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Executive Summary

Based on poor and disputed data, it is estimated that there are some 60 million indigenous people worldwide who live in and depend on forests for their daily livelihoods. This estimate will increase as people begin to self-identify as ‘indigenous peoples’ as the concept gains international currency.

International law recognizes the rights of indigenous peoples to:

- the ownership, control and management of their traditional territories, lands and resources.
- exercise their customary law
- represent themselves through their own 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

These rights are also asserted by indigenous peoples who have also strongly condemned forest policies, logging and plantation schemes established in violation of these rights. In principle, development agencies uphold indigenous peoples’ rights and require borrower governments or clients to take measures to secure indigenous lands and participation. Emerging United Nations’ standards related to forests also affirm:

- secure land rights for indigenous people
- full participation in forest-policy making
- recognition of traditional forest-related knowledge
- promotion of community-based forest management

In practice, both large-scale logging and plantations have commonly been carried out in violation of these rights and principles. The land rights of indigenous peoples in forests are commonly denied and resistance to forestry development has often been met with further human rights violations. The undermining of forest-based livelihoods, impoverishment, the erosion of cultural identity, dispossession and increased mortalities are all widely documented as results of forest exploitation. Indigenous women have suffered particular hardships and human rights abuse.

Recent forestry ‘best practice’ asserts indigenous peoples’ rights, prioritises well-being and community control of forests and forestry decision-making. Efforts to promote reforms through independent, third party certification have had mixed results. Successes have been achieved in recognition of indigenous use rights and in promoting community-based management in boreal forests. In the tropics, best practice cases are rarer, frustrated by lack of good governance, absence of law and order and inadequate forestry regulations.

New technologies are helping forest-based indigenous peoples to map their own lands, assert their land claims and develop novel forest management systems based on traditional forest-related knowledge and customary law. However, repressive states are now seeking to outlaw such techniques and retain forests for the use of large-scale companies.

In many countries, translating agreed international human rights and forestry standards into practice will require private sector companies to operate to higher standards than national laws require. If private sector companies seek to operate in areas claimed by indigenous peoples, they must respect customary rights holders as the legitimate owners of the land and accept the principle that the local communities have the rights to free, prior and informed consent to whatever is planned in their lands and forests. A commitment to enter into negotiated and legally binding agreements between private sector operators and indigenous peoples will help restore equitable relations between developers and forest-based indigenous communities.

In the longer-term, national policy, legal and institutional reforms will all be required to secure indigenous peoples’ rights and ensure a future for forests based on the principles of justice and equity.
2. Indigenous Peoples and Forests: general issues

2.1 Definitions and Numbers

There is no internationally agreed definition of indigenous peoples. In practice at the international level, the term includes a very wide variety of human societies including the ‘native’ and ‘aboriginal’ peoples of the Americas and the Pacific, the ‘tribal peoples’ and ‘minority nationalities’ of Asia and many non-dominant and discriminated ethnic groups in Africa. Indigenous peoples themselves insist on the principle of self-identification and see efforts to impose definitions on them as an affront to their right to self-determination. The principle of self-identification has been accepted by the International Labour Organisation (Convention 169 Article 1(2)) and by the United Nations Draft Declaration on the Rights of Indigenous Peoples and is adhered to in this document.

Global data are lacking on the extent to which forests are owned or claimed by indigenous peoples. They inhabit the majority of tropical forests, including mangroves, and also range over, use, own or claim very large proportions of boreal and temperate forests. The absence of reliable, comprehensive information about these peoples and the extent of their territories is just another result of their persistent marginalisation in forestry policies and practice.

Based on the International Labour Organisation’s estimate that there are some 300 million indigenous people worldwide, the World Bank has estimated that some 60 million of these live in forests. However, as the numbers of peoples self-identifying as ‘indigenous’ is rapidly increasing in Asia and Africa, the estimates are already out of date.

2.2 Human Rights

Indigenous peoples are estimated by the International Labour Organisation to number some 300 million worldwide. They speak as many as 4,000 of the world’s approximately 6,000 languages. International law recognises their rights inter alia to:

- the ownership, control and management of their traditional territories, lands and resources.
- exercise their customary law
- represent themselves through their own institutions
- control, and share in the benefits of the use of, their traditional knowledge
- self-determination.

Indigenous peoples are distinctive from other vulnerable social groups insofar as they are recognised by international law and by some States as autonomous seats of power within the state. They are recognised as exercising collective rights as groups. In many countries special laws and policies establish their distinctive status and rights. Actual State policies towards indigenous peoples vary greatly. In general, African States tend to deny the relevance of ‘tribal’ identities and institutions, which are seen as obstacles to nation-building. In Asia, indigenous peoples are commonly seen as ‘backward’ and national policies are primarily orientated to promote the rapid assimilation or integration of indigenous peoples into the national mainstream, by re-
education, resettlement and the prohibition of traditional cultural and religious practices. In some countries, as in India, a policy of positive discrimination is adopted, reserving quotas in education and administration for indigenous peoples. More recently, especially in Latin America, Governments are beginning to accept the multi-ethnic nature of States and are adopting policies promoting cultural tolerance, bilingual education, regional autonomy and collective territorial ownership and control by indigenous peoples, including Afro-Americans.

A number of rights require more detailed clarification for the purposes of this study.

2.2.1 Land and territorial rights

International law recognises that Indigenous Peoples enjoy inherent rights because of their distinctive identities and their connections to their ancestral lands, based on customary law, which precede the creation of nation states or the extension of effective government administration over their areas. Among the most important for the purpose of this study is the recognition of the rights of Indigenous Peoples to the ownership, control and management of their traditional territories, lands and resources.

These rights were first set out in the International Labour Organisation’s Convention No. 107 on ‘Indigenous and Tribal Populations’, of 1957, and were later expanded on, in 1989, in a revised Conventions No. 169 on ‘Indigenous and Tribal Peoples’. Articles 14 and 15(1) of Convention No. 169 state:

**Article 14**

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands, which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

**Article 15**

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
The ILO’s Conventions broke new ground in international law in that they recognised the principle that ‘aboriginal title’ derives from immemorial possession and does not depend on any act of the State. The term ‘land’ is generic and includes the woods and waters upon it.6

The International Covenant on Civil and Political Rights (ICCPR) is one of the central human rights instruments of the United Nations. It was adopted in 1966. The Covenant does not make specific reference to Indigenous Peoples but it applies equally to them as to other human beings. Articles 1 and 27 of the Covenant are of particular importance to Indigenous Peoples. They note:

**Article 1**

(1) All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue the economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources... In no case may a people be deprived of its own means of subsistence.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Concerns about the treatment of Indigenous Peoples have been frequently brought to the attention of the UN Human Rights Committee, which monitors compliance with the Covenant by States which are party to the Covenant’s Optional Protocol. In 1994, the Human Rights Committee issued a note clarifying the obligations of State parties under Article 27 of the ICCPR:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.7

Last year, the UN Human Rights Committee offered additional guidance about State party obligations under the Covenant:

...in many areas native title rights and interests remain unresolved [and] in order to secure the rights of its indigenous population under article 27... the necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands... securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and
gathering), and protection of sites of religious or cultural significance for such minorities, [are rights] that must be protected under article 27...⁸

The Convention on the Elimination of Racial Discrimination forms another key international human rights instrument with importance for Indigenous Peoples. In interpreting the application of the Convention to Indigenous Peoples the United Nations Committee on the Elimination of Racial Discrimination, at its 1235th meeting on 18 August 1997, noted:

The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned and otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories...⁹

These rights of Indigenous Peoples, already implicit in existing human rights instruments and whose interpretation has been clarified in international jurisprudence, have been consolidated in the UN’s Draft Declaration on the Rights of Indigenous Peoples, which provides a clear statement of Indigenous Peoples’ territorial rights. Article 26 states:

Indigenous Peoples have the right to own, develop, control and use the lands and territories, including the total environment of their land, air waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of the laws, traditions and customs, land tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation or encroachment on these rights.

2.2.2. **Free and informed consent**

Article 7(1) of ILO Convention 169 provides that:

The people concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

This article is one of the general principles of the Convention and provides a framework within which other articles can be interpreted. Although qualified and weakened by the phrase, “to the extent possible,” it recognizes that indigenous peoples have the right to some measure of self-government with regard to their social and political institutions and in determining the direction and nature of their economic, social and cultural development. Other general principles of the Convention require participation, consultation with the objective of achieving consent and good faith negotiation.
In its 1997 General Recommendation, the Committee on the Elimination of Racial Discrimination elaborated on state obligations and Indigenous rights under the Convention. The Committee called upon states-parties to:

... ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.10

In its Concluding Observations on Australia’s report, the Committee reiterated in 2000:

its recommendation that the State party ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5(c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of ensuring the "informed consent" of indigenous peoples.11

Building upon these principles, Article 30 of the UN’s Draft Declaration on the Rights of Indigenous Peoples acknowledges that:

Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require the State to obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources particularly in connection with the development, utilization or exploitation of mineral, water or other resources....

The Organisation of American States also has relevant legislation on Indigenous Rights and is itself in the process of agreeing on a proposed Inter-American Declaration on the Rights of Indigenous Peoples.12 The Inter-American Commission of Human Rights has made a number of relevant judgements on the rights of forest-dwelling indigenous peoples. One petition concerns the case of the Mayagna (Sumo) people of Nicaragua whose lands had been allocated by the government of Nicaragua to a Korean logging company without the community being consulted. The indigenous petitioners to the Commission complained that Nicaragua had violated the American Convention on Human Rights, the American Declaration on Human Rights and other provisions of international human rights law because of its failure to take timely measures to secure the land and resource rights of the indigenous people of the community of Awas Tingi and active violation of those rights caused by government grants of logging concessions on Indigenous lands.13 In 1998, the Inter-American Commission on Human Rights found in favour of the community, affirming their rights to their land and noting that the ‘State of Nicaragua is actively responsible for violations of the right to property, embodied in Article 21 of the Convention, by granting a concession to the company SOLCARSA to carry out road construction work and logging exploitation on the Awas Tingni lands, without the consent of the Awas Tingni Community.’14 Subsequent failure by the Government to resolve the situation led to the case being heard by the Inter-American Court of Human Rights, which on 31 August 2001, again found in favour of the community, upholding their rights to their traditional lands, demanding reforms of the process the Government
uses to ascertain and secure indigenous lands and deciding that the Government should pay US$ 80,000 reparations for damage, and legal costs, to the community.\textsuperscript{15}

2.2.3 Mechanisms for Consultation and Engagement in Decision-making

International law regarding indigenous peoples is unique in a number of respects, perhaps the most important being that it recognises collective rights. It thus asserts the authority of the indigenous group to own land and other resources, enter into negotiations and regulate the affairs of its members in line with customary laws which may be quite different to national laws. External agencies should thus accept not only that indigenous peoples rightfully have a say in their own futures but that they should be permitted and encouraged to express their views and make their decisions according to their own processes and through their own institutions.

These issues have been further clarified in ILO Convention No. 169, which recognises the right of Indigenous Peoples to exercise their customary law. This right is more fully affirmed in the UN’s Draft Declaration on the Rights of Indigenous Peoples.

ILO Convention 169 also makes clear how states and other institutions should interact with Indigenous Peoples. Article 6 (1) of the Convention notes:

\textit{In applying the provisions of this Convention, governments shall:}

\begin{enumerate}
\item consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
\item establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
\item establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
\end{enumerate}

3. Indigenous perspectives and forest policies

Indigenous peoples themselves have made several clear statements about how they feel they should be accommodated by forest policy-making. In 1992, in preparation for the Rio Summit, the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests set out the basic demands and concerns of forest-dwelling indigenous peoples in the form of a ‘Charter’.\textsuperscript{16} The Charter affirms indigenous peoples demands for respect for their rights to their lands, to self-governance and exercise of their customary laws. Specifically with respect to Forest Policy the Charter notes:

\textit{Article 35}

\textit{Halt all new logging concessions and suspend existing ones, that affect our territories. The destruction of forests must be considered a crime against humanity and a halt must be made to the various anti-social consequences,}
such as roads across indigenous cultivationss, cemeteries and hunting zones; the destruction of areas used for medicinal plans and crafts; the erosion and compression of soil; the pollution of our environment; the corruption and enclave economy generated by the industry; the invasions and settlement in our territories.

**Article 36**
Logging concessions on lands adjacent to our territories, or which have an impact on our environment, must comply with operating conditions – ecological, social, of labour, transport, health and others – laid down by the indigenous peoples, who should participate in ensuring that these are complied with. Commercial extraction should be prohibited in strategic and seriously degraded forests.

**Article 37**
The protection of existing natural forests should take priority over reforestation.

**Article 38**
Reforestation programmes should be prioritized on degraded lands, giving priority to the regeneration of native forests, including the recovery of all the functions of tropical forests, and not being restricted only to timber values.

**Article 39**
Reforestation programmes on our territories should be developed under the control of our communities. Species should be selected by us in accordance with our needs.

These concepts were later refined in the ‘Leticia Declaration’ which was the outcome of an intersessional meeting of the UN’s ‘InterGovernmental Panel on Forests’. The Declaration reaffirmed the principles of respect for indigenous peoples’ rights to their lands and territories and to full and informed consent expressed through their own representative institutions, including the right to say no.

Indigenous peoples have likewise expressed concern about the promotion of plantation schemes as part of the Clean Development Mechanism in the Kyoto Protocol. In a powerful statement to the sixth meeting of the Climate Negotiations in The Hague last year, indigenous spokespersons from 22 different countries and representing 28 distinct cultures, rejected the inclusion of forests in the CDM and called for the establishment of a fund for use by Indigenous Peoples to address the impacts of climate change. The statement noted:

*Our intrinsic relation with Mother Earth obliges us to oppose the inclusion of sinks in the CDM because it reduces our sacred lands and territories to mere carbon sequestration, which is contrary to our cosmovision and philosophy of life. Sinks in the CDM would constitute a worldwide strategy for expropriating our lands and territories and violating our fundamental rights that would culminate in a new form of colonialism. Sinks in the CDM would not help reduce GHG emissions, rather it would provide industrialized countries with a ploy to avoid reducing emissions at source.*
In a recent meeting in Marrakesh of the Conference of Parties of the United Nations Framework Convention on Climate Change indigenous peoples noted that:

No development mechanism can be clean, from our point of view, if it does not guarantee the rights of Indigenous Peoples including the right to free, prior informed consent of indigenous and local communities and the respect of our cultures, practices, sciences and knowledge.19

4. Development agency standards

International development agencies have adopted specific policies towards indigenous peoples designed to respect existing and emerging principles of international law and to ensure that their programmes and projects fully take into account these peoples’ distinctive needs and rights. The World Bank’s Operational Directive 4.20 is designed to condition Bank projects to ensure borrower government adherence to these standards. The policy requires operational staff to ensure that:

- there is a clear borrower government commitment to adhere to the Bank’s policy
- acceptable mechanisms are in place to ensure indigenous participation in the full project cycle
- an indigenous peoples component is developed which:
  - makes an assessment of the national legal framework regarding indigenous peoples
  - provides baseline data about the indigenous peoples to be affected
  - establishes a mechanism for the legal recognition of indigenous peoples’ rights, especially tenure rights
  - includes sub-components in health care, education, legal assistance and institution building
  - provides for capacity-building of the government agency dealing with indigenous peoples
  - establishes a clear schedule for fitting actions related to indigenous peoples into the overall project, with a clear and adequate budget
- final contracts and disbursements are conditional on government compliance with these measures20

With respect to its funding of forestry operations the World Bank’s Operational Policy 4.36 requires borrower governments and clients:

- to identify and consult the interest groups involved in a particular forest area where the Bank involves the private sector and local people in forestry and conservation activities
- adopt policies and a legal and institutional framework to:
  - Promote active participation of local people and the private sector in the long-term sustainable management of natural forests
- adopt a comprehensive and environmentally sound forestry conservation and development plan that clearly defines the roles and rights of government, the private sector and local people
- Undertake social, economic and environmental assessments of forests being considered for commercial use… to safeguard the interests of forest dwellers, specifically their rights of access to and use of designated forest areas.

In November 1998, the European Union also adopted a Resolution setting out basic principles for development assistance affecting indigenous peoples. Special standards on indigenous peoples have also been adopted by a number of the bilateral aid agencies including by the German, Dutch, Danish and Belgian governments. A key principle common to these policies is the recognition of these peoples’ rights to their lands and territories. The more progressive also accept that projects should not go ahead on indigenous peoples’ lands without their prior and informed consent.

5. Emerging international forestry standards

International agencies working in many sectors that impact indigenous peoples such as hydropower, forestry and conservation have also begun to recognise indigenous peoples’ rights to free and informed consent and to the use, ownership and control of their lands and territories. The International Tropical Timber Organisation’s Guidelines for Natural Forest Management accept ILO and World Bank standards towards Indigenous Peoples. The World Conservation Union’s (IUCN) new protected area categories accept Indigenous Peoples as owners and managers of Protected Areas. New IUCN and WWF policies endorse the UN Draft Declaration on the Rights of Indigenous Peoples, recognise their rights to own, control and manage their territories, and accept the principle that conservation initiatives should only go ahead in indigenous areas with the free and informed consent of the traditional owners. The World Commission on Protected Areas has also just adopted guidelines for implementing these principles. Since the 1992 United Nations Conference on Environment and Development (UNCED), there has been an intergovernmental consensus that Indigenous Peoples should be involved in policy making and they have been accepted as a ‘Major Group’ that should be involved in implementation of Agenda 21. The Inter-American Development Bank accepts that indigenous peoples should not be forcibly relocated without their consent and the same principle was recently adopted by the World Commission on Dams.  

5.1 IPF and IFF

Since the Earth Summit in 1992, the UN Commission on Sustainable Development has entrusted detailed discussion of forest issues to two ad hoc bodies, the InterGovernmental Panel on Forests (IPF) and the InterGovernmental Forum on Forests (IFF). Both these bodies developed proposals for action, and those from the former were endorsed by the United Nations General Assembly Special Session in 1997. These ‘proposals for action’ are of a declaratory nature, being aspirational non-binding ‘soft law’ exhortations regarding how countries should improve forest management and forestry practice.
These proposals for action, *inter alia*, call for:

- participatory mechanisms which provide opportunities for the participation of indigenous people in the design of national forest programmes and policies
- recognition and respect for the customary and traditional rights of indigenous people and secure land tenure arrangements
- broad participation of indigenous people in decision-making regarding the management of state forest lands
- formulation of policies aimed at securing land tenure for indigenous people
- recognition of the important role of the traditional forest-related knowledge of indigenous people and protection of their intellectual property rights
- recognition and support for traditional resource use systems incorporating traditional forest-related knowledge— Including new instruments and mechanisms to enhance the security of forest-dependent groups
- social mapping techniques in collaboration with indigenous people to assist in forest management planning
- participatory research with indigenous people to develop resource management approaches to reduce pressure on forests
- mechanisms to involve indigenous people in the regeneration and restoration of degraded forests and in their protection and management
- actions to ensure that external trade policies take into account community rights
- steps to ensure equal opportunities for women, in particular indigenous women and women in rural areas, to benefit from forestry operations.

6. Forestry Development and Indigenous Peoples: past experiences and best practice

Forestry policy and legislation is still dominated by the now outmoded notion that forests are of importance to human societies as sources of timber. These notions have hindered the development of policies and laws giving weight to other values and uses of forests— as sources of livelihoods, non-timber forest products, environmental services, reserves of genetic diversity, etc. At the same time, by prioritizing timber values as the main ‘public good’ to be extracted from forests, forest policies have marginalized those with other visions of forests. Consequently, the ‘scientific forestry’ developed in the 19th century secured forests as state assets and established systems for regulating access to forests by the private sector, while denying the rights of forest dwelling peoples and severely curtailing their access to the resources that their ways of life depended on. Conservation policies, which developed later, reinforced these centralizing tendencies, which gave power to government officials at the expense of indigenous peoples.

6.1 Logging

Industrial timber extraction has created major problems for indigenous peoples ever since it was first imposed on them in the colonial era. The exploitative nature of French and Portuguese logging of brazilwood in the early 16th century was remarked on as soon as it started. The creaming of the forests of French Equatorial Africa of
the prized timber, *okoume*, during the 19th century 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’. 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 the curtailment of indigenous rights. 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.

There have been surprisingly few detailed studies of the impact of modern forestry practices on indigenous peoples. The only authoritative long-term study of forest-dweller demography, carried out among the Agta people in the Philippines, shows clearly how logging and associated changes in disease ecology and land use, caused massive increases in mortality and severe health and nutritional impacts. In Sarawak, the intensive logging of primary forests has caused a marked decline in game, both through direct disturbance of habitats and because of increased hunting pressure along access roads and skid trails. A study carried out for the WWF showed how mean intake of protein by Dayaks in logging areas declined from 54 kg/person/year to 12 kg/person/year. Logging also seriously increases soil erosion and consequently the turbidity of rivers, causing fish stocks to crash and thus further affecting community welfare. A Sarawak Government study showed that in recently logged areas, there is a three-fold increase in serious malnutrition in native communities, affecting some 31% of the population. Likewise, logging in Central African forests has seriously depleted wildlife and encouraged a rapid escalation in the bushmeat trade. A study of nutrition among indigenous peoples in the Brazilian Amazon has also revealed the highest rates of malnutrition in areas invaded by loggers.

Changes in disease ecology as a result of logging have also been widely noted. In the tropics, pools of standing water due to blocked or absent culverts on logging roads, in tyre-marks along skid-trails and in poorly designed log-ponds provide new breeding grounds for mosquitoes, which coupled with increased rates of in- and out-migration, have resulted in high incidences of diseases like malaria and dengue. In addition, very high rates of STD infection due to prostitution and exploitative sexual relationships in logging camps and nearby townships have been very widely reported.

Logging operations are sometimes welcomed by indigenous peoples as they seem to offer employment opportunities, road access, clinics, religious centres and schools. Commonly, however, where provided, such services fall into disrepair when the industry moves on. Moreover, because indigenous people often lack formal education or training, they tend to be employed in low-paid, short-term, arduous and dangerous occupations such as tree-spotters, fellers and debarkers. Labour, health and safety regulations are often weak or not enforced. In Sarawak in the 1980s, for example, rates of death and injury of forest workers were 21 times as high as occur in Canada, with one serious injury for every 7000 cubic metres of timber extracted. Compensation for loss or injury proved nugatory. Nor have standards improved
noticeably. In the past year, the timber industry in Sarawak has claimed the lives of 40 workers, while another 1,052 were injured. In the northern Congo basin, where ‘pygmies’ make up as much as one half of the work force in lumber camps, diseases such as malaria, yaws, ulcers, tuberculosis and jiggers are rife, but the companies discriminate against them providing them with far fewer facilities than to Bantu workers. Pygmy communities around the logging camps have suffered a breakdown in their traditional social structure and a loss of forest-dwelling skills. These problems are common throughout the forests of Central Africa.

Indigenous women, children and the elderly suffer disproportionately from logging. Those left behind in their villages are left to survive without able-bodied males, who are away wage-labouring. Those who migrate to logging camps become dependent on their husbands’ wages. Indigenous women may turn to prostitution to supplement family incomes and regain a measure of independence. Women have suffered particular hardship as their societies become increasingly enclosed and subject to the legal and cultural impositions of outsiders. Studies in India and Malaysia show how indigenous women have lost control of land and are excluded from any effective participation in decision-making.

One of the most pervasive problems of conventional forestry practice for indigenous peoples is that it commonly denies their rights to land. Customary tenure systems are often ignored in forestry zoning exercises and rights may be heavily conditioned, curtailed or unilaterally extinguished when forest reserves are established. Historically in many parts, and still today in some countries, government agencies oblige the involuntary resettlement of forest-dwelling indigenous peoples from forest reserves. Alternatively, special regimes may be applied which grant conditional rights or privileges to indigenous people in forests, subject to the authority of forest departments. The dependency that results can encourage the emergence of damaging, exploitative, even corrupt patron-client relations between forestry officials and indigenous peoples.

The overall impacts on indigenous social systems are also severe. New inequalities are introduced, customary laws, social support networks and systems of land management may be undermined, gambling and alcoholism increase, and migration to urban centres accelerates. Lack of experience with cash and the implications of large-scale habitat changes can lead indigenous forest-owners into imprudent deals with forestry companies, which many later regret. Internal conflicts over decision-making, resource allocation and use of cash often result, further undermining social cohesion.

Perhaps the most serious of all the impacts of logging on indigenous peoples is that it shifts the balance of power over forests away from forest-dwellers and in favour of industry and political elites. The reinforcement of patrimonial political systems and rent-seeking behaviours then become major obstacles to sustainable forest management and to policies that respect indigenous peoples’ rights.

6.1.1 Emerging standards and best practice

The need for new standards to ensure that natural forest management benefits indigenous forest-dwellers is now recognised. The International Tropical Timber Organisation in its ‘Guidelines for the Sustainable Management of Natural Tropical
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*Forests’* encourages the adoption of World Bank and ILO standards on indigenous peoples.\(^4^1\) Recognition of indigenous tenure and participation is also enjoined by the Intergovernmental Panel on Forests.\(^4^2\) Principles 2 and 3 of the Forest Stewardship Council are explicit on the need to recognise indigenous peoples’ legal and customary rights and for them to be legally established. According to the FSC, logging should only go ahead on indigenous peoples’ lands with their consent (see box). The World Bank/WWF Alliance has accepted these principles in its promotion of forest certification.

### FOREST STEWARDSHIP COUNCIL PRINCIPLES AND CRITERIA

#### RELATING TO INDIGENOUS PEOPLES

**PRINCIPLE #2: TENURE AND USE RIGHTS AND RESPONSIBILITIES**

Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

1. **2.1** Clear evidence of long-term forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be demonstrated.
2. **2.2** Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.
3. **2.3** Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.

**PRINCIPLE #3: INDIGENOUS PEOPLES’ RIGHTS**

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

1. **3.1** Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.
2. **3.2** Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.
3. **3.3** Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognized and protected by forest managers.
4. **3.4** Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.
In its ‘Criteria and Indicators Toolbox series’, the International Centre for Forestry Research (CIFOR) has established a basic set of criteria necessary for the maintenance of the well-being of forest-dwellers in logging areas. These include:

- The establishment of clear ownership and use rights, including the recognition of the pre-existing rights of forest-dwellers
- Acceptable mechanisms for sharing benefits, including between generations
- Clear communications between timber companies and local communities
- Adequate measures to ensure sound health and nutrition.

All these standard-setting processes agree that securing customary rights is a necessary first step in ensuring socially sustainable forest management.

One of the few practical examples of standard-setting for forest management that has been strongly endorsed by indigenous peoples concerns those established by the Forest Stewardship Council (FSC) in Sweden. In this case, specific provisions were agreed by all the main interest groups - except small-forest owners – to recognise the Saami’s customary rights even though these had never been adequately recognised in Swedish law. The agreed standards thus allow the winter-grazing by pastoral reindeer-herding Saami people in forest areas. The Saami’s herds make use of lowland forests every winter as part of their transhumant grazing cycle and in harsh winters, when the deer cannot break through thick snow crusts, require old growth forest with pendent lichens to survive. The industrial-scale logging companies and the government have thus agreed to allow Saami access to forests in winter and to set aside 10% of forest concession areas for old-growth to provide areas for reindeer survival in harsh winters. However, the FSC process in Sweden has not been an unblemished success story. Small-scale private land-owners who own up to 50% of Sweden’s forests, have unfortunately rejected the FSC standards and have adopted an aggressive approach to the Saami, suing them in the courts for continuing their ‘illegal’ access to forests. Saami communities, unable to provide the documentary evidence of their customary practices that the courts demand, now face bankruptcy as punitive court costs are exhausting their financial resources.

Since the 1980s, there has been a dramatic growth in participatory forestry management approaches, a field which has attracted a great deal of donor support from NGOs and government development agencies. In general, the more successful schemes have been those where local communities, including indigenous peoples, have been given rights to use and manage forests for subsistence purposes or to reforest degraded areas for the sale of harvests in local markets. With some notable exceptions, indigenous experiments with the community-management of natural forests for the production of industrial roundwood have been less successful, owing to lack of capital, inadequate training, overharvesting, poor quality control and difficulties with marketing.

In countries where indigenous land rights are fully recognised, indigenous peoples have nevertheless sometimes suffered serious problems by allowing logging on their lands. A number of factors explain these experiences including: agreements negotiated through bribery or under duress; imprecisions in the law which allow indigenous elites or factions to permit logging against the interests of the wider community; lack of alternative means of income generation; community divisions; ignorance of the likely impacts of timber harvesting.
6.1.2 Prospects

Given the experience of indigenous peoples with logging to date, there are obvious risks to endorsing any kind of ‘best practice’ based on industrial-scale exploitation of forests. The evidence is that most current large-scale logging operations on indigenous lands are not compatible with the well-being of indigenous peoples and violate their internationally agreed rights. Even where their rights are recognised and mechanisms are in place to ensure that operations only go ahead with their free and informed consent, the imbalance in power between the villages and timber operators often results in long term costs being born by communities for relatively modest short-term gains.

Important difficulties also remain to be resolved to ensure that certification processes really do secure advantages for indigenous peoples. For example, when the Forest Stewardship Council was first set up, there were hopes that the certification process would favour community-based forest management initiatives, which were run by indigenous peoples on their own lands. However, as it turns out, the high overheads of managing forests to certifiable standards favour economies of scale. Few small-scale operations have the skills, or can afford the technical inputs required, to develop and implement well-documented forest management systems. Even where they can, the additional costs of independent certification itself are daunting. The combination of these obstacles and the target-driven approach of the process’ main sponsors, who seek the certification of as large a hectarage as possible in the shortest possible time, has meant that less than 10% of FSC certified forests are community-managed. Concerns have been expressed that FSC certification far from promoting community-based forest management may actually be squeezing it out of the market-place as it fails to compete with large-scale, certified forestry.\(^{47}\)

Even more worrying for indigenous peoples is the proliferation of competing certification schemes which have much lower standards than the FSC. For example, indigenous peoples from Sarawak were recently forced to withdraw from the national timber certification scheme in Malaysia because measures were not contemplated to ensure recognition of their rights in the establishment of forest reserves. In general, with the exception of the FSC, forest certification schemes do not demand recognition of indigenous rights or endorse the principles of free, prior and informed consent.\(^{48}\)

6.2 Plantations

Industrial-scale tree plantations established on indigenous peoples’ lands have also caused them serious problems. A summary review of the literature reveals the following problems:

- Indigenous peoples’ rights to land may be permanently extinguished
- Habitat loss undermines traditional livelihoods
- Inadequate compensation is provided for loss of lands and livelihoods
- Resulting landlessness may cause migration to shanties or to forest frontiers
- The establishment of estates may transform hydrological cycles, meaning loss of drinking water, bathing and fishing
• Water supplies are polluted with effluents from plantations and processing works
• In the tropics, changes in disease ecology lead to rising incidences of malaria, dengue, scrub typhus, leishmaniasis and filariasis.

Where indigenous peoples are accepted into the workforce of the plantations, either as labourers or small-holders in out-grower schemes, they often find that conditions are poor, wages are low and workers’ rights are denied. Promised land titles, marketing facilities and services are slow to appear, while repayments from workers and small-holders for housing and start-up costs are demanded immediately. Conditions of ‘debt-slavery’ sometimes result. Adjusting to life on the estates may be difficult: working regimes do not fit customary labour patterns and life-styles; division of communities into nucleated households disrupts traditional social networks and rituals. Many have problems handling money, spend cash imprudently or are easily cheated.

Indigenous women and the elderly are especially affected. Traditional subsistence and social support networks are undermined but not replaced with viable alternatives. Compensation, when paid, for alienated lands, though customarily held communally or by both men and women, is handed over to men. Where communities are incorporated into estates, small-holder titles are provided to male heads of households, not females. Employment opportunities for women are fewer and wages are lower.\(^{49}\)

Regrettably, as Stephen Bass of the IIED has noted, despite the prevalence of these problems, many plantation developers still ignore them.\(^{50}\)

### 6.2.1 Emerging standards and best practice

The growing criticism of plantations by NGOs, due to their negative social and environmental impacts, has led to a number of standard-setting exercises aimed at elaborating acceptable means by which the negative impacts can be mitigated or eliminated. Following intense controversy over the plans of Shell to establish extensive *Eucalyptus* plantations on peasant lands in NE Thailand, Shell and the WWF engaged in a joint exercise with the explicit aims of highlighting the need for tree plantations while producing guidelines for their responsible planning and management. While the guidelines make little reference to indigenous peoples, they do seek to address the concerns of local communities in general. The guidelines stress the need for:

• Participatory rural appraisal methods to assess local realities
• Special attention to the resolution of potential conflicts over land tenure
• Open and continuing communications between the company and the communities
• Evaluations of the implications for women
• Broad consultations with local people
• Careful impact assessments as part of the full planning cycle
• Formal agreements with local communities incorporating guarantees on issues such as land allocation, forest protection, compensation for benefits foregone, employment and service contracts, marketing, infrastructural arrangements and monitoring and evaluation.
• Mechanisms to share control of decision-making between local communities and the company.

The study notes that:

*In general, current single species/purpose plantation types are less desirable for local people than multiple species/purpose plantation types. However, apart from some taungya schemes, there are few commercial management strategies for multiple species/purpose plantations. Successful strategies are likely to build from traditional forestry techniques, or upon agroforestry systems of intercropping, underplanting or rotational cropping.*

To make plantations more acceptable to local communities the Shell/WWF study also suggests experimenting with profit-sharing schemes and the establishment of landscape mosaics incorporating a mix of single species/purpose plantations with other multiple species/purpose plantations, farmland and other land uses. The study notes that where traditional land rights are not recognised by the state, plantation development should only go ahead with the informed consent of the local community. It further observes that customary tenures should be given de facto recognition and ‘no land should be transferred without the knowledge and consent of the local community’. As a basic principle the review argues that ‘indigenous peoples should not be arbitrarily displaced or disadvantaged by plantation development’.

A second study looking at the environmental and social implications of the full cycle of paper production and consumption carried out for the World Business Council for Sustainable Development by the International Institute for Environment and Development did not directly address the concerns of indigenous peoples. Recognising the frequent negative impacts of plantations on local communities from large-scale monocultures, the study advocated outgrower schemes as one of the best methods for ensuring a greater degree of equity in plantation development. It noted that key concerns for local growers are: secure land tenure; choice of which species can be planted; clear tree rights; financial support while trees mature; good prices; adequate returns on investment; and diverse markets. As noted, these conditions can rarely be assured in practice.

FSC certification has also been applied to plantations, although there has been a long-standing controversy over the extent to which certification should be allowed of plantations established in areas of natural forest. The same principles and criteria as those developed for natural forest management, including those with respect to indigenous peoples, apply equally to plantations. FSC-accredited certifiers have in the past certified state-owned teak plantations in Indonesia, despite the fact that these plantations were established at the expense of customary users during the colonial era. Under pressure from community-based organizations, these certifications were withdrawn earlier this year, mainly on the grounds that unresolved conflicts remained between the concessionaires and local people.

This review has found no examples of large-scale plantation operations which have dealt in an exemplary way with indigenous peoples. Two of the most oft cited examples of progressive plantation operations, that of Aracruz Florestal in Brazil and PICOP in the Philippines, have both been established on indigenous peoples’ lands.
without their consent and without the full recognition of their rights. In the case of Aracruz, the company’s reluctance to meet the demands of the resident Tupinikim and Guarani peoples has not only resulted in certification of the plantation being blocked but has also resulted in international NGO mobilisation to halt the certification of the same company’s plantations in other parts of Brazil.\textsuperscript{56} PICOP, historically one of the largest logging companies in the Philippines, established much of its plantations in previously logged over forests that are the ancestral lands of the Higaonon people in NE Mindanao. Higaonon complain that the plantations forced them off their lands for a second time, the first being when they had to make way for logging, the second to make way for plantations just as they had begun to re-establish themselves. The encouragement of outgrower schemes has stimulated the takeover of Higaonon lands by peasant farmers.\textsuperscript{57}

An alternative approach to sourcing plantation products has recently been adopted by three Dutch banks – ABN-Amro, Rabobank and Fortis Bank – which on 31 October 2001 announced their adoption of new principles under which they would finance future oil palm plantations. The banks agreed that in future they would only invest in projects which involved \textit{inter alia}:

- No burning of forestland
- No clearing of tropical forests
- No clearance of primary forests or areas of High Conservation Value
- Respect for the rights and wishes of local communities.\textsuperscript{58}

\textbf{6.2.2 Prospects}

The expansion of intensive, large-scale tree plantations is often advocated as a substitute for natural forest logging but recent research suggests that this is not the case both because plantations are either established at the expense of forests, or displace people into forests, and because markets for forest products and plantation products are segmented. Indigenous peoples’ experiences with plantations schemes have not been encouraging. What indigenous people advocate and thoughtful foresters seem to agree suits them better, is the promotion of community-based forest and plantation management schemes, in which indigenous peoples’ tenure rights are secure and they have a free choice to plant and nurture the species that suit them best.

Large-scale tree monocrops neither meet their immediate needs nor promote the kind of self-determination and self-development that indigenous people aspire to. There are now a number of examples of community-based, FSC-certified forestry such as the Pictou Landing First Nation in Nova Scotia Canada, where indigenous land rights are secured and forest management is in the hands of the local people.\textsuperscript{59}

\textbf{7. Conclusions and Recommendations}

The history of forestry developments in indigenous areas has been a history of exploitation and human rights abuse. Where benefits have accrued to indigenous peoples these have often been nugatory and of short duration.

Emerging standards agreed by UN bodies, development agencies and independent organizations stress the need to respect indigenous peoples’ rights, secure their consent to forest development and give priority to local needs and perspectives.
Logging:

Even where efforts have been made to respect these principles, an evaluation of best practice experience suggests that intensive logging of natural forests is rarely carried out in ways that are both socially and environmentally sustainable. On the other hand, community-based forestry options that have proved socially and environmentally beneficial have rarely been of a scale or intensity to supply much to global markets. Those community-based operations that have supplied global markets have tended to over-harvest the resource. On the other hand, large-scale logging operations in indigenous territories - even those with local consent - have tended to overwhelm indigenous institutions and decision-making processes, fomenting social divisions and accelerating cultural collapse. Short-term economic benefits have rarely translated into long-term social sustainability or improved well-being.

Plantations:

This review identified no best practice examples of large-scale tree plantations that have fully respected indigenous rights and provided community benefits. Although out-grower schemes have been recommended as a way of enhancing social benefits, increasing community-control and improving welfare, the option has yet to be proved workable for indigenous peoples in practice. The demands of large pulp and paper or timber mills for uniform produce militate against the kind of multiple-use community-based forestry that has proved the most viable and beneficial for indigenous peoples.

Certification:

Voluntary, third party certification according to clear criteria consonant with international human rights standards remains a potentially useful way of promoting forest development that respects indigenous rights in locations where human rights, law and order and principles of good governance are commonly observed. However, in practice, political and economic obstacles can easily frustrate the achievement of adequate standards. Thus, although the FSC principles and criteria explicitly recognise indigenous peoples’ rights, there have been serious problems with their application at the national and forest level as far as indigenous peoples are concerned. Three problems stand out in particular:

- Economies of scale and a ‘target-driven’ approach, which favours the certification of as much timber as possible, have both favoured the certification of large-scale, capital-intensive forestry enterprises. There is concern that certification actually disadvantages community-based forestry in the market.

- Experiences in Sweden, Malaysia and Brazil all provide examples of how the voluntary nature of the certification process allows commercial forestry operators to avoid obligations to respect indigenous rights by:
  
  - opting out of national certification processes (Sweden),
  
  - redefining the regions for which national standards are being elaborated to exclude those where conflict with indigenous peoples is intense (Malaysia),


selecting for certification only those of a company’s operations which do not overlap indigenous lands (Brazil).

Some proponents of certification-led forestry reform believe such market-based transformations obviate the need for reforms in national or international regulatory frameworks. This could have the effect of marginalising indigenous issues and discouraging legal reforms, which recognise indigenous rights and oblige careful forest management. Many analysts agree for other reasons that certification needs to be complemented with regulatory frameworks if it is to be effective.\(^60\)

**New ways forward, new areas of contest: community control of land use planning**

Real forestry development which is socially and environmentally sustainable and respects indigenous peoples’ rights to land and self-determination, requires land use planning based both on secure rights and the indigenous peoples’ own traditional knowledge of their lands and resources. These principles have been affirmed by the United Nations General Assembly Special Session – see above. The only way that indigenous people can be assured that this is really done right is if they do it themselves.

New technologies now greatly facilitate community-based land use mapping, using Global Positioning Systems and Global Information Systems, and these techniques have already proved their value both as management tools and as the basis for land claims.\(^61\) For example, in a recent case in the High Court at Kuching, the judge ruled in favour of Iban communities seeking the removal from their lands of the Borneo Paper and Pulp company, which had been granted a permit to establish a plantation on their lands. Community maps showing the extent of customary occupation were persuasive elements in the evidence provided by the Dayak. The ruling found that the Dayak enjoy radical collective rights to their customary land, that these rights extend over all the lands they have customarily used and occupied (including ‘tall forest’ and not just their areas of permanent cultivation), and moreover that their rights do not depend on an affirmative act of recognition by the State. The Sarawak State Government has clearly been alarmed by these legal developments. In late October 2001, the Sarawak legislature moved to pass an act – the Land Surveyors Bill 2001 - that would criminalise community mapping. The act seeks to make it illegal for any except licensed surveyors to make maps which delimit ‘the boundaries of any land, including State land and any land lawfully held under native customary rights’. The move has been denounced by local NGOs who have called for the restrictive sections of the law to be struck from the Bill.\(^62\) The Bill would seem to be a clear violation of Article 19 of the Universal Declaration of Human Rights.

**Multiple Use Values and Community Management of Forests**

One of the most encouraging developments in the past fifteen years has been the growing acknowledgement that forests should not simply be valued for their timber. Forest policies should be founded both on more inclusive ‘valuation’ of forests, to include their social and environmental values, and on recognition of ‘traditional forest-related knowledge’. Such approaches offer scope for an acceptance of indigenous values.
Moreover, there is a growing recognition that community-based forestry and community-based conservation offer practicable ways of managing forests in ways that build on local skills and institutions, while realizing the goals of poverty alleviation and sustainable development. Such approaches offer scope for an acceptance of indigenous institutions and custom, as bases for managing forests.

This paper argues that there is a need to go further and accept that forest policies and laws must be based on respect for the fundamental human rights of indigenous peoples.

Fundamental Principles:

International law and emerging best practice standards in forestry development coincide in accepting the need for clear principles in dealing with indigenous peoples. These principles include:

- Recognition of the rights of indigenous peoples to the ownership, control and use of their territories, lands and resources, to the exercise of their customary law, to self-governance, to represent themselves through their own institutions and to self-determination.

- Forestry and conservation initiatives should not go ahead in indigenous peoples’ territories or lands without their prior, free and informed consent as expressed through their own representative institutions.

- Priority should be given to meeting the basic needs of the communities concerned, not only in terms of forest products and basic livelihood needs but also in terms of health, nutrition, education, social cohesion and cultural identity.

- Special attention should be given to vulnerable sectors including the elderly, women and children.

- Where indigenous peoples agree to forestry developments by third parties on their lands, clear and mutually acceptable mechanisms should be in place, preferably in the form of freely negotiated contracts, to ensure benefit sharing, shared management and control of decision-making, market choices, and community-involvement in monitoring and evaluation.

The basic intent of these measures is to promote processes of self-determination, which is the underlying principle of indigenous aspirations and human rights law. It is indigenous peoples who should decide what happens on their lands and land use options should not be imposed from the top down.

From international standards to local practice:

Many of the obstacles to reform of the forestry sector inhere in the domestic forest policies and forestry laws at the national level. Putting new international standards into practice in the short term may thus require private sector companies to work to higher standards than national laws demand. In the absence of adequate national laws
binding obligations between forestry companies can only be achieved through negotiated contracts, which clearly set out the mutual obligations and responsibilities of all parties: just such agreements have begun to be accepted as best practice in the dam-building sector.63

However, in the longer term, achieving forestry reforms at the national level will require:

- the reform of national social policies, land tenure regimes and administrative laws to recognise indigenous peoples’ rights to their territories and to self-governance,

- the reform of national forest and conservation policies, institutions, laws and regulations so that indigenous ownership and management of forests and protected areas is legally accepted

- mutually acceptable clarification of the extent and nature of the state’s jurisdiction over indigenous-owned and -managed forests and protected areas

References

1 This thematic review has been commissioned by the office of UN High Commissioner for Human Rights pursuant to Resolution 2000/15 of the Sub-Commission on the Promotion and Protection on Human Rights, which recommended that the High Commissioner in collaboration with UNCTAD, the ILO, the WTO and other relevant organizations organize a workshop on ‘Indigenous peoples, private sector natural resource, energy and mining companies and human rights’. The paper draws together the findings of a number of previous studies carried out by the Forest Peoples Programme, in collaboration with indigenous peoples, NGOs and other researchers as well as new information in the field. While every effort has been made to cite sources correctly, I would like to record my thanks to the very many indigenous spokespeople and others whose wisdom, insights and data have contributed to this report. I would also like to thank the Ford Foundation for support while researching and writing this paper.


4 This right is explicitly affirmed in the United Nations’ draft Declaration on the Rights of Indigenous Peoples. The right has also been affirmed by the UN Human Rights Committee see Concluding observations of the Human Rights Committee: Canada 07/04/99, at para. 8 UN Doc CCPR/C/79/Add. 105 (Concluding Observations/Comments 1999).

5 Henriette Rasmussen and Chandra Roy, 2000, ILO Convention on Indigenous and Tribal Peoples, 1989, [No. 169]: a manual. International Labour Organisation, Geneva. The following countries have ratified ILO Convention 169: Argentina, Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay and Peru. The Soviet Union also endorsed the Convention in 1989 but the Russian Federation has yet to inform the ILO of its adherence to the Convention. The Venezuelan Congress endorsed the Convention in December 2000 but the full legal procedures have yet to be followed bringing this into law. The following countries have ratified ILO Convention 107: Angola, Argentina, Bangladesh, Belgium, Bolivia, Brazil, Cuba, Dominican Republic, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Portugal, Syrian Arab Republic and Tunisia. Venezuela has incorporated ILO Convention 107 into national law but has not registered its adherence to the Convention with the International Labour Office.

Indigenous Peoples, Human Rights and Extractive Industries: forest industries


10 Ibid.


14 Inter-American Commission of Human Rights, Report No. 27/98 (Nicaragua), quoted in, The Mayagna (Sumo) Awas Tingi Community Case, Judgment on the Preliminary Objections of February 1, 2000, Series C No. 66, para. 22 (emphasis added).


18 Declaration of the First International Forum of Indigenous Peoples on Climate Change, Lyon, France, 4-6 September 2000.


Indigenous Peoples, Human Rights and Extractive Industries: forest industries


Kirsti Thornber and Matthew Markopoulos, 2000, Certification: its impacts and prospects for community forests, stakeholders and markets, IIED, London.


Ibid.

Indigenous Peoples, Human Rights and Extractive Industries: forest industries


58 Focus on Finance News (Special Issue) November 2001 – Dutch Banks Commit to Forest Conservation.


