



# Forest Peoples Programme

1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK  
tel: +44 (0)1608 652893 fax: +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

Asian Development Bank  
Operations Evaluation Department  
6 ADB Avenue  
Mandaluyong City 1550 Metro  
Manila, Philippines

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## COMMENTS ON THE OED SPECIAL EVALUATION STUDY ON THE INDIGENOUS PEOPLES POLICY

We hereby submit comments on the Operations Evaluation Department of the Asian Development Bank ("the Bank") Special Evaluation Study on Indigenous Peoples' Safeguards. These comments have been consultatively drafted from a range of organizations in Asia Pacific and internationally, and represent our efforts to constructively assist the Bank in the Safeguard Policy Update it is currently undertaking.

We have read with interest the OED Study on Indigenous Peoples' Safeguards commissioned by the Bank. We support and applaud the endorsement given by the Bank to the principle of free, prior and informed consent, and to the Study's acknowledgement that development outcomes are improved if staff are provided guidance on the internationally recognized rights of indigenous peoples, including those set out in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

However, we also have significant concerns with some of the content and conclusions of the Study, in particular the strong emphasis on shifting responsibility for human rights guarantees on to country safeguard systems. We are concerned that some of the results reflected in the staff surveys, on which much of the Study rests, are not accurately reflected in the analysis or conclusions of the Study. Further, we are concerned with the tone of the Study's recommendations, which places emphasis on 'simplification' and 'streamlining' of the existing policies without a concomitant emphasis on retaining or strengthening the existing safeguards.

We would like to address first those sections of the Study that we find helpful and constructive in feeding into the Safeguard Policy Update which the Bank is currently undertaking.

**(i) Endorsement of the principle of free, prior and informed consent**

The Executive Summary of the OED Study unequivocally states that:

...The ADB endorses the principle of free, prior and informed consent for the project from the side of IP [Indigenous Peoples] <sup>1</sup>

Indigenous peoples have long called for explicit recognition of their right to free, prior and informed consent, as provided for in the UN Declaration on the Rights of Indigenous Peoples, and other international legal instruments.<sup>2</sup> We are providing herein (Annex B) a detailed description of current international jurisprudence supporting the need to have the right to free, prior and informed consent of indigenous peoples centrally placed in any development policy aimed at promoting or protecting their interests in development initiatives.<sup>3</sup>

We would like to draw the Bank's attention in particular to the observation of the Committee on the Elimination of Racial Discrimination that indigenous peoples have in the past, and continue to, suffer from discrimination, and 'in particular that they have lost their land and resources to colonists, commercial companies and State enterprises.'<sup>4</sup> In response to this observation, the Committee called upon states-parties to 'ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.'<sup>5</sup>

As an international public finance institution, the ADB is bound not to hinder or weaken the ability of member states to fulfill their human rights obligations. Without a clear guide to operationalizing the principle of free, prior and informed consent, the ADB would be in a position of contributing to member states violation of this foundational principle of indigenous rights. We support the concomitant observation of the Study that "little advice is given to ADB staff and Executing Agencies (EAs) on how to define an acceptable level of consent or how to document or determine it", and are happy to provide additional guidance to the Bank on developing principles for such guidance.<sup>6</sup> We see the current SPU process as an opportunity for this gap to be addressed.

**(ii) The Study affirms that the safeguard outcome from the SPU should be consistent with international law**

The OED Study confirms that the as-yet undetermined outcome of the SPU process should be:

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<sup>1</sup> ADB OED, Special Evaluation Study: Indigenous Peoples Safeguards, SST: REG 2007-01, 2007. p. ix

<sup>2</sup> See, in particular, Articles 10 and 23 of the United Nations Declaration on the Rights of Indigenous Peoples. Full text of the Declaration is provided in Annex A.

<sup>3</sup> Colchester, Marcus and Fergus MacKay, *In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent*, Moreton-in-Marsh, August 2004. Available at: [http://www.forestpeoples.org/documents/law\\_hr/fpic\\_ips\\_aug04\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/fpic_ips_aug04_eng.pdf)

<sup>4</sup> *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4, at para. 3.

<sup>5</sup> *Ibid.*, at para. 4(d).

<sup>6</sup> Special Evaluation Study: Indigenous Peoples Safeguards, p. iv

...consistent with international conventions such as the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples...<sup>7</sup>

Direct referencing of international law correctly situates the policy within the framework of international human rights law in which the ADB and all its member countries sit, and provides both borrower governments and staff with further resources with which to work with indigenous peoples. We welcome ADB's referencing of the some of the appropriate international laws in the OED Study, although we note with concern that comprehensive references to applicable international law are included in neither the existing Policy on Indigenous Peoples nor in the associated Operations Manual. We look forward to seeing the appropriate references in the final outcome document.

Closely related to referencing international laws and standards, is the need for a concurrent commitment not to finance projects or investments which fail to apply applicable legal norms (including norms protecting indigenous rights under international treaties ratified by the Borrower **and** international jurisprudence on indigenous rights).<sup>8</sup> The Inter-American Development Bank is illustrative of a peer institution of the Bank that has codified this commitment in the IDB Operational Policy on Indigenous Peoples, OP-765 and could provide some guidance for the Bank in instituting this no-go criteria.

**(iii) The Study affirms that safeguard procedures are effective in mitigating negative impacts from ADB projects**

The OED Study reveals in the staff surveys undertaken for the review of implementation that the staff of both the Executing Agencies and the staff of the Bank support the safeguard policies and see them as at least partially effective in mitigating harm. The survey of the perceptions of EA staff, shows that only 8% of surveyed staff believe that the safeguard procedures are not effective in mitigating unfavorable impacts in projects.<sup>9</sup>

This is further supported by the findings of the Study that projects approved since the adoption of the policy paid "a great deal of attention to IP issues" but that "some older projects ... got less attention and consequently harmed IP interests".<sup>10</sup> We strongly support the inevitable conclusion that a safeguard framework is necessary and central to the mandate of the ADB to reduce poverty and support sustainable development for the peoples of the Asia Pacific.

Even in its current flawed form, the ADB Policy on Indigenous Peoples has clearly contributed to better development outcomes. We strongly endorse strengthening and improving the safeguard framework to build on these beginnings, with explicit commitment to the principle of free, prior and informed consent, and with appropriate references to applicable international legal instruments.

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We would now like to turn to the areas of the Special Evaluation Study that have caused concern. These comments are intended to constructively assist in the up-coming

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<sup>7</sup> *Ibid.* p. 64

<sup>8</sup> Inter-American Development Bank Operational Policy on Indigenous Peoples, OP-765

<sup>9</sup> Table A14.18, Appendix 14, Special Evaluation Study: Indigenous Peoples Safeguards. p. 105

<sup>10</sup> Special Evaluation Study: Indigenous Peoples Safeguards. p. 61

discussions regarding the re-drafting of the ADB Safeguards. We would like to begin by acknowledging the importance of development processes, and control over development processes, to the lives and futures of indigenous peoples. It must also be accepted and acknowledged that the impact of previous development initiatives have caused irreparable harm to indigenous peoples throughout the world. The United Nations Human Rights Council noted in the preamble to its adoption of the UN Declaration on the Rights of Indigenous Peoples that the Council was:

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.<sup>11</sup>

The importance of self-determined development processes and initiatives to indigenous peoples is underlined again by the fact that the first specialized agency of the UN system to adopt its own policy towards indigenous peoples, to guide its engagement with indigenous peoples, was the United Nations Development Programme. Indeed, the Bank has acknowledged that:

...indigenous peoples often experience disadvantage in interaction with dominant and mainstream populations especially as relates to development. Beyond not benefiting from development nor participating in the planning of development, indigenous peoples can be disadvantaged by of access to ancestral lands and the natural resources and other sources of income contained in these lands; loss of culture, social structures, and institutions; loss of indigenous knowledge; loss of recognition as indigenous peoples; and a lack of opportunities for effective participation in national political and economic processes. Lack of participation in development combined with the loss of access to land and resources have in many cases marginalized indigenous peoples. In some extreme cases, indigenous peoples have suffered physical oppression. In a few cases, indigenous cultures have disintegrated or disappeared.<sup>12</sup>

We see an improved and strengthened policy on indigenous peoples, developed in full consultation with indigenous peoples, as the only appropriate response to both the Bank's observations on the impact of previous development initiatives and the inherent right of indigenous peoples to control the course of their own development, and to exercise full decision making powers over any development initiative that may impact on their lives and territories. It is in this spirit that we offer the following critique of some aspects of the Study.

- 1. Any shift toward reliance on country systems for indigenous peoples must ensure that protections for indigenous peoples are not weakened and a universal standard of international human rights is adhered to by the Bank**

We note with concern the recommendations of the Study conclude that "ADB should recognize that the same approach to IP safeguards is not appropriate for all DMCs" and that the "ADB should recognize country differences". (p. 65). International

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<sup>11</sup> United Nations Declaration on the Rights of Indigenous Peoples, pp. 5

<sup>12</sup> ADB, 1998, *Policy on Indigenous Peoples*. p. 1

standards on recognizing, respecting and upholding human rights are not an 'optional extra' in the formulation of development initiatives and development priorities.

We do not object to the use of country safeguards *should they be stronger than the applicable international standards* however this does not preclude ADB from requiring mandatory minimum standards for the use of ADB's public funds in the region. Further, obligations under human rights law exist regardless of whether a given state has enshrined a given obligation in national law or not. For instance, the right of indigenous peoples to control over their customary lands and resources is an inherent right – in other words, it is not a right that depends on a grant of privileges given by the State but rather emerges from customary laws and practices and customary land tenure regimes.<sup>13</sup>

Peer institutions of the Bank have acknowledged their obligations to protect universal standards of human rights guarantees, regardless of State law, in other safeguard standards. For instance, the International Finance Corporation's Performance Standard 7 on Indigenous Peoples notes that while indigenous peoples traditional or customary lands may not be under legal ownership under national laws, customary occupation and use (including seasonal and cyclical use) and ties that define indigenous identity and community can be “substantiated and documented”.<sup>14</sup> World Bank OP 4.10 stipulates that the mandatory social assessment required under the policy *must* “...pay special attention to the **customary rights** of indigenous peoples regarding lands or territories they have traditionally owned, customarily used or occupied and where access to natural resources is vital to the sustainability of their cultures and livelihoods”.<sup>15</sup>

## **2. The ADB should not decrease the current scope and inclusiveness of the indigenous peoples' policy and associated operations manual**

The Study highlights the challenge of available resources to implement the Bank's safeguard measures. In particular, the Study emphasizes "there is a need for an IP policy implementation plan that reconciles the policy aspirations with organizational, budget, and human resources implications" (p. 66). Requisite resources for full and effective implementation of safeguard measures are essential to the efficacy of any safeguard policy or standard.

However limited resources are not a suitable reason for lowering the standards expected of borrower countries and project staff. Innovative strategies of raising awareness of safeguard requirements among staff, collaboration with indigenous peoples' organizations in conducting and monitoring consultation and consent, and many other opportunities exist to improve and strengthen standards *without* requiring increased resources. To weaken standards, and deny international human rights obligations, on the basis of resource scarcity would demonstrate a lack of political will and imagination.

The OED Study argues that the scope of the original indigenous peoples' policy has expanded with the publication of the Operational Manual for the policy. (p. iv) The Study additionally considers the complexity of the safeguard system at the moment as a contributing factor to less effective outcomes from application of the safeguards.<sup>16</sup> We agree that consistent guidance is essential to reducing misunderstanding of the policy,

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<sup>13</sup> See, in particular, Articles 25 & 26, UN Declaration on the Rights of Indigenous Peoples

<sup>14</sup> IFC, Performance Standard 7: Indigenous Peoples, p. 12

<sup>15</sup> WB, Operational Policy 4.10, p. 16

<sup>16</sup> See especially recommendation one, paragraph 176. ADB, OED Special Evaluation Study 2007

and that staff confusion about the requirements of the policy is a barrier to more effective implementation.

We would like to emphasize the importance of retaining current strengths and correcting weaknesses in combining these two documents. For instance, the current Bank policy on indigenous peoples does not mention customary rights over lands and resources, customary law as pertinent national law, nor the collective nature of the rights of indigenous peoples. The Operations Manual (2004) mentions and provides basic protection for these rights. In streamlining these two documents, the strongest existing protections should be retained and improved, rather than allowing a 'lowest common denominator' to emerge.

### **3. Safeguard frameworks protecting the rights of indigenous peoples are not synonymous with safeguards for environmental degradation and involuntary resettlement**

The OED Study acknowledges early in its analysis the distinctive nature of threats to indigenous peoples posed by development projects, drawing out in particular the threat to their very survival as distinct peoples:

IP issues raised for development projects are in practice often intimately connected with land acquisition, resettlement, and environmental degradation, but may go well beyond these in the socio-cultural domain. Large dams are discussed in the SES on IR as among the most invasive in resettlement impact. Dams may cause not only the resettlement of some communities in, and immediately around, the reservoir area, but also other adverse impacts on communities and individuals in the upstream and downstream areas. As most IP depend directly on natural resources, changes in the ecosystem that forms the basis for the livelihoods of other IP communities surrounding the dam can destroy their identity. Communities uprooted lose not only homesteads and villages, but also all natural resources (communal lands), cultural resources (places of religious worship or symbols, ancestral lands or domains), and income and employment resources. Particular attention to IP issues is needed in the design and implementation of projects that induce massive and sudden changes in factors that affect IP. (p. 6)

Despite this recognition of the distinct needs and interests of indigenous peoples provided in the analysis of the Study, the Summary noted in contrast that "[i]n most cases, the primary adverse impact was related to land and livelihood loss and resettlement. These impacts were generally mitigated by the application of the IR and environmental policies, rather than the IP policy." (p. vi) Further, the Study notes that "[t]he growing IR work that social development specialists are involved in appears to crowd out the time-consuming IP work. The lack of growth in in-house expertise is not in line with the fact that ADB has devoted a whole policy toward IP, and has elevated the IP policy to one of the three safeguard policies." (p. 16).

The tenor of these observations seems to imply that a consolidated safeguard system would be preferred. The Study does not address the conflict between the two different observations, that on the one hand the challenges facing indigenous peoples are distinct and that their rights require special protection, and on the other hand that the policy on indigenous peoples is seen to be redundant if the environment and involuntary resettlement policies are triggered. Indigenous peoples' rights to lands and territories are

often not protected by the national legislation on the states within which they live and these rights are protected in international law, similarly indigenous peoples' right to self-determination, and control over the path of their own development is a right that is recognized internationally and requires protection. Further, the right to protect, maintain and foster distinct cultural heritage is an internationally recognized right that requires specific protection for indigenous peoples. None of these rights are protected or mentioned in the Environment Policy nor the Involuntary Resettlement Policy.

#### **4. The ADB must not undermine indigenous peoples' rights to free, prior and informed consent by shifting emphasis to post-approval consultation**

Despite the reiteration of the Bank's position of endorsing the principle of free, prior and informed consent (p. ix), the content and recommendations of the Study appear to contradict this endorsement. The analysis provided in the report states that "[t]he safeguard policy update needs to carefully look into the most opportune timing of IP planning, before or after project approval, taking into account the generally limited time available for planning work in a loan-funded project once it is under implementation." (p. 19). The implication of considering post-approval planning with indigenous peoples is that free, prior and informed consent is not adhered to, and indeed that the Bank would allow a project to be funded and begin implementation without even a minimal level of involvement by affected indigenous peoples.

The Study goes on to recommend:

The safeguard policy update should describe the criterion to be used to determine whether the amount of consultation and broad communication support for a project and mitigation measures is adequate and **in what circumstances ADB endorses the principle of free, prior and informed consent for the project from the side of IP**. Clear documentation of the consultation process during project preparation and implementation should be made mandatory. IFC's broad community support concept may provide some guidance; its new policy excludes the funding of projects that impinge on lands owned or claimed under adjudication by IP without their full documented consent. The World Bank's IP policy states that where physical relocation of IP cannot be avoided, the borrower will not carry out such relocation without obtaining broad support for it from the affected IP communities as part of the free, prior, and informed consultation process. An earlier response provided by ADB to World Commission on Dams proposals was that the approval of projects should essentially be a decision of the central government and that consent from the side of IP should concern mainly mitigation measures offered. (p. 66) (emphasis added)

The inherent right of indigenous peoples to control the course of their own development, "the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities" (UNDRIP Article 20) is not a negotiable right to be applied only in circumstances determined by multilateral funding institutions such as the Bank.

The tone and content of the above quoted recommendation displays an inaccurate understanding of the principle of free, prior and informed consent, and is the source of

great concern to us if it is taken up by the Safeguard Policy Update. The same perspective of selective application is also reflected in previous statements made by the Bank, as in its Management response to the findings of the World Commission on Dams, that when deciding on whether a project is to be funded that the Bank "viewed such decisions as a matter of national sovereignty and thus the government's responsibility". (p. 14)

#### **5. A human-rights approach should guide the work of the Bank and be acknowledged in each of the safeguard policies.**

One of the key recommendations made by the Study is that the following areas of the current Bank policy on indigenous peoples be clarified:

(i) the definition of IP and the role of the vulnerability criterion in it; (ii) the overlap with other ADB safeguards; (iii) the type of risks and expected impacts that "trigger" various instruments of the policy, such as IPDPs, IPDFs, and SpAs; (iv) the difference between risk mitigation and IP enhancement measures; and (v) the extent of consultation and consent required from IP for projects or project approaches.

The nature of these recommended clarifications does not reflect a human-rights based approach to development, reflecting instead an emphasis on mitigation and containment. A human-rights based approach to development places the human rights of involved and affected peoples at the centre of the decision making process, and places human rights in the process as well and the goal of development interventions. We would like to draw the attention of the Bank to the World Commission on Dams, which found that "[a] rights-based approach... provides a principled basis for mediating development choices among competing interests."<sup>17</sup> Specially, the WCD report calls for a decision-making framework based on 'recognition of rights' and 'assessment of risks' (particularly rights at risk).

This approach is highly relevant for development projects that involve indigenous peoples, because of the significance of the rights-related issues as well as the nature and magnitude of potential risks for indigenous peoples. The WCD found that such a 'rights and risks' framework was the most effective means to integrate the economic, social and environmental dimensions in the processes of options assessment and the planning and project cycles.

The framework proposed by the WCD is widely considered to represent best international practice for development decision-making. We strongly urge the bank to ensure that all updated safeguard policies adhere to this framework.

#### **6. The ADB should reference additional examples of international best practice in promoting and respecting the rights of indigenous peoples to inform the safeguard policy update**

Finally, we would encourage the ADB to review a broader range of documents and model policies in its determination of international best practice. The OED Study only reviews the involuntary resettlement policies of the World Bank, the IFC and the Inter-

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<sup>17</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000; p. 200. <[www.dams.org/report/](http://www.dams.org/report/)>

American Development Bank. The ADB should review additional sources, including those referenced in these comments:

- World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000
- World Bank *Operational Policy 4.10 on Indigenous Peoples* and *Bank Procedure 4.10 on Indigenous Peoples*
- Convention on Biological Diversity (2004) *Akwe: kon Guidelines: Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities*
- International Finance Corporation Performance Standards, in particular *Performance Standard 7: Indigenous Peoples*
- Inter-American Development Bank *Operational Policy 7.65*

In conclusion, we would like to strongly reiterate the need for explicit endorsement of the principle of free, prior and informed consent, together with practical assistance for ADB staff and clients in meeting their obligations under this principle. We would also like to emphasize that wide and extensive consultations with indigenous peoples are essential if the outcome of the SPU is to be accepted by indigenous peoples' organizations and communities in Asia-Pacific.

There should be an unequivocal adherence to international standards of human rights and best practices as the primary framework of ADB safeguards over country systems.

Further, if there is consolidation of the existing safeguard policies into a single policy and process, the distinct needs, aspirations and collective rights of indigenous peoples must be acknowledged, respected and protected.

We are happy to provide further input or information as needed.

Sincerely

Marcus Colchester  
Director

Helen Leake  
Policy Advisor

## ANNEX A

### **United Nations Declaration on the Rights of Indigenous Peoples**

*The Human Rights Council,*

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Recognizing* that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>18</sup> and the International Covenant on Civil and Political Rights<sup>18</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### *Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>19</sup> and international human rights law.

#### *Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

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<sup>18</sup> See resolution 2200 A (XXI), annex.

<sup>19</sup> Resolution 217 A (III).

### *Article 3*

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

### *Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

### *Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

### *Article 6*

Every indigenous individual has the right to a nationality.

### *Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

### *Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

### *Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### *Article 11*

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### *Article 12*

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### *Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### *Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### *Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### *Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall, in consultation and cooperation with indigenous peoples, take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### *Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### *Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### *Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### *Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### *Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### *Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### *Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### *Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### *Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### *Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### *Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### *Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds,

medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### *Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### *Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### *Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### *Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

#### *Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

*Article 38*

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

Annex B: FPP publication: *In Search of Middle Ground*

[http://www.forestpeoples.org/documents/law\\_hr/fpic\\_ips\\_aug04\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/fpic_ips_aug04_eng.pdf)