Court of International Justice noted in a 1930 advisory opinion that the "existence of communities is a question of fact, and not [ . . . ] of law."<sup>43</sup>, hinting that interpretation of the word would be largely context dependent. Little more can be drawn from this case, which focuses on Greco-Bulgarian minorities and touches on a concept that has largely evolved in over 75 years. Finally, at the regional level, the Organization of the African Union's model law proposed to define a community as "a human population in a distinct geographical area, with ownership over its biological resources, innovations, practices, knowledge and technologies governed partially or completely by its own customs, traditions or laws"<sup>44</sup>.

## I. 2 Clarifying the shape and role of "local communities"

### I.2.1 Who are local communities?

The sociological understanding of a term differs from its legal implications<sup>45</sup>, and none of the soft law or binding regimes above provide a definition for local communities. The context in which the term is used, the other actors it is associated with, and defining practices however sketch a deeper understanding.

#### *(a) How local?*

In an attempt to delineate legitimate conditions for the involvement of communities, the 1999 Ramsar Guidelines stated that "the case [is] even stronger when [inter alia] local stakeholders have historically enjoyed customary/legal rights over the wetland"<sup>46</sup>. This reinforces the notion that a certain permanence of a group in the given area is a necessary condition to claim certain rights or empowerment. Because this may be problematic for migrating communities such as pastoralists or certain fisherfolks, the

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<sup>43</sup> The Greco-Bulgarian 'Communities'-Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, Signed at Neuilly-Sur-Seine on November 27th, 1919 (Advisory Opinion), PCIJ 1930 (ser. A/B), No 17.

<sup>44</sup> African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources Part II.1, Algeria, 2000, 22 Mar. 2007 <[http://www.grain.org/brl\\_files/oau-model-law-en.pdf](http://www.grain.org/brl_files/oau-model-law-en.pdf)>.

<sup>45</sup> Janet Blake, "Some Thoughts on 'Communities', 'Groups' and 'Individuals' in International Law," Expert's Report, Meeting on Community Involvement in Safeguarding Intangible Cultural Heritage: Towards the Implementation of the 2003 Convention 13-15 Mar. 2006, UNESCO and ACCU, 22 Mar. 2007 <[http://www.accu.or.jp/ich/en/pdf/c2006Expert\\_Janet\\_BLAKE\\_1.pdf](http://www.accu.or.jp/ich/en/pdf/c2006Expert_Janet_BLAKE_1.pdf)>.

<sup>46</sup> Ramsar Guidelines art 5.

Ramsar Guidelines remark that “‘local’ is a relative term; some stakeholders may live at a distance from the wetland [...] and still have traditional claims to its resources”.<sup>47</sup> Some development scholars have used the “local or mobile communities” phrasing as not to exclude the latter from having a voice in co-management decisions.<sup>48</sup> However, groups that lack formal or legal recognition or documentation of their links to a land, held under customary law for example, may still be excluded from empowering measures. Furthermore, even though the word “local” rules out networks, the issue of size is not addressed. Indeed, the CBD, UNCCD or Ramsar Convention do little to determine an efficient scale for resource management by communities.

### ***(b) Indigenous peoples***

A manifest observation is that *local* communities are often, although not systematically, paired with *indigenous* communities. From “indigenous people and their communities and other local communities” (Rio Declaration) to “indigenous and other local communities” (found twenty-three times in Agenda 21) and “indigenous and local communities” (CBD), the terms are practically inseparable. Much of the complexity of clarifying “local community” arises from the close association of these terms. Indeed, indigenous and local communities do not have the same bundle of recognized rights in Human Rights Law<sup>49</sup>. The 1957 and 1989 Indigenous and Tribal Populations Conventions of the International Labor Organization (ILO)<sup>50</sup>, the Declaration on the Rights of Indigenous Peoples adopted by the Human Rights Council<sup>51</sup>, as well as commitments from the European Bank for Reconstruction and Development, the Asian Development Bank and the African Development Bank all specifically address indigenous issues. Indigenous communities also

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<sup>47</sup> Ramsar Guidelines art 9.

<sup>48</sup> Grazia Borrini-Feyerabend et al., Adrian Phillips, series editor, “Indigenous and Local Communities and Protected Areas Guidelines – Towards Equity and Enhanced Conservation,” Best Practice Protected Area Guidelines Series 11, IUCN – The World Conservation Union, 2004, 7.

<sup>49</sup> Darrell A. Posey and Graham Dufield, Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities, International Development Research Centre, Ottawa, 1996.

<sup>50</sup> Indigenous and Tribal Populations Convention, June 16 1957, International Labour Organization Convention No. 107, and Convention concerning Indigenous and Tribal Peoples in Independent Countries, June 27 1989, ILO Convention No. 169.

<sup>51</sup> United Nations Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council on 29 June, 2006, <<http://www.un.org/esa/socdev/unpfii/en/declaration.html>>. It has not been, however, adopted by the United Nations General Assembly.

have a Permanent Forum at the United Nations<sup>52</sup>, a Special Rapporteur at the Commission of Human Rights<sup>53</sup>, and the years 2006 to 2015 were declared the Second Decade of the World's Indigenous people<sup>54</sup>.

Whether these instruments have consolidated the rights of indigenous people or not, they have brought considerable attention to the issue. As the volume of literature testifies, indigenous issues are studied and debated much more extensively than the other local communities that share space with them in international regimes. Yet here again issues of definitions are unresolved. The Working Group which presented in 1986 the Draft Declaration deliberately avoided providing a specific definition of indigenous peoples because "historically, indigenous peoples have suffered from definitions imposed by others"<sup>55</sup>. Key elements in the accepted definition of "indigenous" in the international framework comprise:

*"self-identification, descent from a territory before an act of conquest, possession of a common land and a distinct history, language, and culture regulated by customary laws, exclusion or marginalization from political decision-making and claims for collective rights that are unrecognized by the state."*<sup>56</sup>

Taken together, these criteria sketch a much narrower understanding than the sociological meaning of community described above. From this is easily derived the conclusion that indigenous communities are simply subsets of local communities. The pairing of the terms in international environmental regimes leads to two possible interpretations. In the first one, indigenous communities are simply highlighted in recognition of the volume of human rights discourse on indigenous-specific matters. A second interpretation would infer that the rights granted to indigenous communities should be extended to any local community.

A conversation with Mr. Delfin Ganapin, Under-Secretary for the Environment of the Philippines and

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<sup>52</sup> United Nations Permanent Forum on Indigenous Issues, 2006, ECOSOC, New York, 16 Mar. 2007 <<http://www.un.org/esa/socdev/unpfii/>>.

<sup>53</sup> Commission on Human Rights, Resolution 2001/57 (2001).

<sup>54</sup> The first Decade was 1994 to 2005, following the first Year of Indigenous Peoples in 1993.

<sup>55</sup> Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, E/CN.4/Stib.2/AC.4/1995/3.

<sup>56</sup> Francesco Mauro and Preston D. Hardison, "Traditional Knowledge of Indigenous and Local Communities: International Debate and Policy Initiatives," Ecological Applications 10.5 (2000): 1263-1269.

representing his country at the negotiations on Agenda 21, seemed to indicate that the second hypothesis prevails.<sup>57</sup> Indonesia in particular resented the original reference to “indigenous communities” only, arguing that local farmers also detained valuable local knowledge of biodiversity and had developed through many years of farming local varieties that could be said to originate from their efforts. The campaigning for more inclusive phrasing concluded with the term “local and indigenous”. Yet to this date the majority of CBD reports illustrate their case studies with examples from groups self-labeled as indigenous.

### *(c) Traditional knowledge*

Linked to indigenous issues is the concept of traditional knowledge, which replaces the expected “local knowledge” in article 17 and 18 of the CBD which mention “indigenous and traditional knowledge/technologies”. Traditional knowledge includes in its largest interpretation a broad range of matters such as “traditional agriculture, knowledge of natural resources, biodiversity and medicinal knowledge and folklore”<sup>58</sup>. To what extent does it differ from *indigenous* knowledge? The terms are often utilized with scarce attempts to distinguish them from one another<sup>59</sup>. Agenda 21 linked traditional knowledge exclusively to “indigenous people and their communities”<sup>60</sup> but the CBD Working Group on article 8(j) expanded the definition to “the knowledge, innovations and practices of indigenous and local communities around the world”<sup>61</sup>. The working group added that it necessitated: 1) an element of time (“developed from experience gained over the centuries”) 2) lack of written codification (“is transmitted orally from generation to generation”) 3) common ownership and 4) that they be “mainly of a practical nature”. Interestingly, traditional knowledge was also a defining reason for involving of local communities in environmental management, as exemplified in the Rio Declaration phrasing of “a vital role [...] *because of*

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<sup>57</sup> Delfin Ganapin, personal interview, 7-19 Mar. 2007.

<sup>58</sup> Cindano C. Gakuru, “Remodeling Traditional and Indigenous Knowledge,” 6 May 2006, Knowledge for Development, 22 Mar. 2007 <<http://knowledge.cta.int/index.php/en/content/view/full/3006>>.

<sup>59</sup> *Ibid.*

<sup>60</sup> Agenda 21 art 15.4(g).

<sup>61</sup> “Traditional Knowledge and the Convention on Biological Diversity,” Convention on Biological Diversity, ed. CBD Secretariat, 2004, 22 Mar. 2007 <<http://www.biodiv.org/programmes/socio-eco/traditional/default.asp>>.

their knowledge and traditional practices<sup>62</sup> [emphasis added]. Taken together, the CBD and Rio Declaration language seem to argue that actions, rather than status, define legitimacy, and that local communities are valid partners as long as their actions remain within the realm of the traditional. The question of why the CBD had not simply referred to local communities as “traditional” ones may reflect a wish to leave space for interpretation. The manner in which traditional knowledge is meant to be simultaneously replicated and protected will be addressed below.

***(d) Communities, populations, peoples, and community-based organizations***

A number of terms are at times substituted for communities. For example, the UNCCD and article 10(d) of the CBD use the term *populations* over *communities*, yet the latter implies a level of organization that the former lacks, an element necessary, it seems, to be granted specific responsibilities. Human rights scholars have also argued that “communities” and “peoples” would be interchangeable if it was not for a connotation of self-determination<sup>63</sup> in the latter, an idea indeed debated during the Rio Conference as reported by Mr. Ganapin<sup>64</sup>.

Notably absent from the international regimes mentioned above are community-based organizations (CBOs). A definition such as “groups of individuals within a village or group of villages or residential area with similar vested interests that have established an agreement to work together in a structured manner to achieve common objectives”<sup>65</sup> adds an element of purpose and would seem suited to the groups studied by community-based natural resource management scholars. The World Bank further specified that CBOs are grassroots and membership organizations, giving as examples “women's groups, credit circles, youth clubs, cooperatives and farmer associations, irrigation associations, forest and

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<sup>62</sup> Rio Declaration Principle 22.

<sup>63</sup> Blake 1.

<sup>64</sup> Delfin Ganapin, personal interview, 7-19 Mar. 2007.

<sup>65</sup> “Community Partnerships for Sustainable Resource Management in Malawi,” *COMPASS*, 22 Mar. 2007 <<http://www.compass-malawi.com/cglossary.htm>>.

watershed management groups, artisan groups, fishery associations”, etc<sup>66</sup>. Yet a 2006 draft CBD policy stated that “[...] there are many community-based organizations as well as indigenous and local community organizations implementing practical conservation and sustainable use<sup>67</sup>. The distinction between the terms, and a search on the CBD clearinghouse for “CBOs” that only resulted in nine hits, indicate reluctance by the CBD to embrace the phrase as a substitute for local communities that would drive the understanding away from the requirement of traditional practices.

### *(e) Participation in international fora*

Integration of communities as actors of the working mechanisms of the CBD proves a valuable tool to further understand the concept. Of course, the organizations have the financial support and technical means to attend high-level international fora and may not be representative of all field realities, but they nonetheless provide some examples of local communities as understood and accepted by state parties.

First, the Working Group on article 8 (j) declared it included representatives from indigenous and local communities<sup>68</sup>. In its January 2006 meeting, however, all “indigenous and local communities” representatives were nominated by the International Indigenous Forum on Biodiversity<sup>69</sup>. Second, representation of local communities and indigenous groups as observers during COPs is allowed since “Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity [...] may be admitted [...]”<sup>70</sup>. “Qualified”, it was later specified, was not to be interpreted in a classical scientific sense but in a manner that would include

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<sup>66</sup> Philippe Dongier et al., “Community-Driven Development,” Poverty Reduction Strategic Papers Sourcebook, World Bank 2002, 22 Mar. 2007 <<http://siteresources.worldbank.org/INTCDD/Resources/CDDPRSP.pdf>>.

<sup>67</sup> Executive Secretariat to the Convention on Biological Diversity. Draft Policy for the Accreditation of Non-Governmental Organizations to the Convention on Biological Diversity UNEP/CBD/COP/8/30 (2006). <<http://www.biodiv.org/doc/meetings/cop/cop-08/official/cop-08-30-en.pdf>> [hereinafter Accreditation Draft Policy].

<sup>68</sup> Conference of the Parties to the Convention on Biological Diversity, Bratislava, Slovakia, 4 - 15 May 1998 [CBD COP4]. Decision IV/9. Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fourth Meeting. UNEP/CBD/COP4/27 (1998). <<http://www.biodiv.org/doc/decisions/COP-04-dec-en.pdf>>.

<sup>69</sup> Working Group on Article 8(j) Highlights, Earth Negotiations Bulletin 9.335, 24 Jan. 2006, International Institute for Sustainable Development, 22 Mar. 2007 <<http://www.iisd.ca/vol09/enb09335e.html>>.

<sup>70</sup> CBD art 23.5.

indigenous and local communities<sup>71</sup>, and a voluntary fund was established in 2004 to facilitate such participation<sup>72</sup>. The nature of the organizations at CBD COP8 emerges from examining their names<sup>73</sup>. Amongst them we find, of course, indigenous communities, bearing the very term in their names<sup>74</sup>, but also groups organized around a common professional activity, such as “Agricultural Community of Clay Pots” or the “Ecological Cooperative of Extractive Women of Marajó (ECEWM)”<sup>75</sup>. At COP8 an inaugural forum on traditional communities was organized under the impulse of Edna Marajoara from ECEWM.<sup>76</sup> Local communities were defined as “groups that have collective systems of use and territorial appropriation, of knowledge building as a heritage with collective, not individual, rights”<sup>77</sup>, therefore responding to the traditional requirement and adding a collective element. Ms. Marajoara remarked that the distinction with indigenous groups impeded access to funding from international organizations such as the UN, Food and Agriculture Organization (FAO) or ILO.<sup>78</sup> The CBD Secretariat, she added, was the only international entity to recognize local communities as distinct from indigenous ones, and allowed the forum to function as an assessor agency. Attracting transnational attention, ECEWM has received support from organizations of local communities from Venezuela, France and various African countries.

In conclusion for this section, the international community has shown no sign of spelling out a legal meaning for local communities. Within the scope of the CBD, local communities are to be understood as traditional ones, showing that behavior, rather than location or size, delineates the contours of the concept,

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<sup>71</sup> Accreditation Draft Policy art 4.

<sup>72</sup> Conference of the Parties to the Convention on Biological Diversity, Bratislava, Slovakia, 4 - 15 May 1998. Decision VII/16 G.10 Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fourth Meeting UNEP/CBD/COP4/27 (1998) < <http://www.biodiv.org/doc/decisions/COP-04-dec-en.pdf>>.

<sup>73</sup> Conference of the Parties to the Convention on Biological Diversity, Curitiba, Brazil 20 - 31 Mar. 2006. Report of the Eighth Meeting of the Conference of the Parties to the Convention on Biological Diversity UNEP/CBD/COP/8/31 (2006): 3, <<http://www.biodiv.org/doc/meetings/cop/cop-08/official/cop-08-31-en.pdf>>.

<sup>74</sup> Ibid, such as “Association of Indigenous Village Leaders in Suriname,” or “Associação dos Povos Indígenas do Tumucumaque”.

<sup>75</sup> Ibid. In Portuguese the name reads “Comunidade Agrícola Olla de Caldera and Cooperativa Ecológica das Mulheres Extrativistas do Marajó”, names translated by author.

<sup>76</sup> Thais Brianezi, “Comunidades Locais Estruturam Fórum Próprio na COP-8,” Agência Brasil 27 Mar. 2006, 22 Mar. 2007 <[http://www.radiobras.gov.br/materia\\_i\\_2004.php?materia=260101&editoria=>](http://www.radiobras.gov.br/materia_i_2004.php?materia=260101&editoria=>)>.

<sup>77</sup> Ibid.

<sup>78</sup> Edna Marajoara, e-mail interview, 7-14 Mar. 2007, translated from Portuguese by author.

which is little more than indigenous communities from which is removed the connotation of self-determination. Other documents lack an exact meaning, maybe simply intending to be as inclusive as possible and thus leave legal room for national governments to decide who can, or cannot, be empowered.

### **1.2.2 Empowerment in international law: old rights and new responsibilities**

Empowerment has become a buzzword in the development literature. Although it lacks a solid definition and a clear understanding of which group is to receive new rights<sup>79</sup>, it is often linked to the devolution of power and decision-making responsibility to lower units of society<sup>80</sup>. Empowerment, or enablement, may be legal, in which case it simply signifies "to give official authority or legal power to"<sup>81</sup>, but also economic, social or political. *Empowerment* or *empower* are evocatively found in soft law instruments, such as Agenda 21<sup>82</sup> or Addis Ababa<sup>83</sup> Principle 2, but absent from binding ones, which favor the less constraining term of "involvement". Yet the tools agreed upon by state parties delineate the contours of empowerment of local communities, which can be broadly categorized as protective (of existing practices) or distributive (of new responsibilities). Although both the CBD Preamble and Article 8(j) refrain from using a human rights language, perhaps because of its controversial nature, the language has been deemed implicit<sup>84</sup>, transpiring naturally from a linkage to indigenous issues.

#### ***(a) Protecting existing rights or practices***

Respect for traditional practices is a right recurrently granted to local communities. The necessity of studying the particular needs and vulnerabilities of communities is evoked in Agenda 21<sup>85</sup> and Addis Ababa Principle 12. In the Akwé: Kon Guidelines, which call for preservation of sites relevant to local

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<sup>79</sup> Frances J. Cleaver, "Paradoxes of Participation: Questioning Participatory Approaches to Development," Journal of International Development 11(1999): 597-612.

<sup>80</sup>United Nations Development Programme. Governance: the Missing Link- Poverty Report (2000), 22 Mar. 2007 <<http://www.undp.org/povertyreport/chapters/chap5.html>>.

<sup>81</sup> "Empowerment," Def. 1, Merriam-Webster Dictionary, 2004 ed.

<sup>82</sup> Agenda 21 chapt. 3.

<sup>83</sup> Addis Ababa Guidelines Principle 2.

<sup>84</sup> Jeremy Firestone et al., "Cultural Diversity, Human Rights, and the Emergence of Indigenous Peoples in International and Comparative Environmental Law," American University International Law Review 20 (2005): 249.

<sup>85</sup> Agenda 21 art 2.54.

communities, or at least consultation between all stakeholders, the spiritual connotation of “sacred site” relate more easily to indigenous issues than local communities in general. The additional phrasing of “traditionally occupied” sites is more ambiguous: it may either refer to any old settlements, in which case the matter is of good governance, or refer back to traditional practices as defined by the Working Group on article 8(j). Indeed, the respect of existing practices is also linked to traditional knowledge in article 8(j), which requires to “respect, preserve and maintain”<sup>86</sup> relevant traditional knowledge, while the UNCCD calls on states to “protect” and “integrate it”<sup>87</sup>. Of course traditional knowledge does not suffice for empowerment: these practices are only legitimate when they are “relevant for the conservation and sustainable use of biological diversity”<sup>88</sup>. Beyond preservation, these practices are set to serve as a model to enhance sustainability. CBD Article 8(j) calls for their wider application, and the UNCCD convened in 1999 an ad hoc panel to promote and exchange such approaches<sup>89</sup>. The tension between scaling up traditional practices towards environmental benefits and protecting the rights of the holders is reflected in the latter part of CBD article 8(j), “with the approval and involvement of the holders of such knowledge, innovations and practices”<sup>90</sup>, UNCCD article 17.c, and the Bonn Guidelines, entirely devoted to the subjects of access and benefit-sharing. None of these, however, provide guidance on ownership of the biological resources that the knowledge utilizes, as was suggested by the African Union’s definition of local communities reported above.

***(b) Promoting new practices through increased responsibilities and new management rights***

In addition to protecting existing rights, the various legal regimes promote new or increased responsibilities, with regards to management in particular. The UNCCD calls on national action

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<sup>86</sup> Ibid.

<sup>87</sup> UNCCD art 17(c).

<sup>88</sup> CBD art 8(j).

<sup>89</sup> United Nations Convention to Combat Desertification, Report of the *Ad Hoc* Panel on Traditional Knowledge. Matera, Italy, 15-18 July 1999. ICCD/COP(3)/CST/3 (1999).

<sup>90</sup> CBD art 8(j).

programmes that include delegation of more responsibility for management<sup>91</sup>, and Addis Ababa Principle 2 notes that sustainability is enhanced when "governments recognize and respect the 'rights' or 'stewardship authority', responsibility [...] to the people who use and manage the resource, which may include indigenous and local communities, private landowners, conservation organizations and the business sector"<sup>92</sup>. Similarly, the Ramsar Guidelines, as their own title indicates, are designed to establish participatory processes for the *management* of wetlands.

Intrinsically linked to management responsibilities, though less frequently addressed, are land tenure rights. Agenda 21 calls for "security of tenure for all land-users, especially [...] local communities"<sup>93</sup>, and Annex 1 to the UNCCD summons African parties to aim to "pursue secure land tenure reforms" for local populations<sup>94</sup>. CBD documents have mentioned land tenure in passing<sup>95</sup> but not in any authoritative set of guidelines. In 1998, the Executive Secretariat drew a tenuous link between implementation of article 8(j) and tenure<sup>96</sup>. Nearly 10 years later, the only relevant COP decision mentions "due regard to the issues relating, inter alia, to [...] land use and tenure"<sup>97</sup>, and only one case study in the CBD clearinghouse, Zimbabwe's notorious CAMPFIRE, addresses the topic.<sup>98</sup> Unresolved issues or inappropriate land tenure are nevertheless identified as a constraint to implementation of programmes of work, an "ultimate cause" of loss of biodiversity with regards to the ecosystem approach<sup>99</sup>, and an indicator that the Working Group on

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<sup>91</sup> UNCCD art 8.2(c).

<sup>92</sup> Addis Ababa Guidelines Principle 2.

<sup>93</sup> Agenda 21 art 7.30(f).

<sup>94</sup> UNCCD Annex 1, art 4.2.b and 8.3(c.iii).

<sup>95</sup> A search on the CBD web site ([www.biodiv.org](http://www.biodiv.org)) for the term "tenure" led to 33 hits on 26 Feb. 2007.

<sup>96</sup> Executive Secretariat to the Convention on Biological Diversity. "Implementation on Article 8(j)." UNEP/CBD/COP/4/10 3, 2 Feb. 1998.

<sup>97</sup> Executive Secretariat to the Convention on Biological Diversity. "Biological Diversity of Inland Water Ecosystems." UNEP/CBD/SBSTTA/6/5. 5 Dec. 2000.

<sup>98</sup> J. W. Arntzen, "Wildlife Use Rights in Zimbabwe: CAMPFIRE," Case study on Incentive Measures submitted for the Seventh Meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-7), 22 Mar. 2007 <<http://www.biodiv.org/programmes/socio-eco/incentives/case-study.aspx?id=5306>>. The CAMPFIRE (Communal Areas Management Programme For Indigenous Resources) has enacted the designation of communal- area inhabitants as "appropriate" authority over wildlife, combining secure tenure and property rights over the natural resources for local communities.

<sup>99</sup> Subsidiary Body on Scientific, Technical and Technological Advice to the Convention on Biological Diversity, Second Meeting,

article 8(j) should take into consideration<sup>100</sup>. Note that these remarks were formulated by the Secretariat, non-governmental organizations or panel of experts, but not by state parties, which solely agreed to a suggestion formulated at COP8<sup>101</sup>.

Handing over management responsibility through greater land or management rights to local communities reflects a volume of literature claiming in essence that communities have fewer incentives to manage resources sustainably if they lack control over them. Win-win opportunities for environmental conservation and benefits to local populations, it is argued, exist in the long term, but are sometimes less discernible in the short term<sup>102</sup>. With regards to biodiversity, the Millennium Ecosystem Assessment for example asserts that:

*"[...] actions to increase income generation from biodiversity can provide incentives for conservation but can also lead to degradation without the appropriate enabling environment, which involves appropriate rights to the resources [...]"*<sup>103</sup>

Finally, beyond responsibilities, soft law instruments propose to hold local communities accountable, as in Addis Ababa Practical Principle 2 suggestion of "authority, responsibility and accountability"<sup>104</sup>. Agenda 21, in reference to desertification, states that empowerment includes delegating "accountability and resources to the most appropriate level to ensure that the programme will be geographically and ecologically specific"<sup>105</sup>; yet on that same issue such language was not adopted in the UNCCD, nor in other binding agreement.

There may be a tension between the double requirements of traditional knowledge as a *condition to recognition* and empowerment –through greater management responsibilities - as a *condition to*

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Montreal, 2-6 Sept. 1996, "Identification, Monitoring and Assessments of Components of Biological Diversity and Processes Which Have Adverse Impacts." UNEP/CBD/SBSTTA/2/3 (9 Aug. 1996). <<http://www.iisd.ca/biodiv/sbstta/sb203.pdf>>.

<sup>100</sup> Conference of the Parties to the Convention on Biological Diversity, Curitiba, Brazil 20 - 31 Mar. 2006. Report of the Eighth Meeting of the Conference of the Parties to the Convention on Biological Diversity UNEP/CBD/COP/8/31 (2006) <<http://www.biodiv.org/doc/meetings/cop/cop-08/official/cop-08-31-en.pdf>>.

<sup>101</sup> Ibid, art 4.2.3.3. and 4.2.3.4.

<sup>102</sup> "Ecosystems and Human Well-Being," Millennium Ecosystem Assessment (2006): 9, 22 Mar. 2007 <<http://www.maweb.org/documents/document.354.aspx.pdf>>.

<sup>103</sup> Millennium Ecosystem Assessment 22.

<sup>104</sup> Addis Ababa Guidelines Principle 2.

<sup>105</sup> Agenda 21 art 3.5(a).

*sustainability*. On the one hand, as seen above, empowerment is justified on the basis that local communities practice traditional activities that are beneficial to the environment and should serve as examples of best practices. On the other hand, the necessity to responsabilize local communities by endowing them with management rights is promoted on the basis that it will enhance sustainability. This duality reflects France Seymour's question on whether CBNRM is "discovered or designed"<sup>106</sup> and somewhat echoes the "protecting old/promoting new" rights framework described above. In this slight paradigm shift may lay an opportunity to open empowerment to new practices, as opposed to solely traditional ones, and therefore a potential for widening the scope of local communities.

*(c) The process: political rights*

Respect of existing practices and endowment of new responsibilities are largely conditional on the right to participate in decision-making, recalling classic political rights of representation<sup>107</sup>. In broad terms, Agenda 21 calls on states to "focus on the empowerment of local and community groups through the principle of delegating authority [...]"<sup>108</sup>, e.g. participation in "the formulation, development and implementation of forest-related programmes and other activities"<sup>109</sup>. UNCCD article 6 of Annex I similarly calls for "a consultative and participatory process"<sup>110</sup> where government, local populations, communities and non-governmental organizations are on equal footing, specifically with regards to policy planning, decision-making and implementation and review of national action programmes<sup>111</sup>. Addis Ababa Principle 9 calls for involvement "at all levels of decision-making process", while Principle 2 reminds that decisions shall be processes including all resource users. With stronger language, the International Seed Treaty

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<sup>106</sup> Frances J. Seymour, "Are Successful Community-Based Conservation Projects Discovered or Designed?" Natural Connections: Perspectives in Community-based Conservation. Western & Wright, eds. (Washington, DC: Island Press, 1994) 472-498.

<sup>107</sup> International Covenant on Civil and Political Rights, 1966, 999 UNTS 171 (1966).

<sup>108</sup> Agenda 21 art 3.5(a).

<sup>109</sup> Agenda 21 art 11.13.

<sup>110</sup> UNCCD Annex I art 6.2.

<sup>111</sup> UNCCD art 13(c).

promotes “the right to participate in making decisions, at the national level, on [relevant] matters.”<sup>112</sup> Prior informed consent as delineated in the Bonn Guidelines also constitutes a means to ensure empowerment as it entails community involvement, decision-making and determination of the group’s interest<sup>113</sup>. It should be noted however that under these CBD guidelines local communities are granted a right to voicing their opinion, but not sole and ultimate decision-making powers.

To make consultative processes more than a token participation, exchange of information and capacity-building are widely called upon. Agenda 21, referring to NGOs in general, stresses the need for “accurate and timely data and information”<sup>114</sup>. CBD decision V/16, building on article 17 and 18, urges parties to “strengthen and build capacity for communication among indigenous and local communities, and between indigenous and local communities and Governments”<sup>115</sup> at all levels, and emphasizes the need for a variety of communication tools and the use of local language. To achieve “effective decision-making arrangements”, the Addis Ababa Guidelines propose training and extension services.<sup>116</sup> Interestingly, information exchange is envisioned to go in both directions: Agenda 21 calls on states to “use community expertise to study the human dimension of environmental changes”<sup>117</sup>, and Addis Ababa Principle 6 elevates local communities to the status of research partners, in line with the necessity discussed above of both preserving and scaling-up sustainable traditional practices.

***(d) A lack of commitment?***

Despite the variety of tools in the various international regimes, a certain lack of solid commitment transpires. First, the guidelines that put forward the most progressive empowerment measures are

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<sup>112</sup> International Seed Treaty art 9.2(c).

<sup>113</sup> Laurel A. Firestone, “You Say Yes, I Say No; Defining Community Prior Informed Consent under the Convention on Biological Diversity,” Georgetown International Environmental Law Review, 16.1 (2004): 181-185.

<sup>114</sup> Agenda 21 art 27.9.

<sup>115</sup> Conference of the Parties to the Convention on Biological Diversity, Nairobi, Kenya, 15 - 26 May 2000. Decision V/16, art 12.d and 12.e. Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fifth Meeting. UNEP/CBD/COP/5/23 (2000), <<http://www.biodiv.org/doc/decisions/COP-05-dec-en.pdf>>.

<sup>116</sup> Addis Ababa Guidelines Principle 2.

<sup>117</sup> Agenda 21 art. 5.6(b).

voluntary. In the non-binding Addis Ababa Guidelines, “rights” are qualified by quotation marks, revealing of the hesitancy to push for a strong language. In addition, the inclusion of a variety of stakeholders, which may include outside powerful commercial interests, could muffle the voices of local communities in participatory processes, requiring them to share control of the resources they depend upon. As far as management rights go, local communities, as one of many resource users, are only granted “authority to carry out any actions arising from those decisions [to which they contributed]”<sup>118</sup>. The Ramsar Guidelines detail list conditions to the case for local peoples’ involvement, such as that “there is sufficient time to negotiate among stakeholders in advance of management decisions”<sup>119</sup>. Participation is therefore far from systematic or vigorously promoted under these regimes. Second, the binding provisions referring to local communities are qualified by weakening language. The initial proposal for Agenda 21, Mr. Galapin explained, subordinated all references to communities to an “as appropriate” qualifier introduced by Malaysia which hoped to retain control over its forestry resources for logging purposes<sup>120</sup>. While this term was eventually dropped in Agenda 21 after pressure from the Philippines and Norway, it reemerged as “subject to national legislation”<sup>121</sup> in the CBD, with verbs such as “endeavor” or “encourage” further weakening the language. Finally, while empowerment may take many forms, its legal aspect is poorly addressed: the CBD classifies empowerment of local communities, indigenous people, and local industries as a social, rather than legal, institutional constraint<sup>122</sup>.

This weak language clearly reflects the tensions around state sovereignty over its natural resources. Already threatened by outside interests with language such as the CBD’s preambular “common

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<sup>118</sup> Ibid.

<sup>119</sup> Ramsar Guidelines art 5(f).

<sup>120</sup> Delfin Galapin, personal interview, 7-19 Mar. 2007.

<sup>121</sup> CBD art 8(j).

<sup>122</sup> Executive Secretariat to the Convention on Biological Diversity, Sharing of Experiences on Incentive measures for Conservation and Sustainable Use, UNEP/CBD/COP/3/24, table 4, 20 Sept. 1996. < <http://www.biodiv.org/doc/meetings/cop/cop-03/official/cop-03-24-part6-en.pdf>>.

concern of mankind"<sup>123</sup>, states may resent the further erosion of their authority, this time from within, by empowerment for local communities.

### **I.3 Conclusion**

From a ubiquitous presence in Agenda 21 to a systematic pairing with indigenous in the CBD, local communities are often referred to but ill-defined. The CBD requirement of traditional knowledge refines what would otherwise be a catch-all term and indicates that local communities are traditional communities, but makes more sense in the context of property rights than in land management. One has to derive from the absence of a clear definition that there is no absolute and agreed understanding, and that the legal meaning depends upon the national legal context. In these, defining statuses is important as it presupposes a legal identity necessary to formalize rights and responsibilities. Wingard et al. in this sense argued that "rather than wrestle with the unwieldy task of defining the term 'community', the preferred and probably more efficient approach is to refine membership criteria"<sup>124</sup>, therefore calling on national legal systems to clarify these. Guidance on what constitutes involvement or empowerment of local communities on environmental issues is best provided by the CBD and its working mechanism, making them the most authoritative documents on the issue. Two main themes for involvement of local communities have emerged: protection of existing practices, resulting from the language of human rights surrounding indigenous issues, and endowment with new responsibilities that will bring environmental stewardship, both of them to be stimulated by participatory processes. CBD state parties Costa Rica, Tanzania and Mongolia will provide examples of how these concepts have permeated into the national legislative systems with various degrees of strength.

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<sup>123</sup> CBD preamble.

<sup>124</sup> James Wingard et al., "Improving the Legal Framework for Participatory Forestry: Issues and Options for Mongolia with Reference to International Trends," FAO Legal Papers Online 46 (2005):15, 22 Mar. 2007 <<http://www.fao.org/Legal/prs-ol/lpo46.pdf>>.

## Part 2: Case studies: Community Empowerment in Three National Systems

While Costa Rica, Mongolia and Tanzania have recently integrated community participation in their legislative systems, their economic situations varies greatly. With a GDP per capita of 12,000 dollars, Costa Rica's economy has been relatively healthy and stable for the last two decades<sup>125</sup>. Mongolia, a transitioning economy, has experienced a dramatic increase in poverty in the last 10 years due in part to the collapse of state-subsidized entities<sup>126</sup>. Tanzania is commonly categorized as a least developed country and remains one of the poorest countries in the world<sup>127</sup>. As will be examined below, the socio-cultural backgrounds and the distribution of power in these three countries are also markedly different. Which of the empowerment measures described above – protection and use of traditional knowledge, management and land rights, and participatory processes- are addressed by national legislative frameworks? Do these adopt, ignore or go beyond the language of the CBD regime? The issues of definition of local communities, decision-making, funding, relationships with other stakeholders, dispute settlement, capacity-building and knowledge flow will be examined.

### II.1 Costa Rica

Costa Rica, a biodiversity-rich country and CBD party since its inception,<sup>128</sup> holds an honorable record on environmental issues. The extent to which it has embraced the international provisions on local communities can first be inferred from its second national report to the CBD. The non-binding Bonn, Addis Ababa or Akwé: Kon Guidelines fail to be mentioned in the national report questionnaire altogether, so the answers of interest relate to implementation of article 8(j). The majority of Costa Rica's answers (60%)

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<sup>125</sup> Ibid.

<sup>126</sup> Lamjav Dorjtseden, "Community Forestry in Mongolia," H.C. Sim, S. Appanah and W.M. Lu, eds, Proceedings of the Workshop Forests for Poverty Reduction : Can Community Forestry Make Money? Sept. 1-2 2003, Beijing, China (Food and Agricultural Organizations of the United Nations Regional Office for Asia and the Pacific, 2004), 22 Mar. 2007 <<http://www.fao.org/docrep/007/ad511e/ad511e0f.htm>>.

<sup>127</sup> CIA World Factbook, "Tanzania," 15 Mar. 2007, 28 Mar. 2007 <<https://www.cia.gov/cia/publications/factbook/print/tz.html>>.

<sup>128</sup> Parties to the Convention on Biological Diversity / Cartagena Protocol on Biosafety, Convention on Biological Diversity, 10 Apr. 2007, <<http://www.biodiv.org/world/parties.asp>>.

indicate a low degree of involvement of local communities<sup>129</sup>, the rest being split between medium degree (20%) and high degree (20%) of involvement. Costa Rica notes in addition that participation of indigenous and local communities in working groups and meetings had been unofficial, the person (note the singular) participating on his/her own account<sup>130</sup>. This is rather surprising in the light of the focus on traditional knowledge which was codified in the 1998 Biodiversity Law, presented in Annex II.a. Designed to, amongst other goals, “recognize and provide compensation for the knowledge, practices and innovations of indigenous peoples and local communities in the conservation and sustainable ecological use of the components of biodiversity”<sup>131</sup>, it contains language clearly derived from the CBD. The Biodiversity Law is particularly innovative in its section on access to genetic resources and *sui generis* rights<sup>132</sup>. It establishes that these rights are recognized by the mere existence of the cultural practice, without needing a formal declaration<sup>133</sup>, and involves populations to establishing their own access mechanism<sup>134</sup>. In line with the Bonn Guidelines, prior informed consent for access to genetic components must be obtained from representatives of the place where access occurs<sup>135</sup>, but the property rights do not apply to plants, animals or biological processes<sup>136</sup>. The provisions of the Biodiversity Law relating to the prescriptions by the aforementioned international instruments will be examined below.

First, participatory processes are provided for in the Organic Law which insures in general terms that the State and municipalities promote the public participation in the process of decision-making in environmental issues<sup>137</sup>. This was notably accomplished in the Biodiversity Law, which initiated a

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<sup>129</sup> Costa Rica Second National Report to the CBD (2001): 37-40, 22 Mar. 2007 <<http://www.biodiv.org/doc/world/cr/cr-nr-02-es.pdf>>. High, medium and low categories were established on the basis of the answers. Answers such as “yes – to a limited extent” scored for example a medium grade.

<sup>130</sup> *Ibid.*

<sup>131</sup> Costa Rica Biodiversity Law, Law n° 7788, 30 Apr. 1998, art 10.6, <<http://eelink.net/~asilwildlife/costa.pdf>>.

<sup>132</sup> Costa Rica Biodiversity Law art 77-85

<sup>133</sup> Costa Rica Biodiversity Law art 82.

<sup>134</sup> Costa Rica Biodiversity Law art 83.

<sup>135</sup> Costa Rica Biodiversity Law art 63.

<sup>136</sup> Costa Rica Biodiversity Law art 78.

<sup>137</sup> Costa Rica Organic Law, Law No. 7554, 4 Oct. 1995, art 6.

participatory process for determination and listing of *sui generis* community intellectual rights<sup>138</sup>. This term, slightly different from “property rights”, was chosen during the consultation process and reflects reluctance from communities with long traditions of sharing resources to the concept of individual possessions and intellectual property models based on individual rights.<sup>139</sup> The Law recognizes a right to cultural objection, establishing the right of local communities and indigenous peoples to oppose access to their resources and associated knowledge for cultural, spiritual, social, economic or other reasons.<sup>140</sup> Yet empowerment via decision-making on access to resources does not go beyond this negative right, and Costa Rica’s record on devolving management power is rather poor. A highly centralized system has prompted Solis Rivera to state that “the state does not yet want to share decision-making with other sectors in society, especially the small farmer and indigenous sectors.”<sup>141</sup>

By contrast to the new protection of traditional knowledge, few legal innovations have been made with regards to natural resource management, and power and authority mostly remain with the government. The takeover of Cahuita National Park by community actors is of course a much studied example<sup>142</sup>, but it remains an exception since no legal system allows for the systematization and/or enablement of such endeavors. The 1996 Forestry Law has revealed mistrust between municipal governments, deemed incompetent actors in forest management, and public forestry agencies<sup>143</sup>, regional Councils of

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<sup>138</sup> Costa Rica Biodiversity Law art 82.

<sup>139</sup> Silvia Rodriguez, interview, “Costa Rica’s Biodiversity Law- Intellectual Community Rights are Preeminent to Intellectual Property Rights,” *In Motion Magazine*, 1 Dec. 2002, 22 Mar. 2007 <[www.inmotionmagazine.com/global/sr1.html](http://www.inmotionmagazine.com/global/sr1.html)>.

<sup>140</sup> Costa Rica Biodiversity Law art 66.

<sup>141</sup> Vivienne Solis Rivera and Patricia Madrigal Cordero, “Costa Rica Biodiversity Law: Sharing the Process,” *Journal of International Wildlife Law and Policy* 2.2 (1999): 265.

<sup>142</sup> The establishment of the Cahuita National Park as a conservation area on the southern Caribbean coast of Costa Rica had a significant impact on local residents who were suddenly deprived of access to their land and resources. Efforts from the community eventually led, after thirty years of tensions, to a collaborative management institution in a precedent-setting case. Viviane Weitzner and Marvin Fonseca Borrás, “Cahuita, Limón, Costa Rica: From Conflict to Collaboration,” *Cultivating Peace: Conflict and Collaboration in Natural Resource Management*, Ed. Daniel Buckles, International Development Research Center, 1999, 22 Mar. 2007 <[http://www.idrc.ca/en/ev-27976-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-27976-201-1-DO_TOPIC.html)>.

<sup>143</sup> Lyès Ferroukhi and Alejandra Aguilar Schramm, “Progress and Challenges of Municipal Forest Management in Costa Rica,” 22 Mar. 007<[http://www.idrc.ca/en/ev-43425-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-43425-201-1-DO_TOPIC.html)>.

Conservation Areas are ill-designed and implementation difficult<sup>144</sup>, and the trickle-down devolution of authority to smaller community entities has not taken place. Economic rewards rather than legal devolution of powers have thus been given priority to achieve environmental successes in this centralized system of governance. Indeed, the Biodiversity Law went further than CBD prescriptions in terms of financial support. It provides in broad terms for payment of incentives for community participation in the conservation and sustainable use of biodiversity, and financial assistance to communities that manage biodiversity<sup>145</sup>. These two articles reiterate the 1996 Forestry Law which had introduced a Payment for Environmental Services (PES) system, rewarding mitigation of greenhouse effect gases, the protection of water resources and protection of the biodiversity and scenic beauty, administered by the Ministry of the Environment and Energy<sup>146</sup>, and funded from selective sales tax on fuels and hydrocarbons. Other monetary incentives include certification of forest conservation and exemptions from territorial taxes. Yet with regards to PES, the lack of information and high transaction costs represent an obstacle for small farmers and peasants. In addition, the lack of formal tenure rights has prevented those without registered property title deeds to benefit from the system.<sup>147</sup>

Second, the Biodiversity Law partially addresses the potential conflictual relationship of local communities with others as it establishes penalties for illegal access<sup>148</sup>, administered by the central government. Yet these could be more severe and better supported. With no other substantial mechanism of enforcement, and no devolution of rights to local communities to actively do so, this protective regulation

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<sup>144</sup> *Ibid.*

<sup>145</sup> Costa Rica Biodiversity Law art 101 and 102.

<sup>146</sup> Through the National Forestry Financing Fund (FONAFIFO).

<sup>147</sup> H. Rosa, S. Kandel, and L. Dimas, "Compensation for Environmental Services and Rural Communities: Lessons from the Americas and Key Issues for Strengthening Community Strategies," San Salvador: The Salvadoran Research Program on Development and Environment (2003): 16-19, 29 Mar. 2007 <[http://www.prisma.org.sv/pubs/CES\\_RC\\_En.pdf](http://www.prisma.org.sv/pubs/CES_RC_En.pdf)>.

<sup>148</sup> Costa Rica Biodiversity Law art 112.

may not suffice. As a measure of comparison, similar systems in regional neighbors Panama or Venezuela contain provisions for civil and criminal sanctions and administrative measures.<sup>149</sup>

Third, recommendations of capacity-building and information flow are unevenly addressed. Costa Rica's involvement of local communities in the drafting of the law seemed a significant, if topical, effort. Yet despite the government's claim that the Biodiversity Law has been amply circulated<sup>150</sup>, Miranda et al. for example report that most of the landowners in the Virilla region that do not already receive PES had little or no information about the system, and those who do are still unaware of many of its aspects<sup>151</sup>. Similarly, Rivera notes on biodiversity in general, only the scientific and academic elite are sufficiently informed on the economic, social and economic implications<sup>152</sup>.

This section will conclude with a reflection on the understanding of communities in Costa Rican law. Despite a call for participation, the term communities remains formally undefined, unlike the choice made by neighboring country Brazil<sup>153</sup>. Because the Biodiversity Law places more emphasis on traditional knowledge than management of natural resources, farmers and indigenous communities are understood as the most relevant local communities. The Law indeed makes references to "peasant communities"<sup>154</sup>, "small farmers"<sup>155</sup>, indigenous communities and "other cultural groups"<sup>156</sup>, the first two likely deriving from the participation of the Federation of Peasants in the drafting phase<sup>157</sup>. Representatives of indigenous and small farmers' boards are also included in the National Commission for Biodiversity Biomangement that implements the Biodiversity Law. Involvement of indigenous communities, which represent less than 2% of

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<sup>149</sup> Costa Rica Second National Report to the CBD 37.

<sup>150</sup> Costa Rica Second National Report to the CBD 39.

<sup>151</sup> Miriam Miranda et al., "The Social Impacts of Payments for Environmental Services in Costa Rica," Markets for Environmental Services 1 (2003):46, 22 Mar. 2007 <<http://www.poptel.org.uk/iied/eep/pubs/documents/MES1.pdf>>.

<sup>152</sup> Rivera 12.

<sup>153</sup> Brazil Provisional Act No 2, 2001, art 7 defines local communities as a "human group, differentiated by its cultural conditions, which is traditionally organized along successive generations and with its own customs, and conserves its social and economic institutions", 22 Mar. 2007 <[http://www.idrc.ca/en/ev-67667-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-67667-201-1-DO_TOPIC.html)>.

<sup>154</sup> Costa Rica Biodiversity Law art 17.2.

<sup>155</sup> Costa Rica Biodiversity Law art 58 and 83.

<sup>156</sup> Costa Rica Biodiversity Law art 9.3.

<sup>157</sup> Silvia Rodriguez, interview, "Costa Rica's Biodiversity Law- Intellectual Community Rights are Preeminent to Intellectual Property Rights," In Motion Magazine, 1 Dec. 2002, 22 Mar. 2007 <[www.inmotionmagazine.com/global/sr1.html](http://www.inmotionmagazine.com/global/sr1.html)>.

the population and are concentrated in reserves around the Talamanca Mountains, resulted not from their number but likely from indigenous rights movements. As over 50% of Costa Ricans live off rural activities<sup>158</sup>, it also seems reasonable that the law involves farmers in the law and decision-making processes. Costa Rica's first comment on implementation of article 8(j), "the indigenous in Costa Rica only represent 1.9% of the population"<sup>159</sup>, comes therefore as a surprise and a disconnect. Indeed, it shows that despite the inclusion of farming communities in their law-making process, Costa Rica's interpreted article 8(j) as relating mainly to indigenous people.

## II.2 Mongolia<sup>160</sup>

Forests cover approximately 9% of Mongolia's land mass<sup>161</sup>, otherwise characterized by arid steppes used for pasture. It should be noted that while forests are widely recognized as holding the vast majority of the world's biodiversity<sup>162</sup>, parties to the CBD have so far avoided negotiations that would lead to a binding forestry regime<sup>163</sup>, an indication of the ongoing contention of access to these resources. Mongolia started in 1995 to develop a legal framework for participatory forest management governed by legislative vehicles (described in Annex II.b) aiming at legally anchoring the concept of CBNRM. In many ways, as will be described below, it departs from the suggestions of the environmental regimes described in section I.

First, Mongolia's social tradition is marked by a nomadic lifestyle and hence not characterized by community-type settlements, to the point that there is reportedly no exact word for "community" in the

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<sup>158</sup> "Population, Health and Human Well-being- Costa Rica," *Earth Trends*, World Resource Institute 2003, 22 Mar. 2007 <[http://earthtrends.wri.org/pdf\\_library/country\\_profiles/pop\\_cou\\_188.pdf](http://earthtrends.wri.org/pdf_library/country_profiles/pop_cou_188.pdf)>.

<sup>159</sup> Costa Rica Second Report to the CBD 40.

<sup>160</sup> Because data in English is scarce on Mongolia, a major source of information on this section comes from Wingard's studies for the FAO.

<sup>161</sup> Embassy of Mongolia in Washington, DC. *Land and People*, 10 Apr. 2007, <[http://www.mongolianembassy.us/eng\\_about\\_mongolia/land\\_and\\_people.php](http://www.mongolianembassy.us/eng_about_mongolia/land_and_people.php)>

<sup>162</sup> Executive Secretariat to the Convention on Biological Diversity. "Note on the Draft Programme of Work for Forest Biological Diversity." UNEP/CBD/SBSTTA/3/5. 18 July 1999. <<http://www.biodiv.org/doc/sbstta-03-05-en.pdf>>.

<sup>163</sup> A Forestry Programme was adopted in CBD COP6 Decision VII/22.

Mongolian language<sup>164</sup>. Most villages were created under the socialist system of collective agriculture, forestry and industry and are held by little social cohesion<sup>165</sup>. The government approaches on participatory forestry therefore reflect a *design* rather than a *discovery* (codification into law of existing societal structures), and have for this reason been received with caution<sup>166</sup>. The legal framework defines a *nokhorlol*, (or *nukhurlu*) as “a voluntary group of community citizens that is formed in compliance with the civil code of Mongolia”<sup>167</sup>. It therefore contains no requirement on traditional practice as suggested by the CBD. Mongolia explains in its (meager) answer to the questions on article 8(j) of its second national report to the CBD<sup>168</sup> that traditional knowledge was being lost due to the transition economy and lack of resources<sup>169</sup>, although it also underlines the country’s “long history of good practice towards conservation and sustainable use of natural resources”<sup>170</sup>.

The legal system to form forest user group, however, may be too inclusive. The law on Nokhorlol<sup>171</sup> indeed allows government agencies to be members of forestry “community” groups, hence negating the intent of delegating powers. Furthermore, membership in these user groups is not restricted to local inhabitants. Of course, linking membership to residency can be problematic in a country where over one third of the population is nomadic.<sup>172</sup> Yet 2005 amendments to the Law on Forests that link membership to registration instead make the system too inclusive, drawing in outsiders that have interests other than those

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<sup>164</sup> Nicholas Crisp et al., “Mongolia Forestry Sector Review,” World Bank: Victoria, BC, 2004,131.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid, citing a 2001 reference by the World Wide Fund for Nature that could not be further identified.

<sup>167</sup> Ayush Namkhai, “2005 Top News of the Environment in Asia-Mongolia,” Institute for Global Environmental Strategies (IGES) (2005): 50, 10. Apr 2007 <[www.iges.or.jp/en/pub/pdf/asia2005/16\\_mongolia.pdf](http://www.iges.or.jp/en/pub/pdf/asia2005/16_mongolia.pdf)>.

<sup>168</sup> Mongolia failed to answer any of the specific questions related to article 8(j). See Mongolia Second National Report to the CBD (2002): 41, 22 Mar. 2007 <<http://www.biodiv.org/doc/world/mn/mn-nr-02-en.pdf>>.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Mongolia Law on Nokhorlol (2002)

<sup>172</sup> “Country Briefs,” Mongolia Today Online Magazine, 2002, 22 Mar. 2007, <[http://www.mongoliatoday.com/info/country\\_briefs.html](http://www.mongoliatoday.com/info/country_briefs.html)>.

of the local, or recurring, inhabitants. Furthermore, the FAO notes, registration and actual residency are very different, as was shown in the widely contested 2004 parliamentary elections.<sup>173</sup>

Second, the focus remains on protection activities such as fire management<sup>174</sup>, while actual management is limited to resource assessment. Management rights are granted on a contract basis for short (15 years) or long (up to 60 years) term, a system far from granting full ownership. 2005 amendments to the Law on Environmental Protection now allow citizens to own land they cultivate<sup>175</sup>, but the refusal to “privatize” forest land continues to prevent a solid system of property rights and tenure security. This may be explained, according to Bruce, by a “lingering suspicion” of collective activities in an economy transitioning from communism such as Mongolia’s<sup>176</sup>. In addition, under the Law on Environmental Protection<sup>177</sup> the use of funding is prescribed by the government and thus used as a manner to control the activities of newly-formed forestry communities. This could impede or deny local innovation and prevent activities important for the livelihoods of the forestry groups.

Third, and resulting from the lack of control over their resources, local forestry groups are not entitled to exclude others, such as mining companies, from using their lands in a manner they deem prejudicial to their resources<sup>178</sup>, and in some instances have even seen concessions on “their” forest granted to such outsiders.<sup>179</sup> Compelling the issue is that decentralized dispute resolutions mechanisms are lacking from the laws governing participatory forestry. These are still the domain of the ministry of

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<sup>173</sup> “State of Democracy in Mongolia- a Desk Study,” prepared by University of Essex, IDFA and UNDP, National Conference on “Democracy Development in Mongolia: Challenges and Opportunities”, Ulaanbaatar, Mongolia 30 June- 1 July 2005, (2005) :30 ,10 Apr. 2007 <[http://www.icnrd5-mongolia.mn/pdf/desk\\_study.pdf](http://www.icnrd5-mongolia.mn/pdf/desk_study.pdf)>. See also Wingard 15.

<sup>174</sup> Erwin Northoff, “Involving Local Communities to Prevent and Control Forest Fires,” FAO Newsroom, 26 July 2004, Rome, 22 Mar. 2007 <<http://www.fao.org/newsroom/en/news/2004/48709/index.html>>.

<sup>175</sup> Adopted by the Parliament on 18 Nov. 2005. See Namkhai 50.

<sup>176</sup> John W. Bruce and Robin Mearns, “Natural Resource Management and Land Policy in Developing Countries”, World Bank (2001):18, 22 Mar. 2007 <[http://lnweb18.worldbank.org/ESSD/ardext.nsf/15ByDocName/NaturalResourceManagementandLandPolicyinDevelopingCountriesLessonslearnedandnewchallengesfortheWorldBank/\\$FILE/NaturalResourceManagementandLandPolicy\\_IIED+version.pdf](http://lnweb18.worldbank.org/ESSD/ardext.nsf/15ByDocName/NaturalResourceManagementandLandPolicyinDevelopingCountriesLessonslearnedandnewchallengesfortheWorldBank/$FILE/NaturalResourceManagementandLandPolicy_IIED+version.pdf)>.

<sup>177</sup> Environmental Protection Law of Mongolia, 30 Mar. 1995, 10 Apr. 2007 <<http://www.investmongolia.com/law12.pdf>>.

<sup>178</sup> Wingard 20.

<sup>179</sup> Wingard 9.

justice and local governors who are inadequately equipped to handle the volume and complexity of disputes.<sup>180</sup>

Perhaps the flaws in the framework are best explained by the fact that, ironically, Mongolia's new legal provisions designed to encourage participation were drafted in a non-participatory manner. Local basis for participation of local communities exists in name, says the FAO, but "needs substantial definition to become reality".<sup>181</sup> As far as technical guidance, the information flow has been fairly poor. Despite a literacy rate of 97%<sup>182</sup> that reflects an ability to reach the mobile populations, adequate and timely access to information lacks from the Mongolian forestry system. Overall assistance on forestry matters is poorly provided, planning principles are virtually absent from the legal framework, and requirements are broad and lacking sufficient specificity<sup>183</sup>, and, as seen above, there is no reliance on traditional knowledge. In conclusion, despite a legal framework that calls for involvement of communities in forestry, the obstacles facing Mongolian forest user groups may render their activities hard to sustain.

### II.3 Tanzania

Rural communities in Tanzania represent eighty-five percent of the population<sup>184</sup>, and over 120 tribal groups live according to traditional activities. From independence until 1985 Tanzania lived two decades of African socialism under President Nyerere and his failed *ujamaa* policies of collectivist village farming<sup>185</sup>, and is now considered "the most decentralized and devolved governance regime of Sub-Saharan Africa"<sup>186</sup>. Tanzania's legislations on traditional beekeeping communal activities, undertaken

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<sup>180</sup> Wingard 10.

<sup>181</sup> Wingard 32.

<sup>182</sup> "Country Briefs," Mongolia Today Online Magazine, 2002, 22 Mar. 2007, <[http://www.mongoliatoday.com/info/country\\_briefs.html](http://www.mongoliatoday.com/info/country_briefs.html)>.

<sup>183</sup> Wingard 9.

<sup>184</sup> CIA World Factbook, "Tanzania," 15 Mar. 2007, 28 Mar. 2007 <<https://www.cia.gov/cia/publications/factbook/print/tz.html>>

<sup>185</sup> Martin Meredith, *The Fate of Africa* (New York: Public Affairs, 2005) 249-59.

<sup>186</sup> Y. Hausser and P. Mpuya, "Beekeeping in Tanzania - When the Bees Get out of the Woods...An Innovative Cross Sectoral Approach to Community-based Natural Resource Management," *Game and Wildlife Science* 21.3 (2004): 293.

practically entirely in savannah forests<sup>187</sup> and hence elements of the wider participatory forestry system, will be examined along with their impact on communities.

With regards to abiding by the provisions of CBD 8(j), 80% of Tanzania' answers in its third report indicated a medium degree and 20% a low degree<sup>188</sup>, indicating a more eager involvement than Costa Rica and Mongolia. It also notably submitted a report devoted to benefit-sharing<sup>189</sup>. Tanzania's devolved system of wildlife management, despite new policies, has so far failed to diffuse throughout the country.<sup>190</sup> However, the sub-sector of traditional beekeeping, now promoted to replace policies emphasizing modern beekeeping,<sup>191</sup> has seen more success. Beekeeping plays a crucial role for terrestrial biodiversity and provides a key ecosystem service in pollination<sup>192</sup>, generates revenues, and, although extractive, is non-destructive<sup>193</sup>. The CBD has taken a leading role in this area with an International Initiative for the Conservation and Sustainable use of Pollinators<sup>194</sup>.

Annex II.c depicts the comprehensive legal and institutional framework that permits community-based resource management in general and beekeeping in particular. Such activities are specifically supported by the 1998 National Beekeeping Policy<sup>195</sup> and the 2002 Beekeeping Act.<sup>196</sup> The Beekeeping

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<sup>187</sup> Equator Initiative and TVE, "Smart Hives-Tanzania", Out of the Woods January 2003, 29 Mar. 2007 <<http://www.tve.org/ho/doc.cfm?aid=952>>.

<sup>188</sup> Tanzania, Third National Report to the CBD (2006): 49-54, 22 Mar. 2007 <<http://www.biodiv.org/doc/world/tz/tz-nr-03-en.pdf>>.

<sup>189</sup> Tanzania, Thematic Report on Access and Benefit Sharing, 22 Mar. 2007 <<http://www.biodiv.org/doc/world/tz/tz-nr-abs-en.pdf>>. No date provided.

<sup>190</sup> Frederick Nelson, "Patronage or Participation? Understanding the Failure and Success of Community-Based Natural Resource Reforms in Sub-Saharan Africa," School of Natural Resources and Environment Dissertation and Thesis, 30 Dec. 2006, 22 Mar. 2007 <<http://hdl.handle.net/2027.42/48787>>.

<sup>191</sup> Food and Agriculture Organization, Regional Expert Consultation on Non-Wood Forest Products for English-Speaking African Countries, Arusha, Tanzania, 17-22 Oct. 1993. Non-Wood Forest Products Series CSC(94)AGR-21 1994, 29 Mar. 2007 <<http://www.fao.org/docrep/x5325E/x5325e01.htm>>.

<sup>192</sup> Peter Kevan and Truman Phillips, "The Economic Impacts of Pollinator Declines: an Approach to Assessing the Consequences," Conservation Ecology 5.1(2001): 8.

<sup>193</sup> Hausser 303. Even the debarking method used to build modern hives is less destructive than conversion to agricultural land.

<sup>194</sup> CBD COP6 Decision VI/5, Annex II contains a "Plan of Action for the International Initiative for the Conservation and Sustainable Use of Pollinators".

<sup>195</sup> It was originally designed as part of the Forestry policy but ultimately stood as its own piece of legislation. Tanzania National Beekeeping Policy, 1998, 3, <[www.tzonline.org/pdf/nationalbeekeepingpolicy.pdf](http://www.tzonline.org/pdf/nationalbeekeepingpolicy.pdf)>.

<sup>196</sup> Tanzania Beekeeping Act No 15, April 2002, <<http://www.tnrf.org/downloads/Tz%20Acts/Beekeeping%20Act%202002.pdf>>.

Policy seeks to “promote individual action and community participation in environmental action”<sup>197</sup>, so that, in broad terms, local communities are assisted by government and NGOs to “become responsible for their own destiny”<sup>198</sup>. To support this policy, management rights at the local level are considerable. The Tanzanian Land Act is one of the few in sub-Saharan Africa to draw a clear distinction between reserved land, general land and village land as management categories<sup>199</sup>, and where ownership of rights can be titled to the appropriate groups in the community or to the community as a whole<sup>200</sup>. The Beekeeping Policy provides for bee reserves, which can be owned by “the state, the district council, the Village Council or individual beekeepers *as long as they are organized in cooperatives and associations*[emphasis added]”<sup>201</sup>, hence making collective ownership preferable to individual one. Tenure laws recognize land held under customary tenure as fully legally tenured *as is*, which includes using community-administered land recording and titling processes<sup>202</sup> and, again, village titles over common properties resources<sup>203</sup>.

Tanzania has not adopted in its legislature the definition of communities proposed by the African Union. Instead, the definition of community under the 2002 Forest Act refers to “any group of person living in or near an area” and wishing to manage it to form a “community forest management group”<sup>204</sup>, hence linking status to management will. This group may select his own members, and should report who they are<sup>205</sup>, as long as any person “living in close proximity or having strong traditional ties to it”<sup>206</sup> is given a fair opportunity to join. These wordings seem to indicate that residency slightly prevails over a long history of

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<sup>197</sup> Tanzania National Beekeeping Policy 3.

<sup>198</sup> Tanzania National Beekeeping Policy 16.

<sup>199</sup> Jussi Ylhäisi, “Forest Privatization and the Role of Community in Forest and Nature Protection in Tanzania,” Environmental Science and Policy 6.3 (2003): 279-290.

<sup>200</sup> Said Iddi, “Community Participation in Forest Management in the United Republic of Tanzania,” Proceedings of the Second International Workshop on Participatory Forestry in Africa, Arusha 2002: 59-67, 22 Mar. 2007 <<ftp://ftp.fao.org/docrep/fao/006/Y4807B/Y4807B04.pdf>>.

<sup>201</sup> Tanzania National Beekeeping Policy 45.

<sup>202</sup> United Nations Development Programme, United Nations Environment Programme, The World Bank, World Resources Institute, “Securing Property and Resource Rights Through Tenure Reform,” World Resources 2005-The Wealth of the Poor: Managing Ecosystems to Fight Poverty (2005), 22 Mar. 2007 <[http://pubs.wri.org/pubs\\_content\\_text.cfm?ContentID=4053](http://pubs.wri.org/pubs_content_text.cfm?ContentID=4053)>.

<sup>203</sup> Liz Wily, “Villagers as Forest Managers and Governments ‘Learning to Let Go’: the Case of Duru-Haitemba and Mgori Forests in Tanzania,” Forestry Participation Series, London: International Institute for Environment and Development, 1997.

<sup>204</sup> Tanzania Forest Act, 2002, art 42.1 < <http://www.parliament.go.tz/Polis/PAMS/Docs/14-2002.pdf>>.

<sup>205</sup> Tanzania Forest Act art 42.4

<sup>206</sup> Tanzania Forest Act art 42.2 (a).

use. More specifically, the Beekeeping Policy uses the word “local communities”<sup>207</sup> but also refers to “tribes” in the context of traditional practices and reserved lands<sup>208</sup>, “organized communities”<sup>209</sup>, and “beekeeper associations and cooperatives”<sup>210</sup>.

Broad public participation in decision-making is enshrined in the Beekeeping Policy as a “fundamental prerequisite for sustainable development”<sup>211</sup>. Village councils have the power to promulgate by-laws to which all, including outsiders, are legally bound. Via this accessible forum, the by-laws mechanism is progressively used by communities to control their surrounding forests.<sup>212</sup> This secures local communities rights of defining and clarifying their relationship to other stakeholders. With regards to dispute settlement, the British colonial system of customary arbitration was amended twice<sup>213</sup> to become the more formalized and regularized Ward Tribunals, meant to function under the overall control of the district-based local government authorities.<sup>214</sup> The guidelines for the designation and management of Wildlife Management Areas stipulate that the Village Council and the Ward Tribunal are solidly designated to handle conflicts emanating from within the village according to three consolidating pieces of legislature<sup>215</sup>, and a study by Yusufu established that the Tribunals are popular among the common people. During conflicts between trophy hunting companies and beekeepers in game control areas, preferred rights over resources have often been granted to outsiders. Hausser reports, however, that it is not a question of law but of practice<sup>216</sup>.

With regards to provisions regarding education on management matters, Tanzania holds an ambiguous record. Access to environmental information is provided by the Tanzanian National

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<sup>207</sup> Tanzania Beekeeping Policy 6, 31, 48.

<sup>208</sup> Tanzania Beekeeping Policy 19.

<sup>209</sup> Tanzania Beekeeping Policy 19.

<sup>210</sup> Tanzania Beekeeping Policy 29.

<sup>211</sup> Tanzania Beekeeping Policy 6.

<sup>212</sup> Ylhäisi 285.

<sup>213</sup> Tanzania Wards Tribunal Act, Parliament Act no 7, 16 Apr. 1985, <<http://www.parliament.go.tz/Polis/PAMS/Docs/7-1985.pdf>>.

<sup>214</sup> Yusufu Q. Lawi, “Justice Administration Outside the Ordinary Courts of Law in Mainland Tanzania: The Case of Ward Tribunals in Babati District,” *African Studies Quarterly* 1.2 (1997), 22 Mar. 2007 <<http://web.africa.ufl.edu/asq/v1/2/1.htm>>.

<sup>215</sup> Sections 60-63 of Tanzania’s Village Land Act, 1999, Land Disputes Courts Act, 2002, and Ward Tribunals Act, 1985.

<sup>216</sup> Hausser 302.

Environmental Policy of 1997, but because it fails to provide specific mechanism Tanzanians are in practice rarely able to exercise this right<sup>217</sup>. On beekeeping technical matters, however, the detailed 2002 Beekeeping Act provides guidance on orderly conduct of beekeeping, quality and quantity of bee products, bee diseases and revenue collection, and a widely diffused "plain language" pamphlet by the Ministry of Natural Resources and Tourism has helped spread the information.<sup>218</sup> Since it relies on traditional techniques that had been developed locally for centuries, it can also be inferred that the guidelines are more widely embraced than modern techniques.

Finally, because of a lack of resources the Tanzanian government provides limited funding for environmental conservation<sup>219</sup>, relying on foreign donors and gambling on the financial sustainability of the initiatives they promote through their laws. Reports show that Tanzania's wildlife efforts of devolved management and responsibilities have not monetarily benefited the communities<sup>220</sup>; the promotion of beekeeping, since it directly generates marketable products rather than services, could see more success.

## II.4 Conclusion

There may be, of course, something artificial in placing side-to-side three discrete national frameworks that address different topics. Yet the examples of Costa Rica, Mongolia and Tanzania reveal the broad range of interpretations of how to involve local communities on environmental matters. Community participation is interpreted in the Costa Rican legislative system with a focus on traditional knowledge, and with little devolution of management powers. Mongolia has chosen to promote community participation without relying on existing organizations and with little emphasis on traditional knowledge.

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<sup>217</sup> Deogratias William Ringia and Stephen J. Porter, "Access to Environmental Information in Tanzania," Lawyers Environmental Action Team (1999):4, 22 Mar. 2007 <<http://www.lead.or.tz/publications/access.to.information/access.to.information.pdf>>.

<sup>218</sup> Tanzania Ministry of Natural Resources and Tourism, Peoples and Bees, a Plain Language Guide to the United Republic of Tanzania's National Beekeeping Programme, August 2004, 10 Apr. 2007 <<http://www.hakikazi.org/papers/People-and-Bees.pdf>>.

<sup>219</sup> Neil Burgess and Felician Kilahama, "Forest Resources and Available Capacity for Management across the Eastern Arc Mountains of Tanzania," Conservation and Management of the Eastern Arc Mountain Project Report No.2004 /04, 10 Apr. 2007 <[http://easternarc.or.tz/downloads/Eastern%20Arc/Eastern%20Arc%20Funding\\_Dec04.doc](http://easternarc.or.tz/downloads/Eastern%20Arc/Eastern%20Arc%20Funding_Dec04.doc)>.

<sup>220</sup> T. Blomley and H. Ramadhani, "Going to Scale with Participatory Management: Early Lessons from Tanzania," International Forestry Review 8.1 (2006): 96.

Tanzania has combined the enhancement of traditional knowledge with devolving authority to communities. It is at this point difficult to conclude on the environmental success of community stewardship in the examples studied, but the legislations provide a number of insights.

First, it is remarkable that none of these countries provides a clear blanket definition for local communities, despite increasingly inclusive systems. The legislative frameworks in Mongolia and Tanzania indicate that the systems are designed with specific activities in mind, as opposed to blanket local community empowerment programs. While issues of definition may not particularly impair the conduct of community activities, they make the system less adaptable and flexible, which could lead to overlapping legislation. The pitfall of project approach is indeed that it provides little flexibility should a new activity arise. Communities wishing to engage simultaneously in beekeeping and ecotourism would be governed by different sets of legislations, making their rights less understandable, and adjudication more complex. By contrast, local communities as understood in Costa Rica Biodiversity law are de facto indigenous communities and farmers, which reflects guidance from the CBD and the International Seed Treaty.

Second, various degrees of uncertainty in land ownership characterize each country. In Mongolia, insufficient tenure security bars forestry user groups from having solid authority over the resources they are expected to manage. The picture is somewhat brighter in Tanzania, where the authority given to local communities on bee reserves could contribute to further environmental benefits such as preventing deforestation, but conflicts over land still arise<sup>221</sup>. In Costa Rica, communal rights do not include a right to the land or resources themselves. The overall refusal to privatize land understandably sprouts from legacies of colonial systems or communist pasts, and this reluctance seems widespread: the World Bank reports that “the state and its management institutions often tend to mistrust the incentives provided by property rights to ensure sustainable behavior, and seek to maintain a residual title and considerable

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<sup>221</sup> Although it is difficult at this point to assess whether conflict impairs beekeeping activities or not.

control over use of the land”<sup>222</sup>. On the other side, de Souza has noted that in Costa Rica and elsewhere in Latin America “the absence of defined property rights or management responsibility has undermined a sense of stewardship or collective responsibility among local or indigenous peoples.”<sup>223</sup> This deadlock can, however, be addressed through innovative systems and legal pluralism that will be detailed in the next section.

Finally, involvement of local communities in decision-making processes is more easily achieved when local governments and courts are themselves granted more power. The striking difference between Tanzania and Costa Rica’s systems of involving local communities is reflected in the legal space and management authority granted to local governments. The devolved governance system in Tanzania allows equating local communities with villages, which already have a set legal identity and relatively set boundaries, or groups of organized individuals who obtained new rights. “Institutional decentralization policies”, the FAO remarks, “are generally considered as an essential prerequisite to people’s participation”.<sup>224</sup> While Costa Rica’s highly centralized decision-making system is widely regarded as beneficial for conservation, it constitutes at the social level an obstacle to the very benefit-sharing mechanisms the new law intends to promote.

Yet there is room to prescribe and simultaneously avoid the tensions emerging from state sovereignty over its resources. Lindsay emphasized the necessity of granting *meaningful, secure* and *flexible* rights through legal systems.<sup>225</sup> Security of rights entail clarity, permanence or set timeline, enforcement, and exclusivity. Flexibility comprises iterative decision-making processes, avoiding the prescription of the structure of local organizations and strict limits to jurisdictions and physical boundaries.

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<sup>222</sup> Bruce 4.

<sup>223</sup> Geórgia Nogueira De Souza Patu, “Conservation and Wise Use of Mangrove Ecosystems: Legislation in Brazil, Colombia, Costa Rica and Nicaragua,” IUCN- the World Conservation Union (2002): 29, 29 Mar. 2007 <<http://www.iucn.org/themes/law/pdffdocuments/CDGFinalPaperGeorgiaNogueira.pdf>>.

<sup>224</sup> Food and Agriculture Organization, Fact Sheet 3: Enabling Environment for the Adoption of Integrated Land Resources Planning and Management, 29 Mar. 2007 <<ftp://ftp.fao.org/agl/agll/ch10/ch103.pdf>>.

<sup>225</sup> Jonathan M. Lindsay, “Creating a Legal Framework for Community-Based Management: Principles and Dilemmas,” *Unasylva* 50.199 (1999), 22 Mar. 2007 <<http://www.fao.org/docrep/x3030e/x3030e09.htm>>.

While this may seem contradictory to the rigor of legal documents, innovative solutions can be found through participatory processes in law-making and its corollary of capacity-building. Here the CBD and other environmental regimes can play a role and push for such improvements, as described below.

### **Part III: Prescriptions for International Legal Regimes**

The CBD, and to a lesser extent the Ramsar Convention and UNCCD, have become authoritative environmental agreements with regards to empowerment of local communities, and could continue their prescriptions further. Naturally, as Lindsay noted, “the search for broadly applicable principles may seem like a risky undertaking in view of the diversity of approaches falling within the scope of community-based natural resource management.”<sup>226</sup> From the global level to the local level, and given the variety of the local and national contexts, how can international regimes promote further involvement of local communities?

#### **III.1 Prescriptions for the Convention on Biological Diversity**

Towards establishing secure, meaningful and flexible legislative systems, the CBD could first organize and stimulate a reflection on local communities as entities discrete from indigenous ones, and request state parties to clarify their understanding in national reports. A working definition of local communities established through consultative processes between and within state parties would be the first measure to respond to the calls of actors such as Ms. Marajoara and to facilitate access to funding. In addition, intellectual property issues have thus far tilted the discussions on article 8(j) towards the use of traditional knowledge. Opening a reflection on non-traditional communities as other valuable actors could accelerate the devolution of management rights.

Second, legal and technical capacity-building to communities could be more systematically envisioned in the CBD. Such processes have been successfully set in place by non-governmental organizations or foreign governmental agencies on a project basis, and could be systematized under the technology assistance already enshrined, although little implemented, of the CDB. Article 18, which

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<sup>226</sup> Lindsay 6.

provides for technical cooperation, could be the basis for guidelines promoting legal training for local communities. Indeed, the “development and strengthening of national capabilities, by means of human resources development”<sup>227</sup> could be interpreted with local communities in mind and towards creating workable legislative frameworks. Although, as best stated by Wingard, “the concept of participation (including policy formation) [...] cannot bring alone the intricacies of law to the knowledge of the common citizen”<sup>228</sup>, the organized structure of local communities would allow them to designate an individual to bridge the knowledge gap. To actively further this training, the CBD Secretariat should also encourage state parties to invite local community representatives at COPs as part of national delegations, rather than as mere observers. COPs could also act as meeting points for state parties wishing to jointly organize, and later systematize, regional management training directed at communities.

Third, international conventions may articulate series of incentives for communities to participate in sustainable management. Not all countries can establish systems of monetary rewards similar to that of Costa Rica. Lack of resources to encourage environmental stewardship can be replaced by provisions towards elevated social status, or, as will be detailed below, tenure incentives. Another alternative is to establish under the CBD a fund to reward good practices for self-nominated initiatives. Directly funding the field actors and encourage their good practices would circumvent the reluctance of certain governments to donate to administrations they deem corrupt or inefficient. The CBD Secretariat has already provided political and in-kind support to the Equator Initiative<sup>229</sup>, a small UNDP program that has instigated such award. Scaling up this type of initiative and involving state parties would be a further step towards an international commitment to local communities.

Finally, to simultaneously promote greater responsabilization and protect certain access rights, the issues of secure tenure should be undertaken more forcefully by the CBD and the other conventions that

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<sup>227</sup> CBD art 18.

<sup>228</sup> Wingard 32 .

<sup>229</sup> Eileen de Ravin, Manager, UNDP Equator Initiative, personal interview, 10 Apr. 2007. See also “Core Partners,” Equator Initiative, United Nations Development Programme, 22 Mar. 2007 <<http://www.undp.org/equatorinitiative/partners.htm>> .

carve a space for local communities. While the issue of property rights will long remain contentious, secure tenure can be achieved through various processes, and international sets of guidelines agreed upon in conferences of the parties could provide guidance, inspired from writings on legal recognition of common property rights undertaken by various NGOs<sup>230</sup>. In order of decreasing strength, Ellsworth proposes, secure tenure ranges from constitutional presumption of ownership, legal "title" –individual or collective- with backing of the authorities, long term (over 100 years) contracts, or shorter term contracts and leasing.<sup>231</sup> Governments may grant property rights to individuals, community, or both, while preserving open access areas. Tying ownership rights to successful completion of specific management goals agreed upon in the planning stage is an option<sup>232</sup> in line with the accountability propositions of Agenda 21. Undertaking negotiations towards voluntary guidelines and practical principles would consolidate the relevance of the topic and initiate a movement towards a more secure tenural environment.

### **III.2 Beyond the CBD: local communities and the Kyoto Protocol<sup>233</sup>**

Community empowerment has naturally emerged from natural resource management and the procurements of conventions such as the CBD and UNCCD. Once legal identity is better established and conditions for participation facilitated by national legislative frameworks, local communities could also become actors towards achieving the objectives of the UNFCCC. Indeed, a participatory role for local communities under the Kyoto Protocol's Clean Development Mechanism (CDM)<sup>234</sup> is conceivable if the role of natural carbon sinks is legally promoted. The CDM is one of the three market-based mechanisms of carbon trading introduced under the Kyoto Protocol and the only one that involves developing countries. Carbon credits - certificates equivalent to a reduction of one ton of carbon dioxide – may be earned by

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<sup>230</sup> Center for International Environmental Law, "Community-Based Property Rights: a Concept Note," Issue Brief for the World Summit on Sustainable Development, 26 Aug.- 4 Sept. 2002, 22 Mar. 2007 <<http://www.ciel.org/Publications/cbpr.pdf>>.

<sup>231</sup> Lynn Ellsworth, "Community Property Rights and Forests around the World", 2001, 22 Mar. 2007 [http://www.forest-trends.org/documents/meetings/Huangshan\\_2001/Ellsworth\\_Tenure\\_HS.pdf](http://www.forest-trends.org/documents/meetings/Huangshan_2001/Ellsworth_Tenure_HS.pdf).

<sup>232</sup> Wingard 11.

<sup>233</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change. Dec. 10, 1997. 37 ILM 22 (1998).

<sup>234</sup> The CDM is not the only scheme for carbon trading: there are other voluntary schemes that use similar market mechanisms.

investing in project activities that reduce greenhouse gases emissions. By the end of 2006 the overwhelming majority of projects consisted of fluorocarbon and nitrous oxide gas reductions.<sup>235</sup> By contrast, projects in the area of land use, land use change and forestry, which are to date restricted to biosequestration from afforestation (converting open land into a forest) and reforestation (restocking of trees on forest which has been depleted), have thus far generated little investment interest<sup>236</sup>. Long timelines, the temporary nature of natural carbon sinks and their vulnerability to a variety of risks and uncertainties<sup>237</sup>- such as fires, or sudden lack of interest from the managing party - have indeed detracted investors. Yet negotiations for a second commitment period valorizing the role of existing forests and agricultural land may represent an opportunity to exploit synergistic environmental opportunities and community empowerment measures. In the scheme proposed here, communities would earn carbon credits by sustainably managing forestry resources and hence maintaining natural carbon sinks. Good agricultural practices could also earn carbon credits: conservative or zero tillage, crop rotations or good management of fallow lands for example have been shown to make the soils a carbon sink, while poor manure management and excessive use of fertilizers make them source of greenhouse gases<sup>238</sup>. To reap the monetary benefits of their good stewardship, however, local communities must be simultaneously protected and encouraged by legal systems. Key and connected legal issues for rural communities include a clarification on ownership of carbon credits linked to secure land rights.

The entity registering a rural activity with the CDM board - be it a government, NGO, business or individual- would conduct carbon soil measurements at the onset and conclusion of the project and be handed an equivalent number of titles to carbon credits certificates, which can then be traded. Under the current construction, ownership of the certificates is specified upon registration on an ad-hoc basis. Some

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<sup>235</sup> United Nations Development Programme, The Clean Development Mechanism: an Assessment of Progress (New York: UNDP, 2006) 80.

<sup>236</sup> Ibid.

<sup>237</sup> Including (but not limited to) whether there will be a post-2012 commitment under the Kyoto Protocol.

<sup>238</sup> Intergovernmental Panel on Climate Change, Land Use, Land-Use Change and Forestry, Special Report of the IPCC (Cambridge, UK: Cambridge University Press, 2000).

argue that the registering enterprise should be granted ownership. This would effectively allow outsiders, more likely than rural populations to have the technical capacities to submit the proposals, to receive benefits from a land they do not maintain. Others claim that owners of the land should be by default the owners of the carbon sequestering process, and thus the carbon credits. Although this suggestion is an improvement over the first one, it still leaves aside the large majority of local communities who lack formal land rights. Securing tenure is therefore an essential step to a pro-communities national agenda. Indeed, more secure tenure would first be needed to assessing, formalizing and guaranteeing community ownership of the carbon credits deriving from ownership of the land. Second, the revenues from the carbon credits would not only strengthen livelihoods but also increase the incentives towards good management of natural greenhouse gases reduction services<sup>239</sup>. Back to the example of forests, if abstaining from logging is profitable for a community, it will embrace the activity with more conviction than if it is presented as a sole matter of conservation. Finally, secure tenure would encourage the enterprises registering the projects: if communities as a whole commit to maintaining a forest or practicing sustainable agriculture and are not likely to be evicted, the guarantees of completion and success are greater. The long timeline that detract investors would also be less of an issue: vesting ownership in a group rather than an individual guarantees the strength and length of the commitment. Making carbon finance work for the rural poor is a budding discussion in development works<sup>240</sup>; integrating the *community* ownership component would only strengthen the proposals which should enter the agenda of the next COP to the Kyoto Protocol<sup>241</sup>. In an effort to incite states to clarify their national legislative systems, the Kyoto Protocol Secretariats should

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<sup>239</sup> J. Boyce and M. Pastor, "Building Natural assets: New Strategies for Poverty Reduction and Environmental Protection," Political Economy Research Institute's Natural Assets Management and Center for Popular Economics, 2001, 22 Mar. 2007 <<http://cjitc.ucsc.edu/docs/RR3.pdf>>. See also H. Rosa et al., "Compensation for Environmental Services and Rural Communities: Lessons for the Americas," Political Economy Research Institute Working Papers Series 96 (2004), 22 Mar. 2007 <[http://www.ccmss.org.mx/documentos/payment\\_of\\_environmental\\_services.pdf](http://www.ccmss.org.mx/documentos/payment_of_environmental_services.pdf)>.

<sup>240</sup> See for example the Center for International Forestry Research, "Making Forest Carbon Markets Work for Poor Forest and Farm Producers," Earth Negotiations Bulletin, Special Report on Selected Side Events at UNFCCC COP-8, 23 Oct.- 1 Nov. 2002, New Delhi, India, International Institute for Sustainable Development, 10 Apr. 2007, <<http://www.iisd.ca/climate/cop8/enbots/pdf/enbots1105e.pdf>>

<sup>241</sup> No such discussion occurred at COP 12.

therefore push the issues of: 1) educating local communities to the CDM mechanisms and natural greenhouse reduction practices; 2) clarifying membership criteria; and 3) granting binding decision-making powers for local communities. Bottom-up leadership emerging from municipalities<sup>242</sup> is already proof of the capacity of mobilization of local decision-makers, who would be at the forefront of training and vesting powers into local communities.

The CBD, UNFCCC and UNCCD have already joined their efforts to insure that watershed, biodiversity and forestry management are part of comprehensive systems, and avoid regrettable effects that would for example allow biodiversity deserts such as plantation forestry to earn carbon credits.<sup>243</sup> Working together towards more secure tenure rights and clear legal status for local communities could be the next joint endeavor that contributes simultaneously to their mandates.

## Conclusion

This brief examination of how empowerment of local communities is conceived by international legal regimes, how it has permeated into national legislatures to recognize them as environmental stewards has sketched a more definite picture of this emerging legal concept. Outstanding issues of land and rights and their cohorts of incentives may be the most important obstacles to achieve the objectives of the CBD and could also prevent local communities from reaping the benefits of emerging carbon finance mechanisms under the Kyoto Protocol. Of course, national legal systems do not suffice for promoting community participation. Legislative framework must be implemented with a certain degree of political will and financial resources, which can sprout from greater attention in international fora such as a Conference of the Parties. By promoting an enabling environment for local communities, international environmental

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<sup>242</sup> International Council for Local Environmental Initiatives, "Global Cooling: Cities Take Leadership," Earth Negotiations Bulletin, Special Report on Selected Side Events at COP 11 & Kyoto Protocol COP/MOP 1, 28 Nov.- 9 Dec. 2005, Montréal, Canada, International Institute for Sustainable Development, 10 Apr. 2007 <<http://www.iisd.ca/climate/cop11/enbots/enbots1710e.html>>.

<sup>243</sup> Imke Sagemuller, "Forest Sinks under the United Nations Framework Convention on Climate Change and the Kyoto Protocol: Opportunity or Risk for Biodiversity?" Columbia Journal of Environmental Law 31 (2006):189-242.

regimes could perhaps then pave the way towards legally enabling community participation in global health, education, and other Millennium Development Goals.

## ANNEX I LOCAL COMMUNITIES THROUGHOUT AGENDA 21

### SECTION I: SOCIAL AND ECONOMIC DIMENSIONS

#### **Chapter 2: International cooperation to accelerate sustainable development in developing countries and related domestic policies**

2.37. More specifically, all countries should develop policies that improve efficiency in the allocation of resources and take full advantage of the opportunities offered by the changing global economic environment. In particular, wherever appropriate, and taking into account national strategies and objectives, countries should:

(g) Provide opportunities for small-scale enterprises, both farm and non-farm, and for the indigenous population and local communities to contribute fully to the attainment of sustainable development;

#### **Chapter 3: Combating poverty**

3.2. While managing resources sustainably, an environmental policy that focuses mainly on the conservation and protection of resources must take due account of those who depend on the resources for their livelihoods. Otherwise it could have an adverse impact both on poverty and on chances for long-term success in resource and environmental conservation. Equally, a development policy that focuses mainly on increasing the production of goods without addressing the sustainability of the resources on which production is based will sooner or later run into declining productivity, which could also have an adverse impact on poverty. A specific anti-poverty strategy is therefore one of the basic conditions for ensuring sustainable development. An effective strategy for tackling the problems of poverty, development and environment simultaneously should begin by focusing on resources, production and people and should cover demographic issues, enhanced health care and education, the rights of women, the role of youth and of indigenous and local communities and a democratic participation process in association with improved governance.

3.5. Activities that will contribute to the integrated promotion of sustainable livelihoods and environmental protection cover a variety of sectoral interventions involving a range of actors, from local to global, and are essential at every level, especially the community and local levels:

(a) Focus on the empowerment of local and community groups through the principle of delegating authority, accountability and resources to the most appropriate level to ensure that the programme will be geographically and ecologically specific;

(c) Contain a long-term strategy aimed at establishing the best possible conditions for sustainable local, regional and national development that would eliminate poverty and reduce the inequalities between various population groups. It should assist the most disadvantaged groups - in particular, women, children and youth within those groups - and refugees. The groups will include poor smallholders, pastoralists, artisans, fishing communities, landless people, indigenous communities, migrants and the urban informal sector.

3.7. Sustainable development must be achieved at every level of society. Peoples' organizations, women's groups and non-governmental organizations are important sources of innovation and action at the local

level and have a strong interest and proven ability to promote sustainable livelihoods. Governments, in cooperation with appropriate international and non-governmental organizations, should support a community-driven approach to sustainability, which would include, inter alia:

- (a) Empowering women through full participation in decision-making;
- (b) Respecting the cultural integrity and the rights of indigenous people and their communities;
- (c) Promoting or establishing grass-roots mechanisms to allow for the sharing of experience and knowledge between communities;
- (d) Giving communities a large measure of participation in the sustainable management and protection of the local natural resources in order to enhance their productive capacity;
- (e) Establishing a network of community-based learning centres for capacity-building and sustainable development.

3.8. Governments, with the assistance of and in cooperation with appropriate international, non-governmental and local community organizations, should establish measures that will directly or indirectly:

- (a) Generate remunerative employment and productive occupational opportunities compatible with country-specific factor endowments, on a scale sufficient to take care of prospective increases in the labour force and to cover backlogs;
- (b) With international support, where necessary, develop adequate infrastructure, marketing systems, technology systems, credit systems and the like and the human resources needed to support the above actions and to achieve a widening of options for resource-poor people. High priority should be given to basic education and professional training;
- (c) Provide substantial increases in economically efficient resource productivity and measures to ensure that the local population benefits in adequate measure from resource use;
- (d) Empower community organizations and people to enable them to achieve sustainable livelihoods;
- (e) Set up an effective primary health care and maternal health care system accessible to all;
- (f) Consider strengthening/developing legal frameworks for land management, access to land resources and land ownership - in particular, for women - and for the protection of tenants;
- (g) Rehabilitate degraded resources, to the extent practicable, and introduce policy measures to promote sustainable use of resources for basic human needs;
- (h) Establish new community-based mechanisms and strengthen existing mechanisms to enable communities to gain sustained access to resources needed by the poor to overcome their poverty;
- (i) Implement mechanisms for popular participation - particularly by poor people, especially women - in local communities groups, to promote sustainable development;

(j) Implement, as a matter of urgency, in accordance with country-specific conditions and legal systems, measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means, as appropriate, to enable them to exercise this right in keeping with their freedom, dignity and personally held values, taking into account ethical and cultural considerations. Governments should take active steps to implement programmes to establish and strengthen preventive and curative health facilities, which include women-centred, women-managed, safe and effective reproductive health care and affordable, accessible services, as appropriate, for the responsible planning of family size, in keeping with freedom, dignity and personally held values, taking into account ethical and cultural considerations. Programmes should focus on providing comprehensive health care, including pre-natal care, education and information on health and responsible parenthood and should provide the opportunity for all women to breast-feed fully, at least during the first four months post-partum. Programmes should fully support women's productive and reproductive roles and well-being, with special attention to the need for providing equal and improved health care for all children and the need to reduce the risk of maternal and child mortality and sickness;

(k) Adopt integrated policies aiming at sustainability in the management of urban centres;

(l) Undertake activities aimed at the promotion of food security and, where appropriate, food self-sufficiency within the context of sustainable agriculture;

(m) Support research on and integration of traditional methods of production that have been shown to be environmentally sustainable;

(n) Actively seek to recognize and integrate informal-sector activities into the economy by removing regulations and hindrances that discriminate against activities in those sectors;

(o) Consider making available lines of credit and other facilities for the informal sector and improved access to land for the landless poor so that they can acquire the means of production and reliable access to natural resources. In many instances special considerations for women are required. Strict feasibility appraisals are needed for borrowers to avoid debt crises;

(p) Provide the poor with access to fresh water and sanitation;

(q) Provide the poor with access to primary education.

3.12. National capacity-building for implementation of the above activities is crucial and should be given high priority. It is particularly important to focus capacity-building at the local community level in order to support a community-driven approach to sustainability and to establish and strengthen mechanisms to allow sharing of experience and knowledge between community groups at national and international levels. Requirements for such activities are considerable and are related to the various relevant sectors of Agenda 21 calling for requisite international, financial and technological support.

## **Chapter 5: Demographic dynamics and sustainability**

5.6. Relevant international, regional and national institutions should consider undertaking the following activities:

(a) Identifying the interactions between demographic processes, natural resources and life support systems, bearing in mind regional and subregional variations deriving from, inter alia, different levels of development;

(b) Integrating demographic trends and factors into the ongoing study of environmental change, using the expertise of international, regional and national research networks and of local communities, first, to study the human dimensions of environmental change and, second, to identify vulnerable areas;

5.10. Socio-demographic information should be developed in a suitable format for interfacing with physical, biological and socio-economic data. Compatible spatial and temporal scales, cross-country and time-series information, as well as global behavioural indicators should be developed, learning from local communities' perceptions and attitudes.

5.14. Collaboration and exchange of information should be increased between research institutions and international, regional and national agencies and all other sectors (including the private sector, local communities, non-governmental organizations and scientific institutions) from both the industrialized and developing countries, as appropriate.

5.24. The impact of national demographic trends and factors on the traditional livelihoods of indigenous groups and local communities, including changes in traditional land use because of internal population pressures, should be studied.

5.38. The capacity of national, regional and local structures to deal with issues relating to demographic trends and factors and sustainable development should be enhanced. This would involve strengthening the relevant bodies responsible for population issues to enable them to elaborate policies consistent with the national prospects for sustainable development. Cooperation among government, national research institutions, non-governmental organizations and local communities in assessing problems and evaluating policies should also be enhanced.

5.39. The capacity of the relevant United Nations organs, organizations and bodies, international and regional intergovernmental bodies, non-governmental organizations and local communities should, as appropriate, be enhanced to help countries develop sustainable development policies on request and, as appropriate, provide assistance to environmental migrants and displaced people.

5.44. Governments and local communities, including community-based women's organizations and national non-governmental organizations, consistent with national plans, objectives, strategies and priorities, could, inter alia, undertake the activities set out below with the assistance and cooperation of international organizations, as appropriate. Governments could share their experience in the implementation of Agenda 21 at the International Conference on Population and Development, to be held in 1994, especially its committee on population and environment.

## **Chapter 6: Protecting and promoting human health**

6.1. Health and development are intimately interconnected. Both insufficient development leading to poverty and inappropriate development resulting in overconsumption, coupled with an expanding world population, can result in severe environmental health problems in both developing and developed nations. Action items under Agenda 21 must address the primary health needs of the world's population, since they

are integral to the achievement of the goals of sustainable development and primary environmental care. The linkage of health, environmental and socio-economic improvements requires intersectoral efforts. Such efforts, involving education, housing, public works and community groups, including businesses, schools and universities and religious, civic and cultural organizations, are aimed at enabling people in their communities to ensure sustainable development. Particularly relevant is the inclusion of prevention programmes rather than relying solely on remediation and treatment. Countries ought to develop plans for priority actions, drawing on the programme areas in this chapter, which are based on cooperative planning by the various levels of government, non-governmental organizations and local communities. An appropriate international organization, such as WHO, should coordinate these activities.

6.5. National Governments and local authorities, with the support of relevant non-governmental organizations and international organizations, in the light of countries' specific conditions and needs, should strengthen their health sector programmes, with special attention to rural needs, to:

(a) Build basic health infrastructures, monitoring and planning systems:

- i. Develop and strengthen primary health care systems that are practical, community-based, scientifically sound, socially acceptable and appropriate to their needs and that meet basic health needs for clean water, safe food and sanitation;
- ii. Support the use and strengthening of mechanisms that improve coordination between health and related sectors at all appropriate levels of government, and in communities and relevant organizations;

xi. Promote and strengthen community-based rehabilitation activities for the rural handicapped.

(b) Support research and methodology development:

- i. Establish mechanisms for sustained community involvement in environmental health activities, including optimization of the appropriate use of community financial and human resources;

6.9. Governments should consider adopting enabling and facilitating strategies to promote the participation of communities in meeting their own needs, in addition to providing direct support to the provision of health-care services. A major focus should be the preparation of community-based health and health-related workers to assume an active role in community health education, with emphasis on team work, social mobilization and the support of other development workers. National programmes should cover district health systems in urban, peri-urban and rural areas, the delivery of health programmes at the district level, and the development and support of referral services.

b) Public information and health education: Provide education and disseminate information on the risks of endemic communicable diseases and build awareness on environmental methods for control of communicable diseases to enable communities to play a role in the control of communicable diseases;

6.17. The health sector should develop adequate data on the distribution of communicable diseases, as well as the institutional capacity to respond and collaborate with other sectors for prevention, mitigation and correction of communicable disease hazards through environmental protection. The advocacy at policy- and decision-making levels should be gained, professional and societal support mobilized, and communities organized in developing self-reliance.

6.22. Indigenous people and their communities. Indigenous people and their communities make up a significant percentage of global population. The outcomes of their experience have tended to be very similar in that the basis of their relationship with traditional lands has been fundamentally changed. They tend to feature disproportionately in unemployment, lack of housing, poverty and poor health. In many countries the number of indigenous people is growing faster than the general population. Therefore it is important to target health initiatives for indigenous people.

6.27. National Governments, in cooperation with local and non-governmental organizations, should initiate or enhance programmes in the following areas:

(d) Indigenous people and their communities:

- i. Strengthen, through resources and self-management, preventative and curative health services;
- ii. Integrate traditional knowledge and experience into health systems.

## **Chapter 7: Promoting sustainable human settlement development**

7.20 All cities, particularly those characterized by severe sustainable development problems, should, in accordance with national laws, rules and regulations, develop and strengthen programmes aimed at addressing such problems and guiding their development along a sustainable path. Some international initiatives in support of such efforts, as in the Sustainable Cities Programme of Habitat and the Healthy Cities Programme of WHO, should be intensified. Additional initiatives involving the World Bank, the regional development banks and bilateral agencies, as well as other interested stakeholders, particularly international and national representatives of local authorities, should be strengthened and coordinated. Individual cities should, as appropriate:

(b) Improve the urban environment by promoting social organization and environmental awareness through the participation of local communities in the identification of public services needs, ..

7.30. Subsequently, all countries should consider developing national land-resource management plans to guide land-resource development and utilization and, to that end, should:

(f) Establish appropriate forms of land tenure that provide security of tenure for all land-users, especially indigenous people, women, local communities, the low-income urban dwellers and the rural poor;

7.45. With the assistance and support of funding agencies, all countries should, as appropriate, undertake training and popular participation programmes aimed at:

(c) Strengthening the institutional capacity of local authorities and administrators in the integrated provision of adequate infrastructure services in partnership with local communities and the private sector;

7.59. Three distinct areas of activity are foreseen under this programme area, namely, the development of a "culture of safety", pre-disaster planning and post-disaster reconstruction.

(d) Identifying industrially based environmental disaster areas at the national and international levels and implementing strategies aimed at the rehabilitation of these areas through, inter alia:

- ii. Promoting close collaboration between governmental and local authorities, local communities and non-governmental organizations and private business;

7.61. Pre-disaster planning should form an integral part of human settlement planning in all countries. The following should be included:

- i) Developing procedures and practices to enable local communities to receive information about hazardous installations or situations in these areas, and facilitate their participation in early warning and disaster abatement and response procedures and plans;

8.5. To support a more integrated approach to decision-making, the data systems and analytical methods used to support such decision-making processes may need to be improved. Governments, in collaboration, where appropriate, with national and international organizations, should review the status of the planning and management system and, where necessary, modify and strengthen procedures so as to facilitate the integrated consideration of social, economic and environmental issues. Countries will develop their own priorities in accordance with their national plans, policies and programmes for the following activities:

- (h) Establishing procedures for involving local communities in contingency planning for environmental and industrial accidents, and maintaining an open exchange of information on local hazards.

## **SECTION II: CONSERVATION AND MANAGEMENT OF RESOURCES FOR DEVELOPMENT**

### **Chapter 10: Integrated approach to the planning and management of land resources.**

10.5. The broad objective is to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources. In doing so, environmental, social and economic issues should be taken into consideration. Protected areas, private property rights, the rights of indigenous people and their communities and other local communities and the economic role of women in agriculture and rural development, among other issues, should be taken into account. In more specific terms, the objectives are as follows:

10.10. Governments at the appropriate level, in collaboration with national organizations and with the support of regional and international organizations, should establish innovative procedures, programmes, projects and services that facilitate and encourage the active participation of those affected in the decision-making and implementation process, especially of groups that have, hitherto, often been excluded, such as women, youth, indigenous people and their communities and other local communities.

10.11. Governments at the appropriate level, in collaboration with national institutions and the private sector and with the support of regional and international organizations, should strengthen the information systems necessary for making decisions and evaluating future changes on land use and management. The needs of both men and women should be taken into account. To do this, they should:

- (c) Provide the appropriate technical information necessary for informed decision-making on land use and management in an accessible form to all sectors of the population, especially to local communities and women;

### **Chapter 11: Combating deforestation**

11.13. Governments should recognize the importance of categorizing forests, within the framework of long-term forest conservation and management policies, into different forest types and setting up sustainable units in every region/watershed with a view to securing the conservation of forests. Governments, with the participation of the private sector, non-governmental organizations, local community groups, indigenous people, women, local government units and the public at large, should act to maintain and expand the existing vegetative cover wherever ecologically, socially and economically feasible, through technical cooperation and other forms of support. Major activities to be considered include:

(b) Establishing, expanding and managing, as appropriate to each national context, protected area systems, which includes systems of conservation units for their environmental, social and spiritual functions and values, including conservation of forests in representative ecological systems and landscapes, primary old-growth forests, conservation and management of wildlife, nomination of World Heritage Sites under the World Heritage Convention, as appropriate, conservation of genetic resources, involving in situ and ex situ measures and undertaking supportive measures to ensure sustainable utilization of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities;

(i) Launching or improving opportunities for participation of all people, including youth, women, indigenous people and local communities in the formulation, development and implementation of forest-related programmes and other activities, taking due account of the local needs and cultural values

11.30. The objectives of this programme area are as follows:

(b) To provide economists, planners, decision makers and local communities with sound and adequate updated information on forests and forest land resources.

## **Chapter 12: managing fragile ecosystems: combating desertification and drought**

12.3. The priority in combating desertification should be the implementation of preventive measures for lands that are not yet degraded, or which are only slightly degraded. However, the severely degraded areas should not be neglected. In combating desertification and drought, the participation of local communities, rural organizations, national Governments, non-governmental organizations and international and regional organizations is essential.

12.23. Governments at the appropriate level and local communities, with the support of the relevant international and regional organizations, should:

(a) Integrate indigenous knowledge related to forests, forest lands, rangeland and natural vegetation into research activities on desertification and drought;

(b) Promote integrated research programmes on the protection, restoration and conservation of water and land resources and land-use management based on traditional approaches, where feasible.

12.24. Governments at the appropriate level and local communities, with the support of the relevant international and regional organizations, should:

- (a) Establish mechanisms to ensure that land users, particularly women, are the main actors in implementing improved land use, including agroforestry systems, in combating land degradation;
- (b) Promote efficient extension-service facilities in areas prone to desertification and drought, particularly for training farmers and pastoralists in the improved management of land and water resources in drylands.

12.25. Governments at the appropriate level and local communities, with the support of the relevant international and regional organizations, should:

- (a) Develop and adopt, through appropriate national legislation, and introduce institutionally, new and environmentally sound development-oriented land-use policies;
- (b) Support community-based people's organizations, especially farmers and pastoralists.

12.56. The objectives of this programme area are:

- (d) To support local communities in their own efforts in combating desertification, and to draw on the knowledge and experience of the populations concerned, ensuring the full participation of women and indigenous populations.

12.57 Governments at the appropriate level, with the support of the relevant international and regional organizations, should:

- (c) Define specific programme/project objectives in cooperation with local communities; design local management plans to include such measures of progress, thereby providing a means of altering project design or changing management practices, as appropriate;

### **Chapter 13: Managing fragile ecosystems: sustainable mountain development**

13.5. The objectives of this programme area are:

- (c) To improve and build the existing land/water ecological knowledge base regarding technologies and agricultural and conservation practices in the mountain regions of the world, with the participation of local communities;

13.15. The objectives of this programme area are:

- (b) To promote income-generating activities, such as sustainable tourism, fisheries and environmentally sound mining, and to improve infrastructure and social services, in particular to protect the livelihoods of local communities and indigenous people;

13.24. The private sector and local communities, in cooperation with national Governments, should promote local infrastructure development, including communication networks, mini- or micro-hydro development to support cottage industries, and access to markets.

### **Chapter 14: Promoting sustainable agriculture and rural development**

14.17. The objectives of this programme area are:

- a. To promote greater public awareness of the role of people's participation and people's organizations, especially women's groups, youth, indigenous people, local communities and small farmers, in sustainable agriculture and rural development;

14.18. Governments at the appropriate level, with the support of the relevant international and regional organizations, should:

- b. Review and refocus existing measures to achieve wider access to land, water and forest resources and ensure equal rights of women and other disadvantaged groups, with particular emphasis on rural populations, indigenous people and local communities;
- c. Assign clear titles, rights and responsibilities for land and for individuals or communities to encourage investment in land resources;

14.19. Governments at the appropriate level, and with the support of the relevant international and regional organizations, should collect, analyse, and disseminate information on human resources, the role of Governments, local communities and non-governmental organizations in social innovation and strategies for rural development.

14.41. Governments at the appropriate level, with the support of the relevant international and regional organizations, should:

- b. Select combinations of land uses and production systems appropriate to land units through multiple goal optimization procedures, and strengthen delivery systems and local community participation;

14.46. Governments at the appropriate level, with the support of the relevant international and regional organizations, should:

- b. Provide incentives and, where appropriate and possible, resources for the participation of local communities in the planning, implementation and maintenance of their own conservation and reclamation programmes;

14.62. Governments, at the appropriate level, with the support of the relevant international and regional organizations, should:

- c. Promote cost-effective technologies for keeping duplicate sets of ex situ collections (which can also be used by local communities);

## **Chapter 15: Conservation of biological diversity**

15.3. Despite mounting efforts over the past 20 years, the loss of the world's biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals, has continued. Biological resources constitute a capital asset with great potential for yielding sustainable benefits. Urgent and decisive action is needed to conserve and maintain genes, species and ecosystems, with a view to the sustainable management and use of biological resources. Capacities for the assessment, study and systematic observation and evaluation of biodiversity need to be reinforced at

national and international levels. Effective national action and international cooperation is required for the in situ protection of ecosystems, for the ex situ conservation of biological and genetic resources and for the enhancement of ecosystem functions. The participation and support of local communities are elements essential to the success of such an approach. Recent advances in biotechnology have pointed up the likely potential for agriculture, health and welfare and for the environmental purposes of the genetic material contained in plants, animals and micro-organisms. At the same time, it is particularly important in this context to stress that States have the sovereign right to exploit their own biological resources pursuant to their environmental policies, as well as the responsibility to conserve their biodiversity and use their biological resources sustainably, and to ensure that activities within their jurisdiction or control do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction.

15.5 Governments at the appropriate levels, consistent with national policies and practices, with the cooperation of the relevant United Nations bodies and, as appropriate, intergovernmental organizations and, with the support of indigenous people and their communities, non-governmental organizations and other groups, including the business and scientific communities, and consistent with the requirements of international law, should, as appropriate:

(e) Subject to national legislation, take action to respect, record, protect and promote the wider application of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation of biological diversity and the sustainable use of biological resources, with a view to the fair and equitable sharing of the benefits arising, and promote mechanisms to involve those communities, including women, in the conservation and management of ecosystems;

15.6 Governments at the appropriate level, consistent with national policies and practices, with the cooperation of the relevant United Nations bodies and, as appropriate, intergovernmental organizations, and with the support of indigenous people and their communities, non-governmental organizations and other groups, including the business and scientific communities, and consistent with the requirements of international law, should, as appropriate:

c) Initiate or further develop methodologies and begin or continue work on surveys at the appropriate level on the status of ecosystems and establish baseline information on biological and genetic resources, including those in terrestrial, aquatic, coastal and marine ecosystems, as well as inventories undertaken with the participation of local and indigenous people and their communities;

f) Collect, assess and make available relevant and reliable information in a timely manner and in a form suitable for decision-making at all levels, with the full support and participation of local and indigenous people and their communities.

## **Chapter 16: Environmentally sound management of biotechnology 16.7 :**

Governments at the appropriate level, with the support of relevant international and regional organizations, should promote the following activities in conformity with international agreements or Arrangements on biological diversity, as appropriate:

b) Promotion of collaborative research programmes, especially in developing countries, to support activities outlined in this programme area, with particular reference to cooperation with local and indigenous people and their communities in the conservation of biological diversity and sustainable use of biological

resources, as well as the fostering of traditional methods and knowledge of such groups in connection with these activities;

## **Chapter 17: Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources**

17.3. The coastal area contains diverse and productive habitats important for human settlements, development and local subsistence. More than half the world's population lives within 60 km of the shoreline, and this could rise to three quarters by the year 2020. Many of the world's poor are crowded in coastal areas. Coastal resources are vital for many local communities and indigenous people. The exclusive economic zone (EEZ) is also an important marine area where the States manage the development and conservation of natural resources for the benefit of their people. For small island States or countries, these are the areas most available for development activities.

17.6. Each coastal State should consider establishing, or where necessary strengthening, appropriate coordinating mechanisms (such as a high-level policy planning body) for integrated management and sustainable development of coastal and marine areas and their resources, at both the local and national levels. Such mechanisms should include consultation, as appropriate, with the academic and private sectors, non-governmental organizations, local communities, resource user groups, and indigenous people. Such national coordinating mechanisms could provide, inter alia, for:

17.70. Marine living resources provide an important source of protein in many countries and their use is often of major importance to local communities and indigenous people. Such resources provide food and livelihoods to millions of people and, if sustainably utilized, offer increased potential to meet nutritional and social needs, particularly in developing countries. To realize this potential requires improved knowledge and identification of marine living resource stocks, particularly of underutilized and unutilized stocks and species, use of new technologies, better handling and processing facilities to avoid wastage, and improved quality and training of skilled personnel to manage and conserve effectively the marine living resources of the exclusive economic zone and other areas under national jurisdiction. Emphasis should also be on multi-species management and other approaches that take into account the relationships among species.

17.74. States commit themselves to the conservation and sustainable use of marine living resources under national jurisdiction. To this end, it is necessary to:

(b) Take into account traditional knowledge and interests of local communities, small-scale artisanal fisheries and indigenous people in development and management programmes;

17.79. Coastal States, individually or through bilateral and/or multilateral cooperation and with the support, as appropriate of international organizations, whether subregional, regional or global, should inter alia:

(b) Implement strategies for the sustainable use of marine living resources, taking into account the special needs and interests of small-scale artisanal fisheries, local communities and indigenous people to meet human nutritional and other development needs;

17.81. Coastal States should support the sustainability of small-scale artisanal fisheries. To this end, they should, as appropriate:

(a) Integrate small-scale artisanal fisheries development in marine and coastal planning, taking into account the interests and, where appropriate, encouraging representation of fishermen, small-scale fisherworkers, women, local communities and indigenous people;

(b) Recognize the rights of small-scale fishworkers and the special situation of indigenous people and local communities including their rights to utilization and protection of their habitats on a sustainable basis;

17.82. Coastal States should ensure that, in the negotiation and implementation of international agreements on the development or conservation of marine living resources, the interests of local communities and indigenous people are taken into account, in particular their right to subsistence.

17.93. States individually, or through bilateral and multilateral cooperation and with the support of relevant international organizations, whether subregional, regional or global, as appropriate, should encourage and provide support for developing countries, inter alia, to:

(b) Create training opportunities at national and regional levels to support artisanal (including subsistence) fisheries, to develop small-scale use of marine living resources and to encourage equitable participation of local communities, small-scale fish workers, women and indigenous people;

#### **Chapter 18: Protection of the quality and supply of freshwater resources: application of integrated approaches to the development, management and use of water resources**

18.9. Integrated water resources management, including the integration of land- and water-related aspects, should be carried out at the level of the catchment basin or sub-basin. Four principal objectives should be pursued, as follows:

(c) To design, implement and evaluate projects and programmes that are both economically efficient and socially appropriate within clearly defined strategies, based on an approach of full public participation, including that of women, youth, indigenous people and local communities in water management policy-making and decision-making;

18.19. The delegation of water resources management to the lowest appropriate level necessitates educating and training water management staff at all levels and ensuring that women participate equally in the education and training programmes. Particular emphasis has to be placed on the introduction of public participatory techniques, including enhancement of the role of women, youth, indigenous people and local communities. Skills related to various water management functions have to be developed by municipal government and water authorities, as well as in the private sector, local/national non-governmental organizations, cooperatives, corporations and other water-user groups. Education of the public regarding the importance of water and its proper management is also needed.

18.21. Institutional capacity for implementing integrated water management should be reviewed and developed when there is a clear demand. Existing administrative structures will often be quite capable of achieving local water resources management, but the need may arise for new institutions based upon the perspective, for example, of river catchment areas, district development councils and local community committees. Although water is managed at various levels in the socio-political system, demand-driven management requires the development of water-related institutions at appropriate levels, taking into account the need for integration with land-use management.

18.34. The conduct of water resources assessment on the basis of operational national hydrometric networks requires an enabling environment at all levels. The following national support action is necessary for enhanced national capacities:

(d) Strengthening of the managerial capabilities of water-user groups, including women, youth, indigenous people and local communities to improve water-use efficiency at the local level.

18.50. All States, according to their capacity and available resources, and through bilateral or multilateral cooperation, including the United Nations and other relevant organizations as appropriate, could implement the following activities:

C) National and community management:

- i. Support and assistance to communities in managing their own systems on a sustainable basis;
- ii. Encouragement of the local population, especially women, youth, indigenous people and local communities, in water management;
- iii. Linkages between national water plans and community management of local waters;
- iv. Integration of community management of water within the context of overall planning;
- v. Promotion of primary health and environmental care at the local level, including training for local communities in appropriate water management techniques and primary health care;
- vi. Assistance to service agencies in becoming more cost-effective and responsive to consumer needs;
- vii. Providing of more attention to underserved rural and low-income periurban areas;
- viii. Rehabilitation of defective systems, reduction of wastage and safe reuse of water and waste water;
- ix. Programmes for rational water use and ensured operation and maintenance;
- x. Research and development of appropriate technical solutions;
- xi. Substantially increase urban treatment capacity commensurate with increasing loads;

18.62. Implicit in virtually all elements of this programme is the need for progressive enhancement of the training and career development of personnel at all levels in sector institutions. Specific programme activities will involve the training and retention of staff with skills in community involvement, low-cost technology, financial management, and integrated planning of urban water resources management. Special provision should be made for mobilizing and facilitating the active participation of women, youth, indigenous people and local communities in water management teams and for supporting the development of water associations and water committees, with appropriate training of such personnel as treasurers, secretaries and caretakers. Special education and training programmes for women should be launched with regard to the protection of water resources and water-quality within urban areas.

18.68. The key strategic principles for holistic and integrated environmentally sound management of water resources in the rural context may be set forth as follows:

(b) Local communities must participate in all phases of water management, ensuring the full involvement of women in view of their crucial role in the practical day-to-day supply, management and use of water;

18.76. All States, according to their capacity and available resources, and through bilateral or multilateral cooperation, including the United Nations and other relevant organizations as appropriate, could implement the following activities

18.76. All States, according to their capacity and available resources, and through bilateral or multilateral cooperation, including the United Nations and other relevant organizations as appropriate, could implement the following activities:

D) Water resources development programmes:

iv. Provide adequate technical advice and support and enhancement of institutional collaboration at the local community level;

v. Promote a farming approach for land and water management that takes account of the level of education, the capacity to mobilize local communities and the ecosystem requirements of arid and semi-arid regions;

18.80. Education and training of human resources should be actively pursued at the national level through: (a) assessment of current and long-term human resources management and training needs; (b) establishment of a national policy for human resources development; and (c) initiation and implementation of training programmes for staff at all levels as well as for farmers. The necessary actions are as follows:

C) Human resource development:

(d) Train staff at all levels, including farmers, fishermen and members of local communities, with particular reference to women;

### **Chapter 19: Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products**

19.70. Governments should develop, as appropriate, national alert systems to assist in detecting illegal traffic in toxic and dangerous products; local communities, and others could be involved in the operation of such a system.

### **Chapter 20: Environmentally sound management of hazardous wastes, including prevention of illegal international traffic in hazardous wastes.**

20.43. Governments should develop as appropriate, an information network and alert system to assist in detecting illegal traffic in hazardous wastes. Local communities and others could be involved in the operation of such a network and system.

## **SECTION III: STRENGTHENING THE ROLE OF MAJOR GROUPS**

### **Chapter 25: Children and youth in sustainable development**

25.14. Governments should take active steps to:

(c) Promote primary environmental care activities that address the basic needs of communities, improve the environment for children at the household and community level and encourage the participation and empowerment of local populations, including women, youth, children and indigenous people, towards the objective of integrated community management of resources, especially in developing countries;

## SECTION IV: MEANS OF IMPLEMENTATION

### Chapter 36: Promoting education, public awareness and training

36.5. Recognizing that countries and regional and international organizations will develop their own priorities and schedules for implementation in accordance with their needs, policies and programmes, the following activities are proposed:

- f) Educational authorities should promote proven educational methods and the development of innovative teaching methods for educational settings. They should also recognize appropriate traditional education systems in local communities;

### Chapter 40: Information for decision-making

40.11. Countries, with the cooperation of international organizations, should establish supporting mechanisms to provide local communities and resource users with the information and know-how they need to manage their environment and resources sustainably, applying traditional and indigenous knowledge and approaches when appropriate. This is particularly relevant for rural and urban populations and indigenous, women's and youth groups.

## ANNEX II: LEGISLATIVE FRAMEWORKS RELEVANT FOR LOCAL COMMUNITIES

### Annex II.a: Costa Rica

Title (year)	Content
Biodiversity Law Law n° 7788 (30 Apr. 1998)	Establishes a National Commission for the Management of Biodiversity Establishes authority over conservation areas in accordance with previous legislations. Devotes a chapter on access to genetic resources and <i>sui generis</i> rights Provides for incentives and payment for environmental services
Forestry Law Law n° 7575 (13 Feb. 1996)	Establishes monetary incentives such as certification of forest conservation, exemptions from territorial taxes and Payment for Environmental Services (PES).
Organic Environmental Law Law No. 7554 (4 Oct. 1995).	Categorizes protected areas into Forestry Reserves, Protected Zones, National Parks, Biological Reserves, Wildlife National Refuges and Natural Monuments. National Parks and Biological Reserves can be acquired or be a property of the State. The Forestry Reserves, Protected Zones and Wildlife National Refuges can be state property, private property or mixed property.
Law Creating the Service of National Parks Law No. 6084 (24 Aug. 1977)	First Costa Rican Law to designate national parks.

## Annex II.b: Mongolia<sup>244</sup>

Title (year)	Content
Law on Forests (1995, amended in 2000 and 2002)	<p>Establishes three zones as the primary basis for management: strict zones, protected zones and utilization zones.</p> <p>Regulates the protection, proper use, and restoration of forests.</p> <p>Defines in broad terms the processes that regulate groups of citizens (communities) and economic entities to access resources.</p> <p>Includes provisions on forest fire protection, maintaining and clearing forests, measures for the protection and restoration of forests, as well as forest utilization issues such as timber contracts, harvest licenses, forest users' obligations, etc.</p>
Law on Khorshoo (1995, amended.1997) and Law on Nokhorlol (2002)	<p>Both laws allow local citizens to form simplified business (cooperatives) entities akin to a simple partnership and are used by communities.</p> <p>The Law on Khorshoo explicitly mentions a list of possible business activities such as livestock, agriculture, transportation, certain banking functions, insurance, housing construction, and health care, but not forestry.</p>
Law on Environmental Protection (5 Jun. 1995, amended 18 Nov. 2005)	<p>Describes the plenary rights of the state organizations, local citizens' representatives, and governors on environmental protection and general measures on the protection, use, and restoration of natural resources. The rights and obligations of state inspectors, economic entities, and organizations for environmental and natural resources protection are amongst the issues also covered.</p> <p>Proposed amendments will make it possible to organize a <i>Nokhorlol</i> specifically for natural resource use, including forest management.</p>
Law on Non-Governmental Organizations (26 Feb. 1997)	<p>Regulate relations concerning the association of citizens and the establishment and activities of non-government organizations for the purpose of implementation of human rights</p> <p>Creates a framework for community participation in conservation activities</p>
Law on Land (1 Apr. 1995)	<p>Provides legal definitions of state land principles, land ownership, land possessors and users and land fees</p> <p>Classifies all land within the borders of Mongolia as "United Land Territory," and creates separate categories of land designated for agriculture, cities, villages, and other settlements, land for transportation and networks, forest resources, water resources, and reserve lands.</p> <p>Includes provisions on land management, records, and reports on the</p>

<sup>244</sup> Based on Wingard, World Bank Report, FAO and Summary of Environmental Laws of Mongolia ed. Ministry for the Environment, Mongolia (Orbis Co., Ltd., 1997), Institute for Global Environmental Strategies 2005, 10 Apr. 2007 <[http://www.iges.or.jp/en/pub/ires/pdf/vl3\\_n1/15.html](http://www.iges.or.jp/en/pub/ires/pdf/vl3_n1/15.html)>

	<p>Unified Land Territory. Includes procedures on application, decision-making processes regarding land possession.</p>
<p>Law on Special Protected Areas (1 April 1995)</p>	<p>Regulates the use and procurement of land for special protection, . Special protected areas are broken down into strictly protected areas, national conservation parks, nature reserves, and monuments.</p>
<p>Law on Buffer Zones (1997)</p>	<p>Governs certain areas and enables increased community participation in local resource management as well as enforcement of environmental laws.</p>

## Annex II.c: Tanzania<sup>245</sup>

Title (year)	Content
National Forest Policy (1998)	Enhances the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of its natural resources for the benefit of present and future generations
National Beekeeping Policy (1998)	Enhances the contribution of the beekeeping sector to the sustainable development of Tanzania and the conservation and management of its natural resources for the benefit of present and future populations
National Wildlife Policy (1998)	-Calls for the creation of Wildlife management Areas (WMA) defined as “an area declared by the Minister to do so and set asides by village governments for the purpose of biological natural resource conservation” (MNRT, 1999) -Transfers the management of WMA to local communities, thus, taking care of corridors, migration routes and buffer zones and ensuring that the local communities obtain sustainable tangible benefits from wildlife conservation
National Beekeeping Program (2001)	Instrument designed to put into practice the National beekeeping Policy with emphasis on stakeholders participation in the planning, management, ownership and sustainable utilization of bee resources for poverty eradication
Beekeeping Act Parliament Act No 15 (2002)	Aims to: (i) to make provisions for the orderly conduct of beekeeping; (ii) to improve the quality and quantity of bee products; (iii) to prevent and eradicate bee diseases and be pests; and (iv) to improve revenue collection
National Environmental Policy (1997)	Confirms government intentions to empower beekeepers to own and manage the use of resources (e.g. bee reserves) so as to prevent and control degradation of life supporting land, water vegetation and air. It also provides a basis for public access to environmental information
Land Act (1999)	Empowers the necessary conditions for CBNRM through the recognition of village land as a category of land
Village Land Act (1999)	Empowers the village council with devolution of management of land
Tanzania Wards Tribunal Act Parliament Act No 7 (16 Apr. 1985)	Established the authority of the Ward Tribunals which are designated to handle disputes at the local level .
Local Government Act (1982)	Permits village by-laws to enter statutory laws though procedures of recognition from the District Council

<sup>245</sup> Reproduced in part from Hausser.

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