

Submission to UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA)

Views on issues relating to indigenous peoples and local communities for the development and application of methodologies

A paper submitted in response to an invitation to accredited observers to submit views on indigenous peoples and local communities (FCCC/SBSTA/2008/L.23 paragraph 11)

Forest Peoples Programme

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Executive summary:

Intergovernmental plans to develop and implement forest and climate change mitigation measures have major implications for the rights and welfare of indigenous peoples and local communities whose livelihoods, cultures and ways of life depend on forest lands and resources. This submission emphasises that effective methodologies to address issues relating to indigenous peoples and forest-dependent communities must respect peoples' rights consistent with applicable international obligations. Rights-based approaches will help ensure that governments fulfil their commitments to respect human rights, reduce poverty, conserve biodiversity and promote sustainable development. Evidence is also presented to show how addressing rights is essential for achieving effective and permanent climate change mitigation outcomes. Background information and thematic discussion highlight that rights-based methods for climate change mitigation measures, including REDD must, *inter alia*:

- Apply binding procedures and minimum standards to uphold applicable international norms on human rights, environmental conservation and sustainable development, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Guarantee fully informed and effective participation of indigenous peoples and local communities in the formulation of strategies and plans for forest-related climate change mitigation at all levels
- Ensure transparency and disclosure of information to enable public scrutiny and accountability of mitigation proposals and related financial incentives and funding activities
- Ensure that the establishment and implementation of national REDD programmes or sub-national projects only proceed on indigenous peoples' land and territories with their free, prior and informed consent (FPIC)
- Use social assessment, vulnerability analysis and human rights impact assessments and related methods to identify and prevent adverse rights and livelihoods impacts
- Include national and local participatory legal studies to assess the land tenure situation and clarify tenure rights, including customary rights
- Recognise and secure indigenous peoples' right to collectively own, control and manage forest lands that they traditionally owned, occupied or have otherwise used or acquired
- Promote targeted land tenure and regulatory reforms where customary and community tenure rights are not recognised under existing national and local laws
- Include activities for the demarcation and titling of indigenous peoples' territories and support the establishment and local management of community conserved forests
- Use definitions and criteria for "deforestation" and "degradation" that respect and protect traditional practices, including use of fire in rotational farming systems
- Safeguard the multiple social, livelihood, cultural and spiritual values that forests hold for indigenous peoples and forest-dependent communities
- Establish mechanisms and funds for the delivery of equitable benefits to communities, including rewards for historical stewardship and protection of standing forests
- Promote good governance of forests at the national level, including capacity building and training of forest authority staff on the rights of indigenous peoples
- Include transparent procedures for monitoring, reporting and verifying the rights, governance and equity impacts of mitigation measures and not just carbon
- Include national and international independent complaints and redress mechanisms to ensure strategies and activities are accountable to affected communities and the public

Useful tools and information sources and specific recommendations to help develop useful methodologies are presented throughout the submission. In relation to the work of the Climate Convention, it is stressed that appropriate and effective UNFCCC methodologies on rights and social standards must be developed with, and be agreeable to, indigenous peoples and community-based organisations.

To this end, it is recommended that in the run up to COP15 the Secretariat and Parties to the Convention and its relevant subsidiary bodies, including SBSTA, as appropriate:

- 1) Take immediate steps to strengthen indigenous peoples' participation in the UNFCCC process through adoption of the progressive participation practices used under the CBD and UNCCD (e.g., the right to speak directly to texts under negotiation and to participate in contact groups and friends of the chair meetings where matters (like forests and related issues) may affect them.
- 2) Involve indigenous peoples' organisations and UN agencies in UNFCCC work to develop practical guidelines for the implementation of the UNDRIP in climate change mitigation and adaptation methodologies and activities. This work should include the development of FPIC procedures in close consultation with indigenous peoples, the United Nations Permanent Forum on Indigenous Issues (UNPFII) and UN human rights bodies.
- 3) Establish an expert group as soon as is practicable and before COP15 to (i) examine the implications of climate change mitigation and adaptation measures for indigenous peoples; (ii) develop agreed social standards; (iii) formulate transparent and accountable monitoring and reporting procedures; and (iv) present findings and recommendations to COP15.
- 4) Recognise indigenous persons as "experts" to be involved the aforementioned expert group and in all the activities of the Convention that relate to indigenous peoples (self-selected through representative indigenous networks working on climate change and related issues).
- 5) Ensure that methodological work includes the development of participatory monitoring methods as well as mechanisms for independent third-party monitoring of the rights, governance and poverty impacts of mitigation measures and incentives.
- 6) Ensure that the term "indigenous peoples" is applied in all UNFCCC methodological work and related texts and decisions in accordance with accepted international norms.
- 7) Invite independent studies to evaluate ongoing demonstration and pilot activities on REDD undertaken with support from international agencies. Such studies should pay careful attention to social, rights and equity issues and be carried out before COP15.
- 8) Ensure Parties make firm commitments to uphold the rights of indigenous peoples and local communities in COP decisions on forests and climate change mitigation and in all other climate measures that may affect them.

I. Introduction and background

Much of the world's remaining forests in developing countries are located in the ancestral and customary lands of indigenous peoples and traditional forest dwellers. The multiple economic, environmental, social, spiritual and cultural values of forests sustain the livelihoods and ways of life of at least 60 million indigenous peoples. They also provide livelihood and environmental benefits for over 1 billion people living in forest-dependent communities.¹ International and national plans targeting these forests for climate change mitigation measures thus have major implications for the rights and interests of forest peoples, including enjoyment of rights to life, food, livelihood, property, development, self-determination and protection against racial discrimination.²

Indigenous peoples have expressed serious concerns that current plans for Reducing Emissions from Deforestation and Degradation (REDD) under discussion by state Parties to the UNFCCC pose serious threats to their rights and welfare.³ If binding commitments are not forthcoming to safeguard rights and if methods are adopted without the agreement of indigenous peoples, then there are dangers that climate change mitigation instruments, including REDD, may have serious negative social and poverty impacts.⁴

Defective methodologies for forest and climate change mitigation activities could undermine, or be at odds with, intergovernmental commitments on respect for human rights, poverty reduction, and good governance. Flawed methodologies would thus also hinder the achievement of the Millennium Development Goals.⁵

There is widespread consensus that rights need to be recognised to prevent adverse impacts and ensure indigenous peoples and local communities benefit from REDD and avoided deforestation measures. As the CDB Ad Hoc Technical Expert Group on Biodiversity and Climate change notes:

...indigenous peoples are unlikely to benefit from REDD where they do not own their lands; if there is no principle of free, prior and informed consent, and if their identities are not recognized or they have no space to participate in policy-making processes.⁶

It is therefore essential that robust methods are developed under the UNFCCC to properly address the (well-documented) concerns of indigenous peoples and civil society. Methodologies must include mandatory rules and standards to uphold peoples' rights. They must also incorporate methods to reward community forest stewardship and promote positive tenure, governance and equity reforms.

Purpose of the submission:

The purpose of this submission by the Forest Peoples Programme (FPP) is to emphasise the vital role of forests in the livelihoods, culture and welfare of indigenous peoples and forest-dependent communities and to highlight the need for rights-based methodologies. It is emphasised that rights-based approaches are needed in order to protect the rights and interests of forest peoples, uphold the rule of law and increase the effectiveness of policy interventions.

Recommendations, tools and sources of information are presented throughout the discussion. Some priority areas for further development of methodologies are also noted.

II. Need for rights-based methodologies

Indigenous peoples have collectively called for all climate change mitigation measures to be grounded in the rights framework established in the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”), which was adopted by the UN General Assembly in September 2007.⁷ In UNFCCC COP15 in Poznan indigenous peoples publicly affirmed that all REDD projects or programmes affecting the traditional lands and territories of indigenous peoples should not proceed until rights are fully recognised and respected.⁸ Policies and measures to reduce or avoid emissions from forests in developing countries that fail to uphold human rights will be subject to considerable legal and other risks, are unlikely to enjoy public support and may generate forest conflicts.

Forestry experts and scientists maintain that securing rights and addressing governance, equity and tenure issues are an essential precondition for sustainable forest policies.⁹ They emphasise that right-based approaches are required to ensure that forest and climate change mitigation measures and methodologies are effective, efficient and fair.¹⁰

A. Conformity with international standards

Climate change mitigation and adaptation measures are comparable with conservation, forestry and development interventions and investment projects that are all subject to the legal requirement to respect peoples’ rights. Such measures, including REDD, must therefore be conceived and implemented within applicable legal frameworks and must meet relevant international standards. UN bodies and experts advise that the UNDRIP restates the existing rules of international law and codifies the correct norms for designing and implementing programmes, projects or investments that may affect indigenous peoples.¹¹

International law recognises that indigenous peoples have inherent rights that derive from their distinct identities and their close and special attachment to their ancestral lands. These rights are recognised in several different human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), ILO Convention No. 169, the Convention on the Rights of the Child (CRC), the Convention on Biological Diversity (CBD), the American Convention on Human Rights and the African Charter on Human and Peoples Rights, among others. These treaties and associated international jurisprudence establish that indigenous peoples enjoy rights to, *inter alia*:

- non-discrimination and equal protection of the law
- represent themselves through their own institutions
- self-determination and self-development (including the right to self-identification)
- free, prior and informed consent (FPIC)
- participation in decisions and activities which may affect them
- ownership and control over their traditional territories, lands and resources
- collective as well as individual rights
- practise their customs and traditions and to exercise their customary law
- cultural integrity
- be free from forcible relocation
- a healthy environment
- control and share in the benefits of the use of their traditional knowledge
- restitution of lands and property taken unjustly or without prior consent¹²

As noted above, these existing norms and other standards relating to indigenous peoples have been codified and consolidated in the UNDRIP.

Methodologies must ensure that climate change mitigation agreements and activities:

- Comply with all applicable international standards, including the UN Declaration on the Rights of Indigenous Peoples and norms established under ILO and UN human rights instruments
- Apply relevant CBD standards on indigenous peoples and local communities, including the CBD Articles 8(j) and 10(c), and COP decisions and work programmes on protected areas and forest biological diversity
- Prevent measures that may undermine a State's capacity to fulfil its obligations under international human rights law and the environmental treaties it has ratified

RECOMMENDATIONS:

UNFCCC decisions and agreements on forests and climate change must contain binding intergovernmental commitments to uphold the rights of indigenous peoples and local communities. The UNFCCC should work with indigenous peoples' organisations and UN agencies to develop practical guidelines for the implementation of the UNDRIP in climate change mitigation and adaptation activities.

The Parties to the Convention should establish an expert group as soon as is practicable and before COP15 to examine the implications of climate change mitigation and adaptation measures for indigenous peoples and local communities.

Work for this expert group should include the development of agreed social standards tailored specifically to instruments or agreements developed under the UNFCCC.

Tools and sources of information:

- United Nations Declaration on the Rights of Indigenous Peoples
<http://www2.ohchr.org/english/issues/indigenous/declaration.htm>
- UN REDD Programme (2008) *Global indigenous peoples' consultation on reducing emissions from deforestation and forest degradation (REDD)*, Baguio City, Philippines, 12–14 November 2008
- Rights and Resources Initiative (2008) *Foundations for effectiveness: a framework for ensuring effective climate change mitigation and adaptation in forest areas without undermining human rights and development*,
<http://rightsandclimatechange.files.wordpress.com/2008/10/foundations-for-effectiveness-14-oct-final-4-pages.pdf>
- CBD Decision and work programme on protected areas (2004)
<http://www.cbd.int/convention/cop-7-dec.shtml?m=COP-07&id=7765&lg=0>
- CBD Decision and expanded work programme on forest biological diversity (2002)
<http://www.cbd.int/convention/cop-6-dec.shtml?m=COP-06&id=7196&lg=0>

B. Public participation and transparency

Indigenous peoples and major groups have the right to participate in environmental policy making at the international, national and local levels. The importance of participation of civil society and vulnerable and disadvantaged groups in the formulation of public policies on the environment is recognised under Principle 10 of the Rio Declaration that establishes that:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level [...] States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided¹³

Principle 22 of the same declaration affirms that:

Indigenous people(s) and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.¹⁴

The UNDRIP establishes that:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (Article 18)

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (Article 19)

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (Article 32(2))

The Aarhus Convention (ratified by 46 European countries) requires States parties to:

...guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.¹⁵

European countries that are party to this agreement have an obligation to ensure public participation in environmental policy-making in third countries where they provide funds or investments in environmental programmes.¹⁶ Under the Non-legally-binding Instrument on All Types of Forests adopted by the UN General Assembly all governments have agreed that national forest policies and measures must:

Promote active and effective participation by major groups, local communities, forest owners and other relevant stakeholders in the development, implementation and assessment of forest-related national policies, measures and programmes¹⁷

International standards on information disclosure require a presumption in favour of publishing official policies and information on environmental, development and other matters. They also uphold rights to request information from public bodies and the right of appeal against a refusal of access to information, including right to have a review of grievances by an independent and authoritative body.

Need for strengthened participation in the UNFCCC process:

Indigenous peoples' organisations have consistently complained that their participation in the UNFCCC is limited and must be improved to ensure they are able to effectively influence negotiations and contribute to the work of the Convention.¹⁸ Improved participation will require Parties and the Secretariat to adopt best practice examples from other conventions like the CBD and UNCCD in which major groups are able to speak to text in negotiations where matters affect them directly and may also participate in contact groups and friends of the chair meetings at the discretion of the meeting chairpersons (see recommendations below).

Need for robust participatory methods at the national and local levels:

In many developing countries, barriers to effective public participation in environmental policy making at the national level remain. Forest policy-making processes tend to involve mainly government officials and representatives of international agencies to the exclusion of other groups. In those cases where civil society groups and indigenous peoples are involved, consultation on national forest policy only occurs after basic concepts and objectives have already been decided. Consultations are still frequently limited to low level "functional" participation where people are informed of the government's plans, but have little or no opportunity to modify them in any significant way.

Experience also shows that establishing "multistakeholder dialogues" and national and local "forest policy roundtables" does not necessarily guarantee effective participation. For example, in countries like Peru these mechanisms have been condemned by indigenous peoples because concerns raised by rights holders have been disregarded by governmental and business interests involved in policy formulation.¹⁹

Methods must guarantee effective participation:

Indigenous peoples and civil society organisations stress that the terms "*meaningful*", "*full*" and "*effective*" participation mean that rights holders are able to take part in and influence environmental decisions that may affect them directly or indirectly.²⁰ Lessons from the Forest Law Enforcement, Governance and Trade (FLEGT) and Voluntary Partnership Agreements (VPA) processes show that meaningful participation requires long-term engagement of civil society organisations to be able to influence national forest policies. Participatory methods must therefore include procedures for mutually agreeing the terms of engagement for good faith public consultation and participatory policy making. Methods should also enable impartial third parties to run and document public consultation processes to ensure balanced inputs and accurate reporting.

Participation must be informed:

It is essential that indigenous peoples and communities have adequate understanding of issues and proposals in question so that they are able to make informed responses and inputs to policy-making processes. To ensure informed participation it may be necessary to provide prior training and capacity building work with indigenous peoples and local communities *before* official public consultations take place. Informed participation also means having timely access to information about international, national and sub-national forestry policies, strategies and programmes before they are finalised.

In the case of indigenous peoples, participation processes may be required to respect their right to FPIC and must include additional specific measures to guarantee that decisions are fully informed. In particular, participatory methods must ensure respect for customary

decision-making processes and allow adequate time for internal consultation and collective decision making (section II.C below).

Methodologies and standards must include:

- effective procedures for public participation and transparency in forest and climate policy making at all levels, including national participatory analyses of the direct and underlying causes of deforestation and forest degradation
- procedures to enable informed and meaningful participation of indigenous peoples' representatives in national decision-making bodies, where they so choose, in national decision-making bodies in climate change mitigation, including bodies overseeing REDD activities
- participation by representatives of indigenous peoples and local communities, where they so choose, in the oversight bodies of international and national climate change mitigation programmes and funds

RECOMMENDATION:

The UNFCCC secretariat and government Parties must take immediate action in 2009 to improve participation in all climate-related negotiation processes through adoption of best practice examples from other conventions such as the CBD and UNCCD, in which major groups are able to speak to text in negotiations where matters affect them directly and may also participate in contact groups and friends of the chair meetings at the discretion of the meeting chairpersons.

Tools and methods:

- FERN (2008) *Consultation requirements under FLEGT Briefing Note # 1 – Logging Off* http://www.fern.org/media/documents/document_4166_4167.pdf
- Pimbert, M (2003) "The Promise of Participation: democratising the management of biodiversity" *Seedling, July(2003):23-28*

C. Free, prior and informed consent (FPIC) and social license to operate

International law stipulates that governments must obtain the free, prior and informed consent of indigenous peoples before implementing any decision or plan that may affect the integrity of their lands and territories (Articles 10, 19 and 32(2), UNDRIP). FPIC is a critical required safeguard where plans seek to deny or restrict the freedom of indigenous peoples to practice their traditions and customs in a manner that could undermine the survival of the group and its members.²¹ The right to FPIC is grounded in the rights of indigenous peoples to self-determination, collective property and the right to participate in decisions that affect them.²²

The right to FPIC is thus tightly bound to indigenous peoples' right to own, use, develop and control the lands, territories and resources that they have traditionally used and occupied (UNDRIP, Article 26(2)). International norms uphold the right of indigenous peoples to enter into agreements, where they so choose, as part of effectively controlling and managing their territory and to develop their own forest and climate change mitigation and adaptation plans.²³

Existing standards on FPIC affirm that this right does not apply to just one point in the cycle of a programme or project, but rather applies at different critical decision points throughout the preparation of an activity.²⁴ International standards and jurisprudence also establish that the process of seeking prior consent must, *inter alia*:

- be conducted in good faith and prior to any decision being made
- enable indigenous peoples to freely choose their own representatives
- respect traditional decision-making processes and allow time for internal discussions
- provide information in a culturally appropriate and understandable format
- inform the affected communities and their representative bodies of all the possible risks and potential adverse impacts and benefits of a proposed decision or action
- prohibit any direct or indirect pressure on affected communities to reach or change a decision and include safeguards to prevent “manufactured” consent
- accurately document and respect the outcome of the FPIC process that must be accompanied and verified by independent third parties

The FPIC standard is applicable to all forest and climate decisions and activities, including REDD plans and strategies, that may affect indigenous peoples’ territories or that may impinge on their resource rights and freedoms to practise their customs and traditions.

Indigenous peoples have thus called repeatedly for national REDD and other mitigation programmes to fully respect FPIC and to develop legal frameworks, protocols and consultation mechanisms for indigenous peoples based on free prior and informed consent, including consideration of customary laws, norms and practices.²⁵

With regard to non-indigenous local communities, there is a growing acceptance that sustainable development and conservation measures must be based on a social licence to operate. Social license is derived from the informed participation of affected communities in environmental and development planning and their prior acceptance of a specific project or development intervention. The first strategic priority for sustainable development established by the World Commission on Dams (WCD), for example, is “Gaining Public Acceptance”, based on the principle that:

Demonstrable public acceptance of all key decisions is achieved through agreements negotiated in an open and transparent process conducted in good faith and with the informed participation of all stakeholders.²⁶

Forest and climate change mitigation agreements and measures must ensure that:

- methodologies are incorporated to respect the right of indigenous peoples to free, prior and informed consent (FPIC), including the right to withhold consent
- methods include procedures for third-party verification and documentation of consultation and FPIC processes
- emission reduction and avoidance plans and activities at the national and sub-national levels only proceed where there is demonstrable public acceptance of affected peoples and forest-dependent communities in the countries or target area concerned

RECOMMENDATION:

UNFCCC work to develop social standards for forest and climate change mitigation and adaptation measures should include the development of FPIC procedures in close consultation with indigenous peoples, the United Nations Permanent Forum on Indigenous Issues (UNPFII) and UN human rights bodies.

Tools and sources of information:

- Colchester, M (2008) *Free, prior and informed consent and the Roundtable on Sustainable Palm Oil – a guide* working draft, March 2008
http://www.forestpeoples.org/documents/law_hr/fpic_and_rspo_draft_briefing_mar08_eng.pdf
- Colchester, M and Ferrari, M (2007) *Making FPIC - Free, Prior and Informed Consent - Work: Challenges and Prospects for Indigenous Peoples* FPP, Moreton in Marsh http://www.forestpeoples.org/documents/law_hr/fpic_synthesis_jun07_eng.pdf
- Motoc, Antoanella-Iulia and Tebtebba Foundation (2005) *Standard-Setting: A Legal Commentary on the Concept of Free, Prior and Informed Consent* Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Twenty-third session, Document E/CN.4/Sub.2/AC.4/2005/WP.1, 14 of July 2005 www2.ohchr.org/english/issues/indigenous/docs/wgip24/2005-wp1.doc
- UNPFII (2004) *Inter-agency Support Group on Indigenous Issues Report on Free Prior and Informed Consent* 3rd Session, 2004
- Colchester, M and MacKay, F (2004) *In Search of Middle Ground: indigenous peoples, collective representation and the right to free, prior and informed consent* FPP, Moreton-in-Marsh http://www.forestpeoples.org/documents/law_hr/fpic_ips_aug04_eng.pdf

D. Social and human rights impact assessments

International norms affirm that government proponents of decisions, actions or investments that may directly or indirectly affect indigenous peoples' lands and territories must ensure that potentially affected communities are informed of possible risks and potential impacts on their rights and interests in general. Proper evaluation of risks and impacts is a core methodology for ensuring the right to information and informed public participation in environmental policy making. Under the intergovernmental action plan to achieve sustainable development adopted by governments at the Earth Summit in 1992, Agenda 21 affirms:

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making...This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work.²⁷

Social and environmental assessments also form an important component of methods to operationalise indigenous peoples' right to free, prior and informed consent – FPIC (Section II.C). Such impact assessments are required to avoid adverse social outcomes, respect community rights, deliver local benefits and improve the design and implementation of effective climate policies and programmes.

Social assessment methodologies involve an analysis of rights holders and affected communities. As the World Commission on Dams advises:

A stakeholder analysis based on recognising rights and assessing risks should be used to identify key stakeholders for planned activities...The analysis will [i]dentify those at risk through vulnerability or risk analysis and consider them as core stakeholders, including those who face risk to their livelihoods, human rights, and property and resource rights. Special attention should be given to indigenous and tribal peoples, women and other vulnerable groups...²⁸

Assessments must examine all potential positive and negative social and environmental impacts in a balanced manner and should evaluate indirect and cumulative impacts on communities and the environment. Appropriate methods need to include analyses of the possible impacts of proposed actions on the economy, land tenure systems, social structure, customs, beliefs, and traditional way of life of affected peoples.

In the case of indigenous and tribal peoples, impact assessments should as a minimum conform to the relevant *Akwe: kon guidelines* developed by the CBD.²⁹ Indeed, the Inter-American Court of Human Rights has cited these guidelines as “the most comprehensive and used standards for Environmental and Social Impact Assessments (ESIAs) in the context of indigenous and tribal peoples,” and “the relevant international standards and best practices” that must be used in order to satisfy human rights obligations to conduct ESIA for any investment or development that may affect indigenous peoples.³⁰

Prior impact studies must pay attention to potential impacts on the collective attachment of communities to land and natural resources. Assessments need to be based on accurate baseline social, economic and cultural data. Baseline analyses need to include careful assessments of existing community tenure arrangements, including systems of customary land and resource tenure as well as the use and management of forest resources. Baseline studies would also need to identify tenure disputes and outstanding land claims (Section II.E). Baselines must also contain a legal analysis of domestic and international laws relevant to the assessment, including international and multilateral human rights and environmental agreements and protocols that have been ratified by the government.

Where adverse impacts are anticipated, the evaluation process should be conducted by independent third parties and be subject to a peer review to ensure the validity and objectivity of information. Social and environmental impact studies are in addition subject to public disclosure and consultation requirements, depending on the nature and scale of potential adverse impacts.

In all cases, assessments must involve a process to document the views and concerns of affected communities and should contain the results of public and community consultations in the analysis and findings of the study. Drafts of impact studies need to be shared with potentially affected communities to obtain their views and validate and correct errors and oversights. Sharing of draft assessments is also a central methodology in good faith public consultation relating to national and local environmental projects and plans.

Need for development of specific impact assessment methodologies:

Different methodologies exist to assess the potential social impacts of policies and development projects, including strategic options assessment, poverty risk analysis, vulnerability analysis, human rights impact analysis and social assessment.

UNFCCC work should seek to combine useful elements from these different tools to develop effective impacts assessment methodologies tailored to proposals for climate change mitigation and adaptation measures.

As noted above, methods relating to indigenous peoples should pay special attention to collective relationships to land and natural resources as set out in the *Akwe:kon guidelines* and in other guidelines like those developed by the World Commission on Dams.

Effective methodologies for forest and climate change mitigation need to:

- develop techniques and specific methodologies for the conduct of social, environmental and vulnerability assessments at the national and sub-national levels in accordance with international standards and best practice
- establish mechanisms to enable the participation of indigenous peoples and community organisations, where they so choose, in the conduct, review and validation of social and environmental impact evaluation, land tenure studies and strategic options assessments

Tools and sources of information:

- *Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities* www.cbd.int/doc/publications/akwe-brochure-en.pdf
- Human Rights Impact Resource Centre <http://www.humanrightsimpact.org/>
- OECD Journal on Development http://www.humanrightsimpact.org/resource-database/publications/resources/view/248/user_hria_publications/
- *Handbook in Human Rights Assessment: State obligations, awareness and empowerment* NORAD, Oslo <http://www.norad.no/files/Handbook.pdf>
- Danish Institute for Human Rights (nd) *Human Rights Compliance Assessment: a tool for better practice* <https://hrca.humanrightsbusiness.org/>
- World Commission on Dams - WCD (2000) *Dams and Development: a new framework for decision making* Earthscan, London and Sterling
- Ribot, J C (1995) "The causal structure of vulnerability: its application to climate impact analysis" *Geojournal* 35(2):119-122

E. Securing land tenure, resource and management rights

Indigenous peoples have collective rights to their lands, territories and natural resources that are protected under international law (UNDRIP Articles 10, 25, 26, 27, 31 and 32). These are inherent property rights that arise from customary tenure and traditional resource use patterns.³¹ Special protections for indigenous peoples' land and territorial rights stem from their close cultural and spiritual attachment to the land that sustains their particular group identity and way of life.³²

States have obligations to recognise, secure and protect indigenous peoples' property rights through demarcation, titling and regularisation of their communal land holdings. Human rights bodies have ruled that procedures for delineating and securing indigenous peoples lands must be founded upon transparent and objective criteria and methods based on traditional occupation and use and customary tenure (i.e., arbitrary and internal demarcation criteria are deemed unlawful).³³ It is emphasised that recognition of tenure and management rights is not strictly an environmental policy decision, but rather a matter of upholding the human rights of indigenous peoples.

For example, the right to self-determination and the right to property for indigenous and tribal peoples have been read conjunctively by UN and regional human rights bodies to the effect that recognition of their territorial rights must include recognition of “their right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system.”³⁴

Traditional land tenure and community forest management:

Traditional regimes of land tenure and forest use often involve extensive patterns of land and resource utilisation. Local management practices constitute an integrated land use approach that includes remote forest areas as community reserves for low intensity hunting and fishing and the extraction of non-timber forest products. Intangible areas may also be set aside for sacred or religious purposes.

Forest-based rotational farming systems involve forest loss that is usually temporary and localised in land use zones closer to settlements. Resource use over time creates a complex mosaic of swidden fields, fallow forests, orchard-fallows and old growth forests – that often enriches local biodiversity (see II. F below). It is the extensive and mixed resource use pattern of traditional forest land use systems that often underpins their sustainability.³⁵ Sustainable forest use and maintenance of forest cover is often the result of low population densities of indigenous peoples coupled with low intensity resource use.

In many cases, sustainable use is maintained through traditions expressed and applied through a series of norms, beliefs and traditional practices geared towards the maintenance, re-growth and enhancement of forest and other biological resources. Customary norms for rational land use are underpinned by cultural values emphasising replacement, regeneration, the need to prevent waste and obligations to respect ancestors and meet the needs of future generations.³⁶

Secure tenure promotes effective forest protection:

Empirical evidence demonstrates that legally recognised common property regimes help to prevent deforestation and can provide effective long-term forest conservation and sustainable use and management of forest resources. Collective tenure coupled with strong community institutions for local forest management enables cost-effective permanent forest protection, sustainable use of forest biodiversity and contributes to sustainable local livelihoods.

Scientific studies in Brazil, for example, show that secure tenure for indigenous peoples is proven to combat intense deforestation pressures and helps to control the spread of forest fires on the agricultural frontier.³⁷ Sustainability of local forest management regimes and security of local livelihoods increases with the level of recognised local management rights and the extent and quality of the forest under community stewardship. One recent study of 233 field sites in forest areas, for example, finds that beneficial forest protection and livelihood outcomes are positively correlated with community forest size, community ownership, and community control and local autonomy in forest management.³⁸

Threats to tenurial security and traditional forest management:

Local forest resource management systems are resilient and flexible, but can be weakened where customary rights and jurisdiction are denied and where traditional knowledge, local institutions and decision-making processes are marginalised by external authorities who assume control over forests.

Customary tenure regimes and sustainable local land-use systems are weakened through fragmentation of the collective forest holding by destructive large-scale development and expropriation of land by conservation, development or private interests. Intensive market pressures and policies promoting individual land titling can likewise erode traditional land tenure and associated natural resource management systems.³⁹

Governance, institutional and legal obstacles:

Weak governance and corruption in the forest sector in developing countries and widespread unjust treatment and exploitation of forest communities by government forest departments are well documented.⁴⁰ Government imposition of logging and mining concessions, dams, and industrial plantations remains commonplace and continues to damage community forests, cause displacement and increase rural poverty in many developing countries.

While there has been a gradual shift towards recognition of community tenure rights in some tropical countries, in many tropical forest countries outdated statutory forestry and conservation laws and policies fail to recognise the customary land and resource rights of indigenous and local communities. Unjust laws and policies still enable resettlement outside parks and prohibit traditional subsistence farming, hunting and fishing inside protected forest areas.⁴¹ These discriminatory policies undermine livelihood security, cause impoverishment and violate peoples' rights (see also Section II.F).

Even where forest and land laws have been revised to strengthen community entitlements, the ownership, control and forest management rights are still often conditioned or limited by government authorities that maintain significant control over forest management.⁴² In other cases where recognition of rights is incorporated in national legislation, practical implementation norms for demarcating and titling lands are lacking, defective or not implemented. Other obstacles include national frameworks that fail to recognise the legal personality of communities and deny citizenship rights to forest dwellers.⁴³

Need to clarify and secure tenure rights:

In many parts of the tropics local tenure rights are legally insecure and land grabs and illegal expropriation of indigenous community lands remain commonplace. Overlapping land and resource claims and denial of customary rights is causing conflict and long-term disputes over forest lands in Latin America, Africa and Asia. Community leaders that challenge the expropriation of communal forest lands are marginalised by authorities or subjected to criminal sanctions and imprisonment.⁴⁴

Without secure land rights for indigenous peoples and forest-dependent communities, there are serious risks that financial incentives stemming from climate programmes could result in land grabbing by speculators and commercial interests claiming possession of forest lands in order to receive rewards or compensation (see section II.G). This is likely to cause displacement, conflict, fraud and elite capture of benefits and incentives.

To be effective, climate change and adaptation methods must include measures to prevent fraud and land grabbing. Methods need to involve activities to clarify land and resource tenure rights, including identification of disputed areas and lands under claim by indigenous peoples (Section II.D). Mitigation schemes should not proceed on lands under dispute. Where these lands are claimed under traditional ownership by indigenous peoples, they must additionally be subject to the FPIC standard before inclusion in climate change mitigation programmes (Section II.C).

Participatory methods are required:

Community-based approaches to land tenure and resource use studies should be used in the development of methodologies to clarify tenure rights. Positive incentives for clarifying tenure and devolving ownership rights to indigenous peoples to communities should be built into the design of climate change mitigation schemes.

In the last 20 years innovative tools have been developed to enable communities to map their customary tenure using participatory mapping and GPS technology. These methods are cost effective and can define land use and occupation at different scales down to an individual dwelling and specific farm fields up to the landscape and territorial level. Skills obtained by community members in mapping tenure and resource use can also be used to monitor the health and integrity of forest resources and to document encroachment or damage by people or destructive interests outside the community.

Need to promote tenure and governance reforms:

UNFCCC methodologies should promote targeted land tenure and regulatory reforms where customary and community tenure rights are not recognised under existing national and local laws. Methods to enable reforms are required to uphold international law, reduce conflicts, ensure equitable local benefits and secure permanent and lasting forest protection activities.

Methods should include national and local studies that involve indigenous peoples and local communities in order to validate information and pinpoint areas for action and reform. Necessary reforms should also be identified through public consultation with rights holders and civil society in each country as part of the process of identifying the direct and underlying causes of deforestation.

Without incentives requiring tenure and forest management reforms, international climate funds for forest protection risk establishing a *disincentive* to governments to recognise customary rights and ensure benefits reach communities.⁴⁵

Forest and climate change mitigation methodologies must:

- support priority activities to clarify and secure tenure rights
- include participatory land tenure views in upstream and site planning (national and local)
- use tools such as community mapping and participatory land tenure studies as part of social assessment and vulnerability analysis to assist in clarifying land and resource rights and to pinpoint needs (demarcation, titling, regulatory reforms, etc.)
- ensure that adequate financial resources and incentives are available for clarifying tenure rights and covering the costs of land demarcation and titling
- identify ongoing and unresolved land claims and address tenure disputes
- recognise and protect collective and customary tenure systems
- legally recognise indigenous and local communities as custodians of forest lands as well as their right to effectively control and manage their territories
- prioritise demarcation and titling of indigenous territories and community forests
- where necessary, support the establishment of interim collaborative management agreements between communities and forest authorities until regulatory changes are in place to enable community autonomy

- enable restitution of indigenous peoples' forest territories where these have been expropriate or gazetted without their free, prior and informed consent
- equip forest communities with skills and tools to monitor and protect their forests from damage and encroachment by outside interests
- promote good governance reforms in the forest sector

RECOMMENDATIONS:

Formulation of methods and incentives for climate change mitigation and adaptation under the UNFCCC must include objective and transparent standards for clarifying and securing tenure rights, including the use of participatory methods and third-party peer review of land tenure studies.

In relation to indigenous peoples, methodologies to clarify tenure and territorial rights must be derived from indigenous peoples' systems of customary tenure and their traditional occupation and use of forest lands.

Tools and information sources:

- CBD (2008) *Draft Findings of the First Meeting of the Second Ad Hoc Technical Expert Group on Biodiversity and Climate Change*, London 17-21 November, 2008
- White, A (2008) *Seeing People Through the Trees: scaling up efforts to advance rights and address poverty, conflict and climate change*, Rights and Resources Initiative, Washington, DC
- Sunderlin, W, Hatcher, J and Liddle M (2008) *From exclusion to ownership? Challenges and opportunities in forest tenure reform* RRI, Washington, DC
- Gilbert, J (2006) *Indigenous peoples land rights under International Law* Transnational Publishing
- Daes, E-I (2001) *Indigenous people and their relationship to land. Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/2001/21, 11 June 200
- Chief Kerry's Moose (2000) *A Guidebook to Land Use and Occupancy Mapping, Research Design and Data Collection* Union of BC Indian Chiefs and Ecotrust Canada <http://www.ecotrust.org/publications/chiefkerrysmoose.html>
- Colchester, M (Ed) (2001) *A survey of indigenous land tenure* FPP, Moreton in Marsh http://www.forestpeoples.org/publications/survey_indig_land_ten.shtml
- Alcorn, J B (2000) *Keys to unleashing mapping's good magic* http://www.iapad.org/publications/ppgis/keys_to_unleash_mapping's_good_magic_f.pdf

F. Protecting traditional practices and multiple use

Forests are of vital importance in the livelihood and cultures of millions of indigenous people and forest-dependent persons in local communities. Forest lands and ecosystems provide wild plant and animal foods, fibres, medicines, construction and craft materials used in subsistence and cultural practices.⁴⁶ As noted in E. above, in many part of the tropics, old growth and secondary forests provide a sustainable reserve of land for traditional rotational and agro forestry farming systems.⁴⁷ Forests yield timber and non-timber forest products that are used to obtain food, subsistence and income, which often provide a vital safety net in times of agricultural and income scarcity.⁴⁸ For indigenous peoples, forests and forest resources are also imbued with critical spiritual values that sustain ceremonial and religious activities and ways of life.⁴⁹

Natural forests therefore meet material, food and livelihood security needs and underpin the cultural systems and distinct identities of indigenous peoples and traditional forest dwellers. Indigenous peoples and community-based organisations have long stressed that forests cannot be reduced to narrow economic inventories. They emphasise that the multiple economic, biological, social, cultural and spiritual values of forests need to be recognised and respected in national and international forest and environmental policies.⁵⁰

In many tropical forest countries, traditional shifting cultivation systems involve fire as a critical part of the cultivation cycle. Net emissions are minimised or neutralised through regeneration of the fields to secondary forest following the harvesting of several crops. Emerging scientific research suggests shifting cultivation involving the use of fire can in some circumstances become a net sink as carbon is leached to lower horizons in the soil profile below swidden fields.⁵¹

Indigenous peoples and a growing number of scientists emphasise that traditional land and forest resource use practices are highly sustainable and adapted to fragile environments (Section II.E above). Indigenous swidden farming systems in lowland South America, for example, are proven to enrich local biodiversity of flora and fauna and enhance agro-ecological diversity.⁵² Sustainable indigenous forest and agro forestry resource management systems have likewise been documented in Africa and Asia and previous concepts of deforestation and forest “degradation” have been proven to have little or no scientific basis as they overlook the dynamics for forest re-growth and regeneration over time.⁵³

International protections for traditional practices:

Indigenous “customary use” and “traditional practices” in forests and other ecosystems, including shifting cultivation and fire management systems are protected under the Convention on Biological Diversity. Article 10(c) of the CBD affirms that States have an obligation to:

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.⁵⁴

Traditional practices and customary use of forest resources are also protected under human rights treaties (II. A above). Governments involved in forest and climate change mitigation schemes that have ratified these agreements (almost all tropical countries have ratified the CBD, for example) have a legal obligation to safeguard these practices. Any methodologies that seek to reduce or eliminate these practices may therefore be deemed unlawful.

Protection against forced displacement:

It is a general principle of international law that indigenous peoples must be protected from forced resettlement given the special attachment of indigenous peoples to their lands and resources that are necessary for their survival as a group.⁵⁵ Any attempt to relocate indigenous peoples without their full prior and informed consent is unlawful and governments have agreed to prohibit involuntary displacement under the UN Declaration on the Rights of Indigenous Peoples (Article 10).

Institutional obstacles and unfair discrimination:

While international law protects traditional practices and standards recognise that forest policies must respect the multiple uses of forest resources, national and local level forest plans continue to disregard the social and cultural values of forests.⁵⁶

National forest programmes and forest management plans still focus on commercial timber species or wildlife protection to the exclusion of community rights and interests and non-timber forest values. At the same time, foresters and conservation authority staff retain prejudices regarding forest dwellers and discriminate against traditional practices such as slash and burn agriculture.

Despite important advances in international (CBD) and best practice (IUCN) standards for participatory and inclusive conservation models, application of these principles in the practice of forest park authorities in some tropical countries remains patchy or limited.⁵⁷ In countries like Thailand and India, as well as much of Africa, relocation of communities to areas outside parks continues.

The slow pace of change on the ground in many countries means that, without requirements for reform and implementation of agreed international commitments, climate change mitigation schemes in forests risk reinforcing unjust exclusionary forest protection models.

Protect traditional practices and appropriate emissions:

Methodologies must recognise that sustainable rotational agriculture and agro forestry systems are protected under international environmental and human rights laws. UNFCCC methods need to contribute to mitigation of climate change as well as promote and protect the rights and livelihoods and food security of indigenous peoples and local communities who live in and depend on forests or other lands considered for inclusion in forest and climate schemes.

Legally and scientifically dubious methods proposing “trade offs” between different objectives and outcomes must be treated with extreme caution. Forest Peoples Programme recommends strongly that the UNFCCC reject any “trade-off” approach in climate change mitigation measures.

Develop just and scientifically robust definitions and criteria:

Definitions, monitoring criteria and incentive schemes must guarantee recognition and protection of legitimate emissions. Appropriate emissions and deforestation would include those that relate to forest clearance and/or use of fire for cultural and traditional practices. They would also include activities and emissions in support of local forest-based livelihoods and food security and those that support the achievement of development objectives and long-term benefits.⁵⁸

It is thus essential that objective methods distinguish between permanent and temporary forest loss and acknowledge that traditional practices sustain important biodiversity, livelihood and cultural values. Net carbon emissions from traditional farming systems must not be used to justify punitive policies that would criminalise use of fire. Nor should release of carbon emissions be used to justify policies to convert shifting cultivators into settled farmers or off-farm workers.

Decision-makers and planners must be informed:

There is a need to raise awareness about international standards that afford protection to traditional practices. Methodologies should thus include capacity building work to educate State agency staff, policy-makers and decision-makers on the rights of indigenous peoples and best practice standards on conservation and sustainable development.

Forest and climate change mitigation methodologies must:

- involve methods at the national and local levels to ensure the protection of the range of values that forests hold for indigenous peoples and local communities, including non-monetary cultural, spiritual and subsistence values.
- prohibit forced resettlement and involuntary restrictions on natural resource use
- include monitoring methods that distinguish between permanent and large scale forest loss, and temporary local forest loss under sustainable shifting cultivation and agro forestry systems
- ensure that definitions and criteria for “deforestation” and “degradation” protect sustainable traditional practices, including use of fire in rotational farming
- recognise and support the establishment and management of community forests and community conserved forests
- enable technical and financial support for community conservation and sustainable use, including strengthening of customary community governance institutions and regulatory reforms
- recognise, protect and build upon the traditional knowledge and practices of indigenous peoples and forest-dependent communities in the design of forest protection and sustainable use programmes, in accordance with international standards, including UNDRIP and CBD Articles 8 (j) and 10(c)

Tools and information sources:

- Colchester, M (2007) *Beyond Tenure: Rights-based approaches to peoples and forests* Some lessons from the Forest Peoples Programme
http://www.forestpeoples.org/documents/law_hr/beyond_tenure_dft_sept07_eng.pdf
- 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
- Outcome 5 of the Durban Action Plan (2003)
<http://cmsdata.iucn.org/downloads/durbanactionen.pdf>

G. Incentives and equitable benefit sharing

Existing proposals for climate change mitigation in forests are unclear on how local benefits would be delivered to indigenous peoples and local communities. Indeed, current discussions on possible measures like REDD suggest that payments would primarily target (compensate) *polluters* engaged in and planning further permanent deforestation and degradation, while effective custodians, like indigenous peoples, who are already protecting and sustainably using forests, would go unrewarded, or receive only token benefits.

Indigenous peoples’ organisations and forest and development experts caution that REDD methodologies that solely target incentives and actions in deforestation areas, will inevitably establish an unfair environmental incentive system that will increase rural inequality and almost certainly attract widespread public condemnation and even generate local conflicts. Without proper safeguards and robust methods to prevent rent-seeking behaviour, financial or other incentives could also end up going to the wrong people, including persons who might occupy and grab forest lands in anticipation of receiving REDD benefits (see also Section II.E).

Methodological proposals for REDD “compensation” to forego future income through delaying or abstaining from deforestation are highly questionable on ethical and moral grounds. This is because they constitute an inversion of the “polluter pays” principle. Incentives based on opportunity costs risk causing perverse outcomes as they might end up rewarding law breakers and illegitimate land holders who have obtained lands illegally in order to obtain incentive payments.⁵⁹

Ensure provision of equitable local benefits:

It is essential that rules for distribution of REDD incentives are based on just and credible principles and criteria, including legality and fairness criteria to prevent benefits accruing to national and local elites or commercial interests. Methodologies for the distribution of benefits must reward customary stewardship of standing forests as well as community protection of their forests against destructive encroachments. With regard to indigenous peoples, the scale of benefits at the local level and any rules governing associated commitments would have to be negotiated and agreed as part of the FPIC process (Section II.C. above).

Forest and climate change mitigation measures must:

- prioritise equitable benefit sharing and incentives for indigenous peoples and local communities
- recognise and reward the historical and ongoing forest protection role of indigenous peoples and traditional forest dwellers
- establish mechanisms to enable indigenous peoples to secure equitable benefits through the negotiation of separate agreements based on FPIC at the national and sub-national levels
- include safeguards and rules to sanction rent-seeking behaviour and prevent fraudulent claims on public funds
- ensure incentives are not accessible to industrial loggers, plantation companies and other interests responsible for deforestation and degradation
- ensure rules for disbursement of funds contain requirements on the need to recognise and respect rights and to comply with agreed social and environmental standards

H. Cross-sectoral policies and other critical issues

The territories and lands of indigenous peoples and local communities in the tropics are under increasing pressures from regional infrastructure projects, agribusiness expansion and industrial plantations.⁶⁰ Governments continue to impose timber, hydrocarbon and conservation concessions (including protected areas) on the traditional lands of forest peoples without their consent.

Despite the current economic downturn, national and regional plans for economic and infrastructure development, coupled with global demands for food, fibre and minerals, are projected to intensify pressures on community lands and increase competition for land in developing countries.⁶¹ It is thus essential that forest protection and climate change mitigation policies address the cross-sectoral direct and underlying drivers of deforestation that fragment standing forests and undermine the sustainable land tenure and management systems of indigenous peoples and traditional forest dwellers.

Identify and address the underlying causes of deforestation:

Measures to protect peoples' rights, secure their forest lands and deliver equitable benefits need to be backed up by wider enabling cross-sectoral policy frameworks at the national and global levels that reduce pressure on forest lands. Methodologies should take account of the in-depth work conducted on the underlying causes of deforestation undertaken by the Intergovernmental Panel on Forests (IPF) in 1999-2000. Under the IPF process, collaborative work with indigenous peoples and civil society organisations and country-level case studies generated multiple recommendations for addressing these underlying causes of forest loss, including the need to, *inter alia*:

- change unsustainable global consumption, production and trade patterns
- address injustice in national land tenure regimes
- recognise the rights of indigenous peoples and local communities, including their land tenure and collective property rights
- increase the legal enforceability of human rights and environmental instruments
- eliminate perverse incentives
- improve forest governance
- establish transparent and open participation mechanisms at all levels
- develop clear legal frameworks to empower indigenous peoples and local communities to undertake monitoring and enforcement
- relieve the debt burden on developing countries and cancel debt where possible
- strengthen and promote policies for local management of community forests
- develop effective measures to value non-timber products and services of forests⁶²

Definitions and criteria:

In addition to essential methodological work under the Convention to develop definitions of “deforestation” and “degradation” that uphold peoples' rights (Section II.F), the definition of “forests” must be revised to exclude industrial plantations. National definitions must likewise be revised to conform to international criteria to ensure comparability and equity between countries.

Unless international bodies and national forest agencies revise flawed forest definitions, then baselines, monitoring systems and incentives systems for forest and climate change mitigation strategies will be incoherent and risk national and international leakage. The wrong definitions and international incentives could even end up rewarding countries for forest loss (in cases where countries maintain that national “forest cover” has expanded through the expansion of plantations).⁶³

Forest and climate change mitigation methodologies must:

- address the underlying causes of deforestation, including national and international demands for food, fibre, vegetable oils and pulp
- adopt a cross-sectoral approach to national forest planning and strategies
- adopt improved definitions of “forests” and develop credible and just definitions of “deforestation” and “degradation” that will minimise the risk of rights violations and other perverse outcomes

I. Compliance, monitoring and public accountability

Effective methods and standards will need to be backed by compliance mechanisms to ensure fulfilment of agreed social and environmental rules and commitments. Provision should be made for transparent monitoring and verification procedures, including independent third party and community monitoring and reporting procedures. Methods must not be confined to measurement of carbon stocks and/or forest cover. It is essential that monitoring, measurement and verification methods include indicators for rights, governance and equity impacts and outcomes.

Indigenous peoples' organisations must have the option to be involved in independent monitoring and to review climate change mitigation schemes and programmes, particularly with regard to the impacts of these activities on their rights and wellbeing.

Methodologies must include:

- application of rights, governance and equity indicators in monitoring systems to assess the impacts and effectiveness of forest and climate change mitigation measures
- specific indicators for the effective implementation of minimum standards contained in the UNDRIP in cases where plans or activities may affect indigenous peoples
- provision for third party independent monitoring and reporting on the implementation of agreed social and rights commitments as part of climate change mitigation efforts
- recognition of the contribution that indigenous peoples' traditional knowledge can make in developing criteria and methods for monitoring forest ecosystem health and the impacts of mitigation and adaptation measures
- transparent and accessible complaints and conflict resolution mechanisms at the national and international levels to ensure accountability to affected indigenous peoples and forest communities

RECOMMENDATION:

The UNFCCC should address the need for compliance and accountability mechanisms, and for participatory monitoring and verification methods, as part of its work in the recommended expert group on indigenous peoples and climate change (Section II.A and Executive summary).

III. Learning from demonstration and pilot initiatives

While the UNFCCC is still in the process of developing methodologies in relation to forests and climate change mitigation, national and local voluntary and pilot initiatives for REDD are already underway in several tropical countries. Early evidence suggests that some of these initiatives appear to be overlooking critical tenure, rights and governance issues in national REDD planning. In other cases, indigenous peoples and local communities have not yet been properly consulted about these initiatives.⁶⁴ Therefore there are dangers that “demonstration activities” will repeat the mistakes of the past global and national efforts that failed to slow deforestation and resulted in adverse impacts on indigenous peoples' and forest communities.⁶⁵

It is strongly recommended that the UNFCCC invites independent studies of the rights aspects and social impacts of demonstration REDD and avoided deforestation activities. Studies should be completed and shared as soon as is practicable and lessons learned should be used to further develop just and effective methodologies for forest and climate change mitigation.

¹ Definitions of 'forest dependence' may vary and so figures on population and dependence sometimes differ in the literature – see Byron, N and Arnold, M (2005) "What future for the peoples of tropical forests"? pp.145-167 in Sayer, J (Ed)(2005) *The Earthscan Reader in Forestry and Development* Earthscan, London and Sterling

² See, for example, UN (2009) *Report of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*. A/HRC/10/61, 15 January 2009 (Advanced edited version) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.61AEV.pdf>

³ See, for example, Aliansi Masyarakat Adat Nusantara, Sawit Watch and Forest Peoples Programme (2008) *Request for consideration of the situation of indigenous peoples in the Republic of Indonesia under the follow up and early warning and urgent action procedures (Seventy forth session of the Committee on the Elimination of Racial Discrimination)* http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_follow_up_feb09_eng.pdf

⁴ Griffiths, T (2008) *Seeing REDD: forests, climate change mitigation and the rights of indigenous peoples and local communities – update for Poznan FPP Briefing*, December 2008

⁵ See, for example, Vinding, D (Ed)(2006) *Indigenous Peoples and the Millennium Development Goals: perspectives from communities in Bolivia, Cambodia, Cameroon, Guatemala and Nepal* ILO, Geneva

⁶ CBD (2008) *Draft Findings of the First Meeting of the Second Ad Hoc Technical Expert Group on Biodiversity and Climate Change*, London 17-21 November, 2008 at paragraph C.

⁷ Statement of the International Forum of Indigenous Peoples on Climate Change (IIPFCC) to the 29th Session of the Subsidiary Body for Scientific and Technical Advice (SBSTA), during the 14th Session of the Conference of the Parties (COP14) of the United Nations Framework Conference on Climate Change (UNFCCC). December 1st, 2008; UN REDD Programme (2008) *Global indigenous peoples' consultation on reducing emissions from deforestation and forest degradation (REDD)*, Baguio City, Philippines, 12–14 November 2008

⁸ *Statement of the International Indigenous Peoples Forum on Climate Change*, Poznan, 10 December, 2008

⁹ Sunderlin, W, Angelsen, A and Roberts, T (2008) *Rights: an essential precondition for effectiveness, efficiency and equity in REDD*, Presentation to 'Rights, Forests and Climate Change' joint conference convened by Rights and Resources Initiative and Rainforest Foundation Norway, Oslo, October 15–17, 2008. See also Humphreys, D (2008) 'The politics of 'avoided deforestation': historical context and contemporary issues' *International Forestry Review* 10(3)(2008):433-442 at page 439; and also Peskett, L, Huberman, D, Bowen-Jones, E, Edwards, G and Brown, J (2008) *Making REDD work for the poor*, Poverty and Environment Partnership (PEP) Policy Brief, ODI, London

¹⁰ RRI (2008) *Foundations for effectiveness: a framework for ensuring effective climate change mitigation and adaptation in forest areas without undermining human rights and development*, <http://rightsandclimatechange.files.wordpress.com/2008/10/foundations-for-effectiveness-14-oct-final-4-pages.pdf> ; See also Kaimowitz, D (2008) 'The prospects for REDD in Mesoamerica', *International Forestry Review* 10(3)(2008):485-49

¹¹ Anaya, S J (2008) *The Human Rights of Indigenous Peoples, in Light of the New Declaration, and the Challenge of Making Them Operative* Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, August 5, 2008 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1242451

¹² See, for example, Thornberry, P (2002) *Indigenous Peoples and Human Rights*. Manchester University Press, Manchester. See also Mackay, F (2005) *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence, Volume I - 1993 – 2004*. FPP, Moreton in Marsh. See also MacKay, F (2006) *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence, Volume II: 2005-2006*

http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_vol2_06_eng.pdf
¹³ <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>

¹⁴ <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

¹⁵ *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, Article 1.

¹⁶ International Council on Human Rights Policy (2008) *Climate change and human rights – a rough guide*, ICHRP, Geneva at pages 49-50.

¹⁷ UN (2007) *Non-legally binding instrument on all types of forests* Sixty-second session Second Committee of the UN General Assembly, 22 October 2007, Doc. A/C.2/62/L.5

- ¹⁸ IWGIA (2008) *Conference on Indigenous Peoples and Climate Change: 21–22 February, 2008* Conference Report, International Work Group for Indigenous Affairs, Copenhagen.
- ¹⁹ Griffiths, T (2004) *Destructive and illegal logging continues to ravage forests and communities in the Peruvian Amazon* http://www.forestpeoples.org/documents/s_c_america/peru_wrm_article_illegal_log_tg_sept05_eng.shtml
- ²⁰ See, for example, 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>
- ²¹ *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172, at para. 194-96 (hereinafter “Saramaka People v. Suriname”). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf. See also MacKay, F (2007) *Los derechos de los pueblos indígenas y el Comité de las Naciones Unidas para la Eliminación de la Discriminación Racial (CEDR)* http://www.forestpeoples.org/documents/law_hr/cerd_ips_rights_sept07_sp.pdf
- ²² Colchester, M and MacKay, F (2004) *In Search of Middle Ground: indigenous peoples, collective representation and the right to free, prior and informed consent* FPP, Moreton-in-Marsh at pages 8-12
- ²³ *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172, at para. 194-96 http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of 12 August 2008. Series C No. 185 http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf
- ²⁴ See, for example, World Commission on Dams (2000) *Dams and Development: a new framework for decision making* Earthscan, London and Sterling
- ²⁵ UN REDD Programme (2008) *Global indigenous peoples’ consultation on reducing emissions from deforestation and forest degradation (REDD)*, Baguio City, Philippines, 12–14 November 2008
- ²⁶ WCD (2000) *op. cit.* at page 215
- ²⁷ *Agenda 21*, Chapter 23: “Strengthening the role of major groups”, paragraph 23.2
- ²⁸ WCD (2000) *op. cit.* at page 279
- ²⁹ MacKay, F (nd) *Indigenous Peoples Rights and Reducing Emissions from Reduced Deforestation and Forest Degradation: the case of the Saramaka Peoples v. Suriname* FPP briefing, forthcoming
- ³⁰ *Id.* at para. 41. See also MacKay, F (nd) *Indigenous Peoples Rights and Reducing Emissions from Reduced Deforestation and Forest Degradation: the case of the Saramaka Peoples v. Suriname* FPP briefing, forthcoming
- ³¹ See, among others, Judgment of the Inter-American Court of Human Rights in the case of The Mayagna (Sumo) Indigenous Community of Awas Tingni v. the Republic of Nicaragua, 31 August 2001, *Inter-Am. Court on Human Rights, Series C, No. 79* (2001), at para. 149, 151; Inter-American Commission on Human Rights, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, at para. 131; and *Report No. 40/04*, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), 12 October 2004, at para. 117
- ³² Daes, E-I (2001) *Indigenous people and their relationship to land. Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/2001/21, 11 June 2001
- ³³ See, among others, Judgment of the Inter-American Court of Human Rights in the case of The Mayagna (Sumo) Indigenous Community of Awas Tingni v. the Republic of Nicaragua, 31 August 2001, *Inter-Am. Court on Human Rights, Series C, No. 79* (2001), at para. 149, 151; Inter-American Commission on Human Rights, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, at para. 131; and *Report No. 40/04*, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), 12 October 2004, at para. 117
- ³⁴ *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172, *supra*, at para. 194. See also *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of 12 August 2008. Series C No. 185. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf
- ³⁵ See, for example, Moran, E (1993) *Through Amazonian Eyes: the human ecology of Amazonian populations* University of Iowa Press, Iowa City.
- ³⁶ See, for example, Suárez, A (2004) “Colombia: an example of community-based forest management” *WRM Bulletin No. 81*, April 2004
- ³⁷ Nepstad, D., Schwartzman, S., Bamberger, B., Santilli M, Ray, D., Schlesinger, P., Lefebvre, P., Alencar, A., Prinz, E., Fiske, G., and Rolla, A (2006) “Inhibition of Amazon Deforestation and Fire by Parks and Indigenous Lands” *Conservation Biology* **20** (1), 65–73
- ³⁸ Agrawal, A (2008) ‘Livelihoods, carbon and diversity of community forests: trade offs and win wins?’ Presentation to ‘Rights, Forests and Climate Change’ A joint conference convened by Rights and Resources Initiative & Rainforest Foundation Norway Oslo, Norway, 15–17 October 2008

- ³⁹ Arnold, J E M (2001) *Forests and People: 25 years of community forestry*, FAO Rome
- ⁴⁰ Larson, A M and Ribot, J C (2007) 'The poverty of forestry policy: double standards on an uneven playing field', *Sustainability Science* 2 (2)189–204
- ⁴¹ Colchester, M (2003) *Salvaging Nature: indigenous peoples, protected areas and biodiversity conservation* WRM and FPP, Montevideo and Moreton-in-Marsh
- ⁴² Wily, L A (2005) "From meeting needs to honouring rights: the evolution of community forestry" pp.388-394 in Sayer, J (Ed)(2005) *op. cit.* ; Colchester, M, Farhan Ferrari, M, Nelson, J, Kidd, C, Zaninka, P, Venant, M, Regpala, L, Balawag, G T, Motin, B, and Lasimbang, B (2008) *Conservation and Indigenous Peoples: Assessing the Progress since Durban*, FPP, Moreton-in-Marsh (Draft report),
- ⁴³ See, for example, Colchester, M and Fay, C (2007) *Land, Forest and People: facing the challenges in SE Asia* Rights and Resources Initiative Listening, Learning and Sharing – Asia final report, September 2007, RRI, FPP, World Agroforestry Centre, RECOFTC
- ⁴⁴ FERN (2001) *Forests of Fear: the abuse of human rights in forest conflicts* FERN, Brussels
<http://www.fern.org/pubs/reports/fear.pdf>
- ⁴⁵ See Wiley, L A (2008) *Whose land is it: commons and conflict states: why ownership of the commons matters in making and keeping the peace* RRI, Washington, DC at page 6
- ⁴⁶ See, for example, Dufour, D L (1990) "Use of tropical rainforest by native Amazonians" *Bioscience* 40: 652-659; and Griffen, V (Ed) (2001) *Seeing the Forest for the People: a handbook on gender, forestry and rural livelihoods* Asian and Pacific Development Centre (APDC) – Gender and Development Programme, Kuala Lumpur
- ⁴⁷ Beckerman, S (1987) "Swidden in Amazonia and the Amazon Rim" pp.55-94 in Turner II, BL and Brush, SB (Eds) *Comparative farming systems* The Guilford Press, New York and London
- ⁴⁸ Kusters, K and Belcher, B (Eds)(2004) *Forest Products, livelihoods and conservation case studies of non-timber forest product systems – Volume 1 – ASIA* CIFOR, Jakarta; Alexiades, M N, Shanley, P (Eds)(2004) *Productos Forestales, medios de subsistencia y conservación – estudios de caso sobre sistemas de manejo de productos forestales no maderables Volumen 3 – LATIN AMERICA* CIFOR, Jakarta; López, C and Shanley, P (Eds) (2004b) *Riches of the Forest: for health, life and spirit in Africa* CIFOR-DFID-EC, Jarkarta.
- ⁴⁹ Posey, D (Ed) (1999) *Cultural and Spiritual Values of Biodiversity*, UNEP and Intermediate Technology Publications
- ⁵⁰ Newing, H (Ed)(2005) *Our knowledge for Our Survival: traditional forest related knowledge and the implementation of related international commitments* (Two volumes) International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF) and CIFOR, Chiang Mai and Bogor
- ⁵¹ Mutuo, P. K., Cadisch, G., Albrecht, A., Palm, C. A., Verhot, L. (2005) "Potential of agroforestry for carbon sequestration and mitigation of greenhouse gas emissions from soils in the tropics" *Nutrient Cycling in Agroecosystems, 2005 (Vol. 71) (No. 1)* 43-54. See also Albrecht, A., Kandji, S. T. (2003) "Carbon sequestration in tropical agroforestry systems" *Agriculture, Ecosystems and Environment* 2003 (Vol. 99) (No. 1/3) 15-27
- ⁵² See, for example, Balée, W (1989) 'The Culture of Amazonian Forests' pp. 1-21 in Posey, D A & Balée, W (Eds)(1989) *Resource Management in Amazonia: indigenous and folk strategies (Advances in Economic Botany Volume 7)* New York Botanical Garden, New York
- ⁵³ Leach, M and Mearns, R (1996) "Environmental change and policy: challenging received wisdom in Africa" pp.1-33 in Leach, M and Mearns, R (Eds)(1996) *The lie of the land: challenging received wisdom on the African environment* James Curry, Oxford; Peluso, N L and Padoch, C (1996) "Changing resource rights in managed forests of West Kalimantan" pp121-136 in Peluso, N L and Padoch, C (Eds)(1996) *Borneo in Transition: people, forests, conservation and development* Oxford University Press, Kuala Lumpur, Malaysia
- ⁵⁴ <http://www.cbd.int/convention/articles.shtml?a=cbd-10>
- ⁵⁵ *Internally displaced persons, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39 UN Doc. E/CN.4/1998/53*
- ⁵⁶ Griffiths, T (2001) *Consolidating the Gains: indigenous peoples and forest policy-making at the United Nations*, FPP, Moreton in Marsh; FPP (2004) *A Summary of Some Key Existing Political Commitments and international standards on the Social and Cultural Aspects of Forests* FPP briefing, Moreton-in-Marsh
- ⁵⁷ Colchester, M, Farhan Ferrari, M, Nelson, J, Kidd, C, Zaninka, P, Venant, M, Regpala, L, Balawag, G T, Motin, B, and Lasimbang, B (2008) *Conservation and Indigenous Peoples: Assessing the Progress since Durban*, FPP, Moreton-in-Marsh http://www.forestpeoples.org/documents/conservation/wcc_conservation_and_ips_interim_rep_sept08_eng.pdf
- ⁵⁸ See, for example the critical distinction between "appropriate" and "inappropriate deforestation" in Kaimowitz, D., Byron, N and Sunderlin, W (2005) "Public policies to reduce inappropriate deforestation – a review" pp.303-322 in Sayer, J (Ed) Sayer, J (Ed)(2005) *The Earthscan Reader in Forestry and Development* Earthscan, London and Sterling at pages 239-240

⁵⁹ Sunderlin, W, Angelsen, A and Roberts, T (2008) *Rights: an essential precondition for effectiveness, efficiency and equity in REDD*, Presentation to 'Rights, Forests and Climate Change' joint conference convened by Rights and Resources Initiative and Rainforest Foundation Norway, Oslo, October 15–17, 2008

⁶⁰ Colchester, M Aik Pang, W Meng Chuo, W and Jalong, T (2007) *Land is Life Land Rights and Oil Palm Development in Sarawak* http://www.forestpeoples.org/documents/asia_pacific/sarawak_land_is_life_nov07_eng.pdf

⁶¹ White, A (2008) *Seeing People Through the Trees: scaling up efforts to advance rights and address poverty, conflict and climate change*, Rights and Resources Initiative, Washington, DC

⁶² Foley, M-E, Moussa, J and Verolme, H (Eds)(1999) *Addressing the Underlying Causes of Deforestation and Forest Degradation: case studies, analysis and policy recommendations* The Tides Center - Biodiversity Action Network, Washington, DC

⁶³ See especially, World Rainforest Movement (2008) *From REDD to HEDD WRM contribution to the Convention on Climate Change*, WRM, Montevideo, November 2008

⁶⁴ Dooley, K, Griffiths, T, Leake, H and Ozinga, S (2008) *Cutting Corners: World Banks forest and carbon fund fails forests and peoples*, FPP–FERN briefing, November 2008

⁶⁵ Colchester, M and Lohmann, L (1990) *The Tropical Forestry Action Plan: What Progress?* WRM and The Ecologist, Penang and Sturminster Newton