

Protected Areas and Human Displacement: Improving the Interface between Policy and Practice

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Abstract

Despite a growing and increasingly sophisticated set of international policy guidance and norms governing issues of equity and the rights of indigenous and local people, conservationists continue to face moral and practical dilemmas in the application of these guidelines in the field, especially in cases where conservationists seek to restrict access to natural resources. One source of the dilemma is that successful implementation of international covenants may require a stronger enabling environment (in the form of fairness, legitimacy of political actors, transparency and accountability) than typically exists on the ground. Conservationists also need to be better informed about existing best practice on community participation. However, both policy and practice can be ultimately strengthened by an iterative process in which practitioners provide regular input to policy development in order to improve the normative basis for successful conservation.

Keywords: protected areas, displacement, indigenous rights, convention on biological diversity

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INTRODUCTION

A significant challenge to the establishment and, at times, the maintenance of nature reserves and protected areas is that the costs and benefits of such areas are typically not fairly distributed. To the extent that protected areas are created to conserve biodiversity and ecosystems—generally construed as a global or national public good—many benefits accrue to a broader community, while nearly all the costs are borne by individuals and groups who live in and around those parks and who may lose access to land, forest resources (e.g., bushmeat, timber, and nontimber forest products), and development opportunities. Even when physical translocation of people does not occur, restrictions on access to land may also constitute ‘displacement’ (Cernea 2005; World Bank 2004). In addition to these direct economic costs, local communities, especially indigenous communities, may suffer cultural losses if traditional natural resource use practices are restricted or denied. Conservationists sometimes face both moral and practical dilemmas in balancing competing claims between public goods and individual or community economic and cultural claims. Of course, those living around protected areas may also garner direct and indirect benefits, including, for example: access to wildlife that leaves the protected area

and becomes available to hunt in the buffer zone, watershed protection, local climate buffering, and employment in ecotourism—these are the elements conservationists prefer to emphasize. However, more often conservation requires local consensus building in situations where the costs and benefits of a particular action will not be distributed equally among stakeholders.

The past half-century has produced a growing and increasingly sophisticated set of international instruments and supporting guidelines governing issues of equity and the rights of local and indigenous people. Land rights have been central to this discussion. The issue of displacement of local people from existing or proposed protected areas, or for other purposes of environmental protection, shares many characteristics with displacement caused by development, urban renewal, or energy generation and even armed conflict. The development of international human rights law surrounding displacement (or forced evictions or involuntary resettlement) in a variety of contexts, and the adoption of corresponding policies and guidelines by a broad range of institutions that may directly or indirectly be responsible for such displacement, provides global conservation organizations with the framework for developing more robust internal policies and guidelines than presently exist for fair, transparent and positive interactions

with local and indigenous peoples who may live in or near sites where these organizations are active. This global policy context also provides a basis of internationally accepted (if not always implemented) norms through which to evaluate past conservation practice. Greater engagement of conservation practitioners in policy development can lead to more reality-based policies, and at the same time it improves their own knowledge of existing guidance and ability to apply it on the ground.

A BRIEF SURVEY OF EXISTING POLICY REGIMES FOR ADDRESSING DISPLACEMENT

International Human Rights Law

The principles of land rights for local and indigenous people are derived from broader concepts of universal human rights or those rights granted to the individual regardless of the legal jurisdiction in which he may find himself.

The rights identified in the UN Charter were further delineated in the nonbinding Universal Declaration on Human Rights (1948) which in turn served as the foundation to the International Covenant on Civil and Political Rights (1966a) and the International Covenant on Economic, Social and Cultural Rights (1966b), both negotiated in the same year. Together, these documents established the widely accepted international norms on individual land rights, cultural rights, rights to movement, information, and other protections for indigenous peoples upon which much subsequent interpretation on forced evictions and resettlements is based.

Based on these agreements, the Committee on Economic, Social and Cultural Rights, a treaty authorized adjudication body, concluded that '[f]orced evictions constitute *prima facie* violations of a wide range of internationally recognized human rights', including the rights to freedom of movement, to choose one's residence, to personal security, to work, to information and popular participation, and even family life. Evictions 'can only be carried out under exceptional circumstances and in full accordance relevant provisions of international human rights law' (Committee on Economic Social and Cultural Rights 1997; Office of the High Commission for Human Rights 1996).

States that are signatories to human rights conventions (i.e., most countries) are legally bound under international law to ensure the rights guaranteed by those treaties and are held ultimately responsible for displacement that is illegitimate or in violation of these agreements. States are obligated to apply appropriate penalties against any person or entity that carries out extra-legal displacement, including international organizations that attempt to sponsor or implement projects that contravene international protocols (Expert Seminar on the Practice of Forced Evictions June 1997).

As a practical matter, customary tenure implied by human rights law often clashes with national implementation of eminent domain policies. Eminent domain has a long history derived from English feudal property laws, and is the only legal

means by which private land rights can be usurped. Nearly every country has legislation describing when and how private property might be taken by the state, and what compensation is required, although they vary in specific procedures and in the strength of their protections for private rights. These laws are frequently subject to capricious interpretation and application, and remain the subject of judicial interpretation, even in countries with well-developed legal systems (cf. *Kelo v. New London* in the United States).

To the extent that protected areas are established by governments, the taking of land or access to resources to implement protected areas must be governed by the relevant eminent domain laws of that country, and the state bears ultimate responsibility for the fair application of its laws, and for preventing forced evictions, no matter who may be driving that policy (Office of the High Commission for Human Rights 1996). Any taking that does not follow the eminent domain laws of a country is by definition, illegal. But this does not allow NGOs to abrogate responsibility for outcomes; individual nonstate partners expose themselves to criticism on both legal and human rights grounds to the extent they take advantage of lax government enforcement or improper application of eminent domain in a country.

IUCN–World Conservation Union

Despite the criticisms leveled at conservation organizations for their disregard for local communities, the conservation world has often found itself allied with indigenous and local groups seeking to avoid displacement due to development projects. The IUCN has consistently taken the view over the course of decades that conservation goals are rarely incompatible with traditional land uses. The IUCN policy has also been explicit in its support of efforts to integrate traditional peoples into conservation practice. Though its decisions are not binding, the IUCN is probably the best example of a norm-building regime in conservation. As such, it has provided a set of guidelines, strengthened over time, to enhance the practice of conservation with respect to people in or near protected areas.

Nearly every IUCN Congress since Kinshasa has endorsed one or more resolutions for supportive policies that safeguard traditional forms of sustainable use and eschew displacement. The World Parks Congress in Durban in 2003 highlighted its commitment 'to involve local communities, indigenous and mobile peoples in the creation, proclamation and management of protected areas'. Of the major goals of the Action Plan negotiated at Durban was to ensure the rights of indigenous peoples, including mobile indigenous peoples, and local communities are secured in relation to natural resources and biodiversity conservation. Significantly, Durban also recognized the validity of applying a variety of protected area governance types (including community conserved areas) to all IUCN categories of protected areas (Borrini-Feyerabend 2004). Resolutions passed at the Durban World Parks Congress also strengthened IUCN policy against forced expulsions.

Convention on Biological Diversity (CBD)

The preamble to the convention notes the close dependence of traditional and local communities on biological resources and Article 8(j) of the convention calls on parties to respect, preserve, and maintain traditional knowledge relevant for the conservation and sustainable use of biodiversity. With these emphases, the Convention has primarily concerned itself with securing the intellectual property rights of local and indigenous people (through coordination with and advice to the World Intellectual Property Organization) and guaranteeing the inclusion of traditional knowledge in the conduct of environmental impact assessments. This issue of displacement *per se* has not been a major topic of debate within the CBD negotiations, as the treaty itself is weighted toward securing gains to local people from biodiversity. The ecosystem approach endorsed by the parties to the Convention implicitly recognizes that indigenous peoples and local communities living on the land are important stakeholders and are critical to the direct implementation of the Convention's goals. The CBD's guidance on sustainable use of biodiversity [the Addis Ababa principles (Convention on Biological Diversity 2003)] further promotes the needs of local people and implies they should be compensated for their efforts on behalf of sustainable use (including, presumably, uses foregone to enhance the prospects of long-term sustainability). The Program of Work on Protected Areas adopted in 2004 includes specific actions toward improved governance, participation, equity and benefit sharing as one of its four pillars. The overarching goal of this program element is to establish mechanisms to ensure equity of costs and benefits of protected areas. In practice, this requires signatories to assess the impacts of protected areas on local people and provide fair compensation for losses. Other targets require mechanisms to ensure the full and effective participation of indigenous and local communities in the establishment, management, and monitoring of protected areas.

Changing Guidance in Development Agencies

Economic development agencies and financing institutions have even more experience tackling displacement issues than conservationists. The construction of dams alone has resulted in the displacement of millions of people, and, unlike the rezoning of land for protected areas; the inundation of traditional lands for hydropower generation causes stark and irreversible dislocation for the inhabitants. Millions more have been displaced through the building of urban infrastructure, ports, mines, irrigation projects, large industrial facilities, and roads and railways. Development agencies that finance the projects that lead to this displacement have been forced by years of protest and conflict into the development of tools and guidelines that may now provide useful policy models for conservation. Each of the multilateral development banks has instituted guidelines to govern treatment of indigenous and local peoples whose lands or livelihoods are impacted by development projects. World Bank Operational Policy (OP)

4.12 on resettlement defines its involuntary resettlement policy to cover any expropriation of land that results in '(i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location, or the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons'.

A key footnote to the policy further clarifies that the definition of 'displacement' includes *restriction on the use of resources* imposed on people living outside the park or protected area, or on those who continue living inside the park during and after project implementation. As the definition has been adopted, the world's major development agencies have moved toward policy consensus that 'restricted access is a form of displacement' (Cernea 2005).

The World Bank requires compensation measures to mitigate impacts of displacement be determined with the participation of the displaced persons during the design and implementation of the project itself. This participatory process helps to establish the criteria for eligibility of displaced individuals and measures to assist them in their efforts to improve their livelihoods, while maintaining the sustainability of the protected area. The World Bank also has an operational directive on indigenous peoples (OD 4.20) that instructs the bank to assist borrowers in helping to establish or strengthen traditional peoples' land rights prior to any project developments that may impact land titles.

The Organization for Economic Cooperation and Development, OECD (OECD Development Assistance Committee 1992), Asian Development Bank (Asian Development Bank 1995), Inter-American Development Bank (Inter-American Development Bank Indigenous Peoples and Community Development Unit 2004), the IFC (International Finance Corporation 2006), and others have instituted similar guidelines for the protection of local and indigenous people.

DISCUSSION

The fair distribution of the costs and benefits of protected areas, which includes managing displacement in an equitable way, has both ethical and practical components for the implementation of conservation and for the actions of conservation organizations. Both individuals and organizations have moral and legal obligations to uphold internationally accepted human rights principles in both letter and spirit. Conservation organizations, as members or partners to IUCN, have implicitly endorsed the resolutions (most of which have been adopted by consensus of that organization's governing body) against physical displacement of local people except under the rarest exceptions and only after high standards of free, prior and informed consent have been met. On the practical side, it is self-evident that protected areas should be easiest to manage when they have community support. Real or perceived inequity in the establishment and management of protected areas will lead to local opposition, which will at a minimum increase management costs and may lead to conflict

that can endanger both community well-being and conservation goals. It would therefore seem that conservationists have powerful, built-in incentives to avoid displacement or at least to manage it with utmost concern for ameliorating and addressing local communities' grievances.

In examining the repeated, increasingly emphatic and comprehensive resolutions, recommendations and guidelines promulgated by the international human rights and conservation communities, it is difficult *not* to conclude that conservationists have in fact been quite responsive to the concerns of indigenous and local communities at least through formal policy-setting mechanisms in IUCN and CBD. Why, then, have these guidelines, some adopted decades ago, not been more effective at creating partnerships between conservationists and local people and indigenous rights groups? Assuming criticisms of conservation practice have a legitimate basis, only three possible explanations remain: (1) the laws/guidelines are inadequate; (2) the guidelines are not followed by practitioners in the field; and/or (3) conflicts are real and intractable at some level and simply must be managed more effectively.

Guidelines are Inadequate

Although the guidance provided by international covenants and supporting documents would seem to be comprehensive, they have not been in existence long enough to cover many of the most egregious cases of displacement dating from the mid-20th century and before—some of which still resonate today (the recent Amboseli NP degazettement comes to mind). Many of the general critiques of conservation's treatment of local people are based on these historical examples and practices, which have since been renounced by the conservation community. Beyond this, improvements in implementing legislation at the national level would also be helpful in many cases. National and local statutes often conflict with the requirements of international treaties to which a country has adhered, and national standards for FPIC, eminent domain, and participation in environmental impact assessments may be absent or inadequate.

A significant shortcoming of international covenants of any kind is that all of the exhortations of the international community imply some foundation of good governance at the national level to provide for the impartial and equitable application of those covenants. Good governance relies on such factors as fairness and legitimacy of political actors, voice and participation by those closest to the resource (subsidiarity), the possibility of legal recourse, transparency, and accountability (World Commission on Protected Areas 2003). The absence of an appropriate enabling environment in many polities hampers the equitable and participatory implementation of conservation policies.

Guidelines are not Followed by Practitioners in the Field

Despite the apparent policy consensus that the support of local communities is vital to the success of protected areas, in practice achieving this support is most often a substantial undertaking. At a minimum, success requires a legitimate participatory process, in which all parties affected by major

decisions have the opportunity to defend their rights. Even after a decision is reached, ongoing accountability and transparency in the form of public reporting to provide community groups assurance that arrangements are being implemented as agreed is probably essential to avoid 'second thoughts' and recriminations. Monitoring and evaluation of management effectiveness, and of the long-term impact of displacement or restricted access where it occurs, are important components of this process, but one that is often shortchanged in park management planning. Given these complexities, it would indeed be surprising to find a protected areas project that did not falter in some aspect of its implementation, leaving some stakeholders dissatisfied and critical of the process.

However, before concluding that existing guidelines are impractical, perhaps greater effort needs to be made to disseminate them and encourage their application. A review of case studies in Africa to determine whether the WCPA/WWF 1999 Principles and Guidelines on Protected areas and Indigenous/Traditional Peoples had been followed concluded that they had not in any of the 10 cases examined. Project managers were in most cases even unaware of the guidelines (Barber 2004).

Implementation of best practices on displacement is also hindered by questions over land tenure and the need to determine the legitimacy of various claims as a prerequisite to even managing a fair participatory process. Security of tenure has received considerable attention in human rights law as a response to the problem of forced evictions and displacement; the United Nations Centre for Human Settlements has identified legal tenure as the single most important step that governments can take to honor their commitment to the right to adequate housing (Office of the High Commission for Human Rights 1996). Clearly, this issue of land tenure extends far beyond the scope of conservation, but yet is integral to our work to establish fair and effective governance mechanisms for protected areas. Conservationists have already recognized the importance of securing land tenure for local and indigenous people as part of an overall conservation strategy at numerous sites. Evaluation of land use and land rights is a necessary initial step for every site-based project, both to identify stakeholders and to understand what management needs are being unmet. However, conservation organizations can rarely resolve longstanding conflicts over tenure.

Improving the Dialogue on Natural Resource Conflict

“Resolving displacement issues has increasingly been seen by international development agencies as integral to their missions of development and poverty alleviation, rather than as just the sacrifice of the few for the common good, which can be mitigated by a cash payment (Asian Development Bank 1995). This perspective may provide a useful model for conservation as well. Among development agencies, the project delays caused by community conflict, and the long-term economic repercussions that can impact more than just those directly displaced, have forced the realization that

effective management of resettlement is core to the agencies' development mission and to the objectives of any individual project. As the OECD noted in its guidelines on resettlement,

Resettlement planning provides the means to mitigate displacement's adverse impacts and to create development opportunities for project-affected people. While adequate resettlement planning may increase the initial investment costs of a project, long-term benefits include fewer delays and cost escalations during project implementation, an increased benefit stream from economically productive resettlers, and reduced welfare costs to society at large" (OECD Development Assistance Committee 1992).

Conservation cannot by itself address the development needs of rural communities in and around protected areas, but working in partnership with indigenous and local people to identify problems of unsustainable natural resource use is inherent to the conservation task. At a time when 12% of Earth's land surface is already under some form of formal park designation, it is difficult to imagine a substantial expansion of the current state-managed protected areas portfolio. Displacement conflicts in the future are less likely to revolve around the establishment of new protected areas than around managing land uses more generally. Of greater potential interest is how to adjudicate 'displacement' issues as they relate to zoning and other restrictions (e.g., hunting bans) on private lands, forestry concessions (particularly when these overlap with the rights of local communities), or other multiple-use lands on which more wildlife-friendly policies might be suitable. In this context, managing 'displacement' is just one aspect in development of a broader public policy consensus on the integration of conservation and development goals more generally. Significant opportunities for conservation organizations to influence this discussion exist at the local, national, and regional levels, but our influence in part depends on our ability to forge alliances with affected rural communities.

The development of new paradigms for governance and management of protected areas can help conservationists negotiate these alliances. Conservation organizations have notable opportunities to provide input to international level policies on governance in a way that supports our conservation goals while underscoring our common cause with local communities. The recent IUCN review and update of the protected areas category system provides significant new opportunities for community-managed protected areas. Similarly, the CBD's Program of Work on Protected Areas will undergo substantial revision at the 10th Conference of Parties in 2010 in Nagoya, Japan. Conservationists and other civil society organizations should engage in the discussion leading up to this conference to integrate best practices on community participation and governance from the field into global standards for protected area management. Specifically, work is required on a monitoring and indicator framework to measure progress on governance, equity, and benefit-sharing for protected areas.

The adoption of a resolution or set of guidelines by a global institution or even by a legally binding treaty organization

is hardly a guarantee of effective field implementation and enforcement. Policy changes can, however, lead to better and wider adoption of stronger norms and practices, particularly when regularly tested and recalibrated by direct inputs from practitioners on the ground. The iterative give-and-take between policy and practice provides the best means of improving both and providing the normative basis for successful conservation.

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