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**Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on  
Indigenous Peoples' Land Tenure and Resource Management Systems and  
Livelihoods.**

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This paper aims to raise awareness and initiate debate on the impact of commercial tree plantations and monocropping on indigenous peoples' lands and communities. This paper was prepared in response to Recommendation 31 of the 5<sup>th</sup> Session of the United Nations Permanent Forum (UNPFII) which stated:

“The Permanent Forum appoints Victoria Tauli-Corpuz and Parshuram Tamang as Special Rapporteurs charged with preparing a working paper, without financial implications, in cooperation with indigenous peoples organizations, Governments and other relevant institutions, on palm oil development, commercial tree plantations and mono-cropping and on their impacts on indigenous peoples' land tenure and resource management systems and livelihoods.”

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## **Introduction**

1. According to latest estimates, between the years 2000 and 2005, the net forest loss was 7.3 million hectares per year or 20,000 hectares per day. The Intergovernmental Panel on Forests (the predecessor of the United Nations Forum on Forests) identified that among the underlying causes of deforestation and forest degradation, was the failure of governments and other institutions to recognize and respect the rights of indigenous peoples and other forest-dependent peoples in regards to their territorial lands, forests and other resources, as well as the issue of government policies that substitute forests with industrial tree plantations.<sup>1</sup>

2. The areas that are converted into monocropping industrial plantations are forests and it is inevitable that these two issues are also addressed in this paper; eventhough the purpose of this paper is to identify issues around oil palm and other commercial tree plantations. Linking the logging of natural forests and plantations, however, does not mean that the two rapporteurs (authors of this paper) agree with the concept that plantations are forests. The two rapporteurs are of the view that there should be a clear distinction between tree plantations and natural forests (primary and secondary).<sup>2</sup>

3. The history and cycle of plantation development begins by the granting of forest areas as concession areas, the next stage is the clearing or destruction of forests and then followed by the establishment of plantations. As these plantations are meant to produce crops for the market, they are logged after a short period and planting begins all over again. In both these processes indigenous peoples are either evicted from these forests areas, or their access to the forests is curtailed, and a few people are absorbed as seasonal workers.

4. For forest-dependent indigenous peoples, the forest is the basis of their sustenance and subsistence forms part of their profound symbiotic relationship with the forest, for millennia, which shaped their societies, their worldviews, knowledge, cultures, spirituality and values. Hence, the evolved strict spiritual and customary laws and sophisticated land tenure, mostly under communal ownership, and resource management systems that both ensures their needs are met and that forests are protected from destruction. The maintenance of the integrity of the forests is crucial for indigenous peoples as it represents the past, present, and future aspects of how to live in mutual reciprocity among themselves and with nature.

5. This paper draws on important reports by various United Nations (UN) bodies and Non-Government Organizations (NGOs) and as well as the conclusions reached during visits by some members of the UNPFII to countries where large-scale industrial plantations on indigenous peoples' territories exist.<sup>3</sup>

## **Overview of indigenous peoples' experiences with logging and large scale monocropping plantations**

6. Social conflicts associated with large-scale industrial logging (both legal and illegal) and monocropping plantations are basically conflicts about who has the right to own, use

and manage the forests. The main protagonists are indigenous peoples versus the state and its machineries (military and police forces, departments of forestry, environment, mining, agriculture, local governments, etc.), the logging, plantation or carbon trading companies and sometimes even NGOs. Land rights remains one of the most contested and violated rights of indigenous peoples. In her report, Daes highlighted the failures on the part of the states to recognize indigenous peoples' land rights; the persistence of discriminatory laws and policies; the failure to enforce or implement laws; the expropriation of lands in the name of development; the allotment of sacred and cultural sites to individuals and/or failure to recognize and respect indigenous peoples' control of their territories.<sup>4</sup>

7. There are many factual accounts on how indigenous peoples were dispossessed of their lands during the colonial era as well as the present. The doctrine of discovery, policies of extinguishment, plenary power doctrine and several doctrines of dispossession (e.g. *terra nullius*), were used to justify the occupation of indigenous peoples' lands by colonizers.<sup>5</sup> One example is the Regalian Doctrine or *jura regalia*. "The term "jura regalia" refers to royal rights, or those rights which the King has by virtue of his prerogatives. The principle of "eminent domain" has been used by colonial governments and continues to be used by post-colonial governments to legitimize the taking or expropriation of indigenous peoples' lands and resources.

8. In several countries there are doctrines and laws which recognize the rights of indigenous peoples to their traditional lands and territories. Unfortunately these also contain killer clauses or are systematically weakened in the name of national development by subsequent interpretations or amendments to these acts. Others are simply extinguished. Some examples are the Native Customary Rights (NCR) as contained in the Sarawak Land Code (1958) in Malaysia and the Native Title Act of Australia of 1993 and the 1997 Indigenous Peoples' Rights Act of the Philippines.<sup>6</sup>

9. The continuing existence, application and development of legislation that are similar to the doctrines of dispossession are seen to be racist and discriminatory and partly explains why many indigenous peoples remain extremely marginalized and politically oppressed. Another factor is the colonial and post-colonial development strategy of integrating indigenous economies into the domestic and global market. National economic development has been the favored argument used to justify the taking of indigenous lands for logging, plantations, oil, gas and mineral extraction.

10. Large-scale plantation economies form part of the story of the erosion and appropriation of indigenous peoples' subsistence base and territories and the alteration of their indigenous land tenure systems.<sup>7</sup> The reports of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, has indicated that the loss of lands of indigenous peoples occurred through colonization, nationalization and privatization of their lands.<sup>8</sup>

11. In the 1980s the neo-liberal Washington Consensus development model emphasized trade liberalization and export-led growth, financial market liberalization and financial

capital mobility, fiscal and monetary austerity, privatization and labor market flexibility. Multilateral financial institutions, including some United Nation bodies, bilateral donors and the private sector all worked together to facilitate the liberalization of investment, trade and finance policies of developing countries which jumpstarted the conversion of forests into industrial plantations. As large-scale monoculture plantations became an integral part of the economic growth strategy of most countries, rampant expropriation or taking of indigenous lands occurred. Forestry programs which included expansion of plantations were planned and implemented through the support of multilateral financial institutions like the World Bank, the Asian Development Bank and United Nations agencies and programmes such as Food and Agriculture Organization (FAO) and United Nations Development Programme (UNDP).

12. An example of such forestry programmes is the Tropical Forestry Action Plan (TFAP) which was initiated by the World Bank together with UNDP, FAO and the World Resources Institute (WRI) in 1985. The TFAP proposed the expansion of plantations to meet the global demand for wood products and introduced the intensification of 'sustained yield' forestry for national development and to halt deforestation. The TFAP has increased the pulp and paper industry's market 5 times over the past 40 years. It played a key role in promoting monocropping plantations of conifers, eucalyptus and acacia trees in tropical forests. Since 1998, over 100 million hectares of primary forests have been converted into industrial tree plantations.<sup>9</sup> It has been the subject of intense criticism because, aside from being a major cause of deforestation, it failed to include indigenous peoples, local communities and civil society in the formulation and implementation and consequently their rights, needs and perspectives were overlooked. The TFAP also provided technical solutions to problems which were political in nature however, it reinforced existing power relations and as a result, the poor which in many cases were indigenous peoples, remained poor and powerless.<sup>10</sup>

13. The lack of understanding of the holistic world views and ways of life of indigenous peoples and other forest-dependent peoples was identified in the December 1996 at the "International Meeting of Indigenous and Other Forest-dependent Peoples on the Management, Conservation and Sustainable Development of all Types of Forests" as an exacerbating factor for deforestation. An outcome of this process was the Leticia Declaration which outlined the underlying causes of deforestation (changing forests into other land uses) and forest degradation (deterioration of forest quality).<sup>11</sup>

14. The International Panel on Forests cites, among others, discriminatory international trade, trade distorting policies, structural adjustment programmes (SAPs), external debt, market distortions and market failure, perverse subsidies, undervaluation of wood and non-wood forest products, and poorly regulated investments as the international underlying causes of deforestation.

15. FAO developed the official definition of 'forests' which declares that "forest includes natural forests and forest plantations. It is used to refer to land with a tree canopy cover of more than 10 percent and area of more than 0.5 ha."<sup>12</sup> On this basis, the definition established two categories of forests: natural forests and plantation forests. Many

NGOs and indigenous peoples contest this definition and insist that there should be a clear distinction between forests and plantations. They do not accept that plantations are forests. The only thing in common between the two is the fact that both have trees. Other than that, they are two totally different systems. A forest is a complex, self-regenerating system, encompassing soil, water, microclimate, energy, and a wide variety of plants and animals in a mutual relationship. Plantations, on the other hand, have one or a few species of trees/crops (often alien), planted in homogenous blocks of the same age. Plantation trees are much closer to industrial agricultural crops than to forests (as usually understood) or a traditional agricultural field.

16. This distinction is important because including plantations as forests is accepting that this is a forest ecosystem, which clearly it is not, secondly, this obscures the real rate of deforestation, and thirdly, it virtually casts a blind eye to the adverse social and environmental impacts of plantations, especially on indigenous peoples. Therefore, it has been recommended that "natural forests" be simply called forests (primary and secondary) and "forest plantations" be called tree plantations.

17. The Millennium Development Goal (MDG) No. 7 on environmental sustainability has an indicator which is 'the proportion of land area covered by forests.' (#25). Countries that have expanded the areas for tree plantations can claim that they are achieving Goal 7 even if plantations have nothing to do with environmental sustainability.

### **Oil palm plantations and indigenous peoples**

18. Oil palm (*Elaeis guineensis*) is a native plant of West Africa which has been traditionally used as food, medicine, woven material and wine. Oil palm can be grown and harvested in an environmentally-friendly way as it has been in Western Africa with small-scale planters who undertake small scale diversified agro-forestry. At present, however, states, multilateral funding institutions, the private sector including the private banks along with bilateral donors and the UN, support and promote the large-scale agro-industrial model, as opposed to a small-scale one. Oil palm plantations have become one of the fastest growing monocropping plantations in the tropics not only of Africa, but also in Asia-Pacific, and Latin America and the Caribbean.

19. The main product of these plantations is palm oil (stearin) from the flesh of the oil palm fruit and from palm oil (olein) from the palm seed.<sup>13</sup> In 1997 it was estimated that oil palm plantations occupy 6.5 million hectares and produced 17.5 million tonnes of palm oil and 2.1 million tonnes of palm kernel oil. By 2005, palm oil production reached 30 million tonnes and the area covered had already comprised 12 million hectares. Of this, 4 million hectares are in Malaysia and 5.3 million hectares in Indonesia.<sup>14</sup>

20. Indonesia is experiencing the biggest rate of increase in terms of forests converted into oil palm plantations. In a period of 30 years (1967-1997) oil palm plantations have increased 20 times with 12 percent average annual increases in crude palm oil (CPO)

production.<sup>15</sup> From 106,000 hectares in 1960 this has increased to 6 million hectares although there were around 18 million hectares of forests cleared purportedly for oil palm in 2006.<sup>16</sup> It appears that loggers used oil palm plantations as a justification to harvest the timber. The government announced new plans, under the Kalimantan Border Oil Palm Mega-Project (April 2006), to convert an additional 3 million hectares in Borneo, of which 2 million will be in the border of Kalimantan and Malaysia. The rapporteurs of this report understands that the area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods.

21. The promoters of oil palm plantations claim that this will reduce unemployment, alleviate poverty and bring environmental benefits. To justify the loans given to oil palm plantation owners in the Ivory Coast and other countries a Director of the International Finance Corporation stated that oil palm plantations will generate more employment and higher living standards and promote environmentally sensitive agricultural production.<sup>17</sup> All these claims are highly contested.

22. Clearly, the main reason for the dramatic expansion of oil palm plantations, notwithstanding their adverse impacts on people and the environment, is that these provide big profits to domestic and international plantation owners and investors. These mega-profits are ensured by cheap labour, low cost of sale or rent of land, ineffective environmental controls, high demand, support from multilateral and bilateral donors and a short growth cycle. In Malaysia, for example, palm oil export is one of its competitive edge in global trade and it has contributed to the economic growth of the country. In 2002 palm oil produced more than US\$2.1 billion in export revenue for Indonesia and \$3.8 billion for Malaysia.<sup>18</sup> This sector also enjoys strong support of governments because the crop is mainly geared for the export market which generates foreign exchange. The increasing demand for biofuels and the need for carbon sinks plus the system of carbon emissions trading are the new incentives for further expanding oil palm plantations. It is now a favorite alternative energy source because of its high yield per hectare and low production costs.

23. It is without any doubt that the growth of the oil palm sub-sector has resulted into economic benefits, especially for the key players. However, it comes with serious social and environmental costs which adversely impact on indigenous peoples, forest-dwellers and the tropical rainforests. Out of the 216 million people in Indonesia it is estimated that 100 million, of which 40 million are indigenous peoples, depend mainly on forests and natural resource goods and services. Large areas of forest lands traditionally used by indigenous peoples have already been expropriated.

### **Emerging issues; biofuels, carbon sinks and carbon emissions trading**

24. The recommendations adopted by the Climate Change Convention on global warming are a classic case of providing a solution to one specific problem while simultaneously creating a host of other problems. Expanding plantations for biofuels or energy crops and for carbon sinks are recreating and worsening the same problems faced by indigenous peoples with large-scale monocropping, agricultural and tree plantations. Indigenous

peoples have, and continue to engage with the Climate Change Convention processes but it is often very difficult to get their perspectives integrated in the final conclusions or the recommendations.

25. The most logical approach to halt carbon dioxide (CO<sub>2</sub>) emissions is for countries, especially industrialized countries, to reduce their fossil fuel consumption and cut back on emissions drastically. These countries are targeted because of their disproportionate use of energy and because of the ‘carbon debt’ they owe to the south which has yet to be paid.<sup>19</sup>

26. The environmental justice approach which strikes at the underlying causes of global warming was defeated when the Convention took a more market-based approach as seen in the proposals of the Kyoto Protocol. Annex 1 countries (38 industrialized countries) pledged that by 2012 they will reduce their emissions by an average of 5.2 percent below the 1990 levels by buying “carbon credits” from less polluting countries or corporations and by investing in projects which “sequester” or “store” carbon. None of the three market-based “flexible mechanisms” tackle directly the physical root causes of global warming: the transfer of fossil fuels from underground, where they are effectively isolated from the atmosphere, to the air.

27. The flexible mechanisms allow Northern countries to avoid or delay reducing their greenhouse gas emissions. The Clean Development Mechanism (CDM) allows northern countries to finance projects in the South to mitigate climate change in return for credits which are banked and ultimately used to license continued pollution at home. Joint Implementation means that northern countries can finance projects aimed at mitigating climate change in other Northern (often Eastern European) and Southern countries, receiving credits accordingly.<sup>20</sup> With these in place, traders and bankers have started establishing carbon exchanges in those countries where major stock exchanges are based.

28. The European Union (EU) widely promotes the use of biofuels as an alternative energy source for transport. Its European Biofuels Directive (2003) has a target of 5.75% of transport fuel in Europe from biofuels by 2010 and 20 percent by 2020. President Bush on the other hand, stated in his State of the Nation speech in Feb. 2006 that by 2020, 30 percent of America’s cars will be running on bioethanol.

29. While USA and the EU farms are now extensively used to raise crops for biofuels there is still a huge supply gap to address the demands for biofuels. Malaysia, Indonesia, Colombia, Ecuador, Nigeria, Cote d’Ivoire, Papua New Guinea, among others, are rapidly expanding their oil-palm plantations to fill this gap. Malaysia and Indonesia are gearing to supply 20 percent of the market in Europe and have just announced that they will set aside 40 percent of their palm oil output for biodiesel. Brazil is aggressively expanding its sugarcane and soya plantations. Its sugarcane production is fast outpacing soya and it is now the largest bioethanol exporter, supplying around 50 percent of the world market. Argentina, together with Brazil are growing genetically-modified (GM) soya for biodiesel. Other traditional sugar producers like Guatemala, El Salvador,

Pakistan, South Africa, Swaziland, the Philippines, are also rehabilitating their sugar plantations to compete in the world market.

30. Amidst all the hype about biofuels being environmentally sustainable, there are already studies done by scientists showing that large-scale biofuel production is an energy intensive and CO<sub>2</sub>-emitting and polluting process. The energy balance of biofuels, which means the amount of energy required to produce one unit of biofuel compared to the energy contained in the same unit of biofuel, has been analysed and the results are not encouraging. The burning of the forests in Indonesia to prepare oil palm plantations, alone, clearly contributed to CO<sub>2</sub> emissions. The carbon that was safely stored in the forests is released through deforestation.

31. In the immediate past, indigenous peoples' territories have been skimmed of their oil, gas and coal deposits in name of development. Now, in the name of saving the world from global warming, their lands are again viewed as a means to providing solutions. The expansion of plantations for biofuels, the development of carbon sinks, and carbon emissions trading are exacerbating the earlier problems related to plantations which indigenous peoples are facing. Converting complex ecosystems to become monoculture carbon sinks and treating CO<sub>2</sub> emissions as a commodity which will be traded in the carbon market do not only lead to adverse social and environmental impacts, but also directly contradicts the basic worldviews and values of indigenous peoples who have used their resources and lands in a sustainable manner. The justification of trade in emissions consists of distorted technical, legal, economic and intellectual devices which perpetuate the inequalities in this world. Global warming which is a social and environmental problem has become a business endeavour which offers opportunities to gain new property rights, assets and openings for capital accumulation.<sup>21</sup> There are several case studies that have been completed on the experiences of indigenous peoples in Costa Rica, Ecuador, Thailand, India, Brazil, and Uganda with projects which are established for emissions trading and it is another repeat in terms of taking over of indigenous peoples' lands.<sup>22</sup>

32. During the 6<sup>th</sup> meeting of the Conference of Parties of the United Nations Framework Convention on Climate Change (UNFCCC) indigenous representatives from 22 countries released a statement rejecting the inclusion of forests in the CDM and calling for the establishment of a fund for indigenous peoples to address the impacts of climate change.<sup>23</sup> The World Bank has played an important role in promoting and supporting the concept of a carbon market.

### **Social and Environmental Impacts of Logging and Monocropping Plantations**

33. The social and environmental impacts of logging and plantations on indigenous peoples' lands and territories, particularly in the developing countries, have been extensively documented in various literature and these show the following:<sup>24</sup> the denial of rights to lands, territories and resources, land alienation, forced evictions, the prevention of access and rights which have led to a decline in the population of indigenous peoples, especially in isolated and remote territories' and the destruction of resource management

systems. There has also been habitat loss that has led to destruction of livelihoods, cultures and loss of traditional forest-related knowledge. There has been an increase in social conflicts between indigenous peoples and the state and private corporations (divisions are fostered by governments and corporations). There has been food insecurity, severe health problems, including increasing malnutrition and increased mortality; changes in disease ecology resulting in high incidences of diseases; increase of rates of sexually-transmitted diseases due to increasing prostitution in plantation or logging estates. There have been exploitative and discriminatory working conditions, high rates of injury among forest and plantation workers; creation of dependency resulting in exploitative relations and corrupt patron-client relations between forestry officials and indigenous peoples. There has been a breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management. There have been internal conflicts over decision-making, resource allocation leading to further weakening of social cohesion and a shift in balance of power over forests away from forest dwellers which include indigenous peoples, towards logging and plantation industry, political and economic elites which reinforce political patronage and rent-seeking behaviour.

34. A classic picture which illustrates what happens when monocropping plantations is introduced into indigenous lands is the case of Aracruz Cellulose in Brazil. It was with the support of the military dictatorship that Aracruz Florestal (now Aracruz Cellulose) invaded the indigenous lands of the Tupinikim in 1967. It is now the world's largest producer of bleached eucalyptus pulp, recording an income of US\$685.9 million in 2005.<sup>25</sup> The Tupinikim and Guarani peoples tried to reclaim their lands by self-delineation and re-occupying some parts of their lands. In January 2006, they were violently evicted by armed policemen from the lands they occupied. Aracruz bulldozers were used to destroy the villages. On September 12, 2006 the National Indigenist Foundation (FUNAI) recommended to the Minister of Justice that he declare 11,009 hectares of Espiritu Santo as indigenous territories of the Tupinikim and Guarani.

35. A report released by FERN (a European forest alliance) entitled "Forest of Fear, the abuse of human rights in forest conflicts"<sup>26</sup> contains over 40 cases of human rights violations. The findings of this report and additional accounts are confirmed in reports of Human Rights Watch and Amnesty International, as well as those by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

36. A report published by Lancet Magazine on the health of indigenous peoples in Africa established that "Pygmy peoples' health risks are changing as the central African forests, which are the basis for their traditional social structures, culture and hunter-gatherer economy, are being destroyed or expropriated by logging, farming, and conservation projects."<sup>27</sup> This report further stated that in places where forest dietary resources have become scarce because of destructive logging and lack of other lands to raise food, malnutrition of children and pregnant women is occurring at a serious rate.

37. In his country mission reports, UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, alluded to the impact of development of forest plantations on Mapuche peoples' land.<sup>28</sup> The situation of the uncontacted peoples or indigenous peoples in voluntary isolation has also been highlighted by the Special Rapporteur in his Ecuador Mission Report because they are being invaded not only by oil and mining companies but also by loggers and oil palm plantation owners.<sup>29</sup>

38. Another example is that of the Benet people or the Ndorobo, the indigenous peoples who have occupied Mt. Elgon in Uganda, since time immemorial. This forest was gazetted as a Crown Forest in 1938, became a central forest reserve in 1968 and a national park in 1993. Because of this, the Ndorobo were evicted in 1983 and 1993. In 1994 the Uganda Wildlife Authority (UWA) and the Netherlands Forest Absorbing Carbon Dioxide Emissions Foundation (FACE), obtained a license from the Uganda government to plant trees in 25,000 hectares on the 211 kilometer long boundary of Mt. Elgon near the Kenyan border. A series of evictions took place again to protect the areas that were provided to the UWA-FACE project. The Ndorobo people filed a case against the Attorney General of Uganda and UWA for forcible eviction which is contrary to the 1995 Constitution which recognizes customary ownership.<sup>30</sup>

39. Deforestation does not only affect the forest itself, but also the underground water. Deterioration in water quality has caused a decline in fish stocks and has affected aquatic biological diversity because indigenous animals and plant life are highly vulnerable to oxygen depletion, suspended particulate matter and a lack of light.

### **Responses and initiatives of indigenous peoples, NGOs and UN bodies**

40. A common response among indigenous peoples, faced with the unilateral taking or expropriation of their lands by the state, is to physically resist logging, plantations, oil, gas and mineral projects at the local level. This is usually done by setting up human barricades and blockades to stop the entry of company vehicles, machines and land occupation acts. It does not come as a surprise that the conflict over lands mainly between indigenous peoples and the state and private sector, has been the central impetus for the emergence of indigenous peoples movements in most parts of the world. Road barricades set up by indigenous peoples' in Sarawak and the land occupation and self-delineation activities by the Tupinikim and Guarani are just few examples of the countless other cases that have occurred since colonization. In many developing countries, the judicial process is so slow, the legal costs are way beyond the means of indigenous peoples and the links of corporations with political elites does not make it easy to sustain these actions.<sup>31</sup>

41. The local and national indigenous peoples' movements have become transnationalized into a global movement. This was a major focus of the work undertaken by the indigenous movement in the drafting of the UN Declaration on the Rights of Indigenous Peoples. It was adopted by the Human Rights Council on June 29, 2006 and it is now before the General Assembly. Indigenous representatives are hoping states will

adopt the Draft Declaration in the General Assembly before the end of its 61<sup>st</sup> Session in 2007.<sup>32</sup>

42. Most of the work in regards to recognizing rights of indigenous peoples to their lands, territories and resources was within the now defunct Commission on Human Rights. It began with the 1971 ECOSOC resolution authorizing the Sub-Commission to undertake a study on the “Problem of Discrimination Against Indigenous Populations” (Martinez-Cobo Report). The designation of Erica-Irene Daes as the Special Rapporteur on indigenous land and resources is step forward. It has also authorized expert seminar workshops which tackled directly or indirectly the issues around plantations.<sup>33</sup>

43. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has visited 10 countries since his appointment in 2001. His reports contain analysis of the situation of the lands, territories and resources of indigenous peoples and several references to experiences of indigenous peoples in regards to logging and plantations. He also completed a thematic report on the “Impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous peoples and communities”.<sup>34</sup>

44. Within the past ten years there have been an increasing number of shadow reports and urgent alerts submitted to the Human Rights Treaty Bodies raising issues of discrimination and violation of basic human rights of indigenous peoples by some states which ratified the Conventions. Some of these have specific proposals addressed to the Permanent Forum.<sup>35</sup>

45. Indigenous peoples did not limit their engagement with the UN Human Rights System. They have also engaged with the Economic and Social Council and its subsidiary bodies. This started with the UN Conference on Environment and Development (UNCED, 1992) otherwise known as the Earth Summit or Rio Summit. The participation of various indigenous representatives ensured the adoption of Chapter 26 of Agenda 21 which is “Strengthening the role of indigenous and local communities in sustainable development”. At Rio plus 10 in 2002, the indigenous delegation ensured that the “vital role of indigenous peoples in sustainable development” which was reaffirmed by the Johannesburg Declaration of the World Summit on Sustainable Development.

46. Indigenous peoples are engaged with the UNFF (UN Forum on Forests) since it is a key UN body mandated to “promote the management and sustainable development of all types of forests and to strengthen long-term political commitment to this end” of their traditional knowledge on forests and monitoring and reporting of the state of the forests.<sup>36</sup> Civil society organizations, which included indigenous peoples, made an assessment of the UNFF processes and made suggestions on how to improve the work of this body and any other future intergovernmental process that will deal with forest issues at the global level.

47. The International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples contains important provisions which recognize the rights of indigenous

peoples to control their natural resources in their collective capacity as peoples. ILO Convention 169 is now ratified by 19 countries, the latest of which are Spain and Nepal. The Inter-American Court of Human Rights (IACHR) of the Organization of American States has received several cases that covered many of the issues outlined in this report. One of its landmark cases was the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*.<sup>37</sup>

48. The FAO under its Land Tenure Service, commissioned a study titled “A Survey of Indigenous Land Tenure” undertaken by the Forest Peoples’ Programme in 2001. This very rich report contains a legal assessment of the recognition of indigenous land rights and includes relevant case studies.

49. The World Bank revised their Operational Directive (OD) 4.20, now called Operational Policy (OP) 4.10 on Indigenous Peoples. In 2002, the World Bank also adopted a new policy on forests (OP 4.60) which indigenous peoples and NGOs view as a diminished version of the 1993 policy it replaced, which prevented the World Bank from funding projects that destroy primary moist forests. Another criticism is that it does not apply to other members of the World Bank Group, e.g. International Finance Corporation and the MIGA (Multilateral Investment Guarantee Agency) nor to structural and programmatic lending.<sup>38</sup>

50. The World Bank has moved away from the mitigation and “do no harm” approach to “do good” and completed its own studies on the success of ethnodevelopment projects that it had supported. They funded an initial study that analyzed 28 successful cases of “indigenous development” in Latin America.<sup>39</sup>

51. Together with some environmental organizations, indigenous organizations also took part in processes which are initiated by the private sector. This includes the certification processes of the Forest Stewardship Council (FSC) and the Roundtable on Sustainable Palm Oil (RSPO) and Sawit Watch, incorporated in 2004 as an NGO under Swiss Civil Law. With great hesitation, some indigenous individuals, not only from Indonesia but also Malaysia, took part and contributed to the evolution of the RSPO Principles and Criteria (adopted in Nov. 2005) which include, among others, the compliance with ratified international law and the principles of free, prior and informed consent, and fair compensation.<sup>40</sup> The FSC Principles and Criteria which set standards for logging and plantations declares that companies must recognize indigenous peoples’ rights to their lands, to prior and informed consent regarding sacred sites if they are to qualify for ‘eco-labelling’.

52. A study conducted by Sawit Watch, Forest Peoples’ Programme, HuMA and ICRAF concluded that very few oil palm estates in Indonesia are likely to comply with the RSPO standards and that the rights of indigenous peoples still continue to be violated in the development of oil palm estates.<sup>41</sup>

53. Another initiative by the Friends of the Earth-Netherlands (Milieudefensie) jointly with Greenpeace-Netherlands and Indonesian NGOs, was a campaign to engage major Dutch banks involved in financing the oil palm industry. This included a research

analysis of the Bank's programs on forestry and investment and plantation policies in Indonesia. NGO campaigners determined that the central players in expanding oil palm plantations in Indonesia, Malaysia and Papua New Guinea are the foreign financial institutions from Europe, North America and East Asia. Thus, a joint campaign in 2001 targeted 5 Dutch banks: ABN Amro Bank, FMO, Fortis Bank, ING Bank and Rabobank.

54. The banks admitted that through their investments they contributed to the adverse environmental and social impacts of oil palm plantations in Southeast Asia. Subsequently, they established their Oil Palm and/or Forestry Investment Policies (Oct. 2001) that will guide them when providing finance to companies involved in this industry. They played key roles in establishing the RSPO. Other banks like Citigroup, JP Morgan and HSBC followed suit and established policy statements that at the minimum, their clients will respect relevant laws and international conventions in regards to maintaining High Conservation Value Forests and respecting the rights of indigenous and local communities.

## **Conclusion**

55. There are positive developments and gains in terms of having indigenous peoples' rights recognized in national constitutions and laws in several countries. Laws and policies on indigenous land tenure now exist in countries in many parts of the world, although the nature of these are wide-ranging, from access rights to rights to own and control. Many countries in Latin America reformed their constitutions to acknowledge that they are multi-ethnic and multi-cultural countries and produced laws that recognize customary land rights and call for the demarcation of indigenous peoples' lands. Some of these countries ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.

56. In Asia, the recognition of Native Customary Rights in Malaysia, the Indigenous Peoples' Rights Act of the Philippines, the Land Act 2001 of Cambodia, in varying degrees, guarantee some rights for indigenous peoples over their forests. In Asian countries where no such laws exist there are policies and projects in community-based watershed and forest management which include the recognition of some customary practices and indigenous land tenure systems. The 6<sup>th</sup> Schedule for Tribes in Northeast India recognizes collective land ownership. In the Pacific several countries, like Fiji and Papua New Guinea, already recognize customary land rights. In North America, Australia, New Zealand and the Arctic there are also varying degrees of recognition of indigenous people's rights to their forests.

57. In spite of the above, the eviction of indigenous peoples from their forests continues unabated. Thus, indigenous peoples carry on their campaigns for the recognition of their land and resource rights. The policies and laws pushed by the dominant neo-liberal economic development model trump those which protect indigenous peoples' rights to their lands, territories and resources. Several studies including one by the Inter-American Development Bank indicated that the policy of land privatization has led to measures which favor granting of individual property titles causing faster alienation of lands. In some instances, steps taken to achieve MDG Goal 1 (the halving of poverty by 2015),

include logging, and conversion of forest lands into monocropping tree and agriculture plantations. Timber, plantation, hydrocarbon and mineral companies are all claiming that they will reduce poverty and provide jobs, although, as mentioned earlier, there is very little evidence to prove that poverty is being reduced.

58. There is much more political will, financial and technical support for macro-economic and structural reforms which intensify pressure on indigenous lands and resources and decrease the capacity of governments to regulate corporate behaviour. In addition, new financial mechanisms such as the Prototype Carbon Fund of the World Bank are set up to strengthen the carbon market and huge loans are provided to the private sector to expand biofuel production.

59. Meanwhile, funding and technical assistance to build the capacities of countries to implement their national laws which protect and respect indigenous peoples' rights to lands, territories and resources and their obligations to International Human Rights conventions and treaties are woefully inadequate. Land demarcation and land titles and ethnodevelopment projects are under funded.

60. There is a lot of scope for the studies undertaken by intergovernmental bodies and civil society organizations to influence policy at the national and global level. In fact, several of these are fed into the shadow reports or urgent alert submissions of indigenous organizations and NGOs to the Human Rights Treaty Bodies. There is now a growing body of jurisprudence developed by these bodies which further reinforce the need to protect the rights of indigenous peoples' to their lands, territories and resources, their right of self-determination and to free, prior and informed consent.

61. Furthermore, indigenous peoples are seeking redress through the courts for the unjust expropriation of their lands and to call for a stop to so-called development projects, such as logging and plantations until their rights to their traditional lands are established. Generally the judgments are against indigenous peoples because of the apparent corrupt judicial systems. So while there are some indigenous peoples using the courts, the majority still refuse because of the utter lack of resources as well as lawyers to help them pursue their cases.

62. Programmes and projects which support traditional livelihoods of indigenous peoples such as those which promote and develop markets for non-timber forest products, natural resource management programmes among others, have also been set up with the help of technical advice and resources from intergovernmental bodies. Some of these are examples of good practice. However, these few models are not replicated, upscaled or effectively used for policy reforms.

63. We have also seen some of efforts of the private sector to establish bodies to address some of the issues raised by indigenous peoples and NGOs, such as Forest Stewardship Council, the Roundtable on Sustainable Palm Oil and the work of some private transnational banks to develop their own policies on how to deal with oil palm plantations.

## **Recommendations**

64. In the light of what has been said so far, there are specific recommendations on what the Permanent Forum can do to help in addressing the issues of large-scale monocropping plantations.

65. Since this issue is a subset of how the rights of indigenous peoples to their lands, territories and resources are respected and protected, the recommendations of the Daes reports on land are all relevant and they should be considered by States, intergovernmental bodies and the Permanent Forum.

66. The Permanent Forum is mandated to coordinate and integrate activities related to indigenous issues within the UN. As this preliminary study indicates, there are several UN bodies, agencies and funds which have done work related to monocropping plantations. It is therefore important to circulate widely this working paper to IASG members and invite them to provide comments and additional information or data they may have on this issue. The contributions can include policies, projects and funding which are related to plantations and forestry. The Permanent Forum should disseminate widely all information on past and existing projects relevant to the issue, good practices in relation to the protection and respect of the rights of indigenous peoples' to their lands, territories and resources and lessons learned from programs and projects supporting self-determined development of indigenous peoples in general, and forestry and plantation projects, in particular.

67. Resources should be made available by the banks, the private sector and bilateral and multilateral donor agencies for the establishment of an independent body to monitor how policies relevant to indigenous peoples and lands, territories and resources are being implemented by the private sector, governments and intergovernmental bodies and to investigate complaints raised by indigenous peoples on logging and plantation operations taking place in their territories. This body can be under the auspices of the Permanent Forum, which can prepare its terms of reference and assist in selecting the membership (experts from governments, indigenous peoples, private sector, banks, NGOs and intergovernmental bodies). This body can prepare reports to be submitted on a regular basis to the Permanent Forum which would disseminate the results to multilateral development banks, international financial institutions and the Equator Banks.

68. This preliminary paper barely skims the surface of the issues at hand. The rapporteurs recommend therefore that a follow-up study be done for the next session of the Permanent Forum which will be undertaken by a Special Rapporteur appointed at this 6<sup>th</sup> Session. This follow-up study will gather more information from the governments, the logging and plantation sectors and their networks, indigenous peoples, NGOs and intergovernmental bodies like the Climate Change Convention, the Convention on Biological Diversity and the UN Forum on Forests.

69. The Permanent Forum may wish to prepare a special report on “Indigenous Peoples and the Climate Change Convention” which will further amplify the issues raised in this paper such as impacts of biofuels, carbon sinks and carbon emissions trading, all of which may impact on indigenous peoples and their participation. The findings can be submitted at the next Conference of Parties of the UNFCCC.

<sup>1</sup> E/CN.17/IPF/1997/6. (1997) "Implementation of Forest Related Decisions of the United Nations Conference on Environment and Development at the national and international levels, including examination of sectoral and cross-sectoral linkages; Letter dated 15 Jan. 1997 from the Permanent Representatives of Colombia and Denmark to the UN Secretary General."

<sup>2</sup> WRM (1992), *Rainforest Destruction: Causes, Effects and False Solutions*, WRM, Penang.

<sup>3</sup> Reports completed by the World Rainforest Movement and the Forest Peoples' Programme and the working papers made by Erica-Irene Daes on "Indigenous peoples and their relationship to land" and "Indigenous Peoples' Permanent Sovereignty Over Natural Resources" were extensively used. The reports of the UN Special Rapporteur, Rodolfo Stavenhagen provided important recent information. Several of his thematic and country mission reports referred to the violations of indigenous peoples' rights by large-scale plantation and logging operations. Data gathered by Ms. Tauli-Corpuz in her visits to West Kalimantan (Indonesia), Cambodia, and in Mindanao (Philippines) and Ms. Nicolaisen, a government expert member of the Permanent Forum who visited Sarawak in Malaysia were likewise used.

<sup>4</sup> Marcus Colchester ed. (2001), *A Survey of Indigenous Land Tenure: A Report for the Land Tenure Service of the Food and Agriculture Organization*. [www.forestpeoples.org](http://www.forestpeoples.org), accessed 12 April 2007.

<sup>5</sup> Document E/CN.4/Sub.2/2001/21 (Indigenous Peoples and their relationship to land), Daes discussed in great detail in Section 111 of her report a 'Framework for the Analysis of Contemporary Problems Regarding Indigenous Land Rights' which contains more elaborate discussions on doctrines of dispossession, extinguishment, etc.

<sup>6</sup> In Sarawak, around one fifth of the land is classified as Native Customary Rights however, these can be taken by the State to be given to timber or plantation companies. It has been amended several times and now the State Legislative Assembly has granted the Chief Minister powers to extinguish Native Customary Rights. The Native Title Amendment Act (1998) of Australia provided a number of means whereby the native title can be extinguished. The CERD ruled that this Act to be discriminatory. The Supreme Court of the US justified extinguishment in its ruling on the *Tee-Hit-Ton Indians v. United States*. With limited exceptions, the US can take or confiscate the land or property of an Indian tribe without due process of law and without just compensation. The legal doctrine which emerged from this case was used by Congress to justify its extinguishment the land rights and claims of 226 nations and tribes in Alaska through the Alaska Native Claims Settlement Act.

<sup>7</sup> Tides Center- Biodiversity Action Network (1999), *Addressing the Underlying Causes of Deforestation and Forest Degradation, Case Studies, Analysis and Policy Recommendations*, Biodiversity Action Network, Washington, D.C. p.33.

<sup>8</sup> UN General Assembly Document A/HRC/4/32/Add.3, 26 Feb. 2007, Mission to Kenya. Stavenhagen said "...the Maasai lost one third of their land through coercive treaties in 1904 and 1911 imposed by the colonial regime, and were allowed to retain only small amounts of marginal land in the Kenyan districts of Narok and Kajiado. In Laikipia District, 75 percent of the land still remains in hands of European owners...Settlement schemes, logging and charcoal production have put a severe strain on Kenya's rich and varied forests, and have resulted in the loss of the traditional habitat of Kenya's forest peoples, the indigenous hunters-gatherers such as the Awer, Ogiek, Sengwer, Watta and Yaaku."

<sup>9</sup> WRM (1999), *Tree Plantations: Impacts and Struggles*. WRM Montevideo, p.18.

<sup>10</sup> Marcus Colchester (1999). *Indigenous Peoples and the new 'Global Vision' on Forests: Implications and Prospects – Discussion Paper*. P.4. [www.wrm.org](http://www.wrm.org).

<sup>11</sup> E/CN.17/IPF/1997/6 (1997) "Implementation of Forest Related Decisions of the United Nations Conference on Environment and Development at the national and international levels, including examination of sectoral and cross-sectoral linkages; Letter dated 15 Jan. 1997 from the Permanent Representatives of Colombia and Denmark to the UN Secretary General."p.12.

<sup>12</sup> FAO report "Global Forest Resources Assessment 2000" (FRA2000)

<sup>13</sup> Palm oil to prosper in 2004. *Inform*.2004; 15 (6).355

<sup>14</sup> See Statement presented by Rukka Sombolinggi of Aliansi Masyarakat Adat Nusantara (AMAN) during the 5<sup>th</sup> Session of the UN Permanent Forum on Indigenous Issues. See also WRM (2006), *Oil Palm, From Cosmetics to Biodiesel: Colonization Lives On*. World Rainforest Movement, Uruguay. p.1.

<sup>15</sup> Ann Casson, (1999) *The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change* CIFOR, Bogor.p.8.

<sup>16</sup> Marcus Colchester, Norman Jiwan,et.al. (2006), *Promised Land, Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Forest Peoples' Programme, Perkumpulan Sawit Watch, Moreton-in-Marsh and Bogor.p.11. This report is the result of an intensive multi-disciplinary study carried out between July 2005 to Sept. 2006 by Sawit Watch, Forest Peoples' Programme, with lawyers from HuMA (Indonesian human rights organization) and land tenure specialists from the World Agroforestry Centre (ICRAF).

<sup>17</sup> *Ibid*. p.3. see also Ellie Brown and Michael Jacobson (2005), *Cruel Oil: How palm oil harms health, rainforests and wildlife*. Center for Science and Public Interest (CSPI), Washington D.C. p. 4.

<sup>18</sup> Ellie Brown and Michael Jacobson, p. 7.

<sup>19</sup> Development Dialogue (September 2006), Carbon Trading; a critical conversation on climate change, privatization and power. Dag Hammarskjöld Centre, Uppsala, p.19-20 in cooperation with Cornerhouse, U.K.

<sup>20</sup> Cornerhouse (2001), Democracy or Carbocracy?, Briefing 24. Cornerhouse, Dorset, U.K.

<http://www.thecornerhouse.org.uk>

<sup>21</sup> Development Dialogue (2006).p. 89

<sup>22</sup> Ibid. pp. 219-309. In another article by Larry Lohman, "Shopping for Carbon, a new plantation economy," which is published by Cornerhouse (<http://www.thecornerhouse.org.uk>) describe some carbon forestry initiatives. The Electrical Generating Board of the Netherlands has concluded contracts with Malaysian Innoprise Corporation to plant dipterocarp trees on logged-over land in Sabah and has also worked in Ecuadorian Andes to plant thousands of hectares of pine and eucalyptus. Suncor Energy (an oil mining, refining and marketing firm based in Calgary, Canada) is entering into a contract with Southern Pacific Petroleum and Central Pacific Minerals in projects to plant more than 180,000 native trees in central Queensland to "offset" carbon dioxide emissions from future oil shale development. Federation International de l'Automobile has arranged for 30,000 trees to be planted in Chiapas, Mexico on lands inhabited by highland Mayan Tojolobal and lowland Mayan Tzetzals, to "offset" the 5,500 tonnes of carbon emitted annually by Formula One car racing at a price of \$61,000 a year.

<sup>23</sup> WRM (2005), Indigenous Peoples, their forests, struggles and rights, WRM, Montevideo.p. 18-19.

<sup>24</sup> Marcus Colchester, et. al, (2006), Forest Peoples, Customary Use and State Forests: the Case for Reform. Forest Peoples' Program. Moreton-in-Marsh, p.4-5. <http://www.forestpeoples.org>, accessed in 18 April 2007.

<sup>25</sup> Annual Report 2006, Council on Ethics for the Government Pension Fund-Global, Norway.p.63.

<sup>26</sup> WRM (2005), Indigenous peoples, their forests, struggles and rights. P.24-25.

<sup>27</sup> Nyang'ori Ohenjo, Ruth Willis, et.al. (2006), Health of Indigenous People in Africa, Lancet, London School of Hygiene and Tropical Medicine. London, p. 367-46.

<sup>28</sup> See para. 23 of Doc. E/CN.4/2004/80/Add.3, 17 November 2003. Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, on his mission to Chile (18 to 29 July 2003).p.10. The increased use of herbicides and pesticides applied from crop-spraying planes on plantations is affecting the health of indigenous people and has led to a break in the traditional food chain, the drying-up and pollution of rivers and springs, at considerable cost to their ichthyological (fishing) potential, and the disappearance of the rich and varied traditional fauna and flora which are vital to the survival of the Mapuche communities.

<sup>29</sup> A/HRC/4/32/Add.2, 28 December 2006, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Addendum, Mission to Ecuador, Human Rights Council, Geneva.

<http://www.ohchr.org>

<sup>30</sup> Development Dialogue (2006) p.237-246. The FACE Foundation was established by the Board of Management of the Dutch Electricity Generating Companies to establish 150,000 hectares of tree plantations to compensate for emissions from a new 600 megawatt coal-fired electricity generation plant in the Netherlands. Since 2000, it has been producing and selling carbon credits from tree plantations as an independent non-profit organization.

<sup>31</sup> WRM and Forest Monitor (1998), High Stakes, the need to control transnational logging corporations, A Malaysian Case Study. <http://www.forestpeoples.org>, accessed 11 March 2007

<sup>32</sup> The UN Declaration contains a cluster of articles from Article 25 to 32 on lands, territories and resources and the traditional knowledge. These range from the right of indigenous peoples to maintain their spiritual relationship with their lands, territories and resources (25), an article explicitly stating that indigenous peoples have rights to the lands, territories, resources they traditionally owned and occupied or otherwise used or acquired (26), to their right to determine and develop priorities and strategies for the development and use of their lands, territories and resources and calling on states to obtain the free, prior and informed consent of indigenous peoples before they can approve projects affecting the these lands and resources.(32). Article 10 calls on states not to subject indigenous peoples to forced removal from their lands and territories without their free, prior and informed consent.

<sup>33</sup> These include the OHCHR-sponsored "Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims" in 1994 and the "Indigenous Peoples' Permanent Sovereignty over Natural Resources and on Their Relationship to Land" held in 2006.

<sup>34</sup> UN Document E/CN.4/2003/90 , 21 January 2003

<sup>35</sup> Formal Request to Initiate an Urgent Action Procedure to Avoid Immediate and Irreparable Harm, Submitted to CERD, 29 June 2006. <http://www.ochchr.org> and <http://www.forestpeoples.org>

<sup>36</sup> Briefing note by the International Alliance of Indigenous and Tribal Peoples of Tropical Forests, FERN and the Forest Peoples' Programme, 4<sup>th</sup> Session of the UN Forum on Forests, 3-4 May 2004, <http://www.forestpeoples.org> and [www.fern.org](http://www.fern.org).

<sup>37</sup> James Anaya, Indigenous Peoples and International Law (2<sup>nd</sup> Edition,2004), Oxford University Press. p.142.

<sup>38</sup> Marcus Colchester (2006), Broken Promises,p.4

<sup>39</sup> Ibid, p.84

<sup>40</sup> Marcus Colchester, Norman Jiwan, et al (2005). Promised Land.

<sup>41</sup> Ibid. executive summary.