A brief guide to human rights in conservation

- Most major conservation organisations are committed to respecting human rights, and all can be legitimately held responsible for doing so.

- Conservation aims are commonly achieved by means of area-based conservation (e.g. protected areas) and restrictions on access and use of resources (e.g. hunting laws, forestry laws).

- Both kinds of conservation may conflict with the human rights of indigenous peoples and other communities who have traditionally used the same lands and resources => human rights risks.

- Indigenous peoples and many other rural customary landholders will be dependant on secure use and access to lands and resources for the very survival of their way of life and culture, which in international law gives rise to a right of property over customary lands and FPIC (though often not well implemented in national law and practice).
Balancing rights and conservation interests

• There may be circumstances occasions when the enjoyment of rights can be *legally* restricted – but only if the restriction is *necessary*, *proportionate* to a *legitimate public interest* in a democratic society, and *in accordance with the law*

• Conservation is of course a legitimate public interest objective

• But, if a conservation programme concerns a new protected area, a restriction on use (e.g. hunting) or access, the impacts on communities must be *only those that are necessary and proportionate* – i.e. the *least* impactful way of achieving the legitimate objective

• This means trying and exhausting the *least* impactful way of achieving conservation before considering the *next least* (and therefore slightly more) impactful way of achieving conservation.
Human rights in conservation

“The wise person builds their house on hard ground, not a swamp”

- New conservation programmes that take place in the context where previous human rights violations continue, put the new conservation programmes and actors at risk of complicity in, or contributing to, those violations unless they take responsibility to move to resolving those violations
  - e.g. a protected area that was created via forced evictions
  - e.g. Hunting or forestry law criminalising traditional use and access by an indigenous people
- FPIC is the key way of finding out about past and continuing violations and how to avoid future human rights violations, and thereby build the solid foundations for long-term success and a ‘win-win’
- Navigating inconsistent laws is important to address
Taking responsibility for direct & indirect risks

“The road to hell is paved with good intentions”

• Good intentions (e.g. protecting wildlife) are not a defence, even if violations are an *unintentional* or *indirect* consequence of projects.

• Hence the need to foresee risks – both *direct risks* (resulting from what the conservation programme does) and *indirect risks* (such as ones that brought about by other stakeholders, e.g. government, elites).

• Indirect risks, even those involving other stakeholders are also the problem and responsibility of conservation actors, because either (1) they would not have happened without the project, or (2) they make FPIC impossible – e.g. coercive, corrupt or criminal behaviour of a chief or local government official.

• Project teams also the need to prepared for *unforeseen events* and take responsibility to intervene and be adaptable and flexible.
Questions to considering when working to respect rights in difficult contexts

• **How** to analyse (*both in advance, and through ongoing monitoring*) whether planned actions may cause or contribute to human rights violations (indirect/direct, intended/unintended)?

• **What** steps need to be taken to prevent, stop or reduce violations? (some of which may require difficult conversations with powerful actors or mediation)

• Where a conservation actor is unable to prevent, stop or reduce violations, **when** may it have to consider pulling out as a last resort, and **how** should that be done in a way that:
  - ensures all other options are exhausted?
  - minimises human rights risks associated with the withdrawal itself?
  - and ensures that withdrawal does not deny communities a remedy for rights violations which the project has caused or contributed to?
Annex 1: On Indigenous Peoples

- **Common usage of ‘indigenous’ separate to its legal meaning**

- **No legal definition of** *indigenous people*, characteristics are:
  1. Self-identification as indigenous
  2. Culture differs considerably from dominant society, and is under threat
  3. Survival of their way of life depends on access and rights to their traditional lands and natural resources.
  4. Suffer from discrimination because regarded as less developed/advanced.
  5. Often live in inaccessible regions and/or geographically isolated.
  6. Marginalised politically and socially – subject to domination and exploitation within national social and political structures.

- **African Commission (Endorois case, Kenya)**

  “the term ‘indigenous’ is also not intended to create a special class of citizens, but rather to address historical and present-day injustices and inequalities.”

- **Legal basis that protections for indigenous peoples extend to other “traditional communities”** with customary ownership of land