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From Dams to Development Justice: Progress with 'Free, Prior and Informed Consent' Since the World Commission on Dams

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ABSTRACT: The World Commission on Dams (WCD) helped establish as development best practice the requirement to respect the right of indigenous peoples to give or withhold their 'free, prior and informed consent' (FPIC) to development projects that will affect them. Recognition of this right helps redress the unequal power relations between indigenous peoples and others seeking access to their lands and resources. In this Viewpoint, we examine the evolution of policy in the ten years since the publication of the WCD Report, and how FPIC has been affirmed as a right of indigenous peoples under international human rights law and as industry best practice for extractive industries, logging, forestry plantations, palm oil, protected areas and, most recently, for projects to reduce greenhouse gas (GHG) emissions from deforestation and forest degradation. To date, relatively few national legal frameworks explicitly require respect for this right and World Bank standards have yet to be revised in line with these advances in international law. We analyse how international law also needs to clarify how the right to FPIC relates to the State's power to impose resource exploitation in the 'national interest' and whether 'local communities' more broadly also enjoy the right to FPIC. In practice, as documented in this Viewpoint and in the cases we review, the right to FPIC is widely abused by corporations and State agencies. A growing tendency to reduce implementation of FPIC to a simplified check list of actions for outsiders to follow, risks again removing control over decisions from indigenous peoples. For FPIC to be effective it must respect indigenous peoples' rights to control their customary lands, represent themselves through their own institutions and make decisions according to procedures and rhythms of their choosing.

KEYWORDS: Indigenous peoples, human rights, free, prior and informed consent (FPIC), development policy, UN Declaration on the Rights of Indigenous Peoples

INTRODUCTION

Ten years after its publication, the Report of the World Commission on Dams (WCD) has withstood the test of being the most comprehensive guide to a human rights-based approach to development. Not least, its recommendation to uphold the right of indigenous peoples to free, prior and informed consent (FPIC), as a standard to be applied in addressing indigenous peoples' rights in the development process, foreshadowed important norms-setting processes on this theme after 2000.

The WCD proposed a framework for decision-making around dams based on upholding the United Nations values of human rights, environmental sustainability and the right to development. Consistent with applying a human rights-based approach, the WCD advocated procedural safeguards in water- and energy-planning processes to empower and protect the rights of those sections of the population shown to have suffered human rights violations and disproportionate negative impacts of large dams in

the past, while not sharing in the development benefits, notably, indigenous and tribal peoples, women and impoverished project-affected communities.

WCD'S RECOMMENDATIONS

Among the key recommendations of the WCD was the following:

> *Strategic Priority 1 – Gaining Public Acceptance*. Public acceptance of key decisions is essential for equitable and sustainable water- and energy-resources development. Acceptance emerges from recognising rights, addressing risks, and safeguarding the entitlements of all groups of affected people, particularly indigenous and tribal peoples, women and other vulnerable groups. Decision-making processes and mechanisms are used that enable informed participation by all groups of people, and result in the demonstrable acceptance of key decisions. Where projects affect indigenous and tribal peoples, such processes are guided by their free, prior and informed consent (WCD, 2000).

In setting this Strategic Priority, the WCD was articulating a human-rights norm on the full and effective participation by affected communities in decision-making processes about their own development, the whose violation would compromise equity, sustainability and the development effectiveness of proposed programmes and projects. In the case of indigenous peoples, the WCD took heed of progressive developments in national and international laws recognising indigenous peoples' rights, grounded on self-determination and the requirement to gain their free, prior, and informed consent (FPIC) to development plans and projects affecting them (WCD, 2000).

Taking as a point of departure, existing rights and entitlements, the WCD proposed the establishment of multi-stakeholder bodies which enable informed decision-making processes involving all affected and interested parties, including those at risk of suffering violations of their social, economic and cultural rights and entitlements in the course of water- and energy-development planning and implementation. Recommending more than formal consultation procedures, the WCD underlined the need to gain public acceptance of key decisions, including policy frameworks, assessment of policy, institutional and technical options, identification of optimal programmes and the elimination of unacceptable projects at an early stage. This Strategic Priority is closely linked to other WCD Strategic Priorities on Comprehensive Options Assessment, Sustaining Rivers and Livelihoods, and Recognising Entitlements and Sharing Benefits.

WCD recommended that all those recognised as adversely affected people should be entitled to negotiate mutually agreed and legally enforceable mitigation, resettlement and development plans, with benefit-sharing provisions, as well as to have access to redress and recourse mechanisms. A key development outcome was to ensure that project-affected peoples and communities became better off rather than worse off, as a result of the water and energy projects (WCD, 2000).

By embedding a combined human-rights- and ecosystem-based approach to infrastructure and natural resource management, the WCD report secured a relevance beyond its assessment of large dams. Some analysts of the WCD Report and process see its lasting contribution "in the gradual construction of a standard of what appropriate behaviour might look like in the context of large water projects in particular and development projects in general" (Dubash, 2009).

WORLD BANK GROUP RESPONSES TO WCD REPORT AND EXTRACTIVE INDUSTRIES REVIEW

The WCD recommendations addressing the social aspects of dam-building became the focus of much debate in the period immediately following publication of the WCD report, not least within the World Bank Group (WBG), which was reviewing its safeguard policies, including on Indigenous Peoples and on Involuntary Resettlement.

Another WBG review process – the Extractive Industries Review (EIR) – headed by the eminent person Emil Salim and completed in 2004, strongly affirmed the necessity to obtain FPIC of indigenous

peoples to oil, gas and mining developments on their lands, as a necessary safeguard for their rights and well-being. The EIR Report recommended that

> The WBG should ensure that borrowers and clients engage in consent processes with indigenous peoples and local communities directly affected by oil, gas, and mining projects, to obtain their free, prior and informed consent. For indigenous peoples this is an internationally guaranteed right; for local communities it is an essential part of obtaining social license and demonstrable public acceptance for the project (EIR, 2004).

It further recommended that the WBG "should ensure that indigenous peoples' right to give their free prior and informed consent is incorporated and respected in its Safeguard Policies and project-related instruments".

With regard to the nature of FPIC, the EIR Final Report states:

> Free prior and informed consent should not be understood as a one-off, yes-no vote or as a veto power for a single person or group. Rather, it is a process by which indigenous peoples, local communities, government, and companies may come to mutual agreements in a forum that gives affected communities enough leverage to negotiate conditions under which they may proceed and an outcome leaving the community clearly better off. Companies have to make the offer attractive enough for host communities to prefer that the project happen and negotiate agreements on how the project can take place and therefore give the company a 'social license' to operate (EIR, 2004; see also Colchester et al., 2003b; Mackay, 2004).

The Management Response rejected these recommendations stating that "Governments and industry do not support free prior informed consent, where this would represent a veto on development" and that "[d]iscussions with communities need to take place in the context of local law which may or may not give rights [of] prior informed consent…" (WBG, 2004).

The World Bank's Board of Executive Directors rejected FPIC in relation to the recommendations of both the WCD and the EIR and, instead decided to adopt the lower standard of '*free, prior, and informed consultation resulting in broad community support*' in its updated operational policy 4.10 on Indigenous Peoples which was approved in 2005.

Following the World Bank's updating of its safeguard policies, other international financial institutions (IFIs) carried out similar policy reviews with slightly varying conclusions: the International Finance Corporation (IFC) adopted its new Performance Standard 7 (PS7) in 2006; the Inter-American Development Bank (IDB) also adopted its Operational Policy 7-65 on Indigenous Peoples in 2006, followed by the European Bank for Reconstruction and Development (EBRD) in May 2008, and the Asian Development Bank (ADB) new policy statement in July 2009. The African Development Bank (AfDB) has so far not adopted a policy on indigenous peoples.

The World Bank's standard, of '*free, prior, and informed consultation resulting in broad community support*' set the parameters for IFC's position on FPIC. However, IFC policy towards indigenous peoples differs slightly from those of the IBRD and IDA. While it similarly requires 'free, prior and informed consultations', these are not required to lead to 'broad community support' but are interpreted as requiring 'good faith negotiation with and informed participation of indigenous peoples'. In the case of projects that may affect indigenous peoples' lands, clients are required to document indigenous peoples' 'informed participation and the successful outcome of the negotiation' (IFC, 2006; FPP, 2006).

Also limiting FPIC requirements, the 2009 ADB policy provides that indigenous peoples' 'consent' will be obtained for projects that involve:

> (i) commercial development of the cultural resources or knowledge; (ii) physical displacement; and (iii) commercial development of natural resources within customary lands provided that this may impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity or community of indigenous peoples (ADB, 2009).

The IDB has gone further in its policies on indigenous peoples, requiring special safeguards for indigenous peoples in projects that directly or indirectly affect their traditional lands, territories, and resources. It specifies that "one of those safeguards is respect for the rights recognised in accordance with the applicable legal norms" including ratified international treaties "as well as the corresponding international jurisprudence of the Inter-American Court of Human Rights or similar bodies whose jurisdiction has been accepted by the relevant country". For all projects that may affect indigenous peoples, the IDB's OP 7-65 requires participatory impact assessments; consultation and informed participation; benefit-sharing; mitigation and avoidance measures; and compensation for adverse impacts (IDB, 2006). IDB further requires FPIC of indigenous peoples for involuntary resettlement (IDB, 1998).

EBRD's Performance Requirements 7 (PR7) explicitly requires FPIC for high-risk projects, stating that "this PR recognises the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples, that the prior informed consent of affected Indigenous Peoples is required for the project-related activities identified in paragraphs 31-37 below, given the specific vulnerability of indigenous peoples to the adverse impacts of such projects" (www.ebrd.com).

The international development agency which has gone furthest in recognising FPIC is the Rome-based International Fund for Agricultural Development (IFAD), which sees FPIC as integral to its strategic objectives of enhancing the capabilities of the poor and improving access to natural resources and financial services and markets, while attending to the vulnerability of certain target groups (IFAD, 2005). IFAD emphasises the need for legal support and capacity-building with indigenous peoples to make enjoyment of the right to FPIC effective, and makes respect for FPIC a criterion of project approval (IFAD, 2009).

Active engagement by indigenous peoples and civil society organisations with these policy review processes resulted in more detailed guidance on indigenous peoples issues by these IFIs, but adopted policies generally fall short of indigenous peoples' demands for adequate human rights safeguards which include the rights to FPIC, to ownership and control of their traditional territories, the prohibition of involuntary resettlement, and respect for indigenous peoples' right to self-determination. [1] The UN General Assembly, however, offered a different arena in which to enshrine these principles in international standards on indigenous peoples' rights.

UN General Assembly adoption of the Declaration on the Rights of Indigenous Peoples

In September 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration sets out what it describes as the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. The Declaration codifies a series of existing norms regarding indigenous peoples which had evolved through bodies such as the International Labour Organisation and the jurisprudence of the international human rights courts and other human rights treaty bodies which oversee the application of human rights laws. The Declaration not only clearly articulates indigenous peoples' right to FPIC but also affirms related rights including indigenous peoples' right to be represented through their own institutions; to exercise customary law; to the ownership of the lands, territories and natural resources that they traditionally own or otherwise occupy or use; to self-identification; and, more fundamentally, to self-determination (UNDRIP, 2007).

The UNDRIP contains three articles explicitly requiring FPIC: "No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just

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[1] See World Bank Round Table Discussion of Indigenous Representatives and the World Bank on the Revision of the World Bank's Indigenous Peoples Policy: Summary Report, report of the meeting held at the World Bank, Washington, DC, 17-18 October 2002. www.forestpeoples.org/documents/ifi_igo/wb_ip_round_table_summary_oct_02_eng.pdf. See also 'Statement by Indigenous Peoples Participating in the 19th Session of the UN Working Group on Indigenous Populations, about concerns regarding the revision of the World Bank's Indigenous Peoples Policy' (July 2001).
www.forestpeoples.org/documents/ifi_igo/wb_4_10_ip_statemnt_jul01_eng.shtml

and fair compensation… (UNDRIP, 2007: article 10), before adopting and implementing legislative or administrative measures that may affect them" (UNDRIP, 2007: article 19) and prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources (UNDRIP, 2007: article 32).

Articles 41 and 42 of the Declaration call on UN agencies to contribute to the full realisation of the rights set out in the Declaration through financial cooperation and technical assistance and promote full application of the provisions of the Declaration (UNDRIP, 2007: articles 41 and 42). Accordingly, immediately following the General Assembly's adoption of the Declaration, the United Nations Development Group developed *Guidelines on Indigenous Peoples' Issues,* in which the right to FPIC as an expression of the right to self-determination is strongly emphasised (UNDG, 2008).

FPIC AND ADVANCES IN INTERNATIONAL LAW

The UNDRIP is not directly binding but rather affirms rights and standards already established under existing international human rights laws and in the jurisprudence of the international treaty bodies. In the same way, in reaching its decision to insist on indigenous peoples' right to FPIC, the WCD drew on the existing and emerging norms of international law, notably the jurisprudence of the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Elimination of Racial Discrimination (CERD) (Colchester, 1999).

Since then these committees have continued to insist on the need to respect the right of indigenous peoples to FPIC, as have regional human rights bodies such as the Inter-American Commission and Court of Human Rights and the African Commission on Human and Peoples' Rights.[2] In 2009, for example, the Human Rights Committee, in its case law under the Optional Protocol I, held that where indigenous peoples or minority communities with strong attachments to land face activities that "substantially compromise or interfere with the culturally significant economic activities", "participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community".[3] This would certainly apply to dams in indigenous territories.

In line with the UN human rights treaty bodies, the Inter-American Commission on Human Rights (IACHR) has consistently held that FPIC is required in relation to activities that affect indigenous peoples' traditional territories. As a general principle, it has observed that Inter-American human rights law requires "special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right not to be deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation".[4]

One of the most significant and detailed judgments of the human rights courts since the UNDRP was adopted is the case of *Saramaka People v. Suriname*, which looked into the case of the Saamaka,[5] a 'Maroon' people whose customary lands had been handed out to mining and logging companies without any regard for their rights.[6] The judgment affirmed that the property rights of indigenous and tribal peoples derive from custom and not from any act of the State. These property rights are

[2] *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment of 28 November 2007. Ser C No. 172 (see also Saramaka People, Interpretation of the Judgment, Ser C No. 185); and Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of *Endorois Welfare Council v. Kenya*, February 2010, para. 226, available at www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html.

[3] *Ángela Poma Poma v. Peru*, Communication No. 1457/2006. UN Doc. CCPR/C/95/D/1457/2006, 24 April 2009, para. 7.6 (in relation to 'the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community').

[4] Report No. 75/02, Mary and Carrie Dann (United States), OEA/Ser.L/V/II.116, Doc. 46 (27 December 2002), para.131.

[5] As the people prefer to be known.

[6] Op. cit note 4.

exercised conjointly with the right to self-determination and their right "to freely dispose of their natural wealth and resources", meaning that indigenous and tribal peoples have the "right to manage, distribute, and effectively control [their]… territory, in accordance with their customary laws and traditional collective land tenure system". The court ruled that in cases where the State proposes large-scale interventions that may affect indigenous and tribal peoples' lands and natural resources their FPIC is required in accordance with their customs and traditions. The court also looked in detail at the institutions through which the State should consult the Saamaka. Rejecting the Government's suggestion that this could be done through their State-recognised headman, the court affirmed the right of the Saamaka to choose their own representatives and make decisions in line with their traditional methods of decision-making (MacKay, 2009).

The universality of the emerging jurisprudence on indigenous rights including their right to FPIC was further affirmed in a recent 'landmark' decision by the African Commission on Human and Peoples' rights, which affirmed the right of the Endorois pastoralists of Kenya to own their customary lands and to 'free, prior and informed consent', rights which were violated when they were removed from their lands to make way for a protected area. The decision invokes the UN Declaration on the Rights of Indigenous Peoples and draws on the findings of the Inter-American Court of Human Rights including the *Saramaka People* case. The case vindicates the right of all indigenous peoples to restitution of lands taken without their consent to create national parks and reserves. This right has also been previously asserted by the Inter-American Court of Human Rights which finds that indigenous peoples have a right to restitution of traditionally owned lands which have been taken or lost without their consent including where title is presently vested in innocent third parties.[7]

The African Commission's decision is also in line with norms emerging from the Conference of Parties (COP) of the Convention on Biological Diversity (CBD). The 7th COP through Decision VII/28 of the Conference explicitly upholds the rights of indigenous peoples to be consistent with countries' obligations under international law, an approach that is reaffirmed in the Programme of Work on Protected Areas agreed to at the same meeting (Casas, 2004). The COP also adopted the Akwe: Kon Guidelines for the conduct of cultural, environmental and social impact assessments prior to 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', which also require FPIC.[8] In Saramaka People, the Inter-American Court held that the Akwe: Kon Guidelines – as an example of international standards and best practice – should be used as part of satisfying states' obligations to conduct environmental and social impact assessments in the case of indigenous and tribal peoples.[9]

FPIC AND THE RIGHT TO DEVELOPMENT

In the course of disseminating the WCD Report, questions have often been raised about the interpretation of WCD recommendations, specifically with regard to the State's role in development planning and regulation, and indigenous peoples' right to 'veto' national development plans.

Many of the objections to both indigenous rights in general and the right to FPIC in particular have come from assertions that recognition of these rights poses an obstacle to national development. It is claimed that if indigenous peoples are 'granted' the right to veto proposed developments that will affect them or affect their lands, territories and resources, then valuable opportunities for countries to emerge from poverty will be blocked.

In this, however, human rights norms are clear. As the 1993 Vienna World Conference on Human Rights declared, "while development facilitates the enjoyment of all human rights, the lack of

[7] See Yakye Axa Indigenous Community Case, Inter-American Court of Human Rights, 17 June 2005, Series C No 125; and Sawhoyamaxa Indigenous Community Case, Inter-American Court of Human Rights, 29 March 2006, Series C No. 146.
[8] The Akwe: Kon guidelines may be found at www.biodiv.org/doc/publications/akwe-brochureen.pdf
[9] *Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of 12 August 2008. Series C No. 185, at para. 41.

development may not be invoked to justify the abridgement of internationally recognised human rights".[10] In the same way, Article 9 of the UN Declaration on the Right to Development itself makes clear that:

> Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

Indeed far from being contrary to indigenous peoples' rights, the Declaration on the Right to Development notes in Article 1 that:

> The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources (UN Declaration on the Right to Development. UN Doc. A/RES/41/128 4th December 1986).

Thus, in the normal course of things, where private sector developers have proposals for the development of indigenous peoples' lands, recognition of the right to FPIC does mean that indigenous peoples have the right to say 'yes' or 'no' to such proposals. This remains the case notwithstanding that, in 'exceptional circumstances' and where there is 'compelling public interest', the State may seek access to and use of indigenous territories and the resources therein, including water resources. In such cases, the State cannot simply invoke the public interest, but must also satisfy a number of additional requirements. Any acquisition of lands or use of those lands to exploit resources must be sanctioned by previously established law and in accordance with due process standards. The State must show that the intervention is 'necessary' and has been designed to be the least restrictive from a human rights perspective. It must likewise show that means employed are closely tailored to the goal and that the cost to, or impact on, the affected people is 'proportional' to the benefit being sought. And finally, the proposed intervention should not "endanger their very survival as a people".[11] In order to ensure 'survival as a people' four additional elements are required: effective participation in decision-making, which includes FPIC; participatory environmental and social impact assessments that conform to international standards and best practice and are undertaken in a culturally appropriate manner; mandatory benefit-sharing; and, finally, that negative impacts are effectively avoided or mitigated (Saramaka People, para. 128 and 133).

In sum, States cannot override indigenous peoples' rights and their right to FPIC just by invoking the national interest alone. Thus, in the case of the 1.8 million hectare Palm Oil Megaproject planned for central Borneo by the Indonesian government, the UN Committee on the Elimination of Racial Discrimination recommended that:

> The State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples… The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indigenous peoples… the Committee recommends that the State party secure the possession and ownership rights of

[10] Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25th June 1993, Part I, at para. 10. UN Doc. A/CONF.157/23, 12th July 1993.

[11] 'Survival' in this context "must be understood as the ability of the Saramaka to 'preserve, protect and guarantee the special relationship that they have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected'. That is, the term survival in this context signifies much more than physical survival" (Saramaka People, Interpretation Judgment, para. 37).

> local communities before proceeding further with this plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in it (UN Doc. CERD/C/IDN/CO/3, 15 August 2007).

In like vein the WCD, in qualifying its recognition of the right of indigenous peoples to FPIC, noted that:

> When a negotiated consensus cannot be achieved through good faith negotiations within the agreed-upon timeframe, the established independent dispute resolution mechanisms are initiated. These may include amicable dispute resolution, mediation, conciliation and/or arbitration. It is important that these are agreed upon by the stakeholder forum from the outset. Where a settlement does not emerge, the State will act as the final arbitrator, subject to judicial review (WCD, 2000).

FPIC AND THE RIGHTS OF 'LOCAL COMMUNITIES'

In line with the right of all peoples to self-determination, international law is explicit that indigenous and tribal peoples enjoy the right to give or to withhold their FPIC to activities or policies which may affect them. Just how far this right extends to other social groups remains a matter for legal clarification. Indigenous peoples are not the only social groups with ill-defined access to the resources that underpin their livelihoods and who suffer from being arbitrarily shunted aside in the name of development. All over Africa, the Middle East and in much of the rest of Asia, many communities have weakly recognised customary rights to their lands and yet not all these social groups identify themselves as 'tribal' or 'indigenous'.

Increasingly, the CBD, environmental advocacy organisations and development 'policy makers' refer to such social groups by the catch-all term 'local communities',[12] a generic phrase which may include indigenous and tribal peoples, ethnic minorities, marginalised and remote villages, fisherfolk, pastoralists and rural settlements in general, and which has even been applied to slum dwellers and other urban congregations. The very wide use of the term inevitably renders it legally imprecise. Clearly, while all human beings are endowed with rights and all peoples have the right to self-determination, it does not follow that all kinds of social groups enjoy exactly the same *collective* rights *vis-à-vis* the State to control their lands, cultures and livelihoods. Emerging norms and further jurisprudence may be needed to clarify these matters.

In 2001, the UN Secretary General made a Statement on Human Rights and Poverty (Human Rights and Poverty UN Doc. E/C.12/2001/10) providing pertinent guidance on how to apply a human rights-based approach to the implementation of the Millennium Development Goals. Among other considerations, the report notes that:

- Human rights empower individuals and communities by granting them entitlements that give rise to legal obligations on others.
- Provided the poor are able to access and enjoy them, human rights can help to equalise the distribution and exercise of power both within and between societies. In short, human rights can mitigate the powerlessness of the poor.
- The twin principles of equality and non-discrimination require States to take special measures to prohibit discrimination against the poor and to provide them with equal and effective protection against discrimination.
- A human rights approach to poverty requires the active and informed participation of the poor in the formulation, implementation and monitoring of national plans and strategies.
- Specific mechanisms and detailed arrangements for the enjoyment of the right to participate are required at all levels, suitable for different contexts.

[12] For example WRI, 2006.

FPIC AND STATE ENFORCEMENT

In general, it remains the case that very few governments and legislatures have incorporated the right of indigenous peoples to FPIC into national legislation. In British Columbia, Canada, where very few First Nations have signed treaties ceding their lands to the Crown, the courts have affirmed that land use decisions in favour of forestry and mining cannot proceed without consultation and agreement with First Nations' communities, whose 'aboriginal rights' over their lands have been strongly affirmed in prior court rulings (Johal, 2007). Other notable exceptions where FPIC has been made law include Bolivia, Venezuela, Colombia, Guyana,[13] a number of Australian states, New Zealand (with respect to mining) and the Philippines. In the case of the two Latin American countries, the letter of the law has not been followed by any notable change in government practice. In the case of the Philippines, unhelpful regulations and guidance on FPIC have led to severe problems in implementation (see below) (LRC, 2010). For the most part, however, there remains a wide gap between international law, which as noted, requires governments to respect the right of indigenous peoples to FPIC, and national laws, which give the state strong powers to override community concerns and extinguish customary rights, sometimes even without due process, just by invoking the national interest.

THE VOLUNTARY APPROACH TO FPIC

Given the slow progress in getting governments to effectively enforce laws protecting the rights of indigenous peoples and even to protect valuable ecosystems, attention has increasingly focused on the promotion of voluntary approaches to promote 'best practice' through industry self-regulation. Such approaches include the promotion of 'corporate social responsibility' and the adoption of internal 'codes of conduct'. Companies as varied as the US oil exploration company Talisman Oil and the Singapore-based pulp-and-paper giant, APRIL, have made public statements endorsing FPIC (FPP and Scale Up, 2009). Private-sector Banks that have endorsed the Equator Principles have likewise agreed to adhere to the International Finance Corporation's Performance Standards in all project lending (FPP, 2006).

Recent years have also seen the proliferation of so-called 'multi-stakeholder' dialogues and standard-setting processes, which are designed to bridge the gulf between civil society and indigenous parties on the one hand and corporate actors on the other. As discussed below, most of these 'multi-stakeholder processes' have accepted the principle that indigenous peoples and other customary law communities have the right to give or withhold their FPIC for activities planned on their lands. Notionally, these processes also ensure that companies' adherence to best practice are subject to checks, sometimes through 'third party verification' under increasingly popular certification schemes. These processes can create important political space for indigenous peoples to engage with the private sector, providing them with forums they perceive as safer and more transparent than those they often find manipulated and intimidating in their home regions (Afrizal, 2006). Nonetheless, there have been serious problems with ensuring that third-party certification bodies genuinely uphold rights (Colchester and Ferrari, 2007).

The Roundtable on Sustainable Palm Oil (RSPO) has gone further than most in upholding the right to FPIC. In 2008, the RSPO commissioned a series of workshops between industry, government and indigenous peoples to review their understanding of how an FPIC-based process should work and to develop a guide for companies in how to adhere to FPIC in line with the RSPO's Principles and Criteria (FPP, 2008). The Guide explicitly acknowledges the right of indigenous peoples to reject projects on their lands. Retrospective application of this standard to resolve land disputes has even led oil palm companies owned by the Wilmar Group, that is a member of the RSPO and the world's largest palm oil trading company, to return disputed land to communities and compensate them for damages caused.

[13] But only with respect to titled lands.

Very similar standards are now being adopted by the Roundtable on Responsible Soy (RTRS, 2009) and the Roundtable on Sustainable Biofuels (RSB, 2009).

FPIC has also come to the fore in forest-sector policies. The Principles and Criteria of the Forest Stewardship Council adopted in 1993 prior to the WCD already required companies to get the 'free and informed consent' of indigenous peoples before logging indigenous peoples' lands (Colchester et al., 2003a). More recently, respect for the right to FPIC has been recognised as 'best practice' in the establishment of timber plantations by The Forests Dialogue, a forum which includes the World Business Council for Sustainable Development (Kanowski and Murray, 2008; TFD, 2009). FPIC has been affirmed as an optimal way to avoid conflicts between forestry companies and indigenous peoples (Wilson, 2009), and reference to FPIC is made explicit in the FAO's Voluntary Guidelines for the Responsible Management of Planted Forests (FAO, 2006).

Conservation organisations have likewise endorsed FPIC. As early as 1996, the IUCN and WWF endorsed the then-draft UN Declaration on the Rights of Indigenous Peoples,[14] and the right to FPIC has been explicitly endorsed through a series of Resolutions of the World Conservation Congress (FPP, 2008b, 2008c). Conservationists have also agreed to restitute indigenous peoples for lands taken for use as protected areas without their consent.[15]

Not all sectors have made the same progress recognising FPIC. Notably, despite the strong recommendations of the World Bank's EIR, the mining sector has been very reluctant to make any industry-wide endorsement of FPIC. After several rounds of dialogue with indigenous peoples, the International Council on Mining and Metals (ICMM) issued a disappointing 'position statement' in 2008, which noted a commitment merely to "seek agreement with indigenous peoples based on the principle of mutual benefit", to be developed through participation and building "long-term partnerships" (ICMM, 2008). Indigenous peoples have characterised such policies as offering them the right to say 'yes'! but not the right to say 'no'! In 2009, the ICMM issued a consultation draft which recognises that as in a 'growing number of countries' FPIC is required and suggests practical means of achieving this in cases where it is legally required by national law. However, the ICMM continues to shy away from general recognition of this right (ICMM, 2009). There has likewise been widespread criticism of the certification standard being developed by the Aquaculture Stewardship Council, which not only fails to endorse FPIC but has very weak provisions for securing peoples' livelihoods.[16]

FPIC IN THE GLOBAL DEBATE ABOUT CLIMATE AND FORESTS

International concern about global warming has led to intensified efforts to curb deforestation, especially of tropical forests. While international negotiations to agree on a legal framework for reducing both climate change and deforestation have stalled (Martone, 2010), wider efforts to set up a system for 'Reducing Emissions from Deforestation and Forest Degradation' (REDD) have already been agreed and now promise developing countries substantial funds (Griffiths and Martone, 2009). It is only by persistent efforts that indigenous peoples have managed to ensure their voices are heard in these discussions and it remains unclear to what extent the World Bank, through its specialised funds, Forest Carbon Partnership Facility and Forest Investment Programme, will respect indigenous peoples' rights, including their right to FPIC (FPP, 2009a, 2009b; World Bank, 2010).

However, outside the World Bank, the realisation that projects in Reduced Emission from Deforestation and Forest Degradation (REDD) will not likely be effective and certainly will not be just has been widely accepted. The UN REDD Programme, administered by the UN Development Programme, the UN Environment Programme and the FAO, has adopted a policy recognising FPIC

[14] These policies were revised in the light of the UN General Assembly adoption of the UN Declaration on the Rights of Indigenous Peoples: WWF International 2008.

[15] http://cmsdata.iucn.org/downloads/durbanaccorden.pdf

[16] See www.forestpeoples.org newsletter April 2010.

(UNREDD, 2009a, 2009b), in line with the standards of the UN Development Group. Likewise, two voluntary standards being developed by the Community, Carbon and Biodiversity Alliance (CCBA, 2008), the second with CARE (CCBA and CARE, 2010), for the certification of voluntary REDD schemes and to guide government agencies implementing REDD both include provisions for FPIC. As these approaches gather momentum, the foot-dragging at the World Bank, already manifest during the WCD ten years ago, has become glaring, even indefensible.

IMPLEMENTING FPIC: PROBLEMS AND PROMISES

The gap between what is increasingly accepted to be a requirement of international law and actual practice is still very wide. Recognition and enjoyment of a right are two quite different things. Even where there has been significant progress towards acceptance of the right to FPIC, there has been considerable confusion about how this right is most effectively exercised by indigenous peoples and best respected by outsiders.

The Philippines experience reveals how this recognition can create new vulnerabilities. Indigenous peoples conceive their right to FPIC to be rooted in the exercise of customary law. In the Philippine law, however, FPIC is being reduced to a formal exercise in positive law, allowing the National Commission on Indigenous Peoples, as the designated government authority, to sign away rights to lands and resources by providing certificates of compliance with FPIC. Some corrupt government officials have transformed the FPIC legal requirements into profitable opportunities to deal in 'FPIC' certification in favour of private business. This bureaucratic process is not iterative, nor is it rooted in customary laws and systems of decision-making. Manipulation of FPIC procedures by government agencies has become a major source of conflicts, particularly in relation to mining developments around the country, including in Mindoro, Zamboanga peninsula, and Palawan.

The engineering of consent, which continues to be the biggest implementation challenge in ensuring respect for this right, becomes easily manipulated by the requirement for government certification of what should be a self-directed and self-determining process. For this reason, there is need to adopt a clear unequivocal standard of FPIC, including mechanisms for redress and resolution of disputes, as recommended by the WCD.

In Indonesia, there have been multiple experiments with applying FPIC in a wide variety of sectors including logging, pulp-wood plantations, protection forests, oil palm development, conservation and now REDD. The cases reveal the multiple obstacles in national law, policy and practice which hinder easy adherence to the right. These include discriminatory laws which offer less protection to customary rights than are provided to individual landowners (Colchester et al., 2003a; Colchester and MacKay, 2004); the systematic replacement of customary institutions by a uniform village administrative system; the States' exercise of its constitutionally asserted 'controlling power' over natural resources often in the absence of due process for compensation or redress; forestry laws which extend the jurisdiction of the forestry department over 70% of the country, which then treat all such areas as if they were State-owned even though they have not been gazetted (Contreras-Hermosilla and Fay, 2005); and patrimonial traditions of governance which are not transparent, often repressive and where rent-seeking is the norm (Dauvergne, 1997, 2001; McCarthy, 2006; Tacconi, 2007). Dishearteningly, independent certification bodies have chosen to make non-compliance with the FSC requirement for 'free and informed consent' a minor irregularity rather than a major failure so companies have got certified even when their procedures are only incipient (Colchester and Ferrari, 2007).

Notwithstanding these formidable obstacles, NGO-supported efforts to support customary communities' assertion of their right to FPIC through awareness-raising, human rights training, assistance with participatory mapping and negotiation support have met with some success. In West Kalimantan, communities and NGOs have invoked the RSPO and IFC standards and pressured oil palm companies to renegotiate with communities whose customary lands had been taken without consent. This has led companies in the Wilmar Group to restitute lands to communities and provide them with

compensation for damages. In Flores, a five-year mobilisation of local communities in Lewolema persuaded local governments to recognise community livelihoods in areas that had been unilaterally designated as protection forests and the local legislature then passed a legislative act to give this arrangement legal standing. In East Kalimantan, the Lusan people of the Paser district were empowered to revitalise their customary institutions and negotiate a revised benefit-sharing agreement with the local logging company PT RKR which had been granted concessions overlapping their customary lands.[17]

The lessons from Indonesia are important. Even where the political and social situation is unhelpful, strong social mobilisation and the application of a rights-based approach based on international law can secure fair, or at least improved, outcomes (Afrizal, 2006). Indeed in contrast to the Philippines, it may be that the very absence of State intrusion into such local decision-making, in part at least, explains these 'successes'.

CONCLUSIONS

Since the pioneering work of the WCD ten years ago, the principle of free, prior and informed consent has established itself very clearly as an internationally recognised collective human right of peoples, notably indigenous peoples, that is also increasingly accepted by the private sector as industry best practice. And yet, indigenous peoples around the world continue to face interventions in the name of development that threaten their survival and way of life. Two main challenges remain. The first is to clarify how, in practice, governments, companies and other entities should respect this right when planning activities that affect indigenous peoples. The second is to ascertain how other social groups that are components of national societies also exercise this right.

It is also important to emphasise that FPIC is not a stand-alone right, observance of which obviates the need to respect other rights. It is not enough for governments to invoke 'the public interest' when considering acquiring indigenous peoples' lands or exploiting their resources; they must satisfy other legal requirements. Companies and development agencies need to respect indigenous peoples' rights inter alia to their lands and territories, to represent themselves through their own institutions, to self-governance, to exercise their customary law and to control the natural resources that they depend on. These rights need to be protected alongside the right to FPIC.

Exercise of the right to FPIC should be very context-specific and, as an expression of the right to self-determination, must vary from people to people and situation to situation, depending on a multitude of factors including the people's own representative institutions, their customs and customary laws. It will also vary depending on what the planned interventions are. Procedures that people choose to follow suited to decisions about where to locate a tube well in a village, for example, will differ from those suited to discussions about an entire river basin development plan. Experience teaches us that affected peoples choose to express their right to FPIC through multiple institutions depending on the type and scale of the proposed intervention.

As adherence to the right to FPIC is integrated in the implementation programmes of international agencies and companies, there is a real risk that it will be reduced to a simplified, mechanical sequence of actions, set out in boiler plate protocols, which end up merely reaffirming the *status quo ante*. Verification procedures then become reduced to box-ticking exercises, which check little more than that consultations took place, an agreement was reached and someone in authority signed it. In our view, however, the essential verifier is not whether such a sequence of actions was followed but whether the affected people agree that decisions were genuinely inclusive and respectful of self-determined development. The spirit of FPIC is that development should become accountable to peoples' distinctive cultures, priorities, and unique paths to self-determination, not endanger their very survival.

[17] Public presentations to the AMAN, FPP, JKPP National Workshop on FPIC, Jakarta, 14-15 March 2010; see also Pusaka, 2009.

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REFERENCES

ADB (Asian Development Bank). 2009. Safeguard policy statement. Manila: Asian Development Bank. www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf

Afrizal. 2006. The Nagari community, business and the state: The origin and process of contemporary agrarian protests in West Sumatra, Indonesia. Moreton-in-Marsh, UK and Bogor: Forest Peoples Programme, University of Andalas and SawitWatch.

Casas, A. 2004. Prior informed consent in the convention on biological diversity Bonn Guidelines: National implementation in Colombia in sustainable development law and policy. *Special Issue: Prior Informed Consent. Sustainable Development Law & Policy* 4(2): 27-28. http://pdf.wri.org/ref/casas_04_prior.pdf

CCBA (Climate, Community and Biodiversity Alliance). 2008. Climate, community and biodiversity project design standards, second edition, December 2008, Climate, Community and Biodiversity Alliance. www.climate-standards.org/standards/pdf/ccb_standards_second_edition_december_2008.pdf

CCBA and CARE. 2010. Draft REDD+ Social & Environmental Standards, Version 15 January 2010, CCBA and CARE International. www.climate-standards.org/REDD+/docs/REDD+SE_Standards_draft_01-15-10.pdf

Colchester, M. 1999. Sharing power: Dams, indigenous peoples and ethnic minorities. Cape Town: World Commission on Dams. Also published in *Indigenous Affairs* 99(3-4): 4-54. www.forestpeoples.org/documents/prv_sector/dams/dams_ips_ethnic_minorities_nov00_eng.pdf

Colchester, M. and MacKay, F. 2004. In search of middle ground: Indigenous peoples, collective representation and the right to free, prior and informed consent. Moreton-in-Marsh, UK: Forest Peoples Programme.

Colchester, M. and Ferrari, M. 2007. Making FPIC work: Challenges and prospects for indigenous peoples. Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/law_hr/fpic_synthesis_jun07_eng.pdf

Colchester, M.; Sirait, M. and Wijardjo, B. 2003a. *The application of FSC principles 2 & 3 in Indonesia: Obstacles and possibilities.* Jakarta: WALHI and AMAN.

Colchester, M.; Tamayo, A.L.; Rovillos, R. and Caruso, E. (Eds). 2003b. *Extracting promises: Indigenous peoples, extractive industries and the World Bank*. Baguio: TebbTebba Foundation and Forest Peoples Programme.

Colchester, M.; Jiwan, N. and Kleden, E.O. 2008. *Keputusan dini tanpa paksaan berdasarkan informasi lengkap sejal awal (free, prior and informed consent): Panduan bagi para activis*. Moreton-in-Marsh, UK and Jakarta: Forest Peoples Programme and AMAN.

Contreras-Hermosilla, A. and Fay, C. 2005. *Strengthening forest management in Indonesia through land tenure reform: Issues and framework for action*. Bogor and Washington, DC: ICRAF, World Bank and Forest Trends.

Dauvergne, P. 1997. *Shadows in the forests: Japan and the tropical timber trade in South East Asia.* Los Angeles: MIT Press.

Dauvergne, P. 2001. *Loggers and degradation in the Asia-Pacific: Corporations and environmental management*. Cambridge: Cambridge University Press.

Dubash, N. 2009. Global norms through global deliberation? Reflections on the World Commission on Dams. *Global Governance* 15(2): 219-238.

EIR (Extractive Industries Review). 2004. Striking a better balance. The World Bank Group and Extractive Industries. The Final Report of the Extractive Industries Review. www.eireview.org/eir/eirhome.nsf/be65a087e9e6b48085256acd005508f7/75971F6A8E5111385256DE80028BEE2?Opendocument

FAO (Food and Agriculture Organisation of the United Nations). 2006. Responsible management of planted forests: Voluntary guidelines, planted forests and trees. Working Paper 37/E. Rome: Food and Agriculture Organisation. www.fao.org/forestry/plantedforestsguide/en/

FPP (Forest Peoples Programme). 2006. Briefing on indigenous peoples and private sector project financing – The International Finance Corporation, the Equator Principles and Export Credit Agencies. Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/ifi_igo/private_sector_project_financing_aug06_eng.pdf

FPP. 2008a. *Free, prior and informed consent and the roundtable on sustainable palm oil: A guide for companies.* Moreton-in-Marsh, UK: Forest Peoples Programme.

FPP. 2008b. Conservation and indigenous peoples: Assessing the progress since Durban. Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/conservation/wcc_conservation_and_ips_interim_rep_sept08_eng.pdf

FPP. 2008c. IUCN resolutions and recommendations on indigenous peoples: A comparative table. Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/conservation/iucn_recs_ips_comparison_oct08_eng.pdf

FPP. 2009a. Moving the goal posts? Accountability failures of the World Bank's Forest Carbon Partnership Facility (FCPF). Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/forest_issues/fcpf_briefing_oct09_eng.pdf

FPP. 2009b. The World Bank's Forest Investment Programme (FIP): Core elements and critical issues. Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/forest_issues/fip_briefing_oct09_eng.pdf

FPP and Scale Up. 2009. *Indonesia: Indigenous peoples and the Kampar peninsula.* Rights, Forests and Climate Briefing series October 2009. Moreton-in-Marsh, UK: Forest Peoples Programme.

FPP with Profundo. 2008. *HSBC and the palm oil sector in South East Asia: Towards accountability.* Moreton-in-Marsh, UK: Forest Peoples Programme.

Griffiths, T. and Martone, F. 2009. *Seeing REDD?* Moreton-in-Marsh, UK: Forest Peoples Programme.

ICMM (International Council on Mining and Metals). 2008. Mining and indigenous peoples, position statement, International Council on Mining and Metals, 15 April 2008.

ICMM. 2009. Good practice guide: Indigenous peoples and mining, consultation draft. International Council on Mining and Metals, prepared by Centre for Social Responsibility in Mining and Synergy Global.

IDB (Inter-American Development Bank). 1998. Operational policy 7-10 on involuntary resettlement. Washington, DC: Inter-American Development Bank.

IDB. 2006. Operational policy 7-65 on indigenous peoples. Washington, DC: Inter-American Development Bank. www.iadb.org/sds/ind/site_401_e.htm also published as Operational Policy on Indigenous Peoples and Strategy of Indigenous Development. http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1442299

IFAD (International Fund for Agricultural Development). 2005. Free, prior, informed consent and beyond: The experience of IFAD. Paper presented at the International Workshop on Methodologies Regarding Free Prior and Informed Consent and Indigenous Peoples, UN Permanent Forum on Indigenous Issues UN Doc. PFII/2005/WS.2/10.

IFAD. 2009. *IFAD policy on engagement with indigenous peoples.* Rome: International Fund for Agricultural Development.

IFC (International Finance Corporation). 2006. *Performance standards on social & environmental sustainability.* Washington, DC: International Finance Corporation.

Johal, A. 2007. *Canada: Landmark ruling backs native self-determination*. Vancouver: IPS. 29 November 2007.

Kanowski, P. and Murray, H. 2008. *Intensively managed planted forests: Toward best practice*. New Haven: The Forests Dialogue.

LRC (Legal Rights and Natural Resources Centre). 2010. Lumads underscore NCIP's FPIC Guidelines as facilitator of development aggression. Legal Rights and Natural Resources Centre, Cagayan de Oro Office, Press Release.

MacKay, F. 2004. Indigenous peoples' right to free, prior and informed consent and the World Bank's Extractive Industries Review. *Sustainable Development Law and Policy* 4(2): 43-65. www.forestpeoples.org/documents/prv_sector/eir/eir_ips_fpic_jun04_eng.pdf

MacKay, F. 2009. *Indigenous peoples' rights and reduced emissions from reduced deforestation and forest degradation: The case of the Saramaka People v. Suriname.* Moreton-in-Marsh, UK: Forest Peoples Programme.

Martone, F. 2010. Taking stock of Copenhagen: Outcomes on REDD+ and rights, January 2010. Moreton-in-Marsh, UK: Forest Peoples Programme. www.forestpeoples.org/documents/ifi_igo/redd_cop15_copenhagen_review_jan10_eng.pdf

McCarthy, J.F. 2006. *The fourth circle: A political ecology of Sumatra's rainforest frontier.* Stanford: Stanford University Press.

Pusaka. 2009. *FPIC, REDD dan resolusi conflik.* Jakarta: Pusaka.

RSB (Roundtable on Sustainable Biofuels). 2009. RSB principles & criteria for sustainable biofuel production, roundtable on sustainable biofuels, Lausanne, 12th November 2009.

http://cgse.epfl.ch/webdav/site/cgse/shared/Biofuels/Version%20One/Version%201.0/09-11-12%20RSB%20PCs%20Version%201.pdf

RTRS (Roundtable on Responsible Soy). 2009. RTRS principles and criteria for responsible soy: Field testing version, 28th May 2009. Roundtable on Responsible Soy Association. www.responsiblesoy.org/index.php?option=com_docman&task=cat_view&gid=71&Itemid=40&lang=en

Tacconi, L. (Ed). 2007. *Illegal logging: Law enforcement, livelihoods and the timber trade.* London: Earthscan.

TFD (The Forests Dialogue). 2009. *Beyond REDD: The role of forests in climate change.* New Haven: The Forests Dialogue.

UNDG (United Nations Development Group). 2008. *Guidelines on indigenous peoples' issues.* New York: United Nations Development Group.

UNDRIP (UN Declaration on the Rights of Indigenous Peoples). 2007. UN Declaration on the Rights of Indigenous Peoples. New York: United Nations. www.un.org/esa/socdev/unpfii/en/drip.html

UN-REDD (United Nations Reduced Emissions from Deforestation and Forest Degradation Programme). 2009a. Engagement of indigenous peoples and civil society, [online], UN-REDD Programme. www.un-redd.org/COP15_News_Home/EngagementofIPs/tabid/1033/language/en-US/Default.aspx

UN-REDD. 2009b. Operational guidance: Engagement of indigenous peoples and other forest dependent communities – Working Document June 25, 2009, UN-REDD Programme. www.un-redd.org/COP15_News_Home/EngagementofIPs/tabid/1033/language/en-US/Default.aspx

WCD (World Commission on Dams). 2000. Dams and development: A new framework for decision-making. London: Earthscan.

WBG (World Bank Group). 2004. Striking a better balance – The World Bank Group and Extractive Industries: The final report of the Extractive Industries Review. World Bank Group Management Response, 17th September. www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/$FILE/finaleirmanagementresponse.pdf

World Bank. 2010. Charter establishing the forest carbon partnership facility, 12th February 2010. Washington, DC: International Bank for Reconstruction and Development. www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Feb2010/FCPF_Charter_Rev_02-17-10_clean.pdf

Wilson, E. 2009. *Company-led approaches to conflict resolution in the forest sector.* New Haven: The Forests Dialogue.

WRI (World Resources Institute). 2006. *Development without conflict: The business case for community consent.* Washington, DC: World Resources Institute.

WWF-International. 2008. Indigenous peoples and conservation: WWF statement of principles. WWF-International: Gland, Switzerland. http://assets.wwf.org.br/downloads/183113_wwf_policyrpt_en_f_2.pdf