Part III. TOWARDS EFFECTIVE INSTITUTIONS

Chapter 7. CO-MANAGEMENT AGREEMENTS

There is no standard co-management agreement, as each must be tailored to its specific subject context and scale, and negotiated with the relevant actors.[1] In particular, different types of agreements exist at the local, national and international level.

...each co-management agreement must be tailored to its specific subject, context and scale, and negotiated with the relevant actors.

At the local and national levels, agreements may involve local communities, indigenous peoples' organisations and private enterprises as well as state, provincial and territorial authorities, government agencies, research and educational institutions, international agencies and development cooperation agencies. International agreements may be multilateral or bilateral and be related to a general convention or specific *ad hoc* situations. Here is a non exhaustive list of the many forms that agreements can take:

- *ad hoc* and non legalised pacts (*e.g.,* via traditional ceremonies, public declarations, public handshakes, etc.) among various parties interested in managing a given body of natural resources;
- written bylaws or customary rules concerning natural resource management, developed cooperatively by local governing bodies, such as village or local councils;

[1] Borrini-Feyerabend, 1996; Lawrence, 1996.

- management plans for a body of natural resources, such as a local woodland, forest, pasture, fishing area;
- legislative protection and regulation of sustainable use rights as framework within which to develop NR management plans;
- agreed provision of NR management assistance from government to resource users (*e.g.*, a memorandum of understanding);
- agreed settlements of NR conflict among various parties, from government to resource users;
- legal contracts between two or more parties regulating the costs and benefits of NR use;
- project-based agreements between donors and recipient communities and relevant authorities, which may include operations of community investment funds and revolving funds with a link to sound environmental management;
- conditional licenses issued by public sector agencies following negotiation with actors and interest groups on resource extraction and management;
- memoranda of understanding between local communities and protected area agencies;
- formal and informal agreements among local actors and public or private sector agencies and organisations, specifying their entitlements, rights and duties, and providing incentives to encourage local integrated conservation and development activities;
- contracts between different levels of government (*e.g.,* federal, state, local, indigenous) or between various government agencies within a level (*e.g.,* a forestry department and a national park agency);
- international treaties and conventions concerning biodiversity and environmental issues.

It would not be effective nor wise, nor even feasible to conceive a co-management approach to improve the status of an environment or a body of natural resources in isolation from the socio-economic reality in which they are embedded.

Some of the components of a co-management agreement deal directly with natural resources and are usually referred to as "co-management plans". Others bear upon natural resources in more indirect and complementary ways, such as through interventions for economic development, health, education, social organising, governance, culture, etc. Indeed, it would not be effective nor wise, nor even feasible to conceive a co-management approach to improve the status of an environment or a body of natural resources in isolation from the socio-economic reality in which they are embedded. Coordinated interventions in several sectors are important to allow for an equitable distribution of the social costs and benefits of sound natural resource management. In this sense, a co-management approach is a broad, interdisciplinary and multi-level setting of intents. Even if the management of a well defined set of natural resources is at its heart, the strategy "links" it to the surrounding environmental, socio-economic, institutional and cultural landscape, and grounds it as part of local and regional land use plans. In practice, this means that a co-management agreement is often developed as a package, including a *co-management plan* for the natural resources at stake as well as one or more *complementary accords* addressing relevant socio-economic and cultural issues. Such complementary accords are crucially important, as they make the management plan acceptable to all parties and thus ensure its sustainability. Natural resource management agreements are constantly being negotiated

A co-management agreement is often developed as a package, including a co-management plan *for the natural resources at stake as well as one or more* complementary accords *addressing relevant socio-economic and cultural issues.*

throughout the world. Whilst some agreements are reached after complex and lengthy negotiations involving lawyers and mediators, others are simply made by farmers or nomads shaking hands under a baobab tree or in the village hall. Several specific examples of *ad hoc* covenants, customary treaties and legally-sanctioned resource management agreements are presented throughout this chapter and in Table 8.1 of Chapter 8.

7.1 Customary and non-notarised agreements

...many unspoken agreements [are] embedded in local culture, history, social systems and cultural practices, such as reciprocity and solidarity.

Indigenous peoples and rural communities negotiate and enforce a wide spectrum of norms (customary law and practice) and procedures (for law making, conflict management, dispute settlement) to govern the use of natural resources. Such norms and procedures are often unique to a given culture or local society and developed as that culture evolved over many generations in a particular environment. Indigenous knowledge is the foundation of such customary or ethnic[2] governance systems, and its evolution through experimentation and innovation is the basis of local decision making in natural resource management. Examples include the customary land tenure systems of Papua New Guinea, which specify the conditions under which forests and forest products can be harvested, used, collected or hunted; the migration patterns of the Oromo Borana communities of Ethiopia, carefully responding to ever changing climatic and political conditions[3]; and the customary harvest restrictions (s*asi*) practiced by communities living in the Molucca islands of Indonesia and in the Pacific islands to ensure sustainable use of marine species.[4]

There exist many unspoken agreements embedded in local culture, history, social systems and cultural practices such as reciprocity and solidarity. Indeed, most indigenous management agreements spring from, and are shaped by, cosmologies that recognise linkages between human and environmental health, local dietary and medicinal sources and spiritual well-being, and livelihoods and natural resource management practices (see Box 7.1). There is a close association between a cosmovision, or how the relationship between people and nature in its widest sense is perceived, and customary resource management systems and agreements.[5]

Box 7.1 **Holistic relationships between indigenous culture and land determine customary management agreements for indigenous agriculture in the Peruvian Andes**
(adapted from Fernandez and Vasquez, cited in IUCN, 1997)

Andean culture perceives "nature" as if it were a living and highly sensitive being, capable of responding positively when handled well, but also of responding furiously when mistreated. The Andean women and men see the flora, fauna, soil, and water as parts of a whole also including their children:

2 Bassi, 2003.
3 Bassi, 1996.
4 Zerner, 1991.
5 Haverkort and Hiemstra, 1999; Posey, 1999.

"We are part of the earth". This relationship does not imply immobility but rather continuous transformation and domestication of the environment, not for the unilateral benefit of humankind but for the reciprocal benefit of nature and society.

Andean culture is agro-centric since the prime concern of the society is to assure adequate and sufficient food, and to produce raw materials for processing. Agro-centrism means that the social organisation, science, art, philosophy, religion, perceptual frameworks, language, and technology (including natural resource management agreements) are all functions of the farming activities. The Andean society seeks an integral relationship with its medium, as reflected in the careful organisation of space and the eagerness to create beauty that benefits nature and society. For example, the construction of irrigation systems benefits society as it allows an increase in production. At the same time, it benefits nature in the sense that it allows greater total biomass production, *i.e.*, a greater quantity of life in the environment.

For the technician, a plot is no more than a medium for production. For the *campesino* it is at the same time the source of food, a meeting place and a sacred place where rituals are carried out.

The customary management agreements of indigenous farmers, fishers, pastoralists and hunters-gatherers generally value the diversity of available ecological zones and allocate resource use in ways that are conscious of the spatial, distributional and ecological consequences on the landscape-wide mosaic (see Box 7.2). Agreements can include rules for allocation of resources within a community and/or between communities and be mediated by a variety of cultural processes. Even marriage may reinforce a desired management agreement. For example, Tukanoan fishing communities in the rich waters of the upper Amazon are responsible for distributing fish to other Tukanoan communities with fewer fishery resources. Marriage rules require out-marriage between resource-rich and resource-poor villages, thus supporting this custom of solidarity, equity and reciprocity.[6]

Box 7.2 **Indigenous peoples' "social agreements" on natural resource management**
(adapted from Matowanyika, 1997; Durning, 1992; Shanley and Galvao, 1999; Zoundjihekpon and Dossou-Glehouenou, 1999; Richards, 1999; Kabuye, 1999)

Customary rules to manage plant and animal species
Traditional management and knowledge systems include regimes to sustainably harvest and process materials from individual species. For example, *Ficus natalensis* and *F. thonningii* bark harvesting in Buganda (Kenya) involves elaborate protocols, including the tying of banana leaves to the de-barked tree, followed by the application of cow-dung to protect the tree. In Shona country, rural Zimbabwe, the many totems of the residents of Kagore are all linked to animals. In Shona society the individual has a special relationship with a totem animal. One injunction is that meat of the totem animal should not be eaten. Both types of rules reduce pressure on certain species.

Customary rules for fisheries and water management
In the South Pacific, ritual restrictions based on area, season, and species prevent overfishing. Religious events often open and close fishing seasons. Canadian Pacific tribes believe salmon spirits give their bodies to humans for food but punish those who waste fish, catch more than they can use, or disrupt aquatic habitats.

6 Alcorn, 1999.

For coastal peoples in Benin and the Ivory Coast, the great fishing period (May to October) is initiated by an opening rite over the "Aby" lagoon, sometimes carried out simultaneously in the different areas. It is the priest of the spirit called Assohon who opens the fishing in May and closes it in October. Sacred catfish of Sapia are sheltered by the Dransi river which is formally forbidden to fisherfolk. Together with sacred crocodiles from Gbanhui, all the aquatic species are covered by food prohibitions to the villagers. During the day dedicated to sacred and venerated crocodiles, it is forbidden to go to the Yonyongo river.

The customary management agreements of the fisherfolk of Jambudip (India) help coordinate the complex variables of seabed topography, seawater conditions and sequences of tide with fish behaviour, to ensure both successful catches and the safety of fisherfolk at sea. In their selection of the appropriate seabed over which to conduct their activities, these fisherfolk are like the agriculturists who tend to classify the soil according to its relative fertility and the types of crops grown. The "soil" of the seabed is classified by its capacity to support the net poles and by its fertility regarding the types and quantity of fish in the waters above it. Such management agreements and practices have helped to conserve a considerable amount of marine diversity.

Several water bodies (village tanks, ponds, rivers and others) are attributed sacred qualities in India and are protected against over-fishing or over-extraction of any other resource available. Some of them exist within the bounds of sacred groves. Management agreements based in spiritual beliefs help preserve the water bodies, allowing for the underwater forms of life, even at the micro-level, to flourish undisturbed. The only surviving population of *Trionyx nigricans*, the large freshwater turtle, is found in Chittagong (Bangladesh) in a sacred pond dedicated to a Muslim Saint.

Customary management of forests

Integral to traditional forest management agreements is the use of elaborate taboos, myths, folklore, and other culturally-controlled systems that bring coherence and shared community values to resource use and management. In the Eastern Amazon, for example, hunters who are greedy, or do not heed the wishes of the giant cobra, giant sloth, and the *curupira*, will become lost, or otherwise suffer some punishment. These creatures require respect for the forest, and what might be called "sustainable" approaches to the harvesting of game and plants.

Interdicts, totems, and sacred forbidden species and areas based on religious beliefs, and implemented by religious chiefs, are widely used throughout West Africa to control the use and management of forests and resources. For example, in Benin the panther is venerated by the Houegbonou clan, who can neither kill nor eat it. The Houedas people adore, protect and breed pythons. Fon and Torris people identify monkeys with twins, which leads to the protection of some monkey habitat. *Milicia excelsa* (iroko) is a sacred tree, protected and revered throughout West and Central Africa. On the western edge of the Gola Forest Reserve— the largest element in a complex of four surviving areas of high rain forest on the Sierra Leonean side of the border with Liberia— villagers have a taboo against bringing the wood of *Musanga cecropiodes* into the village for use as fuelwood.

In general, indigenous peoples and traditional communities have developed, and continue to follow, rules and regulations that govern their use of and relationship to natural resources. Sometimes formalised and codified, often informal and seldom written, these rules and regulations define collective behaviour, and provide a valuable basis for co-management arrangements that may also involve non-local partners. Within the diversity of customary systems around the world, a few common characteristics of such "internal agreements" seem to emerge:

- land, water and biotic resources are assigned livelihood values but also symbolic and religious significance: they contribute to determine the cultural

identity of a group;

- rights and responsibilities are usually collectively held;
- individual, heritable rights in land (and wetlands) can be accommodated, but most such rights are either *rights of use* subject to a superior group right; rights to particular resources (such as tree or animal species); or rights to harvest a particular cultivated spot;
- land tenure, resource tenure and access rights are not necessarily the same, and one parcel of land or area of water is often subjected to a variety of rights held by different persons and groups;

- traditional rights over land, waters and natural resources are rarely recorded in maps or written documents; generally, orders and "ownership marks" make use of natural features and mutual understandings that are more significant to the community of users than to outsiders;
- limits are frequently set on the exploitation of resources, often on the basis of seasonal regulations, and some areas and resources can be placed completely off limits (*e.g.*, sacred groves);
- little conceptual or practical separation exists between resource *use* and *conservation*.

Whilst indigenous and local governance of natural resources respond to many of the needs of local peoples, the diverse concerns of different groups within communities are often differently accommodated. Indeed, in *all* societies (indigenous or not) various types of co-management agreements may be more or less fair and capable of accommodating the specific interests of different social actors (see Box 7.3).

Box 7.3 **The type of resource management agreement depends on who has the right to speak! An example from the Solomon Islands**
(adapted from Adams, 1996)

Resource management agreements must be located in their cultural context. In the Solomon islands customary law has a profound influence on the capacity to participate in decision making. Land and marine tenure systems define the rights and entitlements to speak about and for resources. Individual legal titles to specific marine or land areas do not exist. It is membership in corporate, kinship based clans or *butubutus* that defines a person's relationship to resources. Although resources are claimed and controlled by the *butubutu* as a collective, there are clear distinctions between the power to speak about resources (and frame the resource management agreements) and the rights to merely use them. Rights and entitlements are unevenly distributed within and among communities, and are coming under

increasing pressure from new commercial forces.

In the Solomons, women have inherently weak negotiating positions in traditional community institutions and decision making processes. They are often uninformed about resource management issues and do not participate in public debate and in the framing of resource management agreements. By custom it is male relatives who speak on behalf of a woman landholder. However, customary law does not oblige them to consult with the women. "In decision making processes, a male relation's vote is seen as equivalent to her choice".

Where women do find the confidence to talk as a group against the decisions made by men, it is likely they will be ignored. When the Tobakokorapa Association took the decision to designate an area used by women as protected, Michi women expressed their dissatisfaction at a general meeting. They were overruled by the older men and were told they would get "used to" the idea.

Gender bias is thus expressed not just in community structures but, more fundamentally, in intra-community power relationships and in the *type* of resource management agreements negotiated between members of the community.

Informal resource management agreements are constantly negotiated among a variety of parties. For example, the arrangements to establish a livestock corridor through a farmers' field in semi-arid northern Senegal are usually the product of informal discussions at the village mosque.[7] Such *ad hoc* agreements have no formal legal status and are not enforced by the government. Conflicts between two or more parties are informally arbitrated by respected authorities such as the village chief, a village council, or a wise elder.

Informal resource management agreements are constantly negotiated among a variety of parties.

Among indigenous peoples, resource management agreements are usually enforced through social sanctions according to customary law, with decision-making in the hands of local institutions. The recognition of such agreements by governmental agencies can foster very effective co-management systems (see Box 7.4). In Rajasthan (western India), self-initiated forest protection committees even levy fines on offenders (the amount often depending on the ability of the offender to pay) besides imposing social sanctions, a practice that is informally condoned by official agencies.[8]

Box 7.4 **Village law and co-management of aquatic resources in Khong district (Lao PDR)**
(adapted from Baird, 1999)

The aquatic resource co-management system in Khong district is part of the existing administrative structure of Lao villages. No attempts were made to establish new levels of bureaucracy at the village level, although certain villages have established their own informal or *ad hoc* working groups to deal with particular issues. Regulation, implementation and enforcement are left up to the community. From a legal perspective, Khong district administrators consider that the aquatic resource co-management regulations of villages fit well into what is known as "village law" (*kot labiap ban*). The legal system of Lao PDR allows villages to make certain regulations regarding local issues, provided that they do not conflict with national laws or the constitution. In the recent past, village regulations were rarely utilised to deal with natural resource management issues (except for some security issues, or the tying up or releasing of water buffaloes). Now, Khong district officials believe that the village law system accommodates well for aquatic resource co-management not only within a village but even among villages. A

7 Freudenberger and Freudenberger, 1993.
8 Kothari *et al.*, 2000.

fundamental issue with regards to any aquatic resource co-management programme relates to boundaries of management jurisdiction between villages. For several years no major conflicts between villages with regards to boundaries and aquatic resources have been reported. There seems to be a great potential for utilising village law for dealing with other natural resource management issues as well.

The village structure is the foundation of ethnic lowland Lao society. Villages are self-sustaining communities relatively unconnected with larger political and social units, have very limited social and economic stratification and possess a strong sense of social equality, cooperation and mutual dependence. Currently, disparities in wealth and power within villages are growing, but villagers are still able to speak with one voice when dealing with outsiders, a fact that positively influences the outcome of co-management regulations. There appear to be three interlocked and mutually reinforcing elements maintaining Lao village cooperation and solidarity: (1) a village ideology of mutuality, (2) successful events of cooperation, and (3) shallow socio-economic stratification.

Informal resource management agreements are also increasingly being negotiated between local communities and rural development and conservation projects. Covenants, memoranda of understanding, project and research agreements such as the ones described in Box 7.5 rarely have a legal standing. Yet such non-notarised written agreements can be effective in formalising the roles, rights and responsibilities of the rural communities and external agencies involved.

Box 7.5 **The Protocol for the Community Biodiversity Development and Conservation Programme**
(adapted from CBDC Programme, 1994)

The Community Biodiversity Development and Conservation (CBDC) Programme is an inter-regional initiative developed by agricultural non-governmental organisations in Africa, Asia and Latin America, in cooperation with northern partners. Its purpose is to strengthen the ongoing work of farming communities in conserving and enhancing the agricultural biodiversity that is vital to their livelihoods and food security. The CBDC programme is also a unique attempt to establish a working relationship between farmer communities and institutional systems of innovation (national agricultural research systems and universities).

The CBDC's Programme Protocol was adopted in Barcelona in 1994 and spells out the agreements which CBDC partners have reached with one another. It was developed to guide relations concerning intellectual property, rights and responsibilities in relation to genetic resources, information, funds, technologies, methodologies and systems. The partners recognise that one particularly difficult element to this programme is the relationship between institutional and farmer/ community innovation systems. All partners believe that farmers, and humanity at large, are best served through the full and free exchange of plant genetic resources unfettered by the constraints imposed by intellectual property or other monopolistic market practices. Partner NGOs do not wish to cooperate with institutions (public or private) that impose or facilitate intellectual property control over plant genetic resources.

The Protocol assumes that the partners have mutual trust, confidence and are willing to cooperate, and that a highly-legalistic document is not necessary. It also recognises that other partners at the regional, national and community level may not know all their colleagues and, therefore, basic working relations should be spelled out adequately. In addition, the Protocol recognises that there is an imbalance in the ability of partners to access genetic resources, information and financial resources. The occasional and sometimes long standing tension between the community and institutional system, and a history of mutual misunderstanding, should be taken into account. For these reasons, the Protocol operates on the

assumption that decisions are taken "bottom up" (from the community to the global level) and that the authority will rest, as far as possible, at the community level.

The Protocol is divided into two operational parts: the first addresses issues of intellectual integrity intended to assure that germplasm, information, funds, technologies, methodologies and systems, and the rights and responsibilities that go with them, will be respected. The second section addresses issues of institutional integrity intended to protect and promote the interests of the partners. The Protocol is seen as an evolutionary document that is modified and adapted as partners learn how to work with one another at the local, national, regional and global levels.

To date there exist few examples of written agreements between communities and researchers. Despite the international calls for the requirement of prior informed consent, respect and local control over the use of knowledge and resources, the examples offered by the Awa in Ecuador (Box 7.6) and the Soufriere Marine Management Area in Saint Lucia (see Box 3.9 in Chapter 3) are the exception rather than the rule. The development of such research and benefit sharing agreements illustrate the importance, and the difficulty, of intercultural dialogue in a co-management process. Any agreement— verbal or written— will take shape in the context of existing customary norms and the Four Directions Council (an organisation of North American indigenous peoples) has warned about the risks inherent in broad and all-encompassing regulations:[9]

"*Indigenous peoples possess their own locally-specific systems of jurisprudence with respect to the classification of different types of knowledge, proper procedures for acquiring and sharing knowledge, and the rights and responsibilities related to possessing knowledge, all of which are embedded in each culture and its language.... Any attempt to devise uniform guidelines for the recognition and protection of indigenous peoples' knowledge runs the risk of collapsing this rich jurisprudential diversity into a single "model" that will not fit the values, conceptions, or laws of any indigenous society…".*

Box 7.6 **The Awa Federation and research agreements (Ecuador)**
(adapted from Laird, 2002)

The Awa Federation is a legal institution that administers 101,000 hectares held under communal title by the Awa Peoples in Ecuador, makes collective decisions regarding land use, and works on the development of socio-economic infrastructure. The Awa acquired legal recognition of communal title to their land in 1995. Prior to this time, they were considered "wards of the state", and their territory was a "forest reserve" of the communal settlement of the Awa people. Since 1995 the Awa have demarcated their territory by planting a 50 meter wide border with fruit trees, and patrolling and securing their boundaries. Due to the botanical and ethno-botanical wealth of the Awa and their lands, a number of research institutions have begun collaboration with the Awa. In 1993, the *Convenio— Reglamentos para la Realizaci□n de Estudios Cient□ficos en el Territorio de la Federaci□n Awa*— was developed to set terms for research relationships. The Convenio includes the following provisions:

- all scientists must ask for written permission to carry out studies. The written request for permission must include a description of objectives, size, and composition of research party, length of research programme, species or object of study, and the manner in which this research will benefit the Awa community;
- the request for permission must be given with a minimum of two months' notice (widely dispersed

[9] Four Directions Council, 1996 quoted in Laird, 2002.

communities only meet four time a year for four days);

- more than five people to a research group is prohibited;
- more than one group of scientists are prohibited from entering at the same time (this and the preceding provisions are intended to minimise the cultural impact of the research process);
- local guides and informants must accompany all scientists;
- the collection of animals, insects, or plants for commercial purposes is prohibited;
- only 3 specimens of each species are to be collected— one each for the research group, the Awa federation, and the Tobar Donoso Project in Quito (in 1995 this provision was modified to allow for the collection of more than just 3 specimens);
- the removal of any object from Awa territory not approved by the Federation is prohibited (the main concerns are cultural artefacts and property, including stone mortars found in the forest and believed to be possessions of the ancestors);
- scientists must dispose of their own garbage;
- the prices established by the Awa Federation for their services are as follows: each member of each scientific group must contribute to the Federation 1,000 *sucres* in order to enter Awa territory; guides and informants receive 700 *sucres* per day; cooks, cleaners, and other workers receive 500 *sucres* per day; members of scientific groups from Ecuadorean universities or institutions pay 500 *sucres* per day to enter Awa territory;
- gifts or distribution of money outside of the established regulations are *not* allowed;
- scientists who do not respect these rules or Awa organisations and cultures will be expelled immediately from their territories;
- the Awa Federation must receive acknowledgement in relevant publications.

The collection of specimens in Awa territory requires two tiers of permission: first the researcher must secure permission from the Awa, and secondly, they must obtain permission from the Ecuadorian government.

7.2 Formal legal agreements

Legally recognised agreements can be stipulated at local, national or international levels, but the difference between these types of agreements is often blurred. For example, a natural resource management agreement may be codified in national law but signed locally. Conversely, local agreements may influence national level processes and legislation for resource management. And international treaties may deeply affect national policies and local resource management regimes.

Legal agreements are stipulated at local, national or international levels.

There has been a trend in some countries (*e.g.*, Australia, USA, and Ecuador) towards increased use of conservation agreements over private land. Examples are the land use and conservation easements now numbering in the thousands in the USA (see Box 7.7). Such agreements address the protection of species, ecological communities, habitats or potential habitats and are usually legally binding on the contracting parties and successors in title. The parties include one or more landowners and the relevant government authorities, often with the facilitation of

Co-management agreements over private lands

an environment-concerned NGO. The agreements are effective until terminated or revoked, may be registered and can be amended if so provided in the agreement or in legislation. In general, where an area is under a conservation easement, the authority of the landowner is affected in accordance with the terms of the covenant or the regulations corresponding to the management plan for the area.[10]

Box 7.7 **Conservation easements in the USA**
(Brent Mitchell, personal communication, 2003)

The fastest growing tool for conservation in the Americas is the easement, or deed restriction, which prohibits certain land uses and allows others. Easements are especially popular among private landowners, and particularly useful in working landscapes, allowing traditional land uses such as farming or forestry while prohibiting future conversion in use, *e.g.,* for industrial or residential development.

Easements are based on a concept that rights to land are plural and divisible; that is, rights to farm, cut wood, build a house, mine material, etc., are "bundled" into the idea of land ownership. From that concept springs the idea that a landowner may not only sell or transfer all his or her rights to land, but that these rights may be separated, and one or more may be transferred while the others are retained. Thus a farmer might voluntarily transfer development rights to his land but continue farming. He therefore protects his land from future land conversion, continues farming, and may reap benefits from the (technically) decreased land value (lower property taxes, for example).

While securing conservation "in perpetuity", an easement allows a landowner to retain ownership and rights to uses deemed appropriate to the land. Landowners may thus benefit materially by donating land or a restriction (*e.g.*, tax relief), but it is to be stressed that the most common motivation for the easements is a sense of responsibility for the land and the resources, and a concern about what may happen to them in the future. Because of that, the present landowners restrict the choices that future landowners might take. Easements are attached to the deed (legal title to the property) and future landowners are bound by the conservation restriction. In most cases, and always in the US, easements are legally binding in perpetuity, *i.e.*, forever.

Benefits to conservation include: easements are permanent; they cost less than acquiring all rights to the land; and they encourage maintaining traditional land uses. Presently, a very large number of conservation easements are protecting working forest land from future development. There is some on-going cost however. The transferred rights do not simply disappear; they must be held by someone else, often a non-profit land trust or corresponding government authority. The receiving entity has a legal obligation to monitor and enforce easement violations.

Though easements have been legally possible for a long time, they have been applied in large scale in the US only in the last 30 years or so. Their use reflects a trend toward voluntary, less-than-absolute land conservation strategies, and has been aided by the development of various tax and policy incentives. Easement legislation has recently been passed in most Canadian provinces, accompanied by national efforts to create more incentives for landowners to grant them. Similarly, model easements and/or precedents have been established in several Latin American countries in the past five years.

Other examples of co-management agreements over private lands include the contracts that establish discrete areas for community management of natural resources on land that is privately owned. Under such contracts the village persuades individuals and households to cede some of their land for communal or

10 Sutherland, 1996; Farrier, 1995.

group management. The land may include woodlots, orchards, springs and valued hunting or plant collecting grounds that need special protection. The Upper Guinea Resource management agreements are an example of such private land cession relationships (see Box 7.8).

Box 7.8 *Les ententes*: resource management agreements in Upper Guinea
(adapted from Diallo, 1995)

In Upper Guinea, private land cession agreements are known as *ententes.* The *entente* is a written contract of cession which is translated into French and local languages and certified by a government notary. Copies are made for all the parties to the agreement, and for the government authorities. These cession agreements are not transfers of ownership, but long term leases with stated terms ranging between 20 and 30 years. For example, the agreement between Elhadji Amadou Diallo, Maamadou Orz Diallo and the villagers of Tzankoy in the Fouta Djallon in Upper Guinea, which became official on 3 February 1994, stipulates the following:

- the proprietors make the plot of land available to the village for reforestation;
- trees will be planted at the head of the spring of Diaberehoun;
- the proprietors have no rights to the trees planted;
- the trees belong to the entire village;
- the proprietors have the right to plant and exploit individually fruit trees in the zone;
- other villagers do not have the right to plant trees in this area;
- the clauses contained in this agreement cannot be modified, added to, or subtracted unless an agreement is reached between the two parties in presence of a qualified authority.

The contractual approach is becoming commonplace in conservation and development initiatives....

The so-called "contractual approach" is becoming common place in conservation and development initiatives. A recent review has highlighted the growing use of local conventions and contracts throughout the Sahelian region of francophone Africa.[11] This is partly because the contractual approach offers the flexibility required for the implementation of both integrated conservation and development initiatives[12] and agreements that need to change in content and scope as relationships between social actors evolve and as natural resources are regenerated or better managed over time. For example, gender and equity concerns are increasingly reflected in agreements on natural resource management (Box 7.9).

Box 7.9 **Gender supportive articles in the local contract/ convention of N'Dour N'Dour (Senegal)**
(adapted from Gueye and Tall, 2004)

Article 2	Women have priority use over lowland rice paddies.
Article 3	Each resident woman in the village has the right to a plot of land in the valley.
Article 4	Each woman has the right to share part of her land with her husband or a close relative living in the village.
Article 5	Any person who leaves the village to live elsewhere no longer has rights of access and control over land. All his/ her rights to land are automatically ceded back to the village community.
Article 6	In case of the death of a woman, either her daughter in law or/ and daughter resident in the village will inherit the plots of land.

In France, co-management agreements for regional parks and protected areas include natural resource management plans as well as complementary accords or contracts with state authorities and the private sector involved in broader socio-economic development (see Box 7.10).

Box 7.10 **Co-management of protected areas and landscapes through negotiated territorial charters in France**
(adapted from Finger-Stitch and Ghimire, 1997; Allali-Puz *et al.*, 2003)

In 1965, just one year after the creation of the first national park in France, the government adopted also a further, more flexible approach to protected area management than the *Parc National* model. Based on the German approach to landscape management, the French concept of *Parc Naturel Régional* aimed to conserve fragile environments and regenerate rural economies and to offer relaxing spaces for urban populations. The *Parc Naturel Régional* was and still is the embodiment of an innovative policy that seeks to build the future by combining natural, cultural and human assets within a given territory.

In the *Parcs Naturels Régionaux*, all conservation and development activities are regulated by the charter of the park. This is a contract endorsed and signed by the local authorities and the private and public partners who have a stake in the future of the area defined by the park. The charter is based on a participatory planning and implementation process towards local sustainable development, but it also provides for the respect of other national and international programmes, acting as a useful mechanism for policy coherence at a number of levels and across various sectors. With the signing of the charter,

[11] Tall and Guèye, 2003; see also Box 3.15 in Chapter 3.
[12] A review of experience with integrated conservation and development projects that recommends the contractual approach is available in Larson *et al.*, 1997.

the local authorities and other partners agree to respect and follow the rules and agreements they have themselves developed and laid out in a democratically negotiated contract. Success chiefly depends on the inclusion and participation of all actors dependent on the relevant territory for livelihoods and culture.

Agreements over the management of protected areas have been tried out to lessen conflicts between people and park authorities and reduce pressure on the government staff responsible for managing large parks (See Boxes 7.11 and 7.12).

Box 7.11 **Gurig National Park (Australia)**
(adapted from Smyth, 2001)

For thousands of years, the Cobourg Peninsula and its surrounding sea formed the traditional lands of four Aboriginal clans. In 1924, the peninsula became North Australia's first Flora and Fauna Reserve. During the 1950s, all the remaining Aboriginal traditional owners were removed to a government settlement on nearby Croker Island. In 1981, the establishment of Gurig National Park was agreed to by the Northern Territory Government and the Aboriginal traditional owners, to resolve a pending land claim under the Aboriginal Land Rights Act of the Northern Territory (NT). Rather than proceeding with the claim, the traditional owners consented to the establishment of the National Park in return for regaining title to their traditional lands. The key features of the joint management of Gurig National Park are:

- the declaration of the park under its own legislation– The Cobourg Peninsula Land and Sanctuary Act 1981 (NT);
- the vesting of the land in a Land Trust on behalf of the traditional owners;
- the establishment of a Board of Management comprising 8 members, of whom 4 are traditional owners and 4 are representatives of the Northern Territory Government; the Board is chaired by one of the traditional owner members who also has a casting vote;
- the payment of an annual fee by the Government to traditional owners for use of their land as a National Park; the fee was set at 20,000 Australian Dollars in 1981 and increased annually by a percentage equal to the percentage increase in the average male wage in Darwin;
- the placement of the responsibility for day to day management with the Conservation Commission of the Northern Territory (now the Parks and Wildlife Commission);
- the recognition of the rights of traditional owners to use and occupy the park.

The Cobourg Peninsula Land and Sanctuary Act 1981 (NT) sets out the respective functions of the Board and the Conservation Commission of the Northern Territory. The functions of the Board are:

- to prepare the management plans;
- to protect and enforce the rights of the traditional owners to use and occupy the park;
- to determine, in accordance with the plan of management, the rights of access to parts of the sanctuary by persons who are not traditional owners;
- to ensure adequate protection of sites of spiritual or other significance in the Aboriginal tradition;
- to make by-laws with respect to the management of the park; and
- to carry out other functions as imposed on the Board by the plan of management.

The functions of the Commission are to act on behalf of and subject to the direction of the Board in:

- the preparation of the management plans; and
- the control and management of the park.

The Act also states that where differences of opinion arise between the Board and the Commission with respect to the preparations of plans of management or the control and management of the park, the matter shall be resolved by a resolution of the Board. The plan contains many practical details relating to the exercise of the rights and interests of traditional owners over the park, including:

- the location of Aboriginal residential areas;
- the recognition of traditional hunting and fishing;
- a commitment to train and employ Aboriginal people as rangers and in other capacities on the park (subject to budgetary constraints).

In 1996, the Cobourg Peninsula Land and Sanctuary Act 1981 (NT) was amended to extend the powers of the Board to include supervision of the management of the adjacent Cobourg Marine Park, which includes customary marine clan estates of the traditional owners. In summary, the joint management arrangements for Gurig National Park provide the Aboriginal people with secure tenure over their traditional lands, as well as nominal control over policy and planning matters via their voting majority on the board. The Northern Territory Government, through its representation on the Board and through the operations of the Parks and Wildlife Commission, maintains a strong role in determining the management of the park. It is significant that these arrangements do not require the traditional owners to lease their lands to the government.

Co-management of protected areas have been tried out to lessen conflicts between people and park authorities.

The actual subject matter of protected area management agreements can vary considerably. An example of such diversity can be seen in the agreements reached between conservation agencies and communities neighbouring protected areas in South Africa. Twelve protected area management agencies have developed innovative agreements with local neighbours to cover issues of access and use of different types of protected resources as well as benefit sharing arrangements.[13] Examples include:

1. **Land use agreements.** The 1620 sq km Richtersveld National Park is leased from the Nama for a period of 30 years with rights to graze an agreed number of livestock and to controlled harvest of natural products. The lease payments are paid into a Trust appointed by the community to manage the funds.

2. **Revenue sharing.** Twenty percent of the gross revenue for a reserve in Kwa Zulu Natal is allocated to a neighbouring Tribal Authority and fifty per cent of the revenue generated by the protected area is passed on to the Tribal Authority in Lebowa.

3. **Fuelwood collection rights.** In KaNgwane, people from the neighbouring communities are allowed to remove one head-load of fuelwood per week. The wood has to be from fallen trees or from areas shortly scheduled for burning as part of the range management programme. People from more distant villages may collect fuelwood only for ceremonial purposes, provided they have received the permission of the local Tribal Authority.

4. **Rights to harvest medicinal plants.** Tribal herbalists or *Inyangas* are permitted to collect plants or plant parts in Bophuthtswana and KaNgwane National Parks.

[13] Anderson, 1995.

Box 7.12 **Forest use agreement between Mount Elgon National Park and the people of Ulukusi Parish (Uganda)**
(adapted from Wild and Mutebi, 1996)

The *Forest Use Agreement between Mount Elgon National Park and the People of Ulukusi Parish, Uganda* is a good example of an agreement designed after a careful investigation into the types of resource use and the spectrum of resource users. The agreement begins with an area description in which the buffer zone between Ulukusi Parish (comprised of nine villages, of which four border on the park) and Mount Elgon National Park is divided into three contiguous zones, of which the third is located within the outer rim of the park limit. The communities bordering the park are essentially involved in agriculture, but many seek additional livelihood sources from the forest, such as collecting bamboo shoots and stems, bee-keeping and sawing wood timber. The next section declares the general management objectives of the agreement, of which the first is the integration of community's use needs with the conservation objectives of the park. The agreement is explicit in its aim to gain people's acceptance of the national park and the respect for its boundaries through a constructive working relationship.

The third section of the agreement touches upon the mode of representation of the community and the park in the form of a committee. The Kitsatsa Forest Use Committee is composed of forty representatives from the bordering communities (each of the 9 villages elect 4 to represent their interests), in addition two specialist groups (the herbalists and the pitsawers) each get to elect two members to the committee. The agreement designates the Regional Council Chairman, its Secretary for Women, the Parish Chief, the Mount Elgon National Park Boundary Ranger and a parish-based extension worker as co-opted members of the Kitsatsa Forest Use Committee. Five sub-committees have been named, formed by villagers located on each of the five trails leading from the parish to the park. These sub-committees are responsible for the day-to-day monitoring of compliance to the agreement and are accountable to the Kitsatsa Committee.

The fourth section divides the management and enforcement tasks between the four villages, and along the five trails. Four use categories are distinguished:

1. forest uses open to all people of Ulukusi and for which no prior permission from the committee is required;
2. forest uses which are open to all people of Ulukusi but for which prior permission is required from the sub-committees or the committee on a case by case basis;
3. forest uses which are restricted to a limited and registered number of people only; and
4. forest uses on which there is a total ban.

These use categories are applied for the three management zones that have been identified in the park territory, in which the type of use, the user group and the time period and resource allocation are specified. This is clearly derived from a detailed inventory of resource uses, in their spatial and temporal variability. There is also mention of Cultural Sites in the innermost sector of the park (Zone III), such as Pina, a sacred site to which villagers may have access for religious rituals.

A fifth section of the agreement defines the mechanisms for monitoring and control of forest use. The sub-committees located along trails leading to the park are responsible for monitoring activities and denouncing abuses. The law-enforcement and policing functions are left to the warden in charge and the park rangers, particularly in the case of smoking bamboo shoots through fire. Sanctions, however, are decided by the Kitsatsa Committee, and justice is administered through a graduated system. Fines are defined for first and second offenders, while third offenders are sent to court in the justice system of the state of Uganda. Leases and charges for bee-keeping and bamboo collecting are also fixed and levied by the committee. There is an explicit difference between insiders and outsiders, as outsiders are

charged higher rates for access to the resource. Additional linkage activities are also contemplated in the sixth and seventh section of the agreement, in which the Kitsatsa Committee serves as an intermediary or nested institution to link to other community development initiatives.

International legal agreements focus on the management of natural resources of great value for residents of neighbouring countries. Large free roaming herds of animals or fish that regularly migrate across international boundaries between two countries may be the subject of such bilateral management agreements (see Box 7.13). The subject of agreements can also be water or air (*e.g.,* in pollution prevention agreements).

Box 7.13 **The Agreement between the Government of Canada and the Government of the United States of America on the conservation of the porcupine caribou herd**
(adapted from Government of Canada and Government of the USA, 1987)

This international agreement acknowledges that there are various human uses of caribou herds, that for generations peoples of Yukon Territory and the Northwest Territories in Canada and rural residents of the state of Alaska in the United States of America have customarily and traditionally harvested porcupine caribou to meet their nutritional, cultural and other essential needs, and that these peoples will continue to do so in the future. The agreement starts from the premise that local people should participate in the conservation of the porcupine caribou and its habitat.

The main objectives of the legal agreement signed by both countries in 1987 are:

- to conserve the porcupine caribou herd and its habitat through international cooperation and coordination so that the risk of irreversible damage or long term adverse effects as a result of use of caribou or its habitat is minimised;
- to ensure opportunities for customary and traditional uses of the porcupine caribou herds by rural residents and indigenous peoples while prohibiting the commercial sale of their meat.

Under this type of agreement the parties are asked to establish an advisory board known as the International Porcupine Caribou Board. The Board's main function is to seek information from management agencies, local communities, users of porcupine caribou herds, scientific bodies and other interested and to make recommendations on all aspects of the conservation of the porcupine caribou herds and their habitat that require international coordination.

Whether formal or informal, simple or comprehensive, detailed or principle setting— different agreements are shaped by the social and ecological context in which they are negotiated. An important aim of these negotiations is clarity of meaning and purpose, which should be reflected in the contents of the co-management agreement. This is important to avoid ambiguities and divergent interpretations and on-going conflict during the phase of implementation of agreements, and learning by doing.

7.3 The components of a co-management agreement

A co-management agreement usually specifies:

- the agreement's purpose, the parties in the agreement and the relevant territory, area or natural resources;
- benefits and responsibilities assigned to the parties to the agreement;
- means of protecting the investment each party makes in the agreement;
- means of resolving disputes;
- specification of the duration of the agreement;
- schedules and procedures for review, reporting, monitoring and evaluation;
- confidentiality and other special clauses.

... non-written agreements rooted in customary law and indigenous institutions are as varied and rich as human cultures..

We review below primarily written and legal CM agreements, providing a general checklist for their usual components. No attempt is made to describe the diversity of *non-written* agreements rooted in customary law and indigenous institutions, which indeed are as varied and rich as human cultures.

Title

The title of the agreement or process usually includes a reference to the management of resources or territory at stake and specifies whether it is a contract, a memorandum of understanding or otherwise.

Preamble and statement of purpose

A preamble is the opening statement to an agreement, and it may describe its history, principal characteristics, and the principles on which it is based. It can

A preamble can identify the principles and rationale which will guide the implementation of the agreement.

refer to the institutional actors (stakeholders) interested in the natural and cultural resource management and commit the parties to cooperation, coordination, mutual recognition, trust and respect. It may acknowledge the importance of appropriate resource management to those stakeholders and wider communities. It might refer to the rights of relevant stakeholders under local, state, national or international law, to the values of the particular resources that are the subject of the agreement, and to the relevant authorities that authorise the agreement or render it legally binding and enforceable. Ideally, a common vision would have been achieved and ritualised among the parties for the territories or resources at stake. If so, the preamble should make explicit reference to it (see Chapter 5), and should enunciate clear, realistic and measurable objectives. A preamble is not just an issue of symbolic importance because it can identify the principles and rationale that will guide the implementation of the agreement, and thus assist in its interpretation.

Definitions

All parties to the agreement and those abiding by it need to understand the meaning of the terms used within it. A definition section assists with this.

Defining territory, area or set of resources at stake is relatively easy in those countries where a tenure system is recognised. The real property description may be used, and it may be helpful to attach a map. If the agreement refers to works in a specific part of the land (*e.g.*, "clear the south paddock of weeds"), such areas should also be clearly described and/ or marked on a map. In marine and coastal areas, the agreement should recognise the difficulty inherent in defining maritime boundaries; in the absence of physical demarcation, these will be expressed by a distance from shore, or by depth, or with respect to landmarks on shore.

If the agreement is to have legal validity, it is important that the parties have the legal power to enter into such an agreement.

With respect to the parties, if these are simply individuals ("real persons" in legal terms) and the agreement amounts to a common law contract, things are relatively simple. However, each party should check carefully that the others do have the legal right to contract with respect to the land (for example, a manager or member of the family of a registered owner may need to demonstrate power of attorney; it is never wise simply to take someone's word that they have such rights). Careful checks may be needed in the case of a company, consortium or community customary rightholders.

In the case of indigenous communities, deciding who is the appropriate "party" with whom to enter a legal agreement is often a complex issue, legally, politically and culturally. Clan or tribal relationships, intra-community politics, land claims, relationships between councils of elders and members of modern governing structures, tribal members who live elsewhere, gender issues, and tensions between "traditional" owners and people more recently arrived can all cloud the picture. A wrong choice of "appropriate party" can not only result in serious legal complications, it can also cause grave offence and lead to breakdown in communications with the community or indigenous group.

If the agreement is to have legal validity, it is important that the parties have the legal power to enter into such an agreement. Further, if the agreement incorporates works to or on land, or financial transactions relating to these, it is equally important that the land itself be defined. Some caution, however, should be exer-

cised about not imposing definitions of land and resources that are incompatible with customary governance and management systems, which are usually quite complex (see Box 7.14).

Box 7.14 **Substantial flexibility in NRM agreements is needed to accommodate the complexity of customary governance and management systems**

In customary governance systems, land and resource tenure are normally ascribed to several actors at the same time. These may include households, extended families, villages, lineages, clans, etc. Usually, customary land use patterns recognise overlapping claims on the same territory, connected to collective identities of different importance and defining different types of rights. In addition, mobile indigenous peoples traditionally manage land in migration patterns that are changeable according to climate and other variable circumstances. The definition of their territories and migration routes needs to accommodate for "porous" and changing borders and requires a less-than-sharp definition of the area to which the management agreements ultimately apply. Such complex governance and management systems require substantial flexibility in developing NRM agreements.

Scope of authority of the parties in the agreement

The parties in the agreement include all relevant actors and are usually identified in the preamble of the co-management agreement. The scope of the authority of parties to the agreement should be clearly defined. It may be broad or narrow.

In defining the scope of authority, the agreement should clearly enunciate the distribution of power, taking into account pre-existing legal mandates. In many instances, co-management agreements do not actually change these existing mandates, but they provide a new mechanism for the co-ordination of existing management functions, while filling the voids and empowering civil society actors (see Box 7.15).

Box 7.15 **An inclusive management body with consultative power developed for Retezat National Park (Romania)**
(adapted from Stanciu, 2001)

A small area of outstanding beauty and biodiversity— 100 square kilometres of untouched forest and alpine areas within the Retezat Massif— was declared national park in 1935. The area around the park is rich in natural and cultural reserves and the local people are engaged in traditional agriculture. Romanian and foreign visitors come mostly in the summer to this remote area. The Retezat National Park Management Authority (PMA) was established in November 1999 with the main role of setting up the park management infrastructure. Early in 2000, the park area was enlarged and a stakeholder analysis was undertaken. In 2001, a Consultative Council with representatives from main concerned actors was established. The Council comprises representatives of twenty-five relevant social actors, including eight local communities, forest districts, NGOs, mountain rescue teams, school inspectorates, local scientific bodies and county level institutes. All were identified and included in the Consultative Council as landowners, administrators, representatives of the natural resource users and/ or social actors whose activities may impact the park or be affected by the park. The Consultative Council holds two meetings per year to express opinions on park management activities and develop solutions to problems jointly with the PMA. All important management decisions are to be made only after consulting the Council and, if necessary, also the public at large.

General covenants

The general covenants of an agreement specify the rights and obligations of the parties with respect to several relevant areas, and are often compiled into a coherent management plan. Legislation may specify, or parties may agree on, whether the agreement should bind the land or waters which is the subject of the agreement. Where land owners are involved, this may affect the commercial value of the property depending on the impact of the agreement and its financial terms. The covenants may include:

Key institutional issues in NR management

- aims and objectives of management;
- land and resource tenure systems;
- intellectual property rights and other rights of the relevant parties;
- decision making authority, including legitimate members and functioning rules of a participatory management organisation;
- public consultation and participation procedures;
- provision of legal, scientific, technical or other advice and information;
- agreed procedures for planning and environmental and social impact assessment;
- codes of practice for implementing and monitoring policies (including intra-governmental, corporate, NGO and personal commitments);
- procedures for involving indigenous peoples, disfavoured gender and minorities in NR management and for integrating traditional and scientific research and knowledge, *e.g.*, through participatory management institutions;
- zoning and land-use controls, including issues related to residence, heritage, culture, hunting, commerce, conservation, pollution control, etc.;
- systems of surveillance and enforcement of rules, consequences of infringement; and,
- links with other management agreements at various levels (See Box 7.16).

Box 7.16 **Detailed co-management agreements developed for sylvo-pastoral zones in southern Mali**
(adapted from Hilhorst and Coulibaly, 1999)

Sylvo-pastoral areas in southern Mali include non-arable lands and long term fallow. These woodlands are common pool resources used for grazing and supply of firewood, timber, fruits and other forest products. Degradation of these resources prompted six villages to unite and develop a more sustainable management system. With the help of the district extension services and an agricultural research institute, the villagers developed a Local Convention— a co-management agreement made possible under Mali's new forest law.

The Local Convention starts by stating its main aim as reinforcing respect for regulations developed by the Village Councils and expresses hope that the official village forestry legislation will also adhere to this objective. It then deals with various natural resources such as firewood, timber, fruits and pastures.

The Convention lists all trees that are to be protected. Trees for timber may be cut only with permission from the village chief. Planting timber trees is encouraged. Regarding firewood, a woman may not cut more than three carts full of "green" firewood per season. Use of improved stoves is an obligation. Extra taxes are proposed for commercial firewood cutting and charcoal production. These are additional taxes paid to the Forestry Department. Non residents pay more than residents. The start of the harvesting season for *Néré* and *Karité* trees is also fixed. Sanctions are proposed for non-compliance with regulations, and proceeds from confiscations, fines and firewood taxes are to be divided among the village co-management bodies *(Siwaa).* Ultimately, such proceeds are to be used for financing reforestation, the installation of anti-erosion structures and the *Siwaa's* operating expenses. The villagers also proposed that the *Siwaa* is charged with the supervision of the Local Convention.

The elaboration of the Local Convention has been the major activity of the *Siwaas.* The six villages took two years to reach an agreement among themselves. The document they compiled was then sent to the Forestry Department, which took another two years to deliver comments and approval.

Conservation and resource use issues

- biodiversity management including wildlife and flora protection, ecosystem maintenance, monitoring and surveys, species reintroduction, habitat protection and restoration (revegetation, rehabilitation, weed control);
- maintenance of geological processes;
- soil use and rehabilitation;
- river and water management;
- animal control and fencing, wildlife corridors, buffer zones;
- disease control;
- fire control;
- cultural and heritage management (site protection, interpretation);
- tourism management (including interpretation, visitor experience, codes of conduct regarding photographs, drugs, feeding wild animals, etc.);
- waste disposal;
- identification of threats and recovery processes;
- allowed harvest times and quantities for specific plant and animal species;
- sustainable agricultural practices;
- farming and other income generating activities;
- marketing arrangements for local produce, products and services;
- rules and procedures for mining, quarrying and fossicking;
- utilities and communications infrastructure;
- roads and access corridors; and,
- military access.

Issues concerning communications, capacity building, research and evaluation

- description of specific social communication avenues and initiatives;

- description of *ad hoc* training and continuing education initiatives;
- description of rules to be adopted in local research;
- a follow-up protocol for monitoring; and,
- plans for internal and external evaluation.

Financial issues

- financial planning, programme funding, compensation for lost income from conservation activities, taxation benefits and other incentives (including rate relief, payments, education, health, housing services, information, etc.), protection of investments (see Box 7.17);
- land swaps, offset and debt-for-nature arrangements;
- affirmative action employment policies for local residents including equity in income earning ventures;
- support to local employment and commercial initiatives;
- interest payments, royalties and bounty payments; and,
- cost allocation for co-management meetings and processes.

Other issues dealt with in the general covenants may include: linked negotiations, amendment procedures, agreed schedules of meetings, protection of local customary practices and traditional approaches to resource management, etc.

Box 7.17 **Protecting the investment**

As co-management agreements often involve considerable investment of time, money and other resources, the parties who wish to protect their investment to the greatest legal extent possible attempt to ensure that the other parties are bound to keep the agreement.

Many agreements are common law contracts. In this case, each party needs to check them carefully and be satisfied that the contract offers an acceptable level of assurance. Less commonly, the agreement itself may be enshrined in an Act of Parliament. An interesting example of this kind is being tried out in Lebanon, where three new national parks have been created and local NGOs have been given responsibility for the running of each park. A separate act has been created for each park. Each act is brief, and sets out the responsibilities of the parties, along with broad term administrative arrangements.

In the most common form of "one–on-one" agreement, the government provides resources in return for some action by the landholder. It is therefore the government agency which has the greater interest in protecting its investment, since it will hand over the money, equipment, etc. at a specific time, while the actions of the landholder may be ongoing. Possible mechanisms for protecting the investment include:

- setting out a timetable for works, with a schedule of payments related to achievement of agreed milestones;
- penalty clauses, including "payback" provisions (with or without interest) if the landholder fails to display "stewardship", undoes or fails to maintain the agreed works, or acts contrary to the agreement at some time in the future;
- a monitoring programme, with "payback" or "make good" provisions.

Inclusions of this kind need to be handled carefully. They can appear unfair, the ability to enforce them will decrease over time, and the government agency needs to weigh up the likely effectiveness of any such provisions against the negative impression they may create.

Protecting the government's investment can be even more difficult if the land is sold in the future. The most effective way to do this is to register the agreement on the title as a form of covenant, easement or other legal protection which runs with the title of the land (*i.e.*, all future owners are bound by the terms). Some forms of agreement lend themselves to this, while others do not. Some jurisdictions may be reluctant to register such agreements as constraints on title.

An alternative is the use of a novation of deed on transfer as part of the cooperative management agreement itself. In essence, a novation means that the landholder agrees to sell the land only to a purchaser who agrees in turn to be bound by the terms of the original agreement. If the purchaser breaks the agreement, the original owner may be liable. Novations are unlikely to be enforceable after the first couple of property transactions.

Landholders also seek to protect their "investment", *i.e.*, the natural resource/ conservation values or the land they have managed, in this way. Many wish to protect the land "forever" or at least for their children. In this regard, registration of some form of covenant on title is the most effective mechanism. Even this, however, cannot provide absolute certainty, as governments can (and do) revoke protective covenants if they wish to use the land for other purposes (*e.g.*, transmission corridor for public utility).

Duration

Co-management agreements may be temporary or permanent. The general covenants may also specify amendment and termination procedures, if any.

Agreements may be:

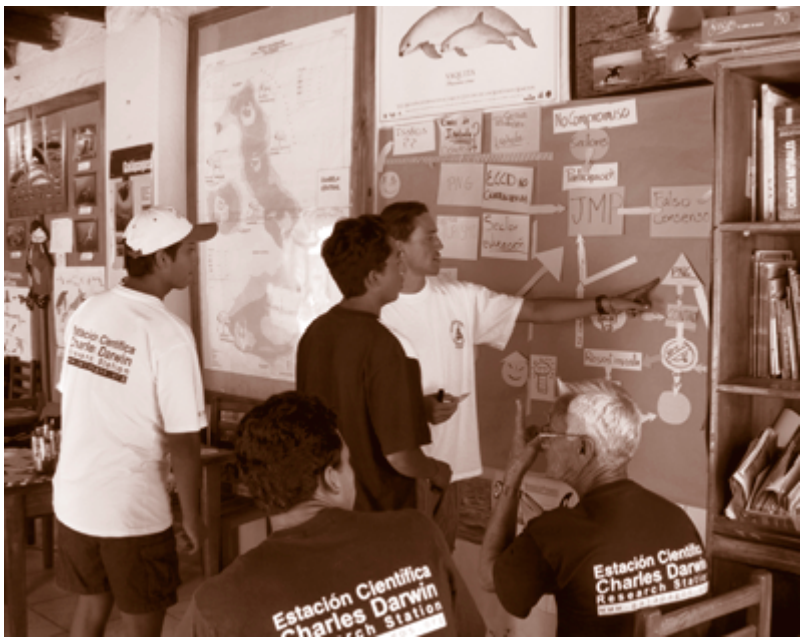
- effectively unrelated to the passage of time (*e.g.*, an agreement about the purchase of a capital item— "if you contribute labour to dig the well, the government will contribute the pumping equipment and the pump will become community property to all effects"). Agreements of this kind relate to specific events which occur at some point in time and are not repeated;
- obviously time limited— *e.g.*, an agreement about restricted access to certain resources until a recovery threshold has been reached. When the threshold is reached, the agreement comes to an end;
- applicable over an extended time— *e.g.*, an agreement that requires ongoing maintenance of certain agreed responsibilities: *i.e.*, "the community will have access to limited harvesting of vines in the protected forest and biodiversity monitoring reports will be delivered each month to the rangers' office". As the requirement for maintenance cannot be effectively enforced indefinitely, it is usually good to set a realistic time limit; and,
- open ended (in this case, the agreement is meant to apply "for all time"— *e.g.*, "the state will support the freeholding of a land lease and declare the land a wildlife refuge, and the landowner will promise to protect and preserve the values of the wetland areas for all time"). While the landholder may agree to protect the heritage values of the forest in perpetuity in return for certain considerations from the government, agreements of this kind can be very difficult to

Agreements may be:
- *unrelated to the passage of time;*
- *time limited;*
- *applicable over an extended time;*
- *open ended.*

enforce over an extended time, even with agreed penalty provisions, unless registered on title.

Agreements of the last kind mentioned above are often requested by landholders in the North, who seek to protect the land permanently without giving up title to it (see Box 7.7). There is also a growing demand for this kind of agreement from citizens mistrustful of the real degree of protection offered by natural resource management schemes operated by governments. Increasingly, people with a strong conservation or sustainable development ethic are seeking to protect land through private ownership and some kind of covenant on title. If government views this trend in a positive light and is prepared to assist with appropriate legal mechanisms, a good deal of valuable conservation can be achieved at minimal cost to the taxpayer.

At any rate, all parties should be clear over what period of time the agreement applies and what are its main implications. The duration should be specified in the agreement. It may also be appropriate to specify what happens after the agreement expires.



Powers and responsibilities of co-management organisations

This section of the agreement deals with co-management organisations and specify the scope of their authority and their specific functions and responsibilities. It may deal with issues such as the regularity of meetings, express commitments to co-operation and goodwill, etc. Co-management organisations tend to complement the work of government resource management agencies rather than replace them. Some commentators have suggested that funding for co-management organisations should be sufficient to support independent secretariats or joint resource centres. This may be particularly necessary where traditional knowledge is not articulated in the professional language used by resource managers, or where the scientific research on which management plans are based has not incorporated traditional knowledge.[14] Co-management organisations are described at some length in Chapter 8 of this volume.

Dispute resolution and amendment procedures

Disputes may arise in co-management situations concerning competing access to resources, restrictions on their use, etc. In several jurisdictions, such conflicts are resolved by the courts, which are also often guided by specific recommendations on how competing claims to resources might best be resolved (see Box 7.18).

[14] Canada Royal Commission on Aboriginal Peoples, 1996.

Box 7.18 **Canadians set priority criteria for resolving disputes about resource management**
(adapted from Sparrow *versus* Canadian Court of Law, 1990)

Canadian case law suggests that conflict resolution over natural resource use should follow the principles of priority for conservation and the public interest, with reasonable and objective regulation being acceptable, followed by priority for subsistence or indigenous/ customary users. The interests of recreational and commercial users follow with lowest priority. For example, as aboriginal and treaty rights have Constitutional protection, in the decision of *Sparrow versus Canadian Court of Law* it was established that fisheries regulations do not extinguish aboriginal peoples' customary rights to fish unless a clear and plain intent to do so is manifest in the legislation. The court noted that government regulation that impinges on aboriginal rights must be shown to be justified, and that the court shall determine whether the regulation is reasonable, whether it imposes undue hardship, and whether the limitation denies the holders of the right their preferred means of enforcing their right. The court held that when assessing government justifications for interfering with aboriginal peoples rights, court priorities should be: 1) conservation, 2) subsistence needs, and 3) commercial and recreational fishers' rights.

Although disputes over legal contracts can be resolved in court, it is highly desirable to build into a co-management agreement a non-court dispute resolution mechanism trusted by all parties. This may include:

- time limits for resolving disputes directly among the parties, or for responding to requests, notices, etc.;
- a requirement that parties attempt informal dispute resolution before having recourse to the courts;
- identification of an agreed independent mediator or arbiter and the circumstances in which the services of this person or body shall be required, and whether their decision shall be final;
- whether the parties shall be legally represented in arbitration; and,
- circumstances in which either party shall simply have the right to terminate the agreement.

The level of detail adopted will depend on:

- the extent to which the parties feel they can trust each other;
- how much is at stake; and,
- how much the parties wish to avoid the courts if the agreement does break down.

The procedures set by the agreement should be culturally appropriate and the parties must ensure that suitably skilled people will be available to implement them. It is also important to remember that the agreements are about the management of natural resources and should not be overloaded it with dispute resolution and/ or penalty clauses.

Disputes are often a symptom of more deep-seated problems and deficiencies in the management regime. If they are frequent, the agreement is probably not working in some fundamental way. Even without active disputes, circumstances change, people change and knowledge grows— either party may wish to change the agreement at some time in the future. A mechanism for this should be fore-

Building amendment procedures into the original agreement may help everyone to accept and understand that agreements can only meet the circumstances of a particular time in history.

seen as part of the original agreement, so that:

- amendment is possible with the minimum of expense and complication;
- the risk of acrimonious debate is minimised; and,
- procedures are fair and equitable, and respect the interests of all parties.

Individuals involved in the original negotiations may feel a strong sense of ownership of an agreement in its original form. Any request for amendment may be seen as a threat or an implication of failure or inadequacy. A request to change an agreement, however, should be seen simply as evidence that the world changes, not as a reason for frustration or recriminations. Building amendment procedures into the original agreement may help everyone to accept and understand that agreements are designed to meet the circumstances of a particular time in history and unlikely to remain appropriate forever.

In the case of natural resource management, the path to needed amendments is smoothed if the parties agree beforehand on some form of monitoring, designed to be at least partly independent of the parties or their aspirations for the treaty. This might mean that the monitoring is done by an independent body, or a team where parties are equally represented, or that it consists of objective measurements that are recorded by mechanical devices. If the monitoring reveals that an agreed threshold has been passed notwithstanding that the treaty conditions were scrupulously observed, it will be difficult to argue that a change is not needed.

It is crucial, however, that agreements are never changed unilaterally. Any agreement that can be changed unilaterally is not a co-management agreement by definition, since the parties are not equal in a matter of fundamental importance. There is little point in negotiating an agreement in good faith if one party can later change it at will. The rights of the parties in this respect should be fully protected by law. At the very least, the need for all parties to agree to any amendments should be clearly stated in the agreement itself.

Information, communication and confidentiality clauses

Information and communication issues can have considerable significance for many parties, and are a major element of a well designed agreement.

Information and communication issues can have considerable significance for many parties, and are a major element of a well designed agreement. In particular, information that affects the status and operation of the treaty needs to be treated with care and an agreed balance of transparency and discretion. The kind of information involved might include:

- any proposed legislative or policy changes;
- any proposed tenure changes;
- financial balance sheets showing receipts and expenditures;
- development initiatives;
- budget proposals;
- public opinion polls;
- visitor figures;
- intentions to review the operation of the agreement itself;
- number and recipients of hunting permits issued;

- numbers of animals taken, trees felled, etc.;
- noticeable changes in size or distribution of animal populations;
- breaches of the agreement, or law breaking by others (*e.g.*, poaching); and,
- effects of traditional management practices (*e.g.*, burning, swidden agriculture).

In general, the constituencies of all the parties in the agreement (and not just their representatives who participated in the negotiation process) need to be informed about the agreement as a whole. What is it about and why was it thought necessary? This will be especially important if the terms of the agreement may lead to conflict with other users of the area. Sufficient funds will need to be set aside to inform all the parties and the public at large.[15]

There should be clarity within the agreement on who, when and how will set up and maintain a communication flow with all the parties and with local communities in particular. Implementation arrangements for positive provisions also need to be clear. For example it should be specified who will receive the tourism benefits, who is allowed to tap water from a given source, who is allowed to collect medicinal plants from the wild. And it should be specified when, where and how often; who will monitor outcomes; whether a monitoring protocol is to be followed; and what specific mechanism should be used to alert the parties if problems arise.

If agreed management practices include traditional practices, and/ or people returning to live on their ancestral land, it may be important to include also a strategy for communicating and explaining these decisions to the general public. In Richterveld National Park in South Africa, for example, the park land is leased from the Nama people, who retain rights to graze livestock and to harvest natural products in a controlled way.[16] This needs to be clearly explained to the public at large.

Indigenous people may also wish to have general cultural education initiatives included as part of the deal (*e.g.*, interpretive signs inside a park explaining cultural history, use of particular plants, spiritual significance of landscape features). For indigenous people and other communities and societies emerging from a history of oppression, it may also be important to have such history acknowledged publicly, either in the agreement itself or in explanatory material associated with it. A government party not prepared to be understanding and transparent about this may not get very far in the agreement process.

For indigenous people emerging from a history of oppression, it may also be important to have this history acknowledged publicly, either in the agreement itself or in explanatory material associated with it.

Notwithstanding the above, one or more parties may wish to keep at least some of the agreement confidential. Although it is generally better to make the whole document public and easily accessible, the parties may wish to respect their mutual concerns. In some cases, landholders seek a confidentiality clause in the contract because they do not wish to be known that they are dealing with a conservation agency in a community where there is little sympathy for conservation. Or they may not wish others to know they are accepting financial assistance. Some people simply wish to keep their affairs private and will not enter an agreement unless confidentiality is guaranteed.

Confidentiality may be a particular issue when dealing with indigenous peoples,

15 Farley, 1997.
16 Anderson, 1995.

in relation to cultural and spiritual information as well as intellectual property rights over knowledge on the uses of plants, animals and micro-organisms. If, for example, part of what an indigenous community seeks from the agreement is assistance in recording the cultural knowledge of its elders, the government agency may need to accept that the information gathered at its expense will remain the property of the indigenous community, who may not even wish to allow it access. Government parties need to be sensitive and flexible about requests for confidentiality that relate to culturally sensitive information. A useful compromise might be to specify that no communication material will be publicly released until the indigenous community signs off on it.

Government parties need to be sensitive and flexible about requests for confidentiality that relate to culturally sensitive information.

While confidentiality issues are important, the money or other assistance provided by a government agency comes ultimately from the public purse and there is a valid argument that its application should be transparent— perhaps especially when being applied to individual private landholders. As a matter of fact, many countries have Freedom of Information provisions that apply to these cases and need to be respected.

Specific clauses

In relation to the benefits and undertakings, more detailed clauses may outline who will do or provide what, and how. Examples of what different parties may ask for or provide vary according to context and the institutional actor's relationship with the resources.

7.4 Recognition of efforts and commitment

Special forms of public recognition can be stipulated as part of a management agreement. Government agencies are often surprised by how important this is to individuals and communities, and how much people are prepared to do for little more than social recognition. Recognition may take the form of an attractive sign for the front of the property identifying it as a Wildlife Refuge, sustainable farm, or other "special place", preferably identifying the resident community or landowner by name. Recognition of this kind costs little and can have excellent spin-offs for conservation. Government agencies can address communities with a known pride in their history and citizens who are influential within their community for this kind of public recognition. Once a few signs go up in a district, the local acceptance level increases, the co-management concept gets talked about, and new parties ask to join in. Other forms of recognition may include a press release, presentation of an award, or hosting of a public ceremony in the relevant space. The added status that comes with this kind of public recognition is important in rural communities, and a significant incentive for others to join in the efforts. In Victoria, for example, the Land for Wildlife Scheme ran a feature on Landline, the rural programme on the national Australian television network in early 1995. In the weeks following the screening, interstate inquiries averaged one per day.[17]

Government agencies are often surprised by… how much people are prepared to do for little more than social recognition.

[17] Vicki Pattemore, personal communication, 2003.

Moral support for existing efforts

This is closely allied to public recognition, but is often less tangible. It may require no more than an enthusiastic government officer who offers to explain ecological processes and lend books, or a community leader convincing government agencies of the importance of a community conserved area for regional conservation. Very often, individuals and communities ask for flora and fauna surveys to be done of their land. They may not want to do anything specific with such inventories, but they greatly appreciate "knowing what's there", especially if they can walk around with the botanist and learn the scientific names of trees, or help the zoologist check the mammal traps. The increased understanding and appreciation of the land which is gained, along with the moral support of the professionals doing the survey (whose very presence affirms their existing conservation efforts) is all some communities and landholders need to continue practising their stewardship— or to step up their efforts. This recognition is actually crucial for communities and landowners whose land and resources are included in government-established protected areas.

"A legacy for future generations"

Landholders already committed to good stewardship will often seek some form of guarantee that the conservation values they have worked to protect will be protected "for all time". This can be difficult to achieve, for reasons that will be discussed further below.

Material contributions

Communities and landowners committed to good stewardship may not have the financial or other resources to do what is needed. They may seek material (*e.g.*, seedlings for planting, stones for terracing) or cash contributions (*e.g.*, tied to the purchase of equipment, fences, etc.) to support their conservation work. Weed control, replanting, demarcation of land, compensation for community guards and prevention of human-wildlife conflicts are often in need of specific material or cash contributions.

One of the most commonly sought inclusions in a co-management agreement with private landowners is some form of tax or rate concession or rebate.

Tax concessions

One of the most commonly sought inclusions in a co-management agreement with private landowners is some form of tax or rate concession or rebate (local government tax). Such a rebate provides recognition that the landowner is managing responsibly and possibly foregoing some material gain in the process. It also relieves him or her of some financial burden without the need for the government to make actual cash payments. Tax concessions are widely used to encourage protection of the environment in many countries (See Box 7.7 in this Chapter).

Technical advice

This is frequently sought by indigenous and local communities and private landholders. It may range from the very specific (*e.g.*: "What should we plant here?" "Where should we place the pig traps?") to a full scale plan of management for the land. A request to prepare a management plan offers boundless opportunities for improved management on a cooperative basis. It is crucial, however, that the preparation of the plan involves the relevant parties at every stage. Training is frequently sought by individuals and communities, and some form of capacity build-

ing for all parties involved should be a routine component of any co-management agreement.

Strategic advice

This is something of a variant on the above. An example will serve to illustrate. An aboriginal community which sought a co-management agreement in New Zealand was concerned at the level of visitation by commercial tours and individual tourists to a waterfall on their traditional land. They did not want to keep people out, but they wanted the site respected. They did not want rubbish left behind or damage done to roads or forests, and they wanted some benefit for the community (since the visitors were simply driving into their traditional lands without so much as asking permission). The government agency agreed to discuss a strategic plan for dealing with tourism. One idea discussed was charging commercial tours access for entry in return for a roster system which guaranteed they would be the only visitors at the falls at a specified time.

Trade-offs

These are sought when one of the parties in the agreement wants to do, or has already done, something which one or more of the other parties would not normally support. For example, a farmer whose operations have over the years (and perhaps unknowingly) encroached onto a national park may seek to have that part of the park excised in return for transfer to the government of another part of the property. This can often be mutually beneficial. In a real example in north Queensland (Australia), a landholder was prepared to hand over to the Crown a large area of forested land in return for excision of a small area of flat land. The flat land had been cleared many years previously and planted to sugar cane every year since. Its conservation value was zero. The forested land was very steep and of no value for agriculture, but was biologically important.

Obviously, arrangements of this kind represent something of a tightrope for a government agency with natural resource management responsibilities. They should not be allowed to become the means for excusing landholders from breaking the law providing they "make it up" afterwards. Nor should they be allowed to be seen as an invitation for others to break the law and be rewarded for doing so.

Support (or the withholding of opposition)

This item has some overlap with the item above. Some parties may seek to have

another party (often a governmental agency) offer support (*e.g.*, by a letter) to assist them in negotiating with another agency. For that, they may be ready to make some important concessions. For example, a letter from a protected area authority to the local government authority might say "On behalf of agency X, I support the proposal to build a car park and boardwalk to allow tourists to view the swamp forest at Laguna Grande in the land customarily owned by the Y community." The Y community may then agree to support the maintenance of the swamp in it original extension and conditions. More active support may also be requested, such as assisting the community in face-to-face negotiations.

As a variation, it may be routine practice for the department which administers land tenure to seek comment from a conservation agency when, for example, a leaseholder is seeking to buy land or extend the terms of a lease. In some cases, the conservation agency may have legal power of veto over the dealing. The landowner may seek an assurance that the agency will not oppose the sale in return for some agreed management action, or trade-off.

This kind of landowner benefit contains significant risks for the government agency agreeing to it, which must be very careful to ensure it is not acting illegally, or contrary to government policy, or promising something it cannot deliver. In most cases, it is sensible to involve a "third party" department or agency at an early stage, even if only informally, to avoid unexpected and undesirable outcomes.

Indigenous peoples and local communities tend to hold an inclusive view of the world, and thus of what needs to be comprised in a resource management agreement. Government negotiators need to be prepared to adopt an inclusive approach that respects and accepts indigenous rights and aspirations.[18] As the BCCTF suggested: "There should be no unilateral restriction by any party on the scope of negotiations."[19]

7.5 Crucial issues for indigenous peoples and local communities

Who owns the land?

Perhaps the most fundamental matter for agreement and acknowledgement in co-management documents is the relationship of the indigenous peoples and local communities to the land in question. All other inclusions, and how they are dealt with, will flow from the extent to which ownership of the land, including customary ownership, is acknowledged in writing and in the law.

One of the most important benefits sought by indigenous peoples and local communities in a co-management agreement is an acknowledgement of their custom-

[18] Farley, 1997.
[19] British Columbia Claims Task Force, 1991.

One of the most important benefits sought by indigenous and local communities in a co-management agreement is an acknowledgement of their customary ownership and rights or affiliation with the land and resources at stake.

ary ownership and rights or affiliation with the land and resources at stake. While this certainly has moral force, its power as a negotiating lever is greatly overtaken in Western societies when the recognition is translated into legal ownership. In Australia, the USA and Canada, the indigenous peoples that managed to obtain a legal title to their land found out that governments and industry that previously dismissed their claims came to actively seek negotiation. The extent of "ownership" often marks the watershed between the role of supplicant and peer for the indigenous or local party in the negotiation process.

If ownership or affiliation is acknowledged with an indigenous people or local community, the question of who will be the formal party to the treaty must be confronted. This may be a council of elders, a corporation, a community council or other representative body. If the land has been successfully claimed by a group or body under an established legal mechanism, the decision is much easier. If this situation does not apply, however, this should not be used as an excuse for not embarking on negotiations. Government negotiators will simply need to work closely and cautiously with the indigenous people or community and assist them to identify the most appropriate formal representative of the right holders.

Who else is involved?

A key matter for early determination is who should be involved in the agreement. This can be a vexed question. Inclusion of new parties and their interests is often opposed by the original parties ("primary stakeholders") who may see such additions as a means of "outnumbering" them, and who may feel anyway that other parties do not have legitimate rights to be involved. While the latter may well be true, inclusion of some new legitimate parties in negotiations— and inclusion of their interests in the agreement— may prevent a good deal of troubles.

For protected areas or wilderness such parties frequently are recreational users, including powerful hunting lobbies. Recreational users, however, have achieved variable results in their efforts to be involved in co-management agreement negotiations in protected areas, *e.g.*, in Alaska and Canada.[20]

Where resource use is part of the agreement, or the land involved is resource-rich, existing or prospective mining, logging or grazing interests need to be carefully considered. In Australia and Canada, it is common for indigenous peoples and mining companies (with or without government support) to enter into formal agreements over resource use before work begins. Such agreements commonly concentrate on financial compensation, rehabilitation, ongoing access, and the conduct of operations in ways, and in places, that respect the spiritual values of the land. In Bolivia, an agreement between a gas and oil company and indigenous peoples provided the essential conditions for a major co-management agreement for the country (see Box 7.19).

Box 7.19 **Co-management of protected areas, the oil and gas industry and indigenous empowerment— the experience of Bolivia's Kaa Iya del Gran Chaco (Bolivia)**
(adapted from Winer, 2003)

The National Park Kaa-Iya del Gran Chaco was established in September 1995 in Southern Bolivia. This park of 3.4 million hectares is the largest in Bolivia and contains the world's largest area of dry

[20] Sneed, 1997.

tropical forest under legal protection. Its most unique characteristic, however, is that the park was created in response to demands for territorial recognition by the Guaran Izoce o people. This is the first park in the Americas declared on the basis of a demand by indigenous people and assigning to an indigenous people's organisation a primary administrative responsibility. The co-administration agreement that set up the park is a model document that creates new opportunities for both indigenous peoples and the under-staffed and under-funded national conservation authorities. Having established the park has only partially fulfilled the historic objective of re-claiming their own customary land upheld by CABI (Capitan a de Alto y Bajo Izozog), the traditional representative structure of the Guaran Izoce o. Currently, besides what is gazetted as park territory, another 1.9 million hectares bordering the park and straddling the river are being titled in their favour.

How was this possible? CABI was able to capitalise on its internal cohesion to pressure the hydro-carbon industry into making significant compensatory payments to them for the impact of that portion of the 32" diameter, 3,146 Kilometres gas pipeline that runs through their indigenous territory and the park. Such compensatory payments, totalling $3.7 million, and the activities that came in with the hydro-carbon industry, ensured CABI's ability to invest significant funds in the running of the park. This obviously strengthened their standing as effective co-management partners. In addition, the hydro-carbon funds were crucial to support the indigenous organisations themselves, promote rural development and accelerate the process of titling indigenous lands. Co-management would have taken hold in Bolivia without these funds, but would not have developed so rapidly, or garnered as much enthusiasm from the government agency in charge.

The Wildlife Conservation Society (WCS) has been the principal broker supporting the negotiations for the park, the indigenous territory, the park's management plan and its administrative structures. It had the vision of a successful co-management agreement and the wisdom to know that this would take years of on-going support. In the 1.9 million hectare indigenous territory adjacent to the park, WCS has also worked closely with CABI since 1991, fostering the full appreciation of the links between wildlife (a crucial element of Izoce o cultural heritage) and the management decisions in their habitats.

Financial outcomes

Many conservation agreements refer to land and resources that belong, or belonged to, an indigenous party or a local community or one or more private landowners. On this basis it is agreed that there should be some financial compensation for their loss, and/ or that the land should return an ongoing income to its customary or legal owners. Agreed financial outcomes may take the form of:

- rental paid by the government (for instance, Aboriginal peoples in Kakadu, Nitmiluk, Booderee and Mutawintji National Parks, in Australia,[21] lease their land to the government for an independently-determined market value return);
- proportion of income or profits (for instance, the Anangu people receive 25% of entrance and other fees at Uluru-Kata Tjuta National Park in Australia;[22] in 1994, this arrangement returned them 600,000 Australian Dollars from entrance fees alone; in South Africa, where the revenue from entrance fees may be considerable, from 10 to 15% of revenue[23] is allocated to neighbouring tribal authorities in various provinces and homelands— a type of arrangement often used also in agreements with mining companies;
- guaranteed employment (this is a very common provision for protected areas throughout the world, but it may benefit only a small proportion of the community);

21 See Table 4.3 in Chapter 4.
22 De Lacy and Lawson, 1997.
23 Anderson, 1995.

- financial compensation, either on-going or once-off, used where government acquires the land and/ or the desired use is considered incompatible with ongoing indigenous use or ownership.

The latter type of arrangement is envisaged, for example, by the *Native Title Act 1993 (Commonwealth) of Australia,* which provides for acquisition (with compensation) of native title rights, and regional agreements by which the Aboriginal people agree to yield their native title rights in return for agreed compensation. This kind of agreement modifies in a most important way the rights of indigenous peoples and should be subjected to very careful consideration and strict provisions for prior informed consent. In 2004[24] the Programme of Work on Protected Areas of the Convention on Biological Diversity actually ruled out forcible expropriation and resettlement of indigenous peoples for the purpose of establishing new protected areas, and upheld the principles of prior informed consent.

Resource extraction companies frequently seek to negotiate one-off compensation arrangements, or compensation that is ongoing but unrelated to profits…. Arrangements of this kind need to be approached with great caution, as they can be superficially attractive but are often unfair and inequitable in the long term, especially if the resource extraction operation destroys natural resources on which the people depend for their subsistence.

Resource extraction companies frequently seek to negotiate one-off compensation arrangements, or compensation that is ongoing but unrelated to profits (*e.g.*, providing schools, housing, vehicles). Arrangements of this kind need to be approached with great caution, as they can be superficially attractive (greatly needed benefits, expected to arrive quickly) but are often unfair and inequitable in the long term, especially if the resource extraction operation destroys natural resources on which the people depend for their subsistence. Also, often promises are forgotten soon after they have been made. The Finima community on Bonny island (Nigeria) learned this the hard way, as they ended up reaping all sort of misfortunes and social and environmental costs for their initial consent to establish a liquefying gas plant in their midst.[25]

The agreement should be very clear on what financial outcomes is to flow to which parties, for how long and in what circumstances. What happens in the case of ongoing compensation tied to profits, for example, if the operation makes a loss? How can the local community know if there really is a loss, or how much the profits really are? Any conditions and obligations should be clearly spelt out, be verifiable, and be understood by all parties.

As well as setting out who gets what funds, the agreement should specify who decides how funds available for the management of the natural resources are to be spent. Generally speaking, this decision should be taken by the co-management organisation, but in some cases a proportion of the funds may be directed to another body that decides how to spend it within broad guidelines. In any case, it is important that the government party is not paternalistic and does not attempt to take control of this aspect. Avoiding long transfer lines for the funds destined to local communities is equally important. Long transfer lines, the "safeguarding" of bank documents by state agencies and the deposit of money on state accounts, which often lasts much longer than anticipated, can hamper the community access to, and decision on, the use of financial resources.

Governance of protected areas

A number of authors have pointed out that basing conservation on a "protected area" model is proper of a western understanding of nature, wildlife and wilderness, which is foreign to many indigenous peoples.[26] It is important for governments to remember this in negotiating treaties over land considered to have

[24] See http://www.biodiv.org/decisions/default.aspx?m=COP-07&id=7765&lg=0
[25] Wittenberg, 2004.
[26] Anderson, 1995; Dwyer, 1994; Ghimire and Pimbert, 1997.

high conservation values. Indigenous peoples will value the land and wish to protect it, but their ways of doing so and their priorities may be different from those of government agencies.[27]

Yet, over half of protected areas in the world (and much more than that in some regions) have been created in areas inhabited by indigenous and local communities. Many of these communities still live there, or maintain close interests and relations to those areas and resources. In addition, a sizeable part of the remaining biodiversity in the world— in forests, rangelands, mountain environments, wetlands, freshwater bodies and coastal and marine environments, including mangroves, coral reefs and sea grass beds— exists in areas inhabited by indigenous peoples or areas held as "commons" by local communities outside of official protected areas. Fortunately, despite the lack of incentives and even the presence of disincentives, many such indigenous peoples and local communities are still engaged in various types of management efforts. Some of those efforts have an outright orientation towards the production and sustainable use of one or more natural resources. Others aim at fully conserving an area for its spiritual, cultural or aesthetic values. In general, community rules privilege livelihood sustainability, risk-aversion, flexibility, social reciprocities and use-values.[28] Within such broad terms, relatively strictly protected elements of the land— such as sacred groves or areas with well-regulated access and use— can still be found in many inhabited territories.[29] A typical resulting landscape is a mosaic pattern of resource units under different use regimes and regulations, including conserved areas and resources of relatively limited size.[30]

community rules privilege livelihood sustainability, risk-aversion, flexibility, social reciprocities and use-values.

For most indigenous peoples and local communities, protecting the land means living on it, close to it, and with it— still a difficult concept to accept for many national parks staff, foresters and rangeland managers. Frequently it will also mean some form of subsistence on the land or its natural resources, and some degree of ecosystem manipulation.[31] Negotiations on land management therefore need to be conducted with care, sensitivity and open minds, and as few preconceived ideas as possible. It is important to arrive at "mutually acceptable planning and management objectives,"[32] agreeing on the objectives of management before the mechanisms are discussed. Often the mechanisms will involve a combination of traditional and "modern" land management practices, and much can be learned and achieved in an atmosphere of good will. Although people and park conflicts still endure throughout the world, community conserved areas and resources are being increasingly recognised as very important for conservation. Community engagement in the conservation of official protected areas is also being increasingly appreciated, as theory and practice move from the old perception of PAs as "islands" of conservation to the more current perception of PAs as integral elements of a landscape/ seascape in which multiple management objectives effectively co-exist.[33]

For most indigenous peoples and local communities, protecting the land means living on it, close to it and with it.

27 A draft synthesis of regional studies prepared in the eve of the Vth World Parks Congress is available at: http://www.iucn.org/themes/ceesp/Wkg_grp/TILCEPA/community.htm#synthesis. See also Borrini-Feyerabend *et al.*, 2004 (in press).

28 In contrast, state-established protected areas generally privilege stability, legal authority and market values (*e.g.*, mega-fauna species).

29 A typical example is the landscape of the Karen villages found in Ob Long National Park, in Thailand. While alarmed park authorities point at the plots of land where the communities practice swidden agriculture, the villagers point at the areas they strictly conserve as sacred or actively protect from forest fires, and stress that they use only about 10% of the land in the park, as shown in the maps they have prepared.

30 In contrast, state-established protected areas generally privilege large scale gazetted environments surrounded by un-regulated territories.

31 Pimbert and Pretty, 1998; Pimbert and Toledo, 1994.

32 Sneed, 1997.

33 See McNeely and Pitt, 1985; Ghimire and Pimbert, 1997; Gadgil, 1998; Borrini-Feyerabend *et al.*, 2002; Phillips, 2003; the Accord, Action Plan and Recommendations developed by the Vth World Parks Congress, 2003 (http://www.iucn.org/themes/wcpa/wpc2003); the CBD Programme of Work on Protected Areas (http://www. biodiv.org/programmes/cross-cutting/protected/wopo.asp) and Borrini-Feyerabend *et al.*, 2004 (in press).

Some co-management agreements formally recognise the importance of community engagement in conservation and, in particular, provide support to Community Conserved Areas (CCAs) and Co-managed Protected Areas (CMPAs).[34] The most direct way to support a CCA is to attribute a clear legal status to communities and entrust them with the authority and responsibility to conserve their land and resources, in continuity with established patterns and structures. This is currently done in places as diverse as Senegal, Colombia, and Australia.[35] For CMPAs, specific agreements need to be developed to clarify the rights and responsibilities of each party in the agreement. It is also important to agree on how the decisions are to be implemented and enforced. If, for example, the parties agree that a certain threatened species will not be hunted until an indicator of its population passes a particular threshold, there should be overt agreement over who deals with offenders who break this rule. The procedures for enforcement need to be workable, and understood by all. While enforcement should to be done sensitively, failure to do it at all may cast doubt on the credibility of the agreement as a whole and the likelihood that other aspects of it will be adhered to. These questions apply equally (though with somewhat different problems) to offences by those affiliated with the parties to the agreement, and to offences by outsiders.

Some co-management agreements formally recognise the importance of community engagement in conservation and provide support to Community Conserved Areas (CCAs).

Hunting, fishing and human-wildlife conflicts

The right to use and dispose of resources is likely to be one of the more controversial aspects of any co-management agreement. The concept of hunting and fishing in protected areas, in particular, is anathema to many conservationists, especially when modern rather than "traditional" weaponry and techniques are used. The cultural significance of the hunting itself and its political symbolism as an act of self determination are resented by conservationists as well as other parties in society. The problems often arise as the national economy relies on tourists being able to see wildlife at close range in protected areas. During the phases of negotiation it will be important to establish agreed management objectives, enforcement procedures and social communication strategies, in particular to convey to the public at large the special significance of hunting and fishing for the indigenous and local communities. Ultimately, however, traditional hunting and fishing is likely to receive public sympathy (and government support) only if it can be done in ways that do not endanger species and ecosystems, or the safety of other users of the area. In some cases, the parties to the agreement have set up a special body to preside over such sensitive issues (*e.g.*, the Mackay Council of Elders decides on the issue of permits to traditional owners for taking marine species in a part of Australia's Great Barrier Reef Marine Park). At times, the

[34] A review of related issues and options for action can be found in Borrini-Feyerabend *et al.*, 2004 (in press).

[35] See the special issue of *Policy Matters* (No.12) on Community Empowerment for Conservation, 2003.

mechanisms for regulating hunting or fishing are developed with minimal government guidance, but the practice is submitted to some form of joint or independent monitoring.

The existence of customary hunting practices should not detract attention from the fact that sport hunting is often practiced by foreign tourists, in elite conditions and environments. In West Africa, for instance, many hunting concessions are established in territories just adjacent to protected areas. Local communities bear the cost of not being able to hunt, fish, farm, graze animals or even legally collect water inside the protected areas dedicated to supporting wildlife. This same wildlife, however, ends up feeding lucrative sport hunting and tourism businesses exploited by local and foreign elites in their strategically located concessions.

…local communities bear the cost of not being able to hunt, fish, farm, graze animals or even legally collect water inside the protected areas dedicated to supporting wildlife. This same wildlife may end up feeding lucrative industries exploited by local and foreign elites….

An increasing number of agreements, starting from the CAMPFIRE examples of the late 1980s, deal today with a fair community share of the benefits deriving from wildlife, including from hunting, fishing and tourism. These have provided some communities with much needed influxes of financial resources, but problems have not been lacking. Depending on where infrastructure and tourism investments are made and the ways in which benefits are allocated, there may be large discrepancies among communities in adjacent territories, and within communities.[36] Also, there may be artificial separations between wildlife management and management of other types of natural resources (*e.g.*, water, pasture, trees), and governments may maintain a paternalistic attitude, remaining reluctant to devolve effective wildlife management authority and rights, and requiring that community members be "trained to the purpose", while other partners, including tourism operators, are not.[37]

Apart from native animals for hunting, other resources considered in a co-management agreement may include rules and procedures for the use of fuelwood, vegetation for thatching, medicinal plants, canes and vines for basket weaving, wildlife as a source of protein-rich food (as distinct from the cultural needs of hunting as an activity), feral animals (*e.g.*, wild pigs), carcasses from culling programmes, grass and other vegetation for grazing livestock, and even intellectual property rights (*e.g.*, collecting a plant for personal medicinal use is quite different from providing sampling and explaining its use to a pharmaceutical company; if the company decides to market the active ingredient, the question of who owns both the plants and the knowledge becomes important).

Underlying all these issues is the question of who owns the resources and the land. Do indigenous peoples and local communities have the right, for instance, to claim ownership of forests, waters, wildlife and/ or mineral resources, and therefore decide on their use(s)? If the government retains ownership and wishes to sell them, will the indigenous party or local community have rights of veto, rights to impose conditions, or the right to expect a portion of the proceeds? The "rights to negotiate" are also likely to be an important aspect of any co-management agreement. These rights allow indigenous parties, local communities and other actors to negotiate directly with a resource extraction company over conditions and compensation payments. The recommendations on indigenous peoples that were adopted in 2003 at the 5th World Parks Congress address future co-management agreements that involve indigenous peoples in protected areas and wildlife management (Box 7.20).

[36] Kothari *et al.*, 2000; Long, 2004.
[37] Borrini-Feyerabend and Sandwith, 2003; Long, 2004; Mainspeizer, 2004.

Box 7.20 **The 5th World Parks Congress recommendations on indigenous peoples and protected areas— extracts with special relevance for co-management agreements**
(see http://www.iucn.org/themes/wcpa/wpc2003/english/outputs/recommendations.htm)

The following recommendations were addressed in Sept. 2003 to governments, inter-governmental organisations, NGOs, local communities and civil society, and were to be implemented in partnership with the freely chosen representatives of indigenous peoples. Several of them were later incorporated in the Programme of Work on Protected Areas of the Convention on Biological Diversity (Feb. 2004):

- Ensure that existing and future protected areas respect the rights of indigenous peoples.
- Cease all involuntary resettlement and expulsions of indigenous peoples from their lands in connection with protected areas, as well as involuntary sedentarisation of mobile indigenous peoples.
- Ensure that the establishment of protected areas is based on the free, prior informed consent of indigenous peoples, and of prior social, economic, cultural and environmental impact assessment, undertaken with the full participation of indigenous peoples.
- Recognise the value and importance of protected areas established by indigenous peoples as a sound basis for securing and extending national protected areas networks.
- Provide support and funding to indigenous peoples for community conserved, co-managed and indigenous-owned and -managed protected areas.
- Establish and enforce appropriate laws and policies to protect the intellectual property of indigenous peoples with regards to their traditional knowledge, innovation systems and cultural and biological resources, and to penalise all biopiracy activities.
- Enact laws and policies that recognise and guarantee indigenous peoples' rights over their ancestral lands and waters.
- Establish participatory mechanisms for the restitution of indigenous peoples' lands, territories and resources that have been taken over by protected areas without their free, prior informed consent, and for providing prompt and fair compensation, agreed upon in a transparent and culturally appropriate manner.
- Ensure respect for indigenous peoples' decision-making authority and support their local, sustainable management and conservation of natural resources in protected areas, recognising the central role of traditional authorities, institutions and representative organisations, as appropriate.
- Require protected area managers to actively support indigenous peoples' initiatives aimed at revitalising and applying, as appropriate, traditional knowledge and practices for land, water, and natural resource management within protected areas.
- Ensure open and transparent processes and genuine negotiation with indigenous peoples in relation to any plan to establish or expand protected area systems, so that their lands, waters and natural resources are preserved and decisions affecting them are taken in mutually agreed terms.
- Ensure that protected areas are geared towards poverty alleviation and improve the living standards of the communities around and within the parks through effective and agreeable benefit sharing mechanisms.
- Encourage international conservation agencies and organisations to adopt clear policies on indigenous peoples and conservation and establish mechanisms for the redress of grievances.

Training and employment

A better economic lot for members of the indigenous and local communities is usually a key concern of one or more parties in the agreement. While this may be

achieved through financial compensation, communities also often seek guaranteed employment clauses. Employment and trade or professional skills offer a more powerful road to self respect and self determination than mere financial security. In fact, having a large bank account but no work or profession is seen by some communities as counter-productive as it can reinforce a welfare mentality.

Wherever possible, financial benefits should be associated with guaranteed training and identified prospects for advancement, to reduce the risk that the outcome will be a small number of people in low paid menial jobs. This is especially important if the agreement is structured round a resource extraction operation that will come to an end in the short or medium term— leaving the people with no further prospects of employment.

Guaranteed access to the relevant territory, area of natural resources

Many agreements need to incorporate clauses about NR access for all parties. These may specify:

- any places where either party agrees not to enter (*e.g.*, a site of spiritual significance may be off limits for government staff, who may in turn seek to limit access to an ecologically sensitive area undergoing rehabilitation);
- the positive rights of access of each party (*e.g.*, a government agency may seek to retain rights of access for fire fighting purposes across indigenous lands from which other non-indigenous people may be effectively excluded; similarly, it may be important for indigenous people to have ongoing access for ceremonial or traditional purposes to areas where other park users are constrained from entering);

All parties may wish to exercise a degree of control over commercial activities such as tourism…

- constraints on access for the general community, and information on who will control such access. If the agreement effectively acknowledges the land as being under indigenous ownership and/ or management, then it may be appropriate for the indigenous owners to exercise control over access directly. This may involve nothing more than the need to obtain a permit to cross the land. Even if no charge is levied, the system allows the traditional owners to be aware of who is on their land and how many visits they are receiving. In the case of an agreement over a national park, or similar area, direct control may continue to be exercised by park staff, but only after agreement with the treaty partner on such matters as entrance fees, camping sites, permit conditions, etc.;
- constraints on access for commercial purposes (*e.g.*, tourism, mining, bioprospecting).

All parties may wish to exercise a degree of control over commercial activities such as tourism. In some cases, such activities will simply be inappropriate and the treaty should make clear that they will not be allowed. Otherwise, the agreement should address a number of practical questions, such as:

Checklist 7.1 **Questions to address in tourism-related agreements**

- Will tourist access numbers be limited?
- If yes, how? To what threshold?
- Who will decide? Will parties have powers of veto?
- Who will issue permits?
- What conditions and fees will be attached to tourist access?
- Who will collect and guard the fees?
- Who will monitor tourist use and enforce the relevant rules and conditions?
- Will indigenous or local guides be compulsory?
- Will accreditation of the guides be required, which may include a requirement for cross cultural training?
- What commercial activities will be permitted?
- Under what circumstances the parties will be allowed to directly engage in commercial activities with the tourists?

7.6 Crucial issues for government agencies

In broad terms, what government agencies should seek from co-management agreements is to further their legislated objectives and policy aims. The relevant "benefits" should be for the land, the natural resources, "conservation", "sustainable development" or other similar goals rather than for the agency itself or its individual staff. But specific agreements may also, of course, benefit the agency directly by saving it money, staff time or other resources, or by helping to spread its "message" and/ or perpetuate itself as a "legitimate organisation". In the sense just described, crucial aspects of the agreement include:

Good management— stewardship

Good management of the land ensures the conservation of species and ecosystems and the sustainable use of natural resources. A government agency may use financial incentives or other rewards to encourage landholders to agree to:

- limit clearing;
- stock pasture at sustainable levels;
- keep livestock out of forests or away from stream banks (*e.g.*, by paying for fencing);
- rotate use of areas for grazing or agriculture;
- use sound productive methods and inputs (*e.g.*, no chemical pesticides and genetically modified organisms);
- limit the number of visitors allowed on the land.

Protection of scenic views

Siting of a house or road may be negotiated to limit the visual impact on an otherwise natural scenic view (as well as the impact on conservation values). Communities and landholders may be willing to paint existing structures in camouflage colours for the cost of the paint.

Access

Access for management purposes or for the public to visit a notable feature may be negotiated with the relevant customary or legal owners. A community or landholder may agree to allow access across a relevant property that is essential for, say, fire control, if the fire authority does a little annual maintenance on the road. In north Queensland (Australia), several landowners agreed to guarantee public walking access across their property to a popular waterfall in return for assistance in closing an unofficial vehicular track and some minor construction to define the walking route more clearly.

Protection of local cultural heritage

On the ancestral lands of indigenous peoples, significant locations of rock art, cave paintings and other important indigenous cultural sites often occur on community or private land. The relevant communities and landholders may be enthusiastic about protecting these, but may need advice or financial assistance. A responsible government agency will include the relevant indigenous groups, communities and landowners in planning and negotiating an action strategy. The agreement will likely include access arrangements for traditional custodians or access regulated by law or custom.

The relevant communities and landowners may be enthusiastic about protecting indigenous cultural sites (rock art, cave paintings) but may need advice or financial assistance.

Rehabilitation of degraded areas

The government agency needs to be confident that:

- the agreed work will get done;
- the reforestation initiatives will be followed up (*e.g.*, communities and landholders may undertake planting of seedlings with volunteer help only, but later they might lose interest in regular watering or weeding; careful choice of species and sites can minimise the need for follow up care, and automated watering systems can be a wise investment);
- appropriate species of local origin will be used;
- chemicals pest control will be avoided.

For an effective outcome, the government agency or a reliable contractor will need to be closely involved in the planning and execution of this component of a co-management agreement. Some form of ongoing monitoring is desirable.

Diffusing the conservation message

Signs, media events, presentations and other communication avenues that acknowledge the efforts of various local parties at conserving natural resources help to diffuse awareness and relevant information in a positive way. Many social communication methods and tools can be used, especially with tourists or other visitors. If a governmental agency is assisting a community or private landowner

to site, design or build a car park, boardwalk or walking track, for example, it should include in the agreement the provision of interpretive material. Small posters and signs can explain forest ecology, conservation issues or indigenous history effectively and unobtrusively. The community or landowner may also be pleased to have a small shelter or pergola built to house educative material, or may agree to maintain and display a small herbarium or insect collection.

Control of weeds and pests

This is another area where a governmental agency can reap significant benefits from co-management agreements, but will need to be closely involved in design, training and monitoring to ensure that:

- traps or chemicals are avoided and, if needed for subsistence livelihoods, trapped animals (including feral) are treated humanely;
- non-target species are not affected;
- there is no risk to human safety or health;
- equipment is looked after, and returned in sound condition if that is part of the deal;
- follow up action is taken as necessary (the initial investment may be wasted if this is not done).

Fire and flood management

Fire management is a genuine and often emotional issue, and will require careful explanation and negotiation, not only with the particular communities and landowners, but with neighbours, conservation groups and other relevant government bodies

Fire management is a genuine and often emotional issue, and will require careful explanation and negotiation, not only with the particular communities and landowners, but with neighbours, conservation groups and other relevant government bodies. "Natural" fire management regimes, which include the intentional setting of fire when required for the maintenance of a specific habitat, and their effects on ecosystems are often not well understood. The risks to human life, property and conservation values may be enormous if something goes wrong. The chances of bad publicity and irretrievable damage to the reputation and credibility of a governmental agency are also very high (as is the risk to its budget if damage leads to compensation claims!).

Inclusion of fire management in co-management agreements therefore requires great caution. A "safe" inclusion might be no more than purchase or loan of fire fighting equipment. Any inclusion of fire manipulation or prescribed (controlled) burns in the agreement should specify the involvement of qualified professional fire management or control experts. This may include both biologists and professional fire fighters. A wise government agency might also seek to specify what will happen in the event of a managed fire (lit under the terms of the agreement) going out of control— though this will be no protection if negligence is involved, and may not help in the case of a public liability suit.

The management of flooding and water regimes also needs to be approached with caution. Along the Murray River and its tributaries (Australia), where irrigation farming is widespread and flooding regimes tightly controlled, landholders are now being encouraged to allow regular flooding of river red gum forests which is essential for forest ecology. This offers considerable scope for co-management agreements.

Avoiding damage

A co-management agreement based on this concept is a little different from the others, and is often more closely akin to a straight commercial transaction. The basic discourse (from the government agency's perspective) is "I will agree that you are entitled to benefit X, if you promise to do (or not to do) Y". In this case, Y will be an activity which would improve (or damage) the values of the area. It may be planting, maintaining and caring for desirable species, or conversely, clearing, building a structure, subdividing, burning, starting up a tourist operation, diverting a watercourse, mining, quarrying or any number of other activities.

In some cases, it will be possible to negotiate a change of location, or way of doing Y which minimises the damage. In some cases, the agency (assuming it does not have the legal powers to stop Y) will need to find a powerful incentive. Often this will be simply money, and may (if the landholders are willing and the agency wealthy enough) lead to voluntary acquisition of the land by the government.

A statutory management plan will need to have the strong support of all parties, as it will be legally binding on the social community at large, not just the parties, and will be much more difficult to revoke than a contract under common law.

When this is not possible, the government agency may need to find an alternative which provides the same outcome as Y. In this respect, it is important to establish in negotiations what the actual desired outcome is (which is not always immediately clear). A landholder seeking to subdivide his or her land, for example, may want to provide a house site for each of her or his grown children. Negotiations with the local government authority may suggest ways of providing for multiple occupancy of a given plot without subdivision. A community may wish free access to a water resource inside a protected area. A new water point outside the border may give it exactly what it wants without any need to compromise on access.

In dealing with the above kind of co-management agreements, the agency is often "on the back foot", as it is likely to be entering negotiations after a community or landholder has already made the decision to do Y; presumably, it has also no legal means to prevent Y. It will need to be very creative, and use its most skilled negotiators. It will also need to be pragmatic, and realistic about what can be achieved. Preventing Y may be the preferred outcome, but minimising the damage is better than nothing.

Bringing it all together in a management plan

Where a complex mixture of management regimes and initiatives is proposed by various parties at various times, it may be desirable to prepare a comprehensive co-management plan. The plan can set out agreed objectives and strategies and a detailed work schedule. It is to be signed off by the parties and it is the heart of the overall agreement.

In some cases it may be possible to make the plan a legal instrument in its own right. A statutory management plan will need to have the strong support of all parties, as it will be legally binding on the social community at large, not just the parties, and will be much more difficult to revoke than a contract under common law. The positive side of this is that such a plan represents a more secure and long term form of protection for the land than a simple contract, and especially so when the latter does not run with title.