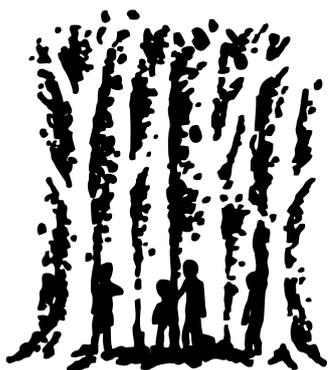


# **FPP E-Newsletter:**

## **July 2011**



Forest  
Peoples  
Programme

**FPP E-Newsletter: July 2011**

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Dear Friends,

The challenge of climate change has injected new energy – and funding – into forest policy-making. Ever since the UN Framework Convention on Climate Change agreed the need to reduce emissions from deforestation and forest degradation (REDD), there have been sustained calls by indigenous peoples and concerned NGOs, that forest peoples' rights must be secured as part of this initiative. Texts agreed in Cancun accept that REDD must respect human rights and ensure the effective participation of indigenous peoples and local communities, and funders must 'safeguard' these principles and ensure countries observe their international obligations. A new funder of REDD schemes, the Global Environment Facility has been persuaded to take more time developing its new safeguard policies to ensure consistency with these obligations.

Most of the articles in this newsletter focus on the battle to put these commitments into practice. In Peru, voluntary REDD schemes in Madre de Dios and San Martin are proliferating without adequately taking rights into consideration. Indigenous peoples insist that their rights to their forests must be secured first before areas are allocated to conservation schemes, otherwise they will be excluded. A guest article from the Nishnawbe Aski Nation sets out their concerns with a similar challenge in Canada. In Cameroon, a study by FPP and partners shows that protected areas linked with REDD funding have been designed without adequate consultation. Although both the World Bank and WWF protest that it is too early to make this charge, [we contend](#) that prior engagement with and consent from rights-holders is required by international law. Indeed, the UN Special Rapporteur on the Rights of Indigenous Peoples notes that 'low-carbon development strategies', such as dam-building programmes in Costa Rica, by avoiding meaningful consultation and adequate impact studies, are seriously compromising indigenous peoples' rights and undermining their right to self-determination. In Peru, sustained advocacy by indigenous organisations has secured commitments from the government and the World Bank to provide additional readiness funds to address land tenure issues.

Building up the capacity of local communities and indigenous peoples to engage in these policy debates is a crucial part of this work. In the Democratic Republic of Congo (DRC), we are working with local partners in Equateur Province to raise awareness about rights and REDD. In Uganda, DRC and Rwanda, FPP is helping Batwa communities to make 3-dimensional maps of their forest lands to show what these forests, from which Batwa have been excluded by protected areas, mean to them. Participatory map-making helps knit together communities and demonstrates to younger generations the value and relevance of the traditional knowledge of their elders. FPP and partners are now working with the IUCN to establish a new approach, dubbed the 'Whakatane Mechanism', to ensure protected areas respect indigenous peoples' rights. We announce also an upcoming workshop on Gender and Land Tenure in Africa, taking place in Cameroon, to review how national land tenure laws need revising to meet each country's international human rights obligations.

Getting forest peoples' rights effectively recognised and protected requires mobilisation and advocacy at all levels from the very local to the most global. We go forwards energised by the vigour in this shared endeavour.

Marcus Colchester, Director

## **1. Ugandan Batwa complete 3-D Model of their Bwindi Forest ancestral area**

In 2009 a group of Batwa representatives from Uganda travelled to Ogiek communities in Kenya to learn about their situation and the different advocacy strategies they were using. One of these strategies was the use of Participatory 3-Dimensional Modelling (P3DM), which helped the Ogiek engage Kenyan agencies on their rights to their ancestral territory, the Mau Forest. The Batwa walked away from this visit impressed by the simplicity of the P3DM technique and hopeful of replicating it in their own context.

Two years later in June 2011, the Batwa, with support from the ARCUS Foundation, began their own three-dimensional modelling of their ancestral territory, Bwindi Impenetrable National Park. More than 100 representatives from the Batwa communities surrounding Bwindi, including youth, elders, women and men attended the exercise over a three-week period.

The first step involved cutting out the individual contours and then assembling them to create the blank model.

Once the blank model was completed, a group of ten Batwa from each of the ten communities neighbouring the park were given the opportunity to travel to the venue where the model was being assembled and apply their traditional knowledge to it.

The information they provided included the location of forest resources (weaving materials, medicinal herbs, hunting grounds etc), specific places of interest (worshipping sites, burial grounds etc), locations of animal habitats (gorillas, elephants, pangolins etc) as well as all the individual names the Batwa gave to each hill, valley, swamp, and cave.

The Batwa communities hope that the model will be useful in a number of different applications. With the number of Batwa elders slowly decreasing, producing the 3D model and populating it with information drawn from memory provided an opportunity for documenting and storing the Batwa's unique cultural heritage. Such a display of information can be used to open-up job opportunities for Batwa within Bwindi, both as guides and through other tourism enterprises. The communities also hope that the information depicted on the model can be used as a platform for discussions with protected area managers regarding increased access to Bwindi, and in particular access to specific locations and resources which are culturally significant to the Batwa such as worshipping sites.

Based on similar experiences in other parts of Africa and the world, it is expected that the wealth of information stored on the model will serve as a reference for communities to participate in the future management of their ancestral lands. As such, the model provides an important tool in the Batwa's ongoing advocacy and rights initiatives and provides a common platform for protected area managers and the communities to engage in the long-term conservation of Bwindi Forest.

## **2. 'No signing of REDD contracts in Madre de Dios and San Martin': Indigenous organisations call on their communities to exercise caution**

San Martin and Madre de Dios are the two regions earmarked for the development of pilot REDD activities in Peru. Both regions are facing an avalanche of over 20 REDD projects oriented towards the voluntary carbon market. Many of these sub-national REDD+ projects are descending on the ancestral territories of indigenous peoples including the Shawi, Awajun and Kechwa in San Martin, and the Ese Eja, Yine, Shipibo, Amahuaca, Arakambut and Machiguenga in Madre de Dios. In Peru, approximately 20 million hectares of indigenous territories have no legal recognition which means that REDD may often pose a threat rather than an opportunity.

During meetings in May and June 2011, CODEPISAM<sup>1</sup> and FENAMAD<sup>2</sup>, the indigenous organisations of San Martin and Madre de Dios, declared that REDD projects should not be implemented in their regions until all pending territorial claims are respected. In San Martin, the collective territorial rights of the Awajun, Kechwa and Shawi peoples were asserted, as well as the claims of 64 communities still requiring recognition and titling. These include those communities whose lands are overlapped by the "Cordillera Escalera" regional conservation area, in contravention of their right to free prior and informed consent (FPIC). At the meeting in Madre de Dios, the claim of the Ese Esja to their ancestral territory, which is affected by two protected areas (Bahuaia Sonene National Park and the Tambopata Reserve), was reaffirmed, as well as the rights of the Arakambut to determine whether and how REDD projects proposed for the Amarakaeri Communal Reserve should go ahead.

1 Coordinator of the Development and Defense of the Indigenous Peoples of San Martin.

2 Federation of the Native Peoples of the river Madre de Dios and its tributaries.

A consensus was reached at the meetings in both regions that communities should not sign REDD contracts until indigenous peoples' and local communities' rights are guaranteed and the nature of REDD projects and programmes have been clearly defined at a national and international level. Both organisations established their own REDD committees (mesa REDD Indígena) to monitor regional REDD developments, to continue to voice indigenous concerns and to put forward grassroots proposals for forest protection and the reaffirmation of indigenous peoples' rights.

*Regional Declaration from Indigenous organisations in San Martín, Peru on Indigenous REDD+* (only available in Spanish) <http://www.forestpeoples.org/es/topics/redd-y-las-iniciativas-afines/publication/2011/acuerdo-regional-sobre-redd-indigena-en-san-ma>

*Regional Declaration from Indigenous organisations in Madre de Dios, Peru on Indigenous REDD+* (only available in Spanish) <http://servindi.org/pdf/AcuereDDfenamad14jun11.pdf>

*FENAMAD press release* (only available in Spanish) <http://www.fenamad.org.pe/noticias.htm>

### **3. Determined lobbying by Peruvian national indigenous organisation - AIDESEP - leads to government commitment to address outstanding indigenous territorial claims**

On the 25<sup>th</sup> March 2011 in Dalat, Vietnam, members of the Forest Carbon Partnership Fund (FCPF) Participants Committee approved the third version of Peru's national REDD Readiness Preparation Proposal (RPP) that the Ministry of Environment (MINAM) had been developing since 2009.

Throughout this process, indigenous peoples' organisations in Peru led by AIDESEP, the principal national organization, have maintained their position that until clear government commitments are forthcoming to recognise and demarcate an estimated 20 million hectares of outstanding indigenous territorial claims, then REDD constitutes a serious threat to indigenous peoples. Furthermore, indigenous peoples have argued that as long as proposed legal reforms such as the law of prior consultation and the forestry law undermine

indigenous people's rights then current REDD policies will not only fail to reduce emissions but may exacerbate existing land conflicts. Despite these constructive criticisms, the RPP's treatment of indigenous issues remained relatively unchanged until the final days before the meeting in Vietnam where the RPP was due to be discussed. This meeting was preceded by unprecedented and intensive dialogue between MINAM and AIDESEP that resulted in a series of governmental commitments to address some grievances, including commitments to: initiate actions to reform national land legislation in order to align it with Peru's international obligations to recognize and demarcate indigenous peoples' traditional territories; designate \$200,000 from the RPP budget and find a further \$800,000 to initiate measures to recognize and demarcate outstanding territory claims in the region of Loreto; prioritize funding for indigenous territorial claims from other REDD funds such as the Forest Investment Program (FIP); and recognize the Indigenous REDD committees to be established at the national and regional levels.

After the Peruvian government's presentation of these commitments to the Participants Committee, AIDESEP representatives acknowledged the improvements, but emphasised that this is only the first step towards respecting indigenous people's rights within any future national REDD strategy. AIDESEP declared that they would be vigilant in ensuring the implementation of commitments on land and territorial issues. AIDESEP will also work to ensure the inclusion of further critical issues relating to the need for measures to fully respect the right to free, prior and informed consent (FPIC). On a final note, they highlighted the need for further urgent measures to control a wave of REDD and carbon projects in Peru that threaten to engulf indigenous communities with unsubstantiated promises of millions of dollars. In a hitherto unprecedented step the Participants Committee resolution requires the Peruvian government to coordinate with the national indigenous REDD committee when they present a progress report of the implementation of these commitments to the 10<sup>th</sup> or 11<sup>th</sup> meeting of the Participants Committee.

Daysi Zapata, Vice-President of AIDESEP concluded, "Today in Peru there are companies that in the name of REDD are pressuring communities for their rights to carbon, offering them only 20 cents for one hectare. This is unacceptable exploitation. This is why REDD in Peru is a threat for indigenous peoples but AIDESEP is working to transform it into an opportunity. Whether we achieve this or not will depend on the new government of Peru and the understanding and support of you all".

**End note:** On 16 June 2011, the much contested forestry law was passed by Congress despite failing to respect key indigenous rights.

See:  
*Indigenous Peoples' National Amazonian organisation in Peru official response to the Peruvian government's*

*submission of its REDD Readiness Preparation Proposal (RPP) to the World Bank FCPF Participants Assembly.*

25 March 2011

Available in English: <http://www.forestpeoples.org/sites/fpp/files/publication/2011/03/intervencionaideseppdalateng25311.pdf>

and Spanish: <http://www.forestpeoples.org/sites/fpp/files/publication/2011/03/intervencion-aidesepp-25311-finalesp.pdf>

*Forest Carbon Partnership Facility (FCPF) Eighth Participants Committee Meeting, March 23-25, 2011, Dalat, Vietnam, Resolution PC/8/2011/7. Peru's Readiness Preparation Proposal*

Available in English: <http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2011/Resolution%207%20Peru%20R-PP.pdf>

and Spanish: [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Apr2011/Resoluci%C3%B3n%20PC8\\_2011\\_7\\_Per%C3%BA\\_Propuesta%20de%20preparaci%C3%B3n%20para%20el%20programa%20REDD-Plus.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Apr2011/Resoluci%C3%B3n%20PC8_2011_7_Per%C3%BA_Propuesta%20de%20preparaci%C3%B3n%20para%20el%20programa%20REDD-Plus.pdf)

*Indigenous peoples' organisation in Peru demands that the forestry law is returned to congress for a new debate due to lack of consensus (available in Spanish only)* [http://www.forestpeoples.org/sites/fpp/files/news/2011/06/PRONUNCIAMIENTO%20-%20Fenamad%20June%202011\\_TG\\_Sp.pdf](http://www.forestpeoples.org/sites/fpp/files/news/2011/06/PRONUNCIAMIENTO%20-%20Fenamad%20June%202011_TG_Sp.pdf)

## 4. Congo Basin Forest Peoples, Rights and Delivery of REDD Benefits

Forest Peoples Programme staff recently visited forest communities in Equateur province, Democratic Republic of Congo (DRC), who they have been supporting since 2009 with information-sharing and consultation meetings related to REDD and conflict prevention. During training and project monitoring visits FPP and our local partner CEDEN (Cercle pour la defense de l'environnement) held public meetings with around 2000 forest people from across the Lac Tumba conservation landscape. Along with the Mai Ndombe region further south into Bandundu Province, the Lac Tumba conservation landscape is targeted for REDD pilot funding, as part of DRC's efforts to protect its forests in response to global agreements about climate control.

CEDEN's staff are working hard on the ground in Equateur Province – a region the size of France - supporting around 50 forest communities to become better informed about REDD policies and development plans for their areas; to

learn about their rights under national and international laws; and to identify and develop viable benefit-sharing mechanisms to help overcome the severe poverty that plagues rural areas everywhere in DRC.

These visits gave FPP an opportunity to document further community views on forest management in their areas, and the negative impacts of unfair logging and conservation practices. These include forest damage and loss of forest access which undermine livelihoods, increasing community poverty. During the public meetings we shared advice in response to numerous questions from indigenous and local forest people about REDD processes at national and international levels, community rights and the laws protecting them, and their tenure of forest lands. The community meetings were characterised by heated discussions and significant intra-communal debate over the future of their customary areas.

We were very impressed by the political sophistication of these Equateur forest communities, who, with a history of extractive colonial powers, powerful and unaccountable logging companies and conservation projects moving in on their lands, are seriously concerned about the erosion of their rights and forest tenure. Indigenous and local forest peoples in Equateur Province are further motivated by a huge desire to develop their communities with accessing and developing clean water sources, improved health care and cost effective education for their children. These are clearly their top priorities, which they share with forest peoples across the Congo Basin.

However, like elsewhere, these Equateur forest peoples are cynical about delivery. Over many decades they have watched government and donor funds axed as they cascaded down administrative levels, until nothing was ever left to benefit them. They believe this is what will happen to REDD funds. Everywhere we went indigenous and local people made it clear to us that they wanted separate and accountable benefit-sharing channels to be established and proven before discussions commenced about re-zoning or re-classifying their customary forests to meet REDD funding requirements, as they have too much at stake.

This project's results will be reviewed during a meeting organised by CEDEN in Mbandaka at the end of June, where the outcomes and community recommendations will be shared with the government and other REDD stakeholders.

## 5. Special Rapporteur on the Rights of Indigenous Peoples Issues: A Note on his official mission to Costa Rica

The UN Special Rapporteur on the Rights of Indigenous Peoples (SRIP), James Anaya, has recently (24 to 27 April 2011) concluded an official mission to Costa Rica. In his report of that mission he makes a series of observations and recommendations concerning the situation of indigenous peoples affected by the Diquis hydroelectric project.

The Special Rapporteur states, in his report, that “All parties agree on the need for a consultation process with the indigenous peoples in territories affected by the hydroelectric project El Diquís, prior to the approval of the project, and this process must be according to relevant international standards”.<sup>3</sup> He highlights that: “The consultation process on the hydroelectric project should have started prior to beginning the technical studies ... allowing affected indigenous communities to participate in the initial decisions”, a process that did not occur. He notes that the lack of such a consultation process and a series of other decisions adopted by the State of Costa Rica over the past five years (without the hydroelectric project being finally approved), has resulted in “the capacity of indigenous peoples to exercise their right to self-determination and to establish their own development priorities has been undermined.”

The objective of the consultation process must be to obtain the free, prior and informed consent of the affected Indigenous peoples a position reaffirmed by the Special Rapporteur in his report. Specifically, he affirms that: “according to applicable international human rights instruments, the consultation with indigenous peoples that would be affected ... should be made with the objective of obtaining their free, prior and informed consent ... which must be established prior to the approval of the project ... based on fair and equitable conditions.” Further: “This consultation should be adjusted to [indigenous peoples’] own forms of representation and organisation in relation to decision-making. Therefore, it is not up to the Costa Rican State or any of their agencies to define the representation modalities of indigenous peoples...”

The Special Rapporteur also proposes the establishment of an independent expert team to facilitate the consultation

<sup>3</sup> [La situación de los pueblos indígenas afectados por el proyecto hidroeléctrico El Diquís en Costa Rica, 2011](#) (available in Spanish only), UN Special Rapporteur on the Rights of Indigenous Peoples, available at: <http://unsr.jamesanaya.org> English translations provided here are unofficial.

process, since it will be “very difficult to overcome the asymmetric conditions of power between the parties, and ensure long-lasting results without any sort of facilitation by external actor(s).” This is an effort to build mutual trust among the parties and to ensure that the process complies with international human rights standards.

Finally, the Special Rapporteur recognises that there are substantial issues, beyond the Diquís Hydroelectric Project, that must be resolved. These include:

- I) Restitution of lands: there are indigenous territories in Costa Rica where illegal encroachment by outsiders into legally recognised indigenous territories has made indigenous peoples minorities within their own territories, in places as low as 10% of the population;
- II) Legislative reforms on indigenous issues and representation: the Costa Rican government has been discussing a bill on the autonomy of indigenous peoples for over fifteen years, but there has been no political will to adopt this bill.

Kus Kura and Teribe, indigenous organizations and FPP’s partners in Costa Rica, welcomed the report of the Special Rapporteur and hope that this will lead to solutions to the human rights violations that they have denounced on several occasions in the past.

## 6. Input into the Global Environment Facility environmental and social safeguards

The process of the Global Environment Facility (GEF) developing safeguards continues. In April this year an initial draft was released, and with minimal consultation, sent to the GEF Board for approval in May. The indigenous peoples’ focal points to the GEF, the GEF-Network, other indigenous organizations and Forest Peoples Programme (FPP) all provided detailed input into the GEF Council deliberations, arguing strongly that the safeguards were not sufficient and would not act to improve development or environmental outcomes.

The Council agreed, and decided not to approve the safeguards in their original form. The GEF Secretariat has now opened a consultation process on the draft in which any interested organization can provide feedback or information. The consultation is only via email and only open until the 31<sup>st</sup> of August 2011, but it is a significant improvement over the earlier limited avenues for input.

We strongly urge partners and interested organizations to read the attached [proposed safeguards](#) and provide comments either directly to the GEF or through FPP.

The sections with yellow highlights are the improvements made after the Council meeting in May this year. As background, we append below the analysis collated by FPP earlier this year.

Separately, the GEF also renewed its commitment to develop a proactive Indigenous Peoples Policy to promote and support projects working with indigenous peoples. This Policy is being developed through a separate process, and anyone interested in finding out more should contact the indigenous peoples' focal points to the GEF.

## **7. Implementing the UN Declaration on the Rights of Indigenous Peoples: an opportunity to influence GEF policy, Jen Rubis**

As awareness of the UN Declaration on the Rights of Indigenous Peoples has grown, we as indigenous peoples have actively sought the implementation of this document in all institutions, policies and programmes that have the potential to impact us. To be able to address the exclusion that indigenous peoples face at the grassroots, we have consistently fought for the right to full and effective participation in mechanisms that affect us. Moving the battle upstream is not easy as we have to educate ourselves in a language and cultural environment that is far removed from our own processes of participation and decision-making. It takes time away from the priority – the persistent violation of our rights and resources at the community level.

The links, however, are there, from the casual trespassing of illegal loggers on our lands to local authorities that misreport or take no action, to national level politics that reinforce this culture and to the global marketplaces that continually demand resources without understanding at what price they come. Environmental and development projects can have the same impact, where there is no consciousness of what happens down the chain that links the local to the global.

The Global Environment Facility (GEF) is the largest funder of environmental projects. Except for the Small Grants Programme, these funds are mostly disbursed through partner agencies including UN bodies, international and regional banks and governments. The GEF also serves as the financial mechanism for 4 environmental conventions.

The GEF's proposed safeguards thus provide an opportunity to reflect our concerns and our thinking on what needs to be done, in order to ensure that projects that are meant to improve the environment do indeed do just that, while at the same time upholding international

commitments to rights. A strong set of safeguards can outline the expectations of what needs to be done to ensure an effective outcome, potentially shaping the way implementers interact with the communities affected by GEF projects.

Such safeguards can be best achieved through our collective, generous participation in this safeguard review. This can be done through specific proposals on amending or deleting text in the draft, analysis or review of a section, reflections on broader principles that should be applied or sharing of experiences with GEF projects in our communities.

## **8. Could land reform succeed where conservation has failed?**

Conservation organisations have been making great strides towards recognising that protected areas must respect the rights of indigenous peoples as enshrined in international law, including the right to give or withhold their free prior and informed consent to the establishment of new protected areas in their customary territories. Yet in practice conservation organisations often continue to exclude local people from using forest and other resources, and only consult them after they have drawn up management plans rather than jointly writing them.

Conservationists admit that conservation is failing. Although eco-guards in Southern Cameroon arrest Baka for assisting others to hunt elephants, the same guards know that the Baka are being paid a pittance for this, and that they are forced to seek such employment because they are excluded from their own forest. During recent fieldwork, FPP talked to a conservationist who said that “the key issue is how to provide local people with economic benefit so that they buy into conservation.”

This is directly refuted in Liz Wiley's excellent 2011 study of the land ownership system in Cameroon - *Whose land is it? The status of customary land tenure in Cameroon* - where she points out that:

“By depriving communities of recognition that they are the lawful owners of forested and rangeland resources, the law removes their greatest incentive to use these assets in sustainable ways, let alone adopt more active and policed systems which, as the local residential populace, they are best positioned to operate and sustain. Instead, affected communities are alienated. Government finds itself having to ‘buy back’ cooperation in return for benefits of access which affected communities consider their due right, creating further antagonism.” (Wiley 2011: 93)

Successfully conserving forests requires a remedy that is both much more straightforward and far more radical. Rather than imposing protected areas and seeking to

buy local people into the process, the right to own and manage the resources upon which communities depend needs to be recognized and supported. For example, conservationists could provide eco-guards to help communities withstand powerful outsiders intent on extracting resources unsustainably. Instead, in seeking to exclude local people from the resources they depend on, conservationists destroy the only basis for long-term sustainability. As one Baka representative put it: "We will only receive benefit if our rights are recognised. Rights not only to the land where we are living but also to the forest that we have customary use of."

FPP is helping to organise a FLEGT/ REDD workshop in Yaounde (September 13-15<sup>th</sup>) to further examine how securing customary rights could be the basis for conservation, sustainability and development. This approach includes the equal recognition of customary land use patterns such as shifting cultivation, hunting and gathering. Without supporting rights to resources and lands, throwing all the money in the world at REDD will only further fuel forest destruction.

Notes:

*FLEGT stands for 'Forest Law Enforcement, Governance and Trade'. It is an EU initiative which seeks to develop Voluntary Partnership Agreements with timber-producing countries to prevent illegally produced timber from entering the EU market.*

*REDD stands for Reducing Emissions from Deforestation and forest Degradation. It is a proposed scheme to financially compensate countries that reduce such emissions by better managing forest resources.*

Links:

For Liz Wiley's book: <http://www.fern.org/whoselandisit>

For WWF principles on working with IPs: <http://www.worldwildlife.org/what/communityaction/people/partneringwith/guidelines.html>

## 9. Guest article from the Nishnawbe Aski Nation of Canada

Canada's Auditor General commented in her [June 2011 report](#) that living conditions in First Nations reserves are still much worse than elsewhere in Canada. Reflecting on her ten years in office, she argued that a fundamental change is needed to address this issue. In 2010, Canada finally [endorsed the United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) after being one of four governments to vote against it during its passage through the General Assembly in 2007.

All the countries in which FPP has partners have

endorsed the UNDRIP (and often many other relevant conventions) yet many of them fail to implement these commitments effectively. In this guest article, the Nishnawbe Aski Nation (NAN) living in the far north of Canada report on how they still struggle to gain respect for their right to self-determination and to give or withhold their free, prior and informed consent to measures that may affect them. The designation of new protected areas in Northern Ontario addressed in this article also raises questions concerning the extent to which Canada is implementing its obligations under the UN Convention on Biological Diversity, which calls for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, in the management of existing, and the establishment and management of new, protected areas.

Respect for the rights of indigenous peoples, as articulated in UNDRIP, can be the basis for ending the marginalization and impoverishment of indigenous communities.

### Expropriation of Indigenous Lands for Government Designated Protected Areas in Northern Ontario, Canada

*By guest author Carol Audet, Nishnawbe Aski Nation (NAN)*

In October 2010, [an Act with respect to land use planning and protection in the Far North](#) was passed in Ontario, Canada by the provincial government (also referred to as the "Far North Act"). This Act directly targets the Cree, Ojibwe, Oji-Cree and Algonquin Indigenous peoples of the Nishnawbe Aski Nation (NAN) who have been the sole occupants of this mostly under-developed far north part of Canada for millennia ([see background information](#)). NAN communities are part of James Bay Treaty No. 9 and Treaty No. 5 of the [treaties made in Canada](#), which affirm the rights of Indigenous peoples in an international context.

The Act was passed without Indigenous peoples' free, prior and informed consent (FPIC). It imposes an interconnected protected area of at least 225,000 square kilometres, expropriating the land of Indigenous people in NAN without compensation, and giving the provincial government the power to override Indigenous peoples' land use decisions. The protected area will also have far-reaching consequences for the lives and human rights of the Indigenous people in NAN including their ability to freely pursue economic, social and cultural development in accordance with their right of self-determination.

The Act came as a result of a unilateral provincial government announcement in July 2008. It appeared to be the product of secret discussions between the government and certain conservation organizations fixated on protection of the boreal forest in northern Canada, which was identified by Global Forest Watch

Canada as the [last of the world's remaining intact forest landscapes](#).

### The Far North Act

The government alleged that the protected area component of the act was motivated in part by concern around climate change and green house gases. Sections 5(.3) and 7(7).(2) of the Act mention, respectively, the "storage and sequestration of carbon in the Far North" and "considerations for cumulative effects for climate change adaptation and mitigation." The government described the far north part of NAN First Nations' traditional territory as a "carbon sink." However, it excludes Indigenous peoples from any meaningful involvement in policy discussion on carbon storage and carbon credits, even though a vast swath of Indigenous territory is being confiscated for this policy.

The Act establishes a land use planning system that is open to Indigenous peoples' participation. However, the core elements of every land use plan (LUP) are subject to government veto, in complete denial of the FPIC standard. The land use planning process is required to generate the interconnected protected area commonly referred to as a "super-park." On average, Indigenous peoples will have to "agree" to give up half of their traditional territory for the boreal forest super-park. The Act immediately freezes most forms of modern development, that is, until LUPs are agreed to. There are some exceptions for limited permitted uses, including mining exploration (s. 12 (5) (e)). By the stroke of a pen, Indigenous peoples are not permitted to engage in most forms of modern economic development throughout their homelands. Despite their domestic and international rights, Indigenous peoples in NAN will not be able to make their own self-defined choices for balanced development and conservation. The only way Indigenous peoples can re-acquire development opportunities is to agree to LUPs. These are the LUPs controlled by the government, by which each First Nation must "agree" to an allocation for the super-park. All of this amounts to black-mail on a scale that might make a nineteenth century imperialist blush.

If an Indigenous community stands on principle and resists the blackmail of the immediate development freeze (sec. 12), it does not really matter. The game has been completely rigged by the government. Where, for whatever reason, an Indigenous community does not agree to a LUP, its entire traditional territory will remain more or less frozen. In addition, even without a LUP, the government can unilaterally establish "provisional" protected areas (sec. 13(1)). Further, the government can establish protected areas under the provincial Public Lands Act (sec. 25 of the Far North Act), without any input from Indigenous peoples. It is likely that the government and conservation organizations will use some of these draconian powers if there is a delay in the LUP process that they consider unacceptable.

Even though land use planning is an essential matter

for the Indigenous peoples in NAN, the government is not guaranteeing meaningful levels of capacity funding to undertake plans. Indigenous communities must also comply with the LUP model of the government, notably including the super-park element, in order to receive funding. The entire LUP process can be subverted at any time if the government decides to authorize a development it deems to be in the social and economic interests of the Province of Ontario (sec. 14(4)). There is no such exception for Indigenous peoples in NAN.

### The role of conservation organizations

Over the 3 years of strenuous objections of NAN, conservation organizations appeared sympathetic. However, at a crucial time in the legislative process, they became instrumental in supporting its enactment. Indigenous peoples in NAN were appalled at these actions as they were contrary to policy statements developed by conservation groups recognizing the rights of Indigenous peoples to FPIC. In the case of NAN and the World Wildlife Fund of Canada (WWFC), one of the nine (9) conservation organizations that supported the Act,<sup>4</sup> NAN pointed to the [WWF Statement of Principles on Conservation and Indigenous Peoples](#) and the [Conservation and Human Rights Framework](#), both signed by WWFC.

NAN accused WWFC of violating their statement of principles on Indigenous peoples' rights and issued an [open briefing note](#) calling for an investigation. NAN brought attention to the fact that the actions of WWFC undermined the legitimate aspirations of Indigenous peoples. NAN also made it known that they expected WWFC to honour its written policies and not push them aside when convenient. The call for an investigation was unheeded.

Another example of activities of conservation organizations that led to state (government) actions and the development of further protected areas is the May 21, 2010 signing of the [Canadian Boreal Forest Agreement](#) (CBFA). Even though it directly impacts Indigenous peoples' rights and territories, including forests, this Agreement between forest industry groups in Canada and conservation organizations, was negotiated in secret. An [open letter to the CBFA signatories](#) calling for the termination of this Agreement on a voluntary and unconditional basis was forwarded by NAN as directed by NAN communities. Rather than respect the rights of Indigenous peoples, including the right to FPIC, the signatories to the CBFA defended their actions and continued to move to implement the Agreement.

A number of the conservation groups that have signed on to the CBFA are not registered in Canada as non-profit charitable organizations, but are based in the United States (US). Indigenous peoples have questioned why

<sup>4</sup> The nine conservation organizations that supported the Far North Act in some form included: World Wildlife Fund of Canada, CPAWS Wildlands League, Ecojustice, Environmental Defence, Environment North, Forest Ethics, Ontario Nature, Canadian Boreal Initiative/Ducks Unlimited Canada and the David Suzuki Foundation.

they have so much influence in Canadian natural resource policy. Some are also heavily financed through grants from US foundations, while Indigenous peoples without access to such largesse, have had difficulty responding to the conservation organizations' well funded campaign to market the CBFA in Canada. While positive steps have been taken to bring investment policies in-line with the standard of FPIC, such as those announced by the International Finance Corporation on May 12, 2011, the yardstick needs to move further to include funding provided by foundations to conservation organizations. Moreover, it must be recognized that investments are being placed in the wrong hands. In Alliance magazine's June 2011 edition, Rebecca Adamson, in her article ['Learning to see 'invisible' capacity'](#) discusses the need for donors to adapt their paradigms to the worldviews of Indigenous peoples.

### The role of government

In March 2011, the government of Canada issued its "Updated Guidelines for Federal Officials to Fulfill the Duty to Consult." These guidelines fail to consider the right of Indigenous peoples to FPIC, except to indicate Canada's concern when such consent is "interpreted as a veto." One of the last three countries to sign, Canada finally endorsed the United Nations Declaration on the Rights of Indigenous Peoples in November 2010. At the time, they indicated that the Declaration was a "non-legally binding document that does not change Canadian laws." In May 2011, at the United Nations Commission for Sustainable Development (UNCSD) 19 Working Groups 1 and 2, Canada, Australia, New Zealand and the US petitioned for the deletion of FPIC language in the work they were developing.

With policy directions such as these, it is no wonder that both the Far North Act and the CBFA are seen as acceptable by Canadian governments and the right to Indigenous peoples' FPIC is ignored. State and third-party interest groups have lost their moral compass and have run roughshod over Indigenous peoples' rights in NAN. Indigenous peoples will have a lot of work to do in their continuing struggle to protect their inheritance for current and future generations. More than enough land has been expropriated.

For further information: [www.nan.on.ca](http://www.nan.on.ca)

We thank the author(s) for contributing this article to the FPP E-Newsletter. The views expressed in this article may not necessarily reflect the views of Forest Peoples Programme.

## 10. Looking Ahead – Regional workshop on Gender and Land Tenure in Africa

A regional workshop entitled 'Gender and land tenure in Africa' will take place from July 26 to 29, 2011 in Edea, Cameroon. Organized by Rights and Resources Initiative (RRI), the Réseau des Femmes Africaines pour la Gestion Communautaire des Forêts (REFACOF), and Forest Peoples Programme (FPP), this workshop's goals include creating a discussion forum on gender, rights to land, and forest resources in Africa and clarifying the applicable legal framework and protection mechanisms created to secure the rights to land and resources. This workshop will also provide an opportunity to share information on land and forest reforms that are taking place in several African countries. It will bring together approximately thirty participants, including representatives from forest communities and indigenous peoples.

## 11. Draft concept note for pilot Whakatane Assessments now open for feedback

As mentioned in Forest Peoples Programme's February E-Newsletter, a meeting was held at the IUCN CEESP Sharing Power conference in Whakatane, New Zealand, January 2011, between indigenous representatives, the chairs of three IUCN commissions (CEESP, WCPA and SSC) and sub-commissions (TILCEPA and TGER), key staff of the IUCN secretariat (the Director of the Environment and Development Programme and the Senior Adviser on Social Policy), and other staff from IUCN, Conservation International and Forest Peoples Programme.

The main outcome of the meeting and subsequent follow-up discussions was an agreement to implement a series of measures to review the implementation of resolutions related to indigenous peoples adopted at the 4th World Conservation Congress (WCC4) in 2008 and to advance their implementation should there be a gap.

As part of this agreement, the IUCN committed itself to implement Whakatane Assessments of protected areas at the local level, in partnership with Indigenous Peoples' Organisations (IPOs), the Forest Peoples Programme, CEESP, TILCEPA and TGER. It was decided that FPP would draft a concept note, which will be used to guide pilot Whakatane Assessments. You can download the concept note [English](#), [French](#) and [Spanish](#). **If you have important feedback, please send it to [emmanuel@forestpeoples.org](mailto:emmanuel@forestpeoples.org) by the 20th of July.** We will promptly revise the concept note and send it to IUCN for a final approval.

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