

Policy pointers

Conservation should never cause or support the violation of human rights, regardless of whether it is implemented and/or funded by states, international organisations, businesses or NGOs.

Governments or states are not solely responsible for upholding international human rights law in a conservation context; conservation organisations and funders also have responsibilities.

The UN-endorsed Guiding Principles on Business and Human Rights provide a starting point for exploring the responsibilities of conservation organisations.

Upholding human rights in conservation: who is responsible?

The current conflict concerning the boundaries of Saadani National Park in Tanzania and the rights of the local people highlights how injustices continue to be perpetrated in the name of conservation. In this context, this briefing clarifies which actors have human rights obligations. It acknowledges that while international law has previously been considered to apply only to states, it is increasingly relevant to the actions of international organisations, businesses and non-governmental organisations, including philanthropic foundations. It concludes that regardless of whether conservation is implemented and/or funded by states, international organisations, businesses or NGOs, it should neither cause nor support the violation of human rights.

Just conservation?

Local villagers in Saadani National Park, Tanzania are concerned they will be evicted from their homes. Saadani was created in the 1960s as a game reserve and included land contributed by Saadani village because of residents' concern at indiscriminate killing of wildlife by outsiders. Importantly, the game reserve explicitly allowed for local access and use.

But in 2004, the game reserve was gazetted as a national park, so prohibiting all access and use by villagers, including from Saadani. In 2005, local people discovered that additional coastal land had been incorporated into the official map of the park and that, as a result, they were no longer entitled to live there or to use the land. A decade on, the park's boundaries remain in

dispute, and local people are seeking an urgent injunction to halt their eviction from their ancestral lands.¹

Injustices such as this have occurred throughout history in the name of conservation, and are increasingly well documented.² Injustices continue despite an extensive body of international human rights and environmental law specifically providing for the rights of indigenous peoples and local communities in a conservation context.

Decisions and resolutions by international institutions, including the Convention on Biological Diversity (CBD) and the International Union for the Conservation of Nature (IUCN), together with voluntary guidelines developed by conservation organisations, may have led to a 'new paradigm' for protected areas at the

international level, but have not yet achieved rights-based transformation at the institutional and local levels.

Legally liable or socially responsible?

Who is responsible for upholding international human rights law and ensuring that conservation is implemented with social justice? Human rights first appeared in international law in the

early 1900s, when international law was widely considered to apply only to states. This perception continues in some places and among some actors.

For example, in February 2004, the African Parks

Foundation, a Dutch non-profit organisation, signed an agreement with the Ethiopian government to take over the management of Nechisar National Park. At the time, the park was inhabited and used by Kore peasant farmers and Guji cattle herders, who were subsequently evicted by the Ethiopian government to allow for tourism development. The eviction process was highly contentious; houses were burned and access to grazing land restricted.³ When questioned about the position of the African Parks Foundation, the chairman responded that “African Parks has never been and will never be involved in questions of a political nature, such as the resettlement of people...resettlement is not a matter for our organisation as Governments are sovereign in these matters in every country.”³

But are governments and states solely responsible for protecting the rights of local communities and indigenous peoples and for upholding human rights? Or do conservation organisations, such as the African Parks Foundation and their funders, also have responsibilities? What about the responsibilities of other international and national stakeholders, such as UN agencies and international financial institutions? Although human rights law was originally developed to protect individuals from the arbitrary use and abuse of power by states, many courts and scholars are now analysing whether other entities, such as international

organisations, businesses and NGOs, also have international legal responsibilities and obligations.

Over the past two decades, an increased focus on businesses' rights and duties has resulted in many guidelines for behaviour at the international level.⁴ In 2011, UN Special Representative John Ruggie developed a set of UN-endorsed ‘Guiding Principles’ on business and human rights, which have been broadly accepted by human rights NGOs, as well as businesses and business organisations.⁵ While the legal liabilities of businesses are largely defined by national standards, the Guiding Principles recognise that businesses have international responsibilities as a result of their social licence to operate — regardless of the exact nature of national laws.

Who is responsible for conservation justice?

The bulk of global conservation activities involve three main types of actors: state agencies; international organisations, such as the UN and its specialised agencies and international financial institutions; and NGOs who implement or fund conservation, including national and international conservation charities as well as private foundations. These diverse actors have different roles, obligations and responsibilities for ensuring just conservation under international law.

The standards that apply to states — and hence government conservation organisations such as protected area authorities — include the human rights obligations set forth in the instruments and standards to which they have agreed. In addition to the treaties in the International Bill of Human Rights, these obligations include the UN Declaration on the Rights of Indigenous Peoples, which, while not a formally binding treaty, reflects customary principles of international law and international consensus on the rights of indigenous peoples.

Pursuant to these treaties and instruments, when undertaking or engaging in conservation-related activities, states should uphold the rights of affected peoples to self-determination, land and natural resources, cultural integrity and full and effective participation in decision making, among others. States should also ensure that private parties, such as businesses and NGOs, do not violate human rights, and should provide an effective remedy if such violations occur.

Are governments and states solely responsible for upholding human rights or do conservation organisations also have responsibilities?

International organisations are also recognised as being bound by customary human rights law and should not be used as a vehicle to infringe upon human rights. International organisations should not support conservation activities that violate human rights and should be proactive in preventing activities that infringe upon those rights.

The roles and responsibilities of NGOs are less clear-cut. But the manner in which businesses have been treated under international law is instructive in analysing this issue given the general status of both businesses and NGOs as 'non-state entities'. Ruggie based the application of the Guiding Principles (see Box) on businesses' social licence to operate rather than their status as subjects of international law: "Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations — as part of what is sometimes called a company's social licence to operate". Although Ruggie drew a distinction between social responsibility and legal liability, he linked the content of societal expectations to human rights as they are set out in international law — in particular, the major human rights and labour conventions.

While the Guiding Principles do not explicitly extend to conservation NGOs or their non-governmental funders, these entities share similarities with businesses and it could be argued that they should be bound by similar principles. In particular, as with businesses, NGOs also operate under a social licence, and this licence is often considered more socially and environmentally specific than that of businesses. In this context then, NGOs implementing or funding conservation should, at a minimum, respect human rights and 'do no harm' to local communities and indigenous peoples.

Some NGOs have already made individual or collective commitments to respect human rights. A number of NGOs are members of the Conservation Initiative on Human Rights (CIHR), which has developed several principles to guide their conservation work.⁶ These include the fundamental commitment to respect human rights and not contribute to infringements of human rights while pursuing their mission. Additionally, there is a proactive commitment to support and promote the protection and

Excerpt from Ruggie's Guiding Principles on Business and Human Rights

1. States, as "the primary duty-bearers under international human rights law", must respect, protect and fulfil human rights and fundamental freedoms.
2. Business enterprises should respect human rights, which in essence means that they should do no harm.
3. As part of states' duty to protect against business-related human rights abuses, they must ensure that effective remedies are in place in order to ensure that the duty is not rendered meaningless. Notably, this third principle is limited to human rights abuses that occur within a state's territory and/or jurisdiction.

realisation of human rights within the scope of conservation programmes. More specifically, the participating conservation organisations have pledged to protect the vulnerable by making special efforts to avoid harm to them "and to support the protection and fulfilment of their rights within the scope of our conservation programmes".

Bringing these and other NGO principles in line with the Guiding Principles would mean linking a general commitment to 'respect human rights' to specific human rights instruments, including the International Bill of Human Rights, the UN Declaration on the Rights of Indigenous Peoples, and ILO Convention 169. Conservation NGOs should avoid causing or contributing to adverse human rights impacts through their own activities, and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, even if they have not contributed to those impacts. Most importantly, this means that NGOs should refrain from engaging in or supporting conservation initiatives that have the effect of dispossessing indigenous peoples and local communities of their lands, territories or resources — as with the African Parks example above.

In conclusion

While debate continues about the binding nature of various developments in international law, there is an evolving consensus that internationally agreed standards regarding the human rights of indigenous peoples and local communities have been established through international instruments, customs and other sources of international law.

International law is a dynamic system that has evolved from generally being seen as applying only to states to one that is widely recognised as setting standards for non-state entities, including international organisations and businesses.

Viewed through the lens of the United Nations' "Protect, Respect and Remedy" human rights framework, in which the social licence of businesses to operate gives rise to their responsibility to respect human rights, other entities with similar or even broader social

licences, such as NGOs and philanthropic entities, must also have similar responsibilities to respect human rights.

Regardless of whether conservation is implemented and/or funded by states, international organisations, businesses or NGOs, it should neither cause nor support the violation of human rights.

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This briefing is based on a discussion paper prepared by Natural Justice and IIED. This paper analyses the applicability of international human rights law to those involved in protected area conservation, including states and state agencies, international organisations, businesses, and NGOs. It is the first of three technical reports that will serve as a foundation for developing an accessible Guide to Human Rights Standards for Conservation. IIED and Natural Justice are particularly keen to receive feedback on the analysis and conclusions presented. You can read the full discussion paper at <http://pubs.iied.org/14631IIED> and join the discussion at www.iied.org/human-rights-standards-for-conservation-part-i



Knowledge Products

The International Institute for Environment and Development (IIED) promotes sustainable development, linking local priorities to global challenges. We support some of the world's most vulnerable people to strengthen their voice in decision making.

Natural Justice is a non-profit organisation intended to facilitate the full and effective participation of indigenous peoples and local communities in the development and implementation of laws and policies that relate to the conservation and customary uses of biodiversity and the protection of associated cultural heritage.

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Notes

¹ See <http://researchimpacts.wordpress.com> / ² Brockington, D and Igoe, J (2006) Eviction for conservation: a global overview. *Conservation and Society* 4, 424-70. / ³ See www.danadeclaration.org/pdf/omotakeover.pdf / ⁴ Kinley, D and Tadaki, J (2004) From talk to walk: the emergence of human rights responsibilities for corporations at international law. *Virginia Journal of International Law* 44, 936-7 / ⁵ See www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf / ⁶ See www.iucn.org/about/work/programmes/social_policy/sp_themes_hrande/scpl_cih