



September 2013
Quaker United Nations Office



Building Peace
around water, land and food:
Policy and practice for preventing conflict

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English

Français

Español

Acronyms

| | |
|-------------|------------------------------------------------------------------------------|
| BCP | Biocultural Community Protocol |
| CAC | Conversatorios of Citizen Action |
| CBD | Convention on Biological Diversity |
| CEDAW | UN Committee on the Elimination of all Forms of Discrimination Against Women |
| CERD | UN Committee on the Elimination of all forms of Racial Discrimination |
| CFS | Committee on World Food Security |
| CFJJ | Centre for Legal and Judicial Training (Mozambique) |
| CGIAR | Consultative Group on International Agricultural Research |
| CPWF | Challenge Program on Water and Food |
| DRC | Democratic Republic of Congo |
| FAO | Food and Agriculture Organisation of the UN |
| FPIC | Free, Prior and Informed Consent |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IIED | International Institute for Environment and Development |
| ILO | International Labour Organization |
| ILO No. 169 | ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989 |
| IWRM | Integrated Water Resource Management |
| MDGs | Millennium Development Goals |
| MSP | Multi-Stakeholder Platforms |
| NGO | Non-Governmental Organisation |
| NRM | Natural Resource Management |
| REDD | Reducing Emissions from Deforestation and Degradation |
| UN | United Nations |
| UNDRIP | UN Declaration on the Rights of Indigenous Peoples, 2007 |
| UNECE | UN Economic Commission for Europe |
| UNEP | UN Environment Programme |
| WCD | World Commission on Dams |
| UNFCCC | UN Framework Convention on Climate Change |
| WWF | World Wildlife Fund |

Acknowledgments

The authors would particularly like to thank those who contributed the case studies: IIED, ANDES, Natural Justice, UN-Habitat and CPWF, Alain Vidal, Larry Harrington, Kim Geheb and Carmen Candelo Reina. The authors gratefully acknowledge the helpful comments from Camilla Campisi, Lindsey Fielder Cook, Caroline Dommen, Karen Glisson, Larry Harrington, David Jensen, Oliver Robertson, Charlotte Seymour-Smith, Andrew Tomlinson, Janny van Beem, Jennifer Preston and Jonathan Woolley on earlier drafts of this publication. Special thanks go to Diane Hendrick for all her help in preparing this paper.

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Suggested citation: Ellie Roberts and Lynn Finnegan (2013) *Building Peace around water, land and food: Policy and practice for preventing conflict*, Quaker United Nations Office, Geneva.

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Executive Summary

Water and land are two of the key natural resources that shape billions of peoples' livelihoods, food security, wellbeing and identity. Developing management of water, land and food that is equitable and peaceful is an increasingly challenging task due to a multitude of factors – such as resource degradation, population growth and violent conflict – that can fuel tensions and exacerbate vulnerabilities around natural resources. Increasing climate uncertainties now lend an additional urgency to the need to develop appropriate policy and practice at international, national and local levels in order to prevent destructive conflict around natural resources. The issues highlighted by this paper are not all directly affected by the impacts of climate change: climate change will, however, exacerbate tensions and vulnerabilities that already exist around water, land and food.

Policy and practice that facilitates improved collaboration among conflicting groups is essential for effective governance of natural resources. Peacebuilding methods such as locally led conflict analysis, facilitation of dialogue among groups with competing interests, and empowerment of vulnerable groups can help to build cooperative and trust-based relationships around natural resource management (NRM). It is not only technical skills that need to be strengthened, but the skills that enable stakeholders to engage with decision making, communicate effectively and address or mediate disputes constructively. Policy and practice needs to build capacity for these skills among actors at all levels - from government representatives, to stakeholders from the private sector, to local communities¹.

¹ UN-EU (2012) Strengthening capacity for conflict-sensitive natural resource management, Toolkit and guidance for preventing and managing land and natural resource conflict, UN Interagency Framework Team for Preventive Action, UN-EU partnership, accessed at: http://postconflict.unep.ch/publications/GN_Capacity_Consultation.pdf

Policy that does not adequately take account of, or respond to, local needs and dynamics can exacerbate tensions around water, land and food. Equally, when civil society groups and local communities are not able to have a voice in resource management or hold decision makers accountable, implementation of good policy frameworks often remains limited². This can result in management rules and practices that are unclear, contradictory or perceived as illegitimate by certain groups. It can also mean that typically vulnerable groups such as women, small-scale farmers and Indigenous peoples are excluded from decision making and resources, leaving them highly vulnerable. This increases the likelihood of destructive conflict and can in some cases mean that tensions escalate to violence.

“ It is not only technical skills that need to be strengthened, but the skills that enable stakeholders to engage with decision making, communicate effectively and address or mediate disputes constructively ”

Policy frameworks that do take these realities into account can facilitate constructive responses to natural resource conflicts. There are a number of existing international laws and guidelines that set out some of the elements needed for peaceful and equitable NRM. Many provide for inclusive consultation of, and participation by,

² Tyler, Stephen R. (1999) 'Policy implications of natural resource conflict management', chapter 14 in Daniel Buckles (ed)(1999) *Cultivating Peace: collaboration and conflict in natural resource management*, World Bank and IDRC

local communities in decision making, as well as protection of vulnerable groups.

These frameworks can help to inform and shape good national policy and law for NRM. They can also be used to raise awareness of rights and good practices among local communities, helping them to engage constructively with other stakeholders. For Non-Governmental Organisations (NGOs) and other civil society groups, they provide a platform for initiating dialogue across sectors and levels, particularly when high level decision makers need to be involved.

However, these frameworks can only be useful tools when the links between policy and practice are strengthened from the bottom up as well as the top down. Good practices developed at the local level can help to inform good national and international policy, ensuring that it supports and builds on local needs and knowledge.

This paper looks at some of the elements of peaceful and equitable NRM, focusing particularly on the need to strengthen peacebuilding skills among actors at all levels. Chapter Two gives an overview of the international laws and guidelines that provide a framework for States and societies to develop and strengthen their governance of natural resources in order to prevent destructive conflict. Chapter Three looks at five case studies that have implemented some of these frameworks, providing examples of good practice for encouraging and facilitating dialogue among groups, empowering communities to understand and resolve conflict, and promoting legal rights and frameworks among government, private sector, judicial and community representatives. Chapter Four draws key lessons from these case studies, suggesting ways in which their experiences could help States and societies when developing and implementing principles for peaceful and equitable water, land and food management.

BOX 1: Use of Terms

Destructive Conflict

Conflict in itself is not negative. It is an inevitable part of life and can function as a motor for change and development in society if handled constructively. Conflict becomes destructive when it leads to a breakdown of communication among groups, damaging social relations and exacerbating tensions that can lead to violence.

Peacebuilding and Conflict Prevention

Peacebuilding is both the development of human and institutional capacity for resolving conflicts without violence, and the transformation of the conditions that generate destructive conflict. In this sense it is closely allied to the prevention of destructive conflict and is not only relevant to post-conflict settings.

Community empowerment

Community empowerment seeks to enable local people to play an active role in the decisions that affect their communities. It occurs when communities have access to relevant knowledge and develop the appropriate skills to analyse their situation, organise in an inclusive way and manage their different interests cooperatively. Thus the community becomes a confident and competent partner in dialogue and negotiations, whether with local or national authorities or outside investors.

Natural resources

Natural resources include a wide range of environmental components that are used by, or have a use for, people and communities. This paper focuses on water, land and food: water and land being two of the key natural resources that shape billions of people's livelihoods, food security, wellbeing and identity. By 'food' we mean the genetic diversity used by humans for food and agriculture, which is closely linked to both water and land. Water, land and food all face increasing challenges and uncertainties from climate change. Although they are also important natural resources, extractives such as fossil fuels and minerals are not included in the scope of this paper.

Chapter One

Water, Land, Food and Peacebuilding

Resource variability can create and exacerbate tensions. The likelihood of these tensions leading to violence and other forms of destructive conflict often depends on the strength and effectiveness of social systems and institutions³. Effective governance plays a key role in promoting peaceful and equitable management of water, land and food. It is not just 'physical scarcity' but also weak and inequitable governance - or 'social scarcity' - that creates imbalances in access to, and distribution of, natural resources, increasing the vulnerability of certain groups⁴.

Arrangements for sharing water, land and food that may seem cooperative can nevertheless leave vulnerable groups disproportionately burdened by the impacts of variability, while also excluding them from resource benefits. Typically vulnerable groups include small-scale farmers, fishing communities, women, Indigenous peoples and those facing social stigma due to characteristics such as race or ethnicity. Without a voice in natural resource management (NRM), these groups can become caught in destructive cycles of poverty, loss of livelihood and increasing social marginalisation⁵.

Issues of inequitable access to water and land within and between societies are not new. There are a multitude of factors – such as population growth, resource degradation, violent conflict, and changing patterns of migration - that can exacerbate the impacts of resource variability, making effective governance more challenging. Large-scale agricultural or water investments can also deepen power imbalances around resource

3 Smith, D. and J. Vivekananda (2007) *A Climate of Conflict: The links between climate change, peace and war*, International Alert, p.8

4 Johnson, V., I. Fitzpatrick, R. Floyd and A. Simms (2011) What is the evidence that scarcity and shocks in freshwater resources cause conflict instead of promoting collaboration? *Collaboration for Environmental Evidence, Collaboration for Environmental Evidence (CEE) Review*, 10 – 010, p. 10

5 Mason, Simon A. and A. Muller (2008) *Linking Environment and Conflict Prevention: The Role of the United Nations*, Centre for Security Studies (CSS) and SwissPeace, Zurich, p. 22

access, with local groups often not permitted, or not able, to have a voice in decision making. This can damage local water and food security, with agreements often failing to recognise community

BOX 2: Giving all groups a voice

A water pipe project in Con Cuong, Vietnam, initiated by the Vietnamese government in 2001 with funding from the European Union (EU), highlights the importance of developing practices and principles that give all groups a voice in decision making and empower communities to address destructive conflict around water, land and food.

Two years after the pipes were constructed, it was discovered that the wealthiest households had been siphoning water from communal pipes for their own use, reducing the amount that reached the shared tank. The poorest groups were unwilling to raise the problem because they relied on wealthy households for supplies during times of hardship. Instead they were forced to tap into the water pipes themselves or take water from leakages in the pipes.

Eventually, the project broke down and the community returned to accessing water via streams¹. This example demonstrates the ineffectiveness of initiatives that do not take local power dynamics into account, often fuelling rather than mitigating social tensions.

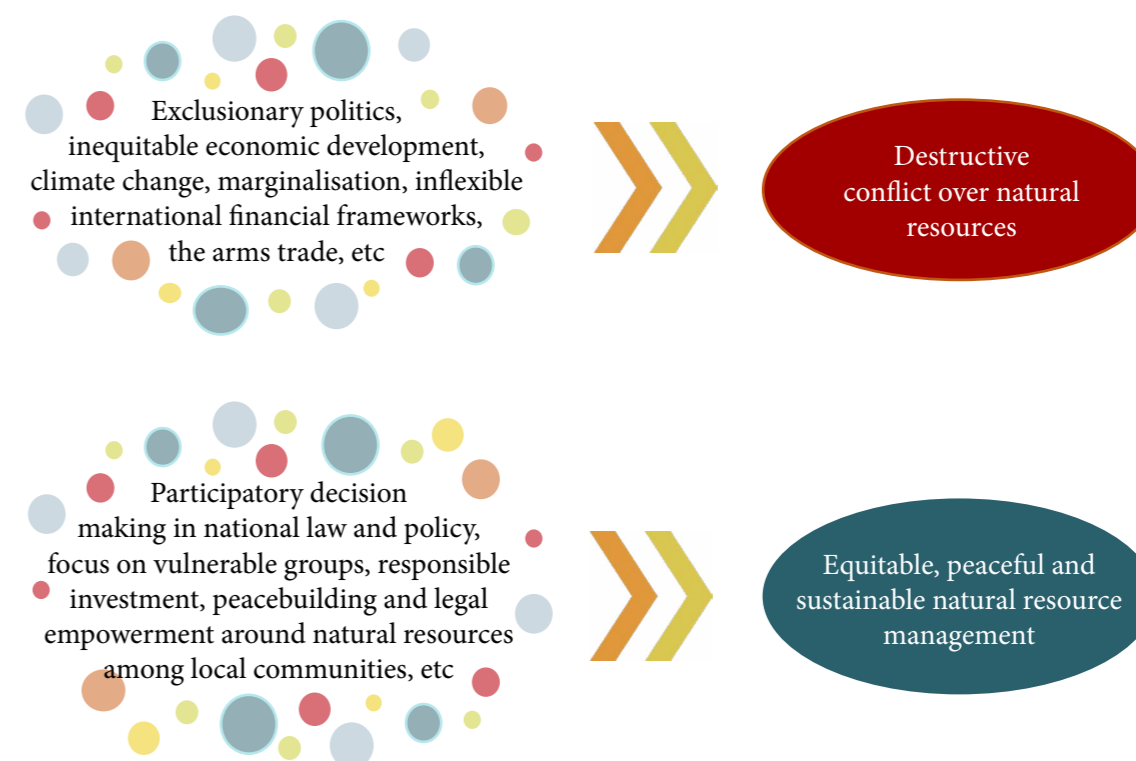
1 Funder, M., R. Bustamante, V. Cossio, P.T.M. Huong, B. van Koppen, C. Mweemba, I. Nyambe, L.T.T. Phuong and T. Skielboe (2012) Strategies of the Poorest in Local Water Conflict and Cooperation, *Water Alternatives*, Vol. 5, No.1, p. 23-25

rights⁶. Tension between customary tenure systems and national law can also make the development of equitable access and ownership rules more complex.

The impact of climate change on water and land, already visible in regions across the globe, is an exacerbating factor, and will greatly increase resource pressure in the future. Decreasing water storage in glaciers, salinisation of groundwater and soils in coastal areas as a result of sea level rise, and increased variability of rainfall with more extreme periods of drought and flooding, will mean that more people live in areas where land and water resources are severely stressed⁷. The extent to which

these changes are likely to lead to destructive conflict will often depend on the capacity of individuals, communities and institutions to respond to them in a positive way.

The link between climate change and conflict is not yet understood and has been widely debated. The relationship between the two, and the context in which this relationship plays out, are complex, meaning that the outcome will often be unpredictable⁸. Changes in land and water availability can exacerbate tensions within and between societies, yet capacity for effective NRM at all levels can contribute to managing such resource conflicts peacefully.

BOX 3: Complex causality relating to natural resources

6 Smith, D and J. Vivekananda (2007) ... cited in footnote 3. p. 13

7 Heywood, S. (2012) *Diverting the Flow: Cooperation Over International Water Resources*, Quaker United Nations Office, Geneva

8 Lind, J., M. Ibrahim and K. Harris (2010) *Climate Change and Conflict: Moving Beyond the Impasse, IDS In Focus Policy Briefing*, Issue 15, Institute of Development Studies, p. 1

BOX 4: Peacebuilding initiatives and resilience

In 2011 Mercy Corps conducted a study to examine if, and how, its peacebuilding programmes had strengthened resilience to drought conditions among pastoralist groups in the Somali-Oromiya area of Ethiopia. The Strengthening Institutions for Peace and Development (SIPED) programme worked with communities to form local committees and create dialogue leading to peace agreements and resource use plans.

SIPED projects also focused on strengthening the links between customary and government institutions. The study found that these peacebuilding initiatives had increased resilience, contributing to disaster risk reduction and mitigating the need for large scale humanitarian relief during droughts¹. Households involved were half as likely to face conflict over access to water for animals than they were before the project started, employing 'adaptive strategies' such as moving and livelihood diversification more frequently than 'distressful strategies' such as killing cattle².

1 Kurtz, J. and G. Scarborough (2012) *From Conflict to Coping: Evidence from Southern Ethiopia on the contribution of peacebuilding to drought resilience among pastoralist groups*, Mercy Corps, p. 3, 4, 8
2 Above footnote, p. 16-19

Prevention of destructive conflict around water and land must address both tensions within and between communities, and conflict that involves higher-level decision makers such as government and private sector representatives. Where conflicts need to be resolved at multiple levels, for example in the case of an investment agreement that will affect local access to water and land, facilitating community engagement with decision makers is essential. Communities are more able to respond positively to issues of resource access when all groups are able to articulate their needs, allowing competing interests to be managed in a way that reduces whole community vulnerability, particularly among the least advantaged groups⁹.

The first annual report of the UN Independent Expert on Human Rights and Environment notes that the fulfillment of procedural rights, including effective public participation in decision making, contributes to 'more transparent, better informed and more responsive' environment policy¹⁰. Community based management builds shared understanding and acceptance of resource sharing rules, while also building capacity for dialogue and negotiation, reducing the likelihood of destructive conflict¹¹. However, superficial or badly planned participation processes can exacerbate unequal access to and distribution of resources by severely disadvantaging groups with lower language and communication skills. They can also worsen social marginalisation by excluding traditionally vulnerable groups, who are often not readily accepted as legitimate participants in public decision making¹².

9 The Institution of Civil Engineers, Oxfam GB, Water Aid (2011) *Managing Water Locally: An essential dimension of community water development*, p. 50

10 Knox, J. (December 2012) *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Report to the 22nd session of the UN Human Rights Council (A/HRC/22/43), p. 10

11 The strengths and challenges of community-based management are considered in the 'CBNRM' literature (Community-Based Natural Resource Management)

12 Dore, J., J. Robinson and M. Smith (eds)(2010) *Negotiate: Reaching agreements over water*, IUCN, Gland, Switzerland, p. 45

“The aim is not to avoid conflict, which is inevitable and can be necessary for positive social change, but to strengthen governance and to understand and address the root causes of conflict”

Peacebuilding methods can help to address these risks by promoting inclusive and trust based decision making around resource management. Locally led conflict analysis, facilitation of dialogue among groups with competing interests, and empowerment of vulnerable groups can help to build cooperative relationships, enabling individuals, communities and institutions to resolve conflict nonviolently (Box 3). Peacebuilding can therefore be relevant to any political context; both pre- and post-conflict societies, as well as settings where conflict is not visible but rather tensions continue to build beneath the surface, as with the water pipe project in Con Cuong, Vietnam (Box 2). The aim is not to avoid conflict, which is inevitable and can be necessary for positive social change, but to strengthen governance and to understand and address the root causes of a conflict¹³.

Constructive responses to the challenges outlined in this Chapter will be further explored in Chapter Three, which outlines five case studies that have drawn on peacebuilding methods to address water, land and food management. Each case study highlights different elements important to equitable and peaceful natural resource management. No case study is without its limitations; the aim is rather to highlight good practices and learn from

13 Smith, D and J. Vivekananda (2007) ... cited in footnote 3. p.10, 32

efforts already being made at various levels.

The following Chapter outlines existing international laws and guidelines that include and support some of the principles and practices needed for peaceful and equitable natural resource management, ranging from consultation with stakeholders to stronger recognition of community ownership and user rights. It focuses on environmental and human rights law, highlighting their roles in informing and supporting States, communities and other actors when seeking to prevent destructive conflict around natural resources.

Chapter Two

International Legal Frameworks

There are a range of international legal frameworks that provide standards and guidelines for equitable and peaceful natural resource management (NRM). These can be used to support States, communities and individuals when responding to challenges around water, land and food, informing and shaping national laws and policies and providing an avenue for accountability and settlement of disputes.

International law and guidelines can play an important role in preventing destructive conflict around natural resources. For example, some provide standards for outside investment in water and land, helping to ensure conflict sensitive investment and enabling national decision makers to support constructive and equitable relationships between investors and local communities.

Some of the legal instruments are 'hard' law, which are legally binding for national governments that have ratified them and which have supervisory and oversight mechanisms at the international level. Other instruments are 'soft' law, which are not legally binding but provide guidelines or minimum standards for national governments. Several soft law instruments have come to be widely accepted as containing recognised principles within international law. Soft law instruments often lead to the development of binding hard law in the future, and so are good indicators of the direction that international legal frameworks may take. It is important to remember '(i)t is not whether or not an international instrument is mandatory or voluntary, what really matters in the end is the extent to which it is known, referred, and actually used'¹⁴.

The international frameworks relevant to NRM are fragmented, emerging from different international fora and institutions such as the UN Conference on Environment and Development, the UN Food

¹⁴ Madiodio Niasse, Director of International Land Coalition, at 2013 Policies Against Hunger Conference, Berlin, 10 - 12 June 2013 quoted in ILC Monthly Update, June 2013.

and Agriculture Organization and UN Human Rights Treaties. Two main areas of relevant law are International Environmental Law and International Human Rights Law, which includes the rights of Indigenous peoples.

These laws and guidelines recognise the challenges faced in achieving sustainable, equitable and peaceful management of natural resources. Many recognise the need to include vulnerable groups in policies that shape water and food management. Some focus on groups that are directly dependent on natural resources for their livelihoods - such as small-scale farmers, fishing communities and Indigenous peoples - and so are particularly affected by national policy and decision making that affects water, land and food.

International law promotes good practices and general principles for NRM, ranging from consultation with stakeholders to recognition of community ownership and user rights. There are, however, major obstacles to effectively implementing such international instruments. They are not all ratified by national governments, and even if they are written into national policy there are many political, practical and institutional challenges to implementing them effectively. The case studies presented in the following chapter provide examples of local initiatives that are supported by national and international law and guidelines. These initiatives aim to implement and apply guidelines effectively in local contexts, or to raise awareness of useful legal principles to empower local communities in NRM.

This chapter summarises some of the relevant international frameworks relating to environment and human rights, including Indigenous peoples (Box 4). The Annex contains a more comprehensive list of legal instruments and their relevant provisions, including frameworks such as the Hyogo Framework for Action for resilience to disasters.

BOX 4: Relevant international laws and standards (see Annex for more detail)

International Environmental Law

- 1992 Rio Declaration on Environment and Development
- 1992 Convention on Biological Diversity (CBD)
- 1992 UN Framework Convention on Climate Change (UNFCCC)
- 1998 Aarhus (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
- 2001 FAO International Treaty on Plant Genetic Resources for Food and Agriculture
- 2010 Nagoya Protocol on Access and Benefit Sharing
- 2012 CFS Voluntary Guidelines on the Responsible Governance of Tenure

International Human Rights Law

- 1966 International Covenant on Economic Social and Cultural Rights (ICESCR)
- 1989 ILO Convention No. 169 on Indigenous and Tribal Peoples
- 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- 2011 UN Guiding Principles on Business

International Environmental Law

International environmental law has expanded significantly over the last half century, and there are now numerous multilateral environmental agreements addressing sustainable management of natural resources. Several focus on the role of local communities in ensuring sustainable management of natural resources, providing for participatory decision making on matters relating to the environment.

Recognising community knowledge and inclusion of vulnerable groups

The recognition that environment and development concerns are inseparable was first firmly recognised in international law in the outcome of 1992 Rio UN Conference on Environment and Development¹⁵. This reflected the emerging consensus that environmental sustainability cannot be addressed without considering development needs, and that natural resource management plays a central role in development.

The Rio Declaration¹⁶ recognised that environmental issues are best handled with the participation of all concerned citizens, explicitly highlighting the vital role of women and Indigenous peoples in effective environmental management.

In the case of water management, participatory approaches that involve users, planners and policy-makers at all levels are recognised in the principles of Integrated Water Resources Management (IWRM), which were presented at the 1992 Rio Conference¹⁷.

¹⁵ Principle 25 of the Rio Declaration affirms that 'peace, development and environmental protection are interdependent and indivisible'

¹⁶ Rio Declaration on Environment and Development, UN GAOR, 3-14 June 1992, Annex 1, UN Doc. A/CONF.151/26 (vol. 1)

¹⁷ The Dublin Principles, presented at the Earth Summit in Rio de Janeiro in 1992, principle 2 and 3 respectively

Involvement of ‘users’ includes groups that may not have clear user rights in formal law, in particular women, farmers and pastoralists¹⁸.

IWRM has become an accepted framework in many river basin organisations, as well as in the International Watercourses Convention, the World Commission on Dams (WCD) and the work of the UN Economic Commission of Europe (UNECE).

For management of genetic resources for food, the Convention on Biological Diversity (CBD) and the UN Food and Agriculture Organization’s (FAO) International Treaty on Plant Genetic Resources for Food and Agriculture (known as the ‘FAO International Treaty’) both address plant genetic resources for food and agriculture. Agreements recognise that biodiversity - including plant genetic diversity -, culture and traditional knowledge are closely linked. Policy and practice that consider and support these linkages help achieve fair and equitable use of plant genetic resources. Ongoing negotiations within the Convention on Biological Diversity call for more recognition of local communities’ knowledge, innovations and practices as a vital contribution to sustainable management of biodiversity.

Equitable sharing of plant genetic resources and farmers’ rights are addressed by the Convention on Biological Diversity’s 2010 Nagoya Protocol and the 2001 FAO International Treaty. States are urged to recognise community knowledge around genetic resources, including for food and agriculture. The FAO International Treaty also recognises farmers’ rights to save, use or exchange seeds – such practices are essential to helping maintain resilient plant breeding that responds to changing climates.

Some of the case studies in Chapter Three will consider the strengths of community protocols that, especially when supported by national policy, can be used to ensure equitable management of plant genetic resources and provide a mechanism for managing conflicts constructively.

18 Institution of Civil Engineers, Oxfam GB, Water Aid (2011) *Managing Water Locally: An essential dimension of community water development*, p. 8; 18 - 19

Public participation in decision making

Numerous international standards oblige governments to consult with stakeholders in decisions and policies relating to natural resources. One comprehensive agreement is the 1998 Aarhus Convention¹⁹ of the UN Economic Commission for Europe, which has around 50 European country parties but is open to accession by non-ECE countries subject to approval by the Meeting of the Parties. The Convention clearly defines three pillars of public participation in environmental matters: access to information, participation in decision making and access to justice in environmental matters.²⁰ Governments must provide information on the potential impact of proposed activities and alternatives, informing the public in an adequate, timely and effective manner²¹. Governments should also provide an independent grievance mechanism, and implement national policy without discrimination to citizenship, nationality or domicile²².

A number of legal frameworks reflect a stronger approach to ‘participation’ in environmental matters by supporting the obligation of governments to meaningfully consult local communities and uphold free, prior and informed consent where initiatives affect communities’ natural resources. The principle of Free Prior and Informed Consent (FPIC) requires States to consult with communities directly affected by a proposed project, that no decision be taken without their informed consent given freely, without coercion, intimidation or manipulation. FPIC provisions are seen particularly in laws and standards relating to Indigenous peoples, as groups who traditionally have a close relationship with their lands and territories.

FPIC is also affirmed in the context of forests by guidelines produced by the UN-REDD

19 The 1998 Aarhus Convention on Access to Information, public participation in decision making and access to justice in environmental matters, adopted by the UN Economic Commission for Europe (UNECE)

20 Article 3 para. 2

21 Article 6 para. 2

22 Article 9; Article 3 para. 9

Programme, outlining a policy framework for seeking and obtaining FPIC in the context of efforts to reduce emissions from deforestation and degradation (REDD)²³. A 2010 agreement under the Framework Convention on Climate Change (UNFCCC) urged States to respect the knowledge and rights of Indigenous peoples and members of local communities²⁴. Although these relate to forest projects they nonetheless indicate the emerging recognition of FPIC as an international legal principle.²⁵

Ownership of, and access to, natural resources

A further important issue is ownership of land and natural resources and how such ownership is defined in customary and formal law. Absence of clear rights over natural resources is often a barrier to community participation in decisions related to water and food. In many countries land, forests, fisheries and other natural resources belong to the State, and there may not be a legal requirement to consult with local communities before national decisions are taken. This can be a major barrier to equitable natural resource management and to the prevention of destructive conflict over natural resources.

Responsible governance of tenure was not explicitly addressed in UN fora until 2012. In May 2012 the UN Committee on World Food Security (CFS) adopted Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security. The CFS Voluntary Guidelines provide the first international standards for recognition of

23 UN-REDD Programme (January 2013) *Guidelines on Free, Prior and Informed Consent*, FAO, UNDP, UNEP

24 FCCC/CP/2010/7/Add.1. Decision 1/CP.16 (2010) The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, Chapter C para. 68 - 79 and Annex I (list of safeguards), accessed at: www.unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2

25 For a useful outline of sources of international law affirming FPIC, see: UN-REDD Programme (January 2013) *Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): International Law and Jurisprudence affirming the requirement of FPIC*, UN-REDD Programme, Geneva

customary tenure systems, urging governments to recognise, respect and protect the customary land, forest and fishery rights of Indigenous peoples and other communities, even if not protected under formal law²⁶. The Voluntary Guidelines specify that such policies should particularly work to protect women and vulnerable groups who hold subsidiary tenure or use rights such as gathering rights²⁷.

An important element of preventing conflict around natural resources is adequate access to justice and compensation. The Voluntary Guidelines on Tenure address this, as well as looking specifically at the governance of tenure in the context of climate change and conflict. They call on States to ensure the protection of legitimate tenure rights of farmers, small-scale food producers, and vulnerable and marginalised people, in order to allow them to respond to the effects of climate change²⁸. ‘All parties should take steps to prevent and eliminate issues of tenure of land, fisheries and forests as a cause of conflict and should ensure that aspects of tenure are addressed before, during and after conflict’²⁹. States should also provide access to justice and appropriate compensation when people believe their tenure rights are not recognised, through timely, affordable and effective resolving of disputes by a competent and impartial body³⁰.

“ *Absence of clear rights over natural resources is often a barrier to community participation in decisions related to water and food* ”

26 Article 8.2

27 Article 7.1

28 Article 23

29 Article 25.1

30 Article 21

International Human Rights Law

International human rights law provides another legal framework with important links to equitable and peaceful natural resource management. Human rights law sets out both substantive and procedural obligations for national governments to respect, protect and fulfil basic human rights. Human rights are universal, with an explicit emphasis on the responsibility of governments to focus on vulnerable groups. Rights include the right to water and to food, as well as access to information, public participation and access to justice.

The right to food recognises the fundamental right of everyone to be free from hunger³¹. The human right to water acknowledges ‘sufficient, safe, acceptable and physically accessible and affordable’ water as essential to leading a life in human dignity³². The UN Special Rapporteur on the Right to Food - currently Olivier De Schutter - clearly argues that the right to food is inseparable from access to productive resources. Security of land tenure and control over plant genetic resources is essential for long term food security³³.

A 2012 study by the Human Rights Council Advisory Committee identifies small-scale farmers, landless workers, fisher-folk, hunters and gatherers as among the most discriminated and vulnerable people in many parts of the world with thousands of peasant farmers becoming victims of forced evictions from land every year³⁴.

31 1966 International Covenant on Economic Social and Cultural Rights (ICESCR) Article 11

32 UN Committee on Economic, Social and Cultural Rights (November 2002) *General Comment No. 15 ‘The right to water’*, United Nations General Assembly (July 2010) Resolution A/RES/64/292

33 De Schutter, Olivier (2010) *Access to land and the right to food*, Report presented to the 65th General Assembly of the United Nations (A/65/281); Similarly argued in General Assembly (12 September 2005) *Right to Food: Note by the Secretary-General*, UN Doc. A/60/350 (Interim report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler), para. 30

34 UN Human Rights Council (February 2012) *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, Nineteenth session, Agenda item 5 (A/HRC/19/75)

Business and human rights

The recent UN agenda around business and human rights responds to the urgent need to improve accountability of businesses and private sector activities in relation to human rights. In 2011, after five years of consultations, the UN Human Rights Council adopted the Guiding Principles on Business and Human Rights³⁵. The Guiding Principles call for States to protect against human rights abuse by third parties, including business enterprises³⁶. Businesses have an obligation to respect human rights of others and address adverse impacts on human rights as a consequence of their business activities³⁷. The Guiding Principles also state that businesses should identify and assess possible human rights impacts, which involves meaningful consultation with potentially affected groups and other relevant stakeholders as well as continued feedback and monitoring³⁸. In May 2011 the Human Rights Council was also presented with ‘Principles for responsible contracts’³⁹, providing guidelines for community engagement in contract negotiations between governments and businesses⁴⁰ and grievance mechanisms that should be accessible to all affected groups⁴¹. Both sets of principles can help shape business activities relating to natural resources - such as large-scale agricultural investments or water developments - that respect local ownership of, and access to, water, land and food.

35 UN Human Rights Council (March 2011) Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, final report to the Human Rights Council (A/HRC/17/31)

36 Article 1

37 Article 11

38 Article 18 and 20

39 ‘Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators’, accessed at: <http://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf>

40 Principle 7

41 Principle 9

Rights of Indigenous peoples

Many international standards relating to Indigenous peoples focus on Indigenous peoples’ rights over natural resources, lands and territories they have traditionally occupied or otherwise acquired. Indigenous peoples are recognised as ‘peoples’ in international law, bringing a fundamental right to self determination, to exert sovereignty over their lands and natural resources.⁴² These standards tend to be soft law, providing non-binding guidelines for national governments.

“ These international laws and guidelines provide useful frameworks from which to consider prevention of conflict around natural resources. Much work is needed to bring these principles to other fora within and outside the UN ”

Minimum standards, however, are clearly set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the UN General Assembly in 2007. UNDRIP addresses the most pressing concerns of the 370 million Indigenous people worldwide. It recognises the right of Indigenous peoples to self determination⁴³, and to participate in decision making on matters that affect their rights. It calls States to consult and cooperate with Indigenous peoples to obtain their Free, Prior and Informed Consent (FPIC) before adopting and implementing measures that may affect them, particularly with respect to projects involving the development, use or exploitation of natural resources⁴⁴.

42 Carmen, Andrea (2010) ‘The right to free, prior and informed consent: A framework for harmonious relations and new processes for redress’, chapter 8 in *Realizing the UN Declaration on the Rights of Indigenous peoples: Triumph, Hope and Action* Jackie Heartley, Paul Joffe and Jennifer Preston (eds)(2010), First Nations Summit Society

43 Article 3

44 Articles 18, 19, 29 and 32

States must not forcibly remove Indigenous peoples from their lands or territories⁴⁵, and shall provide effective mechanism for redress if FPIC is not respected. These principles and rights are affirmed by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the UN Permanent Forum on Indigenous Issues⁴⁶.

One of the few legally binding treaties concerning Indigenous peoples is the 1989 ILO Convention No. 169 on Indigenous and Tribal Peoples (known as ‘ILO Convention 169’). It states that governments shall recognise Indigenous ownership of lands they traditionally occupy⁴⁷, including land used for subsistence, nomadic and traditional activities. Indigenous peoples have ‘the right to participate in the use, management and conservation of their resources’, and governments are required to consult with Indigenous communities concerned when giving consideration to measures that may affect them directly⁴⁸. The Convention, however, only has 22 signatories, the majority of which are Latin American.

These international laws and guidelines provide useful frameworks from which to consider prevention of conflict around natural resources. Much work is needed to bring these principles to other fora within and outside the UN. Several of the instruments offer opportunities for States to share information, resources and recommendations, or provide opportunities to receive capacity building and technical assistance from UN agencies. These mechanisms are available for States and should be used fully. Many of the laws and guidelines are also useful for awareness raising at local level and can be part of the empowerment process that leads to local groups being effective partners in natural resource management.

45 Article 10

46 UN Permanent Forum on Indigenous Issues (2011) *Report on the tenth session (16-27 May 2011)*, Economic and Social Council Official Records, Supplement No. 23, E/2011/43-E/C.19/2011/14, paras. 34

47 Article 14

48 Consultation must be ‘in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent’

Chapter Three Case Studies

This Chapter presents examples of local initiatives in Colombia, the Mekong river basin, the Democratic Republic of the Congo (DRC), Mozambique and Peru. They focus on empowering communities to peacefully manage water, land and food through legal empowerment and peacebuilding initiatives such as capacity building, dialogue and conflict resolution training. Many of them are supported and strengthened by national and international law and policy, demonstrating the effectiveness of natural resource management (NRM) that works across different levels of governance.

CASE STUDY ONE *Empowering communities through capacity building: Conversatorios of Citizen Action (CACs) in Colombia*

Conversatorios of Citizen Action (CACs) empower local communities to participate in NRM, working particularly with marginalised and vulnerable groups such as women⁴⁹. The CAC methodology consists of three phases; preparation, negotiation and follow-up.

During the preparatory stage, stakeholder capacity and interest is strengthened through workshops and other activities that aim to: increase understanding of environmental issues; raise awareness of legal rights; help participants to identify, analyse and resolve conflicts; and develop communication skills for formulating questions and arguments when speaking in public. Negotiation is then carried out through a formal Conversatorio or meeting, where government, institutional and private sector representatives come together with members of the public to discuss and make formal commitments for NRM. Follow-up committees are responsible for ensuring that these commitments are fulfilled.

CACs were first developed in Colombia by Asociación del Deporte Solidario (ASDES) and World Wide Fund for Nature (WWF) in response to the provisions for public participation in the 1991 Colombian Constitution. Between 2005 and 2007 the CAC methodology led to 76 commitments to improve social welfare and resource management⁵⁰.

49 Candelo, Carmen Reina *What has facilitated women impact and participation in Coello, Tolima (Colombia)?*, WWF Colombia, p. 1
50 Candelo, C., L. Cantillo, J. Gonzalez, A.M. Roldan and N. Johnson (2008) 'Empowering communities to co-manage natural

Good law and policy: National legislation for community participation

The 1991 Colombian constitution redefined public participation in NRM, which had previously been limited to the political and social elite. The Constitution, and subsequent national legislation, set out the right to democratic participation in decision making, public access to decision making spaces and national support for citizen's committees to monitor the use of public resources. However, implementation of this law remained limited due to low capacity among many communities, with commercial, armed and illegal interests continuing to have a high level of influence⁵¹.

The provisions made in the Constitution reflect Colombia's international obligations, as the government has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ILO Convention 169 and endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2009. The government has ratified the Convention on Biological Diversity (CBD) but not its 2010 Nagoya Protocol (see Chapter Two).

resources: impacts of the Conversatorio de Acción Ciudadana', *Fighting Poverty Through Sustainable Water Use*, Volumes I, II, III, IV, CGIAR Challenge Programme on Water and Food, p. 204
51 Córdoba, D. and D. White (2011) *Citizen Participation in Managing Water: Do Conversatorios generate collective action?* CGIAR Challenge Programme on Water and Food, Colombo, Sri Lanka p. 6, 7

Good implementation: Empowering women through CACs in Nariño

A CAC in Nariño on the south western coast of Colombia aimed to strengthen community mangrove management, focusing particularly on including vulnerable groups in decision making. Piangueros (mangrove mollusc hunters) tend to be among the poorest and most marginalised community members, with little input into mangrove management despite their dependence on the mangroves for their livelihoods. 78% of piangueros in the area are women, which can worsen their exclusion from decision making processes. Training workshops during a three-year preparatory phase helped to build confidence and improve communication skills among these women⁵². The workshops were carefully tailored to the audience, using verbal communication because of a strong tradition of oral communication and low literacy levels among participants⁵³.

Impact

During the Conversatorio meeting, female pianguero workers became the first women from their communities to speak publicly in a decision making process. The majority of these women reported feeling more able to stand up for their rights and articulate their needs after the CAC. Many said they were able to apply the skills they had learnt to other areas of their life, with some going on to study and take out small loans to improve their livelihoods. Some of the poorest and most marginalised female piangueros came to be perceived by many as legitimate community leaders. However, some women were prevented

52 Beardon, H. (2008) *Building hope from chaos: culture, politics and the protection of the Colombian pacific mangroves*, WWF Bogota, Colombia, p. 25, 19
53 Roldan, A.M. (2008) *A Collective Action to Recognise Commons and to Adopt Policies at Multiple Government Levels*, WWF Colombia, p. 10

from attending training workshops because of needing to work long hours and look after their children⁵⁴.

The CAC also helped change attitudes between the communities and institutions involved. Community members said they had more confidence in dealing with institutions, while also perceiving them to be more transparent. Private and public sector institutions reported seeing community groups as constructive partners where they had previously perceived them as 'hostile and uninformed'⁵⁵.

The Nariño CAC demonstrates how the Conversatorio process can enable positive social change; a CAC's long-term commitment to building capacity among vulnerable groups - often over a period of several years - can result in wider attitudinal shifts, contributing towards more equitable and effective resource management⁵⁶.

“Some of the poorest and most marginalised female piangueros came to be perceived by many as legitimate community leaders”

54 Beardon, H (2008) ... cited in footnote 52. p. 22 - 25
55 Candelo, C. et al (2008) ... cited in footnote 50. p. 204
56 Johnson, N, J. Garcia, J.E. Rubiano, M. Quintero, R.D. Estrada, E. Mwangi, A. Morena, A. Peralta and S. Granados (2009) 'Water and Poverty in Two Colombian Watersheds', *Water Alternatives*, Vol. 2 No. 1, p. 50

CASE STUDY TWO *Negotiating community resource rights: Biocultural Community Protocols in Peru*

Biocultural Community Protocols are an instrument used by communities to agree and set out how they own, use and manage natural resources. Biocultural Community Protocols have two main elements. The first is a tool for dialogue, helping to bring together groups within and between communities. The second is an expression of customary rights, rules and responsibilities around natural resources and their relationship with national and international policy. A Biocultural Community Protocol can set out the process necessary to obtain FPIC within a certain community, and so be used to shape external dialogue with higher level policy, and investors and other outside groups⁵⁷.

Good law and policy: National ratification of international frameworks by Peru

The Convention on Biological Diversity (CBD) and the FAO International Treaty urge States to fully recognise and engage with customary practices of local communities around natural resources, in particular genetic resources used for food and agriculture. Article 12 of the CBD's 2010 Nagoya Protocol recognises Community Protocols in the context of traditional knowledge and genetic resources. Biocultural Community Protocols therefore provide an opportunity for communities to constructively engage with national legal frameworks as national governments work to ensure their CBD commitments⁵⁸.

Peru has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ILO Convention 169 and endorsed the UN Declaration on the Rights of Indigenous Peoples. All of these affirm the requirement to obtain Free Prior and Informed Consent (FPIC) for projects

that will impact Indigenous and local communities (see Chapter Two). The government has ratified the CBD but not its 2010 Nagoya Protocol. However, Peru's national policy framework supports FPIC as a requirement to access communities' knowledge around seeds for food and agriculture⁵⁹.

Good Implementation: A BCP in the Potato Park, Peru

A Biocultural Community Protocol in the Potato Park in the Cusco Region of Peru represents an intercommunity agreement around the use of agricultural biodiversity⁶⁰. The intercommunity biocultural protocol was developed over 15 months among the six Quechua communities (approximately 6000 residents overall) that make up the Potato Park⁶¹. The Park covers around 9,000 hectares and is governed by the Association of Communities of the Potato Park, preserving over 1,000 varieties of potato and acting as a genetic reserve within the region. The drafting process for the Biocultural Community Protocol was supported by two NGOs - ANDES and IIED - who trained 14 Indigenous researchers (seven male and seven female) chosen by the six community assemblies for their leadership skills and knowledge relating to customary laws and practices.

The in-depth drafting was led by the community, taking place over two to three years. The first draft

59 Republic of Peru 'Law No. 27811 of 24 July 2002 introducing a Protection Regime for the Collective Knowledge of Indigenous Peoples Derived from Biological Resources', article 6
60 ANDES (Peru), the Potato Park Communities and IIED (2011) *Community Biocultural Protocols: Building Mechanisms for Access and Benefit Sharing among the Communities of the Potato Park based on Customary Quechua Norms*, Series 'Protecting Community Rights over Traditional Knowledge: Implications of customary laws and practices', ANDES (Peru), the Potato Park Communities and IIED

61 Argumedo, A. (2012) Decolonising action-research: the Potato Park biocultural protocol for benefit-sharing, chapter 7 in Swiderska, K. et al (2012) *Biodiversity and culture: exploring community protocols, rights and consent*, Participatory Learning and Action 65, International Institute for Environment and Development (IIED), London

was produced through thematic working groups, study groups and mapping exercises which focused on Quechua principles, including willingness, exchange of labour and mutual assistance⁶². Participation was then broadened out to 30 consultation groups who met four times a month to produce the second draft of the Protocol. After this, the draft was brought to women and youth groups, elders, shamans, micro-enterprises and the Board of Directors of the Association of Communities of the Potato Park. The Protocol was presented, discussed, voted on and approved in each of the community assemblies.

Impact

The Biocultural Community Protocol articulates customary laws and practices concerning traditional resources, including rules governing reciprocity, knowledge sharing and seed exchange.

These responsibilities help keep poorer social

groups' food and nutrition secure⁶³. The Protocol guides how the benefits from natural resources are shared among the Quechua communities, including the income from and repatriation of seeds and genetic resources. The Protocol also sets out conflict resolution mechanisms in keeping with Quechua traditions.

The Potato Park intercommunity biocultural protocol is recognised by the Cusco regional government, but Biocultural Community Protocols in general can be limited by a lack of recognition at higher policy level. The Potato Park example demonstrates the value of a Biocultural Community Protocol both as an end product and as a process. The Protocol is now seen as a foundation for equitable natural resource management and a way to continue collective decision making, good governance and effective conflict resolution among the six Quechua communities involved⁶⁴.

63 ANDES (Peru), the Potato Park Communities and IIED (2011) ... cited in footnote 63
64 Above footnote, p. 19

62 Above footnote



Participatory mapping with members of the Potato Park communities
photo credit: Asociación ANDES

57 Shrumm, H. and H. Jonas (ed)(2012) *Biocultural Community Protocols: A Toolkit for Community Facilitators*, Natural Justice: Cape Town

58 Above footnote, p. 16

CASE STUDY THREE *Increasing dialogue around dam developments: Multi-Stakeholder Platforms in the Mekong river basin*

Multi-Stakeholder Platforms bring different groups together for dialogue and decision making around resource management. They range in scale from the international to local levels; some bring together national governments with actors from civil society and the private sector while others focus on opening dialogue within or between communities. This case study demonstrates how Multi-Stakeholder Platforms can help to increase participation in decision making around dam constructions. By bringing different stakeholder groups together at a national and regional scale, Platforms in the Mekong region have helped to improve dialogue between dam developers and other stakeholders, demonstrating how they could be used to shape outside investments in water and land.

Good law and policy: International frameworks for community participation

Several international legal frameworks set out requirements for community consultation, Free, Prior and Informed Consent (FPIC), and public participation in decision making, including the ICESCR, UNDRIP and ILO Convention 169 (see chapter two). Cambodia, Laos, Thailand and Vietnam have all ratified the ICESCR and endorsed UNDRIP; however, none are parties to ILO Convention 169.

In addition, the World Commission on Dams (WCD) sets out specific requirements for community participation in dam planning. It outlines participatory decision making and accountability as core values for dam developments, and recommends developments be guided by FPIC when projects have the potential to impact

Indigenous and tribal peoples⁶⁵. Integrated Water Resource Management (IWRM) sets out a coordinated approach to water and land management through cooperation between the local, national, regional and international levels⁶⁶. IWRM aims to bring in multiple voices to decision making, where '[the] diversity of perceptions ... is hoped to hold the key to more integrated and sustainable outcomes'⁶⁷.

Good Implementation: Multi-Stakeholder Platforms for dam decision making in the Mekong

Multi-Stakeholder Platforms have been developed in the Mekong by the CGIAR Challenge Programme on Water and Food (CPWF) to diversify participation in decision making around dam constructions, as projects can often be agreed in back-room discussions between government representatives and dam developers. Five target groups were identified to participate in the platforms: dam developers; governments and international organisations; NGOs and civil society; research organisations; and dam financiers. Due to minimal communication and high levels of suspicion between these groups, CPWF first engaged with each group separately to build trust before initiating a cross-sectorial dialogue. The Hydropower

65 McGee, B. (2010) Participation with a Punch: Community Referenda on Dam Projects and the Right to Free, Prior, and Informed Consent to Development, *Water Alternatives*, Vol. 3 No. 2, p. 162-164

66 Warner, J. (2005) Multi-Stakeholder Platforms: Integrating Society in Water Resource Management? *Ambiente & Sociedad*, Vol. 8 No. 2, p. 1; For more information on IWRM see chapter two.

67 World Commission on Dams (2001) The Report of the World Commission on Dams: Executive Summary, *American University International Law Review*, Vol. 16, No. 6, p. 1435-1452



District consultation in the Mekong region
photo credit: Challenge Program on Water and Food

Sustainability Assessment Protocols developed by the International Hydropower Association provided a tool for initiating engagement with these groups by making hydropower management and sustainability more of a priority.

Different 'languages', such as technical or political, were used with each group to increase understanding and interest. These groups were then brought together for dialogue at national and regional levels.

While the Platforms provide a space for different actors to engage with dam planning, facilitating community engagement has been more difficult. Decision makers tend to have a negative attitude towards engaging with local communities, perceiving dialogue with poor people to be

uncomfortable and potentially threatening to their position, while many community groups lack the confidence to participate. While Farmer Water User Groups, Fisher Cooperatives and local NGOs have to some extent been brought into the dialogue, bridging the gap between local civil society groups and local communities has been challenging. However, Multi-Stakeholder Platforms in the Mekong do demonstrate how participation in dam planning can be broadened beyond high-level representation, and could in the future help to bridge the gap between local communities and decision making processes⁶⁸.

68 Information from interview with Kim Geheb, CPWF-Mekong Basin Leader, CGIAR Challenge Programme on Water and Food, April 2013

CASE STUDY FOUR *Legal empowerment in Mozambique*

Another element of peacebuilding in the context of natural resources is legal empowerment, especially among groups vulnerable to losing their access to water, land and food. Empowering local groups by helping them understand and use their legal rights can create significant improvements in access to water and food, helping to prevent destructive conflict. A training programme in Mozambique illustrates a legal empowerment approach that addresses the lack of knowledge among rural communities of their legal rights to land and natural resources.

Good law and policy: Mozambique's National Land Law

The Mozambique Land Law was adopted in 1997 after a long process of negotiation. It aimed to incorporate customary land access and management systems into the national legal framework. The law provides guidance for managing the relationship between local farming communities, their land and production systems, and new investors wanting access to land and natural resources. In terms of international obligations, Mozambique has endorsed UNDRIP but has not ratified ICESCR or ILO Convention 169 (see Chapter Two).

Good implementation: Legal empowerment by the Centre for Legal and Judicial Training (CFJJ)

It was clear after the adoption of the 1997 Land Law that a lot of progress would be needed for it to be successfully implemented. Investors were applying to lease or buy large areas of land, while bitter disputes among stakeholders were still being reported⁶⁹. Additionally, the consultations carried

out by many new investors were inadequate. One example in Maputo province involved a 500 hectare agricultural investment where the investor visited with 'two friends' to talk to the community leader who said they should come back to talk to the whole community. Apparently the signatures of the 'local inhabitants' later appeared on the required document, but the local community deny that a consultation ever took place⁷⁰. A Centre for Legal and Judicial Training (CFJJ)/ Food and Agriculture Organization (FAO) study of natural resource conflicts showed that locals often did not know how to use their community rights during consultations and rarely had access to justice or judicial processes to resolve conflicts⁷¹. Public agencies often sided with land-applicants and failed to correctly apply the community rights provided in national law⁷².

“ Empowering local groups by helping them to understand and use their legal rights can create significant improvements in access to water and food ”

Since 2001, the CFJJ has provided training for paralegals to build practical support, legal advice and education around land and natural resources for civilians at a community level. Paralegal training includes one week of classroom training, one week of field work, and interactive assessments. Paralegals then work with local communities to give practical legal advice on the Land Law and explain

70 FAO, C. Tanner, S. Baleira, C. Chichava and C. Pedro (2006) *Mozambique's legal framework for access to natural resources: Impact of new legal rights and community consultations on local livelihoods*, Livelihood Support Programme (LSP) Working Paper No. 28, p. 16

71 Cotula, L. and P. Mathieu, (eds)(2008), *Legal Empowerment in Practice: Using Legal Tools to Secure Local Land Rights in Africa*, UN Food and Agriculture Organization (FAO) and International Institute for Environment and Development (IIED), p. 64

72 FAO, Tanner et al (2006) ... cited in footnote 70. p. 2

what judges and prosecutors can do to defend local rights. They are trained in community consultation, the equality of women's rights in formal law and strategies for dealing with conflict, from mediation to court processes.

Alongside paralegal training, the CFJJ also runs seminars for district level officers including administrators, judges, public prosecutors, police chiefs and directors of economic affairs⁷³. These seminars reinforce community work by bringing together district officers in areas where conflicts over resources are likely and where new land investments are planned. They are educated in what the law actually says, how to implement it, what practices are legal and illegal and what they can do when approached by citizens about a specific conflict.

Impacts

By 2007 152 paralegals had been trained and 77 district officers had participated in seminars⁷⁴. In areas where the Land Law is understood well by both investors and local people there has been a clear social and human development impact, with visible differences in how people view their rights to their land and natural resources and the relationship between locals and outsiders⁷⁵. Paralegals have played an important role in linking citizens with the agencies that provide legal support, especially in rural areas. This legal empowerment work does not happen quickly, but the CFJJ projects have fostered changing attitudes amongst district officials towards rural farming communities as well as community perceptions about what the law can achieve.

73 Cotula, L. and P. Mathieu, (eds)(2008) ... cited in footnote 71. p. 64

74 Cotula, L., and P. Mathieu, (eds)(2008) ... cited in footnote 71. p. 66

75 Tanner, C. (2002) ... cited in footnote 70. p. 49

69 Tanner, C. (2002) 'Law-Making in an African Context: The 1997 Mozambican Land Law', *FAO Legal Papers Online No. 26*, UN Food and Agriculture Organization (FAO) p. 35

CASE STUDY FIVE *Managing natural resources in post-conflict peacebuilding: Land mediation centres in the Democratic Republic of Congo (DRC)*

The return of internally displaced persons (IDPs) and refugees in Democratic Republic of Congo (DRC), as outlined in the Goma Peace Agreement, has fuelled tensions around ownership of, and access to, natural resources. Land mediation centres have been set up in Kitchanga, Ituri and Kiwanja in Eastern DRC by UN-Habitat to help resolve land disputes. Returning IDPs and refugees can have stronger rights than host communities, particularly when local land rights are based on customary laws that are not sufficiently recognised by the State⁷⁶. Increasing numbers of State-given land concessions in areas primarily governed by customary tenure have also created land disputes⁷⁷. This case demonstrates the important role that water and land management can play in post-conflict settings.

Good law and policy: Incorporating community rights into national land law

Despite criticism that the 1973 DRC Land Tenure Law does not outline a formal role for customary institutions and has led to State control of land, it does provide legislation for community participation in land concessions. Section 5 of the Land Law obligates the State to carry out community consultations before giving a land concession, requiring them to identify whether the requested land is being used and whether there are local objections⁷⁸. However, awareness of this Law in rural areas remains low, making it difficult for local communities to claim their rights in cases of land concessions.

76 De Wit, Paul V. (2012) *Land Conflict Prevention and Mitigation Program Eastern Democratic Republic of Congo: Program Evaluation*, UN-Habitat, p. 2, 20

77 UN-Habitat *Focus on Land: Addressing land in the peacebuilding perspective*, UN-Habitat, p. 1

78 De Wit, P (2012) ... cited in footnote 76. p. 19-20

Good Implementation: Land mediation and legal training

The mediation centres in Kitchanga, Ituri and Kiwanja provide mediation services to peacefully address competing land claims. They also serve as local access points for information on land law, rights and disputes⁷⁹. The centres run training workshops to strengthen skills for conflict resolution, targeting groups such as returning displaced persons and those affected by land concessions. The workshops provide information on land issues, approaches to mediation and how to register grievances and disputes, as well as offering potential ways to resolve conflicts⁸⁰. The programme has also trained 300 customary authorities, 200 local authorities, and judiciary representatives on Alternative Dispute Resolution (ADR) methods⁸¹.

In the Ituri centre local people are identified by local authorities and customary leaders and trained as mediators. This is important for the effectiveness of the program, as mediators who are rooted within local communities and chosen by local representatives tend to be in a better position to resolve local conflicts⁸².

“ Mediators who are rooted within local communities tend to be in a better position to resolve local conflicts ”

79 UN-Habitat ... cited in footnote 77. p. 2, 3

80 De Wit, P (2012) ... cited in footnote 80. p. 12

81 Above footnote, p. 17

82 Above footnote, p. 30-34

“ Women face cultural barriers to engaging with land debates, a problem exacerbated by the continued presence of male-dominated militias and violence against women ”

The mediation centres have, however, found it difficult to reach women. Women face cultural barriers to engaging with land debates, a problem exacerbated by the continued presence of male-dominated militias and violence against women⁸³. There has been some engagement by women; two of seven local mediators at the Kitchanga centre are female, while 17% of conflicts registered at the Kitchanga centre were reported by women. Yet women struggle to participate in training workshops, particularly those that span several days and require them to stay in a different town or village away from home. There is even evidence that their travelling away from home has led to domestic violence in some cases. It is possible that mediators could play a greater role in bridging the gap between local land authorities and women, or that gender balanced mediation teams could help to include women in debates over land ownership⁸⁴.



A land mediation centre in eastern-DRC
photo credit: UN-HABITAT

83 Above footnote, p.13

84 Above footnote, p. 31, 48

Conclusions and Lessons Learned

Developing natural resource management (NRM) that is effective, equitable and peaceful is not a new concept. Much has been researched and tried in this area, but much still remains to be done. While challenges around NRM have been faced throughout history, climate change lends a new urgency, adding to a number of factors that could make destructive conflict around natural resources more likely now and in the future.

By improving governance at national, local and community levels, and strengthening the links between these levels, States, other decision makers and practitioners can create the conditions needed to prevent destructive conflict around water, land and food. Given that climate change will cause more frequent and extreme periods of resource scarcity and variability, States and societies will have to find ways to respond in ways that do not further exacerbate social, economic and political tensions that may lead to destructive conflict. This must become a priority for all States.

Prevention of destructive conflict around natural resources, including escalation to violence, can be understood as a process of peacebuilding - creating the personal and institutional capacities needed to handle conflict constructively and addressing the root causes that lead to destructive conflict such as inequality and marginalisation. Here we use the term peacebuilding to indicate a positive approach that builds on capacities and assets in individuals, societies and systems. There is a wealth of knowledge and experience available from peacebuilding practitioners at local, national and international levels that can be applied in the context of managing natural resources.

Community involvement in decision making around natural resources is key to building peaceful, equitable and effective management. To make this involvement possible, the power dynamics between local communities and higher level decision makers, as well as the dynamics between and within communities, need to be recognised

and addressed. Peacebuilding approaches such as locally led conflict analysis, creation of dialogue between groups with competing interests, and empowerment of vulnerable groups, can help stakeholders to understand and deal with resource conflict and underlying tensions. Creating the capacity and institutions needed to handle resource conflict constructively will therefore help to reduce the likelihood of violence.

'Policy responses should recognise and empower local stakeholders to become more effective in assessing their own needs, negotiating with other resource users, understanding and interpreting technical assessments of resource quality, and implementing consensus solutions. In short, much progress can be made in conflict management through policy responses that improve governance at the local level.'⁸⁵

Both States and societies can make use of what is already available at the international level in terms of 'hard' and 'soft' law relating to natural resource management. These frameworks can help to inform national responses to natural resource management, and States that have had positive experiences of implementing them can provide valuable examples of how to translate these frameworks into nationally relevant law and policy. They can also be used to raise awareness of rights and good practices among local communities, helping them to engage constructively with other stakeholders. For NGOs and other civil society groups, they provide a platform for initiating dialogue across sectors and levels, particularly when high level decision makers need to be involved.

These frameworks can only be useful tools when the links between policy and practice are strengthened from the bottom up as well as the top down. Good practices developed at the local level can help to

⁸⁵ Tyler, Stephen R. (1999) 'Policy implications of natural resource conflict management', chapter 14 in Daniel Buckles (ed) (1999) *Cultivating Peace: collaboration and conflict in natural resource management*, World Bank, Washington and IDRC, Canada

inform good national and international policy, ensuring that it supports and builds on local needs and knowledge.

No one benefits from destructive conflict over natural resources - local groups can lose their access to water, land and food, while outside investors and government representatives have to deal with increasingly unstable contexts. Addressing resource conflict constructively not only helps to prevent violence but can also facilitate wider social change, building sustainable peace by bridging divides and changing attitudes between groups.

Lessons Learned

From the good practices outlined in the case studies, we have drawn the following lessons:

States should make use of the international legal frameworks available. Many 'soft' and 'hard' law instruments offer opportunities for States to share information, resources and recommendations, such as the UNECE Aarhus Convention⁸⁶ and the Convention on Biological Diversity. Others provide opportunities to receive capacity building and technical assistance from UN agencies, such as the CFS Voluntary Guidelines on Responsible Governance of Tenure and ILO Convention No. 169. Other UN mandates are supported by a Working Group that visits countries on request, such as the UN agenda on Business and Human Rights. These mechanisms are available for States and should be used fully.

An inclusive approach to natural resource management requires capacity building at various levels, with the consequent financial and time investment that this implies. Capacity building should not be seen as limited to local communities, although it is essential for local groups to gain confidence through

⁸⁶ The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters has around 50 European and Central Asian parties but is open to accession by non-UNECE countries subject to approval by the Meeting of the Parties.

developing conflict analysis, conflict handling, communication and negotiation skills. Officials, too, require capacity building to develop new skills associated with facilitation, exploration and planning, rather than implementation of pre-conceived directives. These skills are central to the shift towards participatory natural resource management and adequate conflict management; it is clear that '[this] change is not a minor retooling; it involves a fundamental paradigm shift'⁸⁷. The UN and the EU have collaborated to produce a useful toolkit, guidance and online training for preventing and managing land and natural resource conflicts⁸⁸.

Improved dialogue between civil society groups, private sector actors, national policy makers and other State employees is essential. Improved dialogue helps participants better understand their own and each other's positions, and adopt a more constructive approach to tackling conflicts in a way that benefits all. Multi-Stakeholder Platforms, such as those introduced by CPWF in the Mekong region, provide an example of this, contributing to the long term attitudinal changes that are necessary to ensure inclusion.

Ongoing efforts to bring in excluded groups are essential for good policy and practice around natural resources. In many cases it is not easy to reach all community groups, particularly the most marginalised. Often the groups that are being excluded only become apparent later during the course of a project or initiative: more creative project planning can build in the flexibility needed to respond and adapt to these needs⁸⁹. The Conversatorios of Citizen Action in

⁸⁷ Tyler, Stephen R. (1999) ... cited in footnote 85. p.8

⁸⁸ UN-EU Toolkit and Guidance for Preventing and Managing Land And Natural Resources Conflict, Capacity Inventory contains information, methods and toolkits relating to natural resources and conflict management www.un.org/en/events/environmentconflictday/pdf/GN_Capacity_Inventory.pdf. UN-EU on-line training programme on land, natural resources and conflict at <http://www.unssc.org/home/line-training-programme-land-natural-resources-and-conflict>

⁸⁹ For a useful resource, targeted for humanitarian contexts, see the IASC's (Inter-Agency Standing Committee) Commitments on Accountability to Affected Populations (CAAPs), December 2011, accessed at: www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-subsidi-common-default&sb=89

south west Colombia demonstrated how working with vulnerable groups, who had not previously been part of decision making around natural resources, helped them to identify, analyse and resolve conflicts, develop communication skills, and to use their knowledge of their natural resource rights to be competent partners in natural resource management.

Raising awareness of legal rights and responsibilities among communities, government representatives and private sector representatives leads to more legitimate and peaceful NRM. Legal education and empowerment may have significant financial costs, but these are outweighed by the long term benefits. When rights and responsibilities are known and understood by all parties, resource management will be clearer and more legitimate. Raising awareness of rights can also help local groups to engage and negotiate more constructively with higher level decision makers and outside investors, as true partners. National initiatives - such as Mozambique's paralegal training scheme - can make a significant contribution to improving local understanding of national land laws and the rights and responsibilities of different groups. More targeted efforts by governments to improve communication about natural resource decisions and policies is a prerequisite for meaningful public participation in decision making.

National support for community articulations of customary use and ownership of natural resources can provide a basis for dialogue between groups as well as help gain national recognition of customary law and practice. Community articulations can also be a way to tap into local knowledge and make policy more appropriate and effective. Such articulations - such as the Biocultural Community Protocol in Peru's Cusco region - can provide communities with an opportunity to become recognised by the government as legitimate custodians of natural resources. This recognition can also help outside investors to be aware of how natural resources are being used and managed by local communities, which is a crucial step in developing conflict sensitive investment plans.

Peacebuilding approaches in post-conflict settings must prioritise natural resources.

Natural resources may have been a contributing cause of the conflict, a means to fuel the conflict or directly affected by the conflict. In all cases, how they are managed helps determine whether destructive conflict simmers with the danger of re-erupting into violence. This paper has not dealt in detail with post-conflict settings but the example from the Democratic Republic of Congo illustrates that peacebuilding approaches in post-conflict settings must prioritise natural resources, from peace agreements to recovery and development of the society and economy. The UN Environment Programme (UNEP) has coordinated useful analyses on post-conflict peacebuilding and natural resource management, including management of land and water⁹⁰.

Developing natural resource management that is equitable, sustainable and peaceful requires long term engagement from all parties. Creating and implementing effective policies to prevent natural resource conflicts requires sustained commitment and investment. However, the costs of failure are even higher. Nearly all the good practices explored in this paper have shown the years of preparatory work needed to build the trust, and find the language, needed to engage across the different levels and groups involved. The attitudinal changes within and between groups necessary to improve natural resource management take place over a long period of time, particularly when there are existing tensions around water, land and food. It will be a learning process; adaptive policy and practice that incorporate ongoing reflection and evaluation will be more effective in helping to prevent destructive conflict over natural resources.

⁹⁰ Unruh, J. And R. Williams (eds)(2013) *Land and Post-Conflict Peacebuilding*, and Troell, J. and E. Weinthal (eds)(2013) *Water and Post-Conflict Peacebuilding*, projects of the Environmental Law Institute (ELI), United Nations Environment Programme (UNEP), the University of Tokyo and McGill University. Earthscan, London

ANNEXE

International legal frameworks relevant to natural resource management and prevention of destructive conflict

*An expansion of the legal instruments considered in Chapter Two**

| International Environmental Law | | |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SOURCE | CONTEXT | MAIN POINTS |
| 1992 Rio Declaration on Environment and Development | Adopted at the 1992 UN Rio Conference on Environment and Development | Principle 10 recognises that environmental issues are best handled with the participation of all concerned citizens, with appropriate access to information and the opportunity to participate in decision making processes. Principle 20 and 22 explicitly highlight the vital role of women and Indigenous peoples in environmental management, calling governments to support their full participation in decision making. |
| 1992 Dublin Principles | Adopted at the 1992 UN Rio Conference on Environment and Development | Recognises the principles of Integrated Water Resources Management (IWRM), and participatory approaches that involve users, planners and policy makers at all levels (Principle 2 and 3). |
| 1992 Convention on Biological Diversity (CBD) | Adopted at the 1992 UN Rio Conference on Environment and Development | The Convention aims to achieve fair, equitable and sustainable use of biodiversity, recognising the interdependence of biodiversity, culture and traditional knowledge. Article 8(j) calls on governments to 'respect, preserve and maintain Indigenous Peoples' and local communities' knowledges, innovations and practices' for the conservation and sustainable use of biological diversity. |
| 2010 Nagoya Protocol on Access to Genetic Resources and Benefit Sharing | Adopted by the Conference of the Parties to the CBD | Urges States to recognise community knowledge around genetic resources, including for food and agriculture. Article 12 notes that States should consider 'customary laws, community protocols and procedures' with respect to traditional knowledge associated with genetic resources. |
| 2001 FAO International Treaty on Plant Genetic Resources for Food and Agriculture | Adopted at the 2001 Conference of the UN Food and Agriculture Organization (FAO) | Its goal is the conservation and sustainable use of plant genetic resources. Article 9 provides for farmers rights, recognising the contribution Indigenous peoples and local communities have made to the preservation and maintenance of agricultural biodiversity. |

* We aim to highlight some of the instruments relevant to considering prevention of destructive conflict around natural resources. It is not intended to be an exhaustive list.

| SOURCE | CONTEXT | MAIN POINTS |
|-----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Reducing Emissions from Deforestation and Degradation (REDD+) | Initiative within UN Framework Convention on Climate Change (UNFCCC) | In 2010 safeguards were agreed under REDD+ urging States to respect the knowledge and rights of Indigenous peoples and members of local communities. In January 2013 the UN-REDD Programme launched Guidelines on FPIC, outlining a policy framework for seeking and obtaining FPIC in the context of REDD+ |
| 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters | Adopted by the UN Economic Commission for Europe (UNECE) | Sets out national obligations on access to information, public participation in decision making and access to justice in environmental matters. Governments shall assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.' (article 3). They should also provide information on the potential impact of proposed activities and alternatives, informing the public in an adequate, timely and effective manner and clearly communicating the opportunities for engagement in decision making with reasonable timeframes for input (article 6). The State also has a duty to provide a review mechanism for the settlement of grievances by a legal court or independent body (article 9). |
| 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries | World Committee on Food Security, hosted by the UN FAO, the International Fund for Agricultural Development (IFAD) and the UN World Food Programme (WFP) | States are urged to recognise, respect and protect the customary land, forest and fishery rights of Indigenous peoples and other communities (article 8). States should establish 'safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law' (article 7). In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights. States should also provide access to justice when people believe their tenure rights are not recognised, through timely, affordable and effective of resolving disputes by a competent and impartial body (article 21) |

International Human Rights Law

| SOURCE | CONTEXT | MAIN POINTS |
|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| UN Committee on Economic, Social and Cultural Rights General Comment No. 21 (2009) on the Right of everyone to take part in cultural life | The monitoring body for the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by UN General Assembly in 1966 | Considers Indigenous peoples as a particularly vulnerable group in relation to natural resources. It affirms the need for States to respect FPIC of Indigenous peoples and requires States to 'take measures to recognise and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources.' |

| SOURCE | CONTEXT | MAIN POINTS |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2011 UN Guiding Principles on Business and Human Rights | Adopted by the UN Human Rights Council in 2011 | Article 1 calls for States to protect against human rights abuse by third parties, including business enterprises. Article 11 provides that businesses have an obligation to respect human rights of others and address adverse human rights impacts with which they are involved. This involves meaningful consultation with potentially affected groups and other relevant stakeholders, as well as continued feedback and monitoring (article 18 and 20). |
| Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations | Presented by UN Special Representative on human rights and transnational corporations and other business enterprises, John Ruggie, May 2011 | Principle 7 provides guidelines for community engagement in contract negotiations between governments and businesses. Principle 9 states grievance mechanisms should be accessible to all affected groups. |
| 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) | Adopted by the UN General Assembly in 2007 | Article 3 recognises the right of Indigenous peoples to self determination. Articles 18, 19, 29 and 32 call States to consult and cooperate with Indigenous peoples to obtain their FPIC before adopting and implementing measures that may affect them, particularly with respect to projects involving the development, use or exploitation of natural resources. Article 11 and 28 call States to provide effective mechanisms for redress developed in conjunction with Indigenous peoples, when their lands, territories and resources have been confiscated, taken, occupied, used or damaged without their FPIC. |
| 1989 ILO Convention No. 169 on Indigenous and Tribal Peoples | International Labour Organization (ILO) | Article 14 states 'Indigenous ownership over lands they traditionally occupy shall be recognised', including land used for subsistence and traditional activities, such as by nomadic peoples and shifting cultivators. Article 6 requires governments to consult - in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent - with Indigenous communities concerned when giving consideration to measures that may affect them directly. Article 15 states 'The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.' |
| Hyogo Framework for Action: Building the Resilience of Nations and Communities to Disasters | The 2005 World Conference on Disaster Reduction (A/CONF.206/6) | The Hyogo Framework looks at prioritising disaster risk reduction to build resilience to disasters, including climate variability and climate change. Priorities for action include education and training in risk assessment and disaster preparedness and reducing the underlying risk factors. This includes the encouragement of sustainable use and management of ecosystems to reduce risk and vulnerabilities (para. 19(a)). |



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Building Peace around water, land and food: Policy and practice for preventing conflict

Water and land are two of the key natural resources that shape billions of people's livelihoods, food security, wellbeing and identity. While challenges around governing natural resources have been faced throughout history, climate change now lends an additional urgency to the need to develop appropriate policy and practice in order to prevent destructive conflict around water, land and food.

This paper looks at some of the elements of peaceful and equitable natural resource management, focusing particularly on the need to strengthen peacebuilding skills among actors at all levels. It explores the international laws and guidelines that can help to prevent destructive conflict around water, land and food by promoting good approaches to natural resource management. It further presents initiatives that have implemented such approaches, drawing lessons from their experiences.

Suggested citation: Ellie Roberts and Lynn Finnegan (2013) *Building Peace around water, land and food: Policy and practice for preventing conflict*, Quaker United Nations Office, Geneva.