Part IV. TOWARDS AN ENABLING SOCIAL CONTEXT

Chapter 10. NATURAL RESOURCE POLICY AND INSTRUMENTS

Environmental degradation and inequitable access to natural resources are, to a large extent, the result of political choices and processes and cannot be addressed without significant and durable changes in the distribution of power in society. Thus, making co-management "work" at the local level requires overcoming constraints on local conservation and development that have to do with the regional, national and international contexts and are shaped by a variety of forces, processes and instruments. Crucial determinants of such contexts are national legislation and policies.

Many would affirm that locally negotiated and implemented co-management agreements are likely to be ineffectual unless supported— or at least not impeded— by coherent legislation and policies. While this is generally true, it is also observed that co-management experiments generated in absence of supportive policies have demonstrated aliveness and effectiveness. Importantly, they have demonstrated a capacity to influence existing policy and to generate new and more appropriate ones. In this sense, even co-management experiments practiced on a small scale at the local level can serve as a vehicle for social change. They can, for instance, give a taste of empowerment to groups and communities that were previously marginalised. They can increase the accountability of organisa-

tions. They can build local capacity. And they can be motivating and inspiring for processes of decentralisation and democratisation at the national level.

Policy implies a purposeful course of action taken by social actors to address particular issues and advance towards specific objectives. Policy is a good part of what many organisations do. Policy involves process, in the form of policy making, implementing and reviewing, and it involves content, in the form of objectives, statements and instruments (Box 10.1).

Box 10.1 **Policies defined**

In the broadest sense of the term, policy can be defined as discourse, i.e. as an ensemble of norms, rules, views, ideas, concepts and values that govern practice and behaviour, and interpret social and environmental realities.[1] This suggests that the expressions and instruments of policy can be both formal and informal, and that the manner in which policy issues are discussed and framed in discourse is in itself significant.

Public policy refers specifically to the deliberations and directives of actions taken by governments of nation states, including local government agencies and institutions. By extension, public policy also refers to the deliberations and directives of action established and adopted by inter-governmental agencies and institutions, including international conventions. But policy is more than a set of goals and procedures. It encompasses instruments and processes such as mechanisms of resource allocation; institutional arrangements and procedures for public and non-governmental institutions; legal and regulatory frameworks applied by the state; and access, quality, efficiency, and relevance in the delivery of public services.[2]

Policy is not synonymous with public policy. Other actors such as medium and large scale businesses and transnational corporations have their own policies. This *private sector policy* can have a significant influence on environment and development. And policy is also made by indigenous peoples and local communities of fishing folks, peasants and farmers, nomadic pastoralists and hunters and gatherers. This "community policy" also affects natural resources and their use.

Importantly, public, private and community policy do not always shape, or effectively affect, outcomes, and the difference between rhetoric and reality should be always borne in mind.[3] In this respect, Barraclough and Ghimire[4] provide a useful typology for policies that do not deliver expected outcomes:

- policy failures (they fail to achieve what they were expected to achieve);
- policy perversities (they have unintended negative consequences);
- policy hypocrisies (they ostensibly have one objective but actually aim at other, even contrary, objectives); and
- policy absence (benign neglect results in negative social and environmental impacts).

Policy-making and implementation are inherently political processes, which define a society and reflect its fundamental values and structures. The process of policy-making (who makes policy and how it is made) determines and mirrors the functioning of that society. Policy-making is the privilege of the dictator in an autocratic society, while each and every citizen is expected to participate in policy making in the case of a utopian democratic society. Between these two extremes, there exists a diversity of systems of governance and policy making processes that are more or less participatory.

1 Keeley and Scoones,1999.
2 Norton, 1998.
3 Stiefel and Wolfe, 1994.
4 Barraclough and Ghimire, 1995.

CM-supportive policy deals with ecological sustainability, livelihoods, democratic and accountable institutions, social justice and equity in the political and economic arena.

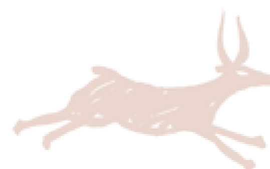
Policies that create environments favourable to co-management seem to pursue three types of goals. The first goal is *sustainability*, seeking human activities and resource use patterns compatible with ecological sustainability. The second goal is *equity*, securing the rights of people and communities, enhancing social and economic benefits, and combating inequalities, such as the ones responsible for poverty and exclusion. The third goal is *good governance*, empowering civil society in decision-making and democratising government institutions and structures, and markets. Ideally, these goals should be pursued in an integrated and coherent fashion. In the real world, however, this is more the exception than the rule. Yet, co-management approaches can still be fostered and supported by limited and sectoral policies, such as policies that address only one of the above goals, or even just a sub-area within any one of these broad concerns, such as:

- building the capacities of any relevant actor in a variety of ecological and social aspects of natural resource management;
- promoting social communication initiatives and soliciting the active participation of disfavoured groups;
- facilitating equitable access to natural resources by recognising and preserving rights, securing tenure, or allocating entitlements through devolution mechanisms;
- managing resource use conflicts, and harmonising conservation with resource use and human development;
- optimising, securing and fairly sharing the social and economic benefits generated from the use of natural resources;
- strengthening the identity and culture of indigenous peoples and local communities, in particular regarding customary rights on natural resource management and conservation;
- fostering the appreciation of cultural diversity, in particular through different ways of satisfying human needs and managing natural resources respectful of customary laws and practices;
- strengthening inclusive democratic processes at various levels including for culturally sensitive issues and customary practices;
- placing limits on the concentration of economic power, both nationally and internationally, and promoting corporate and state responsibility;
- safeguarding local communities, institutions and economies against the negative impacts of unchecked globalisation.

It is thus clear that the policy instruments that are of relevance for co-management extend beyond the regulation of institutional partnerships or the "protection" of the environment. CM-supportive policy deals with ecological sustainability, livelihoods, democratic and accountable institutions, social justice and equity in the political and economic arena.

This chapter focuses on national and international policies that can facilitate and strengthen the co-management of natural resources at different scales. Rather than presenting a fixed menu of policy instruments, it describes a range of policy options and directions for national governments and other actors who seek to mainstream co-management. As democratic participation and citizen empower-

ment are increasingly proving to be crucial for the design of supportive co-management policies throughout the world, issues related to the process of policy formulation will be addressed in the subsequent, closing chapter.



10.1 Enabling policies at the national level

Co-management requires a policy environment that avoids and departs from extremist and simplified approaches to governance. Aware of the failures and inequities of state-dominated models, of the dangers of approaches that give supremacy to the market and its forces, and of the limitations of exclusive community authority and action, advocates of co-management see the benefits of approaches that recognise the strengths and weaknesses of various social actors and institutions. The ideological foundation of co-management is one that places people unambiguously at the centre of the development process, but it is also one that understands that the state, the market and civil society— including local communities, NGOs and individuals— all have a positive role to play in that process.

Ideally, formal policy frameworks would stem from a broadly shared national vision and provide guidance and direction for the sound governance of natural resources. These frameworks should be the products of internally driven participatory processes that generate broad-based commitment and ownership. In an ideal policy environment, such laws and policy instruments would derive from, and be consistent with, a national vision of development, society and environment. In many parts of the world, however, and especially in the South, environment and development policies are directly influenced by external agencies. For instance, the most explicit statements of public policy on issues and sectors relevant to co-management can be found in such instruments as the World Bank-sponsored National Environmental Action Plans (NEAP) and Poverty Reduction Strategy Papers (PRSP), some country strategy papers assisted by bi-lateral and multi-lateral agencies, or policy statements developed in accordance with the provisions of international conventions (*e.g.* National Biodiversity Strategies and Action Plans). This pattern of external influence can put into question the ownership of policy statements and of the measures they contain. Also noticeable is the case of external agencies actively colluding with national elites and commercial interests to promote the interests of powerful actors.[5] In general, co-management arrangements are best established in a political context that respects basic freedoms and provides for the rule of law. In the absence of such a context, the promotion of co-management may frankly prove unrealistic (see Box 10.2).

Box 10.2 Co-management of forests and protected areas in Haiti
(adapted from Renard, 2002)

Between 1996 and 2001, the World Bank and the Government of Haiti implemented a project called *Projet d'Appui Technique à la Protection des Parcs et Forêts*, which aimed at conserving and managing the last remaining forests of this impoverished Caribbean country. The project had a number of compo-

[5] Hancock, 1991; Sogge, 2002.

nents, including capacity-building and institutional strengthening for government agencies and civil society organisations, promotion of social and economic development activities within and around forests and protected areas, preparation of management plans for individual protected areas, and establishment of co-management institutions and agreements at the local level.

This project was designed and initiated at a time when the political situation in Haiti presented signs of hope. A new President of the Republic had been elected with overwhelming popular support, a relatively stable government was in place, and critical policy reforms were being initiated. This project was part of a broader vision based on the restoration of democracy and the protection of the basic rights of citizens, the improvement of governance through decentralisation and community empowerment, and the reduction of poverty through economic diversification, social protection and improved environmental management.

Co-management of forests and protected areas fitted well in this vision. Through co-management arrangements, this project aimed at strengthening local authority and responsibility over the management of critical natural assets, at giving a prominent role to community organisations, at promoting sustainable use of resources, and at protecting the last remaining areas of forests, in a country renowned for its extreme poverty, and for the extent of its deforestation and overall environmental degradation.

While the project had a number of positive impacts before being interrupted in 2001, as a result of the sanctions imposed on Haiti by the international community, it was not able to achieve its objectives of establishing viable co-management agreements. Specifically, three factors militated against the achievement of these objectives: (a) the state and its civil society partners remained unable to protect citizens and community organisations against corruption and against political and economic violence imposed by powerful interests (the "rules of the game" that prevailed on the ground remained basically unchanged), (b) people did not trust government agencies and officials, and were not prepared to collaborate with them in matters of importance to their livelihoods and survival, and (c) the state and its agencies remained unwilling to delegate formal authority to non-governmental and community partners.

In many respects, it was futile to attempt to establish co-management institutions in a country where basic human rights were not respected, state institutions were largely perceived as corrupt and unreliable, and community empowerment was bound to be perceived as a threat to dominant groups and interests within and outside government.

Constitution and basic civil law

The first and most fundamental expression of public policy in any country is found in its national constitution. Some constitutions directly and explicitly facilitate co-management as they fully and straightforwardly recognise the right of peoples, citizens and civil society in general to participate in decision-making processes and in the governance of national and local institutions. Some constitutions also recognise the rights of communities and indigenous peoples as collective bodies (collective versus individual rights). In Argentina, for example, the constitution stipulates that Congress has the power to recognise the legal status of indigenous peoples and of community property rights over their traditional lands. In Colombia, the constitution states that the law guarantees the participation of communities in the decisions that may affect them. In the Czech Republic, the constitution includes protection for national and ethnic minorities, guaranteeing rights to development, culture, language diversity, participation and association. The constitution of Ecuador is, in many ways, remarkably progressive in its recog-

nition of the collective rights of indigenous peoples (Box 10.3). Recent constitutional amendments in India are also leading to empowered forms of local direct participation (Box 10.4).

Box 10.3 **Extracts from the Constitution of Ecuador**

Article 84. In accordance with the Constitution and with the law, respect for public order, and human rights, the state shall recognise and guarantee to indigenous peoples the following collective rights:

1. To maintain, develop and strengthen their spiritual, cultural, linguistic, social, political and economic identity and traditions.

2. To protect the imprescriptible ownership of community lands, which may not be alienated, confiscated or broken up, except by the state with its power to declare public utility. These lands will be exempt from payment of property tax.

3. To maintain ancestral ownership of community lands, which will be freely awarded in accordance with the law.

4. To participate in the use, usufruct, administration and conservation of renewable natural resources found on their lands.

5. To be consulted about any plans and programmes to prospect and exploit non-renewable resources found on their lands which may have an environmental or cultural impact on them. To share in the benefits accrued by these projects wherever possible, and to receive compensation for any social or environmental damage they may cause.

6. To conserve and promote their biodiversity and natural environment management practices.

7. To conserve and develop traditional ways of life, social organisation, and creation and exercising of authority.

8. As a people, not to be displaced from their land.

9. To have collective intellectual property rights over their ancestral knowledge, and to the valuation, use and development of these intellectual property rights according to the law.

10. To maintain, develop and administer their cultural and historical heritage.

11. To access quality education, and to an intercultural and bilingual education system.

12. To their traditional medical systems, knowledge and practices. This includes the right to protection of ritual and sacred sites, plants, animals, minerals and ecosystems of vital interest with regard to traditional medicine.

13. To decide on and prioritise plans and projects for the development and improvement of economic and social conditions, with adequate funding from the state.

14. To participate, through representatives, in official bodies determined by law.

15. To use symbols and emblems which identify them.

Box 10.4 **Constitutional amendments encourage more devolution and subsidiarity in India** (adapted from McGee *et al.*, 2003)

India's 73rd and 74th Constitutional Amendments gave local governments (the *panchayati raj* system) the task of planning for economic development and social justice. In theory this process begins with the *gram sabha* (village assembly) at the village level, though this varies in practice across states. In the state of Madhya Pradesh, a new law was passed in 2001 that virtually transferred all powers concerning local development to the village assemblies, including powers related to village development, budgeting, levying taxes, agriculture, natural resource management, village security, infrastructure, education and social justice. In Kerala, as part of the People's Planning Campaign, local governments received 40% of the state budget allocation for local services. Grassroots planning processes were carried out in thousands of villages and later approved by direct vote in popular village assemblies.

One of the crucial ways in which constitutions and basic laws provide backing to co-management is by recognising communities as legal entities.

While some inspiring examples exist, in many countries the constitution and the basic civil laws fail to recognise community rights over natural resources. Some important elements of legislation (*e.g.* civil code, rural code, and pastoral code) often do not even recognise indigenous and local communities as legal entities (according to some legislation only individuals, businesses and the state "exist") and they cannot accommodate collective rights and responsibilities. Rarely is there a simple and effective legal status for communities willing to manage and conserve natural resources. Even rarer is a legal status that allows local communities not only to manage their customary common property resources, but also to derive an economic profit from it.

One of the crucial ways in which constitutions and basic laws provide backing to co-management is by recognising communities as legal entities, by allowing the devolution of natural resource management authority and responsibilities at the lowest effective level (in application of the principle of subsidiarity— see Chapter 4) and by upholding a broader culture and system of participatory policy-making and governance. When such provisions are enshrined in the national constitution, they have the potential[6] to inform and influence all policies and plans.

Natural resource management policy

Policies on natural resource management are crucially important in directing who will manage natural resources and how, and who will benefit from that management. They do so at the national level but also at the sub-national (regional) and local levels. Particularly significant in this sense are policies that decentralise, delegate, devolve and secure control over natural resources, as well as policies that reconcile protection and use.

[6] It is not automatic that legal provisions are implemented, especially when they involve sensitive concerns to states.

Some countries do not have formal public policy statements that govern social development and natural resource management. In these situations, co-management can rarely take place on a large scale. In other countries policy statements exist but are narrow and fail to provide a comprehensive framework to integrate and harmonise different sectoral policies. In too many cases, policy-making on environmental issues and natural resource management comes in response to a crisis or to external influences, not as a result of endogenous processes of analysis and decision-making. In addition, laws are not always guided by, or derived from, clear objectives. Therefore there is often an unmet need for a comprehensive framework of formal policy in the field of natural resource management. Such a framework would include:

- **National Strategies for Sustainable Development** (NSSD): all countries of the world are now committed, since the World Summit on Sustainable Development (WSSD) held in South Africa in 2003, to the formulation of such national strategies. Whatever the title used (*e.g.* National Strategy for Sustainable Development, National Development Plan, and National Development Strategy), the heart of such statements should ensure that national development is guided by strategic directions and instruments that include concerns for sustainability, provide adequate policy direction for natural resource governance and management, and define a suitable framework for integrated development planning.[7]

- **National Biodiversity Strategies and Action Plans** (NBSAP): these instruments have been or are currently being developed by most countries of the world, in accordance with the provisions of the Convention on Biological Diversity (CBD). They provide an excellent opportunity for nations to express formally their commitment to participatory governance and co-management, and to put in place the specific policies and instruments required to realise this commitment (see Box 10.5).

Box 10.5 **The National Biodiversity Strategy and Action Plan (NBSAP), India**
(adapted from Kohli and Kothari, 2003)

From 2000 to 2004, the Government of India, through its Ministry of Environment and Forests, has been involved in the formulation of a National Biodiversity Strategy and Action Plan (NBSAP). This has been the result of a broad process that involved a number of studies and reviews and dozens of strategies and action plans prepared at local, state, eco-regional and thematic levels. This process has been participatory and decentralised, involving a wide range of actors in the analysis of data, issues and options, and in the formulation of policy recommendations and specific instruments. Its coordination has been carried out by the NGO Kalpavriksh.

One of the basic goals of the draft NBSAP is "equity in the conservation and use of biodiversity, including equitable access to biodiversity and control over decision-making about it, as well as equitable distribution of the costs and benefits associated with its conservation and sustainable use". In particular, that includes "creating democratic spaces for the voices of dis-privileged women and men in defining conservation and use priorities." The measures provided by the draft NBSAP include "community tenure rights, in particular the rights of women, children and other dis-privileged sections within them", as well as "balancing local, national and international interests".

Specific provisions of the draft NBSAP include the strengthening or revival of customary governance

[7] Dalal-Clayton and Bass, 2002

structure, the documentation, encouragement and integration of customary law into statutory laws, and a reconciliation of "the contradictions between the laws of conservation, on the one hand, and those relating to decentralisation and social justice, on the other". In the mechanisms for implementation of the recommendations of the draft NBSAP, specific provisions are being made to facilitate and strengthen co-management and community-based arrangements.

- **National Action Programmes (NAP) for Combating Desertification**: this is another national obligation under international law— the UN Convention to Combat Desertification (UNCCD). Many countries have already prepared their NAP[8] which is meant to incorporate public and community participation in resource management. Very interesting pilot initiatives have been included in some of these national plans.

- **National policies and legislation in key sectors of natural resource**: an essential requirement of co-management is the inclusion of appropriate provisions within the policies and laws that govern the conservation, use and management of natural resources, *e.g.* forestry, fisheries, land, soils, and wildlife. These policy instruments should include a vision of collaboration and equity in natural resource management, incorporate the principles and values of participation, subsidiarity, rights and empowerment, and stipulate the specific measures that are available to design, establish and facilitate co-management institutions and arrangements.
- **National protected area legislation and policies**: in addition to their national policies in key sectors, many countries have formulated and adopted development plans and programmes to govern the establishment and management of national systems of protected areas. These plans and programmes are usually supported by national legislation, which should incorporate the principles and instruments of co-management, including specific provisions for shared and delegated management authority (Box 10.6).

Box 10.6 **Reforming national protected area systems**
(adapted from Ghimire and Pimbert, 1997)

In many cases, a review of national PA category systems and classifications may be a logical and necessary step to bring new strength and coherence to a national conservation policy. For instance, existing protected areas under co-management with indigenous peoples and local communities may still be classified in categories incompatible with current uses and situations. Often, National Parks fit to be managed as protected areas under IUCN Category V or VI are run by legislation that forbids all human presence and NR uses and impedes all sorts of co-management agreements. It is therefore important to dispose at the national level of a comprehensive range of categories and governance types that fully reflect the varying degrees and forms of human use and intervention on the environment.[9] This is slowly being recognised also in international documents.[10]

Examples of co-management of natural resources and protected areas inscribed in national policy and legislation include:

Marine protected areas legislation in Tanzania
National legislation defines the rules under which participatory management of

8 www.unccd.int/actionprogrammes/menu.phb
9 Borrini-Feyerabend, 2004.
10 For instance see the UN List of Protected Areas (2003).

natural resources can take place. The case of the Tanzania Marine Park and Reserves Act of 1994 is a good example. Several local initiatives were started for the co-management of coastal areas, and local government authorities established by-laws and regulations to legalise these activities. It soon became apparent that the national legislation on marine parks and reserves was deficient, and did not formally allow for participatory management processes involving the Division of Fisheries and Village Councils.[11] A new legislation was thus drafted and ratified in 1994 to define the rules for the involvement of village councils in the participatory management of marine parks and reserves. The new national legislation provides an adequate statutory framework for local initiatives to be fully incorporated into national policy, and for village-based resource management systems to be formally recognised as a legal option.

The National Conservation Strategy of Pakistan

Pakistan's National Conservation Strategy, which was ratified in 1994, emphasises public involvement in the management of natural resources and of protected areas in particular. Under its umbrella, provincial and territorial governments embarked in developing regional conservation strategies. The Sarhad Provincial Conservation Strategy[12] includes specific guidelines for the involvement of communities in co-managing protected areas, such as the need to set up a co-management structure where local communities are to be directly represented, as well as specific mechanisms to facilitate their participation, protect their cultural identity, effectively share information and to distribute fairly the benefits deriving from each specific protected area.

Provisions for devolution of protected area management in El Salvador

In El Salvador, the National Park Service has issued a policy document stipulating the official procedures for NGOs and CBOs interested in joint management of protected areas. The relevant agreements take the form of a memorandum of understanding between El Salvador's Park Service and the organisation requesting to co-manage a protected area. A series of requisites are established for an organisation to qualify, such as possessing legal status, and having administrative capacity and prior experience in managing protected areas. Once the organisation qualifies, the Park Service requires it to submit an operational plan, which details the objectives and goals as well as the activities designed to meet them. As in many other instances, the state reserves the right to revoke the agreement that, as a memorandum of understanding, has clear time limits and evaluation periods. If the organisation complies with the requirements and is successfully evaluated, the participatory management of the protected area can continue over longer periods of time.

Civil society management of protected areas in Lebanon

In Lebanon, important conservation initiatives emerged in the 1980s, when there was no effective national government and the country was under Israeli occupation. The initiatives were developed endogenously— one could even say spontaneously— by civil society groups, at times based on progressive religious leadership by Druze and other Moslem groups and Christians, who "declared" and managed a number of protected areas. When Israel was forced to withdraw from Lebanon and a legitimate government was established, it allowed the civil society groups and NGOs that had established the protected areas to continue to manage them, now under the authority of the government and under contract with the Ministry of the Environment. Up to today this arrangement continues more or less

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[11] Magnus Ngoile, personal communication, 1996.

[12] GONWFP and IUCN Pakistan, 1996; Oli, 1998. See also Box 5.14 in Chapter 5.

unchanged in all 9 protected areas of the country, including marine and coastal zones. Yet, states have by nature a monopolistic tendency and the conditions for the management of protected areas are getting tighter for the NGOs— despite their excellent results and their proven capacity to engage local communities and other stakeholders. Unfortunately, the co-management setting of Lebanese protected areas appears in jeopardy.

Joint Forest Management in India

On 1 June 1990, a Joint Forest Management (JFM) programme was officially launched in more than 14 states of India, largely in response to the fast deterioration and uncontrolled exploitation of their forests. The goal of the programme was "to secure the willing cooperation of the people through their active participation for the conservation and development of forests on a sustainable basis".[13] Through co-management agreements, local forest protection committees received the formal authority to control forest resource uses. In the best cases, the agreements have managed to define a fair share of the rights and responsibilities of local user groups and the forest department, and have led to impressive forest regeneration.[14] In other cases, complex controversies related to equity and real versus token participation in forest management decisions have arisen leading to the failure of several local attempts.[15] In 2002, nearly 64,000 Forest Protection Committees were registered in 27 Indian states.[16] Similarly in Nepal, over 3,400 forest user groups have been formed that currently manage 2000 community forests. These legally registered groups work with government forestry staff to develop a five year operational plan. Upon approval of the plan, conditional management rights are handed over to the user groups. The operational plan spells out the rights and obligations of the parties involved in the forest management agreement.[17]

...through co-management agreements, local forest protection committees receive the formal authority to control forest resources uses....

Provisions for claiming land and resource rights in Canada

Under the Federal Government Policy of Canada, a comprehensive claim process enables the negotiation and recognition of indigenous rights and interests in areas where earlier treaties did not involve the surrendering of aboriginal titles. Comprehensive claims processes involve negotiations over indigenous peoples' claims to land and resource management, determination of development strategies and indigenous self-government. Claimant groups can secure title to lands covered by the settlement, wildlife harvesting rights, participation in land, water, wildlife and environmental management in the settlement area, financial compensations, revenue-sharing rights, access to measures to stimulate economic development, and a role in the management of heritage resources (Box 10.7). Agreements are protected under the Canadian Constitution and cannot be amended without the concurrence of the claimant group.[18] The comprehensive claims have evolved over time. In 1984, they mostly dealt with rights to harvest wildlife, harvesting methods, native employment in the parks, business considerations and the like.[19] More recently, the boards established under land claim settlements have gained more encompassing and authoritative roles.[20]

...legal agreements at the national level offer enabling frameworks for the co-management of natural resources.

13 Palit, 1995.
14 Poffenberger, 1994.
15 Sarin, 2003.
16 RUPFOR. 2002; see also http://envfor.delhi.nic.in/divisions/forprt/jfm/html/eval.htm
17 McDermott, 1996.
18 Siddons, 1993.
19 Kovacs, 1984.
20 Morrison, 1997. The first modern comprehensive claims treaty in Canada was the James Bay and Northern Quebec Agreement of 1975. It set the precedent for co-management provisions in the subsequent agreements in British Columbia, Yukon, the North West Territories and others. See also Richardson, Craig and Boer, 1994a; Richardson, Craig and Boer, 1994b.

Box 10.7 **The Inuvialuit Agreements in the North West Territories of Canada**
(adapted from Government of Canada, 1993)

The Western Arctic Claim Settlement gives the Inuvialuit priority in the harvest of marine mammals in the settlement region, including first access to all harvestable resources. This means that the Inuvialuit have the right to harvest a subsistence quota of marine mammals, to be set jointly by them and the government. The Inuvialuit also have a preferential right to harvest fish for subsistence within the settlement region; this includes trade, barter and sale to other Inuvialuit. Subject only to restrictions imposed by quotas each year, Inuvialuit are issued non-transferable commercial licenses to harvest a total weight of fish equal to the largest annual commercial harvest of that species taken by Inuvialuit from those waters over the preceding three years. Access to commercial harvests above that level is granted on the same basis to Inuvialuit as to other applicants.

In the Yukon Final Agreement, signed in 1993, self-government arrangements and special management areas have been negotiated and included in the comprehensive claims settlement for that area. Each of the four First Nations can exercise law-making powers over land-management, hunting, fishing, trapping and fishing, and business regulation. A new national park, a special management area and a national wildlife area have also been created. The Vuntut National Park is encompassed within the special management area, much of which will be owned by the Vuntut Gwitchin people, who also retain harvesting rights. Renewable Resource Councils are established with First Nation representation, and representation is granted on a range of other land and resource management bodies.[21] The National Wildlife Area is a jointly managed waterfowl habitat.

Fisheries management in Vietnam

In Vietnam, the Government has developed a Master Plan for Fisheries (1997-2010). This plan is particularly relevant to the development of coastal and marine protected areas as it emphasises user rights over resources, addresses policy for marine capture fisheries, and promotes the need to adopt and implement more effective conservation measures. The plan emphasises accelerating the process of establishing a rational system for the exploitation and use of the country's natural marine resources and habitats, including the introduction of management systems and structures aimed at supporting resource and habitat protection while recognising the need for an equitable allocation of resource use rights and obligations of the people and coastal communities. Within this policy framework, both fishery co-management and marine protected areas find their complementary places.[22]

Fisheries legislation for co-management in the Eastern Caribbean

In the 1980s, all countries that are members of the Organisation of Eastern Caribbean States participated in a review of their fisheries legislation that resulted in the inclusion of a provision for the establishment of Local Fisheries Management Areas. It is this provision that was followed in Saint Lucia to establish the Soufriere Marine Management Area (see Box 3.9 in Chapter 3) and thus provided the institutional basis for its co-management regime. In the absence of this provision, the Soufriere Marine Management Area may not have been able to realise the positive results that it has obtained over the past few years.

Policies for multi-stakeholder boards for protected areas in the Philippines

In the Philippines, new policies and legal instruments provide for local representation on multi-stakeholder protected area management boards. These boards comprise representatives of national and local governmental agencies,

[21] Such as the Yukon Water Board, Development Assessment Board, Surface Rights Board, and the Territorial Fish and Wildlife Management Board.

[22] Vo, 2001.

non-governmental organisations, indigenous peoples and other local cultural communities. They have primary responsibility for protected area management and they call for the participation of community and other civil society actors. With increased capacity-building for community and indigenous people's representatives, some of these boards have become models of participation in protected area management.[23] When combined with the respect of the principle of Prior Informed Consent these policy shifts potentially allow local communities to actively shape protected area policies.[24]

Enabling legislation for local fisheries management in Turkey

The small-scale fishery in Alanya, on the Mediterranean coast of Turkey, is located on the edge of a deep basin, and the inshore zone for setting nets is very limited. The fishers have organised among themselves a system of rotating fishing areas so that each fisher receives equitable access to the more productive fishing spots. There are some 40 named fishing spots in Alanya's trammel net fishery, which takes place between September and May. The overall system of access rights and rules for taking turns is quite complicated but, starting in the 1980s, it has reduced conflict among fishers. Fishery management in Turkey is centralised. There are no local government jurisdictions or local village jurisdictions over fishing, as for example one finds in Japanese coastal fisheries. This created a dilemma for the fishers in Alanya: how to provide legitimacy for the system they designed? They decided to draw legitimacy by using the Aquatic Resources Act as enabling legislation. The Act states that local co-operatives have jurisdiction over "local arrangements". Thus the rules were drawn up under the letterhead of the local fisheries co-operative, endorsed by the fishers at the coffee house where they were formulated, and copies were deposited with the local mayor and police.[25]

Forest policy for co-management in Nepal

As Nepal emerged from a feudal regime during the early 1950s, the incipient state established a basic forest policy. Initially, this policy distinguished three categories of forests, including "community forests" meant to satisfy community needs. Their management and protection was entrusted to village *Panchayats*. This policy remained on paper and was not truly implemented until the late 1970s. During these two decades, Nepal's forest policy followed the Western model, by which forest ownership was vested in the state and management authority placed in the hands of the Forest Department. The forests were nationalised in 1957, actually not— as many have erroneously remarked— to take them away from the communities, but rather to break the feudal tenure arrangements by which three quarters of the forests and agricultural lands in the country were held by a single family. After nationalisation, the Forest Department was responsible for performing all policing and licensing functions, a nearly impossible task in light of its limited staff capacity. The Forest Act of 1961 provided the first legislation that contemplated transferring government forest lands to village *Panchayats* for community use. Unfortunately, these legal provisions were never implemented, and the issue was not addressed until 15 years later. Meanwhile, the Forest Preservation Act of 1967 strengthened the role of the Forest Department as policy and law-enforcement agency. A Forestry Plan was established in 1976, including provisions for creating *Panchayat* Forests to benefit local communities. Finally, in 1978, specific rules

[23] Worah, 2002.

[24] See, however, Ferrari and De Vera, 2003. See also Box 10.16.

[25] Berkes, 1992.

and regulations governing the transfer of limited areas of state forests to the *Panchayats* were enacted. Formal recognition had thus been given to the rights of villagers to manage their own forest resources with provisions for technical assistance by the Forest Department, as necessary. In 1990, the Government of Nepal stressed its engagement about community forestry by inscribing it as a key component in its major master plan for the forestry sector. This included provisions for:

- handing over of all the accessible hill forests to the communities to the extent that they are able and willing to manage them;
- entrusting the users with the task of protecting and managing the forests, with the users receiving all of the income;
- re-training the entire staff of the Ministry of Forests and Soil Conservation to enable them to perform their new role as advisers and extension workers.

...through co-management agreements, local forest protection committees receive the formal authority to control forest resources uses...

Investigations in forest management have shown conclusively that a great many village communities have been managing their forest resources effectively, creating institutional arrangements to ensure the basic protection of hill forests and the enforcement of access and use rights. Many of these local management systems evolved over the past 35 years, and proved more effective than management by the Forest Department, which had been plagued by constant budget and staff cuts.[26]

Despite the diversity of situations, one broad general lesson emerges from working with natural resource policies throughout the world. While it is essential to establish an appropriate policy and legislative framework at the national level, the purpose of such frameworks is to provide an adequate policy environment, not to impose specific and rigid systems and models of co-management on the ground. Appropriate legislation allows a measure of flexibility in its interpretation and some site-level decision-making to fit at best the specificities of different contexts. It is therefore important to remain aware of the distinction between the CM provisions that more appropriately belong to national law and those that more appropriately belong to specific management agreements, as proposed in Box 10.8.

[26] Gilmour and Fisher, 1991; Kothari *et al.,* 1997.

Box 10.8 **Provisions made in national legislation and specific co-management agreements**

Provisions normally made in national legislation	Provisions normally contained in specific co-management agreements
• Authority and process in favour of local stakeholders to govern the negotiation and allocation of rights and responsibilities • Mechanism for participatory monitoring, evaluation, reporting, arbitration and dispute resolution • Guaranteeing the respect of the rights of "rightholders", most especially indigenous peoples (including mobile indigenous peoples), tribal and local communities • Delegation of authority to local rights— and stake-holders for enforcement • Delegation of authority to local rightholders for revenue generation • General conditions for termination of contractual agreements	• Purpose and scope of the agreement • Specific allocation of rights, responsibilities and resources among co-management partners • Duration of the agreement • Termination and amendment procedures • Transparency and accountability • Specific benefits • Specific conditions for termination of contractual agreements

Decentralisation, delegation and devolution policies

The principle of "subsidiarity" calls for a government to decentralise, delegate or devolve authority and responsibilities to the lowest possible level with capacity to take responsibility for the relevant tasks.

Co-management is almost synonymous with local governance, because it requires local power and capacity to exist and succeed, but also because it is, by its very nature, an instrument of local empowerment. The institutional landscape of local governance is complex and varies greatly from country to country. In most respects, local governance is much more than local government; it encompasses a wide range of organisations and institutions, both formal and informal, all of whom have a role to play in the allocation and use of rights and responsibilities at the local level. Local partners in co-management processes and agreements can be of various types, and policies are required to facilitate their participation in management.

An important innovation for the sustainable management of natural resources is a component of broader policy principles that goes under the name of "subsidiarity". Basically, this calls for a government to decentralise, delegate or devolve authority and responsibilities in several branches of social life to the lowest possible level with capacity to take responsibility for the relevant tasks (see Boxes 10.9 and 10.10). The subsidiarity principle has been re-affirmed by several national and international documents and agreements (see also Chapter 4).[27] Devolving rights and responsibilities in natural resource management, enhancing local autonomy in defining landscapes and seascapes, managing natural resources and planning and implementing development and conservation initiatives are powerful means to awaken the capacities of civil society (see Checklist 10.1 and Box 10.11).

[27] See for example the basic principles of the ecosystem approach adopted by the Convention on Biological Diversity (CBD): www.biodiv.org, and reported in Box 10.22.

Box 10.9 **More perspectives on decentralisation and devolution**

As already mentioned in Box 4.1, the words "decentralisation"and "devolution"are sometimes used inter-changeably. Yet, they connote very different processes.

The term *decentralisation* is used to refer to the physical dispersal of operations to the local level, but also to describe the delegation of a greater degree of decision making authority to lower levels of government administration. Decentralisation thus refers to the distribution of functions and powers from a central authority to regional or local authorities, but the latter are essentially part of the same structure as the central authority. A federal structure with strong provincial control, for instance, is more decentralised than one that is solely controlled by the central government.

Devolution is more radical, involving the transfer of authority and control from one agency to a completely different one, usually more "local" and of a different origin. Effective devolution is as yet rare in the world, for the simple reason that those in power do not want to give it up, or do not believe that local institutions can perform! Even governments willing to devolve the rights to manage and use local resources, tend to retain conflict management functions, budgetary controls, and other functions that keep the local institutions effectively under their control.[28]

Checklist 10.1 **Devolving to whom? What kind of organisations can manage common property resources?**
(adapted from Shackleton *et al.,* 2002)

A recent compilation and analysis of case studies of natural resource governance examined experiences in three Asian and eight southern African countries and from those derived the following typology of organisations found to exercise local authority over common property resources:

- ***District organisations.*** These included local government organisations such as Rural District Councils in Zimbabwe and *Panchayats* in India, and multi-stakeholder district structures aligned to line departments such as Wildlife Management Authorities in Zambia and forest farms in China.
- ***Village committees.*** These are typically initiated and encouraged by government agencies, *e.g.* the Village Natural Resource Management Committees in Malawi and Forest Protection Committees in India.
- ***Corporate, legal organisations.*** These are composed of all rightholders and/ or residents, as Trusts (Botswana), Conservancies (Namibia), Communal Property Associations, Villages and Range Management Associations.
- ***Households and individuals.*** In these cases, households and individuals are found to exercise varying degrees of authority over species selection, wildlife harvesting practices, sale and consumption, and the distribution of benefits.
- ***Indigenous and traditional rule-making institutions.*** These are largely self-initiated organisations that operate outside the state hierarchy, and include traditional leaders, resident associations and shareholding schemes. Examples include the Councils of Elders in the Solomon Islands or the traditional *adat* village governance institutions in Sumatra that have re-emerged after the New Order period. Throughout the world, such traditional organisations still play important roles in natural resource management and represent local voices to external agencies.[29]

While the specific policies and arrangements for local governance vary greatly between countries and regions depending on social and political history and conditions, many co-management bodies include representatives of local government

[28] Parodi, 1971; Burns *et al.*, 1994.
[29] Esman and Uphoff, 1984.

structures (see some examples in Box 10.11). Local administrators and government agencies are important actors in co-management for a number of reasons, including the following:

- local administrators should be elected bodies and thus provide a measure of local representation;
- local government agencies are expected, at least in theory, to provide a measure of public accountability;
- local government agencies are also expected to advance "fair rules" in institutional arrangements.

Yet, we should refrain from assuming that local administrators and agencies always and effectively represent the interests and concerns of their local constituencies. On the contrary! In situations where the electoral process has been recently introduced, is poorly understood, unfairly practiced and/ or limited to making a choice among candidates who have little to do with the local environment, the experience is not flattering for local governments as natural resource managers. Customary NRM bodies or even local civil society organisations would have much better chances to succeed. As a matter of fact, it is good to promote the involvement of *both* local governmental agencies and traditional authorities in co-management bodies, to introduce a good measure of transparency and to promote local communication and mutual learning.

Box 10.10 **Examples of government decentralisation policies**

With the overthrow of long-time dictator Moussa Traore in Mali, a new constitution was framed, providing for the empowerment of local communities. A process of widespread consultation with various sectors of the population resulted in the demand to grant land tenure and resource management rights to local communities. In 1992, these demands were included in a rural development policy, and in 1993, a law on decentralisation was passed, granting to the local *Communes* sizeable independent administrative powers, including the right to manage the resources in their territories. The state retained overall tutelage, i.e. the right to intervene to enforce the law and public interest. Benjaminsen[30] refers to this setup, in which governments delegate considerable responsibility and powers to manage local resources, while providing the policies, laws, and technical support, as "the core of co-management". Yet, some have been doubtful about the real reasons behind this policy and its sustainability, as it was at least partly a result of the urging of the World Bank and International Monetary Fund, whose structural adjustment model requires loosening of governmental controls.

In India, two constitutional amendments of far-reaching consequence have been adopted in 1992, one granting village bodies (*Panchayats*) several powers, and the other doing the same for municipal bodies. A follow-up law in 1996 has extended considerable autonomy to tribal areas, though not the self-rule that some of the tribal movements have been asking for. Later, however, state governments provided their own interpretations, usually highly watered down, to these changed constitutional provisions. When it comes to actual implementation, a considerable control seems to remain with centralised bureaucracies and politicians, unless grassroots movements force actual devolution.

In Uganda, the deposing of Dictator Idi Amin in 1979 marked the beginnings of a hesitant move towards democracy. But it was not until the National Resistance Movement (NRM) took over in 1986 that extensive decentralisation of political functioning started. Through constitutional changes and new legislation (such as the Local Councils Statute, the Local Governments Act, and a new Constitution in 1995), greater power to decide about natural resources has been granted to parishes and other local-level bodies.

[30] Benjaminsen, 1995.

Policies that support the organisation of civil society

Partnerships with civil society necessarily demand that civil society be organised, which requires some form of legal or policy basis for:

- the constitution, registration and operation of groups and organisations;
- the ability of these organisations to generate, manage and invest funds;
- the possibility to vest authority for the management of publicly-owned assets, including natural resources, to these organisations;
- the involvement of these organisations in specific management activities and programmes, including planning, monitoring and research, information management, enforcement and sustainable resource use;
- the provision of technical and capacity-building support by state agencies to these organisations;
- the facilitation of networking and communication among civil society organisations, as a mechanism for organisational strengthening, capacity-building and advocacy.

While local administrators and government agencies are important actors in co-management, one cannot automatically assume that they effectively represent the interests and concerns of their local constituencies.

Research carried out in nineteen countries by a global network of civil society organisations and research institutes has identified legal frameworks that have the potential of enabling and strengthening civil society.[31] While the legal frameworks are not sufficient by themselves, they can provide an enabling context. Such enabling legislation will often need to be combined, in mutually supporting ways, with reforms in economic and fiscal measures to regenerate local livelihood assets (natural, financial, physical, human and social) and create safe spaces to express interests and concerns and discuss options for action.[32]

Policies that strengthen cultural identity and customary governance systems

Cultural strength and integrity generate credible institutions, which perform their governance duties, including negotiating and enforcing resource use regulations, with confidence and public support. This is true for a wide range of contexts, but particularly so for indigenous peoples and many rural communities, for whom cultural identity, a living native language and collective practices help conserve a shared body of traditional ecological knowledge. Many co-management processes are thus smoothed and made more sustainable when all or some of the involved parties are bonded by a strong shared culture.

Policies and legislation in support of co-management of natural resources can take advantage of this, and build upon cultural identity and customary governance systems. This requires, most of all, a sizeable measure of flexibility, necessary to accommo-

[31] For more information see www.ids.ac.uk/logolink. The LogoLink web pages contain a number of resources on ways to help civil society to organise, including recent research on legal frameworks for citizen participation, participatory planning, and participation in local budgets and resource decisions.

[32] See Banuri and Najam, 2002. This is further discussed later in this Chapter and in Chapter 11.

date for the complexity of ethnic governance systems. Ethnic governance usually includes a body of norms (*e.g.*, customary law and practice), procedures (*e.g.*, decisional processes, conflict management and dispute settlement), specific knowledge, and individuals playing specific roles (often the traditional leaders). In ethnic governance, land and resource tenure are normally ascribed at the same time to several actors, which include households, extended families, villages, lineages, clans, etc. Overlapping claims are recognised on a same territory, defining different types of rights and specific rules (norms on circulation of people and access to resources, decisional councils, rituals, myths, etc.) that ensure livelihoods.[33] Conflicts are generally solved by local traditional authorities. When traditional authorities have lost the capacity to maintain the respect of rules (at times because they have been officially disempowered and "dismantled") conflicting claims on the same land and resources may generate open clashes among local communities and the state, private developers and migrants. Aware of this, some countries are reversing past policies and slowly recognising traditional institutions for natural resource management as potential powerful allies (see Box 10.11).

Box 10.11 **Back to the *marga*? Reversing destructive forestry policies in Sumatra (Indonesia)**
(adapted from Brechin *et al.*, 2003)

In the early 1980s the central government of Indonesia decided to outright replace the traditional local authorities (the clan-based *margas*) of Lahat district (Sumatra) with bureaucrats of the modern state. With decisions taken in "far away offices", they also greatly expanded the lot of protected areas in the region, transforming many local people into illegal residents "with a stroke of pen". It was right at that time that the price of coffee also rose significantly in world markets and more and more people, including many opportunistic migrants, started entering protected forests in order to grow coffee.

The original *marga* system was very effective in protecting timber and non-timber products from outside exploiters and in dealing intelligently with environmental resources (*e.g.*, farming was commonly banned within 100 metres from springs). Unfortunately, the system was first seriously weakened by the Dutch colonial powers that established a policy of "shooting on sight" for people who would disobey their formal, top-down prohibitions (*e.g.* would enter a protected forest). Later, after a brief period of resurgence at the time of independence, the system was formally dismantled by national law in 1979. Locally, this was perceived as an attempt by the Javanese elite in the government to gain overall control over the natural resources of the country. In practice, a weak, inexperienced, poorly funded and bureaucratic apparatus abysmally failed at controlling access to the natural resources and only succeeded in transforming the old communal forests into an open access regime. More and more people invaded the protected forests to take advantage of the lucrative coffee markets and deforestation rapidly ensued.

With the fall of the Suharto regime, in the late 1990s, Indonesia has adopted a new forestry management policy that sets in motion opportunities to devolve forest management responsibilities to the local level. Management responsibility can be taken up by local communities organised in either traditional forms (such as the *marga*) or modern cooperatives. The forestry authorities retain an important role as providers of technical advice. This new devolution policy is not likely to become a panacea, and especially so in a context of weakened civil society and shrewd local politicians that can quickly gather benefits for themselves. It is, however, a major innovation— an experiment that many should very closely watch.

The formal recognition of customary governance systems is more of a challenge in countries deriving their legal tradition from Roman law than in common-law

[33] See, for instance, Box 3.5 in Chapter 3, and Baird and Dearden, 2003.

countries. Where national legislation does not "formally recognise" and "allow" indigenous peoples and local communities to play their role in natural resource management, co-management advocates may wish to lobby for policy reform. Even where favourable legislation exists, however, its proper implementation may need to be specifically demanded and supported. Embracing cultural diversity in the co-management of natural resources often implies a radical transformation in the organisational culture of government departments and changes in professional beliefs, behaviours, attitudes and practice.[34] For instance, the tendency to impose "rational" organisational models on local communities[35] is often counterproductive, and even financial and technical "support" may leverage the worst rather than the best in them, spreading internal conflicts and corruption.[36] Most communities can best organise by choosing themselves the models that best suit their culture and needs. If those will change, they should do so from within and not because of external imposition. Examples of broad policy directions supporting cultural diversity for co-management include the promotion of culture-sensitive curricula in basic education and professional training,[37] appreciation and support provided to local languages and local cultural initiatives and, in general, the recognition of the cultural dimension of natural resource management (see Box 10.12).

The tendency to impose "rational" organisational models on local communities is often counterproductive, and even financial and technical "support" may leverage the worst rather than the best in them, spreading internal conflicts and corruption.

Box 10.12 **Discovering and recognising the cultural dimension of natural resource management**

Policies in support of the cultural dimension of conservation are based on generating and disseminating information on community values, knowledge, skills, resources and institutions and promoting awareness about the natural resource management capacities embedded into local cultures. For instance, in Morocco the place where botanists still find the few existing patches of "original vegetation" in the country are not the official protected areas but the "*marabous* cemeteries"— conserved in a nearly pristine state because of the traditional respect and care by the local communities. These local forms of conservation are only beginning to be recognised as part of the patrimony of the country. In India, traditional water harvesting systems that had been left to decay for a long time have been revitalised in recent decades with wonderful success.[38] In Peru, the maintenance of agro-biodiversity is closely related to the maintenance of customary patterns of resource use and exchanges, and some community-originated initiatives are attempting to get this recognised at the national level.[39]

Policies can encourage and support activities (*e.g.*, ceremonies, festivals, fairs) where the people celebrate their cultures, enjoy their artistic manifestations, and show their pride for their lands and the beauty and wealth of their environments. These activities not only have strong impact locally, but also contribute to positioning the local cultures as a vital part of a national heritage. A simple but powerful poli-

34 See Chapter 9.

35 This has origins in colonial impositions, as for the *Cabildo* of Ecuador and the *Capitania* of Bolivia.

36 Lack of sensitivity for the local context may bring agencies to "assign" positions of authority and financial advantages that amount to local revolutions. In Bénin, a conservation initiative assisting communities in the southern periphery of Parc W has provided jobs, social status and financial advantages to local poachers, in the hope that they abandon their practices and assist the governmental agencies instead. Such interventions are poorly sustainable (they are totally dependent on project resources), dubiously effective (the poachers now understand all the ways by which the agencies carry out their surveillance work) and capable of engendering profound social disruptions in the local communities (the poachers, who were among the least capable and respected members of local societies, are now incomparably wealthier than the rest and even considered as primary referents to the external project).

37 An example is a GEF initiative currently (2004) engaged to revise the entire training curriculum of protected areas personnel in Morocco, seeking a better and more sensitive understanding of the unique characteristics and capacities of communities for the conservation of biodiversity (M. Rashid, personal communication, 2004).

38 CSE, 1997.

39 This is true for the Potato Park, in the region of Cusco (Alejandro Argumedo, personal communication, 2003).

cy decision is to maintain, respect, and restore, as necessary, the local, ethnic names of species and places. Traditional knowledge, customary laws and institutions, biodiversity names and uses, and local languages and dialects are all interconnected. In this sense, a revival of indigenous and local languages helps to maintain alive a body of knowledge that is indiscernible from the language in which it is expressed and may be critical to landscape and natural resource management. In general, it has been a deplorable trend of protected area managers and agencies to change traditional names of places with other names that mean little or nothing to people of the region. For instance, in Ecuador, protected area managers changed the name romerillo that people use to give to their local forests, with Podocarpus, which is the Latin name for the same species. The Park thus became " Podocarpus National Park"— a name that means nothing to people. Fortunately, these practices are becoming less common, and local names and languages are increasing their national and international visibility. Examples of protected areas that conserve their traditional names in local languages exist for Australia, Colombia, Malaysia, South Africa, Mexico and several other countries.[40]

Policies that secure natural resources access and tenure rights

Throughout history, conquerors subjugated the conquered by confiscating their lands or otherwise limiting their access to property. Especially in agrarian societies, control of land, water and other natural resources by ruling elites has been the principal mechanism employed for consolidating the monopoly of political, economic and social power throughout society. Present-day rights that regulate access and tenure of resources among diverse social actors are extremely varied from country to country and within a country among different localities. Generally, the rules regulating the use of, and control over, land and other natural resources reflect the interests of dominant social actors at the time these rules were institutionalised by custom or law. These rules, however, are not static and immutable. They evolve in response to social change and it is not unthinkable that-as human rights hopeful-ly become better understood, recognised and protected-the ones hitherto excluded from the control of natural resources will better come to the fore. Indigenous peoples, landless workers, small producers, mobile communities as well as low-income consumers and all others who are dependent on natural resources but without property rights over them, may hopefully acquire some form of rights entitling them to an equitable participation in their management and benefits.

Effective collaborative management agreements are a step in this direction, in particular when they manage to provide clear and secure rules to regulate the access to and uses of natural resources. If diverse social groups do not have a sense of security of their individual and collective rights over natural resources, they cannot participate effectively in their management.[41] Novel legal arrangements can be explored and developed at the national level to provide that. For instance, some formal recognition of "primary" rights to land (property or permanent usufruct) could be provided to communities with a long-standing local history and practicing an ecologically sound model of sustainable resource use. This could help them re-affirm their rights *versus* newcomers and opportunistic users.[42] As mentioned in the preceding section, this also implies that national legislation and policies accommodate for a fair degree of local peculiarities and complexity. In particular, they should refrain from imposing organisational models to communities but seek to recognise what exists and is locally legitimate. The explicit formal

[40] Borrini-Feyerabend *et al.*, 2004 (in press).
[41] Barraclough and Pimbert, 2004 (in press).
[42] See Bassi, 2003. In all cases, institutionalising the rights of the hitherto excluded is a conflictive endeavour, depending on the purposeful organisation and mobilisation of those who stand to benefit (Barraclough and Pimbert, 2004, in press).

recognition of customary law, collective rights and customary regulations and bodies dealing with NRM conflicts are likely to be particularly important.

A number of resources not specifically related to land rights may have crucial relevance for communities within their wider productive and livelihoods systems, for example mobile resources (*e.g.*, water, wildlife and fisheries) or resources located in areas firmly owned or occupied by the state or other social actors. The identification of such resources requires the involvement of traditional knowledge holders, as most of them are used in a customary way and may not be known to everybody in the communities, and even less to government agencies and outsiders. Some of these resources may not be of critical importance for the physical survival of the people but vital in a cultural sense. Other resources may be essential only in times of drought or special scarcity, and thus critically important for the long-term survival of certain communities. Typically, this has been the case for water, pastures, game, fuel wood, building materials and other resources now included in official protected areas, which communities would still like to access in difficult circumstances.

Tenure and resource access security and rights in such special circumstances imply complicated legal challenges, especially when having to reconcile community, private and state interests, but are not out of the realm of creative institutions.[43] In fact, it may be useful that communities involved in mapping and inventory exercises identify the resources they traditionally use even *outside* the boundaries of their customary lands. In Mexico, the state of San Luis Potosi recognised use rights over a long pilgrimage route used by the Huichol indigenous people outside their traditional lands, facilitated agreements with owners and other users, and declared the area a Natural and Cultural Reserve, where traditional uses by the indigenous population are legally allowed.[44] In the North of Russia, the Kytalyk Reserve, established on the basis of an agreement with the Even people on their traditional lands, was extended over an area that the communities considered sacred far from their traditional grazing and hunting grounds.[45]

Related to the above, the Intellectual Property Rights (IPRs) of indigenous and local communities need to be clarified and protected. Countries members of the World Trade Organisation (WTO) are under strong pressure to adopt the US model of intellectual property rights. This model strongly favours the rights of global corporations to claim patents on medicinal plants, agricultural seeds, and other aspects of biodiversity, even in cases where the biological material has been under cultivation and development by indigenous people or farming communities for millennia. By eroding secular rights over biological resources, informal innovations and collective knowledge, the risk is that IPRs will shift the control over production, livelihoods and environment from local communities to the corporate sector through the following interrelated processes:

Some of these resources may not be of critical importance for the physical survival of the people but vital in a cultural sense... or essential in times of drought or special scarcity.

- ***Erosion of farmers' rights.*** Traditional livelihood and survival strategies of small farmers based on saving, exchanging, breeding or replanting seeds are under threat from globally uniform IPR rules adopted by governments.[46]
- ***Privatisation of traditional knowledge.*** IPRs privatise, commercialise, plunder and erode traditional knowledge without any rewards for custodians (women,

[43] National protected areas in the UK, France, Italy and Spain have such characteristics, and yet manage to develop viable management plans.
[44] Otegui, 2003.
[45] Oviedo, 2003.
[46] GRAIN, 1998.

healers, indigenous peoples…).[47]

- ***Research and innovation*** re-directed from the relevant needs of poor people to the demands of companies (focus on high-profit, high-yielding varieties and medicinal drugs).

The loss of control of information is a major concern for people whose political and spiritual power may derive from their traditional knowledge.

For many farmers and indigenous peoples, the enclosure of genetic resources and knowledge through IPR regimes also threatens the diversity of common property cultures by which the rights of local communities over natural resources and community knowledge are ensured. Most of these communities have traditionally viewed plants and seeds as part of the community commons, not subject to ownership and fee structures imposed by outside corporations. This is becoming more of an issue when the communities share their knowledge in the context of co-management processes and agreements. The loss of control of information is a major concern for people whose political and spiritual power may derive from their traditional knowledge.[48] "One size fits all" IPR law should be abandoned to permit reassertion of rules that respect and favour the needs of local and domestic communities as well as the protection of innovations and knowledge developed over time.[49] Even in the absence of specific national legislation that recognises and protects the knowledge and innovations of local communities and indigenous peoples, there are ways of safeguarding these through specific agreements and procedures,[50] which are of particular relevance and value in case of co-management arrangements.

Policies that recognise and respond to the rights of indigenous peoples

The right to self determination is important for indigenous peoples throughout the world. Starting during colonial domination and continuing with independent states, the overriding policy objective *vis-à-vis* indigenous peoples has been their integration into the national society while denying them their rights to use and regulate access to their resources, to exercise their customary laws and to control decision-making concerning their future. Many of their traditional lands have been taken over by the state and later exploited by extractive industries and for "development" projects, or set aside for protected areas. Those who resisted these trends were marginalised and castigated, and often treated as "anti-development" or subversive. Indigenous peoples have consistently argued that they are not against development *per se*, but cannot accept a kind of development that leads them towards social disintegration and ecological wastelands. They wish a different kind of development, related to their needs and aspirations. In this sense, their call for the "right to self-determination" can be interpreted as their wish to decide what type of development shall happen in their communities and to retain control over their lives, which is intimately related to their land and natural resources. For many indigenous peoples the right to self-determination thus appears a fundamental condition towards re-assuming responsibility for natural resource management. This would imply that national governments discontinue their integrationist poli-

[47] GRAIN, 2004
[48] Dermot Smyth, personal information, 2003.
[49] Crucible, 1994; GRAIN, 2003.
[50] Posey and Dutfield, 1996; Laird, 2002.

cies and related practices, first of all involuntary or induced resettlements,[51] and rather provide scope for people to make informed decisions about their future through a variety of participatory processes for assessing, planning and evaluating development and conservation initiatives. New enabling policies could stipulate and ensure just that.

…past right violations also need to be addressed, for instance via land restitution and other fair compensation processes.

Enabling policies, however, cannot limit themselves to looking towards the future. In many cases, they also need to ensure that *past* right violations are also addressed, for instance *via* land restitution and other fair compensation processes. There is overwhelming evidence of the negative impacts inflicted upon indigenous land and resources because of government-led or private operation. This has included community displacements for a variety of reasons, including the establishment of large dams, plantation forests, protected areas, intensive shrimp farming and rangeland development schemes. Mandatory provisions can be made in national law to redress such impacts and damages, providing fair compensation for the damages suffered and restitution for the territories expropriated.[52] As changes have often occurred since the time of expropriation, communities may need some form of specific support to re-establish their livelihoods even when lands are "restituted". In certain cases, a sense of community ownership can be rekindled through affirmative policies that make possible effective attribution and security of tenure, building upon traditional management practices and grassroots-based dialogue on desired futures.[53] Other compensation schemes, such as eco-tourism ventures, may be newer for local communities and require technical assistance to be established effectively. Importantly, a legal representative and/ or a legal team specialising in land rights should be on hand if not permanently representing the communities' case for reparation. Through clear policy commitments "to level the playing field", government agencies can play important roles to assure that indigenous and local communities are fully informed about their rights to land restitution and the equitable compensation of other suffered damages[54]… although this facilitation role may be better suited to NGOs.

Demarcation implies not only the physical identification and signalling of borders, but a complex process of recognition and mapping of a territory, often including a rapid biodiversity inventory as well.

Initiatives at various levels can help ensure the respect of rights over traditional and common lands and the redressing of past injustices. At the national level, enabling policies can support communities to demarcate and protect their territorial or marine boundaries against external threats and political impositions. Either as a precondition for legal recognition of ownership and access rights, or as a provisional alternative to it, area demarcation is a central requirement for tenure security of indigenous and local communities engaged in co-management (Box 10.13). In the last few years, especially in the Amazon region but also in other regions, there has been a strong engagement in demarcation of collective territories, in most cases carried out by indigenous organisations with the support of external organisations. In traditional land tenure, permanent physical boundaries are less important than resource boundaries, which are changing and adaptable. Under modern legal systems, however, the recognition of land rights requires the identification of permanent physical boundaries. In this sense, demarcation provides the basis for the legal recognition of natural resources and landscapes valued by local actors. Demarcation implies not only the physical identification and signalling of borders, but a complex process of recognition and mapping of a territory, often including a rapid biodiversity inventory as well. Once demarcation is done, steps need to be taken for its legal recognition. This

[51] Cernea and Schmidt-Soltau, 2003.
[52] See some examples in Table 4.3 and Boxes 4.3 and 7.11.
[53] A very interesting example is described in Wilshusen, 2003.
[54] See Box 9.1.

is particularly important in areas where there are conflicts over lands and resources, and where external forces could resort to violence, abuse and encroachment into community lands. National policies are crucial to allow and support such processes.

Box 10.13 **The demarcation and titling of indigenous land: a duty of the state?**
(adapted from ILRC and IHRLG, 2003)

On August 31, 2001, the Inter-American Court of Human Rights issued its ruling in the "Case of the Mayagna (Sumo) Awas Tingni Community *versus* Nicaragua" concluding that Nicaragua had violated the rights of the Mayagna community by granting a logging concession within its territory without the consent of the community and by ignoring the consistent complaints of the Awas Tingni for demarcation of its territory. According to an "evolutionary interpretation", the Court noted that Article 21 of the American Convention on Human Rights, which recognises the right to private property, also protects "the rights of members of the indigenous communities within the framework of communal property." Establishing an important precedent for the defence of indigenous rights within the international system, the Court affirmed that indigenous territorial rights arise from the communities "possession of the land" as rooted in their own "customary law, values, customs and mores." These rights are not dependent on the existence of a formal title granted by the state. The Court recognised the importance that indigenous peoples place on their relationship with the land, highlighting that "indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognised and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival."

The *Awas Tingni* decision declares the duty of states to demarcate and title indigenous communal land to make effective the rights recognised by the American Convention. The Court ruled that the lack of demarcation of indigenous territories prevents indigenous peoples from the free use and enjoyment of their lands and resources. As such, the lack of effective juridical mechanisms for demarcation constitutes a violation of the judicial protection and property rights of indigenous peoples as guaranteed by the Convention.

Policies that set the rules and conditions of participation and co-management

In order to provide effective direction for and support to co-management, natural resource policy and other supporting policy instruments often go beyond the mere expression of objectives and desired situations. For instance, they stipulate specific provisions to promote the development and functioning of successful co-management arrangements and agreements. This section presents the main areas where appropriate legislation can help to empower, stimulate and engage local stakeholders.

Requirements for access to information, transparency and accountability
Effective "participation" requires the provision of adequate information to stakeholders in advance of consulting with them. In doing so, planners need to remember that different stakeholders will have different levels of technical expertise and local knowledge. Biologists, for example, may know very little about the socio-economic situation in an area, while local and indigenous communities are likely to have little background in conservation-related sciences. Efforts in effective social communication would provide many occasions for people not only to receive information but to share it, discuss it and make sense of it in a collective

context. In many cases, language may be a barrier, and materials will need to be presented in appropriate local languages. Many of these requirements can and should be guided by policy statements. Whenever possible, they should also be guaranteed by legislation. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, usually referred to as Aarhus Convention, is particularly noteworthy in this regard (Box 10.14).

Box 10.14 **The Aarhus Convention— promoting access to information, public participation and environmental justice**

(adapted from www.unece.org/env/pp; WRI, 2003)

The Aarhus Convention was negotiated in 1998 at the Fourth Ministerial Conference on the "Environment for Europe" in Aarhus (Denmark) and sponsored by the United Nations Economic Commission for Europe. Since then, 24 nations in Europe and Central Asia have become parties to the treaty, and 40 have signed it. The treaty entered into force in October 2001, and is now open to signature by all nations of the world.

The Aarhus Convention links environment and human rights. It acknowledges that this generation has an obligation to future generations and establishes that sustainable development can only be achieved through the involvement of all actors. Thus, it focuses on enhancing interactions between civil society and public authorities in a democratic context and on forging a new process for public participation in the negotiation and implementation of international agreements. At heart, the Convention is about government accountability, transparency and responsiveness. It grants rights to civil society actors and imposes on parties and public authorities obligations regarding access to information, fair and transparent decision-making processes, and access to redress.[55] For example, the convention requires broad access to information about the state of air and atmosphere, water, land, and biological diversity; information about influences on the environment such as energy, noise, development plans, and policies; and information about how these influences affect human health and safety.

There is growing interest in endorsing the Aarhus principles in Latin America, southern Africa, and the Asia-Pacific region, but many other countries perceive the Convention's concepts of democratic decision-making about the environment as too liberal or threatening to commercial confidentiality.

Besides access to information, and as rightly linked in the Aarhus Convention, effective participation in co-management also requires transparency and accountability and a fair recourse to justice available to all. This can be achieved through:

- public reporting requirements stipulated within the provisions of co-management agreements;
- third-party monitoring of the implementation of co-management agreements, by non-governmental organisations, governmental agencies, media houses or independent bodies;
- mechanisms for sanctions when there is a lack of compliance with the provisions of co-management agreements (one key challenge in this regard is to ensure that the mechanisms for sanction apply to all parties in co-management agreements, and not only to civil society and community partners);
- the involvement, whenever required, of active political bodies and civil society pressure groups;
- a reliable and fair judicial system that includes provisions for legal recourse by

[55] See www.unece.org/env/pp

partners in co-management agreements; the system should provide for arbitration in cases of conflict, and guarantee the equality of advocacy in case of dispute.

Related to access to information and transparency is the legal recognition of the right to information and Prior Informed Consent (PIC) of local communities and indigenous peoples. The countries that ratified the ILO Convention 169 and undertook to implement the Convention on Biological Diversity are increasingly considering incorporation of the right to prior and informed consent (PIC) on matters beyond traditional knowledge. This trend is to be supported and encouraged, as it has evident benefits for the lands and resources of indigenous peoples and local communities. PIC should be a central tenet of policies and practices for the co-management of natural resources. In the Philippines, for example, local communities on Coron Island have used the principle of PIC effectively to assert their rights and their own vision of the future (Box 10.15).

Box 10.15 **The Tagbanwa strive for the recognition and maintenance of a Community Conserved Area in Coron Island (The Philippines)**
(adapted from Ferrari and De Vera, 2003)

The Tagbanwa people of the Philippines inhabit a stunningly beautiful limestone island for which they have established stringent use regulations. The forest resources are to be used for domestic purposes only. All the freshwater lakes but one are sacred. Entry to those lakes is strictly forbidden for all except religious and cultural purposes. The only lake accessible for tourism is Lake Kayangan, which has regulations concerning number of people allowed in, garbage disposal, resource use, etc. Until recently, the Tagbanwas' territorial rights were not legally recognised, leading to encroachment by migrant fishers, tourism operators, politicians seeking land deals and government agencies. This caused several problems, chief among whom was the impoverishment of the marine resources, essential for the local livelihood. In the mid-1980s, however, the islanders organised themselves into the Tagbanwas Foundation of Coron Island and started lobbying to regain management control over their natural resources.

They first applied for a Community Forest Stewardship Agreement, which was granted in 1990 over the 7748 hectares of Coron Island and a neighbouring island, Delian, but not over the marine areas. In 1998, they managed to get a Certificate of Ancestral Domain Claim for 22,284 hectares of land and marine waters and finally, in 2001, after having produced a high quality map and an Ancestral Land Management Plan, they managed to obtain a Certificate of Ancestral Domain Title (CADT), which grants them collective right to their land.

Despite their successful management achievements, the Tagnabwa CADT was later reviewed, as the national policies and systems were being restructured. A governmental proposal was then advanced to add Coron Island to the National Integrated Protected Area System. Despite the fact that the government proposed to set in place a co-management system for the island, the Tagbanwas opposed the move, as they feared that they would lose control of their natural resources, and those would be less and not better protected. Very importantly for them, they wish to remain "rightholders"— the owners and protectors of their territories— and refuse to be classified as one "stakeholder" among others. Another reason mentioned by the Tagbanwa for their refusal to accept the government proposal is the fact that Coron Island was selected as one of the 8 sites to be part of the programme without any consultation with them and thus without their prior informed consent. The refusal to comply with the co-management programme, however, does not mean that Coron Island is less well managed than other environments protected by the state. Possibly even the contrary, as the indigenous right holders have set in place restrictive measures for resource access and use, including a strong curbing of tourism.

Requirements for participatory planning and capacity building support

Co-management is not about *any* partnership or identifying the minimum common denominator of the wishes of everyone. It is about partnerships that give power, rights and responsibilities to those who have a primary stake in the use and management of natural resources, and who are in the position to contribute to and guarantee their sustainable and equitable use. Legal instruments should not tightly specify who the partners should be, but lay out the procedure that should be followed to identify such partners and to allocate rights and responsibilities within specific management instruments and agreements. In particular, natural resource policy and legal instruments can and should provide safeguards against the marginalisation and exclusion of some of the potential partners. For example, national parks legislation can stipulate that municipalities adjacent to protected areas should automatically be represented on that protected area's management body. Similarly, forestry legislation can stipulate the roles that user groups play in co-management institutions.

Legal instruments should not tightly specify who the partners must be, but lay out the procedure that should be followed to identify such partners and to allocate rights and responsibilities within specific management instruments and agreements.

"Affirmative" (proactive) national policies are often needed to promote equity in capacity building at the community level. Indigenous peoples and local communities, both rural and urban, comprise groups with different interests and agendas, including some with relatively more power and greater access to resources than others. Women or ethnic minorities may play a more marginal role and may be greatly interested in mechanisms to secure a more meaningful involvement in co-management decisions. One way governments can address this concern is to ensure that relevant information reaches everyone and that all community members can openly participate in discussions over co-management agreements. This may be more feasible in some cultural contexts than in others. In some villages, for instance, women may prefer influencing decisions within the household rather than speaking in public. In general, greater equity in capacity building initiatives may help marginalised or weaker actors such as women, ethnic minorities and poorer social groups to regain some power and standing within their communities and co-management bodies.

It is not always the case that a particular stakeholder group is clear about its own interests and concerns regarding a particular situation or environmental option, including the establishment of a protected area or its relation to it. It is also not often the case that such stakeholders have figured out how to get themselves "represented" in discussions with others. At times NGOs claim to speak for local communities, indigenous leaders claim to speak for their peoples, or private sector industry association representatives claim to speak on behalf of their membership but these forms of "internal organisation" are more top down than genuine. This can cause problems, when, for example, protected areas authorities claim to have "consulted" with indigenous peoples or a local community, but the community does not in fact feel that it was fairly represented in the planning process. As a matter of fact, most if not all co-management arrangements involve some form of representation in governing bodies and management organisations. Legal instruments for natural resource management must therefore specify the mechanisms by which the representatives of people and civil society organisations are selected. These mechanisms should be as much in line with participatory democracy as possible, for instance by involving some form of open discussion of issues followed by an election and/ or a selection through customary community decisions as well as mechanisms for follow up and accountability. And yet, policy makers

should be careful to avoid imposing externally-conceived organising systems on local communities, and rather respect as much as possible their culture-embedded institutions.[56]

A more mundane but similarly important element of capacity building for all rightholders and stakeholders is the possibility to overcome time and travel constraints.[57] Participation is expensive, particularly for local communities and indigenous peoples. Taking time off work for meetings is not an option for many rural people, unless the process is designed with their particular needs in mind, such as avoiding harvest or fishing times, key religious or cultural events, and finding some means to meet the difficulty and expense of travelling, particularly in the remote rural areas where many protected areas are located. Local officials of poorly funded protected area agencies and local government units face similar problems. Policies in support of co-management need to make provisions to cover at least some of the costs of meetings.

Financial and economic policies

One of the fundamental assumptions of co-management is that community-based and collaborative approaches reduce management costs. In a typical co-management arrangement, several of the functions that would otherwise be performed by state agencies are delegated to local government agencies, civil society organisations, community groups and users of natural resources. This is bound to reduce the costs borne by the central management agency. But this does not mean that the costs have been eliminated. They may have been reduced, as it would indeed be more efficient for a local agency to carry out, for instance, a monitoring function, instead of having a team of technicians travelling from the national or provincial capital at regular intervals to collect samples or interview informants. Yet, most of the costs required for management would not be eliminated but simply transferred from the central to the local level.

This observation underscores the need for fair and complete assessments of the costs of management, and for clear rules that govern the allocation of responsibility in this regard. In instances where collaborative arrangements place responsibility for the management of resources in the hands of local communities or agencies, this should be accompanied by a transfer of financial resources through a direct budget allocation, a rental fee, or the transfer of authority to generate financial resources from management.[58]

56 See various considerations and examples in Chapter 5.
57 See Box 9.1 in Chapter 9.
58 An example is described in Box 9.2 in Chapter 9.

Very useful policies also establish the right and capacity of local co-management partners to generate revenue, and provide both autonomy and accountability in the use of that revenue. One of the specific instruments that can bring tangible benefits to local actors is the sharing of revenue from tourism and other commercial concessions, hunting and fishing licenses and permits, trade licenses, and sales of timber and non-timber forest products. In Botswana, for example, the Wildlife Conservation and National Parks Act provides communities with the opportunity to apply to the government for rights to manage the wildlife in their area, including the enforcement of regulated hunting.[59]

Indeed, co-management practices on the ground are supported and fostered by national policies that combat poverty and attempt to reduce social and economic inequality. At a general level, it is the broader national and international political and economic context that presents major opportunities or obstacles for co-management. For instance, neo-liberal policies such as trade liberalisation, privatisation and the predominance of competitive market forces in the regulation of access to resources impact negatively on co-management, as they favour the more powerful economic interests at the expense of poor people and communities.[60] An important economic phenomenon that impacts on the outcomes of co-management is the increased commoditisation of goods and services, accompanied by rapid changes in production, information and communication technology. This means that many resources critical to people are now easily governed by market rules and placed outside of the control of their primary users. Globally defined rules such as the WTO-TRIPs agreement (*e.g.* patents on seeds and medicinal plants) and privatisation (land, water, forests, public services) are undermining the control that local resource users have over their environments, knowledge and institutions.[61] Globalisation and the concentration of economic power in the hands of trans-national corporations and finance markets proceed with a simultaneous process of devolution and decentralisation. But the power to define the content and purpose of policies, institutions and systems is concentrated in the hands of ever fewer trans-national corporations (TNCs).[62] In this light, widening *economic* democracy and equity appear as a key overarching condition for the mainstreaming of co-management.

...co-management agreements backed by proper legislation could become instruments of protection of special local needs and interests.

For instance, co-management initiatives would be strengthened by policies that protect local interests, placing selected resources beyond the reach of competitive bidding processes, and protecting local markets whenever necessary.[63] In this manner, co-management agreements backed by proper legislation could become instruments of protection of special local needs and interests. National governments, acting alone or in groups, may also need to introduce specific policies to protect domestic markets for natural resources from cheap imports and the negative impacts of competition in international trade. Subsidised imports have often destroyed environments and sustainable livelihoods throughout the South, and many people now working for poverty wages in factories are refugees from local economies based on fishing, farming, pastoralism or forest-based livelihoods. For instance, India's domestic edible oil industry (*i.e.* oilseed crop producers, millers, processors and retailers) has been undermined as highly subsidised soya from the US and palm oil from Malaysia have flooded the market. Moreover, the dominant paradigm that exports from the South to the North are a major route for economic

...many people now working for poverty wages in factories are refugees from local economies based on fishing, farming, pastoralism or forest-based livelihoods.

[59] Winer 1996.
[60] UNRISD, 2002.
[61] George, 2001.
[62] Korten, 1995; Menahem, 2001.
[63] Passet, 2000.

development ignores the inevitability of adverse competition between poor exporting countries and its hijacking of national priorities to the provision of the cheapest exports. To reverse this trend, countries could develop international trade rules that allow them to introduce constraints on their exports and imports.[64]

...applying the principle of subsidiarity: whenever production can be achieved by local social actors, using local resources for local consumption, all rules and benefits should favour that option, thus shortening the distance between production and consumption.

Trade rules that favour export production and dumping of cheap imports can be replaced by rules that permit the use of trade tariffs and quotas to regulate imports of food, timber, fish, fibres and other natural products that can be produced locally. This means applying the principle of subsidiarity: whenever production can be achieved by local social actors, using local resources for local consumption, all rules and benefits should favour that option, thus shortening the distance between production and consumption. This is not to suggest that there should be no trade at all in food, fibre and other natural resource based products, but to recognise that trade should be confined to whatever commodities cannot be supplied at the local level, rather than trade being the primary driver of production and distribution.[65]

Governments also need to carefully assess the compatibility of newly evolving international environmental, labour and safety standards with national policies designed to support co-management. For example, in the name of food safety, many international rules, such as the WTO's Agreement on the Application of Sanitary and Phytosanitary Standards and the Codex Alimentarius, have enforced an approach to food processing that works directly against local and artisanal food producers, whilst favouring the global trans-national corporations. Among other things, they require irradiation of certain products, pasteurisation, and standardised shrink-wrapping of local cheese products. Such rules tremendously increase costs for small producers as these homogenised global standards primarily benefit TNCs that trade on global markets. Where co-management schemes seek to retain wealth closer to where it is generated, there is a strong case for food production standards (and other NR standards) to be localised, with every nation permitted to set its own high food safety and other standards related to natural resource management.

Similarly, national governments will increasingly need to work together to put limits on the concentration of economic power in supply chains that link natural resource based producers with consumers. Trans-national corporations involved in natural resource management include suppliers of commercial inputs and services to the farming, fisheries, timber, bio-prospecting, mining, tourism and protected areas sectors. They also include corporations that disproportionately benefit from the processing, distribution and retailing of natural resources (food, timber, minerals, medicinal drugs, genetic resources, new natural products such as oils and cosmetics) as well as TNCs offering services or partnerships for eco-tourism and protected area management.[66] A relatively small number of trans-national corporations are strategically placed along these supply chains, influencing both the nature of production, the terms of trade and who benefits from natural resource based goods and services on the global market.[67] The concentration of corporate power in the global food system is illustrative of these emerging trends (see Box 10.16).

64 Hines, 2003; Mazoyer and Roudart, 2003; Mazoyer, 2003.
65 International Forum on Globalisation, 2002; Hines, 2003.
66 Baumann *et al.*, 1996; Ghimire and Pimbert, 1997; Utting, 2002; Vorley, 2001; Vorley, 2004.
67 Garreau, 1977; Pimbert *et al.*, 2002; George, 1981.

Box 10.16 **Concentration in agri-food business sectors**
(adapted from Vorley, 2001)

1. ***In farm inputs.*** Concentration in the input sector proceeded at breakneck speed in the 1990s. Six companies now control 80 percent of *pesticide* sales, down from 12 in 1994.[68] In the period 1995-2000 the amalgamations in the US *seed* industry alone were worth USD15 thousand million. From a food systems perspective, input manufacturers, as suppliers to the least profitable sector of the agri-food system, namely farming, are in a strategically weak position. The level of concentration in the business is in part a desperate drive to maintain profitability against declining strategic value of chemicals, seeds and biotechnology. Value chain thinking rather than technical justification or innovation is the key to the sustainability of these industries. Survival will depend on strategic alliances with processors and retailers around food quality, safety and quality.
2. ***In processing.*** Partly out of necessity to exercise countervailing economic power to retailers, processing industries are also rapidly consolidating their economic and market power. The economic power of the top eight food multinationals has been compared to that of half of Africa. In 2000, USD 87 thousand million in food industry deals were announced, with Nestlé, Philip Morris and Unilever emerging as the Big Three of global food makers. The justification for such massive accumulation of market power is *"to have more clout in the consolidating retailing environment"*. We are likely to see a growth in networks and cross-ownership between food processing and the seed sector, in which the farmer is contractually sandwiched, just a step away from the farmer as renter rather than owner of contracted crops or livestock.
3. ***In retailing.*** In both the European Union (EU) and the United States of America (USA), it is *retailers* who determine what *food processors* want from *farmers*. Retailers are the point of contact between the majority of OECD (Organisation for Economic Cooperation and Development) citizens and the rural economy. The supermarket sector is most concentrated in the EU, but is also rapidly consolidating in the US. In the nine years since the Earth Summit, USA food retailing chains have concentrated dramatically, with the five leading chains moving from 19 percent control of grocery sales to at least 42 percent. Since 1992, global retail has consolidated enormously and three retailers— Carrefour, Ahold and Wal-Mart— have become truly global in their reach. In 2000, these three companies alone had sales (food and non-food) of USD300 thousand million and profits of USD8 thousand million, and employed 1.9 million people. It is predicted that there will be only 10 major global retailers by 2010.

The growing power of TNCs is a major challenge for governments committed to an enabling policy environment for co-management based on a fair sharing of costs and benefits. TNCs exert inordinate and unaccountable influence over public policies;[69] many corporations involved in the marketing of natural resources have annual revenues that dwarf the Gross National Products of many countries. Newly emerging initiatives, however, may help governments regulate corporate activities for the public good. For example, an increasing number of corporations are working towards a "corporate responsibility agenda" through such instruments as codes of conduct, certification, reporting, stakeholder dialogues and partnerships. This approach to promoting corporate social and environmental responsibility emphasises the role of "voluntary initiatives", in which TNCs themselves define the boundaries of the corporate responsibility agenda. In more recent attempts to move away from corporate self-regulation, trade unions, NGOs and multi-lateral organisations have become involved in standard setting, certification and independent monitoring of codes of conduct.

A "corporate responsibility agenda" can use instruments such as codes of conduct, certification, reporting, stakeholder dialogues and partnerships.

[68] Kuyek, 2000; see also http://www.pan-international.org/index.html
[69] ATTAC, 2001; Balanya *et al.*, 2000; Kneen, 2002.

These are promising developments, but evidence from a range of case studies suggests that there remains a considerable gap between the rhetoric and practice of corporate responsibility. Change has tended to be piecemeal and is fraught with contradictions.[70] Compelling evidence indicates that the regulation of business and TNCs cannot be left to companies and their shareholders, industry associations and service delivery NGOs. More often than not, lukewarm voluntary initiatives have edged out important mechanisms and institutional arrangements that are key to national sovereignty and policy coherence.[71] New policy initiatives and forms of international cooperation are therefore needed to regulate corporations within countries and globally. Several ideas and proposals involving the UN system have emerged that could serve to correct the imbalance of power between TNCs and governments (see Box 10.17). Institutional arrangements involving state and international regulation, watchdog activism, collective bargaining, and complaints procedures that allow different social actors to identify and deal with breaches of agreed standards are all part of the menu of political choices open to governments and civil society.[72] UN agencies such as the UN Conference on Trade and Development (UNCTAD), the UN Development Programme (UNDP), the UN Environment Programme (UNEP) and the World Health Organisation (WHO), as well as the International Labour Organisation (ILO), can also play a central role and should not shy away from critical research and policy analysis on TNCs and their social, environmental and developmental impacts, and on regulatory initiatives at both national and international levels. And yet, with few exceptions, the current vogue in most international agencies is to appease the TNCs with policies and programmes that integrate private sector interests. We are far from seeing the UN agencies play a critical supervisory role.

Box 10.17 **Regulating corporations involved in natural resource sectors: some initiatives**
(adapted from Utting and Abrahams, 2002)

- The Sub-Commission on the Promotion and Protection of Human Rights has set up a Working Group on TNCs, which is considering a code of conduct for TNCs and has drafted a set of Human Rights Principles and Responsibilities for TNCs and other Business Enterprises. The Working Group has also proposed the creation of entities to assist with the implementation of the principles and to monitor compliance.

70 Utting, 2002.
71 Utting, 2002.
72 Fitzgerald, 2001; Utting, 2002.

- There have been calls for a Special *Rapporteur* on TNCs to be established by the Human Rights Commission and for some existing Special *Rapporteurs* to deal with problems involving TNCs. The need to extend international legal obligations to TNCs in the field of human rights and to bring corporations under the jurisdiction of the International Criminal Court has also been suggested.
- Friends of the Earth International proposed that the World Summit on Sustainable Development consider a Corporate Accountability Convention that would establish and enforce minimum environmental and social standards, encourage effective reporting and provide incentives for TNCs taking steps to avoid negative impacts.
- The International Forum on Globalisation has advocated the creation of a United Nations Organisation for Corporate Accountability that would provide information on corporate practices as a basis for legal actions and consumer boycotts. Christian Aid has put forth the idea of a Global Regulation Authority that would establish norms for TNC conduct, monitor compliance and deal with breaches. Others have called for the reactivation of the defunct United Nations Centre on Trans-National Corporations, some of whose activities were transferred to UNCTAD a decade ago.

In practice, a levelling of the economic playing field for the co-management of natural resources calls for mutually reinforcing and radical structural reforms. Among these, the regeneration of more localised economies and culture— in short more effective local governance— merits closer attention. The idea here is to re-localise pluralistic economies that combine both subsistence and market oriented activities.[73] Several mutually reinforcing enabling policies have been identified to bring about such transformation for diversity and democracy (see Box 10.18).

Box 10.18 **Policy for local governance**
(adapted from Hines, 2000; ATTAC, 2000; Pimbert, 2001; IGH, 2002; Merlant *et al.*, 2003)

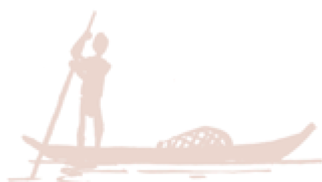
Economic reforms

- Re-orientate the end goals of trade rules and aid, so that they contribute to the building of local economies and local control, rather than international competitiveness;
- re-introduce protective safeguards for domestic economies, including safeguards against imports of food and other natural resource based goods and services that can be produced locally;
- promote a site-here-to-sell-here policy for manufacturing and services domestically and regionally;
- "localise money" so that most of it stays within communities and neighbourhoods and helps rebuild local economies, rather than being siphoned off to distant actors and financial markets;
- promote local competition policy to eliminate monopolies from the more protected economies and ensure high quality food production, and natural resource based goods and services;
- restrict the concentration and market power of the major food and other natural resource based corporations and retailers through new national competition laws and international treaties;
- provide mechanisms to ensure that the real costs of environmental damage, unsustainable production methods and long distance trade are included in the cost of food;
- fund the transition to more localised economies and environmental regeneration by introducing taxes on resources and on speculative international financial flows (USD 1,500 thousand million is traded every day on foreign exchange markets alone— most of which is purely speculative and has nothing to do with the real economy).

[73] Gorz, 1997; Passet, 2000; Pimbert, 2001; Merlant *et al.*, 2003.

Natural Resource Policies

- Redirect both hidden and direct agricultural and other natural resource subsidies towards supporting smaller scale producers to encourage the shift towards diverse, ecological, equitable and more localised food systems in pastoral, fishing, farming and forest-based communities as well as in urban and peri-urban contexts;
- ensure land reform and property rights to redistribute surplus land to tenants and sharecroppers and to secure rights of access and use of common property resources;
- protect the rights of peasants, farmers and pastoralists to save seed and improve crop varieties and livestock breeds, also through a ban on patents and IPR legislation on genetic resources important for food, health and agriculture;
- increase funding for and re-orientation of public sector research and development (R&D) for agriculture and natural resource management towards participatory approaches and democratic control over priority setting and technology validation;
- introduce a two-tier system of environment and health safety regulations: stricter controls on large-scale producers and marketers and simpler, more flexible, locally-determined regulations for small-scale localised enterprises generating wealth from natural resource transformation;
- enhance research and development and financial support for decentralised and sustainable energy production based on renewable energy.



10.2 Enabling policies at the international level

In a context of political, economic and cultural globalisation, and in light of the power and influence of supra-national institutions and processes, it is important to consider the role of international policy frameworks and instruments. Indeed, the past three decades since the 1972 Stockholm UN Conference on the Human Environment have seen the growing importance of global governance in several ways:

- trade liberalisation agreements have led to the emergence of powerful new institutions and corporations that are based on trans-national markets;
- regional political and economic groupings have been expanded and strengthened, including the European Union, the Free Trade Area of the Americas and the Asia Free Trade Association;
- global standards and commitments have been formulated and adopted, particularly through a number of international conventions and agreements; and
- institutional arrangements have been put in place for the management of the global commons, particularly through the United Nations Convention on the Law of the Sea and the Climate Change Convention.

International instruments and agreements impact directly on co-management at

the local level, particularly because:

- requirements for participation and co-management are stipulated in several of the conventions and other binding or non-binding instruments;
- several multilateral and bilateral donor agencies have introduced provisions, guidelines and conditionalities aimed at promoting co-management and other participatory approaches; and
- trade and other international policies impact on the conditions of and capacities for resource use and management at the local level.

In many respects, the most fundamental international instrument in support of co-management remains the Universal Declaration of Human Rights.

In many respects, the most fundamental international instrument in support of co-management remains the Universal Declaration of Human Rights. Adopted by the General Assembly of the United Nations on 10 December 1948, the Declaration is not legally binding but is considered as an international instrument of tremendous political and symbolic importance. After the adoption of this Declaration, the UN Commission on Human Rights began drafting legally binding documents. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted in 1966.

Articles 1.1 of both the ICESCR and ICCPR uphold the right of all peoples to self-determination:

"All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

Articles 1.2 of both covenants similarly support the right to development:

"All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence".

Other international conventions are of particular relevance to marginal social groups who live in areas rich in biological diversity, and who may engage in co-management processes. For example Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, commonly known as ILO 169, was adopted in June 1989 by the Conference of the International Labour Organisation. ILO 169 specifically stresses the need for the participation of indigenous peoples in the decision-making process regarding resources and lands on which they have claims of dependence. Article 2.1 affirms that:

"Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity".

According to ILO 169, the protection of indigenous rights is the responsibility of governments, but only with the cooperation and participation of the indigenous peoples themselves. Similarly, many of the principal rights described in the United Nations Draft Declaration on the Rights of Indigenous Peoples[74] can use-

[74] The Draft Declaration on the Rights for Indigenous Peoples was agreed upon by members of the United Nations Working Group on Indigenous Populations at its 11th session in Geneva, Switzerland, in 1993. The declaration is expected to be finalised in 2004 or 2005.

fully guide co-management processes and negotiated agreements over the use of natural resources (Box 10.19).

Box 10.19 **Key rights affirmed by the UN Draft Declaration on the Rights of Indigenous Peoples**

- Right to self determination, representation and full participation;
- right to collective, as well as individual human rights;
- recognition of existing treaty arrangements with indigenous peoples;
- right to determine own citizenry and citizen obligations;
- right to live in freedom, peace, and security without military intervention or involvement;
- right to religious freedom and protection of sacred sites and objects, including ecosystems, plants and animals;
- right to free and informed consent (prior informed consent);
- right to control access and exert ownership over plants, animals and minerals vital to their culture;
- right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used;
- right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of the fauna and flora, oral traditions, literatures, designs and visual and performing arts;
- right to restitution and redress for cultural, intellectual, religious or spiritual property that is taken or used without authorisation;
- right to just and fair compensation for any such activities that have adverse environmental, economic, social, cultural or spiritual impact.

Agenda 21, adopted at the 1992 UN Conference on Environment and Development, called for effective participation in all the elements of planning and development. In particular:

- Chapter 8 (Integrating environment and development in decision-making) states that "an adjustment or even a fundamental reshaping of decision-making, in the light of country specific conditions, may be necessary if environment and development is to be put at the centre of economic and political decision-making, in effect achieving full integration of these factors."
- Chapter 23 (Strengthening the role of the major groups) identifies, in the "specific context of environment and development, the need for new forms of participation" and notes "the need of individuals, groups and organisations to participate in decisions, particularly those that affect the communities in which they live and work."
- In Chapter 26 (Recognising and strengthening the role of indigenous people and their communities), active participation is called for to incorporate their "values, views and knowledge."

- Chapter 33 (Financial resources and mechanisms) stresses that "priorities should be established by means that incorporate public participation and community involvement providing equal opportunity for men and women. In this respect, consultative groups and round tables and other nationally-based mechanisms can play a facilitative role."
- Chapter 37 (National mechanisms and international cooperation for capacity-building) states that, "as an important aspect of overall planning, each country should seek internal consensus at all levels of society on policies and programmes needed for short and long-term capacity building to implement its Agenda 21 programme. This consensus should result from a participatory dialogue of relevant interest groups and lead to an identification of skill gaps, institutional capacities, technological and scientific requirements and resource needs to enhance environmental knowledge and administration to integrate environment and development".

The 2002 World Summit on Sustainable Development (WSSD) reaffirmed many of the commitments and principles adopted in Rio, and promoted the concept of *partnerships*. In the strict sense of the term, a partnership is no different from co-management, but the dominant discourses at the Johannesburg Summit applied the concept to all forms of collaboration, including those where industry remained the primary factor and actor. Nevertheless, the Summit's emphasis on partnerships only serves to underscore the value of collaboration and participation, and the need to bring all actors into the management process.

***The 2002 World Summit on Sustainable Development (WSSD) promoted the concept of* partnerships.**

One of the most significant developments that have taken place recently on the international scene in the field of natural resource governance is the adoption of the Convention on Biological Diversity (CBD). This significance lies in its focus on traditional knowledge and practices, in the fact that it is legally binding, and in an approach that goes beyond indigenous groups and includes all local communities. The Convention stresses the need to involve indigenous and other local communities in the conservation of biological diversity, and in the sharing of benefits derived from the use of these resources. Article 8(j) of the Convention commits parties to:

"subject to [their] national legislation, [to] respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices".

Similarly, Article 10(c) stipulates that each country should:

"protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements; support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and encourage cooperation between its governmental authorities and its private sectors in developing methods for sustainable use of biological resources."

More recently, the Conference of Parties (COP) of the Convention on Biological

Diversity has adopted the *ecosystem approach* as the primary framework for the implementation of the Convention. The COP has approved operational guidelines, and these are based on twelve broad principles. Particularly noteworthy among these are principles 1 and 2, which stress the need for societal choice and decentralisation of management to the lowest possible level (Box 10.20).

Box 10.20 **Ecosystem approach principles adopted as part of the Convention on Biological Diversity**

The following 12 principles are complementary and interlinked and they are at the basis of several decisions approved by the Conferences of the Parties to the Convention on Biological Diversity.[75]

Principle 1: ***The objectives of management of land, water and living resources are a matter of societal choices.***
Different sectors of society view ecosystems in terms of their own economic, cultural and society needs. Indigenous peoples and other local communities living on the land are important stakeholders and their rights and interests should be recognised. Both cultural and biological diversity are central components of the ecosystem approach, and management should take this into account. Societal choices should be expressed as clearly as possible. Ecosystems should be managed for their intrinsic values and for the tangible or intangible benefits for humans, in a fair and equitable way.

Principle 2: ***Management should be decentralised to the lowest appropriate level.***
Decentralised systems may lead to greater efficiency, effectiveness and equity. Management should involve all stakeholders and balance local interests with the wider public interest. The closer management is to the ecosystem, the greater the responsibility, ownership, accountability, participation, and use of local knowledge.

Principle 3: ***Ecosystem managers should consider the effects (actual or potential) of their activities on adjacent and other ecosystems.***
Management interventions in ecosystems often have unknown or unpredictable effects on other ecosystems; therefore, possible impacts need careful consideration and analysis. This may require new arrangements or ways of organisation for institutions involved in decision-making to make, if necessary, appropriate compromises.

Principle 4: ***Recognising potential gains from management, there is usually a need to understand and manage the ecosystem in an economic context.***
Any ecosystem-management programme should:
a) reduce those market distortions that adversely affect biological diversity;
b) align incentives to promote biodiversity conservation and sustainable use;
c) internalise costs and benefits in the given ecosystem to the extent feasible.
The greatest threat to biological diversity lies in its replacement by alternative systems of land use. This often arises through market distortions, which undervalue natural systems and populations and provide perverse incentives and subsidies to favour the conversion of land to less diverse systems. Often those who benefit from conservation do not pay the costs associated with conservation and, similarly, those who generate environmental costs (*e.g.* pollution) escape responsibility. Alignment of incentives allows those who control the resource to benefit and ensures that those who generate environmental costs will pay.

Principle 5: ***Conservation of ecosystem structure and functioning, in order to maintain ecosystem services, should be a priority target of the ecosystem approach.***
Ecosystem functioning and resilience depends on a dynamic relationship within species, among species

[75] http://www.biodiv.org/programmes/cross-cutting/ecosystem/decisions.asp

and between species and their a-biotic environment, as well as the physical and chemical interactions within the environment. The conservation and, where appropriate, restoration of these interactions and processes is of greater significance for the long-term maintained conditions and, accordingly, management should be appropriately cautious.

Principle 6: ***Ecosystems must be managed within the limits of their functioning.***
In considering the likelihood or ease of attaining the management objectives, attention should be given to the environmental conditions that limit natural productivity, ecosystem structure, functioning and diversity. The limits to ecosystem functioning may be affected to different degrees by temporary, unpredictable or artificially maintained conditions and, accordingly, management should be appropriately cautious.

Principle 7: ***The ecosystem approach should be undertaken at the appropriate spatial and temporal scales.***
The approach should be bounded by spatial and temporal scales that are appropriate to the objectives. Boundaries for management will be defined operationally by users, managers, scientists and indigenous and local peoples. Connectivity between areas should be promoted where necessary. The ecosystem approach is based upon the hierarchical nature of biological diversity characterised by the interaction and integration of genes, species and ecosystems.

Principle 8: ***Recognising the varying temporal scales and lag-effects that characterise ecosystem processes, objectives for ecosystem management should be set for the long term.***
Ecosystem processes are characterised by varying temporal scales and lag-effects. This inherently conflicts with the tendency of humans to favour short-term gains and immediate benefits over future ones.

Principle 9: ***Management must recognise that change is inevitable.***
Ecosystems change, including species composition and population abundance. Hence, management should adapt to the changes. Apart from their inherent dynamics of change, ecosystems are beset by a complex of uncertainties and potential "surprises" in the human, biological and environmental realms. Traditional disturbance regimes may be important for ecosystem structure and functioning, and may need to be maintained or restored. The ecosystem approach must utilise adaptive management in order to anticipate and cater for such changes and events and should be cautious in making any decision that may foreclose options, but, at the same time, consider mitigating actions to cope with long-term changes such as climate change.

Principle 10: ***The ecosystem approach should seek the appropriate balance between, and integration of, conservation and use of biological diversity.***
Biological diversity is critical both for its intrinsic value and because of the key role it plays in providing the ecosystem and other services upon which we all ultimately depend. There has been a tendency in the past to manage components of biological diversity either as protected or non-protected. There is a need for a shift to more flexible situations, where conservation and use are seen in context and the full range of measures is applied in a continuum from strictly protected to human-made ecosystems.

Principle 11: ***The ecosystem approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices.***
Information from all sources is critical to arriving at effective ecosystem management strategies. A much better knowledge of ecosystem functions and the impact of human use is desirable. All relevant information from any concerned area should be shared with all stakeholders and actors, taking into account, *inter alia*, any decision to be taken under Article 8(j) of the Convention on Biological Diversity. Assumptions behind proposed management decisions should be made explicit and checked against available knowledge and views of stakeholders.

Principle 12: ***The ecosystem approach should involve all relevant sectors of society and scientific disciplines.***
Most problems of biological-diversity management are complex, with many interactions, side-effects and implications, and therefore should involve the necessary expertise and stakeholders at the local, national, regional and international level, as appropriate.

Last but not least, the CBD Programme of Work on Protected Areas approved at the 7th Conference of the Parties to the Convention (February, 2004) includes an entire programme element on "Governance, participation, equity and benefit sharing".[76] The programme promotes equity and benefit-sharing and the full and effective participation of indigenous and local communities in the establishment and management of protected areas. It recommends the parties, *inter alia*, to:

2.2.1 *Establish policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities.*

2.2.2 *Implement specific plans and initiatives to effectively involve indigenous and local communities, with respect for their rights consistent with national legislation and applicable international obligations, and stakeholders at all levels of protected areas planning, establishment, governance and management, with particular emphasis on identifying and removing barriers preventing adequate participation.*

2.2.4 *Promote an enabling environment (legislation, policies, capacities, and resources) for the involvement of indigenous and local communities and relevant stakeholders[77] in decision making, and the development of their capacities and opportunities to establish and manage protected areas, including community-conserved and private protected areas.*

Another critical international instrument is the Convention to Combat Desertification, which provides for the formulation and adoption of national action programmes that specify the respective roles of government, local communities and land users, and the resources available and needed. The Parties to the Convention shall,[78] *inter alia*:

(e) promote policies and strengthen institutional frameworks that develop cooperation and coordination, in a spirit of partnership, among the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology;

(f) provide for effective participation at the local, national and regional levels of non-governmental organisations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organisations, in policy planning, decision-making, and implementation and review of national action programmes.

Like the emphasis on partnerships, a second important trend of the past few years has been the adoption, by most multi-lateral, bi-lateral, governmental and

[76] For more comprehensive analysis and guidance on the implications of the CBD Programme of Work regarding indigenous peoples and local communities, see Borrini-Feyerabend *et al.*, 2004 (in press).
[77] In this context nomadic communities and pastoralists are given special reference.
[78] See http://www.unccd.int/main.php

non-governmental agencies, of the discourse on communities and participation. Yet, beyond the apparent homogeneity of this discourse, there are differing ideologies and perspectives even within individual organisations[79] and, even more importantly, the practice does not always correspond to policy discourse and rhetoric.[80]

The Aarhus Convention poses a serious challenge to nominally democratic Western European governments, which have shown particular resistance to its ratification.

For example, non-governmental organisations from 26 countries have federated in the Pan-European Eco Forum to promote the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).[81] The Aarhus Convention has been ratified by 17 countries (only Denmark and Italy among western European countries) and came into force in October 2001. The convention concerns in particular issues related to the installation of industrial plants (for energy— including nuclear, mining, chemical and genetically modified organisms, or industrial meat production and waste management facilities that have environmental effects). The Aarhus Convention has been promoted mainly by non-governmental organisations in Eastern Europe but poses a serious challenge to nominally democratic Western European governments, which have shown particular resistance to its ratification.[82] It seems that, once again, civil society needs to organise and take action to secure and consolidate its rights.

As seen in this rapid survey of policies that can foster or impede co-management regimes, inclusive participation and citizen engagement are key to getting such policies right. This is miles away from the meek "consultation" and "dialogue" on terms largely decided by others often proposed by environment and development agencies, governments and corporations. To get to the heart of the matter, the very process of policy-making (who makes policy and how) needs to be understood and transformed. The themes "empowerment of peoples", "democratic participation", "citizen voice", "inclusion in policy making" and "information democracy" should be explored in great detail. As some would say, a non negotiable principle is that participation is a basic human right.

[79] Jeanrenaud 2002.
[80] Pimbert, 2004a; Pimbert, 2004b.
[81] See www.unece.org/env/pp and Box 10.14 earlier in this Chapter.
[82] Finger-Stitch and Finger, 2003.