

Forest Peoples, Customary Use and State Forests: the case for reform

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Abstract:

Worldwide an estimated 1.6 billion people depend on forests for their daily livelihoods. Though sound data are lacking, about half of these are long term residents who manage their lands and forests according to customary law. Forestry laws tend to classify and zone forests as State forest areas and ignore or deny customary rights in forests or subordinate customary use to the interests of concessionaires and large-scale users. However, international human rights laws, forest policies, conservation norms and environmental laws now place significant obligations on governments to revise their forest management regimes to accommodate the claims of customary law communities. Moreover, widespread mobilization of forest-dependent peoples pressing for recognition of their rights, has triggered significant legal reforms in some countries.

Drawing on five long-term case studies carried out by the Forest Peoples Programme with indigenous peoples' organisations in Venezuela, Guyana, Suriname, Cameroon, and Thailand, the paper summarises new field data which reveal the remarkable complexity of customary law systems and how the narrowing gap, between countries' obligations under international law and national laws, can be bridged. All these countries are party to the Convention on Biological Diversity (CBD), a relatively new piece of international law that is not yet well understood or implemented. The study thus looks in particular at what these countries need to do to meet their obligations under CBD Article 10c, by which States party to the treaty should '*protect and encourage the customary use of biological resources in accordance with traditional cultural practices...*'.

Drawing on these practical experiences, the paper proposes a methodology for identifying customary use, strengthening traditional practices to ensure sustainable use and ensuring that State laws, policies and practices align with countries' obligations under the CBD and other relevant international treaties.

Key words: International law, forest policy, sustainable use, customary law, conservation, legal reform, social mobilization.

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Context:

According to the World Bank

... more than 1.6 billion people depend to varying degrees on forests for their livelihoods. About 60 million indigenous people are almost wholly dependent on forests. Some 350 million people who live in or adjacent to dense forests depend on them to a high degree for subsistence and income. In developing countries about 1.2 billion people rely on agroforestry farming systems that help to sustain agricultural productivity and generate income.¹

These figures are known to be only very rough estimates but the lack of good national data about the numbers of people living in and using areas classified as forests makes greater precision difficult.²

‘Scientific forestry’, as developed in Europe in the 18th century, secured forests as state assets and established systems for regulating access to forests by the private sector, while denying the rights of forest dependent communities and severely curtailing their access to the common property resources that their livelihoods depended on.³ These impositions sparked widespread, local resistance. Conservation policies, which developed later, reinforced these centralizing tendencies and gave further power to government officials at the expense of indigenous peoples.⁴

In the 19th century these same policies were then imposed on the peoples and forests of European colonies, in Burma, India, South East Asia and Equatorial Africa.⁵ The creaming of the forests of French Equatorial Africa of the prized timber, *okoume*, depended on first crushing indigenous resistance, then the forced resettlement of forest peoples and, finally, the extraction of *corvee* labour to supply the manpower that the industry demanded. Death rates in the logging camps were so high that an appalled Governor General felt obliged to denounce the practices of his own administration. The timber industry he wrote is a ‘great devourer of men’.⁶ When the practice of ‘scientific forestry’ was introduced by the British into India and Burma in the 1850s and by the Dutch into Java, the establishment of forest reserves required

¹ World Bank, 2002, *A Revised Forest Strategy for the World Bank Group*. World Bank, Washington, DC.

² The newly established Rights and Resources Initiative for example claims there are 2 billion people dependent on forests of whom 350 million are forest dependent indigenous people.

www.rightsandresources.org

³ Jack Westoby, 1987, *The Purpose of Forests*. Basil Blackwell, Oxford; Jack Westoby, 1989, *Introduction to World Forestry*, Basil Blackwell, Oxford.

⁴ Marcus Colchester, 1994, *Salvaging Nature: Indigenous Peoples, Protected Areas and Biodiversity Conservation*, United Nations Research Institute for Social Development, Geneva.

⁵ Ramachandra Guha, 1991, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, Oxford University Press, Delhi; Madhav Gadgil and Ramachandra Guha, 1993, *This Fissured Land: an Ecological History of India*, Oxford University Press, Delhi; Nancy Peluso, 1992, *Rich Forests, Poor People: Resource Control and Resistance in Java*, California University Press, Berkeley; Raymond Bryant, 1996, *The Political Ecology of Forestry in Burma 1824-1994*, University of Hawaii Press, Honolulu.

⁶ Roland Pourtier, 1989, *Le Gabon: Etat et Developpement*, L’Harmattan, Paris:146, 173, 181; Marcus Colchester, 1993, *Slave and Enclave: the Political Ecology of Equatorial Africa*, World Rainforest Movement, Penang:22-26.

the, often violent, curtailment of indigenous rights.⁷ Conflict with indigenous peoples was immediate. Colonial opinions were divided over the wisdom or merits of denying indigenous peoples' rights, but scientific forestry prevailed and set the dominant pattern for forest management in the tropics for the next century and a half.⁸ The same model of forestry was also applied in newly independent countries in the post-colonial era including in much of Latin America.⁹

The few detailed studies that there have been of the impact of modern forestry practices on indigenous peoples reveal a number of serious problems:

- increases in mortality and severe health and nutritional impacts, leading to demographic decline among previously isolated peoples;¹⁰
- marked decline in game, both through direct disturbance of habitats and because of increased hunting pressure along access roads and skid trails;¹¹
- changes in disease ecology resulting in high incidences of diseases like yaws, tuberculosis, malaria and dengue;
- elevated rates of STD infection due to prostitution and exploitative sexual relationships in logging camps;¹²
- high rates of injury among local people employed as forest workers;¹³
- discriminatory working conditions and a loss of forest-dwelling skills;¹⁴

⁷ Felix Padel, 2000, *The sacrifice of human being: British Rule and the Konds of Orissa*. Oxford University Press, New Delhi; Nancy Peluso, 1992, *Rich Forests, Poor People: Resource Control and Resistance in Java*, California University Press, Berkeley; Raymond Bryant, 1996, *The Political Ecology of Forestry in Burma 1824-1994*, University of Hawaai Press, Honolulu.

⁸ Ramachandra Guha, 1991, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, Oxford University Press, Delhi; Madhav Gadgil and Ramachandra Guha, 1993, *This Fissured Land: an Ecological History of India*, Oxford University Press, Delhi;

⁹ Tom Griffiths, 2003, Progress and problems in the implementation of forest law in Peru. Trip Report. Forest Peoples Programme, Moreton-in-Marsh; Marcus Colchester et al., 2006, *Justice in the Forests; rural livelihoods and forest law enforcement*. CIFOR, Bogor.

¹⁰ John D. Early and Thomas N. Headland, 1998, *Population Dynamics of a Philippine Rain Forest People: the San Ildefonso Agta*, University Press of Florida, Gainesville.

¹¹ Julian Caldecott, 1986, *Hunting and Wildlife Management in Sarawak*, World Wildlife Fund (Malaysia), Kuala Lumpur, Malaysia; Marcus Colchester, 1989, *Pirates, Squatters and Poachers: the political ecology of dispossession of the native peoples of Sarawak*, INSAN and Survival International, Petaling Jaya:37; Marcus Colchester, 1993, The International Tropical Timber Organisation: Kill or Cure for the Rainforests In: Simone Reitbergen (ed.) *The Earthscan Reader in Tropical Forestry*, Earthscan, London:185-207; Marcus Colchester, 1993, *Slave and Enclave: the Political Ecology of Equatorial Africa*, World Rainforest Movement, Penang:48-51; Samuel-Alain Nguiffo, 1998, In Defence of the Commons: Forest Battles in Southern Cameroon, In: Michael Goldman (ed.), *Privatizing Nature: Political Struggles for the Global Commons*, Pluto Press, London:111; Fiona Watson, 1996, A view from the forest floor: the impact of logging on indigenous peoples in Brazil, *Journal of the Linnaean Society* 122:75-82

¹² World Rainforest Movement and Forests Monitor, 1998, *High Stakes: the need to control transnational logging companies – a Malaysian case study*, Ely and Montevideo.

¹³ AN Zainorin 1985, The Status of Logging Safety and Accident Prevention in Sarawak, In: Proceedings of the Azam Conference, Kuching, Sarawak:18-84 ; Marcus Colchester, 1987, *Pirates, Squatters and Poachers: the political ecology of dispossession of the native peoples of Sarawak*, INSAN and Survival International, Petaling Jaya:38.

¹⁴ Oubangui, nd, *Pygmies et Chantiers Forestiers de la Sangha*, ms ; Louis Sarno, 1993, *Song from the Forest: my life among the Be-Benjelle Pygmies*, Bantam Press, London ; David S. Wilkie and John G. Sidle, 1990, *Social and Environmental Assessment of the Timber Production Capacity Extension Project SFAC*, US Department of Agriculture, Washington DC ; Robert Bailey, Serge Bahuchet and Barry Hewlett, 1992, Development in Central African Rainforests: concerns for forest peoples. In: Kevin Cleaver, Mohan Munasinghe, Mary Dison, Nicolas Egli , Axel Peuker and Francois Wencelius

- disproportionate impacts on indigenous women, children and the elderly;¹⁵
- denial of rights in land, forced resettlement, and limitations of rights of access and use;
- creation of dependency resulting in exploitative, even corrupt patron-client relations between forestry officials and indigenous peoples;¹⁶
- breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management;
- internal conflicts over decision-making, resource allocation, further undermining social cohesion;¹⁷
- shift in the balance of power over forests away from forest-dwellers and in favour of industry and political elites, reinforcing patrimonial political systems and rent-seeking behaviours creating major obstacles to sustainable forest management and to policies that respect indigenous peoples' rights.¹⁸

The prevailing pattern in forestry, where the State controls forests to the exclusion of community rights and interests, is now deeply rooted. For example, some 22% of the national territory of India is under the control of State forest departments. In Thailand some 40% of the national territory is run by the Royal Forestry Department. In the Philippines the equivalent figure is some 55% and in Indonesia 70% of the country is classified as State Forest Areas. A similar pattern prevails in much of Africa and, increasingly, in Latin America, where forestry laws have tended to be more recent impositions.¹⁹

(eds.), *Conservation of West and Central African Rainforests*, World Bank, Washington DC:202-211; Richard Carroll, 1992, *The Development, Protection and Management of the Dzangha-Sangha Dense Forest Special Reserve and the Dzangha-Ndoki National Park in Southeastern Central African Republic*, WWF-USA ms:28.

¹⁵Noeleen Heyzer, 1996, *Gender, Population and Environment in the Context of Deforestation: a Malaysian Case Study*, United Nations Research Institute for Social Development, Geneva; Kelvar, Govind and Dev, Nathan, 1991, *Gender and Tribe: Women, Land and Forests in Jharkhand*, Zed Books and Kali for Women, London and Delhi.

¹⁶Marcus Colchester, 1993, *Forest Peoples and Sustainability*, In: Marcus Colchester and Larry Lohmann (eds.), *The Struggle for Land and the Fate of the Forests*, World Rainforest Movement and Zed Books, Penang and London:61-95; Mark Poffenberger and Betsy McGean (eds.), 1996, *Village Voices, Forest Choices: Joint Forest Management in India*, Oxford University Press, Delhi; Madhu Ramnath, 1999, *People, Politics and Forest Management in Bastar: an ethnobotanical perspective*, In: Paul Wolvekamp (ed.), 1999, *Forests for the Future: local strategies for forest protection, economic welfare and social justice*, Zed Books, London:41-56.

¹⁷Marcus Colchester, 1992, *Sustaining the Forests: the community-based approach in South and Southeast Asia*, United Nations Research Institute for Social Development, Geneva; Samuel-Alain Nguiffo, 1998, *Defence of the Commons: Forest Battles in Southern Cameroon*, In: Michael Goldman (ed.), *Privatizing Nature: Political Struggles for the Global Commons*, Pluto Press, London:111-112.

¹⁸James N. Anderson, 1987, *Lands at Risk, People at Risk: perspectives on tropical forest transformation in the Philippines*, In: Peter D Little, Michael M Horowitz and A Endre Nyerges, *Lands at Risk in the Third World: local level perspectives*, Westview Press, Boulder:249-267; Marcus Colchester, 1989, *Pirates, Squatters and Poachers: the political ecology of dispossession of the native peoples of Sarawak*, INSAN and Survival International, Petaling Jaya; Philip Hurst, 1991, *Rainforest Politics*, Zed Books, London ; George Marshall, 1990, *The Political Economy of Logging: the Barnett Enquiry into Corruption in the Papua New Guinea Timber Industry*, *The Ecologist* 20(5): 174-181; Colin Filer (ed.), 1997, *The Political Economy of Forest Management in Papua New Guinea*, International Institute for Environment and Development, London; Peter Dauvergne, 1997, *Shadows in the Forests: Japan and the Tropical Timber Trade in South East Asia*. MIT Press, Los Angeles.

¹⁹Marcus Colchester and Larry Lohmann, 1993, *The Struggle for Land and the Fate of the Forests*. Zed Books, London.

Moves to restore community rights in forests have shown mixed results. Thus, whereas an oft-cited paper by Forest Trends purports to show that about a quarter of the world's forests are now under community management,²⁰ the extent to which novel tenures really give communities adequate control and security is very variable and often contested.²¹ Joint Forest Management in India, for example, while strongly supported by the World Bank, has been denounced by indigenous peoples for failing to protect customary rights and for entrenching the interests of higher caste elites and forestry department officials.²² In the same way, the 25 year leases offered to communities in the Cameroon as a form of community tenure have excluded hunters and gatherers.²³ Comparative studies show that over-onerous regulations of community forest management often push poor communities into illegality and even to getting ensnared in illegal logging networks.²⁴ In Indonesia, despite changes in legislation designed to promote community rights in forests, only 0.2% of what are considered to be State Forest Areas are currently under community tenures.²⁵

Reforms are, however, underway. Especially where there has been strong mobilization by forest-dependent peoples, and supportive civil society organisations, pressing for recognition of their rights, significant land tenure reforms have come about in some countries. In some parts of Latin America, political pressure has successfully led to the revision of constitutions and land tenure laws in favour of indigenous peoples.²⁶ In Asia, customary rights are increasingly recognized as a basis for rights in land in constitutions, new land laws and court rulings.²⁷ In Africa, while tenurial regimes in Central Africa remain in general unhelpful to indigenous

²⁰ Andy White and Alejandra Martin, 2002, *Who Owns the World's Forests: Forest tenure and Public Forests in Transition*. Forest Trends, Washington DC.

²¹ David Barton Bray, Leticia Merino-Perez and Deborah Barry, 2005, *The Community Forests of Mexico: managing for sustainable landscapes*; Marcus Colchester, Tejaswini Apte, Michel Laforge, Alois Mandondo and Neema Pathak, 2003, *Bridging the Gap: Communities, Forests and International Networks. Synthesis Report of the Project 'Learning Lessons from International Community Forestry Networks'*, CIFOR Occasional Paper No. 41, Bogor; Marcus Colchester et al., 2006, *Justice in the Forests: Rural Livelihoods and Forest Law Enforcement*. CIFOR, Bogor.

²² FPP and Samata, 2005, *Andhra Pradesh Community Forestry Management Project: a preliminary independent evaluation of a World Bank forestry project*. Forest Peoples Programme, Moreton-in-Marsh.

²³ Centre pour l'Environnement et le Développement, Rainforest Foundation UK and Forests Monitor, 2003, *Forest management transparency, governance and the law: case studies from the Congo Basin*. CED, Yaoundé, RF, London and Forests Monitor, Cambridge. Community forestry permits cost, on average, US\$ 6,000 each to secure, way beyond the means of most rural communities (Albert Barume, 2005, *Etude sur le cadre legal pour la protection des droits des peuples indigenes et tribaux au Cameroun*. International Labour Organisation, Geneva : 10).

²⁴ Marcus Colchester et al., 2006, *Justice in the Forests; rural livelihoods and forest law enforcement*. CIFOR, Bogor.

²⁵ Colchester, M., Ekadinata, A., Fay, C., Gamal, P., Indriani, E., Lisken, S., Martua, S., van Noordwijk, M., Nurka, C., Suseno, B., et al. 2005 *Facilitating agroforestry development through land and tree tenure reforms in Indonesia*. ICRAF South East Asia Working Paper No. 2005/2. World Agroforestry Centre, Bogor.

²⁶ Tom Griffiths, 2004, Indigenous Peoples, Land Tenure and Land Policy in Latin America. *Land Reform* 2004(1):46-64.

²⁷ Marcus Colchester, 2004, Indigenous Peoples and Communal Tenures in Asia. *Land Reform* 2004(1):28-45.

peoples,²⁸ in Southern and East Africa reforms in favour of community control of forest lands are gaining ground.²⁹

In general, however, forest policies and laws have been slow to accept the implications of these reforms. Studies by the Centre for International Forestry Research (CIFOR) have shown that forest law reforms tend to be heavily influenced by the timber industry lobby and often driven by international development agencies, which favour laws that advantage large-scale, highly capitalized forest industries.³⁰

The constitutionality and legality of forestry regimes which deny the property rights of forest-dependent citizens have not been subjected to adequate scrutiny. For example, in Indonesia, some 30 to 95 million people from 'communities governed by customary law' (*masyarakat adat*), whose rights are recognized in the Constitution, find themselves living in government-classified State Forest Areas, which, according to the forestry law, are by definition areas with 'no rights attached'. Yet studies by the World Agroforestry Centre show that, in fact, only some 12% of these forests have been gazetted, and, even where gazettelement has been done, procedures have not always been properly followed. This implies that although these areas may fall under the jurisdiction of the Ministry of Forestry, they may not be unencumbered of rights, should not be considered 'State Forests' and, therefore, should not be allocated to third parties as logging concessions. A 2001 instruction from the National Assembly to the legislature to reform the forestry law, in order to strengthen the rights of communities and resolve conflicts over natural resources, has since been resisted by the Ministry of Forestry.³¹

National obligations under the International Arrangement on Forests:

International concern to ensure that forest policies lead to conservation, sustainable forest management and provide benefits for local communities has grown over the past 20 years. While there has not been agreement on the desirability of adopting a legally-binding instrument on forests, a wide range of inter-governmental declarations have been made, internationally and regionally, which can be interpreted as imposing 'soft law' obligations on countries to respect the rights of communities in forests.

²⁸ John Nelson, 2004, A Survey of Indigenous land tenure in Sub-Saharan Africa. *Land Reform* 2004(1):65-80

²⁹ L. Wiley and S. Mbaya, 2001, *Land, People and Forests in Eastern and Southern Africa at the beginning of the 21st century. The impact of land relations on the role of communities in forest futures.* IUCN, Nairobi.

³⁰ Silva, E., Kaimowitz, D., Bojanic, A., Ekoko, F., Manurung, T. and Pavez, I., 2002, Making the law of the jungle: the reform of forest legislation in Bolivia, Cameroon, Costa Rica and Indonesia. *Global Environmental Politics* 2(3): 63-97; Marcus Colchester, 2006, *Justice in the Forests: rural livelihoods and forest law enforcement.* CIFOR, Bogor:31.

³¹ Marcus Colchester, Martua Sirait and Boedhi Wijardjo, 2003, *The Application of FSC Principles 2 & 3 in Indonesia: Obstacles and Possibilities.* WALHI and AMAN, Jakarta; Colchester, M., Ekadinata, A., Fay, C., Gamal, P., Indriani, E., Lisken, S., Martua, S., van Noordwijk, M., Nurka, C., Suseno, B., et al. 2005 *Facilitating agroforestry development through land and tree tenure reforms in Indonesia.* ICRAF South East Asia Working Paper No. 2005/2. World Agroforestry Centre, Bogor; Arnoldo Contreras-Hermosilla and Chip Fay, 2005, *Strengthening Forest Management in Indonesia through Land Tenure Reform: issues and framework for action.* Forest Trends and ICRAF, Washington DC and Bogor.

Through the Rio Declaration and Agenda 21, the Non-legally Binding Statement of Principles on All Types of Forests, the ‘proposals for action’ agreed at the UN Inter Governmental Panel on Forests, the Inter Governmental Forum on Forests, the decisions of the Commission on Sustainable Development, and the Convention on Biological Diversity’s Expanded Programme of Work on Forest Biological Diversity, governments have committed themselves *inter alia* to:

- address forest issues in a holistic and cross-sectoral manner;
- ensure the participation of local communities and indigenous peoples in the formulation, planning and implementation of national forest policies;
- recognise and support the identity, culture and rights of indigenous peoples and other forest dependent people;
- formulate policies and laws to secure land tenure for indigenous peoples and local communities;
- recognise and support community-based forest management and;
- develop regimes to protect traditional forest related knowledge.³²

Likewise in the more recent regional agreements on ‘Forest Law Enforcement and Governance’, in Asia, Africa, Europe and North Asia, and by the European Union, governments have committed themselves to:

- engage indigenous peoples and local communities in the formulation and implementation of forest laws and policies;
- ensure coherence between forestry and land tenure laws;
- reform laws and strengthen land tenure and access rights especially for rural communities and indigenous peoples;
- take into account customary law and traditional knowledge;
- strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples, in policy making and implementation.³³

National obligations under other treaties:

This recognition by governments of the need to reform forest-related laws and policies in order to secure the rights of indigenous peoples and local communities in forests, can be seen as the start of a process to revise previously exclusionary forest policies and bring them into line with international human rights laws. UN human

³² Tom Griffiths, 2001, *Consolidating the Gains: Indigenous Peoples’ Rights and Forest Policy Making at the United Nations*. Forest Peoples Programme, Moreton-in-Marsh; FPP, 2004, *A Summary of Some Key Existing Political Commitments and international standards on the Social and Cultural Aspects of Forests*. Forest Peoples Programme, Moreton-in-Marsh; Helen Newing (ed.), 2005, *Our Knowledge for Our Survival: traditional forest-related knowledge and the implementation of related international commitments*. 2 volumes. International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and CIFOR, Bogor.

³³ Marcus Colchester, 2006, *Justice in the forest: rural livelihoods and forest law enforcement*. CIFOR, Bogor; Bali Declaration on Forest Law Enforcement and Governance, 11-13 September 2001; Déclaration Ministérielle, 2003, Conférence Ministérielle sur l’Application des législations forestières et la gouvernance en Afrique (AFLEG), 13–16 octobre 2003. Yaoundé, Cameroon; EU Council Conclusion on Forest Law Enforcement, Governance and Trade, 13 October 2003; ENA-FLEG, 2005, St Petersburg Declaration. http://www.illegal-logging.info/papers/MDILA_final_25_Nov_05_eng.pdf

rights committees have interpreted a number of international human rights treaties as requiring States to secure the rights of indigenous peoples, including in forests.

These treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of Discrimination Against Women and the International Labour Organisation's Convention No. 169 on Indigenous and Tribal Peoples, impose binding obligations on countries that are party to them.³⁴ Summing up all this law and jurisprudence it is fair to say that under international law indigenous peoples enjoy recognized rights to:

- the ownership, control and management of the lands they customarily occupy and use;
- exercise their customary law;
- represent themselves through their own representative institutions;
- free, prior and informed consent to developments on their land;
- control, and share in the benefits of the use of, their traditional knowledge
- self-determination.³⁵

In general, forestry ministries have paid little attention to their countries' legal obligations under international human rights treaties. They have been more active in giving consideration to the way international environmental laws apply to forests.³⁶

National obligations under the Convention on Biological Diversity:

The Convention on Biological Diversity is a legally binding international treaty that frames the way in which States that are party to the Convention should achieve biodiversity conservation, sustainable use and the fair and equitable sharing of benefits arising from the exploitation of genetic resources. The Convention adopts an ecosystems approach to conservation and from its inception, and in numerous decisions of the Parties, the CBD has established progressive norms and principles to address equity, participation and the rights of indigenous peoples, local communities

³⁴ Fergus MacKay, 2001a, *A Briefing on Indigenous Peoples' Rights and the United Nations Human Rights Committee*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2001b, *A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2001c, *The African Commission on Human and Peoples' Rights*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2002, *A Guide to Indigenous Peoples' Rights in the International Labour Organization*. Forest Peoples Programme, Moreton-in-Marsh; Fergus MacKay, 2003, *A Guide to Indigenous Peoples' Rights under the International Convention on the Elimination of All Forms of Racial Discrimination*. Forest Peoples Programme, Moreton-in-Marsh; Ellen-Rose Kambel, 2004, *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women*. Forest Peoples Programme, Moreton-in-Marsh.

³⁵ FPP, 2005, *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence, 1993 – 2004*. Forest Peoples Programme, Moreton-in-Marsh.

³⁶ Evidence for this statement comes from the presence of forestry department officials as members of government delegations at relevant meetings of the Conference of Parties of the CBD and the reluctance of government delegations at the IPF, IFF and UNFF to admit language about human rights into negotiations.

and other interested parties.³⁷ Article 10c of the Convention requires States ‘as far as possible and as appropriate’ to:

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

The Secretariat of the CBD notes that article 10c should be read in conjunction with Article 8j which requires States party to the convention:

Subject to its national legislation, to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

As used in Article 10c, the terms “customary use” and “traditional cultural practices” refer to, among others, indigenous legal systems for the control, use and management of land and natural resources. The CBD Secretariat has thus recommended that in order to comply with their obligations under this article States must ensure that national legislation and national policies account for and recognise, among others, indigenous legal systems, corresponding systems of governance and administration, land and water rights and control over sacred and cultural sites.³⁸

Furthermore, through adoption of the ‘*Addis Ababa Principles and Guidelines*’ on the sustainable use of biological diversity, government signatories to the Convention have agreed that sustainable use of biodiversity is enhanced by supportive policies, laws and institutions at all levels of governance, and that indigenous and local communities should be empowered to manage biological resources and their rights over, and/or stewardship of, biological resources should be recognised and reinforced.³⁹ Moreover, specifically with respect to Protected Areas, governments have recalled:

the obligations of the Parties towards indigenous and local communities in accordance with article 8(j) and related provisions and notes that the establishment, management and planning of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations.⁴⁰

The CBD has also called for case studies of sustainable use of biodiversity by indigenous peoples to help guide implementation of the Article 10c.⁴¹ In order to

³⁷ *Sustaining Life on Earth: How the Convention on Biological Diversity promotes nature and human well-being*. <http://www.biodiv.org/doc/publications/guide.asp>

³⁸ Secretariat of the CBD, 1997, *Traditional Knowledge and Biological Diversity*. UNEP/CBD/TKBD/1/2) at 11 and 12 <http://www.biodiv.org/doc/meetings/tk/wstkbd-01/official/wstkbd-01-02-en.pdf>

³⁹ <http://www.biodiv.org/doc/publications/addis-gdl-en.pdf>

⁴⁰ Decision VII/23 of COP 7.

⁴¹ Decisions V/24 of COP 5 and VII/12 of COP 7.

elucidate the requirements for the application of Article 10c, since 2002 the Forest Peoples Programme has been working with indigenous peoples' organisations in Venezuela,⁴² Guyana,⁴³ Suriname,⁴⁴ Cameroon⁴⁵ and Thailand⁴⁶ to help them document their systems of customary use, analyse their traditional cultural practices, assess their contribution to sustainable use and biodiversity conservation and assess the extent to which national laws and government policies and practices protect and encourage such activities. The rest of this paper summarises the methods and findings of these five studies and makes recommendations on how Article 10c can be effectively implemented in these countries and more broadly.

Developing a methodology for assessing adherence to CBD Article 10c :

The basic method for these case studies that was developed by the Forest Peoples Programme with its partners, included the following elements:

- identify indigenous organisations and communities that are seeking to secure their customary systems of resource use and improve their management of natural resources;
- hold workshops in the proposed host communities to discuss suggested work programmes;
- agree on a general programme of work, with related personnel and budgets, to carry out the proposed work;
- carrying out intensive participatory community mapping projects using geomatic technologies, which plot both the histories and current extent of the selected communities' land use systems;⁴⁷
- carry out initial training of indigenous researchers in the meaning and relevance of CBD Article 10c, and in participatory action research methods and then carry out practical exercises in information gathering about 'customary use' and 'traditional cultural practices';

⁴² Marcus Colchester, Nalua Silva Monterrey and Ramon Tomedes, 2004, *Protecting and Encouraging Customary Use of Biological Resources: the Upper Caura, Venezuela*. Forest Peoples Programme, Moreton-in-Marsh.

⁴³ Beryl David, Percival Isaacs, Angelbert Johnny, Larry Johnson, Maxi Pugsley, Claudine Ramacindo, Gavin Winter and Yolanda Winter, 2006, *Wa Wiizi, Wa Kaduzu: Our Territory, Our Custom*. Forest Peoples Programme, Moreton-in-Marsh.

⁴⁴ Henry Zaalman, Georgette Kumanajare, Louis Biswana, Grace Watalmaleo, Michel Barend, Sylvia Oeloekanamoe, Steven Majarawai, Harold Galgren, Ellen-Rose Kambel, Caroline de Jong, 2006, *Marauny Na'Na Emandobo Lokono Shikwabana. 'Marowijne: Our Territory'*. Forest Peoples Programme, Moreton-in-Marsh.

⁴⁵ Belmont Tchoumba, John Nelson, George Thierry Handja, Stephen Nounah, Emmanuel Minsolo, 2006, *Protecting and Encouraging Customary Use of Biological Resources by the Baka in the west of the Dja Biosphere Reserve*. Forest Peoples Programme, Moreton-in-Marsh.

⁴⁶ Highland Mapping Development and Biodiversity Management Project, Inter-Mountain Peoples' Education and Culture in Thailand Association, 2006, *Indigenous Knowledge, Customary Use of Natural Resources and Sustainable Biodiversity Management*. Draft Abridged Edition. IMPECT and Forest Peoples Programme, Moreton-in-Marsh.

⁴⁷ For the detailed discussion of one such participatory mapping project see Marcus Colchester, 2005, *Maps, Power and the Defense of Territory: The Upper Mazaruni Land Claim in Guyana*. In: Peter Brosius, Anna L. Lowenhaupt Tsing and Charles Zerner (eds.) *Communities and Conservation: Histories and Politics of Community-Based Natural Resource Management*. Altamira Press, Walnut Creek: 271-303.

- hold workshops in the host communities to explain in greater detail the aims of the 10c research and to identify the communities' preferences and priorities;
- carry out the participatory research with the engagement of the host communities over a period of several months, by means of: community level workshops; semi-formal interviews; extensive field visits and treks through community landscapes; informal discussions and focus group discussions; participant observation and involvement in rituals and collective decision-making; feedback meetings with communities to discuss preliminary findings;
- carry out at least one, and usually several, supervisory visits to the communities and researchers to discuss preliminary findings and advise on the organisation of information in the final reports;
- carry out a detailed legal assessment of national laws, and government policies and practices, to assess the extent to which Article 10c is being adhered to;
- draft the report in the local or national languages;
- hold validation meetings with the communities to review and amend the draft report to ensure its acceptance as a good faith expression of relevant customary use and traditional cultural practices;
- presentation of the findings to the Conference of Parties of the CBD in Curitiba in Brazil in March 2006 by the community researchers.⁴⁸

Country Studies:

Venezuela

The Venezuelan case study was carried out by the indigenous peoples' organisation, Kuyujani, with the Makiritare (*Ye'kwana*) and northern Yanomami (*Sanema*) communities inhabiting the upper reaches of the Caura river, in close collaboration with the senior researchers from the Centro de Investigaciones Antropologicas de la Guayana of the Universidad Nacional Experimental de la Guayana, based in Ciudad Bolivar.

The Caura is a major tributary of the Orinoco. The Caura basin, though underlain by nutrient poor rocks and soils, is home to considerable biodiversity. The two main ethnic groups in the area – the Ye'kwana and Sanema – have a long history of occupation of these forests, on which their livelihoods, cultures and identities depend. Although the two peoples have quite distinct livelihood strategies - the former customarily living in large, long established and widely dispersed villages, the latter being much more mobile and living in scattered hamlets – both make extensive use of the forests through shifting cultivation, hunting, fishing and foraging.

Shifting cultivation provides the bulk of the carbohydrate needs of both peoples, being more intensive and varied among the Ye'kwana than the Sanema who used to be more nomadic before they adopted steel tools. Although gardens and forest fallows occupy significant proportions of the lands around the larger settlements, the low population density means that the full agricultural cycle only occupies an estimated 5% of the available agricultural land in the upper river basin. While fishing in the nutrient poor streams and rivers provides significant additions to daily fare, hunting,

⁴⁸ In the event the researchers from Cameroon were prevented by malaria from presenting their case study in Curitiba.

today using shotguns and dogs, provides the majority of the protein in Sanema and Ye'kwana diets. Tapir is the only species which communities are concerned may be depleted by hunting.

The study identified complex bodies of myth, ritual and shamanic belief, which link these peoples to their territories and their environment. Ye'kwana beliefs give particularly strong emphasis to plants, notably drugs, charms, poisons and cures, which are imbued with the spiritual forces that mediate between human beings and between the community and their surroundings. By contrast, Sanema give greater prominence to animals – insects, fish, amphibians, reptiles, birds, mammals – and their shamans recruit the powers on these animals, manifest in their songs and chants, to cure disease, regulate natural forces, counter enemies and restore social harmony.⁴⁹ Sanema tales of origin explain the qualities of human life and the existential problems of being human in terms of natural forces. For example, human frailty and weakness result from humans having been created by the trickster of myth from softwood trees.⁵⁰ Most diseases result from attacks by the vengeful spirits of animals that have been killed and eaten by Sanema. The main task of the very numerous shamans in Sanema society is to interpret these diseases, caution people for infringing the numerous food prohibitions, which regulate and define their place in society, and recruit the assistance of spirit allies to restore balance between society and nature.

Customary uses are regulated through a complex web of customary laws and 'traditional practices' which define gender roles, norms of sharing and exchange, and notions of property and territoriality. The peoples' egalitarian customary institutions ensure social equity, define roles for women and enforce social norms through peer pressure, shared value systems and defined but non-hierarchical polities. Pressure on resources is slight - the population density is lower than 8 km²/person – and is reduced further by the traditional practices of rotating the use of defined hunting zones to allow the fauna to recover (Ye'kwana) and moving villages frequently (Sanema). Environmental issues are explicitly part of decision-making about settlement siting and resource use and, during the course of the study, communities continued to regulate or attenuate pressure on the environment through rotating hunting zones and by relocating communities.

The Venezuelan State has only a tenuous presence in this isolated upland area, although plans to develop hydropower and log the area have been shelved rather than dropped. The State defines the whole area as falling within a number of 'protected areas' (referred to as *Areas Bajo Regimen de Administracion Especial* in Venezuela) – including two national parks, two natural monuments, a hydrological reserve and a forest reserve – which technically make indigenous land use illegal, although these rules are not enforced. Historically the Venezuelan State has pursued an integrationist policy towards indigenous peoples and, although measures to recognise land rights existed, they were not widely applied. The State ratified the CBD in 1998 and since 2000 the Bolivarian Republic of Venezuela has adopted progressive laws and a new Constitution which recognise indigenous peoples' rights and allow for the collective titling of their territories (referred to as '*habitats*' in Venezuelan law).

⁴⁹ Marcus Colchester, 1982, The Cosmivision of the Venezuelan Sanema. *Antropologica* 58:97-174.

⁵⁰ Marcus Colchester, 1981, Myths and Legends of the Sanema. *Antropologica* 56:25-126.

The indigenous peoples of the Upper Caura have mobilised and organised themselves to assert their rights and protect the biological resources of their area by: creating a radio network; establishing a multi-ethnic, basin-wide indigenous association; mapping their customary land use system; registering their knowledge as their own intellectual property; being the first ethnic group in the country to apply for legal title under the new laws; training community members as 'para-biologists'; carrying out community-level workshops to review their customary institutions; elaborating a draft management plan for the area; calling for the co-management of the existing protected areas, which they accept; and building up their own institutional capacity, focused on improved inter-ethnic relations and the empowerment of indigenous women.

The study concluded that given that the customary uses and traditional practices of the indigenous peoples of the Upper Caura are clearly 'compatible with conservation and sustainable use', the Venezuelan State has only to apply its existing laws to bring it into compliance with Article 10c of the CBD. This would be a globally significant act and deserving of international support.

Kuyujani first applied for land title to the Upper Caura in 1998 and formally filed a land claim with the government under the new law in 2001. Although, in 2005, the government issued land titles to small pieces of land to some Kariña, Warao, Pume and Hiwi communities in the States of Anzoategui and Apure, it has refused to recognise the prior and wider claims to '*habitat*' filed by less contacted indigenous peoples further south. In doing so the government has expressed the (ill-informed or misleading) view that to do so would undermine national sovereignty. On the contrary, securing the proprietary rights of its own indigenous citizens, would not only further secure national sovereignty but also make the country less vulnerable to complaints in the international courts.

Guyana

In Guyana, the study was carried out by the Wapishana (*Wapichan*) people of the Rupununi savannahs in the south of the country with the collaboration of the Amerindian Peoples' Association. The research was based on four month's fieldwork undertaken by a team of eight Wapichan researchers in 16 villages and numerous smaller settlements in the South Rupununi District. The results of the study and its recommendations were validated by the leaders and elders of all participating communities in November 2005.

The Wapichan people have occupied and used land and biological resources in the South Rupununi since time immemorial. Wapichan communities feel a strong attachment to this extensive area, which constitutes their ancestral *wiizi* (territory), which comprises a large, seasonally flooded, grassland-shrub ecosystem in the western and central parts of the territory and an extensive tropical forest ecosystem in the south and east, which together support a rich mosaic of habitats and a high biodiversity. The whole area is drained by major and minor rivers associated with permanent and seasonal wetlands that support a large variety of fish and other aquatic life, including the endangered giant otter and arapaima fish, among others.

The indigenous authors point out that present day use of resources can be partly viewed as adaptation of custom in response to economic, cultural and institutional change introduced since colonial times. A significant number of families, for example, have integrated small-scale cattle rearing on the savannah into their livelihood, while maintaining their traditional farms cut in forest and savannah woodland. Central villages have become larger and more permanent since the introduction of schools and churches, but Wapichan communities have adapted their settlement pattern in order to maintain their traditional practice of shifting cultivation.

Documentation of the use of biological resources shows that Wapichan communities in Guyana customarily use the land for farming and use a wide variety of uncultivated plants and wild animals for food, craft, construction, medicines and cultural activities. Customary use takes place across the whole range of ecosystems and habitats found in the South Rupununi: savannah, forest, mountains, swamps, lakes, rivers etc. Settlement is dispersed, with families occupying at least three separate dwellings: one in the main village, one on the family farming grounds and another in distant hunting and fishing grounds. Family farmlands lie between one and 25 miles from settlements, while shared community hunting, fishing and gathering grounds are located between three and 35 miles from people's homes. The customary land use system is thus an extensive one.

The study finds that Wapichan *kaduzu* (custom) includes a rich body of norms and beliefs that promote the "sensible" use of land and natural resources. Customary law contains rules against over-harvesting and strongly condemns wasteful activities, while traditional practices promote selective and rotational resource use to enable re-growth and regeneration. Respectful and measured resource use is underpinned by a shared sense of responsibility regarding the need to care for resources for future generations and a strong belief that all life forms have their own spirit grandfather or "keeper" that must be respected by humans. According to custom, land and resources are held and shared collectively among Wapichan families and communities, while their traditional territory is considered to be owned by, and be the collective responsibility of, the Wapichan people in Guyana as a whole.

Access to land and biological resources is regulated under the traditional system of land tenure, governance and decision-making, which upholds the need to share within and between communities, but limits the access of outsiders. The study shows how introduced community institutions, like Village Councils, are integrated with the traditional system of collective land holding, and have begun to codify customary laws and traditional practices and are developing rules to address emerging resource issues stemming from the use of introduced technologies and non-traditional activities, like sand extraction.

Communities have also created their own inter-community bodies known as District Toshaos Councils, which have been set up to reinforce their traditional jurisdiction over shared farming, hunting, fishing, gathering grounds, coordinate internal collective decisions and enable joint dialogues with the government over land tenure, development, resource use and conservation issues. These inter-community councils are working to support the long-standing struggle of the Wapichan people to obtain legal title over the full extent of their ancestral lands in the South Rupununi. Initiatives include community mapping of traditional occupation and use and a

collective agreement to develop a territorial management plan based on customary use and the communities' own proposals for promotion of traditional practices, self-development, sustainable use and community conservation. While there are two District Councils within Wapichan territory, their objective is to obtain title to their traditionally owned lands, territory and resources that will be vested in a body on behalf of the Wapichan people rather than in individual villages, as it is presently.

The 1980 Constitution of Guyana, as amended in 2003, recognizes indigenous peoples' right to the promulgation, preservation and protection of their way of life and cultural heritage. While this provision has yet to be judicially interpreted, a legal and policy analysis completed as part of the study finds that natural resource, land and other relevant legislation does not adequately give effect to this right and is otherwise deficient with respect to other rights and issues that provide the framework within which customary use of biological resources can be effectively protected. Guyana ratified the CBD in 1994. However, its National Biodiversity Action Plan contains no explicit policy on article 10c and tends to see indigenous peoples' resource use primarily as a threat to biodiversity. The analysis finds that existing national laws and policies do not adequately recognise the vital linkages between traditional tenure, customary resource use and the maintenance of associated traditional practices. For example, land demarcation and titling procedures in Guyana do not recognise and protect the customary land tenure regime and the new Amerindian Act, denies the right of several indigenous communities to hold land collectively and may render some communities ineligible to acquire title.

The study concludes that the sustainability of traditional resource use in the South Rupununi stems from maintenance of: the customary land tenure regime, which enables access to extensive areas of land and diverse resource areas, continuity in a dispersed settlement pattern, the extensive traditional system of shifting cultivation and; Wapichan *kaduzu* (custom), which is widely shared throughout all communities and features explicit norms that promote respectful use of natural resources. This sustainable use system is threatened by: inadequate land titles that do not recognise the extensive pattern of customary occupation and use; incursions by commercial hunters and informal miners from the coastal areas of Guyana and from Brazil and; a risk of colonisation and land invasion linked to international road and infrastructure projects.

In order to address these threats to long-term sustainable resource use and enable effective implementation of article 10c it is recommended that land and natural resource laws and policies should be updated to make them consistent with the new Constitution of Guyana, and Guyana's obligations under international human rights treaties and afford effective recognition and protection of traditional tenure, governance and resource use regime of the Wapichan people and other indigenous peoples in Guyana. A call is also made to relevant government bodies and international agencies to support Wapichan efforts to develop and implement a management plan for their territory in the South Rupununi.

Suriname

The study in Suriname focuses on the customary occupation and use of the Lower Marowijne area in the North East of the country, which is inhabited by Carib (*Kaliña*) and Arawak (*Lokono*) communities. The study was carried out in close collaboration with the Association of Indigenous Village Leaders of Suriname (VIDS) and the Indigenous Land Rights Commission of the Lower Marowijne (CLIM). The research involved eight indigenous researchers drawn from the eight indigenous communities of the area.

The research documented the very varied ways in which the Kaliña and Lokono communities make extensive use of the rivers, creeks, wetlands and forests of the Lower Marowijne to provide for their daily needs. The principal activities include hunting, fishing, rotational cultivation and gathering forest fruits. Natural resources are also widely used as bast, medicines, dyes, for handicrafts, hammock making, making canoes, house construction, in rituals and religious ceremonies.

The study documented a wide range of 'traditional customary practices' that regulate natural resources. According to the customary law of the Kaliña and Lokono young animals, birds or fish, or small trees must not be killed or cut down and community members are only allowed to take what they need and will use. As among the Wapichan, there is a general ethic that waste must be avoided. In addition, several animal species, such as dolphins, giant river otters, manatees and sea turtles cannot be hunted at all, while it is prohibited to cut down or even come close to particular trees (e.g. the silk cotton tree), because of their spiritual significance in the Kaliña and Lokono culture.

These rules are invoked to ensure that biological resources are not overharvested, or overhunted and that the next generations will be able to continue using the resources that have sustained the Kaliña and Lokono since time immemorial. Transgression of these customary norms, for example if a hunter has killed too many bush pigs (white lipped peccaries), may result in spiritually caused diseases, in which case a shaman (*piay*) has to be consulted. Besides the shaman and internal social pressure, the village council, which is the oldest still functioning government system in Suriname, plays an important role in enforcing customary laws. Punishments for cutting down valuable fruit trees, for example, may be cleaning or weeding the entire village, resulting in social disgrace.

The study documented a number of external threats to the sustainable management of the area including the issuance by the government of mining and logging concessions within the Lower-Marowijne area without even notifying the communities or village councils, let alone their consent. In areas where mining or logging activities take place, game is less plentiful and fish stocks are declining.

The government has also issued individual titles to outsiders on the customary lands of some communities without consulting, or obtaining the consent of, the indigenous communities. These titles are mostly located along the river and used for recreational purposes and tourism. As a result the Kaliña and Lokono now have restricted access to the river to moor their boats, to fish and to bathe or wash clothes, and cannot

exercise their traditional management over the coastal mangrove forests found along the river banks.

Suriname is unique among South American countries in that its legislature has not passed any laws at all to secure the rights of indigenous peoples,⁵¹ nor does the government recognize the position or powers of traditional authorities. Indigenous peoples, their communities and village councils do not have legal personality and may consequently not institute legal proceedings in case their rights are violated or infringed upon. In terms of the national courts, they are essentially defenseless in relation to violations of their traditional rights.⁵²

The communities have also objected to the establishment of nature reserves in their customary lands. Three nature reserves have been established in the Lower Marowijne area. The Nature Conservation Act, which provides the basis for the protected areas, does not acknowledge indigenous use rights: all hunting, fishing and agriculture is prohibited within the reserves. The nature reserves were established without the free, prior and informed consent of the indigenous communities and without the respect for their traditional ownership rights. The government is unable to adequately protect these areas, for example a mining company has been allowed to mine for bauxite within the Wane Creek Nature Reserve for more than ten years.

Other threats include: the Hunting Act, which does not acknowledge indigenous customary laws and ignores customary hunting seasons; the increasing presence of foreign owned fishing boats, who use kilometre-long nets and ignore customary laws; the loss of traditional knowledge, through the school system which does not take into account indigenous languages and knowledge systems and; the increasing impact of the cash economy, which requires more fishing and hunting to pay for school, clothes and other new necessities.

Efforts by the communities to deal with these threats include: mapping their territory; setting up the Indigenous Land Rights Commission of the Lower Marowijne and; filing formal petitions with the government to request recognition and protection of their traditional territory. The communities are currently developing a comprehensive land management plan for the area.

Cameroon

In Cameroon, there are no formal indigenous peoples' organisations. The study was carried out with the Cameroonian NGO, *Centre pour L'Environnement et le Developpement*, in direct collaboration with the Baka people living and working in and around Mekas, located on the western side of the Dja Wildlife Reserve, a World Heritage Site.

⁵¹ Ellen-Rose Kambel and Fergus MacKay, 1999, *The Rights of the Indigenous Peoples and Maroons of Suriname*. International Work Group for Indigenous Affairs and Forest Peoples Programme, Copenhagen and Moreton-in-Marsh. Uruguay also lacks any laws relating to indigenous peoples but the existence of indigenous peoples in Uruguay is contested. Most died out before the end of the 19th century.

⁵² Maroon communities in Suriname, who are equally defenceless and deprived of domestic remedies for their problems, have successfully had recourse to the Inter-American Court of Human Rights to claim redress for the abuse of their rights and the hand out of concessions on their customary lands.

The report contextualises the situation of the four Baka communities who mapped their forest use for this case study within the broader situation in Cameroon in general. The study outlines the local administrative and socio-political context along with Baka beliefs and rituals, and then summarises their principal forest activities. The main activities mentioned in the case study, and recorded in community forest-use maps include a highly sophisticated inventory of techniques for hunting and trapping, fishing, gathering and agriculture.

Like many other 'Pygmy' peoples of the Congo Basin,⁵³ the Baka do not have centralised polities or formal institutions, are non-hierarchical and highly egalitarian, with marked gender equality. The small Baka communities coalesce around exogamic clans (*Yé*), and are led by elder men and women (*kobo* and *kobowosse*), healers (*nganga*) and elephant hunters, respected for their experience and abilities.

Baka beliefs and rituals are strongly connected to their landscape and territory. The manifestation of the creator god (*Komba*) is the spirit of the forest (*Enjengui*) who introduced knowledge to the world and conveys it to new generations through initiation ceremonies. Other rituals are used to see into the future, ensure successful hunting, restore social harmony and placate angry spirits.

Cameroonian laws and administrative systems do not recognise the Baka as independent communities. Instead they are recognised and administered by the State only in relation to the Bantu villages with which they are associated as clients. Their dependency on the Bantu and outsiders has intensified following colonial, post-colonial and missionary efforts to sedentarise Baka communities, encourage agriculture and settle them alongside roads. Despite these interventions, the Baka maintain a highly diversified inventory of customary uses of natural resources although the use of shotguns and steel-wire traps has almost completely replaced net hunting and the use of dogs.

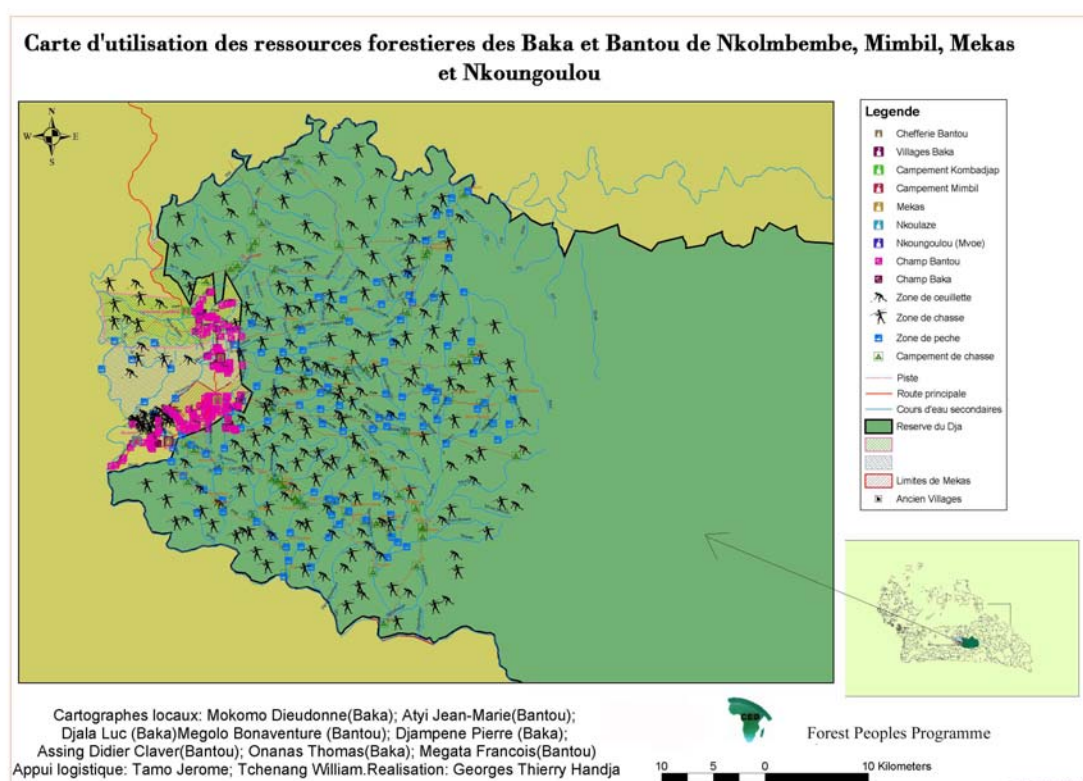
The case study highlights the tension between communities' customary forest use and the objectives of conservation. The forest-use maps clearly show how the activities of local and indigenous communities and those of conservation agencies overlap in the Dja Wildlife Reserve. Much of the conflict between communities and conservation agencies stems from a failure to take into account local communities' needs and rights in forest management plans. Whereas conservation and wildlife laws appear to make provision for local livelihoods, in practice Baka activities are treated as if they were illegal. This is experienced by the Baka as outsiders gaining increasing control over their forests, leading to them being denied access to the forests that they depend on through intimidation and even violence. The result is increased poverty and declining security for Baka livelihoods.

The study concludes that while Baka customary use was sustainable and compatible with conservation, the main threats to biodiversity in the area now come from the

⁵³ Colin Turnbull, 1961, *The Forest People*. Picador, London; Colin Turnbull, 1965, *Wayward Servants: the two worlds of the African Pygmies*. Greenwood Press, Westport; Louis Sarno, 1993, *Song from the Forest: My Life among the Ba-Benjelle Pygmies*. Bantam Press, London; Roy Grinker, 1994, *Houses in the Rainforest: Ethnicity and Inequality among Farmers and Foragers in Central Africa*. University of California Press, Berkeley.

erosion of traditional practices, top-down planning and zoning, and commercial exploitation of the area by outside interests. The sustainability of Baka livelihoods is currently being jeopardised by limitations on their access to the extensive areas of forest their way of life depends on, the prevailing atmosphere of insecurity and predatory commercial networks, in which local officials are implicated, trading bushmeat to distant markets.

The authors recommend that the management plan of the Dja Wildlife Reserve should be revised in line with Article 10c of the CBD⁵⁴ and other relevant decisions of the Conference of Parties of the CBD. This should be achieved through extensive dialogue with the Baka, an end to the harassment of Baka by eco-guards, and wider legal reforms to recognise indigenous rights.



Map : Although Baka customary use areas directly overlap the Dja Wildlife Reserve, their rights are not accommodated in the World Heritage Site management plan

Thailand

In Thailand the research was carried out with the Highland Mapping Development and Biodiversity Management Project and the Inter-Mountain Peoples' Education and Culture in Thailand Association (IMPECT). It was undertaken with the objectives of studying the knowledge, customs, and traditions practiced by the Hmong and Karen (*Pga k'nyau*) peoples in the management of natural resources and biodiversity, in terms of both the sustainable use and conservation of these resources. The project also

⁵⁴ Particularly Element 2 of the Programme of Work on Protected Areas on Governance, Equity, Participation and Benefit Sharing.

studied how highland communities have adapted to the impacts of externally imposed laws, policies and development processes.

The study found that the communities now have a dual system of leadership made up of traditional leaders and elected village heads recognised by the government. The traditional leaders hold authority based on the history and structure of the community. They play the main role in building a relationship between people in the community and natural resources and biodiversity management, by guiding their customary use of soil, water, forest, animal and plant resources. Indigenous knowledge about customary resource use is expressed as patterns of thought, production, beliefs, customs, traditions and rituals. All of these tangible expressions result in a balance between the maintenance of life and dependence on nature as appropriate for each people. The process of transmitting this knowledge from one generation to another is incorporated into customs such as teachings, songs, legends, stories, rituals, and practical daily activities, especially those related to their agricultural and forest-dependent work.

There are similarities between the Hmong and Pga k'nyau in their categorization of, and beliefs about, the ownership of natural resources, in that the ultimate owners are supernatural entities such as the Lord of the Water, the Lord of the Forest, the Lord of the Mountain, or guardian spirits. Both peoples believe that these spirits are the caretakers and guardians of natural resources. People using these resources ask permission to do so only in order to maintain their livelihoods. After having been granted permission by the spiritual owners, they are required to use the resources carefully and sensibly. These beliefs aid in the sustainable use and conservation of resources.

The main differences between the Hmong (Mae Ya Noi and Mae Sa Nga villages) and the Pga k'nyau (Khun Ya and Mae Pon Nai villages) are seen in their agricultural systems. The Pga k'nyau emphasize wet rice and swidden cultivation, mainly producing rice. The Hmong do not grow wet rice or upland rice, but plant cash crops instead. The main factors that play a role in cultural erosion and changes in social and economic activities taking place in the communities relate to the influences of the external development system that emphasizes commercial economic concepts, religion, and formal education.

The work of various government and non-governmental agencies has caused adaptations to occur or has been met with community resistance in the past. For example, Mae Pon Nai village has struggled against the thinking of government and religious organizations, and has not accepted a great deal of outside cultural influence. Khun Ya village has not adopted monoculture cash crops because they believe it destroys their indigenous agricultural methods. Community members have joined together at the community, watershed network, and national people's network levels in order to find appropriate solutions to their problems.

Although the Thai Constitution, which is the highest law in Thailand, provides for the recognition of customary natural resource management by tribal and indigenous peoples, the relevant articles have not yet been put into practice. The lack of title to agricultural and residential lands, one of the main problems affecting the two peoples and causing insecurity in resource management, is a result of Thai laws that have placed certain areas under the direct administration of government agencies, such as

the laws concerning National Reserve Forests, National Parks, Cabinet resolutions and the Land Act. These laws have created obstacles for highland communities to claim their rights.

The study concludes that in order to ensure compliance with Article 10c:

- the government should recognise the cultural rights and the rights of communities to manage natural resources according to their tribal customs;
- government agencies and local administrative organizations must promote and support the maintenance of traditional tribal regulations and community customs, and respect their land rights and cultural rights;
- the government should review relevant policies and laws and amend them where they conflict with the Constitution and the Convention on Biological Diversity;
- local administrative organizations should adopt local regulations that accept community practices and do not violate community members' human rights;
- there should be promotion and support for participatory processes both to study indigenous knowledge and to ensure that tribal peoples can pursue their own ways of life;
- the government should listen to the concerns of tribal peoples regarding community development and organizing the curricula in schools;
- peoples' organizations need to build greater understanding about tribal peoples, disseminate information on the Convention on Biological Diversity and monitor its implementation and reporting;
- tribal peoples must be strong and unshakeable, proud of their culture and sure of their rights to their lands, which they can promote by creating tangible examples and developing strong organizations at every level to join in a cooperative solution to their problems.

Conclusions

Social anthropology and juridical anthropology have given rise to the recognition of the normative value of myth and ritual... society's norms are not necessarily codified in an explicit, logical form, but they can also be expressed in a symbolic and metaphorical way (Marco Bassi 2005: 99).⁵⁵

Findings

All five studies have been able to document the remarkable sophistication and variety of customary resource use, much of which is invisible to the local administration, forestry and environment ministries and conservation agencies. Peoples, who, according to national stereotypes, are considered backward, isolated and inferior, in fact practise long established and subtle forms of environment use which are rooted in their cultures and long associations with particular ecosystems and locales.

Contrary to outsiders' perceptions, their customary use areas are not open access zones which urgently require the imposition of prescriptive laws and land use plans by outside agencies to prevent unsustainable exploitation, but are already regulated commons, subject to customary laws and controlled by indigenous institutions with their own locally recognized jurisdictions and authority.

The research interprets the 'traditional cultural practices' referred to in Article 10c as the communities' customary laws, by which we mean common practices, that have been consistently applied over time and that are enforced by social norms or sanctions.⁵⁶ Only a few of the communities involved in the studies have developed formal codes of customary laws or set them down in writing, yet all have informal and generally known methods for encouraging compliance with customs and social norms.

However, the customary law by which access and use of resources is regulated are not always obvious and sometimes not explicit. Pressure on resources by customary use is controlled or attenuated by measures such as:

- collective notions of property and group access, which define and control who has access to specific resources;
- customary rules which regulate residence and membership of communities, kinship systems and particular areas;
- dispersed or mobile residence patterns;
- diffuse expressions of power and authority within society which sanction behaviour through subtle social controls of approbation and criticism, much more than through the strict enforcement of penalties by formal authorities;
- moral codes and spiritual belief which underpin respect for customary authorities, norms and the opinions of other community members.

⁵⁵ Marco Bassi, 2005, *Decisions in the Shade: political and juridical processes among the Oromo-Borana*. Red Sea Press, Trenton NJ.

⁵⁶ Anthropologists have disagreed on how custom and customary law are to be distinguished, the general agreement being that customs take on the character of 'customary law' where infractions are punishable (Max Gluckman, 1977, *Politics, Law and Ritual in Tribal Society*. Basil Blackwell, Oxford.) .

The systems of customary law which the studies have focused on merge seamlessly with the wider social norms and customary practices which regulate social life in general. Indeed, as the Thai study makes explicit, it is not generally to be assumed that indigenous societies make a distinction between society and nature, much less between customary law related to the environment and customary law related to other affairs. In Pga k'nyau thinking, all beings, human and natural, are 'created things' imbued with spirit, or unseen forces, that are essential to the world and interrelated and which, directly or indirectly, support each other. The sense that human societies need to work to restore harmony between humans and other beings by recruiting spirit allies is, intriguingly, common to several of the peoples' studied.

A number of the peoples involved have abandoned, wholly or in part, their traditional beliefs in favour of world religions. Yet the studies show that while these changes have, to some extent, weakened social controls on resource use, in general customary use and deeply held views about people's relations to nature have been retained. These observations reinforce the argument of many indigenous peoples that their 'traditional forest related knowledge' is not a discrete body of lore that exists apart from their social life but, on the contrary, is embedded in the way they relate to their locales - their 'homelands' - through the skills and practices of their daily livelihoods, which in turn depend on them retaining their rights to manage, control, access and use their traditional territories.⁵⁷

Indeed all the peoples involved in the studies have noted the prevalence of beliefs which imply a deep respect for the spirits of what we call 'nature', which are the very forces of creation. Excessive use of natural resources, wastefulness and greed are frowned on, while sharing and restraint are considered virtues. These norms, translated into day to day behaviour, are believed to limit community pressure on the environment and secure the respect of spiritual forces.

The research that has been carried out cannot be claimed to be definitive and obvious limitations have been imposed by time and resource constraints. A key limitation comes from the fact that independent base line data are lacking about the majority of the species and resources being used by the peoples concerned. The researchers have been able to document an impressive range of customary uses and traditional practices considered to be compatible with conservation and sustainable use, and have shown that all the social groups are taking active steps to promote sound resource management in the face of both imposed and community-driven change. However, demonstrating empirically that such practices actually ensure sustainable resource use requires the collection of a body of data beyond the scope of such an enquiry.⁵⁸ The evidence, then, is compelling but not conclusive.

Still, we need to be careful about what policy conclusions should be drawn from such an admission. If it is the case that we lack the data needed to prove 'sustainability', we

⁵⁷ Helen Newing (ed.), 2005, *Our Knowledge for Our Survival: traditional forest-related knowledge and the implementation of related international commitments*. 2 volumes. International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and CIFOR, Bogor; Tim Ingold, 2000, *The Perception of the Environment: Essays in livelihood, dwelling and skill*. Routledge, London.

⁵⁸ Indeed even conservation biologists carrying out long term, detailed studies of faunal population dynamics in tropical forests have struggled to generate sufficient data to ascertain the sustainable use levels of more than a handful of species (John Robinson and Elizabeth Bennett (eds.), 2000, *Hunting for Sustainability in Tropical Forests*. Columbia University Press, New York.).

likewise, often, lack the data to prove their unsustainability. In these circumstances there should be a presumption in favour of allowing communities to continue to practise their livelihoods.

This is especially the case given that the studies also show that the main threats to the sustainability of these ecosystems come not from community resource use but from outside interventions such as imposed dams, logging, mines, tourism and market demands for bushmeat. Likewise the studies show that, in a number of instances, where community resource use systems have begun to put pressure on their environments, this tends to be in cases where their land base has been restricted, traditional knowledge has been discounted or eroded, or customary uses made illegal. By contrast, the studies also show that communities have a much greater incentives to use biodiversity sustainably when they have secure rights over their territories and resources.⁵⁹

All five case studies also note that protected area laws, policies and practices have interfered with community livelihoods and made customary use illegal. Yet, the communities' responses to the imposition of protected areas on their territories are interestingly diverse. Thus, whereas all the affected peoples' have called on their governments, and conservation agencies, to respect their rights, some have been comfortable with the protected areas seeing them as additional means of protecting resources that they also would like to see conserved. Thus, in Venezuela, Guyana, Cameroon and Thailand the peoples concerned are seeking respect for rights in protected areas, through arrangements such as co-management or community management, rather than the lifting of areas protected status. The exception is Suriname, where the current national legal system currently makes no provision for indigenous rights and where protected areas are not even effective in preventing large-scale bauxite mining within reserves.

Methods

Some lessons can also be drawn about the methods used for these studies. Participatory mapping, which was a key first step in all the study areas to ascertain the extent and nature of the commons in question, has been widely applied in indigenous peoples' areas since the late 1980s.⁶⁰ A lot of lessons have been learned as a result. Among the most important that emerge from these studies are that these should:

- ensure that the maps are made with the full awareness and agreement, and under the control of, the communities involved;
- involve members of the communities at all stages of the mapping from deciding what information is relevant, through gathering the information in the field, to recording and displaying the information on the base maps;

⁵⁹ Loreen Jubitana, 2006, Statement to the IUCN Side event on *Sustainable Use Indicators: Meeting the CBD Needs* 22nd March 2006, Curitiba, Brazil.

⁶⁰ Peter Poole, 1995a, Land-based communities, geomatics and biodiversity conservation, *Cultural Survival Quarterly* 18(4): 74-76; Peter Poole, 1995b, *Indigenous Peoples, Mapping and Biodiversity Conservation: an analysis of current activities and opportunities for applying geomatics technologies*. Biodiversity Support Programme, Washington DC;

- record both land uses and boundaries, wherever possible. Put the indigenous peoples' own location names, land use categories and terms for vegetation types onto the maps;
- make sure that all generations are involved. Elders are often the most knowledgeable about sites of historical and cultural importance;
- involve both men and women in mapping. Men and women tend to use lands and resources differently – both systems are valid and need protection;
- where two or more ethnic groups use the same area, involve both in the mapping. Both have rights. Asserting the rights of only one group is likely to lead to conflict and weaken the claims of both;
- involve neighbouring communities in mapping boundaries that run alongside their lands. If boundaries are later disputed by neighbours land claims are likewise weakened;
- ensure that draft maps are carefully checked over by community members, and revised if necessary, before being used in negotiations with third parties;
- where national laws allow, get the intellectual property rights to the maps and databases registered as property of the people or communities concerned;
- take measures to protect the use of the information, so it is not misrepresented or distorted by other interests.

Similar lessons can be drawn from the participatory documentation of customary use, customary institutions and customary laws, which formed the core activities of the field studies. It is our conclusion that the experimental methodology adopted at the outset of the project was workable but its success depended on extensive training from, and the direct engagement of, experienced anthropologists and environmental scientists.

The main reason for this is not that the issues to be documented and researched were arcane specialist fields, but, on the contrary, because many of the matters under review were so obvious to the local people that they took them for granted. It required trained outsider observers to remark on them, in order to make their significance as systems of environmental management clear to the people concerned. During the training sessions, the researchers developed simplified sets of questions to promote community discussions with a focus on elucidating 'rules, roles and rights'. The studies were able to help local communities demonstrate their customary use by being directed by local researchers, using local languages, engaging women as well as men in the studies, giving due attention to both customary systems of governance and novel decision-making mechanisms and by validating preliminary findings through repeated discussions of drafts at community workshops.

The studies have also shown how a huge amount of cultural information can be gathered in a relatively short time by a team of researchers drawn from the same communities. The collection and documentation of large amounts of traditional knowledge under such community-based research projects makes it essential that participating communities, their representative organisations and their traditional authorities engage in prior planning and agreement about the protection, storage and subsequent use of the information that is collected as part of the project.

The case study processes led to far more than the documentation. By carrying out these exercises through the involvement of the indigenous peoples' own organisations and with the engaged participation of leaders and community members, they led to:

- strengthened community organisations;
- raised awareness about indigenous peoples rights under national and international law;
- enhanced respect for custom;
- reconnecting younger people with the wisdom of community elders;
- increased interest in revitalizing the use of customary use and law in their daily lives;
- appreciation of the importance of community-based management and development plans;
- informed dialogue with the authorities.⁶¹

Recommendations:

This study was in large part triggered by the call from the Secretariat of the CBD to carry out case studies on the application of Article 10c of the Convention. All the community case studies thus included concrete recommendations on what States that are party to the Convention now need to do to comply with its requirements. Common recommendations of the studies are that:

- national laws, policies and practices need to be revised to recognize the rights of indigenous peoples to: their territories and the natural resources on them; the exercise of their customary laws and; to represent themselves through their own institutions;
- consonant with these legal changes, national conservation, forestry and environmental policies need to be revised so that they recognise, protect and support indigenous peoples' community-based natural resource management and their contribution to the maintenance of biological resources;
- such revisions should take account of countries' obligations under international human rights and environmental laws and be consistent with national constitutions;
- government agencies should provide information to communities about ratified international human rights and environmental laws;
- government personnel be retrained to work in more participatory ways with indigenous peoples;
- educational systems should be revised to imbue indigenous youth with greater respect for the peoples' own languages, beliefs and ways of life;
- imposed logging and mining concessions and inappropriate land zonation should be revoked;
- governments should provide additional resources to encourage community based natural resource management.

These revisions of law, policy and practice are not only necessary to ensure alignment with the CBD but also with countries' obligations under international human rights

⁶¹ Follow up dialogues with national and conservation authorities were carried out in Venezuela, Cameroon, Suriname and Thailand. In some cases, officials admitted being unaware of Article 10c and the requirement for governments to 'protect and encourage customary use'.

laws. For example, a study for the International Labour Organisation of the extent to which the current legal regime in Cameroon protects indigenous rights, found that despite Cameroon's ratification of the main international human rights treaties and despite Constitutional protections of rights, Cameroon's land tenure and forestry laws do not recognize the rights of indigenous peoples to the lands they customarily occupy and use.⁶²

Recommendations from the Kaliña and Lokono communities of Suriname:⁶³

We call upon the government to implement all ratified international conventions, including article 10c of the Convention on Biodiversity. Protection of our rights to land, territories and resources we have traditionally owned and customary laws concerning use and management of biological resources, are integral to implementation of article 10c. Suriname should, among others:

- take effective measures to legally recognize our collective rights to own, use and manage our lands and natural resources, and to regulate and implement the demarcation and delimitation of this area;
- legally recognize our traditional authorities and our indigenous or customary laws;
- revoke all existing logging and mining concessions, timber cutting licenses and individual land titles, until our land rights have been legally recognized and our territory has been demarcated;
- not issue any new mining or logging concessions without our free prior and informed consent until our land rights have been legally recognized and our territory has been demarcated;
- not implement or develop other projects that might impair our traditional use and management of our lands and natural resources and particularly our sacred sites, without our free prior and informed consent;
- revoke the nature reserves that have been established within our territory; we already consider the entire Lower Marowijne as a protected area and will continue to manage and protect this area for future generations;
- implement all aforesaid measures with our full participation and our free prior and informed consent and pursuant to the international human rights norms that apply to Suriname;
- set up a dialogue with our communities on bilingual and multi-cultural education;
- make available funds to our communities to further elaborate and implement a management plan for the Lower Marowijne area. We have been managing the area for centuries, but with the new threats facing us, we need new methods and means to continue to protect the same.

Likewise, the Wapichan's call for a revision of the recently adopted Amerindian Act in Guyana has recently been echoed by the UN's Committee on the Elimination of Racial Discrimination, which was reviewing the country's compliance with its obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD). At its 68th session held in March 2006, the Committee expressed 'deep concern' about the way this new Act does not vest Amerindian Village Councils 'with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.' It urged the government to develop a mechanism for the 'recognition of the rights of

⁶² Albert Barume, 2005, *Etude sur le cadre légal pour la protection des droits des peuples indigènes et tribaux au Cameroun*. International Labour Organisation, Genève.

⁶³ From Henry Zaalman, Georgette Kumanajare, Louis Biswana, Grace Watalmaleo, Michel Barend, Sylvia Oeloekanamoe, Steven Majarawai, Harold Galgren, Ellen-Rose Kambel, Caroline de Jong, 2006, *Marauny Na'Na Emandobo Lokono Shikwabana. 'Marowijne: Our Territory'*. Forest Peoples Programme, Moreton-in-Marsh: 4.

ownership and possession of indigenous communities over the lands which they traditionally occupy' and urged the Government to 'recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources....' It further urged the Government 'to demarcate or otherwise identify the lands which they traditionally occupy or use, ... [and] to define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system, while taking due account of relevant indigenous customary laws.'⁶⁴ All five of the countries in this study are parties to the CERD and thus have similar obligations under this treaty.⁶⁵

'Protecting and encouraging customary use of biological resources' implies that governments need to develop relations of trust with indigenous communities and accord them the space and respect they need in order to exercise effective control over the natural resources they use. Respect for community self-governance and management of their common property resources is not just required by international law, it also makes good sense.

⁶⁴ CERD/C/GUY/CO/14.

⁶⁵ Fergus MacKay, 2003, *A Guide to Indigenous Peoples' Rights under the International Convention on the Elimination of All Forms of Racial Discrimination*. Forest Peoples Programme, Moreton-in-Marsh.