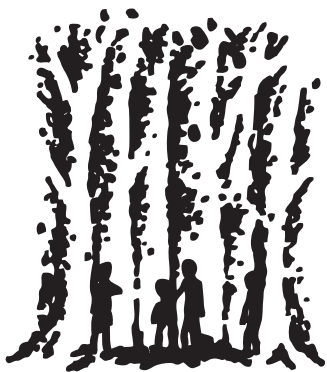


FPP E-Newsletter:

February 2012



Forest
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Programme

FPP E-Newsletter: February 2012

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Forest Peoples Programme

1c Fosseyway Business Centre, Stratford Road

Moreton-in-Marsh

GL56 9NQ

United Kingdom

Tel: +44 (0)1608652893

info@forestpeoples.org

www.forestpeoples.org

Dear Friends,

Balancing human beings' need for decent livelihoods against the imperative of securing our environment is, arguably, the biggest challenge facing our planet. This struggle between 'development' and 'conservation' is being played out in global policy negotiations, with the decisions of so-called policy-makers being imposed on the ground. But not everything is or should be 'top down'. Enduring solutions also spring from the grassroots, from the 'bottom up'.

In this newsletter we celebrate the sterling achievement of the [Wapichan people](#) who after a ten year effort mapping and agreeing how to use their ancestral lands in south Guyana, have released a comprehensive plan to secure their people's livelihoods and set aside 1.4 million hectares of forest for conservation. The Wapichan now look to the Government of Guyana to secure their area and so make these plans effective. The example contrasts startlingly with the case of the [Kaeng Krachan National Park](#) in Thailand where security forces have been torching Karen villages and burning their rice stores to expel them from their forests. FPP joined with the Karen in appealing to the Thai Prime Minister to halt these abuses. This is an example of the old 'Yellowstone Model' of exclusionary conservation that seeks to create uninhabited wildernesses in indigenous peoples' territories. It is a model of conservation that most conservationists have rejected in favour of a 'new paradigm' that respects people's rights in Protected Areas. A pilot assessment of the [Ob Luang National Park](#) in northern Thailand has just been carried out, under the newly agreed '[Whakatane Mechanism](#)', to see how far this new approach had been applied there. The team of observers, from IUCN, FPP, local communities, local NGOs and National Parks authorities, found that National Parks staff in Ob Luang have adopted a policy of joint management, accepted Karen and Hmong communities' presence in the Park, and have explicitly endorsed these communities' rights to their farmlands and to regulate the sustainable use of their forests.

Meanwhile, back at the top, the [climate negotiations in Durban](#) brought mixed results. The conference agreed that policies to reduce emissions from deforestation must go beyond securing carbon to ensure livelihoods and fair-sharing of benefits, but government parties baulked at accepting monitoring of rights, which is what indigenous peoples had demanded. The [UN-REDD Programme](#) however is near finalising its guidance on how Free, Prior and Informed Consent should be respected in forest and climate programmes. Moreover, a regional meeting in South East Asia of National Human Rights Institutions, with concerned community voices, indigenous peoples and NGOs, issued a [Bali Declaration on Human Rights and Agribusiness](#) which calls on States to protect community and indigenous peoples' rights and for agribusinesses to observe human rights. Encouragingly, international banks who have adopted the [Equator Principles](#) recently affirmed that they will adhere to the revised Performance Standards of the International Finance Corporation, which requires indigenous peoples' 'Free, Prior and Informed Consent' to projects planned on their lands.

Getting such standards applied on the ground is the bigger challenge. In [Indonesia](#), communities have no recourse to the law, as the judiciary is not independent and the legal framework is unfavourable, so FPP partner NGO Scale Up has been pioneering alternative processes of dispute resolution. Already there are over 7,000 government-registered land disputes in Indonesia crying out for resolution. Across the world, in [Belize](#), oil companies are moving in on Mayan peoples' lands without their agreement. Not only are 'development' and the 'environment' still in collision, but policies are still being imposed from the top down without any room for a local voice. It is FPP's role, when requested, to support these peoples to ensure they do have a determining voice about resource use in their areas. This is how 'development' and 'conservation' can really be balanced.

Marcus Colchester, Director

1. Wapichan people in Guyana present territorial map and community proposals to save ancestral forests

Highlights:

- Completion of a community digital map of traditional use and occupation of Wapichan wiizi (territory) by Wapichan mappers and a GIS specialist.
- Community map is based on thousands of waypoints geo-referenced with satellite imagery.
- The land use map has been finalised through multiple validation meetings in Wapichan communities as well as consultations with the Makushi and Wai Wai communities to the North and South of Wapichan territory.
- Over 80 community consultations and workshops have been carried out to compile the innovative territorial plan titled *Thinking Together for those Coming Behind Us*.
- The land use plan includes proposals to establish a **Wapichan Conserved Forest** and contains dozens of inter-community agreements on actions to secure land rights, promote sustainable use of resources and enable self-determined community development.
- Participants at the Wapichan map and plan launch event in Georgetown, Guyana, praised the work as a potential model for other indigenous peoples in Guyana, and throughout the world.

On 7 February 2012, more than 50 people attended a public event held at the Umana Yana (traditional meeting house) in the capital of Guyana (Georgetown), where leaders of the Wapichan people from South Rupununi District in south-west Guyana presented a community map of their traditional lands alongside a community plan for caring for the natural resources within their territory. In presentations made by the Wapichan communities' *Toshaos* (leaders) and local organisation, the South Central Peoples Development Association (SCPDA), participants heard about the origins of this work and how the map and plan were developed. They also learned about key proposals in the territorial plan and the next steps for its implementation.

Patrick Gomes, Toshao of Morora Naawa Village and Chair of the South Rupununi District Toshaos Council explained that the completion of the map and territorial plan is the most recent part of a long-running Wapichan campaign to secure legal recognition over their traditional lands:

The Wapichan people are struggling for our rights to be recognised and we have been in this struggle for years and years. We have sought recognition of our land rights since the time of the British. After independence, our leaders submitted applications seeking recognition of our lands to the Amerindian Lands Commission (ALC) in 1967, yet we still did not achieve full recognition. In 2000 we started to map our lands in order to show how we use them and how we are attached to them.

Toshao Gomes highlighted that international standards on human rights affirm that indigenous peoples have the right to own, manage and control lands that they have traditionally used and occupied, and this is a key reason why the Wapichan communities carried out the mapping to provide evidence of customary land ownership. Treaties like the Convention on Biological Diversity (CBD), ratified by Guyana, also contain recognition of the need to respect and protect customary land use (e.g. Article 10c of the CBD). In order to complement information on the land use map, the South and South Central Rupununi Districts Toshaos Councils also carried out a community-based "10c project" to document traditional land use practices and customs, which resulted in a much acclaimed report titled [Wa Wiizi Wa Kaduzu: Our Territory, Our Custom](#) published in 2006.

Gomes told participants that this community research has been used as a baseline for a further major District Toshao Council (DTC) project carried out between 2008-11 to compile a land management plan based on customary law and local systems of governance, to promote sustainable land use, support local livelihoods and to protect Wapichan territory against harmful development. After 5 years and more than 80 community-based consultations and workshops, the end result is a detailed territorial plan titled *Thinking Together for those Coming Behind Us* that contains Wapichan customary laws and agreed principles for caring for the land, as well as many agreed actions for specific places within the territory.

He explained that this comprehensive document has been developed to guide community land use planning and decision-making, to demonstrate that the Wapichan people have their own system of customary rules and local capacity to govern their territory.

In describing how the digital territorial map was made,

indigenous mapper and Toshao of Sawari Wa'o Village, Angelbert Johnny, explained:

The mapping work took several years (2000-5). It was based on working with our elders, land users and knowledgeable people in our villages. They guided our mapping trips and we mappers visited many places. We climbed mountains, travelled along creeks and followed our traditional trails. Trips could sometimes last up to three weeks in the forest. It was hard work. Land use was carefully recorded by hand, as well as by GPS, in field log books which came in handy to cross-check information. Draft maps were validated and corrected among our communities in a painstaking process from 2006-2011. I can say that the end result is a detailed map that it is accurate!

In her presentation on how the territorial plan was drawn up, Claudine La Rose, of Shorinab Village and a member of SCPDA's technical field team, highlighted the importance of working in local languages in community discussions on land rights and land use planning:

All the public meetings, workshops and validation activities were conducted in our Wapichan language and in some mixed villages we used Makushi and Wai Wai too. This was key to ensuring effective participation. A lot of thought went in to translating key concepts and we worked closely with our own Wapichan literacy tutors. Every thing was validated page by page with villagers, including the agreements on common title boundaries, land title extensions and community development.

In talking about the contents of the plan, Mr Kid James of the SCPDA told participants that the plan contained agreements on land rights matters, including common boundaries between villages for land title extensions, which have been developed fully in line with the Amerindian Act and in ways consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). He told the participants about chapters on different kinds of land (ecosystems) found in Wapichan territory, including forests, savannahs, mountains, waters and wetlands. Participants heard about chapters on different land uses, including farming, hunting, fishing, gathering, ranching and the use of fire, as well as important places such as spiritually sensitive locations, cultural heritage sites and valuable wildlife sites.

Mr James explained that the territorial plan also sets out the Wapichan vision for development in their communities:

We want to follow our own development path and make sure that development proposals coming from

others fit with our own priorities. We want to be sure that the direction of development for our people is truly in line with our rights and where we want to get to.

He added:

Our plan also contains proposals for institutional strengthening and further work to consolidate Village Rules on free, prior and informed consent. We plan to set up a Council of Elders in each village to advise on cultural issues, land use and development matters. We plan to identify and support local traditional leaders (men and women) to help implement our decisions, including agreements on controlled burning.

During an open question and answer session, participants, including government officials, members of parliament, NGOs, international organisations and representatives of the media, congratulated the Toshao on the results of all their hard work over the past decade. Several participants shared their view that the Wapichan land use planning and mapping work has the potential to become a model for other indigenous peoples throughout Guyana and in other countries.

At the close of the meeting, Toshao Gomes said that sharing the experience with other indigenous peoples in Guyana and elsewhere is a key part of planned follow up work. In discussing next steps for implementing the territorial plan, he added:

One stage of our task has been completed, but now the work is just beginning. The challenge ahead is to put our plan to work. We wish to work together with government and other allies and friends to have our rights recognised, to finally secure our full land title extensions and to help us realise our vision for Wapichan territory. Let us work to make our plans like our proposal for the Wapichan Conserved Forest come to life.

Further information:

- *Press Release: Wapichan people in Guyana showcase community proposal to save tropical forests on their traditional lands:* <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2012/02/press-release-wapichan-people-guyana-showcase-comm>
- Mr Kid James, South Central Peoples Development Association (SCPDA) – Tel: +592 617 4519 (mobile); Email: kidrodelo@gmail.com
- Toshao Patrick Gomes, South Rupununi District Toshao Council - Tel +592 687 4923 (mobile)

The Districts Toshaos Councils (DTCs) extend thanks to the many organisations that worked on the mapping project including the Amerindian Peoples Association (APA), Local Earth Observation (LEO) and the GIS mapping consultant Gregor MacLennan. DTCs also wish to acknowledge the Forest Peoples Programme (FPP) for provision of technical assistance and facilitation of the community mapping, research and land use planning projects. The DTCs, SCPDA and FPP all wish to express thanks to the many donors who have supported this work since 2000, including the W Alton Jones Foundation, Rainforest Foundation US, HIVOS-Novib Biodiversity Fund, Oxfam-Novib, the Michael John Eden Bequest, Size of Wales, IFAD, Swedbio and the European Union (through the EU delegation to Guyana). The views presented here are those of SCPDA and FPP and are not necessarily shared by the agencies that have generously supported this work.

2. Karen People forcibly expelled from the Kaeng Krachan National Park in Thailand

In January, indigenous peoples' organisations sent a [letter to the Prime Minister of Thailand](#), Yingluck Shinawatra, asking her to take immediate action to redress the forcible expulsion of Karen people from their ancestral territory in north-western Thailand, which is now overlapped by the Kaeng Krachan National Park.

According to sources that have visited Kaeng Krachan National Park and collected information, the harassment of Karen villagers has been going on for some time and became severe in May, June and July 2011, when many of the villagers' houses and rice stores were burned and money, jewellery, fishing and agricultural tools were stolen by a group comprising National Park wardens and military forces. As a result, some of these villagers moved away and are now staying with relatives elsewhere and a number of them (allegedly around 70 people) are hiding in the forest in fear of meeting government officers, and are without sufficient food and shelter.

This alleged forceful action by the National Park has violated the human rights of the affected indigenous community on a number of grounds and has raised great concerns as it also involved unlawful arrests, intimidation and use of force. This action is in contravention of the Thai Constitution (2007), the Thai Cabinet resolution adopted on August 3, 2010 on policies regarding the restoration of the traditional practices and livelihoods of

Karen people, and international human rights law, as well as the UN Convention on Biological Diversity (CBD) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The letter to the Thai Prime Minister is signed by the International Indigenous Forum on Biodiversity (IIFB), a network of organisations representing indigenous peoples and local communities from across the world, who are working on the implementation of the United Nations Convention on Biological Diversity. The letter is endorsed by 48 other organisations, and calls on the Thai Prime Minister to take action to, among other points:

1. Urgently cease all threats, harassment, arrests and all other forms of human rights violations against the villagers in the National Park;
2. Effectively investigate the actions of the staff and authorities of Kaeng Krachan National Park and all others involved in the alleged acts of violence so that the perpetrators are prosecuted in justice;
3. Abide by, and implement, the Thai Cabinet resolution on policies regarding the restoration of the traditional practices and livelihoods of Karen people; and
4. Take all necessary measures to effectively implement the provisions of the CBD relevant to protected areas and indigenous peoples, and Thailand's obligations under international human rights law in relation to the rights of indigenous peoples.

The indigenous organisations recommended that this issue could be addressed through the establishment of a committee (or other appropriate mechanism) by the government, with the active participation of indigenous peoples and local communities, to address and implement the actions recommended in the letter.

To see photos and read more about this story on the Bangkok Post website, please visit:

"Where the law of the jungle rules. Indigenous Karen forest dwellers suffer violent eviction despite their constitutional right to stay in their ancestral land":

<http://www.bangkokpost.com/print/259158/>

"Royal vouchers for 103-year-old Karen":

<http://www.bangkokpost.com/print/254877/>

To read the Karen Statement, August 2011, see:

<http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2011/statement-karen-network-culture-and-environmen>

3. South East Asian Human Rights Commissioners and Indigenous Peoples' Organisations adopt Bali Declaration on Human Rights and Agribusiness

Constructive dialogue and potential synergies between the National Human Rights Commissions and Institutions of Indonesia, Malaysia, Thailand, the Philippines and Cambodia, reached an important milestone at a four-day workshop in November in Bali, Indonesia. The workshop was convened by the Indonesian National Human Rights Commission and organised by Forest Peoples Programme and Indonesian NGO SawitWatch, with the support of the Rights and Resources Initiative, Samdhana Institute and RECOFTC – The Center for People and Forests.

This landmark workshop on “Human Rights and Business: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform” was attended by 60 participants, including notable academics, indigenous peoples’ representatives and members of supportive national and international NGOs. An opening statement was made by UN Special Rapporteur on the Right to Food, Olivier de Schutter, and a presentation was delivered by Raja Devasish Roy, elected Member of the UN Permanent Forum on Indigenous Issues (UNFPII) and traditional chief of the Chakma circle in the Chittagong Hill Tracts, Bangladesh.

The workshop focused on the challenges faced in ensuring respect for the rights of indigenous peoples and rural communities in the context of the rapid expansion of agribusiness, notably the palm oil sector, as well as the need to recognise their right to development and improve their welfare. The rich and diverse sharing of lessons learned, experiences and recommendations that characterised the workshop was instrumental in fostering stronger mutual understanding between the Human Rights Commissioners, regional lawyers, human rights activists and supportive NGOs.

In an attempt to span and connect the local, national, regional and/or international levels involved in and affected by agribusiness expansion, the workshop participants actively identified opportunities for using plural legal approaches to secure the rights, especially in land, of indigenous peoples and other customary law

communities. The need for a Rights-Based Approach to Agricultural Expansion across the South East Asian region was strongly voiced, an approach that needs to be based on human rights norms, guided by human rights principles and standards, and geared towards the realisation of human rights for all.

Seminal to the discussions was the report “Protect, Respect and Remedy: a Framework for Business and Human Rights” (2008) on the human rights responsibilities of corporations, by Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights. This report, otherwise known as the UN Framework on Business and Human Rights, was identified as a basis and possible critical tool for dialogue. Of particular relevance to the theme of the workshop was the fact that “the responsibility [of corporations] to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

Concluding comments by Marcus Colchester (Forest Peoples Programme) and Nur Kholis (Komnas HAM) stressed the need for both immediate effectiveness and long-term objectives in securing the rights of indigenous peoples and local communities in the face of agribusiness expansion on their customary lands. Also highlighted was the pivotal role that National Human Rights Institutions can play in raising their concerns about agribusiness and human rights to international financing institutions (such as the Equator Banks), UN Working Groups, UN Human Rights treaty bodies and UN Special Rapporteurs, as well as ASEAN. In addition, there was a general agreement among the participants that plural notions of “development” needed to match the plural legal systems and processes at work at different levels; local, national, regional, and international. The fundamental requirement needed for reaching these objectives was identified as sustained and pro-active collaboration between the Human Rights Commissions, with the support of NGOs and indigenous organisations.

A significant outcome of the workshop was the development of a regional human rights standard for agricultural expansion in South East Asia, anchored in international human rights standards and the ICC Edinburgh Declaration. This new standard, the “[Bali Declaration on Human Rights and Agribusiness in South East Asia](#)”, reminds companies of their legal obligation to fulfil their responsibilities to respect human rights, even where human rights are not fully respected by States in which they operate and where the legislative framework

is weak and loosely enforced. The Declaration also calls on States to fulfil their legal obligations to protect the rights of their citizens, including indigenous peoples, in the face of unprecedented pressure by agribusinesses: Notably their rights to own and control the lands and territories they have traditionally owned, occupied or otherwise used and their right to give or withhold their Free, Prior and Informed Consent to activities planned on those lands. The Declaration also makes particular reference to the rights of workers, smallholders, communities, women and children under international human rights law.

It is expected that this Declaration will encourage governments and legislatures in the South East Asian region to take urgent steps to reform national laws and policies relating to land tenure, agrarian reform, land use planning and land acquisition so that they comply fully with their countries' human rights obligations, including the right to food, the right of all peoples to freely dispose of their natural wealth and resources, and the right not to be deprived of their means of subsistence.

The proceedings of the Bali workshop will be published during the course of 2012 and a follow-up workshop is being organised, which will this time also benefit from the participation of representatives of the agribusiness and private sectors, to stimulate broader lesson-sharing and multi-stakeholder dialogue.

For further information, please contact: Sophie Chao sophie@forestpeoples.org

Bali Declaration on Human Rights and Agribusiness in Southeast Asia. December 2011: <http://www.forestpeoples.org/sites/fpp/files/publication/2011/12/final-bali-declaration-adopted-1-dec-2011.pdf>

Press Release: Agribusiness and Human Rights in Southeast Asia Workshop brings together Human Rights Commissioners, indigenous peoples' representatives, academics and NGOs from across the world. November 28 2011: <http://www.forestpeoples.org/sites/fpp/files/news/2011/11/Press%20release%20-%20Bali%20workshop%20final%20Nov%2028%202011.pdf>

Press Release: Bali Declaration acclaimed at Agribusiness and Human Rights in Southeast Asia Workshop. Dec 1 2011: <http://www.forestpeoples.org/sites/fpp/files/news/2011/12/PRESS%20INFORMATION%20-%20Bali%20Declaration.pdf>

4. Pilot Whakatane Assessment in Ob Luang National Park, Thailand, finds exemplary joint management by indigenous peoples, local communities, National Park authorities and NGOs

Since its inception at the IUCN Commission on Environmental, Economic and Social Policy (CEESP) 'Sharing Power' conference in Whakatane, New Zealand, in January 2011, the Whakatane Mechanism has been piloted in two places: at Mount Elgon in Western Kenya and most recently in the Ob Luang National Park in Northern Thailand. The aim of the Whakatane Mechanism is to assess the situation in protected areas and, where people are negatively affected, to propose solutions and implement them. The Mechanism also aims to identify, celebrate and support successful protected areas where the new paradigm of conservation is being implemented.

Joint management of the Ob Luang National Park is an example that should be shared. Since 2004, the park authorities, local communities and NGOs have been working together to implement joint management, taking special care to include women and young people. The pilot Whakatane Assessment in Ob Luang was also carried out jointly, with a team including staff from the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT), Thailand's Department of National Parks, Wildlife and Plant Conservation, Forest Peoples Programme, IUCN, local NGOs, indigenous peoples and local community networks (the Watershed Network and Highland Nature Conservation, Chomthong).

This team spent several days visiting communities in the park and local government staff to hear their views and recommendations. The team found that the joint management approach was supported by everyone due to its clearly visible positive effects e.g. reduced tensions between the government and communities, increased protection of forests and watersheds, and improved livelihood security for indigenous peoples and local communities.

Unfortunately, Ob Luang is currently an exception in

Thailand. In fact, those involved have to go against the law: while Thailand's 2007 constitution allows indigenous peoples and local communities to manage their natural resources, they are still not legally allowed to live in protected areas. There are currently over ten million people living in protected areas in Thailand, under the constant threat of eviction. Recent reports reveal that Karen people in northern Thailand were forcibly [evicted from the Kaeng Krachan National Park](#) and their houses burnt.

Based on their positive experiences in Ob Luang, the National Park authorities, local communities and NGOs want to expand the joint management approach to other protected areas in Thailand and allow communities to live legally in the parks. At a community restitution workshop on 6 February 2012, participants unanimously agreed that the current laws have to be revised so that protected areas in Thailand can legally implement the new paradigm of conservation.

Closing the workshop, the Ob Luang Park Manager, Charkrit Saereenonchai, said:

"I came to this position only 4 months ago and my boss reminded me that Ob Luang has gained a good experience working with communities. He asked me can you work like that? Since then, I understood that Ob Luang is very diverse in ethnicity, in occupations and there is a great diversity of trees in the forest". He asked "How can we manage a diversity like this? Not by putting people in a cage, but by helping them to gain better living conditions - the answer is participation."

Charkrit Saereenonchai and many others will be championing this approach to policy-makers during a national workshop next month, and in a report summarising the findings of the Ob Luang pilot Whakatane Assessment.

5. Durban COP 17: UNFCCC fudges decision on climate finance and makes little progress on REDD+ safeguard implementation

Parties to the United Nations Framework Convention on Climate Change (UNFCCC) at their recent COP17 did not support performance indicators for reporting on the implementation of indigenous peoples' rights in REDD+. However, they did recognise that REDD+ benefits have to go beyond carbon to include biodiversity conservation and support for local livelihoods.

Forest Peoples Programme, with a delegation of indigenous peoples from Guyana, Kenya, Cameroon, Suriname and Peru, attended preparatory negotiations and the 17th Conference of the Parties of the UNFCCC in Durban, South Africa, in late November/early December 2011. The main purpose of FPP's attendance was to support the Indigenous Peoples' Caucus and closely follow negotiations on REDD+ safeguards and finance.

REDD+ negotiations at the COP developed along two streams: First, the Subsidiary Body for Scientific and Technological Advice (SBSTA) focused on adopting guidance for a Safeguard Information System (SIS) on *how* safeguards are implemented and considered in REDD+, and also examined the question of reference levels and reference emission levels for REDD+. The second debate on REDD financing modalities took place within the Ad Hoc Working Group on Long-term Cooperative Action (LCA).

One key contentious issue in the SBSTA negotiations was the different interpretations of the safeguard reporting requirements. Most of the Parties were hesitant to adopt guidance that would include performance-related information, and their discussions on the reporting modalities were limited. The Indigenous Peoples' Caucus lobbied to have specific additional reference to indigenous peoples' rights and international obligations included in the final text at COP 17. However, the main outcome of this advocacy was a very general reference to the package of REDD+ safeguards (which protect indigenous peoples' rights) adopted at the previous COP in Cancun (meaning that Parties recalled commitments made at COP16). The COP 17 decision on the SIS

provides no guidance on the need to ensure reporting at the international level, nor to develop performance indicators, while specifying that the implementation of safeguards should support national strategies and possibly be included in all phases of implementation. This latter decision raises the potential risk that some governments might adopt a discretionary approach towards the application of safeguards in the different phases of REDD+. Indigenous peoples and social justice groups highlighted that it is essential for safeguards and compliance systems to be put in place at the inception of Phase 1 (REDD readiness planning and activities) before Phases 2 and 3 (results-based payments). Parties acknowledged that results upon which payments would be made need to encompass non-carbon benefits such as livelihoods, biodiversity and poverty alleviation. Parties and Observers were asked to provide inputs and submissions by early 2012 to inform discussions and negotiations on REDD+ finance that will occur throughout this year in the lead-up to COP18, which will take place in Qatar in November.

Regarding REDD financing, it was evident from the start of the negotiations that no clear-cut decision would be taken on whether to fully support market or non-market mechanisms, and that the final decision would be left to the discretion of national governments. Nevertheless, after tense negotiations, language was adopted according to which market-based approaches could be developed by the COP on the basis of experience gained from current and future demonstration activities. This triggered an over-enthusiastic reaction by some in the private sector and conservation NGOs, who read this as an endorsement of the project-based, sub-national REDD activities they are currently pursuing. Reference to future activities could be an invitation to continue on this track, but it is unclear how lessons learned could be fed into the COP process in the short to medium term. The final agreement reached in Durban also contains a balanced reference to safeguards. It again affirms that regardless of the sources of financing, any REDD action has to be consistent with the UNFCCC safeguards.

The need to ensure a robust and effective framework to implement safeguards and indigenous peoples' rights at the national level as a necessary pre-condition before projects can start on the ground was further evidenced in a collaborative report on REDD in Peru, "The Reality of REDD+ in Peru: Between theory and practice - Indigenous Amazonian Peoples' analyses and alternatives", produced by Peruvian indigenous peoples' organisations: AIDSEP, FENAMAD and CARE, with Forest Peoples Programme. Case studies in the report present evidence of the risks ensuing from the multiplication of local REDD and carbon projects on the ground, that stem from the lack of solid and consistent

national legal frameworks to protect and recognise the rights of indigenous peoples and forest dependent communities.

In a side event organised by Rainforest Foundation Norway and Forest Peoples Programme, ideas and options were shared on how to ensure that safeguards are properly implemented and supported by REDD governments and financing institutions, such as the Green Climate Fund (GCF), whose mitigation window, agreed in Durban, will also support REDD activities and programmes. Among the key issues stressed by participants were the central need for land tenure reform and measures to recognise and respect land rights as a keystone for a rights-based approach to REDD planning and implementation. The need to ensure that governments have the necessary support, in financial and capacity building terms, to effectively implement safeguards and report accordingly was also highlighted. Given the lack of stringent and immediate commitments towards an increase in climate financing and a global scheme to reduce carbon emissions, much of the discussion at the Durban COP mainly centred on institutional arrangements of the Convention. Of particular note, was the launch of the Green Climate Fund.

Indigenous peoples, among others, again called for direct access to financing to support adaptation and mitigation projects developed and implemented by indigenous peoples, based on their traditional knowledge. Key issues for indigenous peoples in this year's work plan of the GCF's newly established Board are:

- Direct access to financing.
- The adoption of safeguards anchored to international obligations and instruments, such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
- Policies that engage with rights-holders and relevant stakeholders.
- The acknowledgment of indigenous peoples' right to FPIC.
- Indigenous peoples' participation at all levels in the activities of the Green Climate fund.

Further information

The full text of the COP decision establishing the Green Climate Fund can be found at: http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_gcf.pdf

Indigenous Peoples' Organisations' statements at the

Durban COP can be found at: <http://www.forestpeoples.org/topics/climate-forests>

The decision on a System of Information on Safeguards can be downloaded at: http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_safeguards.pdf

The text of the COP decision including a section on REDD can be found at (pages 12- 13): http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf

AIDSEER, FENAMAD, CARE and FPP Peru report, “The Reality of REDD+ in Peru: Between theory and practice - Indigenous Amazonian Peoples’ analyses and alternatives”, can be downloaded at: <http://www.forestpeoples.org/topics/redd-and-related-initiatives/news/2011/12/new-forest-peoples-programme-report-reality-redd-pe>

6. The Importance of Mainstreaming Alternative Dispute Resolution (ADR) in Tenurial Conflict Resolution in Indonesia

A summary of ADR studies in Riau, West Sumatra, Jambi and South Sumatra, Indonesia

By **Ahmad Zazali, Executive Director, Scale Up**

An ongoing and heated debate is underway over the neglect of public access rights over forest resources in current modes of forest tenure in Indonesia. The role of local communities and their access to natural resources often overlap with the rights accorded to government/state enterprises and the private sector. The exploitation of forest resources has driven large companies to ignore the interests of these communities who live within and depend on forests for their livelihoods. This situation in turn has triggered the emergence of intra- and inter-community social conflict, conflict between communities and the government, as well as conflict between communities and companies.

Since the reform and the implementation of

decentralisation policies, natural resource conflicts have become increasingly prevalent in Indonesia. The National Land Agency (BPN) reports that at least 7,491 natural resource conflicts have been dealt with by BPN and the Indonesian police. The Center for International Forestry Research (CIFOR) recorded 359 forest-related conflicts from January 1997 to June 2003. The highest frequency of conflicts occurred in 2000 with 153 recorded cases, or 43% of the total number of cases recorded over those 6 years. Conflicts in Industrial Plantation Forests (HTI) were the highest at 39%, with conservation areas (including protected forests and national parks) representing 34% of conflict cases, and forest concessions (HPH) representing 27%.

However, the proliferation of forest-related conflicts is not being approached through innovative or alternative conflict resolution methods and the repressive approach and mechanisms of legal /formal forest peace-keeping remain the primary mode of conflict resolution. Since 2005, numerous cases have been brought to the Forestry Department’s Forestry Policy Quick Response Unit (SPORC) but the handling of disputes is inefficient, and court trials sometimes run counter to justice itself.

Forest resource conflicts result from the failure to manage the interests of all parties involved; the communities, the government and corporations. The escalation of natural resource conflicts is also associated with the choice of conflict resolution mechanisms that do not provide equitable and acceptable support to the parties involved. While dispute resolution through formal courts is often the choice of parties with strong material backing and the required networks of contacts, formal resolution mechanisms can put local communities at a serious disadvantage for the very same reasons. From the point of view of these communities, court procedures are often seen as overly time-consuming, prone to manipulation, long-winded, and inevitably resulting in a “win-lose” outcome.

On the other hand, the availability of alternative mechanisms outside the court has the potential to position both parties in dispute as active agents of dispute resolution, working towards a “win-win” outcome. However, the mechanism of alternative dispute resolution (ADR) outside the court is not yet fully understood, has not been applied systematically, and is not yet available as an institutionalised form of mediation. Lessons learned from ADR activities have not been systematically explored and unravelled as empirical evidence to strengthen the understanding and practice of ADR outside the court. To learn more about the various problems mentioned above, Scale Up carried out a study on the application of ADR in the Indonesian provinces of Riau, Jambi, South Sumatra and West Sumatra.

Through interviews, observation and focused discussion, around 24 cases of ADR processes were documented, and certain key elements are examined below:

Natural Resource Conflicts

It was found that natural resource conflicts always resulted from contestation of one or more parties over a certain resource. The root problems in the four provinces examined in this study include:

- (1) the overlap of government policies and customary rights over natural resources and management;
- (2) the lack of political space for the implementation of equitable governance of resources;
- (3) the support that formal forest tenure gives to the development of industrial crops and plantation forestry; and
- (4) the lack of effective community-based economic development programmes.

Confusion over and distortion of customary rights compounded with poor management of resources have also resulted from:

- (1) the overlap of property rights over land and resources between communities and companies;
- (2) communities being forced to relinquish their rights to natural resource management as a result of company operations;
- (3) struggles over land between communities;
- (4) the lack of compensation provided to local communities in return for their management of natural resources;
- (5) land seizures once land permits have been issued for plantations; and
- (6) the limited arable land left available for communities.

These factors are the underlying reasons for the occurrence of conflicts between communities themselves, communities and corporations, and communities and the government.

Natural resource conflicts in the four provinces studied are escalating in intensity. In Riau, for example, conflict has been on the rise for the last four years. In 2007, 35 cases of natural resource conflict were reported. In 2008, the figure had risen to 96 cases. In 2009, 45 cases were reported and 44 in 2010. In West Sumatra, 24 cases were identified from 1997 to 2010 involving communities, corporations and the government. By 2010 in Jambi, 46 land conflicts had been reported in the plantation sector alone. 31 conflicts occurred between communities and companies, whilst forestry conflicts numbered 30 cases.

The escalation of conflict is testified to by the growing range of parties involved, including communities, corporations, the government and non-governmental organisations.

The escalation and intensification of natural resource conflict is also influenced by the perspectives of the parties in conflict, as identified in Scale Up's study. On the one hand, the state (government) is of the view that natural resource management must be adopted through macro-management strategies/systems with the support of large-scale and powerful technologies in order to create significant economic contributions. According to this point of view, community participation should be directed towards the support of these macro-objectives advocated by the state. Any actions which do not serve this end are seen as hindering such objectives.

In this perspective, corporations backed by strong capital and technology are seen as conducive to rapid and efficient macro-development. On the other hand, community and local activists such as academics and NGOs hold the view that the management of natural resources cannot be performed without the participation of society or without recognition of their own knowledge and use of these resources. This perspective respects, accommodates and honours the rights of people to natural resources and society's role in their management. Management schemes that protect and ensure the rights of communities are therefore necessary to achieve this end.

The escalation of natural resource conflict leads to negative outcomes for the parties involved and the resource in question, as the disputed land resources become neglected and are no longer managed properly. Parties with established networks, ease of mobility, capital and authority are favoured, whilst local communities suffer from social conflict and the violation of their rights. Acts of violence have tended to cause casualties and damage to both parties involved. Conflict is thus no longer solely associated with the struggle for land and rights to natural resources alone, but also with the destruction of human lives and social relations.

Understanding and institutionalising ADR

Scale Up's study showed that ADR mechanisms were employed in numerous conflict resolution cases, and were based on the ideas of iterative deliberation and negotiation-based consensus-seeking. While the communities believe that ADR mechanisms can effectively rebuild harmonious relationships between parties in conflict, certain NGO activists and government officials perceive them as out-dated and archaic.

Communities are often hesitant or refuse to resort to formal judicial mechanisms such as the courts as judicial procedures require significant resources and knowledge that communities feel they frequently lack. Scale Up's study showed that where formal court procedures failed, the parties involved sometimes sought alternative means of settlement. The fact that formal courts are often the first option more often reflects the lack of understanding that people have of ADR, rather than a genuine preference for the formal mechanism.

However, poor implementation of ADR can also fail to generate solutions to conflict. Qualified mediators, who fully understand and apply their mediation skills, may be lacking. Mediators from NGO backgrounds often find themselves entangled in the dilemma of opting for advocacy or mediation. Government agencies acting as mediators may not be aware of the type or function of mediation appropriate for each case of conflict. As a result, the application of the principles and stages of mediation remains weak. The principle most often overlooked is that of the neutrality of the mediator. The mediator must be a person who can be trusted, one that has been agreed to and appointed by both parties in dispute. The abandonment of the principle of neutrality inevitably leads to poor conflict resolution, or sometimes even the worsening of conflict.

Scale Up's analysis of the cases of successful application of ADR shows that the forces that drive the success of mediation stem from the appointment of a mediator who is chosen by and acceptable to both parties. In successful cases, the mediation process implements and oversees the management of mediation agreements generated, and involves other concerned parties. In the case of disputes between communities, the success of ADR is mainly due to the motivation of the community to resolve the dispute through a process of deliberation. In the case of disputes between communities and companies, successful ADR results from the company's commitment and financial support to the mediation process.

The benefits of ADR

This section draws from the important points made above in order to make recommendations for the mainstreaming of ADR. It is argued that this can be achieved through strengthening commitment towards conflict resolution, strengthening the capacity and skills of mediators, overcoming the dualism of choice between "winning" and "losing" in favour of a "win-win" outcome, ensuring the validity of the results of ADR processes, and strengthening the juridical basis of ADR outcomes.

Strengthening commitment: A variety of commitments and past experiences affect the interests of the parties in conflict. Communities are influenced in their commitment by their negative experiences with corporations and the government. The government's degree of commitment tends to grow over time but remains unclear in terms of its role and function. The company's commitment is generally calculated based on profit-making objectives. The commitment of NGOs in implementing ADR is undermined by their dilemma over whether they should act as facilitators, supporters and/or advocates in ADR processes.

The capacity of the mediator: In most of the successful ADR processes, the parties reached an agreement through a third party mediator. However, the mediation process frequently stalled, and this was associated with the lack of capacity and skills of the mediator. Problems of capacity (in terms of knowledge and skills) must be approached through training and mentoring on mediation.

Dual mechanisms: Another aspect worth stressing is the binary choice involved in dispute resolution; that of the formal courts and that of ADR. In general, conflict resolution achieved through formal court procedures does not produce satisfactory results. In some cases, both the courts and alternative paths of conflict resolution are simultaneously adopted. Where there is confusion or ambiguity over which course of action to take, the commitment and motivation of the parties involved must be strengthened and they must be made to understand and be ready to accept the consequences of their choice of dispute resolution mechanism. An explanation of the incentives for and benefits of ADR should be provided at an early stage.

The validity of results: Scale Up's study questions the way in which parties assess and verify the validity of ADR. Does the agreement between the parties in conflict, achieved through mediators, have legal force? How can cases of denial of the agreement by one party be addressed? What is the validity of an agreement mediated by a mediator who does not have the appropriate qualifications? What is the status of the resulting agreement if, over the course of time, one of the parties chooses to settle through court? How can agreements be legalised by judicial institutions and government authorities? Questions relating to the validity of ADR-produced agreements confirm the importance of more systematic efforts to provide support for mediation (by government and NGOs) without the risk that such agreements cannot be verified or guaranteed.

Juridical foundations: The juridical foundation for ADR is to be found in Law Number 30 (1999) on Arbitration and Alternative Dispute Resolution. This juridical foundation

needs to be communicated to the parties involved in order to convince them of the merit of this process. Information about certified mediators and the support of the Indonesian National Human Rights Commission (Komnas HAM) should also be communicated to the parties in conflict. Furthermore, the involvement of authorities such as the government and the judiciary in ADR processes must be open and transparent, so that all parties involved in ADR remain positive about choosing ADR as a mechanism for resolving their conflicts.

Sources cited:

1. Maring, Prudensius et al 2011, *Study on the understanding and practice of Alternative Dispute Resolution through the institutional mediation of conflicts over natural resources in the provinces of Riau, Jambi, South Sumatra and West Sumatera*, Pekanbaru, Scale Up.
2. Zazali, Ahmad 2011, *Natural Resources Conflict Resolution through Mediation Initiatives*, Pekanbaru, Scale Up. (In Bahasa Indonesia only)

7. Update on recent UN-REDD Social and Environmental Principles and Criteria (SEPC) and Free, Prior and Informed Consent (FPIC) Workshops

From 8–11 February 2012 indigenous peoples' representatives, civil society, NGO and state representatives gathered in Geneva to discuss the draft UN-REDD Programme Social and Environmental Principles and Criteria and the draft UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC). Forest Peoples Programme (FPP), along with a number of NGO, state, and indigenous organisations (including FPP's local partners from Paraguay, Indonesia and Panama), submitted written comments to both documents in advance. At the meeting in Geneva they then provided significant feedback to United Nations Development Programme (UNDP) representatives facilitating the event and taking the lead in drafting and revising the documents.

Forest Peoples Programme found the dialogues and exchanges to be very rich; reflective of an increasing

understanding of indigenous peoples' rights and the nature of human rights-based development. FPP also found the UNDP staff responsive to the suggestions for improvement as well as to the criticisms of content.

The earlier 2-day discussions around the Social and Environmental Principles and Criteria focused on a series of issues, including whether the document should clarify the mandatory versus voluntary nature of specific requirements, and whether greater flexibility should be written into the document to allow states to adjust their implementation and/or interpretation of the requirements against the backdrop of domestic circumstances. Some supported such suggestions while others felt this would merely diminish the value of the document and subordinate international legal obligations to country laws and frameworks. A significant question still left unanswered, however, is when and where these principles and criteria are to be applied, i.e. during the readiness phase only, or to REDD+ activities thereafter?

For two days participants provided further opinions regarding the draft UN-REDD FPIC guidelines. In breakout groups, participants focused particularly on the issue of *who* gives consent (for instance, just indigenous peoples and other forest dependent communities); *when* such consent is needed and *how* such consent processes should be conducted as well as verified for effectiveness and credibility.

On the last day, the UNDP benefitted from direct input and dialogue with a smaller set of experts in free, prior and informed consent, thus assisting UNDP in revising the guidelines and addressing the many comments and inputs received in the meeting and in written submissions. The participants agreed, among other things, that attempting to provide an exhaustive list of when FPIC does apply, or does not apply, was not preferred for the Social and Environmental Principles and Criteria. Participants also recognised that indigenous peoples' right to FPIC was well enshrined in international law, but the same affirmations were not as clear with respect to local communities. Many agreed, however, that numerous local communities (whether they have self-identified as such, or whether the state has recognised them as such) would likely satisfy criteria for application of the FPIC standard.

Participants also reached greater consensus that FPIC processes are necessary not just at the local level, but also at the national level when national REDD strategies and programmes are being developed and contain elements that may affect the rights of indigenous peoples and/or specific indigenous communities (see, for example, Article 19 of UNDRIP). A significant discussion also circled around the recognition that while there is an

urgency to preserve and conserve forests under threat, such urgency could not justify short cuts on FPIC and the overall human rights based approach to the guidelines.

The next UN-REDD meeting will be held in Paraguay in March. The UN-REDD has stated that it will soon post all of the discussions and outcomes of these Geneva meetings on their website. FPP will continue to follow the process and review the new drafts before the March meeting.

8. The Equator Principles are being updated: under “EP III” process

The Equator Principles (EP) are a set of voluntary principles developed by private banks to guide their social and environmental risk management systems. There are ten principles in total, listed below.

EQUATOR PRINCIPLES

- Principle 1:** Review & Categorisation
- Principle 2:** Social & Environmental Assessment
- Principle 3:** Applicable Social & Environmental Standards
- Principle 4:** Action Plan & Management System
- Principle 5:** Consultation and Disclosure
- Principle 6:** Grievance Mechanism
- Principle 7:** Independent Review
- Principle 8:** Covenants
- Principle 9:** Independent Monitoring & Reporting
- Principle 10:** EPFI reporting

Principle 3 provides the ‘Applicable Social and Environmental Standards’ which are supposed to be implemented according to the requirements of the remaining 9 principles. The Applicable Social and Environmental Standards are the Performance Standards of the [International Finance Corporation](#) (IFC) plus other relevant Environmental, Health and Safety Guidelines, although ‘justified deviation’ from these standards is permitted. In August 2011, the IFC Board adopted a revised set of Performance Standards and, in late 2011, the Equator Principles Association adopted these revised IFC Performance Standards in their entirety into the Applicable Social & Environmental Standards, Principle 3, of the Equator Principles. This

incorporation became effective on 1 January, 2012.

In addition to this update, the Equator Principles as a whole are being revised in the EP III Update process which was launched in late 2011 and will continue into 2012. In March a draft version of a revised set of Equator Principles will be released for a 60-day formal public consultation.

The new IFC Performance Standards are useful in that they require private companies to secure the free, prior and informed consent (FPIC) of indigenous peoples for a range of project activities. This standard of FPIC has been adopted into the Equator Principles through the incorporation of the IFC Performance Standards. The current on-going revision of the other Equator Principles could strengthen or weaken this requirement for FPIC and should be carefully monitored.

For more information: <http://www.equator-principles.com>

9. Belize: Threats to the rights of the Maya from oil exploration, mining, logging and plantation development

The Sarstoon-Temash Institute for Indigenous Management (SATIIM) has circulated the following two articles regarding the current violations of the rights of the Indigenous Peoples of Conejo, Belize, due to the government’s interest in oil development on the lands of Indigenous Peoples across Toledo. Please share with your networks.

Le Monde Diplomatique: *The law is running out of gas in Belize* <http://mondediplo.com/blogs/the-law-is-running-out-of-gas-in-belize>

The Ecologist: *Mayan people battle oil giants as Belize’s rainforests threatened* http://www.theecologist.org/investigations/politics_and_economics/1240082/mayan_people_battle_oil_giants_as_belize_rainforests_threatened.html
