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A photograph of two men in a lush, green forest. The man on the left is wearing a yellow hard hat and a plaid shirt, holding a small plant. The man on the right is wearing a blue and red cap and a plaid shirt, pointing towards the first man. They are surrounded by dense vegetation, including ferns and tall grasses.

Biofuels, Forests and Climate Change

Indigenous Perspectives

Volume IX, Numbers 1 & 2

A Journal of Tebtebba

**Biofuels, Forests and
Climate Change**

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Foreword

In the 6th Session of the UN Permanent Forum on Indigenous Issues (UNPFII), Forum members Victoria Tauli-Corpuz and Parshuram Tamang submitted a paper, "Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods" [E/C.19/2007/CRP.6]. This important document discussed the impacts of biofuels and monocrop tree plantations on indigenous peoples.

In this paper, the rapporteurs have reaffirmed the huge impacts of monocrop and biofuel plantations on the rights of indigenous peoples to their forests, lands and resources. Massive expansions of these have led to violations of their basic human rights and have compromised their very right to survive.

One of the major impacts of these plantations is the destruction of vast tracts of forest lands. For indigenous peoples, forests are key to their survival. They have, for generations, set up intricate systems of indigenous practices that have sustainably managed forests and its biodiversity. In turn, forests have provided them with food, medicines, shelter and other needs. Sacred groves can also be found in these forests.

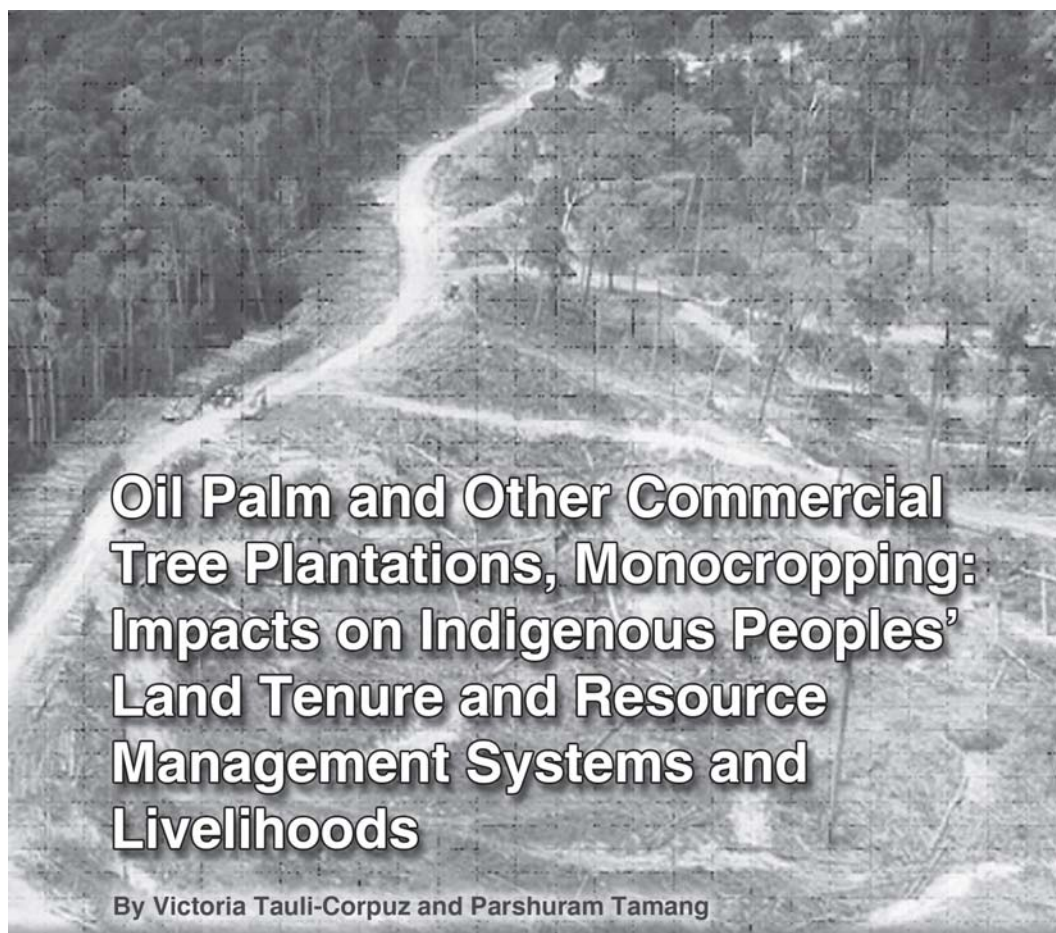
In recent years, we have seen the phenomenal growth of biofuels, specially in the light of skyrocketing costs of fossil fuels. According to the rapporteurs, biofuels have become a "favorite alternative energy source because of its high yield per hectare and low production costs." Biofuels have also been pushed by the Climate Change Convention (UNFCCC) as a means to mitigate climate change by replacing high carbon dioxide-emitting fossil fuels, the main cause of climate change. Thus, "[t]he increasing demand for biofuels and the need for carbon sinks plus the system of carbon emissions trading are the new incentives for expanding further oil palm plantations.

Nowhere can we see the impacts of these plantations on indigenous peoples than in Indonesia, one of the leading exporters of palm oil. According to the report submitted by various indigenous organizations and advocate groups to the Committee on the Elimination of Racial Discrimination or CERD, "[t]he massive expansion of oil palm plantations in Kalimantan ... threatens the survival of the affected indigenous peoples." Excerpts of this report are reproduced in this journal.

Aside from biofuels, indigenous peoples now have to contend with their forests being used as means to mitigate climate change. In the Bali Climate Talks in December 2007, reducing emissions of greenhouse gases as a result of deforestation and forest degradation became a very important topic. Lobbied by several countries and environmental NGOs, REDD (Reducing Emissions for Deforestation and Forest Degradation) was given the go signal by the UNFCCC to be negotiated towards this being part of the next climate change agreement in post-2012. The World Bank has, in turn, launched a facility in Bali to fund REDD projects, called the Forest Carbon Partnership Facility (FCPF).

Indigenous peoples have expressed their objections and concerns over REDD and the FCPF, in particular. Victoria Tauli-Corpuz, Chair of the UNPFII, expressed this collective position in a statement she read during the FCPF launching (See pp. 90 and 136). Tom Griffiths' article on REDD also elaborates the concerns and potential impacts that indigenous peoples face in REDD (p. 93).

Lastly, Martin Khor of the Third World Network highlights some of the key development issues that need to be considered in the next post 2012 climate change agreements, in his article "Development issues crucial for post-2012 climate regime." We have also reproduced some key decisions in the Climate Talks in Bali which we believe indigenous peoples should be aware of. These are the Bali Action Plan (p. 125) and the decision on REDD (p. 131).



Paragraph 31 of the Report of the 5th Session of the Permanent Forum on Indigenous Issues contained in documents E/2006/43; E/C.19/2006/11 states:

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.

This recommendation tasked the Special Rapporteurs to prepare a working paper which will examine the impacts on indigenous peoples' land tenure and resource management systems and livelihoods of oil palm and other commercial tree plantations and monocropping, in general. This working paper is aimed at first raising the level of awareness of those engaging with the Permanent Forum on this issue. It will provide information and analysis which will be the basis of

* This paper was the basis for the official submission [E/C.19/2007/CRP.6] of the Rapporteurs, Victoria Tauli-Corpuz and Parshuram Tamang, to the 6th Session of the UNPFII held 14-25 May 2007.

some proposals which the Permanent Forum, the States, and the members of the Inter-Agency Support Group as well as indigenous peoples can take on board. This paper will also link the issue with decisions of the human rights treaty bodies relevant to land and resource rights and expert reports which emerged from the Sub-Commission on the Promotion and Protection of Human Rights. The issues addressed by this working paper is highly relevant to the theme of the 6th Session which is "Territories, lands and natural resources."

The Permanent Forum is mandated to: a) provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council; b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system; and c) prepare and disseminate information on indigenous issues. In keeping with this mandate, this paper aims to raise awareness and initiate debates on the issue towards the formulation of advice and recommendations to the Council and to the UN programmes, funds and agencies in relation to oil palm and other monocrop plantations. As this issue links with the concerns of the UN Forum on Forests, the Commission on Sustainable Development and the Conventions on Biological Diversity and Climate Change, this paper will also identify areas for more active engagement of the Forum with these bodies.

Reports and statements presented by indigenous representatives not only from Asia but also from other parts of the world during the sessions of the Permanent Forum, the Working Group on Indigenous Populations and the UN Forum on Forests and its predecessor bodies, made it clear that the issue of plantations and their impacts on land rights, their livelihoods, environmental and health situations as well as their civil and political rights is of an urgent nature. Several reports done by UN bodies and NGOs and their networks which are working on forest issues have also called on the Permanent Forum to play a role in addressing urgent issues related to displacement of indigenous peoples or expropriation of their lands by logging and plantation companies. This working paper will try to respond in an initial and modest way to these appeals first by understanding better the nature of the problem and the recommendations forwarded so far, amplifying some of these and then coming up with proposals on the ways forward.

According to latest data from the FAO, "global forest cover amounts to just under four billion hectares, covering about 30 percent of the world's land area. From 1990 to 2005, the world lost three percent of its total forest area, an average decrease of some 0.2 percent per year, according to FAO data. From 2000 to 2005, 57 countries reported an increase in forest area, and 83 reported a decrease. However, the net forest loss remains at 7.3 million hectares per year or 20,000 hectares per day, equivalent to an area twice the size of Paris. Ten countries account for 80 percent of the world's primary forests, of which Indonesia, Mexico, Papua New Guinea and Brazil saw the highest losses in primary forest in the five years running from 2000 to 2005."¹

The net forest loss in South and Southeast Asia between 2000-2005, is 2.85 million hectares. This is an average of 0.98 percent, five times over the global rate of forest loss which is 0.18 percent. This rate of forest loss is second only to Central America. Two thirds of the forest loss in the region is taking place in Indonesia.² Majority of these forests which are undergoing deforestation are in indigenous territories and the ones bearing the heaviest brunt are the indigenous peoples. The Intergovernmental Panel on Forests (the predecessor of the UN Forum on Forests) has identified that among the underlying causes of deforestation and forest degradation are the failure of governments and other institutions to recognize and respect the rights of indigenous peoples and other forest-dependent peoples to their territorial lands, forests and other resources and government policies substituting forests with industrial tree plantations for the pulp industry.³

In terms of population, the World Bank estimates that out of a total of 1.6 billion people who depend in varying degrees on forests for their livelihood, about half of these are managing their lands and forests through customary law⁴. It is estimated that there are 60 million indigenous peoples who are almost totally dependent on forests. The World Wildlife Fund and Terra Lingua estimates are higher. Their report says there is around 200 million indigenous persons living in the forests who have rightful claims to these territories on the basis of their occupation of these since time immemorial, their cultural, spiritual, and economic ties with the forests and their proven ability to manage these in a sustainable manner.⁵ This number is more than half of the total population of the indigenous peoples in the whole world which is estimated to be 370 million.

Since the forest ecosystem is one of the most biologically and culturally diverse ecosystems in this planet and those mainly responsible for sustaining this diversity are indigenous peoples, it is of paramount importance that the Permanent Forum looks into the situation of forest-dwelling indigenous peoples. As the areas which get converted into monocrop industrial plantations are forests it is inevitable that these two issues are addressed together in this working paper, even if the mandate only identified oil palm and other commercial tree plantations. While this paper does not delink logging of natural forests from plantations, this is not to condone the concept that plantations are forests, as the experts are of the view that there should be a clear distinction between tree plantations and natural forests (primary and secondary).

But as the history and cycle of plantation development in territories show, this begins by granting of forest areas as concession areas, clearcutting of forests, after which, the establishment of plantation follows. As these are plantations meant to produce crops for the market, these get logged after a short period and planting begins again. In both these processes indigenous peoples are evicted from these forests, or if not, their access are curtailed, with a few absorbed as seasonal workers. Many resistance protests of indigenous peoples are borne out of their fight to keep their forests.

For forest-dwelling indigenous peoples, the forest is the basis of their sustenance and subsistence and it is their profound symbiotic relationship with the forest, for millennia, which shaped their societies, their worldviews, knowledge, cultures, spirituality and values. They evolved strict spiritual and customary laws and sophisticated land tenure and resource management systems in relation to the forests to ensure that their needs are met and to protect the forests from destruction. Their extensive knowledge of the forest ecosystem and their communal systems of ownership and management ensured that these forests were sustained through thousands of years. The unique relationship of indigenous peoples to their lands, in this particular case with forests, can be further seen in the collective and inter-generational aspects. Communal ownership of forests is more the rule, rather than the exception, among most indigenous peoples. The integrity of the forests is important as this is a representation of the past, present, and future ways in which indigenous peoples lived reciprocally with nature and other creation.

To prepare this working paper, the rapporteurs together with Ida Nicolaisen, a government expert member of the Forum, did a review of literature and interviewed indigenous persons who are from communities affected by monoculture plantations. There is no dearth of information on this issue as extensive research, documentation and publications have been done by several UN bodies, multilateral financial institutions, NGOs and the academe. Other intergovernmental bodies, like the CIFOR (Center for International Forestry Research) and ICRAF (World Agroforestry Center), also have similar reports.

This paper draws heavily from the extensive research work done by NGOs working on forests and plantations, foremost of which are the World Rainforest Movement and the Forest Peoples' Programme. Likewise, from the working papers prepared by Madame Erica-Irene Daes on "Indigenous peoples and their relationship to land" and "Indigenous Peoples' Permanent Sovereignty Over Natural Resources."⁷ These two papers, which she did in her capacity as an expert of the Sub-Commission on the Promotion and Protection of Human Rights, captured the most essential concerns and views of indigenous peoples in relation to land and resources and provided the analytical frameworks for understanding such a complex issue. The reports of the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, provided important recent information which were fed into this paper also. Several of his thematic and country mission reports referred to the violations of indigenous peoples' rights by large-scale plantation and logging operations.

Tauli-Corpuz visited and spoke with indigenous peoples in West Kalimantan (Indonesia), Cambodia, and in Mindanao (Philippines). Nicolaisen visited Sarawak in Malaysia. The data gathered from these visits were used for this paper. Discussions with some NGO representatives who have direct experiences with plantations and who are engaged in the research, organizing and campaign work around this were also held. The situation in Africa and in Latin America will also be

covered. Most of the information from these regions and those from governments are mainly from secondary sources.

Experiences of indigenous peoples in Asia with plantation economies were also shared during the series of consultation workshops held recently in Cambodia. These activities were the following:

- the Asia Indigenous Peoples' Consultation with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (February 7-9, 2007);
- Asia Indigenous Peoples' Conference on Communal Land (Feb. 14-16);
- Asia Indigenous Peoples' Preparatory Meeting for the Permanent Forum 2007 Session (Feb. 17-18).

Considering the limitations of time and resources, this paper cannot be a very thorough review of the subject matter. Due to the complexity of the subject matter, an initial paper on this can only put the issue within a historical context, highlight the recent developments, identify some of the key impacts and responses of indigenous peoples, the UN, other intergovernmental bodies and NGOs, and propose which among the myriad issues should be prioritized in terms of response and immediate steps which can be taken. It will also identify some areas where coordination between various bodies can be done. There are data gaps which will be identified that will need further research. The final section will contain proposals on how to carry this work forward.

At the outset, it is important to state that the core values which guide us in pursuing this work are the human rights principles embodied in established International Human Rights Law⁸ and the emerging standards for the protection and respect of indigenous peoples' rights which are mainly captured by the UN Declaration on the Rights of Indigenous Peoples. Equality, non-discrimination and self-determination remain as key principles which will be used to analyse policies, programs and projects taken by governments, the intergovernmental bodies and the private sector in relation to plantations found in indigenous territories. Sustainable development principles which seek a balance between economic, social and environmental goals are important guidelines used by this paper. The human rights-based approach to development, a framework indigenous peoples fully support, will be used as guide in assessing and promoting proposals to be considered.

Overview of indigenous peoples' experiences with logging and large scale monocrop plantations

The first encounter of most indigenous peoples with large-scale plantations can be traced way back to the colonial era and the era of industrialization in Europe. Many indigenous peoples, both from the industrialized and so-called

developing countries, whose territories include boreal, temperate and tropical forests, went through similar experiences, although there might be differences in time frames. Their customary laws and land tenure systems and their traditional systems of forest management were undermined or destroyed because of their subordination under colonial rule, the modern nation-state and the market economy. Whatever they achieved in sustaining their indigenous systems, saving some parts of their traditional forests and making their voices and perspectives heard are direct results of their resistance movements and the advocacy and campaigns work they did at the local, national and global levels. In most cases, campaigns were done in partnership with other social movements and NGOs and, in some cases, with supportive governments.

Social conflicts associated with large-scale industrial logging (both legal or illegal) and monocrop plantations are basically conflicts on 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 or agriculture, local governments, etc.), the logging, plantation or carbon trading companies and sometimes even NGOs and other indigenous or non-indigenous peoples. Land rights is the most contested and violated among the human rights of indigenous peoples. Madame Daes elaborated in her report on land, the obstacles to the recognition of indigenous land rights:

- Failure of States to recognize the existence of indigenous use, occupancy and ownership and the failure of States to accord the appropriate legal status, juridical capacity and other legal rights in connection with indigenous peoples' ownership to land;
- Discriminatory laws and policies affecting indigenous peoples' land rights, including according indigenous land rights second class or inferior status and unilateral abrogation of treaty rights;
- Failure to demarcate and failure to enforce or implement laws protecting indigenous lands;
- Problems concerning land claims settlement or return of lands;
- Expropriation of indigenous lands in the national interest, particularly in the name of development;
- Removal and relocation;
- Other policies or programmes including allotment of lands to individuals and state control of sacred and cultural sites;
- Failure to protect integrity of indigenous territories;
- Failure to recognize and respect indigenous control of their territories as part of the right to self-determination.⁹

There are countless factual accounts on how indigenous peoples were dispossessed of their lands from the colonial era up to the present. The doctrine of discovery, policies of extinguishment, plenary power doctrine and several doctrines of dispossession were used to justify the occupation of indigenous peoples' lands by colonizers.¹⁰ The doctrine of discovery gave the colonial power a title to own the land, it claims to have discovered, after it has effectively occupied this within a reasonable time. One of the doctrines of dispossession is *terra nullius*, which contends that indigenous lands are legally unoccupied until the arrival of the colonial presence, and can therefore become the property of the colonizing power through effective occupation.¹¹ In 1992 the High Court of Australia ruled that this is an unjust and discriminatory doctrine and can, therefore, no longer be used.¹²

Another doctrine which justified the claims of the colonial power is the Regalian Doctrine or *jura regalia* in the Philippines. [I]ntroduced by Spain into these Islands, this feudal concept is based on the State's power of dominium, which is the capacity of the State to own or acquire property... The term "*jura regalia*" refers to royal rights, or those rights which the King has by virtue of his prerogatives. In Spanish law, it refers to a right which the sovereign has over anything in which a subject has a right of property or *propriedad*."¹³ Even after Spanish and American colonization ended, *jura regalia* remains enshrined in the Philippine Constitutions of 1935, 1973, and 1987. It is a key obstacle to the effective implementation of the Philippine Indigenous Peoples' Rights Act of 1997.

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 which was amended and weakened in 1998. In Sarawak, around one fifth of the land is classified as Native Customary Rights Land. These lands, however, can be taken by the State to be given to timber or plantation companies. Its coverage also has been limited by the provision that "no recognition shall be given to any native customary rights over any land in Sarawak after the 1st day of January 1958."¹⁴ The 1996 Forests (Amendment) Ordinance Part 11 on Forest Reserves gives the Minister of Forests power to extinguish all subsisting rights or privileges over a forested area by notification in the government Gazette and posted on the notice board of the District Office, which are not easily accessible by indigenous peoples. The Sarawak Land Code has been amended several times and now the State Legislative Assembly has granted the Chief Minister powers to extinguish Native Customary Rights.

In the same track, the Native Title Amendment Act (1998) of Australia provided a number of means whereby the native title can be extinguished. The Committee on the Elimination of Racial Discrimination, on several occasions, stated that this Act is discriminatory. In the United States, a judgement by the Supreme

Court which justified extinguishment was the *Tee-Hit-Ton Indians v. United States* case. This decided that, 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 has also been used by Congress to justify its extinguishment of all the land rights and claims of 226 nations and tribes in Alaska through the Alaska Native Claims Settlement Act.¹⁵

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. The Indian Forest Act of 1927, which was passed by the British colonial government, proclaimed the rights of the Crown to “eminent domain” which means the government can acquire lands, forests and other common property resources through simple notification. Compensation or equity is not required. In some countries, there is a clear distinction between lands acquired for public purposes, in which owners have the right to due process and compensation, and lands acquired for private purposes in which the owner has the right to refuse sale. In the history of most indigenous lands taken for forest and plantation projects, this distinction does not exist as the ownership of indigenous peoples to their ancestral lands remains contested.

The continuing existence, effectivity and further legislation of racist and discriminatory doctrines, laws and policies which legitimize actions of states and private interests to dispossess indigenous peoples of their lands and resources and extinguish their pre-existing rights, partly explains why many indigenous peoples still 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. This is done without involving indigenous peoples and under the most inequitable terms of trade. National economic development has been the favorite argument used to justify the taking of indigenous lands for logging, plantations, oil, gas and mineral extraction. Deforestation and the establishment and expansion of the plantation economies are justified under the slogan “development for the national interest.”

Among the numerous struggles waged by indigenous peoples is the fight to save their forests from being logged and converted into monocrop agriculture and industrial tree plantations. Large-scale plantation economies form part of the story of the erosion and appropriation of indigenous peoples’ subsistence base and territories. Such experiences date back to the 15th century when European colonialism reached the shores of their future colonies. In the 1550s, for example, the Portuguese developed a plantation economy in Brazil which produced sugar and other agricultural crops for export to Europe. Tobacco plantation settlements were set up by the colonizers in Maryland, Virginia, Georgia, North Carolina in the 1600s amidst strong resistance from the American Indians. Sugar cane plantations were established around the same time in the Caribbean and in Hawai’i. The 1876 Treaty between the Kingdom of Hawai’i and the United

States which allowed for duty-free importation of Hawaiian sugar into the United States, promoted sugar cane monocrop plantations and greatly altered the Native Hawaiian land tenure system.

At the height of the coffee boom in the 1870s, Guatemala indigenous land use patterns changed through the establishment of land laws which allowed the sale of "national lands" as private property and which obliged Indians to register their claims to common lands. This led to the alienation of more than a million acres of the highlands converted to coffee plantations as most of the indigenous peoples are illiterate and did not register their lands.

Some reindeer-herding Sami peoples, who were the original inhabitants of the Municipality of Jokkmokk, witnessed their forests ending up in the hands of Swedish major logging companies who converted old growth forests into pulp and paper plantations as early as the 18th century. Forests played a central role in Sweden's transition from an agrarian to an industrial society. Only around five percent old growth forests are left in Sweden, mostly in Sami territory.¹⁶ Data shows that in most countries, colonization was the first cause of deforestation. When the first European settlers arrived in America, it was covered by around 3.2 million square kilometers of temperate forests. By 1930 only around 400,000 square kilometers were left and this was halved to 220,000 by 1992.¹⁷

The reports of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people show that the loss of lands of indigenous peoples happened through colonization, nationalization and privatization. In his Kenya report, he stated that "...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."¹⁸

Developing countries which gained their independence in the mid-1900s adopted the model of import-substituting industrialization, which was designed to protect their economies from imports coming from developed countries. This was short-lived, however, as it was immediately replaced by the Washington Consensus development model which emphasized trade liberalization and export-led growth, financial market liberalization and financial capital mobility, fiscal and monetary austerity, privatization and labor market flexibility. Multi-lateral financial institutions, some UN 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 agricultural and 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 UN agencies and programmes like the FAO and the UNDP.

An example of such forestry programmes is the Tropical Forestry Action Plan (TFAP) which was planned by the World Bank with the UNDP, FAO and the World Resources Institute (WRI) in 1985. First, they undertook a global review of the forest situation. On this basis, they formulated the TFAP which pushed for 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 five times over the past 40 years. It played a key role in promoting monocrop plantations of conifers, eucalyptus, acacia, in tropical forests. As of 1998 over 100 million hectares of primary forests have been converted into industrial tree plantations.¹⁹ Because of its profitability, investments in plantations by the private sector and governments are highest in pulp and paper sector. This has been the subject of intense criticisms and reviews and some of issues raised are the following:

- it failed to include indigenous peoples, local communities and civil society in its formulation and implementation and therefore their rights, needs and perspectives were overlooked;
- it provides technical solutions to problems which are political in nature;
- it reinforced existing power relations, which means the poor remained poor and powerless;²⁰
- it intensified deforestation.

Unfortunately, it is not the indigenous peoples who are benefiting from all this. In fact, they bear the heaviest costs and are the biggest losers because their traditional forests are deforested and their livelihoods lost. The profits and biggest benefits are enjoyed by a small number of multinational and national pulp and paper corporations, technology suppliers and consultancy firms. All countries import pulp and paper products and the major exporting countries are Canada, USA, Brazil, Australia, Chile and South Africa.

In Dec. 9-13, 1996 an International Meeting of Indigenous and Other Forest-dependent Peoples on the Management, Conservation and Sustainable Development of all Types of Forests was held under the co-sponsorship of the governments of Colombia and Denmark, co-organized with the International Alliance of Indigenous and Tribal Peoples of Tropical Rainforests (IAITPTF). This is to implement a part of the Programme of the Intergovernmental Panel on Forests (IPF), the predecessor of the UN Forum on Forests. The lack of understanding of the holistic world views and ways of life of indigenous peoples and other forest-dependent peoples was identified 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). Some of these are as follows:²¹

- Failure of governments and other institutions to recognize and respect the rights of indigenous peoples and other forest-dependent peoples to their territorial lands, forests and other resources;
- Increasing problems of landlessness among impoverished peasants who are denied access to lands outside forest areas due to the inequitable land ownership patterns and who also have no other alternate economic opportunities;
- Government policies and those of the private sector industry geared to exploit forest and mineral resources to the fullest extent for purely economic gain. These policies are often incompatible with existing forest conservation policies. Such policies include substituting forests with industrial tree plantations for the pulp industry; oil and gas exploration by transnational corporations; uncontrolled mining operations and establishing nuclear waste storage sites in indigenous territories.

These conclusions were reinforced by recent reports released by the IPF.²² Several reports released by the CIFOR (Center for International Forestry Research),²³ the IAITPTF, the World Rainforest Movement, the Forest Peoples' Programme and the Global Forest Coalition said the same things. Robert Repetto of the World Resources Institute (WRI) ranked commercial logging as the top cause of deforestation.²⁴ Another paper by WRI said that commercial logging remains the greatest threat to the world's old growth forests affecting 70 percent of these.²⁵ The inverse correlation between land tenure security and deforestation has been established by CIFOR.

The IPF has also identified the international underlying causes of deforestation and forest degradation contained in the report of the "Global Workshop on Underlying Causes of Deforestation and Forest Degradation." It cites, among others, the 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. Market failure includes the failure to account for non-priced benefits of forests (such as protection against soil erosion, irrigation, carbon reservoir, biodiversity and biomass, livelihoods to indigenous peoples and other forest dwellers, etc.). The loss of these benefits should be factored in as costs. However, these are also not accounted for. This system rewards the actions of the private sector against the protection and conservation of forests and, therefore, is an underlying cause of deforestation.

To add more incentives for timber concessionaires and plantation owners, direct subsidies are provided. Usually this comes in the form of low forest charges paid to the government. In most countries, the usual arrangement for forest ex-

traction is through concession contracts which are licenses given by government to the private sector to assess the forest production potentials, harvest timber and other non-timber forest products and manage the forest for a period of time.

It is important to point out that behind this gigantic increase in timber plantations in the last 40 years are northern interests which include pulp and paper firms such as International Paper (US), UPM-Kymmene (Finland), Stora (Sweden), Nippon Paper (Japan) and their industry associations and alliances; consultancy companies such as H.A. Simons, Reid, Collins and Associates (Canada), Brown and Root, Babcock and Wilcox (US), Jaako Pöyry (Finland), Swedforest (Sweden), SGS Silviconsult (UK and Switzerland); technology suppliers which include those producing large-scale machinery like pulping and bleaching machines (Ahlstrom and Valmet-Tampella of Finland, Beloit of USA, Mitsubishi Heavy Industries of Japan) pulp and paper-making chemicals (BASF, Dow and Texaco of US, Ciba Geigy and Sandoz of Switzerland).

Other key actors are bilateral agencies such as FINNIDA (Finland), SIDA (Sweden), CIDA (Canada), JICA (Japan), ODA (UK), USAID (US), GtZ (Germany); state investment and export credit agencies like Britain's Commonwealth Development Corporation (CDC), US Export-Import Bank, Japan Export-Import Bank, US Overseas Private Investment Corporation (OPIC); multilateral financial institutions; research institutes and NGOs like Australia's Commonwealth Scientific and Industrial Research Organization (CSIRO), the International Institute for Environment and Development (IIED, UK), World Resources Institute (WRI, USA) and the World Wildlife Fund (WWF).²⁶

The UN agencies and programmes, such as the FAO and the UNDP, also played important roles through their cooperation with bilateral donors, international financial institutions and consultancy firms. These were used by the consultancy firms to secure contracts to go to the developing countries. Researches on business opportunities in the forestry sector in the developing countries were facilitated by these UN bodies. Technical assistance to help shape master forestry plans and programmes of said countries was provided and international consultants like Jakko Poyry were paid to do this. The FAO also undertook studies which undermined indigenous agro-forestry systems, such as swidden agriculture, agro-forestry practices and land tenure systems.²⁷

The FAO is the body which has made the official definition of "forests." It says "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."²⁸ On the basis of this, it established two categories: natural forests and plantation forests. Natural forests are "a subset of forests composed of tree species known to be indigenous to the area," while plantation forests are subdivided into: a) "established artificially by afforestation on lands which previously did not carry forest within living memory" and b) "established artificially by reforestation of land which carried forest before, and involving the replacement of the indigenous species by a new and essentially different species or genetic variety."²⁹

Many NGOs and indigenous peoples contest this definition and are pushing that there should be a clear distinction between forests and plantations. They assert that plantations are not forests. The only thing in common between the two is that they have trees. Other than that, these 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 mutual relation. Forests have numerous species of trees and bushes of all ages; a large number of plant species, growing both on the forests, trees and bushes, themselves; a huge variety of species of fauna which find food and shelter in the forest and which can reproduce there; human beings interacting with forests and obtaining goods and services from these to ensure their survival.

Plantations, on the other hand, have one or a few species of trees (often alien), planted in homogenous blocks of the same age and these have very few species of plants and animals. It is a cultivated area whose species and structure have been simplified dramatically to produce only a few goods, whether lumber, fuel, resin, oil, or fruit. A plantation's trees, unlike those of a forest, tend to be of a small range of species and ages and require extensive and continuing human intervention. Plantations are much closer to an industrial agricultural crop than to either a forest as usually understood or a traditional agricultural field. Usually consisting of thousands or even millions of trees of the same species, bred for rapid growth, uniformity and high yield of raw material and planted in even-aged stands, they require intensive preparation of the soil, fertilization, planting with regular spacing, selection of seedlings, weeding using machines or herbicides, use of pesticides, thinning, mechanised harvesting, and in some cases, pruning.

Making this distinction is important for several reasons. First, including plantations as forests, because it can be claimed that these have tree canopies of 10 percent, is accepting that this is a forest ecosystem, which it is not. Secondly, this obscures the real rate of deforestation. For instance it includes as forests, the monoculture plantations in Europe which replaced forests that were logged over in the 19th century. Thirdly, it virtually casts a blind eye to the adverse social and environmental impacts of plantations, especially on indigenous peoples whose intricate relationship with the forest is totally different from their experiences with plantations. Therefore, what is recommended is that "natural forests" be simply called forests (primary and secondary) and "forest plantations" be called tree plantations.

The Millenium Development Goal (MDG) No. 7 - ensuring environmental sustainability - has an indicator which is "the proportion of land area covered by forests" (#25). Countries who 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. Tree plantations are associated more with environmental degradation such as erosion of biodiversity, water pollution, soil infertility, etc. rather than sustainability. This is where the FAO definition of forests can lead to gross inaccuracies in assessing how the MDGs are met.

Oil palm plantations and indigenous peoples

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 do small scale diversified agro-forestry. Unfortunately, states, multilateral funding institutions, the private sector including the private banks along with bilateral donors and the UN are more focused in promoting the large-scale agro-industrial model. This has made oil palm plantations one of the fastest growing monocrop plantations in the tropical regions not only of Africa but also in Asia-Pacific, and Latin America and the Caribbean.

The main product of these plantations is palm oil from the flesh of the oil palm fruit and from the palm seed. Palm stearin comes from the oil palm fruit and this is used entirely for manufacturing cosmetics, shampoo, soap, detergents, candles and lubricating oils. Palm olein from the palm seed is used for food, such as cooking oil, margarine, creams, cakes and pastries. Palm kernel meal is another product which is mainly used for animal feed. Palm oil is the world's best selling vegetable oil covering almost 56 percent of the total global trade of edible oils, eclipsing soya oil which has 23 percent. Oil palm plants yield 10 times more pounds of oil per acre than soybeans.³⁰ The world's biggest importers of palm oil between 1997-2001 were India, China, Pakistan, Netherlands, United Kingdom, Egypt and Germany. In 2001 the US became the second largest importer of palm kernel.³¹

With the new global demand for biofuels (so-called "green fuels"), crude palm oil is heavily promoted as biodiesel suited for countries like Japan and Europe. Their commitment to reduce their greenhouse gas emissions under the Kyoto Protocol includes the shift to alternative energy sources and support for the establishment of carbon sinks. Oil palm plantations are also being offered as carbon sinks by countries like Indonesia and Malaysia.³²

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 it is expected to reach 43 million tonnes by 2020. The area covered has already reached 12 million hectares with four million hectares in Malaysia and 5.3 million hectares in Indonesia. These two countries are responsible for 85 to 90 percent of the world production of palm oil and 89 percent of global exports.³³

Other countries which are significantly scaling up their production are Papua New Guinea (world's third largest palm oil exporter); Thailand, Philippines, Vietnam, Cambodia and India in Asia-Pacific. Nigeria, Ghana, Cote d'Ivoire, Congo, Guinea, Democratic Republic of Congo, Cameroon, Sierra Leone in Africa. In Latin America, Ecuador, Colombia, Honduras, Costa Rica, Venezuela, Brazil, Peru, Guatemala, Dominican Republic, Nicaragua, Mexico, Panama, Suriname and Guyana.

Indonesia has the distinction of having the biggest rate of increase in terms of forests converted into oil palm plantations. In a period of 30 years, oil palm plantations increased 20 times with 12 average annual increases in crude palm oil (CPO) production.³⁴ In the 1960s there were only 106,000 hectares planted to oil palm. This increased to 2.5 million hectares in 1997. A recent report³⁵ released in 2006 says the forest area planted to oil palm reached around six million hectares although there are already around 18 million hectares of forests cleared using oil palm plantations as the reason. It appears, however, that loggers just use this as a justification to harvest the timber. In terms of the distribution of oil palm lands Sawit Watch (an NGO monitoring oil palm plantations in Indonesia) says that approximately 33 percent are in the hands of small-holders, 16 percent are state-owned and 51 percent are controlled by large private plantation owners.

The government announced new plans, under the Kalimantan Border Oil Palm Mega-Project (April 2006), to convert an additional three million hectares in Borneo, of which two million will be in the border of Kalimantan and Malaysia. This report reveals that the area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods. A special regulation, Presidential Decree No. 36/2005, was passed which would apply to this new border zone and which would allow the government to take land away from communities that do not want oil palm plantations in the name of "public interest."

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 Ivory Coast and other countries, a Director of the International Finance Corporation (the private sector arm of the World Bank) said oil palm plantations will generate more employment and higher living standards, promote environmentally-sensitive agricultural production and earn foreign currency.³⁶ The Indonesian government declared that the Kalimantan Border Oil Palm Mega-Project will "bring prosperity, security and environmental protection to the Kalimantan Border area." The Colombian oil palm producers' federation said that "oil palm plantations are forests which protect our ecosystems." A Malaysian minister declared that oil palm plantations are "better than developed nations' pine trees in terms of absorbing carbon gases."³⁷ All these claims are highly contested.

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 labor, low cost of sale or rent of land, ineffective environmental controls, high demand, support from multilateral and bilateral donors and a short growth cycle. The oil palm tree produces fruits after four to five years and reaches its productivity peak when it becomes 20 to 25 years. This sector also enjoys strong support from governments because the crop is mainly geared for the export market, which means foreign exchange which

can be used to pay mounting external debts. Since palm oil is raised in many countries, it has become cheaper than soybean oil and other edible oils. The increasing demand for biofuels and the need for carbon sinks plus the system of carbon emissions trading are the new incentives for expanding further oil palm plantations. It is now a favorite alternative energy source because of its high yield per hectare and low production costs.

It is without any doubt that the growth of the oil palm sub-sector has resulted into economic benefits, especially for the key players. In Malaysia, for example, palm oil exportation 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 revenues for Indonesia and \$3.8 billion for Malaysia.³⁸ However, it is also a reality that this comes with serious social and environmental costs which mainly impact 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 forest and natural resource goods and services. Large areas of forest lands traditionally used by indigenous peoples have already been expropriated.

Outside of the states, the main beneficiaries of this industry include plantation owners and traders, international private banks, international financial institutions, the agrochemical industry and the global corporate buyers and consumers of palm oil which include industries dealing with food, cosmetics and detergents, biofuels, chemicals and livestock. Among the buyers are corporations like Unilever, Proctor and Gamble, Cognis, Cargill, UK Pura Foods and Archer Daniels Midland (through Wilmar Trading). In Indonesia, between 1993-2003, the total investment in the sector was US\$10 billion and this came from private financiers which include UK financiers - Barclays, HSBC, Royal Bank of Scotland, NM Rothschild and Son Ltd.; US banks - Citigroup, Bank of America, JP Morgan Chase; and Dutch Banks - ABN Amro Bank, FMO, Fortis Bank, ING Bank, MeesPierson, and Rabobank.³⁹ The close associates of former President Soeharto dominate the oil palm industry. These include the Raja Garuda Mas Group, Astra International Group, Sinar Mas Group, among others. Malaysian companies are also central players in the Indonesian oil palm industry. In 1997 these companies controlled around 71 percent of 93 Indonesian plantations worth \$3.3 billion. This has increased to more than 100 companies in 2004.

There are small-holder schemes in the oil-palm sector such as what the Indonesian government implemented under a World Bank supported project called Nucleus Estate and Smallholders (NES) which began in 1980/81. This established small-scale plantations (1-2 hectares) surrounding a large plantation (10,000 or more). Through Presidential Decree No. 1/1986 the development of this NES scheme was integrated with transmigration programmes. This encouraged government-sponsored migrant farmers to open up forest areas and become source of cheap labor for industrial plantation companies. Smallholders include independent land-owners who opt to grow oil palm in their lands, community members contracted by the companies to plant oil palm in their lands and sell the

products to the companies, or transmigrants or local people relocated to oil palm areas where they are assigned to specific estates.

The model upon which the oil palm industry operates, however, favors large-scale operations rather than small-holder systems. Land preparation is tedious and expensive, way beyond the capacities and means of the smallholder. Oil palm seedlings can only be bought from oil palm companies. Newly harvested oil palm fruit has to be brought within 24 to 48 hours to a crude palm oil mill nearby for it to be processed. Smallholders usually do not have vehicles to transport their produce to the mill. For this mill to operate feasibly, it has to be fed with fresh fruit from 4,000 hectares of oil palm plantations. Ultimately, farmers operating under the NES scheme become completely dependent on one commodity and on the big plantation owner. Since it takes three to five years before the first harvests come and eight years before they can gain profits, they become heavily indebted to the big plantation owners. A similar scheme also supported by the World Bank and the European Development Fund has been set up in Cote d'Ivoire. The difference is that this led to the shifting of control of plantations away from the parastatal Palmindustrie to smallholders who now control 70 percent of the lands.

Biofuels, carbon sinks, carbon emissions trading and indigenous peoples

The rapporteurs deemed it necessary to include a section on the expansion of present plantations in relation to biofuels, carbon emissions trading and establishment of carbon sinks. The solutions adopted by the Climate Change Convention to global warming is a classic case of providing a solution to one specific problem but creating a host of other problems at the same time. 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 monocrop agricultural and tree plantations. Indigenous peoples have and continue to engage with the Climate Change Convention processes but it is very difficult to get their perspectives integrated into the final conclusions or recommendations. This section will summarize the developments in the Convention and will attempt to amplify some of the concerns of indigenous peoples and NGOs have been raised time and again even during the Conference of Parties (COP) 12 which was held last 6-17 November 2006.

It is already indisputable that the level of carbon dioxide and other greenhouse gases in the atmosphere is causing global warming. Bringing to the atmosphere only a small percentage of the remaining 4 trillion tonnes of recoverable fossil carbon remaining underground will trigger unprecedented disasters such as extreme storms, droughts and floods, pest infestations, and an upsurge of "climate refugees."⁴⁰ This is the issue which the UN Framework Convention on Climate Change (UNFCCC) is mandated to address.

The most logical approach to halt CO₂ 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 the “carbon debt” they owe to the south which has yet to be paid. Data shows that the United States, with less than five percent of the world’s population, was responsible for 30 percent of cumulative greenhouse gas emissions between 1950-1986 compared to India which has 17 percent of the world’s population but contributed only two percent.⁴¹ The report on per capita CO₂ emissions in 2002 shows that the U.S. emitted 20.3 percent; Australia, 18.3 percent; Canada, 16.5 percent; Singapore, 13.8 percent; Japan, 9.4 percent; New Zealand, 8.7 percent; Malaysia, 6.3 percent; Mexico, 3.7 percent; China, 2.7 percent; Indonesia, 1.4 percent; India, 1.2 percent; and the Philippines, 0.9 percent.⁴² According to the International Energy Agency, by 2025, 82 percent of the world’s population will be consuming 45 percent of the energy, while 14 percent, those in industrialized countries, will consume 43 percent.⁴³

As early as 1992, during the Earth Summit, countries were urged to radically change their unsustainable production, consumption and trade patterns based on wasteful use of energy. This requires shifts in the structures of northern industrial, transport and household energy use, away from fossil fuels towards more renewable sources. Extensive programs of energy conservation and energy efficiency and reduction of energy consumption need to be put in place. Extraction of more oil and gas under the earth should be diminished. This approach should also tackle the gross inequity in energy consumption and CO₂ emissions. This means analyzing and addressing the institutional and power imbalances which perpetuate the wasteful and unequal use of the earth’s carbon-absorbing capacity.

Thus, the direction of the negotiations should have been towards democratizing per capita emissions worldwide while simultaneously reducing overall emissions. The Clean Development Fund proposed by Brazil, which will come from penalties imposed on countries exceeding their emission targets to finance clean energy initiatives in the South, could have been one step in this direction. This proposal was aborted, however, and transformed into a trading mechanism allowing industrialized countries to buy rights to pollute from countries with no emission limits. An idea which comes from an environmental justice perspective was transformed into a market approach.⁴⁴

The environmental justice approach which strikes at the underlying causes of global warming and which is consistent with the “polluter pays principle” did not see the light of day at the Climate Change Convention. The Convention took a more market-based approach which was reflected in the proposals of the Kyoto Protocol. This Protocol, which was adopted in 1997 and came into force in 2005 after ratification by 127 countries responsible for 61 percent of greenhouse gas emissions, is a baby step wherein 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. Outside of using biofuels as additives to fossil fuels used by cars, these countries can avoid emission reductions by buying “carbon credits” from less polluting countries or corporations and by investing in projects which “sequester” or “store” carbon. Planting trees is an example of this because the photosynthetic activity of these trees will convert CO₂ into wood carbon. This promotes the concept that CO₂ emissions are acceptable so long as these can be compensated or offset by an activity which absorbs CO₂ or which prevent emissions.

The technological and market fixes, referred to as “flexible mechanisms” by the Protocol, are emissions trading, clean development mechanism and joint implementation. When these were agreed upon, even big environmental NGOs celebrated as they had the view that this was the only way the Kyoto Protocol can be adopted. Scores of scientists and economists were brought in to provide the knowledge fix which justified these. There was hardly any commitment to address institutions and power imbalances which have resulted in both the overuse and the unequal use of the atmosphere. None of the three market-based “flexible mechanisms” tackle directly the physical root of global warming: the transfer of fossil fuels from underground, where they are effectively isolated from the atmosphere, to the air.

These are basically meant to help Northern countries avoid or delay reducing their greenhouse gas emissions. The Clean Development Mechanism (CDM) lets northern countries finance projects in the South aiming to mitigate climate change in return for credits which are banked and ultimately used to license continued pollution at home. Projects can include small hydropower schemes, renewables, energy efficiency, improved techniques of waste disposal and tree plantations. Emissions trading allows Northern countries who fail to meet their emission targets to buy emission rights from other countries who have permits to spare because they have lower emissions beyond their targets. Joint Implementation means that northern countries can finance projects aiming to mitigate climate change in other Northern (often Eastern European) countries, receiving credits accordingly.⁴⁵ With these put into place, traders and bankers started establishing carbon exchanges in the countries where major stock exchanges are based. The World Bank set up the Prototype Carbon Fund (PCF) in 1999 to generate cheap credits from the south to reduce the costs of emission reductions for industrialized countries. By 2005 the EU Emissions Trading Scheme (ETS) was established.

One step which could have contributed to slowing down the rate of CO₂ emissions is the implementation of the recommendations of the World Bank-sponsored Extractive Industries Review (EIR). This called on the World Bank to immediately stop its support for coal extraction and to phase out its support for oil extraction by 2008. Some indigenous organizations took part in the EIR by providing case studies from countries where indigenous peoples been impacted by the oil, gas and mining sector. The recommendation that free, prior and informed consent of indigenous peoples be obtained before extractive industries can come into their lands came out of these processes. This was not heeded by the World Bank, however, even if these emerged from a process they supported. Between

2004-2005 the World Bank Group spent US\$7.6 billion for fossil fuel-related projects (37% of its total lending for the year).⁴⁶ Bank financing for fossil fuel extraction far outranks its funding for renewable energy by 17 to one.⁴⁷ Even with the lower investments for renewable energy, most of these would be spent for the expansion of plantations for biofuels and for carbon sinks.

The most common form of biofuels (produced from plant biomass) are either biodiesel (from oilseeds) or bioethanol (from fermented plant sugars or starch and cellulose). Biodiesel comes from plants like oil palm, soya, rapeseed, coconut, jatropha and sunflower, whereas bioethanol comes from sugarcane, corn, wheat, beet, barley, sorghum, poplar, pine or eucalyptus trees and grasses. There are other forms such as biogas (from animal manure and landfills), biodimethylether or biomethanol. Since 50 percent of energy consumption in the whole world is consumed by 800 million automobiles, it is claimed that a shift from fossil fuels to biofuels will have an impact in cutting back CO₂ emissions.

The EU widely promotes the use of biofuels as an alternative energy source for transport. It came up with the European Biofuels Directive (2003) which targeted that 5.75 percent of transport fuel in Europe should be from biofuels by 2010 and 20 percent by 2020. Bush, on the other hand, stated in his State of the Nation speech in February 2006 that by 2020, 30 percent of America's cars will be running on bioethanol. The question is where will these biofuels come from? Presently, the EU dominates the biodiesel industry, covering 90 percent of global production with rapeseed oil as the main feedstock. The level of production, however, will not be enough because for it to meet these targets, the EU requires fivefold increase in regional production of biofuels.⁴⁸ US corn farmers are now planting corn more for bioethanol production - more than other crops like soya.⁴⁹ While the US has wide farmlands, it still has the biggest consumption of energy so it will need to import to fill the gap. It is estimated that in order for national targets for biofuels to be met, the global biofuel production will have to increase four times in the next 20 years.

This is where many developing countries come in. Malaysia, Indonesia, Colombia, Ecuador, Nigeria, Cote d'Ivoire, Papua New Guinea, among others, are rapidly expanding their oil-palm plantations to meet this demand. Malaysia and Indonesia are gearing to supply 20 percent of the market in Europe and they recently announced that they will set aside 40 percent of their palm oil output for biodiesel.⁵⁰ Brazil is aggressively expanding its sugarcane and soya plantations. Its sugarcane production is fast outpacing soya, so much so, that it is now the largest bioethanol exporter, supplying around 50 percent of the world market. Argentina, together with Brazil, are into 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.

Many other countries in Africa and in Asia, aside from expanding oil palm, are now being supported by foreign companies, like D1 oils and British Petro-

leum in the UK, to plant jatropha tree seeds (*Jatropha curcas*). This is a non-edible, drought-resistant feedstock for biodiesel. D1 Oils set up its Asia-Pacific operations in the Philippines where it will provide the Philippine Coconut Authority the capacity to supply biodiesel to China, Korea, Japan, Taiwan and Australia.

The phenomenal growth of the market for biofuels within the past 5-10 years has now led to a competition between production of food crops and energy crops. Food security especially for the developing countries is going to be compromised. Lester Brown of the World Resources Institute noted that “..of the 20 million tonnes of increased world grain use in 2006, 14 million tonnes will have been used to fuel US cars whilst only six million will have contributed to the world’s growing food supplies... the world is set for a head-on collision between the world’s 800 million affluent automobile owners and the food consumers.”⁵¹

Amidst all the hype about biofuels being environmentally sustainable, there are already studies done by scientists showing that large-scale biofuel production is a heavily energy intensive and CO₂-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 Scientists for Global Responsibility Report found that “energy inputs for large-scale production include petroleum-based herbicides, pesticides, fertilizers, while fossil-fueled tractors and tracks plough the fields, harvest and transport the crop to the fuel refineries. In the case of the US ethanol industry, refineries are themselves fired by fossil fuels – largely natural gas, but sometimes even coal – in enormous quantities to ferment the crop, and then purify ethanol from the watery fermentation product.”⁵²

Two scientists, Pimentel and Patzek, also reviewed the energy balance and economics of producing biomass, ethanol or biodiesel from corn, switchgrass, wood, soybeans and sunflower. They used the lifecycle analysis and they concluded that there is a negative energy balance for all crops based on current processing methods. This means that it takes more fossil energy input to produce the equivalent energy in biofuel.⁵³

The burning of forests in Indonesia to prepare oil palm plantations, for example, clearly contributed to CO₂ emissions. A study conducted by CIFOR estimated that the area burnt in the big fires in Indonesia in 1997 was about 11.6 Mha, resulting in carbon release of 1.45 Gt, equivalent to 0.73 ppmv of CO₂, or almost half the annual global atmospheric CO₂ growth. Based on the current carbon market price, such emissions by the 1997 fire episode were worth around US\$ 3.6 billion.⁵⁴ This means that even before they become a “carbon sink” they, in fact, cause “carbon leakage.” The carbon that was safely stored in forests is released through deforestation. The carbon balance is thus negative, because most forests store much more carbon per hectare than any plantations.

A briefing paper⁵⁵ prepared by the International Institute for Environment and Development (IIED) and another report made by the Society of Environ-

ment Journalists⁵⁶ raised some pertinent questions which will not be answered by this paper but which should be addressed by future debates on this issue:

- Will fuel shortages be replaced by food shortages – or by water shortages?
- Will biodiverse landscapes be replaced by ecological and economic monocultures?
- Will this new form of trade exacerbate the environmental and social problems associated with the trade of many tropical food and cash crops, or will it provide a solution?
- Will industrialized countries' agricultural and energy programmes applying to biofuels continue to undermine developing countries' opportunities to benefit from trade?
- Will companies invest in environmental management to ensure biofuel production is sustainable, or will they merely be the latest "raiders of nature" to make excessive profits?
- What is the energy content of a gallon of the biofuel?
- How much energy is required – farm equipment, fertilizers, pest management, transportation, storage – to produce each of these?
- How much energy is required to manufacture, transport and store a gallon of the biofuel?

The proposal of the Kyoto Protocol to use forests as "carbon sinks" for capturing or sequestering carbon is one of the most controversial ones for most indigenous peoples. This allows industrialized countries to receive a limited amount of credits from forests and agricultural practices to use against their emission reduction targets. This has led such countries to invest in plantation projects in developing countries so they can gain credits through the CDM. This will facilitate further the replacement of natural forests with fast-growing tree plantations as incentives and subsidies that are offered for such methods under the CDM. The usual problems associated with monocrop plantations – the reduction of biological diversity leaving plantations vulnerable to diseases that affect single species, eviction of indigenous peoples and other forest dwellers from their homes by governments and private corporations eager to establish such plantations, etc. – will be further exacerbated. The irony is that such plantations only remove carbon on a temporary basis. When the trees die, decompose or burn, carbon is released into the atmosphere just the same.

For indigenous peoples who have long suffered from the expropriation of their lands for oil, gas, mineral extraction, deforestation and plantations, these recent developments pose very serious threats. In the name of energy development indigenous peoples' territories have been skimmed of their oil, gas and coal deposits, even against their will. Now, in the name of saving the world from global warming, their lands are again eyed to provide the solution. The expan-

sion of plantations for biofuels, the development of carbon sinks, and carbon emissions trading are already creating a host of problems for indigenous peoples which are hardly factored into the whole equation. As was shown earlier, even before energy crops came into the picture, the plantations of soy, eucalyptus and sugar cane already are the main causes of the deforestation of the Brazilian Amazon, in the same way that oil palm destroyed forests in Malaysia and Indonesia and in other Asian, African and Latin American countries. With the further expansion of lands for cultivation of these same crops, albeit this time for biofuels and for carbon sinks, other indigenous peoples who have not yet been displaced will meet the same fate.

Converting complex ecosystems to become monoculture carbon sinks and treating CO₂ emissions as a commodity which will be traded in the carbon market do not only lead to adverse social and environmental impacts. The concepts or philosophies behind these contradict the basic worldviews and values indigenous peoples live by which have allowed them to use their resources and lands sustainably. The justification of trade in emissions consists of distorted technical, legal, economic and intellectual devices which perpetuate the inequalities in this world. There are several case studies done 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 of take-over of indigenous peoples' lands.⁵⁷ What is even worse is that these have not contributed to any significant decrease of CO₂ emissions. Clearly, emissions trading schemes do not regard global warming as a social and environmental problem which has to be solved, but as a business endeavor which offers opportunities to gain new property rights, assets and openings for capital accumulation.⁵⁸ Many proposals for the establishment of plantations to serve as sinks cover hundreds of thousands of hectares. One can just imagine the extent of displacement and land grabbing which will happen because of such proposals.

Current carbon trading schemes do not address the global inequities in the use of fossil fuel and CO₂ emission. In fact, these inequities are exacerbated. Companies who have exceeded their share of the world's carbon emission can continue doing so by maintaining trees or soil in their own rural areas or by paying communities in the south to plant more trees. By using cash, which in the first place, had been accumulated partly through a history of extraction, the North gets the right to emit extra greenhouse gases.

Some of the biggest buyers of carbon credits are heavily-polluting industries like energy utilities, oil refineries, chemical firms, pulp and paper companies, among others, which are capable of investing in some technical fixes and hire consultants who will calculate and "verify" carbon credits, monitor progress, make reports and justify the privatization of the global carbon dump. These carbon consultants, who are extremely expensive and which are accredited by the UN to document, "validate" and "verify" the carbon traders' community-friendly schemes are companies like Det Norske Veritas (Norway), TUV (Germany), SGS

(Britain) or JQA (Japan). These can never be afforded by indigenous communities in the Amazon, in Africa or in Asia.

A picture of what is happening now, especially as it affects indigenous peoples, is given in the book entitled "Carbon Trading, A critical conversation on climate change, privatization and power:"

..a polluting industrial installation often gets a new lease on life by buying cheap carbon credits from a project that damages the lives and livelihoods of local people elsewhere. In this way, the trade in carbon credits can use the oppression of local people whose land is being used for industrial plantations in Brazil, say, to prolong the oppression of other local communities in the vicinity of oil refineries or power plants in Europe. Communities that should be uniting in their battles for a transition away from the hydrocarbon economy are being pitted against each other by the trading system that pretends to offer a solution. In the future, it may even happen that an indigenous community fighting an oil company's exploitation of its territory will find itself at odds with another indigenous community down the river providing carbon sink credits to the same company.⁵⁹

During the 6th meeting of the Conference of Parties of the 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. They said,

Our intrinsic relation with Mother Earth obliges us to oppose the inclusion of sinks in the CDM because it reduces our sacred lands and territories to mere carbon sequestration which is contrary to our cosmovision and philosophy of life. Sinks in the CDM would constitute a worldwide strategy for expropriating our lands and territories and violating our fundamental rights that would culminate in a new form of colonialism. Sinks in the CDM would not help reduce GHG emissions, rather it would provide industrialized countries with a ploy to avoid reducing emissions at source.⁶⁰

There was another view from a group of indigenous peoples from Brazil who expressed that they support the inclusion of forest protection, community-based forest management, sustainable production and economic alternatives for indigenous and traditional peoples in the CDM. Lately, however, even this group has not been very vocal about their support, as it has come out that the communities where similar projects are underway have expressed harsh criticisms on these.

Tree plantations as carbon sinks still has to be proven scientifically. The deforestation which happens before these are established already makes these net carbon sources, not sinks. Conversion of wetlands into plantations releases significant amounts of CO₂ from the soil. As these are commercial plantations, in no time, the trees will be harvested which means that whatever carbon has been captured will be released. In case these will not be harvested, millions of hectares of land which can be used for food production and other diverse purposes will be locked in, creating more hunger and poverty. Indigenous peoples whose systems and struggles maintained the forests as carbon reservoirs, are systematically de-

prived of livelihoods, their forests and territories which are the basis of their traditional knowledge and cultural identities.

The World Bank has played an important role in promoting and supporting the concept of a carbon market. When the idea of carbon trading was first proposed in 1992, there was some opposition to this. However, by 1995, at the first COP of the UNFCCC, it was agreed that a pilot phase of Activities Implemented Jointly (AIJ) would be set up. This is a mechanism which would allow selling of carbon emissions to companies who would rather pay someone else than reduce its own emissions. Some countries, e.g., Costa Rica, Vietnam, Zimbabwe, Russia and the USA, immediately responded and set up AIJ Funds. The World Bank also established its AIJ Fund in 1996 and worked with the Norwegian Government and the IFC to develop pilot projects.

With its extensive experience in development financing, it easily convinced its Board that it can be the fund manager for industrialized country governments and for the industries who are interested to invest in projects in the South to reduce their carbon emissions. It estimated that the carbon “offset” market will reach billions of dollars by 2020 and the Bank can earn US\$100 million annual net revenue by 2005. The World Bank secretariat worked on this until the Prototype Carbon Fund (PCF) was established in 1999 with contributions from Finland, Netherlands, Norway and Sweden. The Bank remains as the largest public source of funds for the fossil-fuel industry, providing US\$11 billion for 128 fossil fuel extraction in 45 countries. These projects will contribute 43 billion tons of CO₂ emissions. Its carbon funds, which was estimated in 2004 to be \$410 million, is just 20 percent of the total lending for fossil-fuel projects.⁶¹ One of its PCF fund projects is the Plantar project in Minas Gerais, Brazil which will establish 23,000 hectares of eucalyptus plantations. This will temporarily capture CO₂ emissions before being converted into charcoal for pig iron production. Those most affected are the *quilombolas* (descendants of slaves) but there are several indigenous peoples, which have very small populations, that will also be affected.

A meeting in 2000 of social activists, including some indigenous representatives, came up with the Mt. Tamalpais Declaration. This spelled out the reasons why they opposed inclusion of plantations as carbon sinks:

- Using “sinks” to help Northern countries to meet their Kyoto Protocol emissions reduction targets cannot promote a livable climate since those targets are themselves insufficient to do so;
- Trading emissions for tree carbon would intensify regressive distribution of world resources;
- Large-scale industrial tree plantations are a threat to communities and ecosystems the world over;
- Using tree plantation projects to “compensate” for the climatic effects of CO₂ emissions is scientifically incoherent and sanctions external political interference in the social policies of host countries.

Social and Environmental Impacts of Logging and Monocrop Plantations

The environmental and social impacts of logging, oil palm plantations and other plantations have been extensively documented. While there are specificities in each of the countries, there are also many common threads. Among the most common social impacts, especially among indigenous peoples in the developing countries, which have been documented in literature are the following:⁶²

- Denial of rights to lands, territories and resources, and alienation of indigenous peoples' lands, forced evictions, and prevention of access and use rights leading to a decline in the population of indigenous peoples, especially in isolated and remote territories;
- Habitat loss leads to destruction of livelihoods, cultures and loss of traditional forest-related knowledge;
- Indigenous land tenure and resource management systems are further undermined;
- Increase in social conflicts between indigenous peoples and the state and private corporations. Divisions amongst indigenous peoples are fostered by governments and corporations;
- Food insecurity, severe health problems including increasing malnutrition and increased mortality;
- Changes in disease ecology resulting in high incidences of diseases like malaria, tuberculosis, dengue;
- Increase of rates of sexually-transmitted diseases due to increasing prostitution and exploitative sexual relationships in plantation or logging estates;
- Exploitative and discriminatory working conditions ranging from forced labour, slave-like labour conditions and debt bondage, 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;
- Breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management;
- Internal conflicts over decision-making, resource allocation leading to further weakening of social cohesion;
- 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, rent-seeking and behavior.

Logging, industrial tree plantations, oil palm companies and agricultural monocrop plantations remain as continuing causes of the alienation of indigenous peoples' territories, lands and resources and the non-recognition of their customary land tenure and resource management systems. As discussed earlier, colonial and post-colonial doctrines and laws were put into place to justify the dominant control of states over forest lands. Reports show that 22 percent of the national territory of India is under the control of State Forest Departments, 40 percent of Thailand under the Royal Forestry Department and lands classified as state forest areas cover 55 percent of the total land area in the Philippines and 70 percent in Indonesia.⁶³ Several forestry laws were made under authoritarian regimes and in countries where these happened, the most egregious violations of indigenous peoples' human rights also took place. Resource management practices of indigenous peoples were totally disregarded in national resource management policies and laws as multilateral and bilateral bodies promoted programs like the TFAP which denigrate indigenous peoples' systems.

Massive amounts of forests logged and converted to plantations are lands taken away from the production of basic food and subsistence needs of indigenous peoples. Availability of wild meat has dramatically declined in Central Africa, Brazil and Asia-Pacific thereby reducing the protein sources for indigenous peoples. Non-timber forest products (NTFPs) - such as rattan, resin, honey, etc. - which are main sources of livelihoods for indigenous women, disappear. NTFPs which are usually not factored in as products of the forest are substantial sources of income, especially for women. A study done in Cameroon has shown that in the first half of 1995, NTFPs generated around US\$1.75 million shared among around 1,100 NTFP traders.⁶⁴ Incomes generated by indigenous peoples from NTFPs, hunting and fishing are lost because of the restrictions of access to their own forests and the pollution of the water systems.

Deforestation does not only affect the forest itself, but also the water below. 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. Research in Sarawak done in 1987 has shown that 59 percent of the rivers were polluted as reported by 57 longhouses along the rivers. Logging in the Marovo Lagoon in Solomon Islands has led to the destruction of marine fisheries due to siltation. In Central Africa the destruction of the habitats of mammals such as apes and elephants has led these animals to raid peoples' crops, thereby reducing food sources.

Malnutrition has become widespread in the interior areas of Sarawak in the late 1970s to the 80s because of the decline of wildmeat harvesting and of upland rice production. The 1994 survey of hunger in the Brazilian Amazon also recorded unprecedented levels of malnutrition among indigenous peoples whose lands were overtaken by loggers and plantation owners.

The Indonesian Legal Aid Foundation (YLBHI) documented that in 1998, 827,351 hectares of land in 14 provinces were taken away from ordinary citizens to private investors. This has deprived 214,356 households of their land rights and their source of livelihood.⁶⁵ The Sawit Watch and Forest Peoples' Programme study on implications of oil palm for local communities and indigenous peoples in Indonesia identified the many irregularities by which the lands have been acquired and these are the following:

- Customary rights not recognized;
- Plantations established without a government license;
- Information not provided to communities;
- Consensus agreements not negotiated;
- Customary leaders manipulated into making forced sales;
- Compensation payments not paid;
- Promised benefits not provided;
- Smallholder lands not allocated or developed;
- Smallholders encumbered with unjustifiable debts;
- Environmental impact studies carried out too late;
- Lands not developed within the stipulated period;
- Community resistance crushed through coercion and use of force;
- Serious human rights abuses.⁶⁶

There are researches done which show that the income and lives of indigenous peoples in Indonesia are better when they continued to practice their traditional agroforestry systems. The Institut Dayakologi compared incomes generated from two hectares of jungle rubber managed by the Dayak to that of a smallholder of oil palm. They found out that the incomes obtained by those who still do traditional agroforestry was twice that of the smallholder.⁶⁷ This did not even factor in the incomes from fruits, non-timber products and vegetables. Such diverse, mixed-farming systems are fast disappearing and are being replaced by export-oriented monoculture plantations, which in most cases brought more poverty to indigenous peoples.

Aside from being deprived of their lands, indigenous peoples who fight back are subjected to the worst forms of human rights violations. There are many documented accounts of these, ranging from arbitrary arrests, tortures, killings, forced displacement, etc., which cannot be included in this report because of the page limitations. Many of the documented social conflicts between indigenous peoples and state authorities and private security guards which are accompanied by gross violations of individual and collective rights have been recorded in logging and plantation areas. These include cases of land invasions, harassment,

assassinations of indigenous leaders, rape of women, forced labor and child labor. The disappearance of the world's forest and establishment of plantations have direct correlations with the massive violations of the rights of indigenous peoples and other forest peoples. A report released by FERN (a European forest alliance) entitled "Forest of Fear, the abuse of human rights in forest conflicts"⁶⁸ contains over 40 cases of human rights violations ranging from murder, threats to life, disregard of land rights, illegal detention, torture and forced resignations for workers and employees. 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 people.

Around 12,000 families (indigenous peoples, rural workers, *quilombolas*⁶⁹) who were evicted from Bahia and Mata Atlantica are still camping in the highways. This situation has led to a significant increase in *favelas* (shantytowns). In Malaysia, the indigenous peoples in Sarawak have set up road blockades to stop plantations from entering their territories. On April 17, 2007, the rapporteurs received reports from Sahabat Alam Malaysia (Friends of the Earth Malaysia) on five Penan blockades which have been recently set up by four villages and one nomadic community in lower Baram river basin, Miri Division, Sarawak. The villages involved are Long Lutin (Sungai Patah), Long Sayan and Long Belok (Sungai Apoh) and Long Kevok (Sungai Layun, Tutoh) and from Ba' Bevan, Sungai Si'ang, Tutoh. The Ba' Bevan people are blockading against KTS Logging, while Long Sayan and Long Kevok are blockading against Rimbunan Hijau and Long Lutin and Long Kevok villagers are blockading against Samling.⁷⁰ These types of action launched by indigenous peoples in Sarawak have been going on since the 80s and many of them have been detained and manhandled by the police.

In Burma, reports of forced labor were released by Amnesty International, Karen National Union and Free Burma Coalition. In July 27, 2000 the State Peace and Development Council (SPDC) troops ordered villagers from Thagyet and Kyeinchaung to work for military oil palm plantations. Another oil palm plantation was started in Tanawthiri township (Taninthayi) in Jan. 2001 where residents of all nearby villages were ordered to plant saplings.

In February 2007, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, visited Cambodia and participated in the "National Land Conference of Cambodia" and held a consultation with Asian indigenous peoples. This was followed by the "Asian Indigenous Peoples' Conference on Communal Lands." In these meetings, several reports on the impacts of large-scale plantations on indigenous peoples in Cambodia and the rest of Asia were shared. One report was on how indigenous peoples' lands in Cambodia were alienated in violation of the Land Law of 2001. Among the various cases, one was a land concession of 199,999 hectares of forest land granted by the Royal Government of Cambodia to the Wuzhishan L. S. Group (Cambodian-Chinese company) in August 2004 to establish a pine plantation. This violates the Land Law which states that a maxi-

mum of 10,000 hectares can only be given as land concessions. The concession area is the territory of the Phnong, an indigenous peoples in Mondulkiri. Protests were met with repression by the government authorities and this case remains unresolved up to now.

In his earlier country mission reports, Professor Rodolfo Stavenhagen raised the impact of the development of forest plantations on Mapuche land. He stated that communities interviewed complain that their sources of water for both drinking and irrigation purposes are in decline or have disappeared. The woodland fauna that forms part of their diet and the undergrowth vegetation traditionally used for ritual, medicinal and nutritional purposes are fast disappearing. His description of the situation represents what indigenous peoples in forests go through.

[T]he introduction of single-crop forests of exotic species such as pine or eucalyptus by the powerful transnational forestry corporations that now control a large part of Mapuche territory has had negative effects on the local environment. The increased use of herbicides and pesticides applied from crop-spraying planes 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. Members of these communities can no longer devote themselves freely to hunting and gathering in order to live, which not only affects the food economy but also their traditional herbal medicine, their spiritual life, and the social and cultural fabric of their communities. This process has led to growing poverty in the region and has forced many young people to migrate to the cities in search of new opportunities.⁷¹

Another report on Chile reinforced the findings of the Rapporteur. This report states that in the Lumaco region of Chile, plantations are taking over the lands of the Mapuche. Plantations in this region increased from 14 percent in 1988 to over 52 percent in 2002. Over two million hectares of pine and eucalyptus plantations are controlled by only two companies. The expansion of plantations have been followed by an increase in poverty rates among the Mapuche. Lumaco is now one of the poorest regions in Chile, with 60 percent of the population living under the poverty line and 30 percent in extreme poverty.⁷²

The situation of the uncontacted peoples or indigenous peoples in voluntary isolation has 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. He has recommended in his study that in the “untouchable” areas and the Yasuni National Park, oil extraction and illegal logging should be punished and called on the government to stop oil extraction and logging from these areas. He stated that effective controls should be put into place to prevent the deforestation of these communities.⁷³

One of the last countries he visited was Kenya and he reported on how 20,000 Ogiek of the Mau Forest have been dispersed when this was gazetted as a Na-

tional Forest in 1974.⁷⁴ This forest is their traditional territory and they have been evicted without their information or consent. Furthermore, they are not even allowed to hunt nor collect honey and other non-timber forest products. The government has allowed some areas of this forest to be used for logging and plantations of alien species of trees.

A similar situation happened with 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 FACE (Forest Absorbing Carbon Dioxide Emissions) Foundation, secured a license from the Uganda government to plant trees in 25,000 hectares on the 211km-long boundary of Mt. Elgon near the Kenyan border. 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. This is one of its five projects, the others of which are found in Malaysia, the Netherlands, Czech Republic and Ecuador. A series of evictions took place again to protect the areas 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.⁷⁵

Marcus Colchester, an expert on forest and indigenous peoples' issue, summed up some of the problems faced by indigenous peoples whose forests are logged and converted into industrial-scale tree plantations:

- Indigenous peoples' rights to land may be permanently extinguished;
- Habitat loss undermines traditional livelihoods;
- Inadequate compensation is provided for loss of lands and livelihoods;
- If accepted into workforce of plantations, either as workers or smallholders in out-growers schemes, conditions are poor, wages are low and workers' rights are denied;
- Disruption of traditional subsistence, social networks and rituals due to nucleated households;
- Conditions of "debt-slavery" are created;
- When communities are incorporated into estates, small-holder titles are provided to male heads of households marginalizing the indigenous women;
- Employment opportunities for women are fewer and wages are low;

- Promised land titles, marketing facilities and services are slow to appear;
- Adjusting to life on estates difficult; working regimes do not fit customary labour patterns and lifestyles;
- Resulting landlessness may cause migration to shanties or forest frontiers;
- The establishment of estates may transform hydrological cycles, meaning loss of drinking water, bathing and fishing;
- Water supplies are polluted with effluents from plantations and processing works;
- In the tropics, changes in disease ecology lead to rising incidences of malaria, dengue, scrub typhus, leishmaniasis and filariasis.⁷⁶

In several countries, large-scale deforestation and the massive expansion of timber and pulp plantations and other plantations took place under authoritarian regimes. Examples of these are the Marcos dictatorship (1972-1986) in the Philippines, the military rules of Pinochet (1973-1988) in Chile, Suharto (1967-1998) in Indonesia, in Brazil under a series of military presidents (1964-1985) and in South Africa under apartheid (1948-1994). Indigenous peoples suffered egregious human rights violations under these repressive regimes. Many of the documented cases were linked to their resistance against the expropriation and destruction of their territories by logging, plantation and mining operations and related infrastructure development, e.g., dam and road building.

After the military dictatorship was installed in Brazil in 1964, a new forestry code was passed and generous fiscal incentives were provided to promote tree plantations. From a pulp production of 280,000 tonnes in 1950, this rose to four million tonnes in the 1980s. The greatest growth of the forestry sector in Brazil took place within the 20 years of military rule. By 1994 Brazil was supplying half of the world eucalyptus pulp.

It was under the Marcos dictatorship in the Philippines that the Revised Forestry Code (Presidential Decree 705, 1975) was enacted which decreed that lands 18 percent in slope and above are considered state lands reserved for forestry and therefore are inalienable and indisposible. Most indigenous lands fall into this category. Such a law ignored indigenous forest tenure systems which existed since time immemorial. It gave full authority to the government to determine who will get the license to exploit these forests. The biggest number of licenses for timber extraction (timber licence agreements – TLAs) and for industrial tree plantations/industrial forest management agreements (IFMA) were released during the martial law period. In 1969 there were only 58 timber licenses released. By 1977 there were 230 licenses most of which were given to the cronies and family of Marcos.⁷⁷ The use of licenses as a reward for supporters, a source of wealth for friends and family, and a lever to keep politicians under his patronage

was perfected by Marcos. Logging companies routinely paid “royalties” to government officials, made large political contributions, and were able to get prominent politicians to sit on their boards to ensure that their licenses would be renewed.⁷⁸

Similarly, Chile revised its Forestry Policy one year after Pinochet came into power. Decree Law No. 701 of 1974 was passed and this facilitated the massive clear-cutting of native forests to be replaced by plantations of pine (*Pinus radiata*) and eucalyptus (*Eucalyptus grandis*). Subsidies and tax breaks were provided by the government to a few economically powerful families to expand the pine and eucalyptus plantations. Many of these lands are within the territories of the Mapuche who found themselves cut off from their forests and their waters, their traditional sources of sustenance.⁷⁹ Now Chile has the distinction of having the largest pine plantation in the world which is approximately 1.2 million hectares.

In Indonesia, it was under the Suharto regime that pulp plantations and mills mushroomed and were concentrated under the control of a few families. In 1966, Indonesia had 75 percent forest cover which was around 144 million hectares of forests.⁸⁰ It has the third largest tropical rainforest in the world. By 1967 the Foreign Investment Law and the Basic Forestry Law were enacted which spurred the country towards intensive large-scale logging and log exportation and justified state ownership over all forests.

The Forestry Law basically denied customary rights of indigenous peoples over their forests. Pulp production which was 167,000 tonnes in 1983 increased dramatically to 1.4 million tonnes in 1994. In the same period, paper production rose from 377,000 tonnes to 3.05 million tonnes.⁸¹ By the end of the 90s, Indonesia became the biggest plywood producer in the whole world, supplying 75 percent of the global demand. The Forestry Law was changed into the Revised Forestry Law of 1999 but the total control of the state over the forests remained.

It is ironical that the most cited progressive plantation operations are found in Brazil and the Philippines. Yet these plantations have dubious reputations of violating indigenous peoples rights several times over. Aracruz Florestal (now known as Aracruz Cellulose) in Brazil and PICOP in the Philippines, have been established in indigenous peoples territories without their consent. Worse yet, massive violations of indigenous peoples’ human rights continue up to the present.

It was with the support of the military dictatorship that Aracruz Florestal invaded the indigenous lands of the Tupinikim in 1967. Aracruz is now the world’s largest producer of bleached eucalyptus pulp, recording an income of US\$685.9 million in 2005.⁸² Many indigenous peoples were expelled to nearby towns and to the three villages who resisted displacement. Thousands of hectares of native forest were deforested and planted with eucalyptus. These peoples fought back and re-occupied parts of the land. In 1995 they started the process of re-claiming and self-delineating 13,579 hectares of the eucalyptus plantations of Aracruz. The Tupinikim are able to show that they were the original owners of the lands even before the Portuguese colonized Brazil in the 16th century. To further but-

to press their claim, they invoked the 1934 Constitution of Brazil which recognized the rights of indigenous peoples to their traditional lands and which declared that these lands are inalienable and indisposable. During the struggle, they were forced to sign an agreement which reduced significantly the area of the lands they were claiming to 2,571. This was not acceptable to the others, so they persisted with the fight.

The company, together with the government, stopped the self-delineation and land occupation processes. On January 2006 the Tupinikim and Guarani were violently evicted by armed policemen from the lands they occupied. Aracruz bulldozers were used to destroy the villages. On September 12, 2006 FUNAI (National Indigenist Foundation) recommended to the Minister of Justice that 11,009 hectares of Espiritu Santo be declared as indigenous territories of the Tupinikim and Guarani. Aracruz is still contesting this and this situation has created divisions between the workers and indigenous peoples. As a result of the campaigns of the Tupinikim and Guarani peoples, together with their support groups, the certification of Aracruz was blocked. There is now an ongoing international campaign to block the certification of Aracruz in other parts of Brazil.

Oil palm plantations are established in primary forests or areas which have been previously logged or planted with other crops like rubber, coconut or cacao. Data from Malaysian and Indonesian industry show that around 48 percent of plantations in both countries resulted in forest destruction. Based on the same calculations, in Malaysia alone, 87 percent of all deforestation has been caused by oil palm plantations between 1985 to 2000.⁸³ The culprits of the biggest forest fires in Indonesia which happened in 1997/98 were industrial plantation companies as this is the cheapest way of clearing the forest. Subsequent forest fires, of a similar nature, took place in 1999 and in 2002. Seventy percent of the native forests of Bahia in Brazil were lost between 1970-1985 and this was brought about by paper and pulp mills companies such as Suzano Bahia Sul, Aracruz, CAF Santa Barbara Ltd. and Veracel. The government, itself, estimated that only four percent of the original Mata Atlantica (Atlantic Forest which is a national heritage) is left. Thousands of deaths due to floods caused by massive logging have occurred in the Philippines and Thailand.

The Indonesian government reports stated that there were 176 companies found to be involved in these fires. One hundred thirtythree (75.5%) of these were oil palm plantation companies, 28 (16%) were industrial tree plantation companies and 15 (8.5%) were transmigration land clearing companies. Unfortunately, out of this number, only five companies were taken to court and only one was found guilty and was only fined US\$82.⁸⁴ Recently, the government announced that it will sue three oil palm plantation firms and one oil palm entrepreneur for starting fires in their concessions which grew into massive forest fires in Riau province.⁸⁵ It was estimated by the GTZ (German Technical Development Assistance) Fire Monitoring Unit that a total of 10 million hectares were affected, of which 3.33 million were forests. According to the Asian Development Bank,

the cost of these reached US\$9 billion in terms of transboundary economic losses and health costs.⁸⁶ Seventy million people were affected by the haze caused by these fires.

The conversion of forests to oil palm plantations in Malaysia and Indonesia, as several researches show, leads to the disappearance of 80-100 percent of species of mammals, birds and reptiles. This means that oil palm plantations can support only 0-20 percent of the fauna found in primary forests.⁸⁷ There is a significant decrease in wildlife populations in Southeast Asia, South Asia, Central Africa, Brazil, etc. Diverse species of flora disappear as monoculture plantations do not allow for undergrowth. The massive use of agro-chemicals also results into the loss of insects which help propagate seeds and pollen. Indonesia covers only 1.3 percent of the earth but its forests contains 10 percent of all flowering plants, 17 percent of bird species, 12 percent of mammal species and 16 percent of all reptile species. All of these, including those of Malaysia and other tropical countries, are under serious threats because of the destruction of the remaining forests.

Most plantations, including oil palm plantations, require the use of various agro-chemicals, including the most toxic ones, for the monocrop to survive. As many as 25 different pesticides and herbicides are used. Paraquat dichloride, which is a persistent pollutant, is commonly used even if it is banned already in 13 countries because of its high level of toxicity. Another toxic herbicide used is glyphosate, the most famous brand of this is Round-up Ready made by Monsanto. Endosulfan, carbofuran, malathion, carboxin, all of which are classified by WHO as highly to moderately dangerous are also commonly used. Water sampling in oil palm zones shows that chemical concentrations exceed limits allowed for humans and livestock. Usually, the women are the ones bearing the heavier brunt because they are the ones engaged in mixing, handling and spraying. In Malaysia, alone, it was estimated that in 2000 over 30,000 women both local and migrants were employed to spray pesticides and fertilizers. A study done on how women are impacted was made and this shows the health problems experienced by these women. Most of these are classical symptoms of organophosphate and carbamate poisoning.⁸⁸ Effluents from palm oil mills, which have high fat residues and crushed shells, are also dumped in water bodies diminishing the oxygen content of water, therefore killing aquatic creatures.

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." This report quoted a Twa man from the Democratic Republic of Congo who said that "...since we were expelled from our lands, death is following us. We bury people nearly everyday. The village is becoming empty. We are heading towards extinction. Now all the old people have died. Our culture is dying too."⁸⁹ 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 has set in. Traditional food sharing systems also broke down.

Responses and initiatives taken by indigenous peoples, the UN and other intergovernmental bodies, NGOs and the private sector

This section will cover the range of actions done, policies, mechanisms and formations created in response to the issues of logging and plantations. It cannot be comprehensive enough as there is too much to cover so it will mainly focus on a few examples, especially those taken at the global level.

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 by setting up human barricades and blockades to stop the entry of company vehicles or 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. What were mentioned earlier such as road barricades set up by indigenous peoples' in Sarawak, and the land occupation and self-delineation activities being done by the Tupinikim and Guarani are just few examples of the countless other cases since colonization up to the present.

These are struggles not only in defense of their lands but also in defense of their worldviews and philosophies on land and their land tenure systems. These are struggles not only for security of land tenure but also control over the resources found in these lands which they need for their subsistence and self-determined development. Ensuring their control, ownership and management of their lands, territories and resources is ensuring their continued existence as these are the fundamental basis for their cultures, identity, spiritual life, integrity and economic survival. The experts will just cite two examples which can represent experiences commonly faced by indigenous peoples.

In Malaysia, physical resistance in the form of countless blockades against logging and plantation companies accompanied by complaint letters, international appeals, national and international lobby, media campaigns and legal actions against logging companies and the state government or its agents have been done by indigenous peoples for the past 30 years. As of 2006 there are already 120 cases involving NCR (Native Customary Rights) land claims before the Sarawak courts. In 2002, the Penans held a state-wide meeting where they united on the Long Sayan Declaration. This called on the state to halt all logging operations on the ancestral lands of the Penan; compensate the people who have been affected by logging and institutionalize a consultation process which is fair,

open and meaningful in the management of their forests and lands and; recognize their Native Customary Rights and establish Communal Forest for each Penan community. Sahabat Alam Malaysia (Friends of the Earth Malaysia) submitted accounts of the most recent blockade which took place in April 17, 2007.

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 do not make it easy to sustain these actions. The indigenous peoples in Sarawak have repeatedly called for their land rights to be respected and secured. They have long waited for the approval of their applications to the State to legally constitute the lands where their longhouses are based as Communal Forests. The government has so far ignored these requests. The WRM assessed the situation and concluded that the government:

continues to consider all NCL areas as 'idle land' in need of large-scale development to be brought to the indigenous people so as to alleviate poverty. This argument was used to promote logging in the 1970s and is now used to justify the introduction of industrial tree plantations. In fact, the forests of Sarawak have been heavily exploited over the last 20 years, yet most of the people living in the interior are now worse off, indicating that the state government's rural development policies, based on income from forest exploitation, have failed. Those indigenous people who oppose logging argue that their security lies in respect of their land rights and that it is their disenfranchisement by government and corporate interests, irrespective of the legal situation, which has brought about their current dire position.⁹⁰

In the case of Aracruz Cellulose in Espiritu Santo, Brazil, the Tupinikim and Guaraní have been fighting to recover their lands since 1979. In 1981, these peoples obtained rights to 4,491 hectares and in 1997, the FUNAI Working Group No. 783 identified an area of 18,070 hectares to be re-demarcated. This has not happened until now as Aracruz Cellulose pressured the Federal Government to go against its earlier decision and convinced the Ministry of Justice to reduce the area to only 7,061 hectares.⁹¹ The land occupation and self-delineation activities done by the indigenous peoples were met by police violence but the struggles are still continuing and, together with their support groups, they are bringing the case before international bodies like the Organization of American States, the World Bank and IFC (which has been providing loans to the company). This is included as a case presented to the Dutch, US and UK banks which have bankrolled the company and also to the Norwegian Government Pension Fund-Global.

The local and national indigenous peoples' movements became transnationalized into a global movement. This movement which has been engaged with the UN for more than 30 years on standard-setting exercises is getting bigger and more organized. A major focus of the work the indigenous movement did is in the drafting and the adoption of a UN Declaration on the Rights of Indigenous Peoples. The drafting process started in 1985 under the UN Working Group on Indigenous Populations until the draft was adopted by the UN Sub-Commission in 1993. It took 11 years to negotiate the Sub-Commission draft under a body constituted by the Commission on Human Rights called the Working

Group in accordance with Commission on Human Rights Resolution 1995/32. The successor of the CHR, the Human Rights Council, adopted this in June 29, 2006 and it is now in the hands of the General Assembly. Indigenous representatives are working very closely with states to get this adopted by the General Assembly (GA) it ends its 61st Session in 2007. (*Note: The Declaration was finally adopted by the UN GA on September 13, 2007.*)

The UN Declaration contains a cluster of articles from Article 25 to 32 which are on lands, territories and resources and the traditional knowledge around these. 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.

Much of the work on getting the rights of indigenous peoples to their lands, territories and resources recognized has been within the now defunct Commission on Human Rights. This started with the 1971 ECOSOC resolution authorizing the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) to undertake a study on the "Problem of Discrimination Against Indigenous Populations". This is the famous Martinez-Cobo report which came up in several volumes in 1984 and now serves as a major point of reference on indigenous peoples' within the United Nations. So much has happened since then, the latest of which is the adoption of the UN Declaration in 2006 by the Human Rights Council.

The Sub-Commission has designated Special Rapporteurs to make reports on indigenous land and permanent sovereignty over resources, those referred to earlier in this paper. Erica-Irene Daes undertook these task as the Special Rapporteur and her two reports contain very important conclusions and recommendations which will be re-echoed later in this paper. Expert seminar workshops have also been held which tackled directly or indirectly the issues around plantations. These include the OHCHR-sponsored "Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims" in December 23, 1994 and other workshops which are the culminating processes for the reports made by the Rapporteurs. The latest is the Expert Seminar on "Indigenous Peoples' Permanent Sovereignty over Natural Resources and on Their Relationship to Land" which was held in January 2006.

The UN Special Rapporteur, Rodolfo Stavenhagen, who has visited 10 countries since his appointment in 2001, has come up with reports containing his own

analysis of the situation of the lands, territories and resources of indigenous peoples and several references to experiences of indigenous peoples with logging and plantations. He also did 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."⁹² Other UN Special Rapporteurs like the Rapporteur on Adequate Housing has some reports on his country visits which contain recommendations related to displacements of indigenous peoples from their traditional territories due to logging operations.

Within the past 10 years, there has 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 submissions to CERD (Committee on the Elimination of Racial Discrimination) and the Human Rights Committee were given by indigenous peoples and their NGO support groups which were logging and plantation-related cases from Suriname, Guyana, Belize, Nicaragua. The most recent one was to CERD in June 2006 sent by the various indigenous organizations⁹³ in the Democratic Republic of Congo (DRC) and their support organizations. This is a formal request to initiate an urgent action procedure to avoid immediate and irreparable harm.

The report cited the violations of the rights to lands, territories and resources of indigenous peoples in the DRC, in particular, due to the operations of logging and plantation companies. It requested that the CERD adopts a decision pursuant to its Early Warning and Urgent Action Procedure on the situation of indigenous peoples in DRC to reverse the acts and omissions of DRC which has caused massive and persistent patterns of racial discrimination. This submission also requests that the Chairperson of the UN Permanent Forum on Indigenous Issues communicates with the World Bank and other United Nations agencies to ensure that indigenous peoples' rights are fully accounted for and respected in the design and implementation of technical and project assistance in the natural resource management sector in DRC.⁹⁴

Indigenous peoples did not limit their engagement with the UN Human Rights System. They also engaged with the development wing of the UN- 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 on "Strengthening the role of indigenous and local communities in sustainable development." Some indigenous persons were commissioned by the UNCED Secretariat to prepare expert preparatory papers. Tauli-Corpuz, for example, was commissioned to prepare an expert paper on "Asian Indigenous Peoples' Perspectives on Environment and Development." This document identified deforestation and plantations as the main causes of loss of lands, environmental degradation and social conflicts in the region. It also contained recommendations on how to address these issues.⁹⁵ Indigenous peoples sustained their participation in the Commis-

sion on Sustainable Development, the monitoring body for the implementation of Agenda. At the World Summit on Sustainable Development (Rio+10), a big delegation of indigenous peoples participated in the Kimberley International Summit of Indigenous Peoples to prepare for the WSSD. This delegation ensured that the “vital role of indigenous peoples in sustainable development” was reaffirmed by the Johannesburg Declaration of the WSSD.

The formation of the International Alliance of Indigenous and Tribal Peoples of Tropical Forests coincided with the UNCED. It was born in 1992. This is the indigenous formation which has been engaged with the post-UNCED mechanisms dealing with forests which started with the Intergovernmental Panel on Forests (IPF), then the Intergovernmental Forum on Forests, and now, the UN Forum on Forests. The Alliance coorganized with the IPF the “International Meeting of Indigenous and Other Forest-dependent Peoples on the Management, Conservation and Sustainable Development of all Types of Forests.” Some of the results of this meeting which includes the Letitia Declaration were discussed earlier. Several NGOs need to be cited for having blazed the work on logging and plantations and for sustaining their engagement with the various processes dealing with these issues. These are the World Rainforest Movement, the Forest Peoples’ Programme, Friends of the Earth, FERN and the Global Coalition on Forests. The review of literature done by the experts has shown the wide extent of research, mobilizing and advocacy work done by these NGOs, mostly in close partnership with indigenous peoples.

Indigenous peoples are engaged with the UNFF (UN Forum on Forests). Because of this and since this 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,” this working paper will dwell in some length on this. The functions of this body are as follows:

- To facilitate implementation of forest-related agreements and foster a common understanding on sustainable forest management;
- To provide for continued policy development and dialogue among governments, international organisations, including Major Groups, as identified in Agenda 21 as well as to address forest issues and emerging areas of concern in a holistic, comprehensive and integrated manner;
- To enhance co-operation as well as policy and programme co-ordination on forest-related issues;
- To foster international co-operation;
- To monitor, assess and report on progress of the above functions and objectives;
- To strengthen political commitment to the management, conservation and sustainable development of all types of forests.

It has a Multistakeholder Dialogue (MSD) process which includes participa-

tion of indigenous peoples. At its fourth session in 2004, the themes it discussed included Traditional Forest Related Knowledge, Social and Cultural Aspects of Forests, Monitoring and Reporting, Criteria and Indicators. Indigenous representatives came out of this meeting extremely disappointed. They felt that they were not able to participate substantially and the final document did not even mention their key issues which are rights, land tenure, customary law and community-based forest management, free prior and informed consent on the use of their traditional knowledge on forests, and monitoring and reporting of the state of the forests.⁹⁶

Civil society organizations, which included indigenous peoples, made an assessment of the UNFF process. They came up with the following observations:

- Restrictive participation for major groups in the UNFF sessions that fall behind the best practice of other UN fora;
- Repeated dismissal of major group proposals on ways to improve usefulness, transparency and accountability of the International Arrangement on Forests (IAF);
- Defective multi-stakeholder dialogue organization that has created a “ghetto” of civil society participation cut-off from the deliberations of governments;
- Aversion to open discussion of human rights, including indigenous peoples’ rights;
- Continuing lack of transparency in Collaborative Partnership on Forests (CPF) meetings and CPF policies and activities;
- Forest-related policies and projects of some key CPF members failed to promote implementation of international commitments on forests and forest peoples, and even worse, have undermined application of agreed principles and standards (e.g., World Bank and Global Environment Facility);
- Weak linkages between the international forest policy making and national policies and practices.⁹⁷

They recommended that any future intergovernmental process which will be developed by governments to deal with forest issues at the global level, should endeavour to do the following:

- Fully address social and rights issues, including international human rights;
- Recognize and respect the customary rights of indigenous peoples and other forest dependent communities;
- Give focused attention to the underlying causes of deforestation and forest degradation, including the need to change financial flows and reduce unsustainable consumption patterns;

- Promote and support genuine community-based forest management that empowers local people;
- Uphold, reinforce and be consistent with intergovernmental commitments made under existing and developing forest-related agreements, such as the Convention on Biological Diversity.

The work on standards for the protection of indigenous peoples rights, in general, and their rights to their lands, territories and resources, in particular, went beyond the UN Commission on Human Rights. The International Labour Organisation (ILO) has done very important work on this. The 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. Article 15 calls on states to safeguard indigenous peoples' rights to the natural resources which includes the right to use, manage and conserve these resources. Article 13.1 states that "In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationships with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular, the collective aspects of this relationship." ILO Convention 169 has now been ratified by 19 countries, the latest of which were Spain and Nepal. Out of this number are 11 Latin American countries. In this region, the Convention has been used as an instrument by indigenous peoples to bring about changes to their national constitutions - from being integrationist to acknowledging that the nations are multi-cultural and pluri-ethnic. Several indigenous peoples' organizations, especially in South and Central America, have invoked the Convention to further strengthen their claims on their forests.

Other regional bodies which are dealing with indigenous peoples' rights to lands, territories and resources are the Organization of American States, the African Commission on Peoples' and Human Rights, as well as other multilateral bodies like the European Union and multilateral financial institutions like the World Bank, the Inter-American Development Bank and Asian Development Bank. These bodies commissioned studies on indigenous peoples and some adopted policies on indigenous peoples.

The Inter-American Court of Human Rights (IACHR) of the Organization of American States has received several cases which covered the issues discussed here. One of its landmark cases was the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* where the Mayagna accused the Government of violating their property rights by giving a 65,000-hectare concession to a South Korean timber company to log in their traditional territory. The IACHR ruled against the Nicaraguan government and compelled it to recognize and guarantee indigenous peoples' property rights derived from indigenous forms of tenure and defined by indigenous law and custom.⁹⁸

According to James Anaya, the lead lawyer in this case and a renowned scholar on indigenous peoples' rights:

The Inter-American Court of Human Rights accepted the commission's conclusion that Nicaragua had violated the property rights of the indigenous Mayangna community of Awas Tingni by granting to a foreign company a concession to log within the community's traditional lands and by failing to otherwise provide adequate recognition and protection of the community's traditional land tenure. The Court held that the concept of property articulated in the American Convention on Human Rights includes the communal property of indigenous peoples, even if that property is not held under a deed of title or is not otherwise specifically recognized by the State.⁹⁹

The FAO, under its Land Tenure Service, commissioned a study on "A Survey of Indigenous Land Tenure" which was undertaken by the Forest Peoples' Programme in 2001. This is a very rich report which contains a legal assessment of the recognition of indigenous land rights and case studies on how indigenous peoples' internationally recognized rights to their lands, territories and resources and their customary land tenure regimes are recognized in Latin America, Sub-Saharan Africa and Asia. Obstacles to securing indigenous land tenure and livelihood security - found in the legal, institutional, technical, policy, economic, political and cultural spheres - were highlighted.

It identified that some cases of participatory and collaborative demarcation, titling and joint management initiatives can be considered as best practice but need to be mainstreamed in national legal frameworks and replicated at the country level.¹⁰⁰ Finally, it came up with a long list of recommendations on strategies to improve indigenous land tenure and livelihood security. One recommendation is that the FAO should encourage more in-depth national level participatory studies of customary land tenure regimes and their linkages to livelihood security. Result of such studies can be used to inform further the future work on land, natural resources and poverty reduction policies. Several of the recommendations are captured at the end of this working paper as these reflect many of the recommendations from indigenous peoples' processes and by some intergovernmental bodies and NGOs.

The World Bank revised their Operational Directive (OD) 4.20 to the new Operational Policy (OP) 4.10 on Indigenous Peoples and it initiated and provided resources for the establishment of two bodies, the World Commission on Dams (WCD) and the Extractive Industries Review (EIR). Indigenous peoples actively took part in the revision process but ended up disappointed as the Bank diminished the principle of free, prior and informed consent to free, prior and informed consultation. Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education) actively took part in the two bodies which strongly recommended that no developments should take place on indigenous peoples' lands without their free, prior and informed consent. These recommendations have not been taken on board by the Bank as shown by the final version of OP 4.10. Indigenous peoples participated in good faith with the hope that their views will be integrated in the final results. There may be some opportunities to use the policy to ensure that borrowers will go through a broad consultation process

with indigenous peoples before the Bank will approve their loans. Since most plantation companies rely on Bank money, this policy might still prove to be useful for indigenous peoples.

In October 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. The old Policy was clear in its statement that the WB cannot fund projects which will destroy primary moist forests. This was removed from OP 4.60. The World Wildlife Fund for Nature-World Bank Alliance influenced this change. This partnership aims to secure 200 million hectares for so-called responsible logging ("independently certified sustainable forest management"). The forest strategy which is abetted by this policy is to promote markets for environmental services, create more and better opportunities for private sector investments in forests and to improve livelihoods for the rural poor. The other points in the criticism of indigenous peoples and civil society on the new policy is that it does not apply to the other members of the WB Group, e.g., International Finance Corporation and the MIGA (Multilateral Investment Guarantee Agency) nor to structural and programmatic lending; allows Bank funding for forest clearance to establish plantations; does not offer any additional protection to forest-dependent peoples affected by non-forestry lending.¹⁰¹

Because of the criticisms, the Bank promised to take some steps such as a review of the policy application after three years, establishment of an "External Advisory Group" which will be independent and transparent, among others. After three years, these promises were not kept. The External Advisory Group does not include representatives of indigenous peoples, is very untransparent and is still controlled by the Bank; no forest sourcebook has been produced; community forest management projects in India, intended to alleviate poverty, totally ignored safeguard policies and trampled on indigenous peoples' rights; expansion of logging in the Congo Basin took place without securing indigenous peoples' rights to the forests; projects to promote carbon markets destroyed forests and ruined indigenous livelihoods; and even the WWF-WB Alliance cannot identify a single best practice out of the projects funded.¹⁰²

Together with some environmental organizations, indigenous organizations also took part in processes which were initiated by the private sector. These included the certification processes of the Forest Stewardship Council (FSC) and the Roundtable on Sustainable Palm Oil (RSPO). Sawit Watch, which has several indigenous organizations as members, is a member of the RSPO. The Forest Stewardship Council's Principles and Criteria, which set out standards for logging and plantations, declares that companies must recognize indigenous peoples' rights to their lands, to prior and informed consent and to sacred sites if they are to qualify for "eco-labelling."

The RSPO was set up by businesses involved in the production, processing and retailing of palm oil in collaboration with environmental organizations like the World Wildlife Fund (WWF). This is composed of 87 members (plantation

companies, traders, processors, retailers and investors and NGOs). Aside from WWF and Sawit Watch, other member-NGOs include Oxfam-Great Britain. RSPO was incorporated in 2004 as an NGO under Swiss Civil Law. With great hesitation, some indigenous individuals, not only from Indonesia and Malaysia, took part and contributed to the evolution of the RSPO Principles and Criteria (adopted in Nov. 2005) which include the following:

- compliance with the law including ratified international laws and respect for customary law;
- demonstrable right to use the land and absence of legitimate land conflicts;
- no diminishment or loss of customary rights without free, prior and informed consent (FPIC);
- documented and acceptable systems for resolving disputes and achieving negotiated agreements based on FPIC;
- fair compensation of indigenous peoples and local communities for land acquisitions and extinguishment of right, subject to FPIC and negotiated agreements.¹⁰³

A study was conducted by Sawit Watch and Forest Peoples' Programme with the help of HuMA (Indonesian Human Rights Organization) and land tenure specialists of the World Agroforestry Centre (ICRAF) between 2005 to 2006 to document the legal protections of customary institutions and customary rights and to ascertain if the RSPO standard can be implemented in Indonesia. This study concluded that very few oil palm estates in Indonesia are likely to comply with the RSPO standard and that the rights of indigenous peoples still continue to be violated in the development of oil palm estates. It attests this to the following:

- Contradictory laws, which fail to secure indigenous rights while encouraging land expropriation for commercial projects in the "national interest;"
- An absence of regulations, as a result of which, procedures for the recognition of the collective land rights of customary law communities are unclear;
- Weak institutional capacity, both in the national land agencies and in the district bureaucracies, which makes recognition of customary rights difficult;
- National and regional policies and spatial planning processes which favor the conversion of ulayat lands and forests into oil palm plantations to increase national and district revenues.¹⁰⁴

This study identified the challenges which has to be addressed by the Indonesian government. Among these are:

- Balancing the controlling right of the state with greater respect for community rights, so that community rights are secured in national development projects;
- Removing the impediments to the recognition of customary rights in the basic agrarian law, the forestry act and the plantation act;
- Reassessing the legal status of forests areas and conversions zones to determine which are actually lands of the communities;
- Developing a dedicated law for the protection of indigenous peoples to secure constitutional rights not yet secured by other laws;
- Adopting procedures requiring the free, prior and informed consent of customary law communities as a condition for permitting oil palm plantations on their lands.

Because of the difficulties faced by smallholders in the oil palm business, the NGOs urged the RSPO members' assembly to establish a Task Force on Smallholders to ensure their effective participation in the RSPO processes. This was formed and several workshops were held with their participation to look into their particular problems and review the RSPO if it suits the needs of this sector. These workshops came up with concrete suggestions on what the smallholders should do and how the RSPO can help address their issues. They have declared that they will struggle to get back the lands acquired by companies without respect for the customary rights of indigenous peoples; called on government to favor local communities in resolving problems affecting people; and avoid using intimidation. They also rejected the expansion of oil palm plantations along the Indonesia-Malaysia border.

Another interesting initiative, which was spearheaded 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 to analyze the implementation of the forestry, investment and plantation policies of these banks as these are implemented 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, they launched a joint campaign in 2001 which targeted five Dutch banks - ABN Amro Bank, FMO, Fortis Bank, ING Bank and Rabobank. 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) which will guide them in providing financing to companies involved with the industry. They played key roles in establishing the RSPO. Other banks like Citigroup in the US in 2004 and by HSBC in the UK followed suit and established their policies the same year. By 2005, JP Morgan Chase adopted its Environmen-

tal Policy and Goldman Sachs also adopted a policy which included forests, climate, indigenous peoples and ecosystem services.

The policy statements of the five Dutch banks and the four banks from the US and the UK established that, at the minimum, their clients should adhere to the following:

- Respect Indonesia's laws and relevant international conventions;
- Are not involved in clearing of High Conservation Value Forests (HCVF);
- Respect the rights and wishes of indigenous peoples and local communities;
- Are not involved in burning of forestlands.

Four years after the adoption of the investment policies, Milieudefensie commissioned the research which looked into the policies of the nine banks mentioned earlier. The findings of this research are worthwhile studying as it has important recommendations which the UN Permanent Forum can pursue in its engagement with the multilateral financial institutions and the private banks who have signed on to the Equator principles and who have such policies. This report contains several examples of conflicts of companies with indigenous peoples and the way the banks still sustained their support to such companies. The conclusions of the report in relation to best practices in implementing the criteria mentioned above are as follows:

Legal compliance: ABN Amro Bank, FMO and Bank of America include compliance to international standards adopted by the national state and reference to sub-national, local and state government policies;

High Conservation Value Forests: ABN Amro Bank, FMO and the Bank of America maintain a 5-year limit after the clearing of HCVF before considering to invest in the establishment of an oil palm plantation. NGOs prefer that the cut-date should be 1994, when the criteria for the Forest Stewardship Council, which includes conversion, were set;

Social Conflicts: JP Morgan Chase was the only bank which has an extensive elaboration on indigenous peoples. Its policy says that it will only finance projects in indigenous areas where free, prior informed consultation results in broad support of the project by affected indigenous peoples. It requires that the borrower will provide indigenous peoples the opportunity to engage in informed participation and collective decision making. None of the policies, however, asked for free, prior and informed consent from all stakeholders potentially affected by the project;

No burning: ABN Amro Bank, FMO, Fortis Bank, Rabobank and Bank of America all refer to the practices of the client and not just to existence of zero-burning policy as this is not always implemented.¹⁰⁵

The final part of the report contained recommendations for the banks and also for the Dutch government. For the banks, it recommends that the content of

the policies be more specific and should use the best practices available from industry and the RSPO Principles and Criteria. It also recommended that the banks should clearly establish that the geographical scope of application will be worldwide and the sectoral scope will include forestry and timber processing; pulp and paper; timber plantations; agricultural plantations; large-scale livestock grazing; oil and gas and mining; real estate and physical infrastructure (pipelines, roads, railways, etc.) It has recommendations on how to better implement the policy which includes identifying a bank director to be in charge of implementing this policy; public disclosure of information; setting up of a complaints mechanism for stakeholders; participation in RSPO, among others.

The report recognized that the development of the policies and their implementation have been solely done by the private sector. It recommends that it is also important to involve the government as it has a key role to play in facilitating processes and it can also use these to operationalize its own laws. An example is the Act on the Supervision of the Credit System 1992 which says that financial institutions must refrain from activities which are “socially unacceptable.” At the European level, it called for the promotion of legislation to ensure responsible investments by all European banks.

Another development is the action being considered by other sources of investments for plantation companies, in particular the Pension Funds. One example is the Norwegian Government Pension Fund-Global (previously the Government Petroleum Fund) which established its Council of Ethics on 19 November 2004. The Fund’s Ethical Guidelines were adopted which set the criteria whether companies should be excluded from the Pension Fund because of acts or omissions conflicting with the Guidelines. In 2006, the Council focused on human rights and environmental issues. One of the companies which it identified for assessment was Aracruz Cellulose S.A. from Brazil. On the basis of requests from five Brazilian organizations to exclude Aracruz from the investment universe of the Government Pension Fund-Global, it sent a letter to the Ministry of Finance in March 22, 2006 referring to this case. The Council stated as an important question, indigenous peoples’ rights to land. Its move, so far, is to consider whether there is a need for a more thorough assessment of the case.¹⁰⁶

The various multilateral environment agreements agreed in Rio which include the Convention on Biological Diversity (CBD), the Climate Change Convention and the Convention on Desertification are bodies indigenous peoples engage with in varying degrees. The Article 8j and Related Provisions Working Group of the CBD has been the focus of attention of indigenous peoples as this deals with the various articles of the Convention which are highly relevant for them. These are the issues of traditional knowledge, innovations and practices on biodiversity conservation, protection and use (Article 8j) and customary sustainable use of genetic resources (Article 10 c). They are also active in the Working Group on Protected Areas. The issue of biodiversity and customary use inevitably relates with forests and monocrop plantations. Various activities are done by indigenous peoples and their NGO allies to implement some of the items of the

Strategic Plan and 2010 targets. Goal 9 of the 2010 Target is to *maintain socio-cultural diversity of indigenous and local communities*, and it has two targets:

- Target 9.1 to “Protect traditional knowledge, innovations and practices;”
- Target 9.2 to “Protect the rights of indigenous and local communities over their traditional knowledge, innovations and practices, including their rights to benefitsharing.”

They formed the IIFB (Indigenous Peoples’ International Forum on Biodiversity) Working Group on Indicators to respond to the immediate need to identify and test indicators relevant to realize the goal. Tebtebba, which is the convenor of this Working Group, organized a series of regional seminars (Asia, Africa and Latin America) and an International Expert Seminar, which was held in February 2007, to consider in an holistic and integrated way, the development of a limited number of meaningful indicators in the identified thematic areas of traditional knowledge, innovations and practices; customary sustainable use (Article 10c); maintain goods and services from biodiversity to support human well-being (Biodiversity and the achievement of the Millennium Development Goals); and effective participation of Indigenous and Local Communities in the CBD processes at national, regional and international levels.¹⁰⁷ The results of these will be presented at the Conference of Parties (COP) 8 of the CBD in 2008. The regional activities are carried out jointly with the indicators on well-being and poverty project of the Permanent Forum. The Forest Peoples’ Programme implemented a project on Article 10 c which did case studies on customary sustainable use in Cameroon, Venezuela, Guyana, Suriname and Thailand. The studies provide very important insights and recommendations some of which will be reflected by this working paper.

As far as the processes within the Climate Change Convention is concerned, as has been mentioned earlier, indigenous peoples have not succeeded in getting their proposals into the final documents which is a big source of frustration. One of the consistent recommendations put before the Conference of Parties is for the UNFCCC to establish a working group which will deal with issues concerning indigenous peoples. This is a body similar to the Working Group on Article 8j and Related Provisions of the Convention on Biological Diversity. Another proposal is the setting up of a voluntary fund which will allow for more participation from indigenous peoples and local communities. Again, the example of the CBD, which managed to set up such a voluntary fund, was cited. Unfortunately, these proposals were never taken up by the Convention.

There have been case studies done by NGOs on existing projects which are now being pushed by the project holders to become accepted as CDM projects. The projects in Uganda and Costa Rica of FACE, a Dutch NGO, are just some of these cases which were researched. Several of the cases have shown direct impacts on indigenous peoples, such as the Ndorobo or Benet peoples in Mt. Elgon in Uganda. These kinds of situations will have to be raised at the UNFCCC

through mechanisms which will allow more active engagement of indigenous peoples.

Conclusion

The issue of forests, logging and monocrop plantations represents the fundamental contradiction between indigenous peoples' notions and perspectives on development and the dominant development paradigm. Indigenous peoples have stated in many declarations and debates that self-determined development for them means, first and foremost, security of tenure to their traditional lands, territories and resources and the ability to continue their sustainable resource management systems and traditional livelihoods. They assert that respect and protection of their rights to their lands, territories and resources are the very basis of their continuing survival as distinct peoples and cultures. These define their collective identity and the state of these lands and territories determine their collective and individual, physical and spiritual well-being. These are inextricably linked with their past, present and future as peoples and their relationships with other living things, as well as to their ancestors and gods and goddesses. Over thousands of years, they have developed sophisticated customary laws and practices on the use, ownership and management of these lands and resources which are integral to their social, economic and political organizations.

This is in contrast with the dominant mindset which regards lands and resources merely as means of production and as commodities for the market. The focus of efforts, therefore, are on how to establish laws to facilitate access and control over these so that economic growth and profits can be gained. International and national forestry and monocrop plantation policies emerged from this mindset. The road towards indigenous peoples' development and the solution to indigenous poverty is to extract forest and other resources from their lands and bring these to the market through trade.

While plantations may have contributed to the economic growth for most countries, this, however, has not trickled down to indigenous peoples. The claims that these will reduce poverty among indigenous peoples and provide jobs remain contested both in the developing countries as well as in other developed countries. There are more evidences to show that indigenous peoples became more impoverished because their access to their sources of subsistence are restricted in various ways. The adverse social and environmental impacts of logging and monocrop plantations on indigenous peoples reinforce the compelling arguments on why there has to be a significant shift on how development is done on indigenous peoples' territories. The legal recognition of their rights to their lands, territories and resources and the need to obtain their free, prior and informed consent before any development is brought to their communities are the first steps in addressing the problems with logging and plantations. The history of the indigenous peoples' movement started with protests against logging and

other extractive activities which were undertaken by colonial and post-colonial governments and by the private sector, with utter disregard to indigenous peoples basic human rights and fundamental freedoms.

There are positive developments and gains in terms of getting indigenous peoples' rights recognized in national constitutions and laws in several countries. Laws and policies on indigenous land tenure now exist in some 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 came up with laws which recognized customary land rights and called for the demarcation of indigenous peoples' lands. Some of these countries ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.

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 of 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 6th 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 peoples' rights to their forests and there are ongoing litigation over conflicts between indigenous peoples and the government.

The gains of the indigenous peoples' movements at the local and national levels have been translated into gains at the global level in terms of norm-setting for the protection of indigenous peoples' rights and the establishment of more spaces for indigenous peoples. These gains are represented by the UN Declaration on the Rights of Indigenous Peoples which has been adopted by the UN Human Rights Council in June 2006 and is still awaiting adoption by the General Assembly; the establishment of the Permanent Forum; and the declaration of the Second Decade of the World's Indigenous People. These global gains, in turn, are used to strengthen local work. Various policies reinforcing these norms have been developed by multilateral financial institutions, bilateral donors, NGOs, UN programmes and agencies and the private sector. Aside from policies, there are also additional spaces - like the Article 8j Working Group of the CBD - and resources, like voluntary funds, to increase access of indigenous peoples to various global spaces.

Indigenous peoples, whether at local, national, regional or global levels, have come up with strong declarations and statements on the issue of logging, monocrop plantations; and indigenous rights to lands, territories and resources. Their demands focus on the following:

- Revise national laws, policies and practices to recognize, respect and

protect their prior and inalienable rights over their lands, territories and resources, including rights to their forest lands and resources;

- Revise national conservation, land use, forestry and environmental policies to recognize and protect indigenous peoples' rights over the use, management and conservation of forests and resources according to custom and traditional laws and practices;
- Discriminatory doctrines, policies and laws which justify the expropriation or taking of indigenous lands and resources should be purged, revised or removed to be consistent with the obligations of states to international human rights law;
- Ensure access to adequate resources and efficient and appropriate procedures for demarcation and titling of indigenous lands and territories which will allow for customary land use and resource management;
- Respect for the right of free, prior and informed consent in decisions or development plans done affecting indigenous lands and resources;
- Stop projects which violate human rights of indigenous peoples, specifically those undertaken without FPIC and those which are causing environmental pollution;
- Protect against forcible evictions or involuntary resettlement due to forest and plantation projects;
- Stop the violation of indigenous women's rights and loss of their status and control over lands and resources, the use of forced labor and child labor in plantations and forestry projects;
- Restitution of forest lands which have been expropriated from indigenous peoples and rehabilitation of degraded forests;
- Support for indigenous peoples' self-determined development based on their own priorities, values and traditional resources;
- Increase effective participation of indigenous peoples in intergovernmental bodies like the Climate Change Convention, the UN Forum on Forests, among others;
- Government and inter-governmental personnel working in bodies mandated to work on logging, forestry and natural resource management as well as those working in ministries or departments handling indigenous peoples' issues should be made more aware of indigenous peoples' rights and perspectives on development and should be trained to work in participatory ways with indigenous peoples;
- Imposed logging and mining concessions, licenses for plantations and inappropriate land classification and zonation should be revoked;
- Recommendations which emerged from studies done by intergovern-

mental organizations should be implemented and resources be made available for this.

There is still a long way to go before these demands are met and long lasting solutions are achieved. The dominant neoliberal approach to development undermines whatever gains there are and the expansion of monocrop plantations for biofuels and carbon sinks are creating another set of problems for indigenous peoples. The eviction of indigenous peoples from their traditional forests to make way for the establishment of carbon sinks is just one of these problems. The neoliberal reforms in the 1980s which were adopted by most governments include market-based land policies, national economic development based on export-based agriculture and forestry, withdrawal of regulatory role of the state and massive natural resource exploitation. This agenda has been pushed with the help of multilateral financial institutions, bilateral donor agencies, the private sector and even by some UN bodies, programmes and funds. One aspect is the liberalization of investment laws (e.g., mining law, forestry laws, etc.) which contradict indigenous peoples' rights laws and policies. Another is the provision of agricultural and forest subsidies by the OECD countries to their big farmers and forest corporations which allow for dumping of cheap agriculture and forest products in the market, giving a huge disadvantage to products of developing countries and indigenous peoples. Market-oriented land policies are implemented with adequate resources and the full support of the law even if these are proven to cause more poverty for indigenous peoples and the rural poor.

In the 1990s, in Latin America four countries repealed aspects of their laws which did not allow for sale of indigenous peoples' lands: Nicaragua (1990), Mexico (1992) which spurred the Zapatista uprising, El Salvador (1992) and Peru (1993).¹⁰⁸ The extractive industries sector lobbied hard in Russia against legal measures to secure indigenous land tenure and in the Philippines, the mining lobby challenged in court the constitutionality of the Indigenous Peoples' Rights Act. Land demarcation or delineation, even if recognized in the law, could hardly take off as governments do not allocate budgets for this and constituted government bodies to implement land demarcation and titling are under resourced and are also undermined and discriminated by other more powerful agencies like Ministries of Forestry, Mining, Plantations, Agriculture, etc.

Several studies done such as that made by the Inter-American Development Bank show that the policy of land privatization has led to measures which favor granting of individual property titles, causing faster alienation of lands. Even some steps taken to achieve MDG Goal 1, the halving of poverty by 2015, is done through logging and conversion of forest lands into monocrop 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 not much evidence to prove that poverty is being reduced.

There are a lot of inconsistencies or contradictions in existing policies on land tenure and access and management of natural resources in many countries. Most of the time, the laws and policies which promote and reinforce the prevailing neo-liberal economic development model trump those which deal with indigenous peoples' rights to their lands, territories and resources. The same situation happens at the international level. Multilateral financial and development institutions, bilateral donors and most UN bodies and other intergovernmental bodies like the EU promote national economic development which is based on export-led agriculture and forestry, withdrawal of the state (deregulation and privatization) and expanding natural resource exploitation. In other words policies which favor the market and the private sector. There is much more political will, financial and technical support for macro-economic and structural reforms which intensify pressures on indigenous lands and resources and which decrease the capacities of governments to regulate corporate behavior.

So what we see, on one hand, are increasing resources and technical assistance programs provided to countries to increase their capacities to liberalize investment laws to allow for easier alienation of indigenous lands and to implement their obligations to regional and global trade agreements (e.g., WTO Agreements) and also their loan agreements. More money is provided to expand physical infrastructures (roads, pipelines, electrical grids, etc.) and transnational networking to facilitate resource extraction and to establish transnational energy networks, so-called economic corridors and regional and bilateral trade agreements. 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.

On the other hand, 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 titling and ethnodevelopment projects are underfunded. There are social scientists working in government and multilateral bodies who are strong supporters of ethnodevelopment, protection of indigenous customary land tenure systems and land demarcation. However, economists, foresters, agriculturists who promote forestry programs, extractive industries and agriculture programs in line with the neo-liberal model are those who have more resources and support.

While there may be some funding to implement Multilateral Environmental Agreements, these are more geared towards making countries adopt the market-based approach such as carbon emissions trading, certification schemes, etc. Scientists and economists are brought in by the private sector to become advisers of government negotiators, at times even becoming the negotiators themselves, providing the justification for forestry and carbon sequestration projects, among others.

There are excellent studies and expert workshop seminars organized by intergovernmental and expert bodies, indigenous peoples' organizations and NGOs which analyzed the problematique of logging and plantations, indigenous land tenure and resource management systems and traditional livelihoods. Some of these include those used as references for this paper - Forest Peoples' Programme, the World Rainforest Movement, the FPP survey done for the Land Tenure Service of the FAO on indigenous land tenure, the Daes reports on indigenous lands and permanent sovereignty over natural resources, studies done by the Intergovernmental Panel on Forests on the underlying causes of deforestation and forest degradation, studies on swidden and shifting cultivation, hunting and gathering and pastoralist economies, among others. Critiques of monocrop plantations - ranging from critiques of the economic, environmental and scientific justifications used to legitimize these, the laws and policies which back them, up to studies of adverse impacts - have been undertaken.

The World Bank has moved away from mitigation and "do no harm" approaches to "do good." It undertook its own studies on the success of ethnodevelopment projects which it supported. They funded an initial study which looked into 28 successful cases of "indigenous development" in Latin America. On the basis of the findings of this study, the Bank identified preconditions which would make indigenous development successful:¹⁰⁹

- Respect for human rights;
- Food security;
- Secure land and resource rights;
- Participation of indigenous peoples in project design, planning and monitoring;
- Intercultural education and social capital building;
- Strengthening of indigenous organizations;
- Diversification of production (away from monocropping);
- Appropriate financial assistance;
- Technical assistance and training;
- State support for indigenous self-development.

Unfortunately, many of the intergovernmental studies just remain as studies. In most cases, there are no plans, resources and capacity building efforts to implement recommendations of such studies and workshops. The follow-up to these are done in a token manner. There are a lot of possibilities for the studies done by intergovernmental bodies and civil society organizations to be used to influence policy at the national and global level. In fact, several of these have fed into the shadow reports or urgent alert submissions of indigenous organizations and NGOs to the Human Rights Treaty Bodies. There are now more initiatives from indigenous peoples, with support of NGOs, to submit cases related to log-

ging and plantation operations before the Human Rights Bodies and regional intergovernmental bodies like the Inter-American Court of Human Rights. Likewise, these are used during negotiations which take place in intergovernmental processes and in legal cases filed to claim for the entitlements of indigenous peoples. Changes in some national and international policies have also been informed by these studies. Because of these actions taken by indigenous peoples with 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. Other international mechanisms which are being utilized by indigenous peoples to make their claims are the Organization of American States, the African Commission for Peoples' and Human Rights and the World Bank's Inspection Panel.

Furthermore, indigenous peoples are seeking redress from 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. In a few cases, there have been positive judgements like the *Awas Tingi* case in Nicaragua and a judgement of the High Court in Kuching, Sarawak. In this case, the judge ruled in favor of the Ibans who have sought the removal of the Borneo Paper and Pulp company from their lands. With these positive judgements, the body of jurisprudence which requires governments to take action to demarcate indigenous peoples' lands and to protect their collective rights to their lands and territories is strengthened.

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 while others have been heavily criticized. However, these few models of good practice are not replicated, upscaled or effectively used for policy reforms.

In the UN, bodies and intergovernmental mechanisms were set up to pursue the implementation of agreements on sustainable development such as Agenda 21. These include the Commission on Sustainable Development and the UN Forum on Forests, Article 8j Working Group of the CBD, among others.

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 the 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. There are still other mechanisms which have not yet been explored by this paper, such as the OECD (Organization for Economic Co-operation and Development) Guidelines for Multinational Enterprises and its National Contact Point process.

Recommendations

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 monocrop plantations.

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 land¹¹⁰ and permanent sovereignty over resources are all relevant. We will not repeat all these, but we highly recommend that these be considered by the States and intergovernmental bodies and the Permanent Forum. Paragraph 157 of the report on lands which is addressed to the Permanent Forum should, however, be discussed further by the Forum. This states:

The recently established Permanent Forum for Indigenous Peoples should consider playing a constructive role regarding problems pertaining to land and resource rights and environmental protection. In particular consideration should be given to the following:

- the creation of a fact-finding body, or appointment of a special rapporteur on indigenous issues, with a mandate *inter-alia* to make site visits and to prepare reports concerning particular indigenous land and resource issues; the special rapporteur could also provide response, mediation and reconciliation services;
- the creation of a complaint mechanism or procedure, under and within the responsibility of the special rapporteur, for human rights violations that pertain to indigenous land and resource situations;
- the special rapporteur should be provided with “peace-seeking” powers to investigate, recommend solutions, conciliate, mediate and otherwise assist in preventing or ending violence in situations regarding indigenous land rights;
- the creation of a procedure whereby countries would be called upon to make periodic reports with regard to their progress in protecting the land and resource rights of indigenous peoples.

The Daes study on permanent sovereignty over natural resources called on the Permanent Forum to give regular attention to the steps taken by the UN bodies, programmes, fund and agencies to protect the permanent sovereignty of indigenous peoples over their natural resources as a right.

The Forum is mandated to coordinate and integrate activities related to indigenous issues within the UN. As this preliminary study would show there are several UN bodies, agencies and funds which have some work related to monocrop plantations. It is therefore important to circulate widely this working paper to IASG (Inter Agency Support Group) members and enjoin them to send in their comments and additional information or data they have on this issue. These con-

tributions can be on policies, projects and funding which are related to plantations and forestry. What will be useful for the Forum will be 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. Since the secretariats of the UN-CSD (Commission on Sustainable Development) and the UN Forum on Forests are not members of the IASG, they can be invited to be part of this formation and to engage more actively with the Forum. (*Note: IASG was established to support and promote the mandate of the UN Permanent Forum on Indigenous Issues within the United Nations system.*)

The recommendations which emerged from the studies mentioned in this paper, especially the Daes reports, the reports of the SR, the FPP Survey on Indigenous Land Tenure report submitted to FAO, IPF report on underlying causes of deforestation and forest degradation, Sawit Watch and FPP reports on oil palm plantations, the FOE Netherlands reports on the oil palm and the private banks, should be studied further by the Forum to see which of these it can help implement and monitor.

The Forum may consider making a survey of the existing criteria and guidelines related to indigenous peoples and large-scale monocrop plantations. This would include those adopted by the Roundtable on Sustainable Palm Oil, the Equator Banks, Forest Stewardship Council, the OECD Guidelines on Multinational Enterprises, Pension Funds, etc. The results of this can be disseminated widely by the Forum to indigenous peoples, states, and the UN system; and it can monitor how these are being implemented. This can be a joint project with NGOs and indigenous organizations which have a long-track record of working on these issues.

The Forum should continue holding consultations with the multilateral development banks, international financial institutions and the Equator Banks to discuss how the Forum can help in the implementation of their policies on indigenous peoples and other relevant policies, guidelines and criteria they have developed that are linked with logging and mono-crop plantations.

Resources can be made available from the banks, the private sector and bilateral and multilateral donor agencies for the establishment of an independent monitoring body to monitor how policies relevant to indigenous peoples and lands, territories and resources are being implemented by the private sector, the governments and intergovernmental bodies. It can also look into the 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. It can prepare the terms of reference for this body and compose the membership which will be experts from government, indigenous peoples, private sector, banks, NGOs and intergovernmental bodies. This body can prepare reports to be sub-

mitted on a regular basis to the Forum.

This preliminary paper barely skimmed 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 done by a Special Rapporteur appointed at this 6th 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, the UN Forum on Forests.

The Forum may want to prepare a special report on “Indigenous Peoples and the Climate Change Convention” which will further amplify the issues raised in this paper. These include the impacts of biofuels, carbon sinks and carbon emissions trading on indigenous peoples, participation issues, etc. and come up with proposals on how these can be addressed. This can then be submitted at the next Conference of Parties of the UNFCCC.

Endnotes

¹ FAO Forest Resources Assessment 2000-2005, Rome, 2006.

² Millieudefensie – Friends of the Earth-Netherlands, People, Planet, Palm Oil? A Review of the Oil Palm and Forest Policies adopted by Dutch Banks. Amsterdam, March 2006. p.1. This quoted the FAO Forest Resources Assessment 2000-2005, Rome 2006.

³ E/CN.17/IPF/1997/6. “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.

⁴ Marcus Colchester, Nalua Silva Monterrey, et.al, 2006, Forest Peoples’ Customary Use and State Forests: the case for reform, Forest Peoples’ Programme. p.2.

⁵ WWF and Terralingua (2001). Indigenous and traditional peoples of the world + ecoregion conservation.

⁶ Document E/CN.4/Sub.2/2001/21 dated 11 June 2001 “Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Indigenous peoples and their relationship to land”. Final working paper prepared by Special Rapporteur, Mrs. Erica-Irene Daes.

⁷ Document E/CN.4/Sub.2/2004/30, 13 July 2004: “Prevention of Discrimination and Protection of Indigenous Peoples: Indigenous peoples’ permanent sovereignty over natural resources.” Final Report of the Special Rapporteur, Erica-Irene A. Daes.

⁸ International Human Rights Law includes the Universal Declaration on Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Several international conventions which have been adopted and ratified by the majority of States are also part of this; Convention on the Rights of the Child, Convention on the Elimination of All forms of Racism and Discrimination, Convention on the Elimination of all forms of Discrimination Against Women, among others.

⁹ Marcus Colchester ed., *A Survey of Indigenous Land Tenure: A Report for the Land Tenure Service of the Food and Agriculture Organization*, Dec. 2001. www.forestpeoples.org. accessed 12 April 2007.

¹⁰ 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.

¹¹ Quoted by Erica-Irene Daes from James Anaya (Indigenous Peoples' In International Law, p.22) in Document E/CN.4/Sub.2/2001/21, Indigenous peoples relationship to land (para.31, page.11).

¹² This was the ruling of the High Court in its decision on the *Mabo v. Queensland* case which was released in 1992. As a result of this the Government of Australia adopted the Native Title Act which provides the framework which Aborigines can use to claim their land rights.

¹³ See Philippine Jurisprudence, G.R. No. 127882, Jan. 27, 2004, *La Bugal-B'laan Tribal Association, Inc. et.al vs. Victor O. Ramons, et.al*. Republic of the Philippines, Supreme Court, Manila. This was a case questioning the constitutionality of some aspects of the Philippine Mining Act in which the Supreme Court used the Regalian Doctrine to justify that the Mining Act is constitutional.

¹⁴ Victoria Tauli-Corpuz, *An Indigenous Peoples' Perspective on Environment and Development*, IWGIA Newsletter, 1/1993, IWGIA, Copenhagen. 1993.p.7.

¹⁵ See Daes, *Indigenous Peoples and their relationship to land*. p.14-15.

¹⁶ Tides Center- Biodiversity Action Network, *Addressing the Underlying Causes of Deforestation and Forest Degradation, Case Studies, Analysis and Policy Recommendations*, Biodiversity Action Network, Washington, D.C. 1999, p.33.

¹⁷ See WRM (1992), *Rainforest Destruction: Causes, Effects and False Solutions*, WRM, Penang. p.21-22.

¹⁸ UN General Assembly Document A/HRC/4/32/Add.3, 26 Feb. 2007, Report of the Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, Rodolfo Stavenhagen, Addendum. Mission to Kenya. Human Rights Council.

¹⁹ WRM, *Tree Plantations: Impacts and Struggles*. WRM Montevideo, 1999, p.18.

²⁰ Colchester, Marcus (1999). *Indigenous Peoples and the new 'Global Vision' on Forests: Implications and Prospects – Discussion Paper*. p.4. www.wrm.org.

²¹ See E/CN.17/IPF/1997/6. "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.

²² The UN Commission on Sustainable Development established an Intergovernmental Panel on Forests (IPF) in 1995, which was mandated to address forest-related issues one of which is the underlying causes of deforestation and forest degradation. The IPF, NGOs and indigenous peoples' organizations held a "Global Workshop to Address the Underlying Causes of Deforestation and Forest Degradation." in Costa Rica from 18-22 Jan. 1999. Case studies were presented and policy recommendations were agreed upon. This report concluded that one of the main underlying causes of deforestation is the substitution of native forests by fast-growing, exotic species for forest plantations.

²³ See CIFOR. *The Underlying Cause of Forest Decline*, Arnoldo Contreras Hermosilla. June 2000. Occasional Paper No. 30. Bogor Indonesia. P. 17. This paper confirms that if government policies do not recognize property rights, either formally or informally, and if there

is little possibility to enforce recognized rights, then the propensity to abuse forest resources increase. While this paper did not directly mention indigenous peoples and their property rights to the forests, such an observation does apply to the situation of most indigenous peoples who are forest dwellers. The forest tenure systems of indigenous peoples where forests are considered clan or communal forests is not recognized by most governments as the modern law considers the state as the owner of forests.

²⁴ Marcus Colchester and Larry Lohman (eds). 1993. *The Struggle for Land and the Fate of the Forests*. Zed Books, The Ecologist and World Rainforest Movement, Penang. p.8.

²⁵ Bryant, Nielsen & Tangley. 1997. *The Last of Frontier Forests*. WRI. Washington D.C.

²⁶ Oil Palm, From Cosmetics to Biodiesel: Colonization Lives On. World Rainforest Movement, Uruguay. p.1.

³⁴ Ann Casson, (November 1999). *The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change* CIFOR, Bogor. p.8.

³⁵ 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).

³⁶ Ibid. p.3. see also Ellie Brown and Michael Jacobson, May 2005, *Cruel Oil: How palm oil harms health, rainforests and wildlife*. Center for Science and Public Interest (CSPI), Washington D.C. p. 4.

³⁷ WRM (2006), *Oil Palm, From Cosmetics to Biodiesel*.

³⁸ Ellie Brown and Michael Jacobson, p.7.

³⁹ Ellie Brown and Michael Jacobson, p.8

⁴⁰ Larry Lohman, *Shopping for Carbon: A New Plantation Economy*, Cornerhouse Briefing. <http://www.the.cornerhouse.org.uk>.

⁴¹ Development Dialogue (September 2006), *Carbon Trading; a critical conversation on climate change, privatization and power*. Dag Hammarskjöld Centre, Uppsala, p.19-20 in co-operation with Cornerhouse, U.K.

⁴² Ibid. p.18.

⁴³ WRM Bulletin (Nov. 2006), p.4. www.wrm.org.uy.

⁴⁴ Development Dialogue (2006), p.51.

⁴⁵ Cornerhouse, *Democracy or Carbocracy?*, Briefing 24. October 2001. Cornerhouse, Dorset, U.K. <http://www.thecornerhouse.org.uk>.

⁴⁶ Development Dialogue (2006). p.24. quoted from John Son et al., "Mainstreaming Climate Change at the Multilateral Development Banks, World Resources Institute, 2005.

⁴⁷ Ibid.

⁴⁸ Anne Dufey, *International trade in biofuels: Good for Development? And good for the Environment?*, An IIED Briefing. 2007. p.2. www.iied.org.

⁴⁹ Alexei Barrionuevo, *Brazil Feeds China's Rising Demand for Soy*, New York Times, April 14, 2007.

⁵⁰ Anne Dufey. p.3.

⁵¹ Andrew Boswell, *Biofuels for transport – a dangerous distraction?*, SGR (Scientists for Global Responsibility) Newsletter, Winter 2007. Issue 33.

http://www.biofuelwatch.org.uk/docs/sgr_boswell.pdf

⁵² Ibid. p.2.

⁵³ Mae-Wan Ho, Peter Bunyard, et.al, *Which Energy?* Energy Report from the Institute of

Science in Society. 2006. ISIS, London. Pimentel is a professor of crops science at Cornell University and Patzek is a professor of chemical engineering at the University of California Berkeley.

⁵⁴ Murdiyarso, D , Climate anomalies, Indonesian vegetation fires and terrestrial carbon emissions, Adiningsih, E.S., Mitigation and Adaptation Strategies for Global Change 12(1): CIFOR, Bogor.

⁵⁵ IIED Briefing. 2007.

⁵⁶ Andrew Boswell. p.3.

⁵⁷ For lack of space these case studies will not be discussed in this paper. These are in the book published by Development Dialogue, Carbon Trading, a critical conversation on climate change, privatization and power. 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>) he describe some carbon forestry initiatives. He says the Electrical Generating Board of the Netherlands has concluded contracts with Malaysian Innoprise Corporation to plant dipterocarp trees on logged-over land in Sabah. It is also working in the Ecuadorian Andes with some organizations 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. This is with the support of the Mexican government and audited by a team from Edinburgh University.

⁵⁸ Development Dialogue (2006). p.89

⁵⁹ Ibid.

⁶⁰ WRM, Indigenous Peoples, their forests, struggles and rights, Dec. 2005. WRM, Montevideo.p. 18-19.

⁶¹ Rainforest Foundation, Forest Peoples' Program, et. al, Broken Promises, How the World Bank Group Policies and practice fail to protect forest and forest peoples' rights. www.forestpeoples.org, downloaded 12 March 2007.

⁶² 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.

⁶³ Marcus Colchester,et.al (2006), p. 5.

⁶⁴ WRM, High Stakes: the need to control transnational logging companies; A Malaysian case study, WRM, Montevideo, 1998.

⁶⁵ WRM (2001), The Bitter Fruit of Oil Palm, p.28.

⁶⁶ Marcus Colchester, Norman Jiwan, et.al, (2006) Promised Land.

⁶⁷ WRM (2001).p.29. quoted from Kalimantan Review, May 1998).

⁶⁸ WRM (2005), Indigenous peoples, their forests, struggles and rights. pp.24-25.

⁶⁹ Descendants of slaves brought from Africa.

⁷⁰ Coomunications from SAM (Sahabat Alam Malaysia) sent through email on 17 April 2007.

⁷¹ 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.

⁷² Anne Petermann and Orin Langelle, Plantations, GM Trees and Indigenous Rights,

Seedling, GRAIN, July 2006. <http://www.grain.org>.

⁷³ 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>.

⁷⁴ A/HRC/4/32/Add.3, Mission to Kenya, Feb. 2007. p.12

⁷⁵ Development Dialogue (2006), pp. 237-246.

⁷⁶ Colchester, Marcus. Indigenous Peoples and the new 'Global Vision' on Forests: Implications and Prospects. Downloaded 11 April 2007; www.greatrestoration.rockefeller.edu/ 21 Jan 2000/colchester.

⁷⁷ See Vitug-Danguilan, Marites (1993), The Politics of Logging: Power from the Forest, Philippine Center for Investigative Journalism, Manila. p.14.

⁷⁸ Ibid. pp.11-37.

⁷⁹ See Carrere, Ricardo and Larry Lohman (1996), Pulping the South: Industrial Tree Plantations and the World Paper Economy. Zed Books Ltd, London. p.169. See also para 23 of E/CN.4/2004/80/Add.3, Report of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen, on his Mission to Chile (18-29 July 2003). p.10.

⁸⁰ See "Addressing the Underlying Causes of Deforestation and Forest Degradation: Case Studies, Analysis and Policy Recommendations" (1999) Speech delivered by Mia Siscawati of the Indonesia Bioforum on her reflections on the Conclusions of the Workshop. p. 30.

⁸¹ Ibid, Carrere, Ricardo and Larry Lohman (1996), p.211

⁸² Annual Report 2006, Council on Ethics for the Government Pension Fund-Global, Norway. p.63.

⁸³ Friends of the Earth, 2003, Greasy Palms – Palm oil, the environment and big business, FOE UK. London, Section 3. www.foe.co.uk/resource/reports/greasy_palms_buyers.pdf.

⁸⁴ Ibid. Section 3.

⁸⁵ Tb. Arie Rukmantara, Government of Indonesia to sue firms over forest fires. The Jakarta Post, 2 Sept. 2006.

⁸⁶ Wakker E., Funding Forest Destruction: The Involvement of Dutch Banks in the Financing of Oil Palm Plantations in Indonesia (March 2000), Report for Greenpeace Netherlands. AidEnvironment (Amsterdam),Telapak (Bogor), p.6.

⁸⁷ WRM (2006), Oil Palm, From Cosmetics to Biodiesel.

⁸⁸ This study "Poisoned and Silenced" was done by PAN (Pesticide Action Network) and Tenaganita, NGOs based in Malaysia.

⁸⁹ Nyang'ori Ohenjo, Ruth Willis, et.al, Health of Indigenous People in Africa, Lancet 2006: London School of Hygiene and Tropical Medicine. London, pp.367-46.

⁹⁰ WRM and Forest Monitor, High Stakes, the need to control transnational logging corporations, A Malaysian Case Study, 1998. <http://www.forestpeoples.org>, accessed 11 March 2007.

⁹¹ Letter to the President of the World Bank: Mr. James Wolfensohn dated 4 April 2005, published in "Broken Promises, How the World Bank Group policies and practice fail to protect forests and forest peoples' rights, Rainforest Foundation, CDM Watch,etc. <http://www.forestpeoples.org>.

⁹² UN Document E/CN.4/2003/90, 21 January 2003.

⁹³ These organizations include the following; Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV) Association Pour le Regroupement et l'Autopromotion des Pygmées (ARAP

;Collectif pour les Peuples Autochtones au Kivu (CPAKI/RDC);Action Pour la Promo-

tion des Droits des Minorités Autochtones en Afrique Centrale (APDMAC);Solidarité pour les Initiatives des Peuples Autochtones (SIPA);Union Pour l'Emancipation de la Femme Autochtones (UEFA) Forest Peoples Programme (FPP).

⁹⁴ 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>.

⁹⁵ Victoria Tauli-Corpuz, Asian Indigenous Peoples' Perspectives on Environment and Development, UN Conference on Development and Environment (UNCED), United Nations Headquarters, New York, 1992.

⁹⁶ Briefing note by the International Alliance of Indigenous and Tribal Peoples of Tropical Forests, FERN and the Forest Peoples' Programme, 4th Session of the UN Forum on Forests, 3-4 May 2004, <http://www.forestpeoples.org> and www.fern.org.

⁹⁷ Forest Peoples' Programme and FERN Position Paper for UNFF 5 – May 2005, www.forestpeoples.org, pp.1-2.

⁹⁸ Erica-Irene Daes (2001) "Indigenous Peoples Relationship to Land; www.ohchr.org accessed 16 April 2007 and Marcus Colchester, ed, A Survey of Indigenous Land Tenure, Forest Peoples. Programme, Moreton-in-Marsh, 2001. p.18. www.forestpeoples.org accessed 12 April 2007.

⁹⁹ James Anaya, Indigenous Peoples and International Law (2nd Edition), Oxford University Press.2004. p.142.

¹⁰⁰ Marcus Colchester,ed., Survey of Indigenous Land Tenure (2001).

¹⁰¹ Marcus Colchester (2006), Broken Promises, p.4.

¹⁰² Ibid. p.5.

¹⁰³ Marcus Colchester, Norman Jiwan,et.al, Promised Land.

¹⁰⁴ Ibid. Executive summary.

¹⁰⁵ Millieudefensie (2006), p.v.

¹⁰⁶ Annual Report 2006, Council on Ethics for the Government Pension Fund,Norway, p.63.

¹⁰⁷ Joji Carino, 2005, Concept Paper prepared for the IIFB Working Group on Indicators.

¹⁰⁸ Marcus Colchester, 2001, Survey of Indigenous Land Tenure, p.76.

¹⁰⁹ Ibid., p.84

¹¹⁰ E/CN.4/Sub.2/2001/21, p.43

Oil Palm Plantations in Kalimantan, Indonesia: Violating Indigenous Peoples' Rights



I. Introduction

The government of Indonesia plans to establish massive oil palm plantations in an area stretching 850 km in Kalimantan along the Indonesia-Malaysia border.¹ This area covers partially or fully the ancestral territory of 1-1.4 million Dayak indigenous people.² They have not been involved in decision-making about these plantations and their consent has neither been sought nor obtained.³ Both the scale and the nature of these plantations threaten imminent and irreparable harm to indigenous peoples. That this is the case is amply demonstrated by the impact of existing oil palm plantations on indigenous peoples in other parts of Indonesia and around the world.⁴

This report explains and details the fact that, despite great strides made in transparency and democratisation in recent years, discrimination against indigenous peoples in Indonesia remains pervasive and institutionalized. The massive expansion of oil palm plantations in Kalimantan is emblematic of this discrimination and threatens the survival of the affected indigenous peoples. In May 2007, Mr. Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, reached the same con-



clusion when he identified plantations in Indonesia as placing indigenous peoples “on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples.”⁵

The United Nations Permanent Forum on Indigenous Issues (UNPFII) has also acknowledged the severity of the situation created by oil palm plantations in Indonesia. Prompted by interventions about the situation in Indonesia, in 2006, the PFII took the unusual step of appointing two of its members to be Special Rapporteurs charged with writing a working paper on the impact of plantations on indigenous peoples. The working paper noted that the Indonesian 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. ...[T]he area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods.”⁶ In addition to listing the typical rights violations associated with large-scale plantations on indigenous peoples’ territories,⁷ the working paper also concluded that oil palm plantations come

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.*⁸

The imminent threat posed by the massive expansion of oil palm plantations into indigenous peoples' territories in Kalimantan is further compounded and aggravated because Indonesia's laws do not provide adequate and effective protection for the rights of indigenous peoples. Indeed, indigenous peoples' very existence has yet to be fully recognized in national law. Article 18B of the Constitution, for instance, recognizes "traditional communities along with their traditional customary rights" but only to the extent that doing so is deemed consistent with, *inter alia*, national development priorities.⁹ This equivocal recognition is further compromised by the application of Law No. 5 of 1979 on Village Government. This law subordinated indigenous peoples' traditional authorities, institutions, and laws to an imposed and unified Javanese village administration system that severely limits and in some cases negates the exercise of indigenous peoples' rights. This law has since been replaced by Law No. 32 of 2004 on Regional Government which retains the discriminatory subordination of local *adat* to Javanese customary institutions. Other laws also deny or severely restrict indigenous peoples' rights and livelihoods, most notably, for the purposes of this report, Law No. 41 of 1999 on Forestry and Law No.18 of 2004 on Plantations.

The situation described herein fully meets the criteria for consideration under the Committee [on the Elimination of Racial Discrimination]'s early warning and urgent action procedures and typifies the existence of a serious, massive and persistent pattern of racial discrimination against the indigenous peoples of Kalimantan. Massive expansion of oil palm plantations, coupled with the ongoing and continuous effects of existing plantations and the presence of racially discriminatory laws, including the absence of effective means of recourse at the domestic level, is a situation "requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention" and to reduce the risk of further racial discrimination.¹⁰

There is also a strong likelihood of significant displacement of indigenous persons "resulting from a pattern of racial discrimination or encroachment on the lands of minority communities," and a substantial threat of immediate and irreparable harm to indigenous peoples in the affected area.¹¹ The Chairperson of the UNPFII, for instance, states that although "there are few statistics showing how many people are at risk of losing their lands" in the Kalimantan provinces of Indonesia the UN has estimated that around 5 million indigenous persons face economic, cultural or land displacement because of biofuel crop expansion.¹² This situation demands urgent and additional international attention.

II. Indigenous Peoples in Indonesia

AMAN, the national indigenous peoples' organization of Indonesia, defines indigenous peoples as groups of people having a historical continuity that devel-

oped in a given geographical area, and having their own values, ideologies, and economic, cultural, and social systems, as well as territories.¹³ Indonesian laws use various terms to refer to the peoples who self-identify as indigenous, such as *masyarakat suku terasing* (alien tribal communities), *masyarakat tertinggal* (neglected communities), *masyarakat terpencil* (remote communities), *masyarakat hukum adat* (customary law communities) and, more simply, *masyarakat adat* (communities governed by custom).

While there are no census data on the number of persons who self-identify as indigenous or who may be otherwise defined as such, many studies have used a rough estimate of between 35-95 million indigenous people, while some have gone as high as 120 million.¹⁴ Of this, 45-60 million live on land legally classified as public forest.¹⁵ Indigenous peoples in Kalimantan account for approximately 45 percent of the total population of Kalimantan, or just over 5 million persons.¹⁶ All indigenous persons in Kalimantan are potentially indirectly affected by the proposed oil palm plantation project and other large-scale investments in biofuel expansion, as recognized by the UN.¹⁷ In the areas of the Kalimantan provinces covered by the Kalimantan Border Oil Palm Mega-Project, there are between 1 – 1.4 million indigenous persons who will be affected by the proposed 1.8 million hectare oil palm plantations.¹⁸

The Indonesian archipelago contains 120.35 million hectares of forest, which is the largest forest area in South East Asia and the world's third largest after the Amazon and Congo Basins. The forests have been categorised as Production Forests (58.25 million hectares), Protected Forests (33.52 million hectares), Conservation Forests (20.5 million hectares) and non-forestry development reserved forests/Conversion Forests (8.08 million hectares).¹⁹ Indigenous peoples have lived in these vast forests for millennia and their cultures and lives are inextricably related to their forests and the maintenance of their profound and multi-dimensional relationships therewith.

"The forest is our mother, our breast milk," say the indigenous people of Paser in East Kalimantan. It is in the forest that their existence is reflected through oral history and traditional knowledge and through well-defined and detailed customary tenure regimes by which all indigenous peoples delineate their traditional territories. In relation to forest management, customary laws are designed to ensure sustainability and communal well-being. Such customary forest laws commonly govern ownership (individual, collective, communal), designation (forest use) and other aspects related to human interaction with forests. That is why, under customary laws, forests had been free from outside intervention, including that of local and regional businesses.²⁰ Sacred sites, which serve as focal points for spiritual life, are generally located in forests. Thus, forest management is accompanied by spiritual elements in the form of religious ceremonies.

That indigenous peoples in Kalimantan are dependent on the existence and health of their traditional forest estates is amply illustrated by an UN Food and

Agriculture Organization study. This study explains that

*comparing four different aspects of the four communities: population, land use, production and land tenure. This comparison reveals that indigenous people contribute little to population growth in East Kalimantan; that each farm family needs from 15 to 40 ha of land to practice a sustainable form of agroforestry that will include maintenance of extensive areas of humid tropical rainforest; that the traditional system, though characterised by low rice yields, actually produces a great deal (including timber, non-timber forest products, a great variety of foods and medicines) and has important conservation functions; and that land tenure needs to be clarified and formalised.*²¹

Large-scale oil palm plantations however deny and ultimately destroy indigenous peoples' relations with their forests and their customary tenure and resource management systems and institutions. Because forest biodiversity is completely destroyed by mono-crop, industrial palm plantations, a large percentage of indigenous peoples' traditional food sources are also destroyed leading to substantial levels of food insecurity. Rotational farming is not possible because there is no natural forest left to fertilize the poor rainforest soils which in turn permits the planting of crops. Under such circumstances, traditional rites also cannot take place at forest-based sacred sites as these sites are destroyed when the land is cleared for the plantations.

III. Oil Palm Plantations and Indigenous Peoples' Rights

Global studies into the impacts of oil palm plantations on indigenous peoples have revealed that in addition to violating fundamental rights to land and security over their means of subsistence, such plantations have a wide variety of direct and indirect impacts causing devastation to indigenous peoples' communities. One immediate and common outcome of the imposition of such plantations is increases in social conflicts between indigenous peoples and state-owned and private corporations, with corporations sometimes resorting to the use of both state and non-state force.²² Such violence directly threatens the personal security of indigenous people and their communities.

Cumulative impacts on communities involve serious health problems, including increasing malnutrition and increased mortality; changes in disease ecology resulting in high incidences of diseases; and increase of rates of sexually-transmitted diseases due to prostitution in plantation or logging estates. Also noted are the increased instances of 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. Such plantations have commonly been accompanied by a breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management.²³

The preceding is well documented and has already occurred in existing oil palm plantations in Kalimantan.²⁴ World Bank studies into the forestry sector in Indonesia, for instance, clearly reveal that government policies of supporting the expansion of timber and oil palm plantations have “marginalized and alienated forest dependent communities and indigenous peoples from traditional lands and uses, through denial of rights and access” and that such denials have been “backed by force.”²⁵

Where plantations have been established on their lands, indigenous peoples are often forced to become smallholders²⁶ on their own lands, in situations that are tantamount to debt bondage in many cases, producing oil palm fruit for the companies that control their lands and debts.²⁷ The typical arrangement is that oil palm plantation companies provide technical assistance and seed stock, fertilisers and pesticides. The smallholders are then required to repay the monetary equivalent with interest. Many are simply unable to do so – and incur further debt over time – and they are thus in permanent debt to the companies and forced to provide their labour in exchange on a permanent basis.²⁸

These same impacts and violations of internationally guaranteed rights are expected to occur in the massive expansion of plantations into indigenous peoples’ territories in West and East Kalimantan provinces either under the Kalimantan Border Oil Palm Mega-Project, or any similar government-sponsored investment in oil palm plantations, and which is the focus of this report and discussed in greater detail below.

IV. Persistent Violations of Indigenous Peoples’ Rights in Kalimantan

Violations of the basic rights of the indigenous peoples of Kalimantan have long been an aspect of their relationship with the Indonesia government, particularly in the agrarian, forestry and mining sectors.²⁹ This was acknowledged by the President of Indonesia on 10 August 2006, when he accepted that indigenous peoples’ rights have often been sacrificed for national development.³⁰ These violations are particularly evident in relation to indigenous peoples’ rights to own and control their traditional territories and resources, their right to be secure in their means of subsistence, and the right to participate in and consent to activities that may affect them. The vast majority of indigenous territories enjoy no effective legal protection and protection in fact is almost non-existent. As a 2005 Asian Development Bank Institute paper explains,

*Forests are central to the economic livelihoods of the societies surrounding them. In Indonesia, the government often treats the indigenous people or forest villagers living in and close to the forests in the outer islands (like the Dayak of Kalimantan) as if they do not exist.*³¹

Among other things, indigenous peoples in the Kalimantan provinces have suffered for decades from the central government’s *transmigrasi* policy under

which millions of people were moved from high population density areas in Indonesia to low population density areas. Throughout *transmigrasi*, indigenous peoples saw their lands alienated and claimed by new settlers, and violent clashes have continued between settlers and indigenous peoples until today. Long term impacts of the *transmigrasi* programme include alienation of indigenous peoples from their lands, population pressures and inter-communal conflicts. The World Bank, in its review of the *transmigrasi* programmes that it directly supported, recognized, for example, that "there was a major negative and probably irreversible impact on indigenous peoples," and it withdrew funding in the late 1990s.³²

One of the lasting consequences of the *transmigrasi* era is the rise in population in Kalimantan. East and West Kalimantan had a combined population of less than 3 million people in 1971 - by 2000 this population had increased to 6.5 million people as a direct consequence of government sponsored transmigration and associated family migration.³³ In West Kalimantan, this population growth resulted in huge increases in the number of smallholder oil palm holdings and in East Kalimantan many of the new settlers have been absorbed into large scale oil palm plantations. Transmigration is directly responsible for indigenous peoples in Kalimantan losing a large percentage of their traditional lands - a situation that has yet to be adequately assessed by the State, let alone repaired - both due to the influx of migrants and to the logging and establishment of plantations that followed.³⁴

The historical threats of population transfer, logging concessions and the associated land alienation are compounded now by the expansion of oil palm plantations. As explained by the above-quoted Asian Development Bank Institute paper,

*By the 1980s the golden age of logging was over. Since then we have seen the expansion of large scale plantations for export crops. These have had drastic implications for the Dayak. It is known that the Dayak rely on forest products, such as honey, eaglewood (gaharu), and rattan. They now face problems in maintaining their traditional livelihoods. Logging concessions and timber estates have led to the expulsion of the Dayak from their lands and their environment has been destroyed.*³⁵

The Dayak and other indigenous peoples now stand to lose a large percentage of their remaining land base to the Kalimantan Border Oil Palm Mega-Project and other similar government-sponsored investments in oil palm plantations. Further development of oil palm plantations will also increase the presence of transmigrants in indigenous areas as new plantations workers are brought in, exacerbating existing land conflicts.

V. Indonesia is in the Advanced Stages of Establishing Massive Palm Oil Plantations in Indigenous Peoples' Traditional Territories in Kalimantan

According to its law, Indonesia acceded to the International Convention on the Elimination of All Forms of Racial Discrimination in 1999 because it believed that this Convention provided an important mechanism for ensuring equality before the law and in order prohibit and abolish all forms of racial discrimination.³⁶ This notwithstanding, Indonesia's current laws and practice discriminate against indigenous peoples. As explained in the next section, these laws fail to provide adequate protection for, *inter alia*, indigenous peoples' rights to own and control their traditional territories and their right to consent to activities that affect them.³⁷

Indigenous peoples' territories may simply be issued in concession to concessionaires on the basis of a unilateral declaration of public interest and indigenous peoples have no means of recourse to challenge such decisions.

Indonesia's failure to provide indigenous peoples with meaningful legal guarantees is further aggravated by grave, persistent and pervasive violations of indigenous peoples' rights in practice. Such violations are especially pronounced and entrenched with respect to extractive industries and agro-industry. Indeed, this present report has been filed precisely because Indonesia plans a massive expansion of oil palm plantations into indigenous peoples' territories in Kalimantan under the highly controversial Kalimantan Border Oil Palm Mega-Project.³⁸ This project will be implemented in the first place by taking and converting indigenous peoples' traditional forestlands into oil palm plantations, which will then be vested in multinational and domestic companies through the issuance of long-term leasehold rights.

Indigenous peoples, as has happened elsewhere in Indonesia, will either be forced to move or to become smallholders harvesting oil palm fruits for the companies that hold the plantations. They will lose their traditional means of subsistence and become wage labourers and indebted farmers working for the companies that have assumed control of their ancestral lands. In short, they will suffer irreparable harm to their basic rights and well-being to such an extent that their survival as distinct cultural entities will be severely threatened. This situation both demands and compels urgent international attention and oversight.

Under the Kalimantan Border Oil Palm Mega-Project, some 18 separate oil palm plantations have been proposed, each with an average size of 100,000 hectares.³⁹ Based on the projected costs of the most westerly of these plantations being established by the para-statal plantation company, PT Perkebunan Nusantara, it is estimated that an investment of around US\$ 8.6 billion is being sought to implement the overall scheme.⁴⁰

The Kalimantan Border Oil Palm Mega-Project was announced in the context of a series of two visits to China by the President of the Republic of Indonesia. Although official contracts have yet to be announced, newspaper articles reveal that Chinese, Singaporean, Malaysian, as well as Indonesian para-statal and private companies have all been encouraged to invest in the scheme. Those said to be interested include the Artha Graha group, which has links with the Indonesian army retirement welfare fund, Yayasan Kartika Ekta Paksi, the Sampoerna group, both of Indonesia, the Indonesian para-statal group PT Perkebunan Nusantara, the China Development Bank and the Chinese state-owned conglomerate, CITIC, working with the Indonesian Sinar Mas Group, and Golden-Agri Resources of Singapore.⁴¹

To further promote the project the Government held meetings with interested investors, as well as with concerned parliamentarians and research organisations, throughout 2005 and 2006. In a seminar organized by the Land Planning Department (Bappenas) in early 2006, to which research organizations and institutes, NGOs and some 11 different government agencies were invited, significantly different views on the feasibility of the planning oil palm plantation expansion programme were presented, yet plans are moving forward to convert land for this purpose.⁴² Despite disagreement from within the government on the feasibility of this programme, strong external protests and lack of consent by indigenous peoples, both the central government and district governments in Lundu in West Kalimantan and Malinau in East Kalimantan are pressing ahead with the project.⁴³

The number of people directly affected by forced resettlement out of the Kalimantan Border Oil Palm Mega-Project area will depend on the final territory covered by the plantations. However, for the 1.8 million hectare area currently being proposed, an estimated 300,000 individuals would be moved from their traditional lands and territories to allow the plantations to go ahead⁴⁴ and between 1 – 1.4 million indigenous persons would otherwise be directly affected.⁴⁵ Flow-on effects to communities and peoples living near the plantations would greatly increase this number of affected people.

The large-scale clearance of forests in the centre of Borneo's watersheds also has worrying implications for forest ecosystems and rivers, and the indigenous peoples and other downstream residents whose livelihoods depend on these healthy forests. Detailed studies show how logging and conversion to oil palm plantations are the main causes of the massive rate of forest loss in Indonesian Borneo.⁴⁶ West Kalimantan, for instance, lost more than 56 percent of its forests between 1985 and 2001. Scientists predict that widespread effects will cascade throughout the region's ecosystems, causing faunal populations, especially of carnivores, ungulates and primates, to decline precipitously and even cause local species extinctions.⁴⁷ Many of these animals are a fundamental source of protein in indigenous peoples' diet.

There has not been any process to consult indigenous peoples' organisations to ensure their rights and interests are accommodated for either the Kalimantan Border Oil Palm Mega-Project or for the wider programme of oil palm expansion nationally. Objections raised so far by a coalition of local, national and international indigenous peoples' organizations, environmental and human rights NGOs, research organisations, and donor agencies, members of Regional House of Representatives (DPD), university student organisations and associations, and the Ministry of Forestry have not resulted in a serious review of the Mega-Project or other plantation expansion plans.⁴⁸

Field surveys carried out in West and East Kalimantan during 2005 and 2006 show that plantations continue to be developed in both provinces without respect for the rights of indigenous peoples, with minimal compensation for losses and accompanied by intimidation and harassment of community members when they object to the takeover of their lands.⁴⁹ A similar pattern has also been documented for other parts of Indonesia, with the result that conflicts between communities and plantation companies are widespread.⁵⁰

The Kalimantan Border Oil Palm Mega-Project will result in the relocation of some 300,000 indigenous people from their ancestral territories, and directly cause irreparable harm to millions. It will permanently render their traditional territories unusable for anything but cultivation of oil palm and destroy their traditional way of life. There is thus an imminent and severe threat to their ability to survive as distinct peoples and to exercise their international guaranteed rights. They will be faced with two options: leave their ancestral lands and relocate elsewhere or enter into relationships that are tantamount to bonded labour with the companies that have acquired control over their traditional lands. That this will come to pass is amply demonstrated by the experience in the existing oil palm plantations that have been established on indigenous peoples' lands elsewhere in Kalimantan and in Indonesia more generally. As discussed below, Indonesia's laws do not provide effective protection to indigenous peoples, a fact that has been acknowledged by no less than the President of the country.⁵¹ They are defenceless and in urgent need of international attention.

VI. Indonesian Law Discriminates Against Indigenous Peoples

A. The Constitution

Article 18 of Indonesia's 1945 Constitution recognized the existence of indigenous peoples by stating that there were 250 regions in Indonesia governed by customary and/or tribal administration systems (*zelfbesturende, volksgemeenschappen* – self-administering communities). This article was amended in 1992 to include a new Article 18B, which, in sub-paragraph 2, provides that the State recognizes and respects "traditional communities" and their traditional, customary rights provided that they have not been assimilated ("they still exist;"

a decision made by the State) and provided that the exercise of these rights is consistent with the development priorities of the unitary state of Indonesia (a decision also made by the State).⁵² The criteria on which a community is judged to “still exist” include recognition as such by local government, further undermining the principle of self-identification, and the final determination is made by the State.⁵³ The State, by law, thus determines which peoples benefit from the protection of Article 18B and which do not.⁵⁴

Indonesia’s Constitution vests ownership and exclusive management rights in the State. In this respect, Article 35 provides that:

1. Economic matters are managed as common efforts based on family principles.
2. Productive activities related to natural resources, which have importance to the State and significance for the livelihood of the Indonesian people, will be managed exclusively by the State.
3. The land, water and natural resources are under the control of the State and should be utilized for the maximum welfare of the Indonesian people.
4. The national economic system should be conducted in accordance with the following principles: togetherness, equitable efficiency, sustainability, environmental friendliness, independence, and balancing progress and national economic unity.
5. The implementation of this article will be regulated by further laws.

Exclusive State ownership and control is somewhat tempered by Article 28I(3) of the Constitution which specifically protects the rights of traditional communities, although it does not specify what those rights are and is also subject to the power of the State to simply not recognize the existence of indigenous peoples pursuant to Article 18B(2) of the Constitution. Article 28I(3) provides that “The cultural identity and the rights of traditional societies shall be respected in accordance with this age of progress and human civilisation,” thereby restricting acknowledgement of the rights of indigenous peoples according to principles of “progress and civilisation” which are not defined. The same assimilationist and restrictive language that is present in Article 18B is thus also present in Article 28I(3). This language is also in the laws discussed below

The Committee on the Elimination of Racial Discrimination has previously admonished that such legal provisions, including those contained in Article 35 of Indonesia’s Constitution, must be understood and exercised consistently with the rights of indigenous peoples.⁵⁵ Similarly, and addressing an analogous provision to that extant in Indonesian law, the Inter-American Commission on Human Rights has held that invocations of the public interest must be viewed within the context of effective protection for indigenous peoples’ land and resource rights and the provision of effective judicial remedies to assert and defend those rights (all of which are manifestly absent in Indonesian law).⁵⁶

B. The Basic Agrarian Law

The Basic Agrarian Law (BAL) of 1960 accords with the preceding Constitutional provisions. It seeks to reconcile rights to natural resources under customary law, commonly referred to as *ulayat* rights, with inherited colonial legal concepts related to land. Article 3 of the BAL thus states that: "... *ulayat* rights and other similar rights of customary law communities should be recognised, as long as these communities really exist, and [the exercise of these rights] is consistent with national and State interests, based on the principle of national unity, and is not in contradiction with this law and higher regulations." Likewise, Article 5 of the BAL states that: "Customary law applies to the earth, water and air as long as it does not contradict national and State interests, based on national unity and Indonesian socialism, and also other related provisions of this law, in accordance with religious principles."

These provisions limit the right of indigenous peoples to the point that they become essentially meaningless. In the context of the massive development of oil palm plantations, for example, the State simply can convert customary lands into plantation lands thus negating indigenous peoples' rights.⁵⁷ Some companies compensate indigenous peoples, others do not; however, this compensation is usually only paid for the loss of fruit trees rather than for the traditional lands, resources and livelihoods that are lost when the land is taken, and consent to land appropriation is not sought.

Although the Basic Agrarian Law provides the State with an unusual degree of control over all land tenures, much greater security of tenure is afforded to (non-indigenous) citizens granted individual property and use rights (*hak milik* and *hak pakai*, respectively) or to corporations granted long-term, renewable leaseholds for establishing plantations or constructing plants (*hak guna usaha* and *hak guna bangunan*, respectively). Whereas regulations, procedures and institutions exist to issue and regulate such tenures, none such exist for the recognition, registration or protection of indigenous peoples' collective tenures based on customary law (*hak ulayat*).⁵⁸

The preceding remains the situation despite the adoption of National Assembly Decree (TAP/MPR) No. IX/2001 on Agrarian Reform and Natural Resource Management six years ago, which called for a reform of the laws relating to forests, lands and natural resources in order to deal with the persistent land conflicts throughout the archipelago.⁵⁹ Article 4 of this decree includes among its goals: "implementing social, conservation and ecological functions in line with the local socio-cultural conditions" and "recognizing, respecting and protecting the rights of indigenous peoples and the diverse national cultures over agrarian/natural resources." Although implementation of this decree remains part of the current parliament's legal reform programme, it has not yet been given legal effect.⁶⁰

C. The 1999 Forestry Act

Law No. 41 of 1999 on Forestry grants almost absolute authority to the State to govern and regulate all matters related to forests and their products irrespective of whether the forest lands in question are the traditional territories of indigenous peoples. The Law does contain some recognition of limited rights vested in indigenous peoples to manage forests, but only if such forests are designated as “state forest.” Such a designation in turn authorizes the State to convert the forests to other uses, for example, to issue them to concessionaires on grounds that they are part of “the state forest” and that such conversion is for “the sake of the nation.”

That the State may take indigenous lands and issue them to concessionaires by invoking the national interest is explicitly provided for in Article 4(3), which states that “... the State still cares for the rights of indigenous peoples, as long as such rights do exist and are recognized and are in line with the national interests.” The term “recognized” requires that the State has explicitly and positively granted legal recognition to the rights in question, normally through the issuance of some form of title deed. In most cases, indigenous peoples’ rights are not recognized precisely because the State has not issued title deeds.

D. The 2004 Plantation Act

The government of Indonesia considers that the 2004 Plantation Act, which provides a legal basis for developing plantation crops such as oil palm, is fully consistent with and implements Article 35(3) of the Constitution, which stipulates that “land, water and all the resources found therein are controlled by the state and shall be exploited for the maximum benefit of the people.”

This law fails to provide meaningful protections for indigenous peoples. The promulgation of the Act was met with great concern from indigenous peoples and civil society in Indonesia, as it was viewed as perpetuating deficient treatment of indigenous peoples’ rights and indeed compounding these deficiencies.⁶¹ In particular, the Act requires only that indigenous peoples’ “interests” need be considered, rather than respected, the requirement that rights be already formally “recognized” is still present, and the overriding national interest exception continues to negate indigenous peoples’ rights. Moreover, paragraph 7 of the law’s general explanatory note, states that:

Use permits for estate crops shall take the interests of indigenous peoples (or ulayat rights) into consideration, as long as such rights do exist and are recognized and are not in direct contradiction to higher-level laws and regulations and the national interests. To ensure fair ownership, control, tenure and utilization, regulations shall be established on the maximum and minimum size of land for plantations.

SawitWatch has documented over one hundred separate conflicts between local communities and palm oil companies throughout Indonesia. The main causes of disputes are land conflicts, allocations of small-holdings, repressive police ac-

tions, low pay and pricing.⁶² In 2004, prior to the introduction of the Act, 143 cases of conflict were recorded in that year. By 2006 this number had swollen to over 500 active cases of conflict over land appropriated for plantations. The implementation of the Act has seen harassment and intimidation increase, with the use of Articles 20 and 47, among others, to intimidate indigenous peoples' communities. Article 20 provides for the use of private and state security forces in the "protection" of plantation areas once lease hold has been granted:

Plantation business actors shall perform plantation business safety that is coordinated with the security people and can ask assistance from the surrounding community.

Article 47 details the punishments for "use of plantation land without permission," and in combination with Article 20 has created an atmosphere of intimidation and fear.

Article 9(2) of the Plantation Act states "the applicant of the rights shall carry out consultation with customary law communities of the customary land right-holder and person of right-holder to the land, in order to obtain an agreement on the transfer of the land, and its compensation." This provision could be read proactively as requiring agreement or consent from indigenous peoples to the use of their lands. However, in practice, this Article is interpreted to require only agreement as to the level of compensation, not consent to the transfer of the land, and if such agreement can not be reached then the land may still be appropriated "for the sake of the nation." Such concerns have led to a request for judicial review of the Plantation Act in March 2005, on which no decision has yet been taken.⁶³ While this case is still pending, the government has stated that the Act may be reviewed in the context of wider legislative review between now and 2009.

In conclusion, Indonesia's laws and practice are inconsistent with its obligations pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination and indigenous peoples' rights are neither adequately guaranteed by law nor are they adequately protected in practice. That this is the situation in Indonesia was acknowledged by no less than its President in August 2006, when he stated that indigenous peoples "had often been sacrificed for the sake of development, as powerful business interests seek to exploit natural resources," and that one of the reasons that this had occurred was because indigenous peoples' rights were not recognized and protected by a specific law.⁶⁴ At that same time, the President also stated that he would propose a law to protect the rights of indigenous peoples. This welcome and encouraging statement has yet to be given effect, however, almost one year later, and, as typified by the Kalimantan Border Oil Palm Mega-Project, indigenous peoples continue to face severe threats to their rights and survival.

VII. Request

In light of the preceding, the submitting organizations request that the Committee take the necessary measures to assist Indonesia to fully recognize and protect the rights of the indigenous peoples subject to its jurisdiction, especially those indigenous peoples in Kalimantan, who are threatened with imminent and irreparable harm by the expansion of oil palm plantations.

For these reasons, we hereby respectfully request that the Committee:

- (a) Considers the situation described herein under its early warning and urgent action procedure at its 71st session to be held in August 2007.
- (b) Recommends that Indonesia not proceed with the Kalimantan Border Oil Palm Mega-Project or other oil palm plantation projects affecting indigenous peoples in East and West Kalimantan, at least until such time as it has legally recognized and secured their ownership rights in and to their traditional lands, territories and resources and obtained their free, prior and informed consent.
- (c) Recommends that Indonesia remedy the massive and ongoing rights violations occurring in existing palm oil plantations.
- (d) Recommends that Indonesia adopts legislative, administrative and other measures to give full effect to the rights of indigenous peoples, including by amending existing laws, and that it does so with indigenous peoples' full and free participation through their own freely chosen representatives.
- (e) Draws the attention of the UN Secretary General, Human Rights Council, the Permanent Forum on Indigenous Issues and the Office of the High Commissioner for Human Rights to the serious and urgent situation affecting the indigenous peoples in West and East Kalimantan.

Note: This article is part of the "Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures" submitted to the 71st Session of the Committee on the Elimination of Racial Discrimination by Perkumpulan Sawit Watch, Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago), Aliansi Masyarakat Adat Kalimantan Barat (Indigenous People Alliance of West Kalimantan), Lembaga Studi dan Advokasi Masyarakat/ELSAM (Center for Community Study and Advocacy), Wahana Lingkungan Hidup Indonesia/WALHI (Friends of the Earth Indonesia), Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community- and Ecologically-based Legal Reform), Yayasan Padi Indonesia, Lembaga Bela Banua Talino, Lembaga Gemawan (Lembaga Pengembangan Masyarakat Swandiri/The Institution of Swandiri Society Empowerment), Institut Dayakologi and Forest Peoples Programme, 6 July 2007.

Endnotes:

¹ 'Government plans world's largest oil palm plantations', *The Jakarta Post*, 18 July 2005 and; 'President's Visit to China: China to invest US\$7.5 billions', *The Media Indonesia*, 30 June 2005.

² *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006, at p. 11 (stating that "Due to its isolation, the Kalimantan border area is fairly sparsely populated. The total population in the border area is estimated at some 300,000 inhabitants, mostly from Dayak origin. In West Kalimantan, the population density is 27/km²; in East Kalimantan 13 people per km²"). Available at: http://www.orangutans-sos.org/downloads/palm_oil_mega_project.pdf.

³ *Id.* at p. 13 (stating that "communities are generally unaware of the government's plans for the border area up to date. Of those that are aware of the project, many univocally oppose any oil palm development in their areas;") and, at Box 3, p. 13-15, containing a list of complaints submitted by some of the affected indigenous communities.

⁴ See, among others, V. Tauli-Corpuz and P. Tamang, *Oil Palm and Other Commercial Tree Plantations, Mono-cropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*, UN Permanent Forum on Indigenous Issues Working Paper, E/C.19/2007/CRP.6, para. 33 (hereinafter "UNPFII Working Paper"). Available at: http://www.un.org/esa/socdev/unpfii/en/session_sixth.html; *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Sawit Watch, Forest Peoples Programme, ICRAF and HuMA, 2006. Available at: http://www.forestpeoples.org/documents/prv_sector/oil_palm/promised_land_eng.pdf and; *Ghosts on Our Own Land: Indonesian Oil Palm Smallholders and the Roundtable on Sustainable Palm Oil*, Sawit Watch and Forest Peoples Programme, 2006 (hereinafter "Ghosts on our own Land"). Available at: http://www.forestpeoples.org/documents/asia_pacific/bases/indonesia.shtml.

⁵ R. Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Oral Statement to the UN Permanent Forum on Indigenous Issues Sixth Session*, 21 May 2007, at p. 3. Available at: http://www.un.org/esa/socdev/unpfii/documents/6session_SR_statement_asia_en.doc.

⁶ UNPFII Working Paper, at para. 20.

⁷ *Id.* at para. 33.

⁸ *Id.* at para. 23.

⁹ Article 18B(2) reads that "The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law."

¹⁰ *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, para. 8-9. Available at: http://www.ohchr.org/english/bodies/cerd/docs/A_48_18_Annex_III_English.pdf.

¹¹ *Id.*

¹² The figure of 5 million provided by the UN refers to the entire Dayak indigenous population in the Kalimantan provinces. 'Biofuels displace Indigenous Peoples', *Associated Press*, 15 May 2007. Available at: <http://news.mongabay.com/2007/0516-indigenous.html>

¹³ AMAN's Congress Decision No. 01/KMAN/1999.

¹⁴ O. Lynch, *Whither the People?* World Resources Institute, Washington DC, 1991; C. Zerner, *Indigenous Forest-Dwelling Communities in Indonesia's Outer Islands: Livelihoods*,

Rights and Environmental Management Institutions in the Era of Industrial Forest Exploitation, Paper for the World Bank Forest Sector Review, World Bank, Washington DC, 1992; World Agroforestry Centre, 2005, *Facilitating Agroforestry Development through Land and Tree Tenure Reforms in Indonesia*, ICRAF SE Asia Working Paper No 2, Bogor, 2005.

¹⁵ R. Stone & C. D'Andrea, *Tropical Forests and the Human Spirit: Journeys to the brink of hope*. University of California Press, Berkeley and Los Angeles, 2001, at p. 125.

¹⁶ Population statistics for Kalimantan are not divided according to ethnicity, and official government records of the number of Dayak indigenous persons are not available. The most current government census statistics give the total population of Kalimantan at 12,176,936 persons. Using an estimate of 45% Dayak, this provides a total population for indigenous persons of 5,479,621 persons. Sources: Department of Home Affairs, Ministry of Home Affairs (Sumber: Departemen Dalam Negeri Republik Indonesia, Data_Wilayah_Adm_Pemerintahan.pdf).

¹⁷ See footnote 12.

¹⁸ For the purposes of this report, 'directly affected' is used to refer to people who are likely to be relocated from their lands, or have some part of their traditional territories and resources appropriated by the government or companies for the proposed plantations. All indigenous persons living in the 7 districts in West Kalimantan, 1 district in Central Kalimantan and 4 districts in East Kalimantan which form part of the current proposed plantations are considered directly affected. The total population of these districts (indigenous and non-indigenous) is 1.5-2 million persons, of whom an estimated 70% are indigenous. *Monographic data of villages and distribution of populations within areas of 100 km from border with Malaysia*, Central Statistics Agency, Government of Indonesia, 2005.

¹⁹ UN Food and Agricultural Organization, *Information and Analysis for Sustainable Forest Management: Linking National and International Efforts in South Asia and South-east Asia*, Bangkok, Thailand 2002. Available at: <http://www.fao.org/docrep/005/AC778E/AC778E11.htm>

²⁰ See, *Seven Spells-Seven Curses: Reflection of the 10th Years of SHK Movement*, John Bamba, downloaded on 8 July 2006 from http://www.kpshk.org/index.php?option=com_content&task=view&id=57&Itemid=2.

²¹ C. Pierce Colfer, *Shifting Cultivators of Indonesia: Marauders or Managers of the Forest?* UN FAO, 1993. Available at: http://www.fao.org/docrep/006/u9030e/U9030E01.htm#P20_3622.

²² *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006 p. 2. Available at <http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/280016-1152870963030/IDForestStrategy.pdf?resourceurlname=IDForestStrategy.pdf>.

²³ See, UNPFII Working Paper, *supra*, para. 33.

²⁴ See, for instance, *Indonesian Path Towards Sustainable Energy: A Case Study of Developing Palm Oil as Biomass in Indonesia*, KEHATI, INRISE, Sawit Watch, Bogor Agricultural Institute, Both Ends, 2006, p. 26 (describing extensive social conflicts caused by oil palm cultivation). Available at: http://www.bothends.org/strategic/061211_Biomass%20case%20study%20Indonesia.pdf.

²⁵ *Sustaining Economic Growth*, World Bank, December 2006, *supra*, p. 2. See, also, *Ghosts on Our Own Land*, *supra*.

²⁶ The Roundtable on Sustainable Palm Oil defines 'Smallholders' as family-based enterprises producing palm oil from less than 50 ha of land.

²⁷ See, *inter alia*, 'Palm oil doesn't have to be bad for the environment', 4 April 2007. Available at http://news.mongabay.com/2007/0404-oil_palm.html; 'The Impact of Palm Oil

in Borneo', June 2007. Available at: http://www.mongabay.com/borneo/borneo_oil_palm.html; *Ghosts on Our Own Land*, *supra*.

²⁸ *Id.* See, also, *Inter alia*, S. Vermeulen & N. Goad, *Towards Better Practices in Smallholder Palm Oil Production*, Natural Resources Issues Series No. 5. International Institute for Environment and Development, London, 2006. Available at: <http://www.iied.org/pubs/pdf/full/13533IIED.pdf>.

²⁹ See, *Without Remedy: Human Rights Abuse and Indonesia's Pulp and Paper Industry*, Human Rights Watch Report: Indonesia, Vol. 15, No. 1(C), Jan. 2003. Available at: <http://www.hrw.org/reports/2003/indon0103/index.htm#TopOfPage>; *Indonesia: Grave Human Rights Violations in Wasior, Papua*, Amnesty International Report ASA 21/032/2002, 26 September 2002. Available at: <http://web.amnesty.org/library/Index/engasa210322002>; C. Ballard, *Human Rights and the Mining Sector in Indonesia*. International Institute for Environment and Development: London, 2001. Available at: http://www.iied.org/mmsd/mmsd_pdfs/indonesia_hr_baseline.pdf; and, D. Hyndman, *Ancestral Forests and the Mountain of Gold: Indigenous Peoples and Mining in Indonesia*. Boulder, Colorado and London: Westview Press 1994.

³⁰ 'President Admits Indigenous People Mistreated', *Jakarta Post*, 10 August 2006 (see Annex B for full text).

³¹ Y. Maunati, *Sharing the Fruit of Forestry Products: Indigenous Peoples and their Incomes in the Forestry Sector in East Kalimantan, Indonesia*. Asian Development Bank Institute, Discussion Paper No. 24, 2005, at p. 9 (hereinafter "Sharing the Fruit"). Available at: <http://www.adbi.org/files/2005.02.dp24.forestry.sector.indonesia.pdf>.

³² World Bank, *Indonesia Transmigration Program: a Review of Five Bank-Supported Projects*, Operations and Evaluation Department, Country Specific Sector Review 12988, April 1994: <http://wbIn0018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a000d/777331ddd0b6239c852567f5005ce5e2?OpenDocument>.

³³ Population statistics here are sourced from Badan Pusat Statistik (BPS-Statistics Indonesia), an independent agency reporting to the President. Precise statistics are 2,753,733 individuals in 1971 and 6,489,318 in 2000 for East and West Kalimantan. Full statistics available at: <http://www.bps.go.id/sector/population/table1.shtml>.

³⁴ *Sharing the Fruit*, *supra*, at p. 9 (explaining that "The issue of forced settlement is also linked to accusations that the Dayak destroy the forest through their practice of slash and burn agriculture. However, it should be noted that the government's assessment of the facts here is somewhat questionable given that the New Order government encouraged timber companies to destroy the forest while at the same time resettling the Dayak into compounds").

³⁵ *Id.* at p. 11.

³⁶ Considerations a, b and c of Law No. 29 of 1999 (by which Indonesia's Parliament assented to be bound by the Convention).

³⁷ See, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4.

³⁸ For strong criticism of the project, see, *inter alia*, *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006; Media Indonesia. 2005. *Kunjungan Presiden ke China: China Investasi US\$7,5 Miliar*. 30 June; Obidzinski, Krystof, Agus Andrianto and Chandra Wijaya, *Timber Smuggling in Indonesia, critical or overstated problem?: forest governance lessons from Kalimantan*, Bogor, Indonesia, Centre for International Forestry Research (CIFOR), September 2006. p. 8, 10-12. Available at: <http://www.cifor.cgiar.org/publications/>

[pdf_files/Books/BObidzinski0601.pdf](#).

³⁹ *Pembangunan Kawasan Perbatasan Melalui Pembangunan Perkebunan Kelapa Sawit di Propinsi Kalimantan Barat, Konsorsium, PT Perkebunan Nusantara 1-XIV* (Persero), Jakarta, 2005.

⁴⁰ *China Daily* (Beijing) 26 April 2005; *Bisnis Indonesia* (Jakarta) 9 August 2005; *Antara* (Jakarta) 9 August 2005.

⁴¹ Chinese Consortium Eyes Business in Indonesia's Palm Oil Sector, *Antara*, 25 April 2005; Chinese Investors eye RI palm oil sector, *Jakarta Post*, 9 June 2005; Kadin to Help Expand Oil Palm Plantations in Indonesia, *Antara*, 10 June 2005; Artha Graha, Sampoerna Cooperate with Chinese Investors in Agrobusiness, *Antara*, 18 July 2005; RI inks US\$7.5 bn in deals with China, *Jakarta Post*, 30 July 2005; China Bangun Kebun Sawit Senilai US\$8 miliar, *Bisnis Indonesia*, 9 August 2005; China Plans Oil Palm Plantations in Kalimantan, *Antara*, 9 August 2005; Ambalat is Ours, *Tempo*, 16-22 August 2005.

⁴² Dep-II/Bappenas/23 Januari 2006 (23rd January 2006) available at <http://www.bappenas.go.id/> in Bahasa Indonesia.

⁴³ Government seeks new land for border project, *Jakarta Post*, 8 May 2006.

⁴⁴ *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006, *supra*, p. 11.

⁴⁵ *Monographic data of villages and distribution of populations within areas of 100 km from border with Malaysia*, Central Statistics Agency, Government of Indonesia, 2006. See footnote 16 for explanation of the term 'directly affected.'

⁴⁶ The World Bank identifies timber for pulp and oil palm plantations as the main cause for deforestation and the single largest cause for massive expansion in agricultural areas. See *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, *supra*, p. 30.

⁴⁷ LM Curran, et al., Lowland Forest Loss in Protected Areas of Indonesian Borneo, *Science* Vol. 303 (No.5660):1000-1003 2004; see, also, World's largest oil palm plantation could spell disaster for upland forests of Indonesian Borneo – WWF, Press Release WWF International, Gland, 10 August 2005.

⁴⁸ See, raised responses against the proposed border project, <http://www.samarinda.go.id/node/8273> or <http://www.kaltimpost.web.id/berita/index.asp?Berita=ProKaltim&id=152966> – Tolak Perkebunan Sawit di Perbatasan, forestry students of Mulawarman University, East Kalimantan, <http://dte.gn.apc.org/68ioi2.htm> Border Mega-project, *Down to Earth* Nr. 68 February 2006, Ministry of Forestry rejects oil palm in border areas – no conversion of forest for plantations, <http://www.rspo.org/PDF/Projects/STF/Deklarasi%20Serikat%20Petani%20Kelapa%20Sawit.pdf>

⁴⁹ *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, 2006, *supra*, and; *Ghosts on Our Own Land*, *supra*.

⁵⁰ *Id.*

⁵¹ 'President Admits Indigenous People Mistreated', *Jakarta Post*, 10 August 2006 (see Annex B for full text).

⁵² *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, 2006, *supra*.

⁵³ *Id.* The five relevant criteria are "(1) adat communities still organize themselves exclusively under customary association (*rechtsgemeinschaft*); (2) the presence of structured customary institutions; (3) the presence of a clear legal territory of adat communities; (4) adat communities still practice their daily activities according to the existing adat law and institutions; and (5) the local government has recognised the existence of such adat communities in accordance with any local regulation on such a recognition." (See explana-

tory notes to Plantation Law 18, Annex C).

⁵⁴ See I Nyoman Nurjaya, *Proses Pemiskinan Di Sektor Hutan Dan Sumberdaya Alam: Perspektif Politik Hukum (Impoverishment in forestry and natural resource sector: Legal Political Perspective)* in the Report of 'Masyarakat Adat Dalam Mengelola Sumber Daya Alam' (Indigenous Peoples in Natural Resources Management); compilation of presentations and discussions held by Kelompok Diskusi Adat Indonesia (KEDAI). Available at: <http://www.worldagroforestrycentre.org/sea/Publications/Files/book/BK0025-04.PDF>.

⁵⁵ *Inter alia, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 11.

⁵⁶ *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans (Suriname)*, 2 March 2006, at para. 241-42 (stating that the public interest doctrine "substantially limit[s] the fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favor of an eventual interest of the State that might compete with those rights. What is more, according to Suriname's laws, mining, forestry, and other activities classified as being in the general interest are exempted from the requirement to respect customary rights. In practice, the classification of an activity as being in the "general interest" is not actionable and constitutes a political issue that cannot be challenged in the Courts. What this does in effect is to remove land issues from the domain of judicial protection").

⁵⁷ W. Wright, *Final Report on the Review of the Basic Agrarian Law 1960*. Indonesia: Land Administration Project. World Bank, Jakarta, 1999. Available at: www.worldbank.org; World Bank, 2004, *Land Management and Policy Development Project: Project Appraisal Document, Report No: 28178-IND*, Washington DC.

⁵⁸ J. Wallace, A.P. Parlindungan, and A.S. Hutagalung, S. Arie, *Indonesian Land Law and Tenures – Issues in Land Rights*. Land Administration Project. Government of the Republic of Indonesia, National Planning Agency and National Land Agency, Jakarta, 1997; and, W. Wright, *id.*

⁵⁹ For connections between conflicts and insecure tenure, see, also, *Growing Conflict and Unrest in Indonesian Forests: a summary paper*, USAID and ARD, Burlington, 2004.

⁶⁰ World Agroforestry Centre, *Facilitating Agroforestry Development through Land and Tree Tenure Reforms in Indonesia*, ICRAF SE Asia Working Paper No 2, Bogor, 2005, at p. 33.

⁶¹ "DPR approves Plantation Bill", *gatraonline*, Jakarta, 12 July 2004 13:28. See also "Plantation Regional Bill is considered to ignore farmers: 40 reclaiming cases in Central Java," *suaramerdeka.com*, Monday, February 14, 2005.

⁶² See Sawit Watch database tracking active conflicts. An example of a protest letter outlining indigenous peoples' objections to the proposed plantations is provided in Annex D.

⁶³ See, *Request for Judicial Review of Law No. 18 Year 2004 on the Government's Stipulation to Replace Law No. 1 Year 2004 on Changes in Law No. 41 Year 1999 on Forestry into Law*, 1 March 2005, p. 11.

⁶⁴ 'President Admits Indigenous People Mistreated', *Jakarta Post*, 10 August 2006 (see Annex B for full text).

Statement on the Announcement of the World Bank Forest Carbon Partnership Facility



Victoria Tauli-Corpuz
Chairperson,
UN Permanent Forum on Indigenous Issues

Thank you very much for giving me this opportunity to present some of the views and concerns of indigenous peoples regarding the World Bank Forest Carbon Partnership Facility (FCPF).

My name is Victoria Tauli-Corpuz and I am an indigenous person, a Kankanaey-Igorot, from the Cordillera Region in the Philippines. Presently I am the Chairperson of the United Nations Permanent Forum on Indigenous Issues. The Forum is the highest body in the UN which deals with indigenous peoples' rights and development. The Forum's main mandate is to provide advice to States, the UN System and other intergovernmental bodies, including the World Bank, on issues of indigenous peoples.

Those of us who live and depend on forests, are pleased that there is growing international consensus that policies to address climate change must include measures to combat deforestation and forest degradation in tropical and sub-tropical forests. We also welcome the Stern Review which urges that actions to prevent deforestation on a large-scale must be taken as soon as possible. We are very much aware that the World Bank Forest Carbon Partnership Facility is designed to respond to this and is setting the stage for large-scale incentives for

reducing emissions from deforestation and forest degradation (REDD). The tropical and sub-tropical forests, the subject of the Facility, is the home of around 160 million indigenous persons who are the custodians and managers of forest biodiversity. Yet we remain in very vulnerable situations because most States still do not recognize our rights to these forests and resources found, therein.

While Facility can be a good thing, we are very apprehensive on how this will work because of our negative historical and present experiences with similar initiatives. My task, as the Chair of the Permanent Forum, therefore is to communicate these concerns to you. I must inform you that International Human Rights Law and the recently-adopted UN Declaration on the Rights of Indigenous Peoples uphold our rights to own, control and manage our lands, territories and resources, which includes sub-tropical and tropical forests. Most of the countries aspiring for benefits from REDD voted for the adoption of the UN Declaration on the Rights of Indigenous Peoples and these include Brazil, Democratic Republic of Congo and Indonesia.

With all due respect to the Ministers present, the reality is that most governments or corporations have not played positive roles in preserving these remaining tropical and sub-tropical forests. We, the indigenous peoples, are the ones who sacrificed life and limb to save these because these are vital for our survival as distinct peoples and cultures. The indigenous peoples protected the Amazon from ranchers in Brazil, from loggers in Congo Basin countries and from commercial oil palm plantations and the forest industry in Indonesia. It is, therefore, a moral and legal imperative that indigenous peoples be fully involved in designing, implementing and evaluating initiatives related to REDD.

The success of efforts to lower carbon emissions from reduced or avoided deforestation hinge primarily on whether indigenous peoples will throw their full support behind proposed mechanisms, such as the Forest Carbon Partnership Facility. It also rests on how coherent institutions, like the World Bank, are in terms of what activities are being financed. While you are establishing this Facility, you are also financing fossil fuel extraction which will negate the carbon emissions saved from avoiding deforestation.

The following are some conditions which will determine whether indigenous peoples will support this or not:

First, the Facility and other actors such as States, corporations and NGOs should unequivocally state that they recognize and respect indigenous peoples rights as contained in the UN Declaration on the Rights of Indigenous Peoples and that this will be the starting framework of any discussion or negotiations related to the access and use of resources of the Facility. Indigenous peoples' free, prior and informed consent should be obtained before any initiative on REDD is pursued in their territories and forests. I imagine that donors and the private sector would not like to put their resources in high risk projects which will not genuinely involve indigenous peoples and other forest-dwelling people.

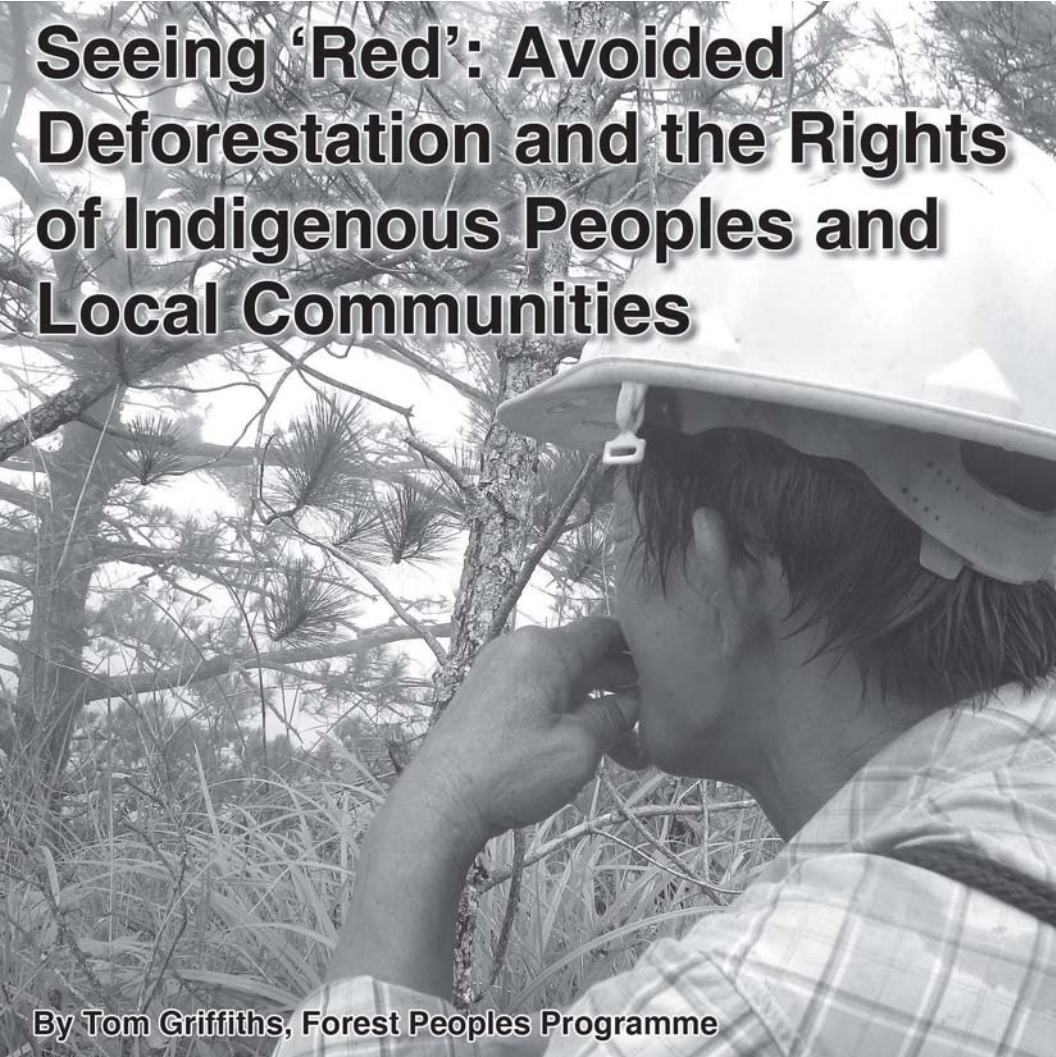
Secondly, their capacities should be enhanced to effectively address the drivers of deforestation as identified by the UNFF (UN Forum on Forests).

Thirdly, if there is an acceptance of the Facility, indigenous peoples must have a representation in the governance structure at the same level as governments, donors and the private sector.

Fourthly, consultations should be undertaken with indigenous peoples who are directly affected and pertinent documents should be translated in major languages understood by them and these should be disseminated before the consultations take place.

As the Chair of the Permanent Forum on Indigenous Issues, I am committed to help facilitate such consultations and ensure that the UN Declaration on the Rights of Indigenous Peoples remains integral in the concept and implementation of mechanisms related to reduced emissions from deforestation.

Grand Hyatt Hotel, Bali, Indonesia, 11 December 2007



Seeing 'Red': Avoided Deforestation and the Rights of Indigenous Peoples and Local Communities

By Tom Griffiths, Forest Peoples Programme

I. Introduction and Background

After repeated warnings from scientists, civil society and indigenous peoples that climate change is already underway and set to accelerate, there are signs that most governments today accept that more effective measures must be taken to tackle global warming. It is increasingly recognised that deforestation, particularly in the tropics, contributes between 18 and 20 percent of all annual global emissions of CO₂ (carbon dioxide), and that in some countries like Brazil it accounts for up to 75 percent of the country's annual release of CO₂ from human activity each year. Consequently, there is a growing international consensus that future policies to combat climate change must include measures that seek to reduce deforestation in tropical countries.

Renewed calls for incentives for avoided deforestation under the UNFCCC

Despite earlier controversies over the inclusion of forests under Kyoto (Annex 1), policies to avoid deforestation using economic incentives to encourage tropical countries to protect their carbon reservoirs in standing forests have recently been put forward by Southern and Northern governments, conservation NGOs, private consultants, some natural scientists and so-called “carbon finance” companies.

In December 2005, the *Coalition of Rainforest Nations*¹ led by Costa Rica and Papua New Guinea presented a formal proposal for reducing GHG (greenhouse gas) emission from deforestation to the 11th Conference of the Parties (COP) of the UNFCCC (UN Framework Convention on Climate Change) and first Meeting of the Parties to the Kyoto Protocol (COP11/MOP1). At the same meeting, several NGOs and scientists led by Environmental Defense reiterated earlier calls for inclusion of forests under Kyoto’s trading instruments.² As a result, COP11 requested that its Subsidiary Body for Scientific and Technological Advice (SBSTA) evaluate the issue of avoided deforestation and climate change mitigation and report back to UNFCCC COP13/MOP3 in December 2007. The UNFCCC has already organised two international meetings on avoided deforestation (in July 2006 and March 2007).³

A major boost to global options for RED mechanisms for climate change mitigation came when the Brazilian government, which is opposed to linking RED schemes to carbon trading, presented its own avoided deforestation proposal based on public funding at a workshop of the UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA) in September 2006 and again at UNFCCC COP12 in November 2006 (see below).⁴

The AD (avoided deforestation) agenda rose even higher on the global climate change agenda with the publication of the UK government’s influential Stern Review on Climate Change in early 2007. Ex-World Bank economist Sir Nicholas Stern suggests that avoided deforestation measures should be included in the post-2012 commitment period under Kyoto, but urges that action to prevent deforestation on a large-scale must be taken as soon as possible through pilot avoided deforestation schemes to test methodologies and iron out any remaining technical *and* social difficulties (Annex 2).⁵

World Bank seeks to be lead global agency on avoided deforestation

The World Bank has always been fast to capture (and engineer) new global initiatives where considerable North-South financial flows may be anticipated as it did in the late 1980s and early 1990s with the Global Environment Facility (where it remains the main implementing agency and still controls the trust funds). So too in international carbon finance, the Bank has been a lead player.⁶

In 2006 and early 2007, the World Bank has placed avoided deforestation

and carbon forestry at centre stage of its controversial proposal for a new “Global Forest Alliance” (GFA) with large conservation NGOs, like the Nature Conservancy, Conservation International, WWF, and the private sector. This proposal for a mega-fund for forests, which so far hardly been discussed with civil society outside a closed group of big conservation NGOs, would be managed by the World Bank and would seek to increase the Bank’s interventions in the forest sector in developing countries. At the moment, the World Bank is proposing a “Forest Carbon Partnership Facility” (FCPF) that would sit within its proposed GFA to “test the feasibility” of different methodological approaches to payment schemes for Reduced Emissions from Deforestation and Degradation REDD (see discussion below on the major difference between RED and REDD proposals). The World Bank is now seeking high-level political backing for its carbon forestry and AD proposals from G8 industrialised countries.

II. Common and distinct approaches to avoided deforestation

Scrutiny of various governmental and non-governmental avoided deforestation proposals shows that most put forward similar arguments and include similar elements in their plans for avoided deforestation schemes. These are that:

- Compensating governments, the private sector and forest owners to protect forests would establish positive economic values for standing forest and *discourage* forest clearance for other uses;
- Powerful economic incentives are required to counter the proximate economic drivers of deforestation (e.g., oil palm expansion, industrial tree plantations, conversion to agriculture, hydrocarbon extraction, etc.);
- Countries that can demonstrate verifiable reductions in *deforestation rates* or maintain forest carbon stocks (forest cover) above *agreed minimum targets* would be paid compensation through a global and/or regional RED funding mechanism(s);
- Verification of forest cover and deforestation rates would be based on a combination of satellite remote sensing images backed up by ground truthing (site visits);
- RED schemes would use a *national* or *country-level* carbon accounting approach (not project level accounting) in order to enable cross-sectoral national land use planning and to reduce monitoring and verification “transaction costs;”
- Previous concerns about “additionality,” “leakage,” accurate carbon accounting and verification (Annex 1) would be largely resolved through advances in remote sensing technology,⁷ methodological progress in carbon accounting⁸ and the use of the country or “entire national forest system” as the unit of account (although it is acknowledged that there

are still scientific and verification “details” to be worked out, tested and agreed);

- Forest carbon reservoirs are not guaranteed permanent stores of carbon, but RED schemes to protect standing forests can “buy time” and reduce CO₂ emissions while more effective mitigation strategies and technologies are developed for permanent emission reductions.⁹
- There would be a need for “strong rules” that would discourage the removal of forest from land that has been subject of AD funding or involved in the generation of compensation payments for reduced deforestation (financial sanctions, etc.).¹⁰

Notwithstanding the above similarities, governmental and NGO proposals for avoided deforestation are markedly different in a number of ways and these differences may be critical in forthcoming public debates and intergovernmental negotiations on this topic. The first marked difference among different AD proposals relates to the choice of funding mechanisms for such schemes.

Public funding approaches

The Brazilian government proposes the establishment of an international trust fund which would compensate efforts to reduce emissions from deforestation drawing upon voluntary contributions from governments in industrialised countries. Other proposals, such as that of the Kyoto2 initiative run by environmental activists in the UK, recommend that AD funds be secured from a tax on carbon-based extractive companies at the point of production (not emissions). Some proportion of this tax revenue, say 10 percent, would then be channelled to an international avoided deforestation fund used to reward countries for their emissions reduction efforts through forest conservation.¹¹ Such a carbon tax might generate many billions of dollars annually and so might deliver some fraction of those billions to a global fund to slow down or eliminate deforestation.¹²

Market-based approaches

The Coalition of Rainforest Nations and most conservation NGOs, and obviously carbon finance businesses, are pushing for compensated reduction financed through carbon emission “reduction” credits.¹³ These market advocates maintain that public international funds would never generate the required volume of funds to provide attractive and sustained economic incentives for developing countries to keep their forests standing. European governments tend to be more in favour of a trade-based scheme, presumably to increase volumes and reduce prices of pollution rights in the *EU Emission Trading Scheme* (ETS). The UK government, for example, is proposing that the rainforests of the Congo basin be protected through carbon trading:

*...the challenge for the international community – for all of us – is to change the economic incentives facing the government (of DRC): to make it more rewarding to preserve forests than to cut them down. **In the end, the only way we are going to do this is through a global carbon trading scheme** ... So the (World) Bank needs to expand its work on sustainable rainforest **management** by piloting new ways to provide alternative incomes for people living in rainforests, rather than from cutting them down, as we move towards a system of carbon trading (emphasis added).¹⁴*

World Bank pushing carbon markets

Though the World Bank promotes a mixed funding approach to avoided deforestation (see below), on balance the Bank is a major pioneer and advocate of carbon trading. Like other carbon market advocates, Bank economists stress that only markets will deliver enough funds for effective global efforts to mitigate climate change. Indeed, the finance plan for its proposed Forest Carbon Partnership Facility assumes that the fund will operate almost entirely on market-based funds by 2014.¹⁵

In 2007, there appears to be an emerging consensus among proponents of avoided deforestation that a mixed approach to RED funding is required.¹⁶ Public funds (ODA) would be used to fund initial pilot schemes to test methodologies and to fund “carbon inventories,” monitoring and **enforcement** needs, capacity-building and technical assistance work with governments, while the carbon credit market might in time channel the bulk of funds for reduction compensation payments (either through voluntary or regulated carbon trading schemes).¹⁷

A second marked key difference between AD proposals relates to what to include or exclude from such schemes.

RED or REDD?

Some AD advocates wish to include not only avoided deforestation, but also reduced emissions from avoided forest degradation, i.e., Reduced Emissions from Deforestation and Forest Degradation (REDD). Proponents of REDD maintain that a genuine ecosystem and landscape approach to avoided deforestation must encompass both healthy standing forests and degraded forests. Advocates of REDD include the Coalition of Rainforest Nations (CRN) mentioned above and the World Bank which seems to be trying to harness avoided deforestation funds to finance its (much criticised) conventional tree plantation offset projects.

Countries without high deforestation rates strongly advocate AD rewards for forest landscape restoration and “rehabilitation” given that their forests are not subject to high rates of clearance, when compared to other developing countries. The government of India, for example, notes that restrictions of rewards to efforts to reduce deforestation would unfairly penalise countries that are expanding “forest” cover. India cautions that confining compensation to avoided deforestation with payments based on deforestation *rates* may create a perverse incen-

tive for unscrupulous governments to accelerate deforestation before 2012 or to threaten to implement expensive (bogus) land clearance development schemes to drive up the compensation payment per hectare of forest.¹⁸

Countries like Indonesia that have already deforested large areas and have severely degraded forest through unsustainable industrial logging also advocate afforestation and “restoration” activities under avoided deforestation schemes.¹⁹ Private companies involved in the international carbon economy also seek to include afforestation, plantation schemes and payments to reduce forest degradation under REDD.

Critics of this broad approach to “avoided deforestation” payment schemes point out that measuring degradation is difficult. On this issue, most scientists agree that existing remote sensing technology may not be sufficient for verifying the state of degradation of standing forests to an acceptable degree of accuracy. Those that advise against inclusion of afforestation schemes as part of avoided deforestation compensation point out that such forest restoration components risk suffering from the same leakage and additionality problems that have plagued carbon sink plantation initiatives (Annex 1). There is also the concern that by including forest degradation, there is the risk of opening up a can of definitional worms that will only serve to hinder effective UNFCCC negotiations. This group, which includes Brazil, thus propose that the UNFCCC and international agencies restrict compensated reductions to avoided deforestation - RED.

Baselines or targets?

Most existing market and non-market AD proposals, including that of Brazil, propose that compensation payments be made according to national performance. This would be judged against a baseline set by a country’s average annual deforestation rate that would be known as its Reference Emission Rate (RER). Some carbon finance companies are advocating an alternative cap and trade approach. Under this latter framework, payments would be made to maintain carbon reservoirs at or above an agreed target based on “an approximation of the amount of carbon currently held” in a country’s “forest carbon reservoirs,” which would give the country the option to “sell credits and transfer equivalent forest areas of forests to **protected reserves**, or carry out deforestation activities, or a combination of both.”²⁰ (!!)

Mega-bucks for forests and forest conservation?

The sums of money being put forward as required to finance RED schemes and pay countries compensation are highly variable, but RED supporters suggest that there could be very large financial rewards for avoided deforestation. According to a study commissioned by the Stern Review of eight countries responsible for 70 percent of emissions from land-use change, the opportunity cost of income from alternative land uses would be in the order of \$5-10 billion annu-

ally, if all deforestation were to stop.

Globally, the World Bank estimates that to reduce the annual rate of deforestation in developing countries by 20 percent, avoided deforestation would cost between two and \$20 billion annually, which would put the price of halting deforestation altogether as high as \$100 billion per year! In terms of potential earnings for countries, estimates vary widely. However, most estimates predict substantial rewards for forest conservation. In the case of DRC, for example, some commentators advise that AD compensation might generate \$2.7 to \$33 billion per year. Enthusiastic advocates of AD advise that per capita incomes could, on paper at least, be raised by over 10 percent though they fail to explain how citizens would truly enjoy raised incomes.²¹ On the ground, depending on the specific opportunity costs for alternative land uses in specific areas, the World Bank claims that compensation reduction payments could range from between US\$200 and \$10,000 per hectare of forest.²²

Who would benefit and receive these compensation payments or rewards under AD?

Surprisingly, many AD proposals are often vague about *which* bodies, entities or persons would receive compensation payments under an international RED scheme. Most proposals imply that payments would in large part be made to *government* ministries or treasuries, which in turn suggests that schemes would in part apply to forests deemed by the government and the courts to be “state” lands. AD proposals made by the Government of Indonesia suggest compensation funds could be distributed among protected area authorities, “certified” logging companies engaged in sustainable forest management (SFM), initiatives to tackle illegal logging, payment for environmental services (PES) schemes and community-based forest management (CBFM) though the Indonesian proposal does not specify in detail which bodies or legal persons would receive funds for these initiatives.²³

Could indigenous peoples and local communities benefit?

With so few concrete AD schemes in operation other than a few project-level schemes run by NGOs (see below), there is little concrete empirical evidence so far to judge to what extent AD and RED programmes might benefit people at the local level. Studies by economists and advocates of payments for environmental services (PES) are quite optimistic. PES economists suggest that, based on emerging experience with PES schemes in some parts of Latin America, some livelihood gains can be expected if the right terms and conditions are in place particularly on economically “marginal lands” like upland forest areas.²⁴

The World Agroforestry Centre points to its *Rewarding Upland Poor for Environmental Services (RUPES)* programme that operates in Indonesia, Nepal and the Philippines as positive examples.²⁵ In the case of indigenous communities

with subsistence and barter economies it is suggested that nonmonetary benefits in-kind might be more culturally appropriate, while those indigenous communities with some degree of monetisation might be compensated or “rewarded” with small and regular payments into community funds or to community projects.²⁶

Studies of other PES schemes in Brazil and Bolivia have found these programmes have tended to be top-down and have suffered “inadequate stakeholder participation” and thus have been plagued by “barriers to sustainability.”²⁷ Independent NGO studies have found more disturbing findings in carbon forestry projects in the uplands of South America (Box 1) where environmental payment and carbon forestry schemes have ended up leaving the communities *worse off*, indebted and locked into unfavourable legal obligations to carbon finance and carbon forestry companies.²⁸ Critics of PES also point out that the commodification of life forms and “biodiversity” (biodiversity credits, etc.) undermines local (non-monetary) cultural, conservation and sustainable use values.²⁹ Recent indigenous case studies of carbon offset plantation schemes confirm that indigenous peoples are often marginalised and fail to receive equitable benefits from such projects.³⁰

III. Existing avoided deforestation initiatives and proposed pilot schemes

At this time, there are very few existing examples of AD or RED schemes, and most are pilot voluntary initiatives financed by conservation and development NGOs. Examples include TNC’s the Climate Action Project in Noel Kempff Mercado National Park in Bolivia³¹ and its Rio Bravo Conservation and Management Area in Belize. IIED and CIFOR have examined some of these projects and found mixed results.³² Most of these existing AD initiatives have yet to be critically assessed by social justice NGOs and grassroots organisations.

In 2007, however, national-level initiatives to develop AD methodologies and carbon accounting are gathering pace. The European Space Agency, for example, is to pilot carbon inventories and deforestation monitoring using remote sensing technology in Bolivia and Cameroon.³³ The World Bank is inviting the governments of Papua New Guinea, Costa Rica and Indonesia, and regional bodies in Brazil and the Democratic Republic of Congo, to fund forest protection through avoided deforestation. The World Bank is seeking to persuade these countries to sign agreements to limit carbon emissions from deforestation by 2009 or 2010, in return for \$250 million investment.³⁴

Initiatives by regional and local governments are also emerging in Asia and Latin America, and some developed country governments are putting up regional funds for avoided deforestation. In April 2007, the Australian government announced a US\$160 million fund for reforestation and avoided deforestation in the Asia-Pacific region. At the end of April, the governors of Aceh and

Papua and Papua Barat in Indonesia published a statement expressing interest in avoided deforestation schemes and pledging that the rights of indigenous peoples and local communities would be respected in any such programmes. The Governor of Aceh even suggested that he might place a moratorium on industrial logging in the province if funds from AD can be secured.³⁵

At the same time, in April 2007, the government of Ecuador has publicly stated that it would be willing to forego oil and gas extraction in protected tropical forest areas in return for compensation for avoided deforestation and the maintenance of its carbon reservoirs above and below ground.³⁶

Although national-level schemes have yet to be developed, it is clear that momentum for such largescale AD interventions is increasing and tropical countries, not least the members of the Coalition of Rainforest Nations (who prefer market-based approaches to AD finance), are already lining up to take part in any internationally funded pilot schemes and so it looks very likely the World Bank will strike deals with these governments in the near future.

IV. Unanswered rights, equity, accountability and livelihood concerns

There are clear risks, but also potential benefits to be gained by indigenous peoples and forest dependent communities if forests become part of an international scheme for reducing GHG emissions from deforestation. Most of the existing RED proposals make mention of the need for community “participation” and the provision of local benefits for forest communities. The Stern review mentions the need to address forest peoples’ rights *and* responsibilities (Annex 2). The World Bank’s GFA and FCPF proposals both mention support for community-based forest management: but what would that really mean in practice? Experience in India has shown that such schemes have in certain ways *increased* state control over forests, and increased unwanted government interventions in local customary systems of land tenure and natural resource management.³⁷

Social risks associated with current AD proposals

Though social and poverty reduction issues are mentioned in most avoided deforestation proposals, they are generally scant on details about *how* peoples’ rights will be fully respected and safeguarded, and *how* equitable and sustainable local benefits might be ensured under RED schemes.

Top-down and unsustainable forest policies?

At this stage, the majority of AD proposals stem from the World Bank, governments and large conservation NGOs. There is much evidence to show that any global plans to save the world’s forests devised without the full knowledge and agreement of forest peoples and local communities are doomed to failure

and such top-down policy-making often serves to reinforce the unequal *status quo* in forest politics at the international, national and local levels.

A prime example of a previous failed global solution designed by the World Bank and FAO, which at one point involved no less than 73 developing country governments, was the *Tropical Forestry Action Plan* (TFAP) which was planned and implemented in the 1980s and early 1990s. Though the TFAP talked a lot about participation and local livelihoods, it ended up serving the interests of government agencies and the logging industry, despite its claims of support for “social forestry.” The TFAP experience showed clearly that it is a mistake to develop forest policy from the top down and that sustainable solutions can only come from the bottom-up, from forest owners and forest peoples who actually live in and depend on the forest.³⁸

Yet, so far at least, it is not at all clear that indigenous peoples and other forest peoples have been consulted about the risks and potential benefits of the “avoided deforestation” plans being promoted by their governments in league with international agencies. Accelerated global initiatives to promote biofuels as part of climate change mitigation measures have been roundly criticised by indigenous peoples and NGOs for failing to ensure proper public consultation.³⁹ There is a danger that rapid moves to adopt global policy measures on AD may likewise take place without proper consideration of potential social and rights impacts, and without the informed participation of potentially affected rights holders.

In 2007, international deals on forests are *still* being negotiated between the World Bank and developing country governments without the knowledge or involvement of forest peoples in those countries. This is even after the Bank has been repeatedly publicly condemned for its failure to involve rights holders in its forest interventions in developing countries (as has happened recently in DRC where the Bank promoted industrial logging and a new Forest Code without adequate participation of indigenous peoples and other forest-dependent people).⁴⁰

Anti-people and exclusionary conservation

There are real risks that where RED funds are used to promote and *ensure* forest protection, a significant proportion will be used by the State to equip forest protection agencies with jeeps, walkie talkies, arms, helicopters and GPS in an outdated and anti-people “guns and guards” approach to forest protection. In the same way, there is a serious risk that RED money may *reinforce* State and private sector control over forests and end up supporting outdated and unjust models of forest protection.

While there has been a welcome normative shift at the international level towards a more people-centred approach to forest conservation and protected areas due to pressure from indigenous peoples and human rights activists, many countries, particularly in some parts of Africa and Asia, continue to deny the

Box 1. Impact of carbon forestry on indigenous peoples and peasant communities in the Ecuadorian Andes.⁴¹

Voluntary carbon-offset plantation projects in the uplands of Ecuador reveal a series of potential social, economic and livelihood impacts on indigenous peoples and local communities who have entered into carbon offset projects in good faith. Several years into these voluntary offset projects, the communities complain that they:

- Were never properly informed by the carbon forestry company about actual net payments they would receive per hectare (they were only advised gross rates per hectare without deducted costs: they were not told that the company's technical costs for planting, training, monitoring and certification would be *deducted* from gross payments per hectare);
- Were not informed about social and economic risks and potential costs and their legal obligations under the project;
- Have not been advised of the purpose or logic of certified carbon credits and how they produce income for the company;
- Were not told about penalty clauses under the contract before community members and leaders signed long-term agreements;
- Have been victims of manipulation or abuse of their own rules for free, prior and informed consent;
- Have suffered economic displacement from communal grazing lands as a result of giving up land for the project (based on incomplete and inaccurate promises of potential benefits);
- Have had to use much of the modest payments under the scheme to pay for outside experts to carry out technical work specified in the contract;
- Have endured long delays in payments from the company for work completed on time and according to contract;
- Have in most cases not received promised levels of income and employment
- Are in several cases actually worse off and have become *indebted* in order to pay contract penalties for failure to meet obligations (e.g., due to accidental fire damage to plantations);
- Have been sanctioned by large fines payable under contract penalty clauses;
- Have been *indebted* in some communities due to company accounting errors that have made "over-payments" for certain forestry works and have demanded repayment;

- Have had to bear almost *all* the unforeseen costs of the activity (replacement of failed seedlings, etc);
- Have in one case been (falsely) threatened by company officials that their ancestral lands might be compulsorily confiscated as a penalty for failing to carry out forestry activities stipulated under the contract;
- Have had complaints and questions about company expenditures and accounting routinely dismissed by company officials.

rights of forest peoples. These countries still apply anti-people and discriminatory approaches to forest protection that penalise and criminalise indigenous forest dwellers.⁴²

Significant financial AD rewards may induce State forest agencies and protected area authorities to start overzealous enforcement of existing unjust forest protections laws using measures that will unequally target marginal and vulnerable groups, including indigenous peoples and traditional forest-dependent communities.⁴³

In the worst-case scenario, in parts of Asia and Africa, RED funds risk being diverted to unjustly settle nomadic and semi-nomadic forest dwellers, or to convert shifting cultivators into settled farmers in the name of (non-forest based) “*alternative sustainable livelihoods*.” Such practices may violate people’s right to culture and livelihood, weaken food security and undermine their traditional practices.⁴⁴ Such warnings are not scare-mongering, but rather based on actual practices happening in forest areas today (e.g., forced evictions in the uplands of Thailand). Should AD schemes support such relocation schemes, they would be undermining participating countries’ legal obligations to protect customary use of biological resources and traditional knowledge under the Convention on Biological Diversity (CBD) and various human rights conventions, including the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Violation of customary land rights and risk of land conflicts

In many tropical forest countries states fail to recognise the collective customary rights of indigenous peoples over their ancestral forests, or only recognise a small portion of their traditional lands legally defining the remaining forests as so-called “State land.”⁴⁵ This issue is crucially important, because presumably the zoning of forests under any RED payments scheme and any benefit-sharing plan under RED contracts would be in part determined by land tenure and ownership rights.

There is a real risk that governments, companies and conservation NGOs will “zone” (carve up) forests by demarcating protected areas, biological corridors, forest reserves and sustainable forest management zones (certified logging)

to receive AD payments to the exclusion or disadvantage of indigenous and traditional communities.

Thus, the same potential problems of top-down land use planning and forest zonification exist with RED schemes as they do with other approaches that depend on land-use zoning and land classification like the application of the High Conservation Value or “critical forests” concepts.⁴⁶ Given the potential earning capacity of standing forests, some States may become even more reluctant to recognise indigenous and local community customary ownership rights over forest lands. RED compensation payments to governments may create a *disincentive* for forest and conservation and other government authorities to resolve long-standing land disputes in forest areas.

There is also the danger that relatively lucrative compensation rates per hectare of forest might drive land speculation on forest frontiers and even in more remote forest areas. RED schemes therefore risk driving the expropriation of customary lands.

There is a risk that States and governments will make public commitments to respect rights in a rhetorical way, but in practice, use the AD funds to reinforce existing unjust conventional models and policies of forest protection. In the aforementioned case of Indonesia, for example, the governors declare they will respect indigenous rights, but pledge that funds will be used to equip the forest police.

Increased inequality and social conflict

Forests under top-down demarcation RED schemes might generate conflict over boundaries and benefits both within and between rural landholders and forest owners. There is also the risk that without careful measures to ensure equitable benefits in rural areas, AD payments might create rifts between those communities or households receiving payments and those that are excluded, which may include those without formal legal title to their lands and “landless” people. In other words, AD compensation might increase inequality in rural forest areas and risk creating intra- and intercommunity conflicts.

Corruption and fraud

The large sums of money that might be involved in RED also create a very real risk of corruption especially given that some of the tropical countries with the worst deforestation rates are among the most corrupt in the world. Even where corruption and embezzlement can be avoided or controlled, there is still a strong risk that benefits will be captured largely by state agencies, local governments and conservation NGOs rather than indigenous peoples and local communities as has happened in some areas of the pilot avoided deforestation scheme in Noel Kempff National Park in Bolivia.⁴⁷ Worse still, while companies, NGOs

and state agencies might receive income, the direct costs of forest protection may unduly fall on indigenous and local resource users who may face restrictions on hunting, fishing and shifting cultivation practices as a result of conventional exclusionary protected forest area policies (as also happened in Noel Kempff).

Unjust contractual arrangements

Even if communities are able to negotiate direct benefits for AD schemes involving their traditional forest lands, there is no guarantee that the terms of negotiation will be equal. There is a danger that compensation and forest conservation contracts will be drawn up to favour the State or company or conservation NGO and place undue costs or conservation duties on local community members, their leaders and their organisations as has happened in the carbon forestry contracts with indigenous peoples in the uplands of Ecuador (Box 1).

All the above risks generate a series of critical questions that remain largely unanswered by governmental and non-governmental advocates for avoided deforestation schemes:

- What guarantees will RED schemes put in place to ensure avoided deforestation programmes fully uphold the human rights of indigenous peoples and other forest dwellers?
- How will RED ensure that communities and traditional land holders will be rewarded for protecting the forests and not evicted from such forests?
- How will customary land rights and unresolved land claims be dealt with under AD rules and policies?
- Will indigenous peoples' right to FPIC be genuinely respected? How will the problems of manipulated and engineered consent be overcome?
- What is to stop ruling and corrupt elites at the national level siphoning off the bulk of funds and benefits for personal gain or their own political agendas?
- How will a national or extensive sub-national programme targeting specific forest areas tackle the different proximate and underlying "drivers" of deforestation? Who and how will these drivers be identified?
- Which rights-holders and related representative bodies will have the right to negotiate contracts and compensation rates over *which* areas of forest and on *what terms* and according to whose criteria and rules?
- How will the international and national rules and criteria for access to AD schemes be agreed and set in a participatory and equitable manner?
- How can citizens and rights holders be sure that unfair or narrow rules

will not be set by governments, companies, NGOs and forestry consultants largely for the benefit of these latter interest groups?

- If communities or groups of communities are able to collectively negotiate contracts: how will asymmetric negotiations that might lock them into unfair contractual obligations be prevented?
- Who will “absorb” the unforeseen or accidental costs of AD when contracts are breached (and compensated carbon is lost)?
- If existing project-level carbon forestry has struggled to address the complexities of sustainable forest management, how will these social and cultural complexities be effectively addressed on a national scale in RED schemes?
- How will AD policies tackle the demand aspect of drivers of tropical deforestation?
- How will transboundary (international) leakage between participating and non-participating countries be prevented or at least minimised?
- If AD schemes are to involve national forest policy making and planning, how will meaningful citizen and indigenous participation be guaranteed?

Unresolved ethical and scientific criticisms of carbon trading

On top of all these legitimate questions about the *social* sustainability of global and national schemes to compensate avoided deforestation, there also remain thorny questions about those RED proposals that advocate funding through carbon trading. While community-government relations are often asymmetric and skewed in favour of State agencies, so too negotiations with companies are all too often unequal as the PROFAFOR case in Ecuador demonstrates (Box 1).

Receiving income via companies and the global carbon trading market could also raise potential serious ethical issues for indigenous peoples and communities. This is because, ultimately, it is likely that the great bulk of payments for carbon credits would flow from the same industrial and corporate interests that continue to extract fossil fuels elsewhere, sometimes on the ancestral lands of indigenous peoples at serious cost to their environment, well-being and health. These same transnational energy companies have, at the end of the day, engaged in the carbon trade mainly to buy rights to *continue* polluting.⁴⁸ For many indigenous peoples these contradictions are deeply problematic and might well risk causing conflicts and divisions within and between their communities.

V. Next steps?

It is disconcerting that while world leaders, government delegations to the UNFCCC and large NGOs are busy promoting avoided deforestation on the world stage, surprisingly few provide detailed answers to address the concerns raised above. In some cases, such risks are not even acknowledged at all. It is as if some climate activists and NGO coalitions like CANI have become so obsessed with targets, monitoring, measuring and implementing GHG reductions that they have overlooked the social and technological roots of the climate crisis, as well as the broader concerns and historical lessons of international forest policy-making. While mention is made of the need to protect biodiversity, it is rare to see any mention at all of human rights or social issues.⁴⁹ In the very worst cases, raising social issues, at least for market-based AD advocates, is seen as a just a “side issue”⁵⁰ or even worse as a “distraction” from the core task at hand: saving the planet.

Yet, surely all the lessons of forest policy-making and environment and development over the last century should remind us that social and rights issues are fundamental to achieving sustainable development and to securing effective measures to sustainably manage forests and protect biological resources and ecosystems. Are we unlearning lessons?

As governments and international agencies rush to establish pilot avoided deforestation schemes, they must be reminded that states have a legal obligation to uphold human rights and fulfill international commitments under environmental treaties. Protecting human rights is thus far from a “distraction” from the main global objective of combating climate change: governments have a legal duty to uphold human rights.

Those AD supporters that do acknowledge that social, rights, livelihood, governance and equity issues are important in AD policies, often point to emerging certification standards such as the *Gold Standard* of the WWF⁵¹ or the *Climate, Community and Biodiversity (CCB)* standards⁵² developed for carbon forestry and PES projects by forestry companies and NGOs as the way to address social issues and safeguards in any future AD schemes. These certification approaches are also seemingly the preferred approach of the World Bank Group.

The problem with reliance on certification standards, however, is that most are *voluntary* and cannot be enforced and many of them, like the CCB standards, have not been widely tested on the ground.⁵³ In relation to the use of certification for sustainable timber extraction within forests, it is clear that even the best standards are often not implemented in forestry operations. Forest Stewardship Council (FSC) standards, for example, which are supposed to respect indigenous land tenure and uphold the principle of free, prior and informed consent have been found lacking in Indonesia, Guyana, Cameroon and elsewhere.⁵⁴

More disturbing is that private sector investors, private Banks and the World Bank will all accept logging company promises of improvements towards FSC

standards to render them eligible for their finance *even if the companies do not meet the standards in the present*. This step-wise approach risks AD payments or bonuses being paid to large commercial logging concession-holders for supposed sustainable practices that *may* or *may not* actually be used in the future. Here there is a serious risk that AD funds will be wasted on “hot air” and false promises unless certification oversight, verification and compliance mechanisms are tightened considerably.

Overall, when faced with the challenges of making AD schemes sustainable, social development and forestry think-tanks like the ODI and CIFOR have simply noted that “social standards” need to be developed for avoided deforestation and carbon forestry, including requirements for social impact assessment.⁵⁵ Clearly, lip service on social commitments under AD policies is not adequate.

As a first step in addressing gaps in the AD policy debate, it seems essential that indigenous peoples and forest movements worldwide commence serious internal dialogue on the pros and cons of avoided deforestation schemes run by governments and the World Bank. Can these schemes strengthen tenure rights and customary rights to resources, or are they doomed to strengthen the current *status quo* to the detriment of indigenous peoples and local communities? If they could deliver genuine benefits for local people, what minimum guarantees are required to help ensure this?

If the risks and challenges identified in this briefing are not properly addressed, how can forest peoples and their supporters stop governments and international agencies from agreeing a deal that is bad for people?

Suggested next steps on this critical issue for forest peoples in the tropics include action to ensure:

- Indigenous peoples and forest movements are directly engaged in the current international and national debates on AD/RED policies and possible future mechanisms and approaches;
- Human rights; free, prior and informed consent (FPIC); respect for customary land and resource rights; land tenure security; equitable benefit sharing and good governance are placed as central issues in the AD policy discussion;
- Guarantees are forthcoming that customary rights will be recognised and respected;
- International and national AD forest policies adopt a rights-based approach to sustainable forest conservation and forest management;
- Guarantees are secured that indigenous peoples will retain and recover control over their forests and receive support for genuine community forest-based management;⁵⁶
- Dialogue with AD supporters is undertaken in good faith and addresses *both* the potential benefits from such schemes, *and* their risks, including

ethical problems (of market funds) and existing limitations and scientific gaps (like transnational leakage, measurement problems);

- Any processes to identify national and local drivers of deforestation in tropical countries and decisions on which drivers and underlying causes must be tackled to prevent deforestation *must* involve forest peoples and forest-dependent communities;
- Any proposed standard-setting and rules for AD schemes at the international and national levels fully involve potentially affected indigenous peoples and local communities and require full conformity with international law.

In short, there is an urgent need to make sure global climate change mitigation policies on avoided deforestation are formulated with the full and effective participation of indigenous peoples and other potentially affected rights holders. Effective measures to tackle climate change and other environmental crises must involve democratic and decentralised policy-making that involves indigenous and civil society organisations in identifying and implementing sustainable solutions.⁵⁷

ANNEXES

Annex 1: Forests in past negotiations on global climate policies

During tortuous intergovernmental negotiations on the first Kyoto commitment period (2008-2012), questions over whether or not projects to protect natural forests should be included under the UNFCCC's Clean Development Mechanism (CDM) caused heated debate. Following intense negotiations, natural forests were in the end not included under the CDM. Only afforestation and tree plantation carbon sink "offset" projects were finally (and very controversially) considered eligible for carbon credits under the CDM rules despite strong opposition and serious concerns about the social and environmental problems with tree plantation carbon sinks raised by indigenous peoples, social justice organisations and some environmental NGOs.⁵⁸

The exclusion of forests from the CDM stemmed from a combination of ethical and scientific concerns raised by some NGOs and scientists, as well as stiff opposition from governments like Brazil for reasons partly linked to the politics of global trade. At the time, critics pointed out that forest carbon "reservoirs" are non-permanent and that they may suffer damage or "leakage" cause by man-made or accidental forest fires and even by natural disasters.⁵⁹ Critics also noted that effective forest protection in one place might well displace deforestation and land conversion activities to another location within the same country thereby failing to ensure "additionality" (a net reduction) in controlling GHG emissions.

The very real technical difficulties in accurately and objectively measuring and monitoring changes in carbon stocks in forests were also highlighted.

Perspectives of Indigenous Peoples

Indigenous peoples point out that they suffer the direct consequences of climate change on their environments, especially in the tropics, in the Arctic and in other fragile ecosystems. Indigenous declarations, such as the 2002 *Kimberley Declaration*, have repeatedly warned governments of the devastating impacts of climate change and called for major action to address global warming.⁶⁰ In the Amazon, the Coordinating Body of Indigenous Organisations of the Amazon Basin (COICA) established, through its own independent efforts, the *Climate Alliance* with the peoples of European cities in 1990. This partnership is based on the principle of ecological debt and of support for indigenous peoples to protect carbon reservoirs in tropical forests and secure their goals "...to attain their basic rights' to self determination, to own and control their traditional territories and to be able to "live and work in their natural environment according to their own development concepts."⁶¹

Indigenous peoples have previously reached different conclusions about whether or not forests should be included in the CDM. Some have questioned the ethics of trading carbon stocks on the international market. Many reject the principle that industrial and corporate polluters can buy permission to continue polluting by trading in forest carbon credits. They also dismiss the notion that the value of forests can be reduced to the monetary value of their carbon stocks, and stress that for their peoples the non-monetary cultural and spiritual values of their forest are of utmost importance and must be respected. They maintain that trade in carbon credits is unethical and irrational because it does not tackle the main root cause of climate change (continuing and increasing emissions from fossil fuels). They worry that trade in forest carbon credits may establish perverse incentives for governments and big business to expropriate indigenous peoples' forests and displace their communities in order to capture carbon funds. In numerous statements to the UNFCCC, indigenous peoples have asked for effective participation in climate change negotiations to ensure that their rights and priorities are addressed. They have also consistently requested access to the UNFCCC Adaptation Fund to help their peoples cope with the impacts of existing and future climate change in their territories.⁶²

In other cases, most notably in Brazil, some indigenous peoples, with the support of the Washington-based NGO Environmental Defense, have called for the inclusion of forests under the Kyoto Protocol.⁶³ They have advocated that indigenous community projects and natural resource management initiatives should be open to payments and credits under Kyoto or other frameworks.

Annex 2: The Stern Review on Avoided Deforestation

The Stern report proposes that one key action the international community should take to slow climate change is to tackle “non-energy emissions” by rewarding or compensating developing countries for reducing deforestation. The review predicts that emissions from deforestation may reach 40 gigatonnes of carbon dioxide (CO₂) between 2008-2012, raising the concentration of CO₂ in the atmosphere by two parts per million. The report states:

Non-energy emissions make up one-third of total greenhouse-gas emissions; action here will make an important contribution. A substantial body of evidence suggests that action to prevent further deforestation would be relatively cheap compared with other types of mitigation, if the right policies and institutional structures are put in place. (Executive summary, page xiii)

the opportunity cost of forest protection in 8 countries responsible for 70 per cent of emissions from land use could be around \$5 billion per annum initially, although over time marginal costs would rise. (xxvi)

Plea for immediate support for pilot schemes outside the UNFCCC

The report notes that current rules under the Kyoto Protocol do not allow avoided deforestation under the CDM, though this could change from the second commitment period post 2012. In the meantime, it is argued that “... international support for action by countries to prevent deforestation should start as soon as possible” through pilot schemes, which “... could be based on funds with voluntary contributions from developed countries, businesses and NGOs” (page 550)

Action to preserve the remaining areas of natural forest is needed urgently. Large-scale pilot schemes are required to explore effective approaches to combining national action and international support. (xxv)

A non-market or market approach?

Stern suggests that the establishment of a “specialised fund” has advantages over market-based payments because non-market funds could be targeted where they can provide most benefit at the country level, and could be used to tackle poverty reduction and underlying “drivers of deforestation” (pp. 550-551). The review proposes that such a fund could finance pilot avoided deforestation schemes in the short term and may even be an alternative to market-based solutions. Nonetheless, market-based solutions are not ruled out by Stern: “in the longer term, there are good reasons to integrate action to reduce deforestation within carbon markets.” One option suggested is markets for “...biodiversity credits or deforestation credits. These credits would operate in a similar way to carbon credits, with demand coming in from those who wanted to invest in forestry projects linked to corporate social responsibility or other goals.” (551)

Proposal for national-level avoided deforestation schemes

Like other recent avoided deforestation proposals, Stern prefers country-wide schemes (though these may include project-level actions). Stern advocates a comprehensive national approach in part to combat “leakage” within a country’s borders (displaced deforestation). The problem of transnational leakage is noted, but not addressed in detail. (549)

Does Stern address social and equity considerations?

The Review does recognise the need to address tenure issues: “At a national level, defining property rights to forestland, and determining the *rights and responsibilities* of landowners, communities and loggers, is key to effective forest management. This should involve local communities, respect informal rights and social structures” (page xxvi). It is also stressed that “Clarity over boundaries and ownership, and the allocation of property rights regarded as just by local communities, will enhance the effectiveness of property rights in practice and strengthen the institutions required to support and enforce them” (page 541). Stern also notes the risks of perverse incentives created through incorrect baselines, corruption, rentseeking behaviour and the capture of benefits by national elites (pages 549-550), but proposes few concrete measures to avert or minimise these risks.

Note: This article is reprinted from the publication “Seeing ‘Red’: Avoided Deforestation and the Rights of Indigenous Peoples and Local Communities” by Tom Griffiths, published by Forest Peoples Programme, August 2007.

Endnotes

¹ Bangladesh, Bolivia, Central African Republic, Cameroon, Chile, Congo, Colombia, Costa Rica, DR Congo, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Ghana, Guatemala, Honduras, Indonesia, Kenya, Lesotho, Malaysia, Nicaragua, Nigeria, Panama, Papua New Guinea, Paraguay, Peru, Samoa, Solomon Islands, Thailand, Uruguay, Uganda, and Vanuatu (see <http://www.rainforestcoalition.org/eng/>).

² Moutinho, P, Santilli, M, Schwartzman, S and Rodrigues, L (2005) *Why ignore tropical deforestation? A proposal for including forest conservation in the Kyoto Protocol* http://ftp.whrc.org/policy/COP/Brazil/moutinho%20et%20al%20%202006%20%20Unasylva%20222_27.30.pdf See also Moutinho, P and Schwartzman, S (Eds) (2005) *Tropical Deforestation and Climate Change* Instituto de Pesquisa Ambiental da Amazônia and Environmental Defense, Belém and Washington DC. http://www.environmentaldefense.org/documents/4930_TropicalDeforestation_and_ClimateChange.pdf.

³ UNFCCC (2007) *Report on the second workshop on reducing emissions from deforestation in developing countries* FCCC/SBSTA/2007/3 <http://unfccc.int/resource/docs/2007/sbsta/eng/03.pdf>.

⁴ Government of Brazil (2006) *Positive incentives for voluntary action in developing countries to address climate change: Brazilian perspective on Reducing Emissions from Deforestation* Paper presented to UNFCCC COP 12, Nairobi, Kenya, November 2006. http://unfccc.int/files/meetings/dialogue/application/pdf/wp_21_braz.pdf For local government REDD proposals in Brazil, see Viana, V M, Cenamo, M C and Manfrinato, W (2006) *Reducing Emissions from Deforestation in Amazonas, Brazil: a State government's proposal for action*. http://www.sds.am.gov.br/programas_02.php?cod=24855.

⁵ Stern N (2007) *The Economics of Climate Change: The Stern Review* HM Treasury/Cabinet Office: CUP, Cambridge at page 547.

⁶ The World Bank now manages no less than 10 different global carbon funds worth US \$2 billion on behalf of 16 governments and 64 private companies. These funds include the Prototype Carbon Fund (PCF), "Biocarbon Fund" (BioCF), Community Development Carbon Fund, the Netherlands Clean Development Facility, the Italian Carbon Fund, the Spanish Carbon Fund and the Danish Carbon Fund, among others.

⁷ The European Space Agency claims that it has developed a framework for Global Monitoring for Environment and Security (GMES) that includes a remote sensing Forest Monitoring project using GMES Sentinel satellites which would provide "global coverage every five days with a resolution of 10 metres" see European Space Agency (2006) "ESA backs incentives for developing countries avoiding deforestation" Press release. http://www.esa.int/esaLP/SEMOKCC4VUE_LPgmges_0.html.

⁸ Fearnside, P (2003) "Avoided Deforestation in Amazonia as a Global Warming Mitigation Measure: the case of Mato Grosso" *World Resource Review* 15(3)(2003):352-361.

⁹ See, for example, Smith, K, Mulungoy, R and Sayer, J (2005) "Harnessing carbon markets for tropical forest conservation: towards a more realistic assessment" in Sayer, J (Ed)(2005) *Earthscan Reader in Forestry and Development* Earthscan, London and Sterling at page 329. See also, Chomitz, K M (2006) *Policies for national level avoided deforestation programs: a proposal for discussion* Background paper for policy research report on tropical deforestation, Revised Draft 1.3. http://www.rainforestcoalition.org/documents/Chomitz_Avoided_Deforestationrev1.3.pdf.

¹⁰ CAN International (2007a) *Reducing emissions from deforestation in development countries: approaches to stimulate action* Climate Action Network International Submission to international workshop on "Reducing Emissions from Deforestation," February 2007 at page 7.

¹¹ <http://www.kyoto2.org/>.

¹² Tickell, O pers. comm., May 2007.

¹³ Environmental Defense (2006) *Compensated reduction a positive incentive for tackling the largest source of greenhouse gas emissions in the developing world*. http://www.environmentaldefense.org/documents/4875_CompensatedReduction_Overview.pdf

¹⁴ Speech by Secretary of State, Hilary Benn, on *The Future of the World Bank*, Royal Africa Society/School of Oriental and African Studies, London <http://www.dfid.gov.uk/news/files/Speeches/world-bank-april07.asp>.

¹⁵ See, World Bank (2007) presentation at http://www.tyndall.ac.uk/ppts/robert_watson.ppt#356,1,Slide 1.

¹⁶ See, for example, Ebeling J and Tippmann R (2007) *International policy for avoided deforestation reaching synergies for environment and development* Presentation by EcoSecurities to Yale workshop on Financing for Forest Conservation, 2-3 March 2007.

¹⁷ CAN International (2007a) *op. cit.* CANI (2007b) *Report of Workshop on Reducing Emissions from Deforestation in Developing Countries, 7-9 March 2007 Cairns*,

Australia Unpublished internal report.

¹⁸ Government of India (2007) *Indian Proposal: An Alternative Policy Approach to Avoided Deforestation: compensated conservation* Presentation to 2nd UNFCCC workshop on Reducing Emissions from Deforestation in Developing Countries, 7-9 March 2007, Cairn, Australia. http://unfccc.int/files/methods_and_science/lulucf/application/pdf/070307kishwan.pdf.

¹⁹ Government of Indonesia (2007) *Reducing emissions from deforestation in developing countries (REDD)* Paper submitted to UNFCCC SBSTA by the Government of Indonesia

²⁰ Prior, S, Streck, C and O'Sullivan, R (2006) "Incentivising avoided deforestation a stock based methodology." Submission by the Centre for International Sustainable Development Law to the COP UNFCCC in response to calls for views on the issue of avoided deforestation issues at its 11th Session, March 2006. Chomitz, KM, Buys, P, De Luca, G, Thomas TS and Wertyz-Kanounnikoff, S (2007) *At loggerheads? Agricultural expansion, poverty reduction, and environment in the tropical forests* World Bank, Washington D.C. at page 204.

²¹ See, for example, Butler, R (2006) "Avoided deforestation could help fight third world poverty under global warming pact: \$43 billion could flow into developing countries" *Mongabay.com* bulletin October 31, 2006.

²² Chomitz, KM, et al (2007) *op. cit.* at page 195.

²³ Government of Indonesia (2007) *Reducing emissions from deforestation in developing countries (REDD)* Paper submitted to UNFCCC SBSTA by the Government of Indonesia. <http://www.cifor.cgiar.org/NR/rdonlyres/4E81DB28-410F-4885-ACB6-6CA802603A32/0/indonesia.pdf>.

²⁴ See, for example, Robertson, N and Wunder S (2005) *Fresh tracks in the forest: assessing incipient payments for environmental services initiatives in Bolivia* CIFOR, Bogor.

²⁵ ICRAF (2006) "Clean Rivers, Lighted Lights: monetary rewards for reducing sediment" *RUPES Sumberjaya Brief No.2*, World Agroforestry Centre, Bogor; ICRAF (2007) "In Bakun, indigenous peoples use modern mechanisms for selling environmental services to preserve a traditional way of life without its poverty traps" *Site Profile: RUPES Bakun* ICRAF, Baguio City.

²⁶ Wunder, S (2006) "Are direct payments for environmental services spelling doom for sustainable forest management in the tropics?" *Ecology and Society* 11 (2):23.

²⁷ May, P, Boyd, E, Chang, M and Veiga Neto, F C (2005) "Incorporating sustainable development in carbon forest projects in Brazil and Bolivia" *Estudos Sociedade e Agricultura* 1 (2005).

²⁸ Granda, P (2005) *Carbon Sink Plantations in the Ecuadorian Andes: impacts of the Dutch FACE-PROFAFOR monoculture tree plantations on indigenous and peasant communities* WRM Series on Tree Plantations No. 1, WRM, Montevideo.

²⁹ Karsenty, A (2004) "Des rentes contre le développement? Les nouveaux instruments d'acquisition mondiale de la biodiversité et l'utilisation des terres dans les pays tropicaux" *Mondes en développement* 127(3):1-9. See also, Friends of the Earth International (2005) *Nature for Sale: privatization - the impacts of privatizing water and biodiversity* FOEI, Amsterdam <http://www.foei.org/en/publications/pdfs/privatization.pdf> See also *Global Forest Coalition* (2007) *Potential Policy Approaches and Positive Incentives to Reduce Emissions from Deforestation in Developing Countries* A submission to the Secretariat of the Framework Convention on Climate Change http://www.wrm.org.uy/GFC/material/Incentives_Reduce_Emissions.html.

³⁰ See, for example, Makelo, S (2006) *The DRC Case Study: the impacts of carbon sinks of Ibi-Batéké Project on the indigenous Pygmies of the Democratic Republic of Congo* <http://www.internationalalliance.org/documents/Climate%20Change%20-%20DRC.pdf>.

³¹ Nature Conservancy (2007) *Climate Action Project: Noel Kempff Mercado National Park, Bolivia*. <http://www.nature.org/initiatives/climatechange/work/art4253.html>

³² May, PH, Boyd, E, Veiga F and Chang M (2004) *Local sustainable development effects of forest carbon projects in Brazil and Bolivia* Environmental Economics Programme, IIED, London; Robertson, N and Wunder S (2005) *op. cit.*

³³ <http://dup.esrin.esa.it/news/news125.asp>.

³⁴ Wynn, G (2007) "World Bank eyes \$250 mln deal to save forests," *Reuters*, Thu May 3, 2007.

³⁵ Governors of Aceh, Papua and Papua Barat (2007) *Declaration of the Governors of Aceh, Papua and Papua Barat on Climate Change* April 26, 2007, Nusa Dua, Bali.

³⁶ ENS (2007) "Ecuador Seeks Compensation to Leave Amazon Oil Undisturbed QUITO, Ecuador, April 24, 2007." <http://www.ens-newswire.com/ens/apr2007/2007-04-24-04.asp>

³⁷ See, for example, Griffiths, T, Rebbapragada, R and Kalluri, B (2005) "The Great 'Community Forest Management' Swindle In India - critical evaluation of an ongoing World Bank-financed project in Andhra Pradesh" in *Broken Promises: how World Bank policies fail to protect forests and forest people's rights*, World Rainforest Movement, FPP, RF-UK, EDF, Global Witness see www.forestpeoples.org.

³⁸ Colchester, M and Lohmann, L (1990) *The Tropical Forestry Action Plan: What Progress?* WRM and The Ecologist, Penang and Sturminster Newton. See also Hildyard N, Hegde P, Wolverkamp P and Reddy S (1998) Same Platform, Different train: the politics of participation. <http://www.thecornerhouse.org.uk/item.shtml?x=51958>.

³⁹ *Global Forest Coalition* (2007) *From Meals to Wheels: the social and ecological catastrophe of agrofuels* GFC and Global Justice Ecology Project. See especially, Tauli-Corpuz, V and Tamang P (2007) *Oil Palm and other Commercial Tree Plantations: impacts on indigenous peoples' land tenure and resource management systems and livelihoods* UN Permanent Forum on Indigenous Issues, 6th Session, New York, 14-25 May 2007. http://www.un.org/esa/socdev/unpfii/documents/6session_crp6.doc.

⁴⁰ Counsel, S (2005) "Democratic Republic of Congo after the war the fight for the forest" pp.11-19 in *Broken Promises: how World Bank Group policies fail to protect forests and forest peoples' rights* FPP, WRM, ED, DTE, Global Witness, RF-UK, Sinkswatch. Moreton-in-Marsh and Monetevideo. See also Inspection Panel (2006) Report and Recommendation on Request for Inspection, Democratic Republic of Congo: Transitional Support for Economic Recovery Credit Operation (TSERO) (IDA Grant No. H192-DRC) and Emergency Economic and Social Reunification Support Project (EESRSP) (IDA Credit No. 3824-DRC and IDA Grant No. H064-DRC) Inspection Panel, Washington, DC.

⁴¹ Granda, P (2005) *Carbon Sink Plantations in the Ecuadorian Andes: impacts of the Dutch FACE-PROFAFOR monoculture tree plantations' project on indigenous and peasant communities* WRM Series on Tree Plantations, No. 1, WRM, Montevideo.

⁴² Colchester, M (2003) *Salvaging Nature: indigenous peoples, protected areas and biodiversity conservation*, WRM and FPP, Montevideo and Moreton-in-Marsh.

⁴³ Colchester, M, Boscolo, M, Contreras-Hermosilla, A, Del Gatto, F, Dempsey, J, Lescuyer G, Obidzinski, K, Pommier, D, Richards, M, Sembiring S N, Tacconi, L, Vargas Rios M T and Wells, A (2006) *Justice in the Forest: rural livelihoods and forest law enforcement* CIFOR, Bogor.

⁴⁴ See, for example, Griffiths, T (2005) *Indigenous Peoples and the Global Environment Facility (GEF) Indigenous Peoples' experiences of GEF- funded Biodiversity Conservation - A critical study* FPP, Moreton-in-Marsh.

⁴⁵ See especially, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (2005) *Our knowledge Our Survival: Traditional Forest Related Knowledge and the Implementation of Related International Commitments* IAITPTF and CIFOR, Chiang Mai and Bogor. See also: Colchester, M (Ed)(2001) *A survey of indigenous land tenure* FPP, Moreton-in-Marsh.

⁴⁶ "Focus on High Conservation Value Forests," *WRM Bulletin No. 114 January 2007*. <http://www.wrm.org.uy/bulletin/114/viewpoint.html#Policy>.

⁴⁷ May, PH, Boyd, E, Veiga F and Chang M (2004) *Local sustainable development effects of forest carbon projects in Brazil and Bolivia* Environmental Economics Programme, IIED, London at pages 85.

⁴⁸ For a detailed and through examination of the scientific and ethical problems with carbon trading and carbon markets, see Lohmann, L (2006) "Carbon Trading: a critical conversation on climate change, privatisation and power" *Development Dialogue No.48 (September 2006)*.

⁴⁹ See, for example, the CAN update on avoided deforestation published at the 26th meeting of the UNFCCC SBSTA CAN (2007) "Code REDD" *Eco, 11 May, 2007*. See also the report of the a two day workshop held in the UK at Chatham House and reported on by the Royal Society of Birds (RSPB) that seemingly did not address rights, equity and poverty issues as central themes in the organisation of the discussion. The report suggests that the topic barely came up in the open discussions that focus on finance and technical issues above all RSPB (2007) *Workshop on Reducing Emissions from Tropical Deforestation* RSPB and Chatham House, 16-17 April, 2007.

⁵⁰ Cf. Wunder, S (2005) *Payments for Environmental Services: Some Nuts and Bolts*, CIFOR, Bogor at page 22.

⁵¹ *WWF the Gold Standard background and overview*. <http://assets.panda.org/downloads/thegoldstandardoverview.doc>.

⁵² <http://www.climate-standards.org/>.

⁵³ CCB to date has only certified two PES carbon forestry projects in China and Panama - see http://www.climate-standards.org/news/news_feb2007.html.

⁵⁴ See Colchester, M, Sirait M and Wijardjo B (2003) *The Application of FSC Principles 2 & 3 in Indonesia: Obstacles and Possibilities* WALHI and AMAN, Jakarta. Colchester, M (2006) "Guyana: Controversial Barama certificate further tarnishes FSC's reputation" *WRM Bulletin No. 105, April, 2006*. See also WRM (2003) *Certifying the Uncertifiable. FSC Certification of Tree Plantations in Thailand and Brazil*. <http://www.wrm.org.uy/actors/FSC/uncertifiable.html>.

⁵⁵ Smith, J and Scherr, SJ (2002) *Forest Carbon and Local Livelihoods: assessment of opportunities and policy recommendations* CIFOR Occasional Paper No. 37, CIFOR, Bogor; Peskett, Brown, D and Luttrell, C (2006) *Can payments for avoided deforestation to tackle climate change also benefit the poor?* Forest Policy and Environment Programme FPEP, ODI, London.

⁵⁶ The Mumbai - Porto Alegre Forest Initiative <http://www.wrm.org.uy/statements/Mumbai/index.html>.

⁵⁷ Indigenous Peoples' Statement (2007) *Indigenous Peoples Major Group Opening Statement* UN Commission on Sustainable Development, Inter-active Session with Major Groups Monday, April 30, 2007.

⁵⁸ See, for example, WRM (2000) "The Mount Tamalpais Declaration" WRM's

bulletin Nº 39, October 2000. WRM (2000) *Climate Change Convention: Sinks that stink* WRM, Montevideo. <http://www.wrm.org.uy/actors/CCC/Sinks%20that%20Stink.rtf>. See also, FERN (2000) "Brussels boiling over on carbon sinks issue" *EU Forest Watch Issue 47 - Special Report: Climate Change* <http://www.fern.org/pubs/fw/srnov00.pdf>. IFIPCC (2001) *The Bonn Declaration Third International Forum of Indigenous Peoples and Local Communities on Climate Change* 14-15 June, 2001. http://www.tebtebba.org/tebtebba_files/susdev/cc_energy/bonndeclaration.htm.

⁵⁹ Humphreys D (2006) *Logjam: deforestation and the crisis of global governance* Earthscan Forestry Library, Earthscan: London and Sterling at page 207.

⁶⁰ *Kimberley Declaration* <http://www.treatycouncil.org/The%20Kimberley%20Declaration%20International%20Indigenous%20Peoples%20Summit%20on%20Sustainable%20Development.pdf>. http://www.terradaily.com/reports/More_Than_50_Tribes_Convene_on_Global_Warming_Impacts_999.html. See also ENS (2007) "Indigenous Peoples on Climate Change Front Lines" <http://www.ensnewswire.com/ens/apr2007/2007-04-19-03.asp>.

⁶¹ *Climate Alliance Manifesto* <http://www.klimabuendnis.org/english/association/511a.htm> See also, the Climate Alliance Declaration <http://www.klimabuendnis.org/buendnis/5120222.htm>.

⁶² See IFIPCC (2000a) "The Quito Declaration on Climate Change Negotiations - Recommendations of indigenous peoples and organizations regarding the process of the framework convention on climate change," *Quito, Ecuador, May 4-6, 2000.*; IFIPCC (2000b) "Declaration of the First International Forum of Indigenous Peoples on Climate Change," *Lyon, September 4-6, 2000*; IFIPCC (2000c) •eSecond International Indigenous Forum on Climate Change - Declaration of Indigenous Peoples on Climate Change•f *The Hague, November 11-12, 2000*; IFIPCC (2001) •eThe Bonn Declaration Third International Forum of Indigenous Peoples and Local Communities on Climate Change•f *Bonn, 14-15 June, 2001*; Indigenous Peoples and Local Communities Caucus (2001) *Declaration to Seventh Session of the Conference of the Parties United Nations Framework Convention on Climate Change* Marrakech, October 29 to November 9, 2001 declarations available at http://www.tebtebba.org/tebtebba_files/susdev/cc_energy/cc.html Indigenous Peoples' Caucus (2002) Statement on Climate Change to COP8, UNFCCC COP 8, UNFCCC, *New Delhi, October 23 - November 1, 2002* Indigenous Peoples' Caucus (2004) Declaration of the Indigenous Peoples Attending COP 10, UNFCCC *Buenos Aires, December 6 17, 2004.*

⁶³ Colchester, M (2001) "Capturing carbon: dilemmas for forest peoples" *WRM Bulletin No. 48, July 2001.*



The UN General Assembly thematic dialogue on climate change (31 July-2 August 2007) and the “Vienna Climate Talks” (27-31 August 2007) under the umbrella of the UN Convention on Climate Change (UNFCCC) have made gradual headway in clarifying the issues that will be crucial at the Bali meetings this December which will hopefully launch negotiations and a roadmap for global action to combat climate change, especially in the post-2012 period.

At Vienna, participants held a dialogue on the “building blocks” required for such global action, and especially for a framework or regime to guide activities after the expiry in 2012 of the first Kyoto Protocol set of commitments. They also held initial discussions on the range of commitments for developed countries to reduce their Greenhouse Gas emissions by 2020

Key among the present Kyoto commitments is the agreement of most developed countries to reduce their Greenhouse Gas emissions by 5.2 percent collectively by 2012 as compared to 1990 levels. However, a few developed countries, notably the United States and Australia, have not signed up to the Kyoto commitments.

At this significant moment in the conceptualization of a climate regime that is equitable and fair, it is important to put forward perspectives that promote the environment and development interests of the developing countries.

From this viewpoint, there are at least four important building blocks towards a post-2012 UNFCCC climate regime – science and targets; relations between developed and developing countries; the need to link development and environment; and policy coherence.

I. Science and Targets

First, on science and targets. Developments in the science of climate change have progressed recently so that there is broad consensus that the climate problem is real, serious, and that developing countries will be most affected.

There is need to set targets for global action, such as to limit temperature rise to two degrees centigrade (in fact, well below that), and to prevent Greenhouse Gas concentration from exceeding 450 parts per million (ppm) of carbon dioxide equivalent. Even at these levels, there will be great damage. At levels higher than these, scientists inform us that the damage will be catastrophic.

However, the establishment of such science-based targets has to be linked to agreement on “burden-sharing” principles, particularly as between North and South.

II. North-South Relations

Second, therefore, is the crucial building block of fair North-South relations in a climate agreement. The UNFCCC and Kyoto principles of equity, historical responsibility, and common but differentiated responsibilities have to be re-affirmed and more importantly to be operationalised in concrete terms and measures to be worked out.

Indeed, these principles must be infused into all aspects of the negotiations and reflected in the agreements to be made.

The implications for developing countries of proposals on global targets should be more explicitly discussed. For example, the European Union has made a proposal for a global emission cut of 50 percent by 2050 (compared to 1990 levels) and a cut of 60-80 percent for developed countries.

It is good that the EU has started the ball rolling by putting forward these proposals and figures. Of course, it is only a start and the EU and other developed country parties must be expected to improve on their proposed commitments.

However, there are also implications for developing countries in such figures, which have thus to be considered seriously. If we assume, for simplicity, that developed and developing countries account 50:50 for total emissions, then a global 50 percent cut with 70 percent developed-country cut implies a 30 percent emission cut for developing countries.

If developing countries' population doubles in that period (from 1990 to 2050), then the implication is a 65 percent cut collectively in their emissions per capita.

This is a very deep cut, and whether developing countries should or can take on such cuts should be openly debated. It is insufficient to leave these as implicit targets, as a residue of global and developed countries' targets.

The above is of course only one aspect, though an important one, in the operationalisation of the principles of equity, common but differentiated responsibilities, etc.

III. Integrating Development Concerns with Climate Issues

Third, there needs to be more work the building block of integrating development with environment. Addressing climate change as an environmental crisis requires simultaneously a development solution. The development challenges are enormous, far more than has been generally acknowledged as yet.

As has been effectively argued, if climate change is not addressed, its effects would themselves devastate development prospects. Thus adequately addressing climate change through mitigation and adaptation is crucial, and is more cost-effective than adopting a "business as usual" attitude.

At the same time, we should also not under-estimate the tremendous efforts required to switch to new development pathways that match the new emission-stabilisation pathways required to curb the growth of Greenhouse Gas emissions.

For example, the Vienna meeting heard presentations that the economic costs of addressing climate change would be only 0.12 percent of world Gross National Product (GNP) per year, up to 2050.

If this is so, then operationalising this would still be an enormous challenge. It may imply, for instance, that if developed countries are growing at 2.12 percent a year, they would have to make do with two percent and if developing countries are growing at 6.12 percent, they would have to make do with six percent.

(Of course if developed countries were to agree to reduce their growth rates more than this, developing countries will have more space to grow).

This may be a relatively small price to pay to address climate change and still enable relatively good growth. But it would be a tremendous challenge, indeed, for developing countries to be able to grow economically at six percent a year

and also be able simultaneously to reduce their per capita emissions by 65 per cent by 2050.

Perhaps it can be done. However, many in-depth studies must be undertaken to show how this tremendous transformation can be undertaken, or it would remain at this stage only a vision.

On the issue of finance, there should not be an impression that the sums are small and that the private sector will take care of most of the costs.

The UNFCCC Secretariat paper on investments needed to address climate change (presented at Vienna) has done a good job of stimulating discussions on a complex issue. It has given estimates of an extra investment and financial flow of US\$200-210 billion required in 2030 for mitigation and “tens of billions of dollars” for adaptation.

The enormous costs of mitigation and adaptation should be realistically spelt out, and national studies (such as the one presented by India on the immense costs of emission-reducing reforms in industry) and examples of costs of addressing real-life climate-related events, would be illustrative.

For example, in the newspaper *USA Today* (dated 29 August 2007) it was reported that the 2005 Hurricane Katrina caused US\$150 billion damage and the costs of reconstruction include US\$116 billion allocated by the US Congress as well as many more billions of dollars to be met by private financing including insurance.

The 2004 tsunami would also have cost many billions of dollars in rehabilitation and reconstruction.

Mitigation and adaptation measures would help prevent or reduce such expensive costs of disaster-related reconstruction. The high costs of damage and reconstruction also have to be addressed.

At the least, there is need for a large publicly-financed and operated fund to address adaptation. Private finance can only be a supplement, especially since it is difficult for poorer countries to access these funds and on affordable terms. A fund to address costs of damage may also need to be looked into, especially since climate-related damage is already taking place.

On technology transfer, the challenge is also enormous. A key question is the treatment of intellectual property rights (IPRs) over climate-friendly technologies. IPRs confer monopoly rights, and can curb affordable access through higher prices (that usually include monopoly profits) as well as be a barrier to the introduction or upgrading of technology by private industry or public-sector agencies in developing countries.

The lower the cost and the greater the ability of developing countries' enterprises to make use of or to make existing or new climate-friendly technologies, the faster would be the developing countries' ability to switch to more climate-friendly technologies and to the new emission-stabilisation pathways as well as

new development pathways.

If there is insistence on the “full protection of intellectual property” in relation to climate-friendly technology, it would be a barrier to technology transfer. The example of how Indian companies were hindered from introducing a new chemical that is not harmful to the ozone layer as a substitute to chlorofluorocarbons (CFCs), because of patents on that chemical, is illustrative.

Thus, a post-2012 regime has to deal with this thorny issue of IPRs and developing countries’ access to technology (existing and new technologies, for mitigation, adaptation and reconstruction).

On new development pathways, there should be more discussion and work done. Stabilisation pathways (aimed at greater energy efficiency and emission reduction) are an important component.

However, there are other key components if developing countries are to explore new ways of looking at economic and social development strategies that meet the requirements of emission-stabilisation pathways.

The pathway of moving from primary production and commodity-based sectors to commodity processing and first-stage manufacturing and services to more mature industrialisation and services, the pathways of addressing sustainable development in agriculture, industry, commercial and social services, the pathway of trade policy, investment policy, financial policy, technology policy, social policy, have to be thought through. These are massive challenges.

IV. Need for Policy Coherence

Fourth, there should be policy coherence at national and international levels. If climate change is indeed the most pressing challenge of our times, then policies made in other areas and in other fora have to be looked at through the fresh lens of addressing climate change, and made consistent with the aims and measures that we are trying to implement in combating climate change.

For example, at the World Trade Organisation (WTO), there are proposals to consider as a non-tariff barrier (which should be removed) the imposition of higher taxes on cars with a higher engine capacity, or the lack of government action to facilitate financing of consumers’ purchase of motor-cars.

Also at the WTO, some developed countries are also pushing developing countries to drastically reduce their tariffs on food products, so that their highly subsidised farm products can penetrate the poorer countries’ markets, and at the same time they are insisting that the developing countries’ markets for industrial products also be opened up very significantly.

Developing countries that take measures, consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to provide cheaper generic medicines for their population, are being condemned or punished by the

major developed countries like the US or the EU, as the recent case of Thailand and its compulsory licenses on three types of medicines shows.

If some of the proposals at the WTO were to be adopted, they would make it far more difficult for developing countries to switch to an emission-stabilisation pathway and a sustainable development pathway.

Similarly, reviews should be made of the provisions of bilateral and regional free trade agreements, and of loan and aid conditionalities facing countries dependent on the international financial institutions and on aid donors.

These are some of the issues that at present could be stumbling blocks that have to be transformed into building blocks towards new goals, frameworks and structures in the cooperative efforts to combat climate change.

Note: This is partly based on the author's presentation on behalf of the Third World Network at the UNFCCC meeting in Vienna on 27-31 August. Reprinted from TWN Climate Briefings for Bali, No. 1.

Annexes

Annex 1: Decision 1/CP.13 Bali Action Plan

The Conference of the Parties,

Resolving to urgently enhance implementation of the Convention in order to achieve its ultimate objective in full accordance with its principles and commitments,

Reaffirming that economic and social development and poverty eradication are global priorities,

Responding to the findings of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change that warming of the climate system is unequivocal, and that delay in reducing emissions significantly constrains opportunities to achieve lower stabilization levels and increases the risk of more severe climate change impacts,

Recognizing that deep cuts in global emissions will be required to achieve the ultimate objective of the Convention and emphasizing the urgency¹ to address climate change as indicated in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change,

1. *Decides* to launch a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session, by addressing, inter alia:

(a) A shared vision for long-term cooperative action, including a long-term global goal for emission reductions, to achieve the ultimate objective of the Convention, in accordance with the provisions and principles of the Convention, in particular the principle of common but differentiated responsibilities and respec-

¹Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Technical Summary, pages 39 and 90, and Chapter 13, page 776.

tive capabilities, and taking into account social and economic conditions and other relevant factors;

(b) Enhanced national/international action on mitigation of climate change, including, *inter alia*, consideration of:

(i) Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties, while ensuring the comparability of efforts among them, taking into account differences in their national circumstances;

(ii) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner;

(iii) Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries;

(iv) Cooperative sectoral approaches and sector-specific actions, in order to enhance implementation of Article 4, paragraph 1(c), of the Convention;

(v) Various approaches, including opportunities for using markets, to enhance the cost-effectiveness of, and to promote, mitigation actions, bearing in mind different circumstances of developed and developing countries;

(vi) Economic and social consequences of response measures;

(vii) Ways to strengthen the catalytic role of the Convention in encouraging multilateral bodies, the public and private sectors and civil society, building on synergies among activities and processes, as a means to support mitigation in a coherent and integrated manner;

(c) Enhanced action on adaptation, including, *inter alia*, consideration of:

(i) International cooperation to support urgent implementation of adaptation actions, including through vulnerability assessments, prioritization of actions, financial needs assessments, capacity-building and response strategies, integration of adaptation actions into sectoral and national planning, specific projects and programmes, means to incentivize the implementation of adaptation actions, and other ways to enable climate-resilient development and reduce vulnerability of all Parties, taking into ac-

count the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, especially the least developed countries and small island developing States, and further taking into account the needs of countries in Africa affected by drought, desertification and floods;

(ii) Risk management and risk reduction strategies, including risk sharing and transfer mechanisms such as insurance;

(iii) Disaster reduction strategies and means to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change;

(iv) Economic diversification to build resilience;

(v) Ways to strengthen the catalytic role of the Convention in encouraging multilateral bodies, the public and private sectors and civil society, building on synergies among activities and processes, as a means to support adaptation in a coherent and integrated manner;

(d) Enhanced action on technology development and transfer to support action on mitigation and adaptation, including, inter alia, consideration of:

(i) Effective mechanisms and enhanced means for the removal of obstacles to, and provision of financial and other incentives for, scaling up of the development and transfer of technology to developing country Parties in order to promote access to affordable environmentally sound technologies;

(ii) Ways to accelerate deployment, diffusion and transfer of affordable environmentally sound technologies;

(iii) Cooperation on research and development of current, new and innovative technology, including win-win solutions;

(iv) The effectiveness of mechanisms and tools for technology cooperation in specific sectors;

(e) Enhanced action on the provision of financial resources and investment to support action on mitigation and adaptation and technology cooperation, including, inter alia, consideration of:

(i) Improved access to adequate, predictable and sustainable financial resources and financial and technical support, and the provision of new and additional resources, including official and concessional funding for developing country Parties;

- (ii) Positive incentives for developing country Parties for the enhanced implementation of national mitigation strategies and adaptation action;
- (iii) Innovative means of funding to assist developing country Parties that are particularly vulnerable to the adverse impacts of climate change in meeting the cost of adaptation;
- (iv) Means to incentivize the implementation of adaptation actions on the basis of sustainable development policies;
- (v) Mobilization of public- and private-sector funding and investment, including facilitation of climate-friendly investment choices;
- (vi) Financial and technical support for capacity-building in the assessment of the costs of adaptation in developing countries, in particular the most vulnerable ones, to aid in determining their financial needs;

2. *Decides* that the process shall be conducted under a subsidiary body under the Convention, hereby established and known as the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, that shall complete its work in 2009 and present the outcome of its work to the Conference of the Parties for adoption at its fifteenth session;

3. *Agrees* that the process shall begin without delay, that the sessions of the group will be scheduled as often as is feasible and necessary to complete the work of the group, where possible in conjunction with sessions of other bodies established under the Convention, and that its sessions may be complemented by workshops and other activities, as required;

4. *Decides* that the first session of the group shall be held as soon as is feasible and not later than April 2008;

5. *Decides* that the Chair and Vice-Chair of the group, with one being from a Party included in Annex I to the Convention (Annex I Party) and the other being from a Party not included in Annex I to the Convention (non-Annex I Party), shall alternate annually between an Annex I Party and a non-Annex I Party;

6. *Takes note* of the proposed schedule of meetings contained in the annex to this decision;

7. *Instructs* the group to develop its work programme at its first session in a coherent and integrated manner;

8. *Invites* Parties to submit to the secretariat, by 22 February 2008, their views regarding the work programme, taking into account the elements referred to in paragraph 1 above, to be compiled by the secretariat for consideration by the group at its first meeting;

9. *Requests* the group to report to the Conference of the Parties at its fourteenth session on progress made;

10. *Agrees* to take stock of the progress made, at its fourteenth session, on the basis of the report by the group;

11. *Agrees* that the process shall be informed by, inter alia, the best available scientific information, experience in implementation of the Convention and its Kyoto Protocol, and processes thereunder, outputs from other relevant intergovernmental processes and insights from the business and research communities and civil society;

12. *Notes* that the organization of work of the group will require a significant amount of additional resources to provide for the participation of delegates from Parties eligible to be funded and to provide conference services and substantive support;

13. *Strongly urges* Parties in a position to do so, in order to facilitate the work of the group, to provide contributions to the Trust Fund for Participation in the UNFCCC Process and the Trust Fund for Supplementary Activities for the purposes referred to in paragraph 12 above and to provide other forms of in kind support such as hosting a session of the group.

ANNEX

**Indicative timetable for meetings of the Ad Hoc Working Group on
Long-term Cooperative Action under the Convention in 2008**

Session	Dates
Session 1	March/April 2008
Session 2	June 2008, in conjunction with the twenty-eighth sessions of the subsidiary bodies
Session 3	August/September 2008
Session 4	December 2008, in conjunction with the fourteenth session of the Conference of the Parties

8th plenary meeting
14–15 December 2007

Annex 2: Decision 2/CP.13

Reducing emissions from deforestation in developing countries: approaches to stimulate action

The Conference of the Parties,

Recalling the relevant provisions of the Convention, in particular Article 2, Article 3, paragraphs 1, 3 and 4, and Article 4, paragraphs 1(a).(d), 3, 5 and 7,

Acknowledging the contribution of the emissions from deforestation to global anthropogenic greenhouse gas emissions,

Acknowledging that forest degradation also leads to emissions, and needs to be addressed when reducing emissions from deforestation,

Recognizing that efforts and actions to reduce deforestation and to maintain and conserve forest carbon stocks in developing countries are already being taken,

Recognizing the complexity of the problem, different national circumstances and the multiple drivers of deforestation and forest degradation,

Recognizing the potential role of further actions to reduce emissions from deforestation and forest degradation in developing countries in helping to meet the ultimate objective of the Convention,

Affirming the urgent need to take further meaningful action to reduce emissions from deforestation and forest degradation in developing countries,

Noting that sustainable reduction in emissions from deforestation and forest degradation in developing countries requires stable and predictable availability of resources,

Recognizing that reducing emissions from deforestation and forest degradation in developing countries can promote co-benefits and may complement the aims and objectives of other relevant international conventions and agreements,

Recognizing also that the needs of local and indigenous communities should be addressed when action is taken to reduce emissions from deforestation and forest degradation in developing countries,

1. *Invites* Parties to further strengthen and support ongoing efforts to reduce emissions from deforestation and forest degradation on a voluntary basis;

2. *Encourages* all Parties, in a position to do so, to support capacity-building, provide technical assistance, facilitate the transfer of technology to improve, inter alia, data collection, estimation of emissions from deforestation and forest degradation, monitoring and reporting, and address the institutional needs of developing countries to estimate and reduce emissions from deforestation and forest degradation;

3. *Further encourages* Parties to explore a range of actions, identify options and undertake efforts, including demonstration activities, to address the drivers of deforestation relevant to their national circumstances, with a view to reducing emissions from deforestation and forest degradation and thus enhancing forest carbon stocks due to sustainable management of forests;

4. *Encourages*, without prejudice to future decisions of the Conference of the Parties, the use of the indicative guidance provided in the annex to this decision as an aid in undertaking and evaluating the range of demonstration activities;

5. *Invites* Parties, in particular Parties included in Annex II to the Convention, to mobilize resources to support efforts in relation to the actions referred to in paragraphs 1.3 above;

6. *Encourages* the use of the most recent reporting guidelines¹ as a basis for reporting greenhouse gas emissions from deforestation, noting also that Parties not included in Annex I to the Convention are encouraged to apply the *Good Practice Guidance for Land Use, Land-Use Change and Forestry*;²

7. *Requests* the Subsidiary Body for Scientific and Technological Advice to undertake a programme of work on methodological issues related to a range of policy approaches and positive incentives that aim to reduce emissions from deforestation and forest degradation in developing countries noting relevant documents;³ the work should include:

(a) Inviting Parties to submit, by 21 March 2008, their views on how to address outstanding methodological issues including, inter alia, assessments of changes in forest cover and associated carbon stocks and greenhouse gas emissions, incremental changes due to sustainable management of the forest, demonstration of reductions in emissions from deforestation, including reference emissions levels, estimation and demonstration of reduction in emissions from forest

¹ At the time of this decision, the most recent reporting guidelines for national communications from Parties not included in Annex I to the Convention are found in decision 17/CP.8.

² Decision 13/CP.9.

³ FCCC/SBSTA/2006/10, FCCC/SBSTA/2007/3, FCCC/SBSTA/2007/MISC.2 and Add.1, FCCC/SBSTA/2007/MISC.14 and Add. 1.3; and the background paper prepared for the workshop on reducing emissions from deforestation held in Rome, Italy, from 30 August to 1 September 2006, available at <http://unfccc.int/methods_and_science/lulucf/items/3757.php>.

degradation, implications of national and subnational approaches including displacement of emissions, options for assessing the effectiveness of actions in relation to paragraphs 1, 2, 3 and 5 above, and criteria for evaluating actions, to be compiled into a miscellaneous document for consideration by the Subsidiary Body for Scientific and Technological Advice at its twenty-eighth session;

(b) Requesting the secretariat, subject to availability of supplementary funding, to organize a workshop on methodological issues identified in paragraph 7 (a) above, before its twenty-ninth session, and to prepare a report on the workshop for consideration by the Subsidiary Body for Scientific and Technological Advice at that session;

(c) Advancing the development of methodological approaches, taking into account the outcome of the workshop referred to in paragraph 7 (b) above at its twenty-ninth session;

8. *Requests* the Subsidiary Body for Scientific and Technological Advice to report to the Conference of the Parties, at its fourteenth session, on the outcomes of the work referred to in paragraph 7 (a). (c) above, including any recommendations on possible methodological approaches;

9. *Invites* relevant organizations and stakeholders, without prejudice to any future decision of the Conference of the Parties on reducing emissions from deforestation and forest degradation in developing countries, to support efforts in relation to paragraphs 1, 2, 3 and 5 above and to share outcomes of these efforts with the Subsidiary Body for Scientific and Technological Advice by providing corresponding information to the secretariat;

10. *Requests* the secretariat to support, subject to the availability of supplementary funding, the activities of all Parties, in particular developing countries, in relation to paragraphs 3, 5, 7 and 9 above, by developing a Web platform where information submitted by Parties, relevant organizations and stakeholders will be made available;

11. *Notes* the further consideration, under decision 1/CP.13, of policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries;

12. *Notes further* that when addressing policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries, the efforts described in paragraph 3 above should be considered.

ANNEX

Indicative guidance

1. Demonstration activities should be undertaken with the approval of the host Party.
2. Estimates of reductions or increases of emissions should be results based, demonstrable, transparent and verifiable, and estimated consistently over time.
3. The use of the methodologies described in paragraph 6 of this decision is encouraged as a basis for estimating and monitoring emissions.
4. Emission reductions from national demonstration activities should be assessed on the basis of national emissions from deforestation and forest degradation.
5. Subnational demonstration activities should be assessed within the boundary used for the demonstration, and assessed for associated displacement of emissions.
6. Reductions in emissions or increases resulting from the demonstration activity should be based on historical emissions, taking into account national circumstances.
7. Subnational¹ approaches, where applied, should constitute a step towards the development of national approaches, reference levels and estimates.

¹Activities carried out within the national boundary.

8. Demonstration activities should be consistent with sustainable forest management, noting, inter alia, the relevant provisions of the United Nations Forum on Forests, the United Nations Convention to Combat Desertification and the Convention on Biological Diversity.

9. Experiences in implementing activities should be reported and made available via the Web platform.²

10. Reporting on demonstration activities should include a description of the activities and their effectiveness, and may include other information.

11. Independent expert review is encouraged.

8th plenary meeting
14–15 December 2007

² To be developed by the secretariat as referred to in paragraph 10 of this decision.

**Annex 3: Statement by the International Forum of
Indigenous Peoples
on Climate Change (IFIPCC) on
“reduced emissions from deforestation and forest
degradation” (REDD) agenda item at the
UNFCCC climate negotiations**

*The International Forum of Indigenous Peoples on Climate Change (IFIPCC)
The 13th Session of Conference of the Parties to the UNFCCC SBSTA 27,
agenda item 5/REDD
November 2007*

Thank you Mr. President,

On behalf of the International Forum of Indigenous Peoples on Climate Change, I would like to express our profound concern about reducing emissions from deforestation (REDD).

Many adaptation and mitigation policies and projects promoted as solutions to climate change like market based mechanisms, carbon trading, agrofuels and the Clean Development Mechanism devastate Indigenous Peoples' lands and territories and cause more Human Rights violations.

REDD will not benefit Indigenous Peoples, but in fact, it will result in more violations of Indigenous Peoples' Rights. It will increase the violation of our Human Rights, our rights to our lands, territories and resources, steal our land, cause forced evictions, prevent access and threaten indigenous agriculture practices, destroy biodiversity and culture diversity and cause social conflicts. Under REDD, States and Carbon Traders will take more control over our forests.

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly of the United Nations on September 13 of this year and consecrates fundamental rights of indigenous peoples which are relevant to the REDD discussions. especially Articles 10, 26, 27, 28, 29, 30, 32.

Given the threat to Indigenous Peoples' Rights that REDD represents, the International Forum on Indigenous Peoples and Climate Change calls for SBSTA to organize with The United Nations Permanent Forum on Indigenous Issues an Expert Meeting on Climate Change Mitigation Strategies Impacts on Indigenous Peoples. Furthermore, we urge the Convention to participate actively in the next session of the United Nations Permanent Forum on Indigenous Issues whose special Theme is Climate Change.

In closing, we inform the SBSTA that we are requesting that Human Right Council and The Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples to monitor the potential Human Rights violation related to the implementation of REDD.

Terimakasih (Thank you), Mr. President.

