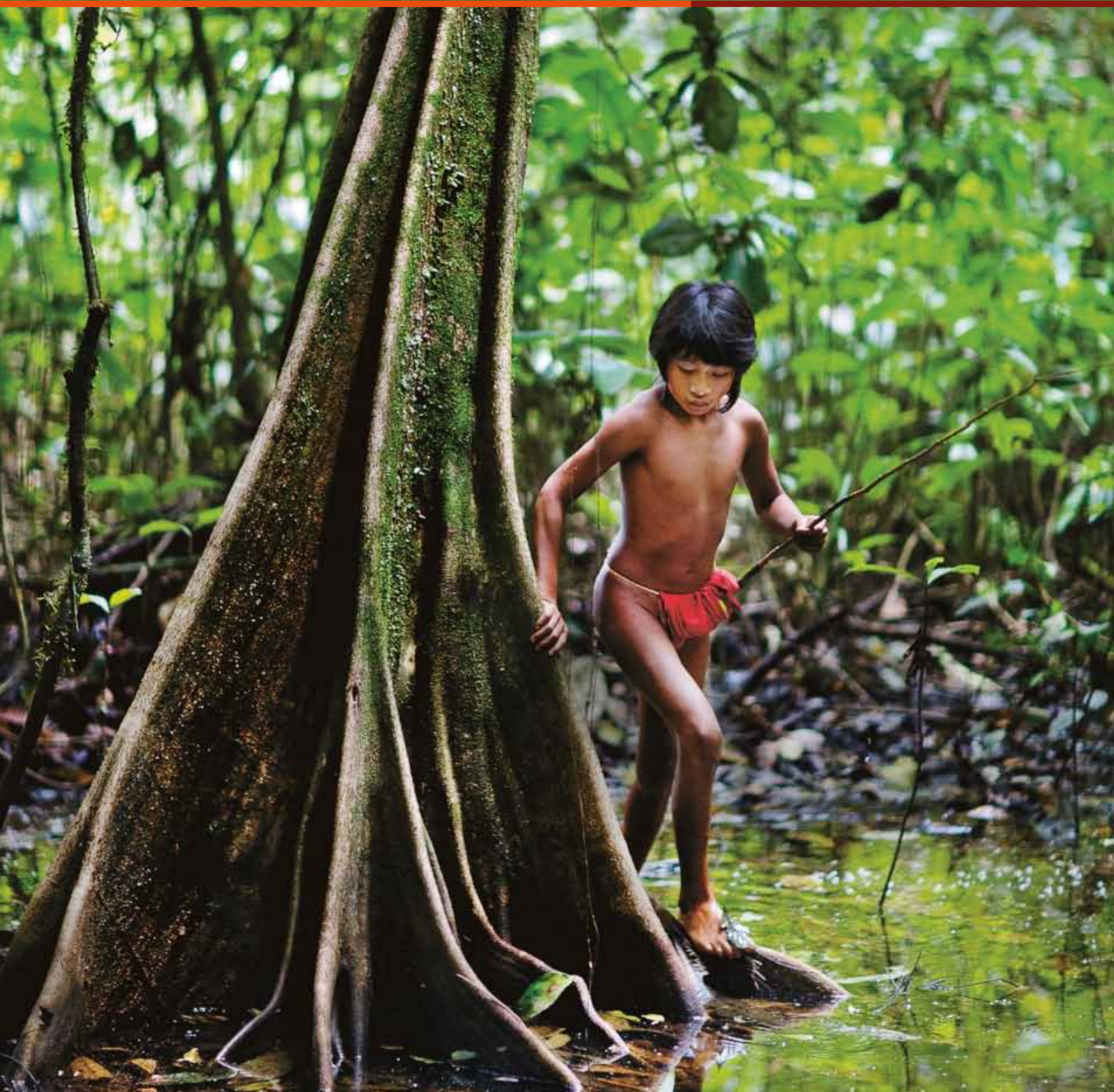


# Rights-based rainforest protection

*Why securing the rights of forest peoples is the right way to save the forest*







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Rainforest meets cattle ranching. The border of the Xingu Indigenous Park in Mato Grosso, Brazil. Photo: Per Fronth.



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Rainforest Foundation Norway (Regnskogfondet) fights to preserve the world's rainforests and ensure the rights of indigenous peoples and forest dependent communities, in cooperation with more than 100 local indigenous and environmental organizations in Southeast Asia, Oceania, Central Africa and the Amazon.

Rainforest Foundation Norway supports projects in ten countries, in all three rainforest regions. In Norway we raise awareness about the rainforest and prevent Norwegian politics and business interests from contributing to rainforest destruction.

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## Executive summary

The loss of the world's rainforest has for decades been recognised as a serious, global environmental problem, both by rainforest nations and the international community. Still, 13 million hectares of tropical forest disappear every year. There is, thus, an urgent need for intensified efforts at the appropriate scale and with the right approach. In this report, Rainforest Foundation Norway shows how a rights-based approach is both the most effective way to protect the rainforest, as well as the best way to avoid that forest protection leads to human rights violations.

Political will to shape and implement the right forest management policies at the national level in rainforest nations is necessary to halt the destruction of the rainforest. The international community, and particularly the rich nations, have an obligation to support these measures. They will also be among the beneficiaries when the world's most important reservoir of biodiversity and a globally significant climate regulator are protected. But efforts of forest protection will never be sustainable if they ignore the rights and interests of people living in the world's forests.

Rights-based rainforest protection takes as its starting point the customary rights of local forest communities to their traditional lands, resources and culture. It is an approach normatively grounded in international human rights standards and operationally directed to promoting and protecting human rights. Rights-based rainforest protection is built on the acknowledgement of the key role of local communities and indigenous peoples in the management of forests.

Chapter one and two give an introduction and a brief overview of the state of the world's rainforests, the forest dependent people living in the world's rainforest regions and the international legal and regulatory framework for forest peoples' rights. Case studies from the Xingu Indigenous Park in Brazil and the Bukit Duabelas National Park in Sumatra show how people protect forests in practice.

Chapter three discusses key elements of a human rights-based approach to rainforest protection: The importance of secure tenure rights, the value of traditional management practices and local knowledge, the necessity of real participation and the fundamental aspect of conflict resolution. Case studies from DR Congo and Papua New Guinea show practical experiences.

Chapter four looks at the role of the state and national policies. Thereafter, some of the opportunities, but also challenges, entailed in the international community's attempts to establish support mechanisms such as Reduced Emission from Deforestation and Forest Degradation (REDD+) are discussed. Examples from the work to protect un-contacted indigenous peoples in Peru, and the struggle for participation in forest conservation in DR Congo show how realities on the ground are shaped by national and international policies.

In chapter five, the findings and experiences are summed up.

The annex gives more detail on the human rights norms and standards relevant for a right-based approach to forest protection.





## CHAPTER 1 Introduction

The last rainforests are quickly disappearing, in spite of their well-documented importance. Rainforests are amazing vibrant life support systems that we all depend on. They provide ecosystem services of global importance, are home to the majority of terrestrial species, and give food and livelihood security for hundreds of millions of people. They help stabilize the global climate, regulate rainfall, wind and temperature. Every year, a rainforest area the size of Greece is lost. If this trend is not reversed, the world's rainforest will disappear for good, and the consequences will be felt locally, nationally, and globally.

The importance of protecting the worlds' rainforest is well recognized, also by the majority of governments, who have signed international agreements like the UN Convention on Biological Diversity and the UN Climate Change Convention.

Rainforest destruction is not inevitable, but there is a need to find better approaches to halt deforestation and forest degradation. More than 20 years of experience has taught that the best way to manage and protect rainforest is through a rights-based approach, acknowledging the human rights, knowledge and sustainable practices of rainforest communities. The trends driving deforestation are complex and hard to curb. Policies and measures must follow a double track approach; On the one hand the driving forces behind deforestation need to be addressed, and on the other positive measures to facilitate forest protection must be implemented and supported.

In order to make this work, there is a need for broad-based cooperation between interest groups. Local forest dependent communities are

key actors and rights holders in such cooperation for rainforest protection. Traditional forest dwellers depend on the rainforest, and the forest not only provides their livelihood, it is their home. In spite of this, they have often been forcibly evicted from national parks, conservation areas, logging areas and dam sites, with dire cultural, social and economic consequences. The reasoning behind their eviction from national parks has been the assumption that in order to protect forest you need to remove the inhabitants. This is however contradicted by an increasing amount of evidence, showing that forests managed by forest based communities and indigenous peoples may in fact be more effective in maintaining forest cover than other management models. This is not surprising. Forest based communities have a vested interest in protecting their forests. They have the potential to provide a first line defense against deforestation, but their forests and traditional adaptations are under huge pressure. They cannot do the job alone, and need support from other actors, including the state and the broader international community.

The authority to take measures to protect forests and also to provide incentives to facilitate positive change is vested in the state. When the right measures are applied, great results can be achieved, as some countries have already demonstrated.

The importance of rainforests in the efforts to reduce greenhouse gases causing global warming has provided a new momentum for protection through schemes like REDD+ (Reduced Emissions from Deforestation and forest Degradation). If implemented, according to a rights-based approach, such frameworks could provide important incentives for the protection



Villagers protesting against a development project that will evict them from their land, Sarawak, Malaysia.  
Photo: Anja Lillegraven/RFN.

of rainforests and the people who depend on these.

Rainforest Foundation Norway strongly argues that the peoples who over generations have developed their cultures and societies in interaction with the highly complex yet vulnerable rainforest ecosystems have fundamental rights to these areas, and that forest protection strategies must be rights-based. The rights-based approach aims at enabling forest-based communities to live well and to protect their land effectively. In order to effectively protect their forest land, tenure rights need to be in place. Also, they must be acknowledged as partners in forest management, which means they should be consulted and participate when plans and decisions are made that affect their forest areas. This is also an effective way of preventing conflicts. As rights-holders, they have a special status and role to play. Their presence is therefore of

key importance in multi-stakeholder processes around forest related issues. As the main duty bearer under the international human rights, the state has the main obligation to put in place a rights-based approach to forest protection. The international community has obligations under international environmental agreements to support, and contribute to finance, tropical countries' efforts to protect forests. The report aims to show, through selected cases from Brazil, Indonesia, Peru, Democratic Republic of Congo and Papua New Guinea, that a rights-based approach to rainforest protection is the right way to manage and protect rainforests in a sustainable manner. This approach provides a framework for the double aim of protecting the world's valuable rainforests and securing the rights and livelihoods of the millions of people depending on them.





Indigenous peoples in the Xingu indigenous park have protected the borders of their territory since 1961. Photo: Carsten Thomassen.

## Xingu Indigenous Park: An effective barrier against deforestation

The Xingu Indigenous Park in the southern part of the Brazilian Amazon has for the last two decades provided visible evidence of how indigenous territories can serve as a strong barrier against deforestation. While the surrounding areas have been turned into soy plantations, Xingu Indigenous Park has kept its forest cover.

Xingu Indigenous Park (PIX), established in 1961, is now a part in one of the world's most promising efforts to save the rainforest. It involves the protection of large forest areas in the river basin through a mosaic of areas with different management systems, allowing for human use and settlement as well as protection of the forest and its biodiversity.

Still, the Xingu Park also faces serious challenges. External factors like climate change and internal factors like an increasing population on a limited territory require new solutions. Experience to date indicates that local culture, knowledge and practices, combined with alliances with surrounding groups sharing an interest in the area, is the key to succeed.

### Indigenous lands

The Xingu Indigenous Park is the largest indigenous territory in the state of Mato Grosso. The park extends over an area of 2.8 mill ha, with tropical forests in the north (baixo) and savannah or cerrado in the south (alto). PIX is home to 16 different indigenous groups, and today 5.500 people live in 77 villages in the park.

It was the Brazilian brothers and indigenous rights activists, Orlando, Claudio and Leonardo Villas-Bôas, who managed to draw the attention of the country's authorities to the situation in the Xingu area in the 1950s, and to have the Xingu Indigenous Park established and demarcated in 1961. The brothers based their work in a fundamental respect for the indigenous culture and practices. When the park was created, this was the first time an area was assigned to several different indigenous peoples living together. But although the establishment and demarcation of the park was an important achievement, its size was only one tenth of the area originally proposed.

### Exclusive rights

Like the other indigenous territories in Brazil, PIX is not a national park, but an area where

indigenous peoples have been granted exclusive rights to the land and its resources (above the ground) for all future. The indigenous peoples hold responsibility for managing the park – as opposed to the federal, state and to some extent private business management regimes in the surrounding areas.

The demarcation of PIX did not in itself mean that the area was protected. Success here is due first and foremost to the way the indigenous groups, with support from institutions and NGOs from outside, have dealt with internal and external pressure, and been open to adjustments and change.

### Local culture as the starting point for development

For a long time now, the indigenous peoples themselves have been actively involved in the development of strategies for PIX. A common Xingu indigenous organization, ATIX, was established in 1995, and among other tasks represents the different indigenous peoples in Xingu in negotiations with outsiders. In PIX, interventions in areas like health, education, natural resource management and social organization have all been based on traditional culture, knowledge and practices, conducted in dialogue with external actors. Relatively early, representatives from Xingu were included in FUNAI's (the Federal Indigenous Agency) management of the territory.

With regard to education, pressure from the Brazilian NGO Instituto Socioambiental (ISA) and ATIX has led to the establishment of differentiated education until 6th grade within the park, grounded in traditional culture and perspectives. The indigenous peoples have developed their own curriculums and textbooks, in close collaboration with linguists from the outside, and indigenous teachers have been trained. Most of the villages have their own school with local teachers, and almost everyone now knows how to read and write.

### Income

Most of the population in the baixo Xingu, who earlier used to move around in the forest area, are now living in their permanent villages. As the population grows, it has been important for the sustainability of the park to develop alternative income opportunities in addition to the traditional use of rainforest resources. Investments in

productive activities such as the commercialization of handicraft, honey and vegetable pequi oil have been important, but challenging.

The indigenous peoples of Xingu have successfully produced and marketed honey from the territory, which is then sold in supermarkets (Pão de Açúcar). The key to success lies in the ability to combine traditional knowledge and organization, and adjust to the regulations and demands of the commercial market. Representatives of various ethnic groups have been trained in processing and administration, and ATIX negotiates prices with the supermarket and producers. So far demand has proven larger than PIX is able to supply.

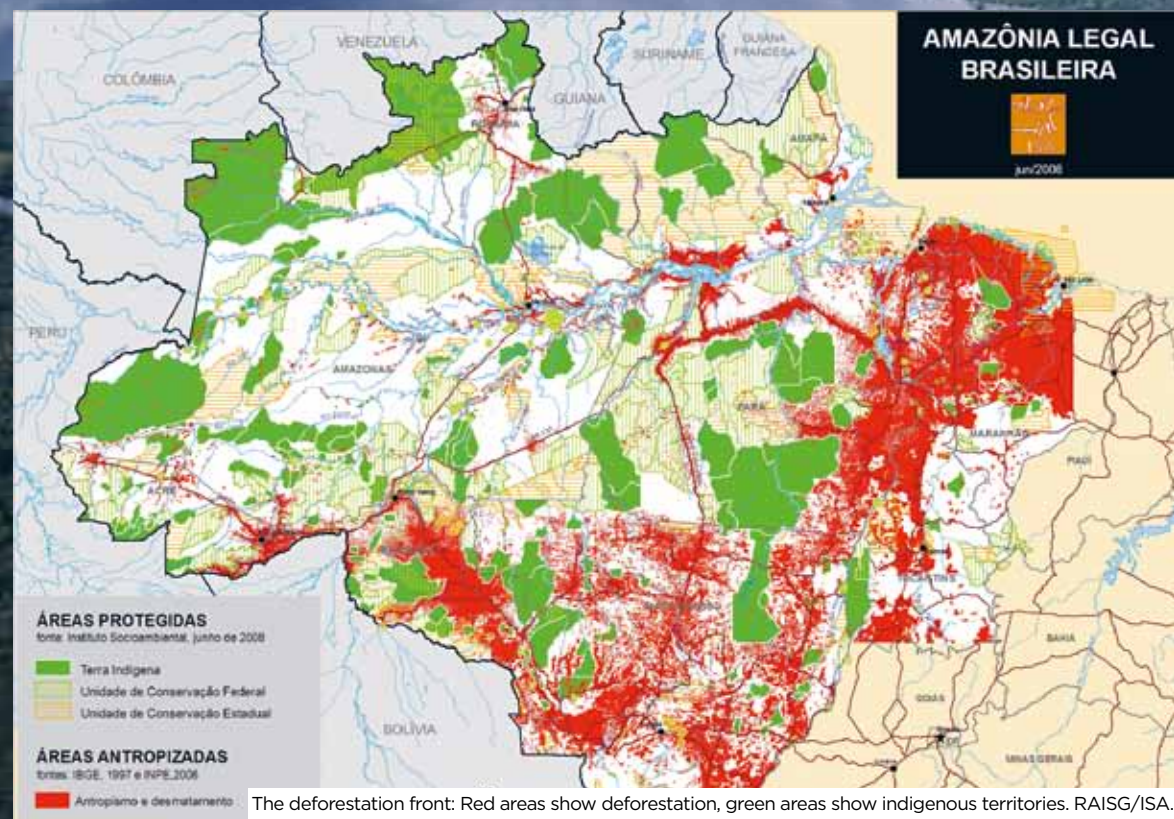
### Renewed need for demarcation and protection

Border protection is high on the agenda in discussions within the park, through ATIX, and in the dialogue with the federal indigenous agency FUNAI and the federal environmental agency IBAMA. FUNAI is formally responsible, but lacks resources to protect the park. The local residents themselves have had to patrol the borders and deal with intruders.

Since the 1980s, it has been a problem that hunters, fishermen, and also to some extent loggers and farmers, cross the borders into the park<sup>1</sup>. With more of the surrounding forest transformed into agricultural land, pressure on the park increased. By 1990, forest fires on cattle ranches outside the borders were posing a direct threat to the park. The villages were located along the main Xingu river, far away from the borders, and the border demarcation establishing the physical limits of the territory had grown invisible over the years. With support from RFN, the indigenous groups started restoration and maintenance of the border demarcation lines, through yearly expeditions. Control posts were established, with the focus on areas that allow direct access to the park, like the intersection of the main rivers with the park borders and the points where the highway runs close to the border. An important part of this work has been satellite assessment of threats to the area, including deforestation and logging roads.

This surveillance is still ongoing. It enables the inhabitants to monitor what is happening on the borders and to mobilize their communities





The Xingu River. Photo: Jan Thomas Odegard/RFN.

against external threats, in dialogue with the public agencies responsible (FUNAI, IBAMA and state government).

### Internal pressure

The demarcation and protection of the park have been vital for its survival. So has the indigenous peoples' relationship to the forest. Within the park borders they have managed to maintain important elements of their traditional ways of living, while also adjusting to changes and new developments when necessary.

There are 16 different ethnic groups living in the park, belonging to four main groups. All speak their own languages, have their own cosmo-visions and their own forms of social organization. Of course, this heterogeneity makes planning and organization challenging, especially as regards issues related to the management of natural resources.

Due to climate changes, drought and increased population pressure, the fires from traditional slash and burn agriculture have become more difficult to control, and in 2010 the park was seriously affected by forest fires. Because the people

now live in permanent villages, instead of their previous mobile lifestyle, communities are burning the same pieces of land more frequently. Fields are also closer to each other, and fires spread easily. Dialogues on the management plans are complicated, with the younger generation more open to discussing how to tackle new challenges.

Inside the park, internet, TV and other elements of modern technology are visible symbols of the changes taking place. Contact with the outside world is increasing, and many of the young people move to the towns and cities for further education. As outside pressure increases, the decisive challenge will be the ability to uphold strong internal organization and keep the heritage from the elder generation alive, while at the same time making alliances with external actors.

### Save the Xingu water

Outside the park borders, enormous areas have been deforested. Increasing agricultural and other economic activities outside the park borders have polluted the headwaters of the Xingu River and its tributaries, also affecting the park's drinking water.

To address this problem, the campaign 'Y Ikatu

Xingu' – 'save the clean waters of Xingu' – has been initiated. It engages all relevant stakeholders in the surrounding area, and aims at resolving conflicts as well as finding common interest in protecting the natural resources important for all actors. The campaign, started by Instituto Socioambiental (ISA) and the umbrella organization for indigenous peoples in the Xingu Indigenous Park (ATIX), involves soya and cattle farmers, local authorities and indigenous groups. To save the headwaters of the Xingu River and protect drinking-water sources, vegetation is replanted along the river banks. The indigenous peoples in the park provide the seeds, collected from native species in the forest and planted in local garden nurseries. Providing the seeds for replanting river banks is not only an important environmental measure: it also gives the indigenous population a new source of income.

The campaign strengthens environmental awareness among farmers and land-owners. Trade unions, private sector and local and district authorities have joined the campaign, which means a good basis for further cooperation.

### Xingu River Basin - integrated protection

The Indigenous Park of Xingu is one out of 21 indigenous territories and 10 protected areas covering 28 mill ha of the 50 mill ha Xingu River basin. The basin consists of a mosaic of management systems, and constitutes one of the world's greatest contiguous corridors of biodiversity<sup>2</sup>. The many different indigenous groups living in the area also make it an area of unique cultural diversity: the whole area is home to some 25.000 indigenous people from 24 ethnic groups, speaking over 20 languages and maintaining ancient knowledge about the regional biodiversity. Also living in the basin area are other people – rubber tappers, brazil-nut collectors, riverine mestizo populations, small-scale fishermen, afro-descendent and peasant settlers: in total 400.000 inhabitants.

Comprehensive and integrated management of this large area where indigenous territories and protected areas lie back-to-back, where a unique biodiversity coexists with human settlements, can set an example for future rainforest protection.





## CHAPTER 2 Status of the world's rainforest and its peoples

### 2.1 State of the world's tropical rainforest

Tropical rainforests cover less than 6 per cent of our planet's land surface, but harbour more than 50 per cent of its species. This narrow green belt stretching from the Amazon, through Central Africa to the islands of South East Asia and Oceania has far greater global importance than its size would indicate. Constant high temperatures and high humidity provide the foundation for some of the oldest and most diverse ecosystems on Earth. Through millions of years, species have adapted to the environment, developing and specializing into a complex web of functions and interdependencies. Most of the species in the rainforest have yet to be described by science, and the destruction of the rainforest entails the irreversible loss of species and resources that might prove of immense value for future medicine development or food production.

The rapid rate of species extinction threatens the integrity of entire ecosystems, with their own intrinsic value. Primary forests, and especially intact tropical rainforests, are also extremely valuable from the perspective of both climate and biodiversity. Some 15 per cent of all global greenhouse gas (GHG) emissions stem from destruction of tropical forests<sup>3</sup>. Carbon storage and sequestration, however, represent a mere fraction of the climate-related function of tropical forests. The role of these forests in regulating humidity, rainfall and temperature extends over large areas. Forest loss will alter landscapes and affect agri-

cultural production in many parts of the world, as well as food and livelihood security. Deforestation can change national economies. And yet, the ecosystem services provided by forests – like water purification, air purification and climate regulation, pollination of crops, nutrient cycling, erosion and flood control – are often taken for granted and not included in the cost-benefit analyses in development planning.

Increased attention to the role of tropical forests in carbon sequestration has put the protection of the rainforest much more prominently on the international agenda. A significant reduction in deforestation is necessary if we are to achieve the globally agreed target of maximum 2° C rise in the average global temperature.

Each year 6 million ha of the world's remaining intact primary tropical forests are deforested, degraded or converted to other forests or plantations. Counting tropical forests in general, not only primary forest, 13 million ha are deforested every year<sup>4</sup>, and an even larger area of forest is fragmented or degraded.

The situation is serious in all the three main rainforest regions of the world – the Amazon, Central Africa, South East Asia and Oceania.

#### Rainforest regions

The Amazon extends over nine countries in Latin America. With its 7.8 billion ha it is the largest rainforest in the world. Sixty-four per cent of the Amazon rainforest falls within the borders of



Brazil<sup>5</sup>, while 10 per cent is in Peru<sup>6</sup>. There is an urgent need to apply strategies that can counter the deforestation and fragmentation of the Amazon, protecting areas of sufficient size to secure intact ecosystems. In recent years, Brazil has more than halved its deforestation rates, showing that good results can be achieved through the right legal and policy measures. The world's second largest tract of rainforest, the Congo Basin forest, has to a lesser extent than the Amazon been subject to deforestation. However, large areas in the Democratic Republic of Congo may be opened to logging as soon as a review process for old and illegal logging concessions is completed. Greater international support for forest protection through schemes like REDD+ may offer an alternative to such developments.

In Asia, deforestation rates and conversion of forest are generally extremely high. The largest tracts of rainforest in Asia and Oceania are found in Indonesia and Papua New Guinea. Immediate measures are necessary to protect what remains of relatively large areas of intact rainforests – especially in Indonesia and Papua New Guinea, but also in other forest countries in the region, like Burma, Laos, Cambodia, Vietnam and Malaysia.

Deforestation is both a global and a national concern, but its effects are most dramatically felt by the people who live in and around the rainforest. Deforestation is taking away the livelihoods of some of the world's most vulnerable peoples, and environmental disasters like floods and droughts affect millions of already impoverished communities.

## 2.2 State of the world's forest peoples

The world's tropical forests are home to millions of people who depend on the forest for their livelihood. Their cultures are often closely linked to the forest. Even in forests that are considered 'untouched wilderness', a closer look reveals how indigenous peoples have, for thousands of years, used and harvested from the forest, and contributed to the management and protection of forests and their resources. An understanding of the close relationship between local communities and the forests and its resources must be at the core of any strategy to protect the forests.

Estimates of the number of those who depend on forests vary greatly<sup>7</sup>, but between 800 million<sup>8</sup>

and 1.6 billion people depend directly on forest ecosystems and agroforestry for some of their fuel wood, food and fodder needs. The World Commission on Forest and Sustainable Development<sup>9</sup> has estimated that 350 million of the world's poorest people depend almost entirely on forests for subsistence and survival.

At least 60 million of the forest peoples are indigenous<sup>10</sup>. Indigenous peoples tend to be the original inhabitants of the area or country where they live, often with their own cultures, languages and religions distinct from the mainstream society. Forest-based indigenous peoples have strong social, cultural and spiritual bonds to their ancestral territories. If the forests disappear, these people lose not only their livelihoods, but also essential elements of their culture and identity. The distinction between indigenous peoples and other forest-based communities is not always clear-cut. (See 2.3 and the Appendix).

In the Amazon, peoples living in voluntary isolation, or 'un-contacted indigenous peoples', are particularly vulnerable. These are relatively small groups with distinct languages and cultures, living in the forest and explicitly avoiding contact with the majority society. By signs and behaviour, they signal that they want to continue their life in the forest without interference. However, logging and other extractive activities threaten

### The cultural importance of land

The land is where collective culture is being lived and shared, and where the transfer of skills from one generation to the next takes place. Land is linked to worldview and historic references, and certain places have spiritual and religious importance. Land is intrinsically linked to worship, collective knowledge, to male/female activities, to skills linked to food harvesting and medicine collection, house building, income generation, etc. If the rights of a people to land, territories and resources are respected, this may counteract pressures for assimilation and lay the foundation to enable all individuals to enjoy their individual rights according to their culture and without undermining their dignity.



Yanomami traditional house, Brazilian Amazon. Photo: Lars Løvold/RFN

their existence, and every year there are reports of isolated Indians being killed in conflicts with intruders. The world's last isolated indigenous peoples require special attention, and much can be learned from the experiences gained in Peru (see Peru case study, page 33). Without special measures and effective protection of their ancestral forests, these peoples may well not exist a few years from now.

### Cultural diversity

Indigenous peoples are relatively few in number, approximately 370 million people<sup>11</sup> and constitute about 5 per cent of the world population. Still, their numerous ethnic groups represent the main cultural diversity of the world. The greatest number of indigenous peoples is found in the large tropical forest regions<sup>12</sup>. The Brazilian Amazon alone has 170 indigenous peoples<sup>13</sup>.

A recent study on the correlation between areas with high biological diversity and high linguistic diversity further underscores the link between indigenous peoples and tropical rainforest<sup>14</sup>. Some 70 per cent of the world's languages are spoken in the biodiversity hotspots, mainly tropical rainforests.

For local communities, forests represent an important repository of food<sup>15</sup> and other resources that contribute towards livelihood security<sup>16</sup>. Also for people affected by natural disasters, access to forests and forest resources may be the way to survive, and here reliance is greatest for those most heavily impacted and the poorest<sup>17</sup>. The most impoverished sectors of society are the most directly dependent on forest and also those hardest hit by forest destruction. The World Bank<sup>18</sup> estimates that 90 per cent of the world's poorest people depend on forest resources.

Land conflicts are common in rainforest areas, and are often caused by commercial actors, state development projects or the establishment of conservation areas (See box, page 17).

## 2.3 Rights-based rainforest protection

Rights-based rainforest protection takes as its starting point the customary rights of local forest communities to their traditional lands, resources and culture. It is an approach normatively grounded in international human rights standards and operationally directed to promoting and protecting human rights (see also Annex)<sup>19</sup>.



## Indigenous peoples' rights to decide

According to ILO 169, indigenous and tribal peoples 'have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development'(Article 7). In addition, they shall have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures

and programs that affect them directly (Art. 6). As expressed in Article 6 and 7 of ILO 169, consultation with indigenous peoples should be undertaken through appropriate procedures, in good faith, and through the representative institutions of these peoples. Importantly, indigenous and tribal peoples also have a right to manage for themselves the land they use and depend on. This is expressed even more clearly in UNDRIP. Furthermore, management plans and strategies should be designed and implemented in ways that do not threaten their individual and collective rights.

Rights-based rainforest protection is built on acknowledgement of the key role of local communities and indigenous peoples in forest management. In line with international human rights<sup>20</sup>, it ascribes an obligation to the state to implement rainforest management strategies and policies that reflect human rights standards, with regard to the end result as well as the quality of processes. A process based on human rights should be accountable and transparent, participatory and inclusive, non-discriminatory and grounded in equity and the rule of law<sup>21</sup>.

## Customary and collective rights

The connection between culture and land is particularly clear with regard to forest-dependent communities. The collective rights of indigenous peoples to land are clearly established in international human rights law. However, also other ethnic groups with firm bonds to the land have rights associated with land and land use<sup>22</sup>. Their customary rights are to a certain extent reflected in international human rights law, and are based on their historical use of the forest. On the national level however, customary land rights are often found to be in conflict with formalized land rights, as established in national land registries.

The instruments specifically dealing with indigenous peoples rights, ILO Convention 169 on the Rights of Indigenous and Tribal Peoples (1989) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) from 2007, were products of the active and persistent lobbying of indigenous peoples. These human rights instruments, and the jurisprudence being developed, have become important references for indigenous peoples and gradually for other forest-based communities seeking state recognition of their rights-based claims.

Most forest communities are characterized by collective management of resources, often in combination with individual plots of land to each family. Their land claims often involve a claim for collective land for the community, rather than individual rights to private land, and as such they are based in customary and ancestral rights<sup>23</sup>.

## Indigenous peoples

For indigenous peoples who depend on forests, ILO Convention 169 (ILO 169) and UNDRIP are important references because they so clearly express their collective rights to land, territories and resources, as well as the right to self-determination (in UNDRIP), participation, consultation, and free, prior informed consent (FPIC) (in UNDRIP). These rights set the standard for state-indigenous interaction, and provide a framework for the development of rights-based forest laws and policies for indigenous peoples.

Twenty-two countries, most of them in Latin America, have ratified ILO 169<sup>24</sup>. Since 1989 many countries in Latin America have under-

taken legal reforms and have updated their constitutions to include recognition of the rights of indigenous peoples, some using the wording of ILO 169. This Convention has gained recognition well beyond the number of actual ratifications, by influencing debates and legal decisions at the national, regional and international levels, as well as national legislation and policies<sup>25</sup>. The almost universal support for the UN Declaration on the Rights of Indigenous Peoples, UNDRIP<sup>26</sup>, makes it an important reference, despite its status as a declaration and not a legally binding instrument. See the Annex with its table for more detail on human rights associated with various categories of forest dwellers.

## Drivers of deforestation

Logging in tropical forests, also selective logging of the most valuable species like mahogany or teak, often open up new areas for exploitation. A recent study show that in areas where selective logging had taken place, 16 percent of the forest had disappeared one year after the logging. Thereafter the deforestation rate was as high as 5 percent per year in the selectively logged areas<sup>27</sup>.

Agricultural expansion and plantations in general follow after areas are logged, whether selectively or clear-cut. In the Brazilian Amazon, cattle ranching and soy production have been the main sectors behind large scale deforestation. In Malaysia and Indonesia, and increasingly in Papua New-Guinea, oil palm plantations are major causes of deforestation. The expansion of this industry has led to numerous conflicts with indigenous groups, as well as alarming environmental impact of the massive forest destruction. Tree plantations established in tropical rainforests to supply the pulp and paper industry is another driver of deforestation<sup>28</sup>.

Extractive industries like mining and oil and gas exploration are present in practically all rainforest countries. Oil and gas industry requires access roads and corridors for seismic

exploration, and often causes extensive contamination of soil, river systems and air, with devastating effects on the forest ecosystem and the health and way of life of indigenous peoples and other local communities. The mining industry degrades the natural ecosystems and contaminates soil and water resources as it clears large tracts of land and extracts sub-soil resources like gold, nickel, bauxite and copper, among other minerals<sup>29</sup>.

Infrastructure development, like extensive networks of highways and large hydroelectric projects presently being planned in the Amazon, cause extensive forest loss and ecological damage.

Tropical deforestation has often been attributed to expanding populations of subsistence farmers cutting down the forest for small-scale agriculture and firewood. While this is a significant factor in some forest regions, and can be reinforced by increasing land conflicts, many recent scientific studies show that large, commercial agriculture and timber enterprises are the principal agents of tropical deforestation. The main, underlying driving force behind deforestation today is the global demand for commodities either harvested or extracted from forest areas, or produced on land where the forest has been cleared<sup>30</sup>.





## Protecting the last lowland rainforest in Sumatra

Orang Rimba, or ‘people of the forest’, are a group of semi-nomadic forest dwellers living in the province of Jambi on the Indonesian island of Sumatra. In the 1980s and 1990s, forest clearances in this area threatened the entire Orang Rimba population with marginalization, poverty and loss of their culture. The intervention and systematic efforts of a local organization and the increasing support from government have not only saved the forest, but also given the Orang Rimba an opportunity to develop their communities on the basis of their own culture and traditional way of life.

The Rainforest Foundation Norway (RFN) and the local organization WARSI started working with the Orang Rimba in 1998, aiming to protect their remaining forest areas. A baseline survey employing a combination of detailed fieldwork and analysis of satellite images showed that in western Jambi, where a trans-Sumatra highway was built in the early 1980s, forests had been cleared to make way for large-scale transmigration settlements and oil palm plantations. The widely scattered groups of about 1,250 Orang Rimba had basically lost their forest. Deforestation had also affected central Jambi and many of the 1500 Orang Rimba living there, but a substantial core of forest was still left around the Bukit Duabelas hills. Impending plans for plantations presented an acute threat to this remaining forest.

Securing this area would save the Orang Rimba from ending up marginalized and disempowered like their fellow tribesmen in western Jambi. Part of the forest in and around Bukit Duabelas was in fact already protected as a nature reserve, but the Orang Rimba and the resources that they depended on were found mainly in the forests to the north of this reserve. WARSI thus argued for an extension of the reserve. The problem was that the forests had been licensed to a state-owned company which planned to convert the forest into an industrial timber plantation.

### A park for people

To get recognition from the authorities for the rights of the Orang Rimba and the importance of the remaining rainforest, WARSI started by documenting Orang Rimba’s way of life and their

dependence on the forest. Thematic maps were made of vegetation cover, hydrology, resource distribution, demography, extent of deforestation, etc. These were then used to inform key decision makers at all levels of government. The media were invited to Bukit Duabelas, and the Orang Rimba became probably the best-known small ethnic minority in all Indonesia.

Soon the government had not only cancelled the plantation license that threatened Orang Rimba rights and livelihoods, but, in August 2000, also formally established Bukit Duabelas National Park, with around 600 km<sup>2</sup> of lowland rainforest covering the existing nature reserve as well as a northward extension. The decree, issued by the Minister of Forestry, stated that the Orang Rimba were entitled to live in the park in accordance with their traditions. This was the first time in Indonesia that the presence of forest people was formally acknowledged as legitimate within a conservation area. The fact that a national park had been established to protect the forest habitat of an indigenous population stands as an important milestone for the development of human rights-based, sustainable rainforest management in Indonesia.

### Solving conflicts

However, obtaining formal protection proved to be the easier part. Reducing outside pressure on the park in the form of illegal logging as well as agricultural expansion into the park area has been extremely challenging, but years of work are now showing results. The national park is surrounded by non-indigenous (‘Malay’) villages and transmigration settlements. At the time the park was declared, these populations were heavily involved in illegal logging in and around the park. A nationwide crack-down on illegal logging in 2005/2006 staggered illegal logging in the national park itself, but did not solve the underlying problem. Several of the outside communities had come to rely heavily on the income from illegal logging, rather than continued replenishment and replacement of their smallholder rubber plantations which had traditionally been the main source of income. And although the national park was inhabited by the Orang Rimba, the village communities also had traditional land claims in the area.



Photo: Thomas Marent.

A big challenge for ensuring the sustainability of Bukit Duabelas has therefore been to secure support for the national park from the surrounding village communities. WARSI has initiated small-scale development projects and facilitated implementation of government development programmes in some communities. A key intervention undertaken by WARSI has been to provide training in the cloning technology for developing high-yielding rubber-plant seedlings and to establish nurseries. This could increase incomes several times over from the same amount of land, resulting in more efficient use of existing lands, and also makes it possible to reduce agricultural expansion. Restoration of defunct rice paddies also has the potential to increase yields substantially and reduce pressure on the forest. In several cases licences for large plantations near Bukit Duabelas that have not met their legal obligations have been cancelled, to allow redistribution of the land to local villagers. With support from WARSI, some villages have succeeded in having parts of their lands established as ‘hutan desa’<sup>31</sup>, or village forest, which formally secures their access to forest in the buffer-zone and, it is hoped, reduce pressure on the park.

Village communities surrounding the park have organized themselves into a formal association of park stakeholder villages, facilitated by WARSI. Dialogue between the village communities and

the relevant authorities aimed at reaching agreement on the final park boundaries proved to be a complicated process which took almost ten years. Without the facilitation of the community participation in this process, encroachment into the park would have been a major problem. The work with the village communities surrounding the national park has been of key importance in securing the park and the rights of the Orang Rimba.

Traditionally, the Orang Rimba have no overarching political organization representing their interests towards the outside world, but, facilitated by Warsi, they have established a council of chiefs to facilitate relations with the park authority and other government agencies. After dialogue, the park authorities agreed to base the zoning of the national park on Orang Rimba’s traditional resource use pattern of the forest. This means that the Orang Rimba are allowed to exploit resources within the national park according to their traditions.

### Education and health

The Orang Rimba have generally viewed formal schooling as something alien, belonging to the outside world and thus taboo. At the same time, they came to realize that they were being cheated and exploited in their relations with outsiders. Literacy and numeracy education has now been provided to the Orang Rimba based on their culture and way of life, in Rimba camps wher-





ever they happened to be in the forest. The great majority of children and young people have now become effectively literate and numerate. Only a few small groups still decline education.

Lack of access to basic health services is a problem severely felt by the Orang Rimba. They have shamanistic curing rituals and use a variety of natural cures based on their knowledge of the plants of the forest, but recognize that this is not sufficient health care. To most Orang Rimba, visits to government health clinics outside the forest is not an easy option, because of the distances involved and the negative attitude of health workers. WARSI managed to get in place mobile health services within the forest, and advocate for better and friendlier health services for the Orang Rimba. The Orang Rimba now receive free treatment at public health centres.

#### Choosing their own future

The traditional economy of the Orang Rimba has been based on highly mobile slash-and-burn cultivation, hunting and gathering, and collecting of forest products for external exchange. This kind of economy requires large forest areas that can be utilized sequentially to allow for regeneration of the resources extracted. Reduction of the forest area and degradation caused by illegal logging have made it difficult to maintain a fully

traditional forest-based economy. The Orang Rimba's main compensational strategy is planting rubber plants in their swidden fields. WARSI has assisted the Orang Rimba in establishing rubber gardens, primarily in locations along the park boundary with access to external transport infrastructure. The rubber fields function as a barrier against agricultural intrusion into the park from the outside. Rattan is also planted among the rubber for crop diversification, and WARSI has provided assistance in the marketing of forest products, including rubber, to avoid excessive profit-seeking on the part of local middlemen<sup>32</sup>.

Much has changed in the 14 years since the project began. The Orang Rimba of the Bukit Duabelas interior used to maintain an extraordinary degree of separation from the world around them by means of strict taboos that limited interaction with the outside as well as prohibiting cultural change. With the shrinkage of the forest and the establishment of new transmigration villages with road access, contacts with the outside have inevitably increased. Some smaller groups have nevertheless retained a very traditional cultural orientation, while others are changing rapidly, reflecting the fact that the Orang Rimba are now more able to choose their own way into the future.

## Promoting participation and indigenous peoples' rights in DRC's forest policy

In October 2005, twelve indigenous peoples' organizations in DR Congo submitted a formal complaint to the World Bank's Inspection Panel,<sup>33</sup> claiming that the Bank had been violating its own safeguard policies as to indigenous peoples' rights and environmental assessments. The ensuing complaint and review process, accompanied by continuous pressure from civil society, led to important changes in the way forest policy is developed in DRC. A major step forward has been the improved cooperation between government and civil society.

In 2002, the war-torn DRC adopted a new law to govern the management of the country's vast rainforest resources. This new forest legislation was developed by the Congolese government in close cooperation with the World Bank and FAO, the UN's Food and Agricultural Organization.

However, the people most affected by the new legislation hardly knew of the code or its possible consequences, as no proper consultations had been held. Some 40 million Congolese depend on the forest for their livelihood, including 250,000 to 600,000 indigenous, or Pygmy, people. Their culture and identity are intimately linked to the forest, and legislation and policies governing forest management have profound impacts on their livelihood and way of life. The forest communities were already hard-hit by the many years of war. Access to forest resources is vital for forest peoples' opportunities for a better future.

#### Neglect of Indigenous Peoples

In close cooperation with human rights and environment organisations, local civil society organisations and representatives of indigenous peoples started to review and publicly comment on the new laws and policies. They criticized the lack of consultation, stressed how local communities would lose their resources, and noted a range of negative environmental effects. Despite repeatedly bringing their concerns to the Institut Congolais de la Conservation de la Nature (ICCN) and to the World Bank, no real changes were made.

#### Complaint to the World Bank's Inspection Panel

On behalf of affected communities, twelve

indigenous peoples' organisations submitted a formal complaint to the World Bank's inspection Panel in October 2005, where they argued that the Bank had failed to respect its own internal safeguard policies regarding indigenous peoples' rights and environmental assessments.

The Inspection Panel delivered its conclusions at the end of 2007. In line with the complaint, the Panel noted lack of consultation with local and indigenous peoples, and that environmental and social impact assessments had not been conducted. Forest land-use zoning had not been done, although the Bank's directives require this. A planned review of old logging concessions giving exploitation rights for 25 years would thus serve as de facto zoning, giving priority to logging companies over the customary rights of local communities.

The Panel was also critical to the assertion that the approach chosen was contributing to poverty alleviation, as there was little evidence that industrial logging had lifted rural populations out of poverty. If the local communities' access to non-wood forest resources were to be noticeably limited, compensating for the loss would be impossible. The commercial value of industrial and artisanal logging in the DRC is estimated to 160 million dollars, whereas the value of the forest resources used by local communities (firewood, bush meat, fruits, honey, medical plants, etc.) was calculated to more than 2 billion dollars a year<sup>34</sup>. In short, the Panel concluded that the World Bank must comply with its own internal safeguards, and explore more community-oriented alternatives to forest management that would take into account the customary rights of local communities and indigenous peoples.

The active role taken by Congolese civil society and indigenous peoples' organizations in the complaint process from 2005 to 2007 led to significant changes in the way Congolese forest policy was designed. Indigenous peoples are now recognized in policy documents, and in some cases also the principle of free, prior, informed consent has been acknowledged. This has set a new standard for cooperation also in relation to the new REDD+ schemes.





Wajapi, Brazilian Amazon. Photo: Bo Mathisen

## CHAPTER 3 Key elements in rights-based forest protection

### 3.1 Tenure rights and the protection of tropical forests

Contrary to the traditional conservation idea that in order for forests to be protected, people must be denied access, there is now growing evidence that forest-based communities with tenure rights are in fact key actors in rainforest protection. The finding that there is less deforestation in areas where local people have their rights recognized indicates that indigenous territories and collective rights to land for local communities are effective measures against deforestation.

In the southern part of the Brazilian Amazon, in the indigenous territory of Xingu (see page 8), the indigenous inhabitants have been able to keep their forest standing even as the areas surrounding Xingu have gradually been changed from

forests to soy plantations. The factors behind this success are many. First of all, formalized exclusive user rights over the Xingu territory have enabled local organizations to mobilize to protect the land against intruders. The communities also uphold their traditions and transfer skills and knowledge to the next generation through an education system adapted to their traditions and way of life. In addition, efforts are made to create new, sustainable income opportunities in line with local traditions.

#### People protect forests

An increasing number of scientific studies support the findings from Xingu. Forests where people live, including indigenous territories, are generally better protected against deforestation than are strict nature reserves.

In the Amazon rainforest, shared among nine countries in Latin America, as much as 25 per cent of the forest area is designated as indigenous territories (for details, see table page 24). Nepstad et al<sup>35</sup> have shown that in the Amazon rainforest of Brazil, in inhabited reserves (indigenous lands, extractive reserves, and national forests) deforestation and the occurrence of fires are as low as in uninhabited parks, even though these inhabited areas are located in regions with far higher deforestation and fire rates.

A recent study by the World Bank's Independent Evaluation Group (IEG) shows that, globally, forest reserves that allow for sustainable use by local populations are more effective than strictly protected areas focused exclusively on conservation. Most effective of all are the indigenous areas. The authors suggest there is compatibility between forest-based livelihoods, rainforest protection and biodiversity conservation<sup>36</sup>. Another global study found that community-managed forests have lower and less variable annual deforestation rates than protected forests<sup>37</sup>. The study lists three arguments for forests managed by local communities. First: local populations experience heavy social and economic costs when they are not allowed to enter the strictly protected forests. Second: strict forest protection is far less effective than previously argued, and third: forests managed by local or indigenous communities for the production of goods and services can be equally effective in maintaining forest cover as those managed under strict protection.

#### Forest protection

The Brazilian and the Peruvian legislation explicitly recognize indigenous peoples, but while Brazil also recognize their rights to territories, land rights for indigenous peoples in Peru are weak. In Indonesia, about 40 million people are living within forest lands designated as 'state forest' without any legal right to be there or to use the resources<sup>38</sup>. This gives them no authority to protect their ancestral forest lands against intruders<sup>39</sup>. But Indonesia can also show examples of how recognition of traditional rights to forest can be the basis for sustainable use and protection. Bukit Duabelas National Park in Sumatra was established with the intention to protect the rainforest, while at the same time securing the indigenous Orang Rimba a place to live (see page 18). The presence of the Orang Rimba gave the incentive to protect the area, while most of the lowland rainforest of Sumatra is disappearing rapidly.

The situation in Papua New Guinea is very different. Quite unique in the Asian context, the forest land is owned by the local clans, and their land rights are inscribed in the Constitution. Due to a fairly impartial legal system, local land-owners have on many occasions taken legal action against intruders on their land, and gained support through court rulings. In the Managalas plateau in eastern PNG (see page 30) the local clans, who represent several language groups, have through a long and cumbersome process developed a common plan aimed at protecting the Malangalas Plateau as a special conservation area. This enables the clans to take a common stand against extractive industries and logging companies, who target the valuable resources of the PNG rainforest. In many parts of the country communities experience heavy pressure to give up their rights, as well as direct land grabs. The constitutional rights are a basis for local protection of the forest, but not a guarantee.

#### Tenure

Even if most of the world's tropical forests are used by local communities, the state is usually the formal owner. According to Sunderlin, in the 30 most forested countries (containing 85 per cent of the global forest), governments control about 75 per cent of forest land<sup>40</sup>. Only approximately 11 per cent of the forest is owned or designated for use by local communities and indigenous peoples. There are substantial regional differences. In the Amazon, as mentioned, 25% of the forest land is under indigenous tenure. In Latin America, only 36% of the forest is administered by governments, as against 68% in Asia, and 98% in Africa<sup>41</sup>. Especially in Latin America, an increasing amount of forest land is under indigenous tenure. This increase is a result of several decades of advocacy for the recognition of especially indigenous peoples' rights.

With tenure rights secured indigenous peoples and traditional forest communities have a strengthened position in relation to other interest groups, and may better secure their livelihoods and protect forests (more in 3.4). Most of the State Parties to the ILO 169 are found in Latin America (see note 24 for all parties to ILO169).

As much as 21.7% of the Brazilian Amazon<sup>42</sup> is now recognized as indigenous territory.



Forest peoples and tenure rights

	Party to ILO 169	IP right to land acknowledged in Constitution	% (million ha) forest land under indigenous tenure <sup>1</sup>	Numbers in millions: indigenous nationally / forest people <sup>2</sup>
The Amazon (total)	n.a <sup>3</sup>	n.a	27,5 (214)	1,6 / 33
Brazil	Yes	Yes	22,2 (111)	0,7 / 0,46
Peru	Yes	Yes	23,9 (18,7)	13 / 0,3
DRC	No	No	0	0,1-2 / 40
Indonesia	No	No <sup>4</sup>	0,2 (0,2)	30-70 / 80-95
PNG	No	Yes	97 (28)	6,9 / 5,3

1 Sources: RAISG 2012, RRI AND ITTO 2009; FAO 2010; IWGIA yearbook 2012 (full references in endnotes 13, 41, 4 and 11).  
2 Sources: All numbers are from FPP 2012 (endnote 18), except for the Amazon (total) which is from RAISG (endnote 13).  
3 n.a means this category is not applicable.  
4 A memorandum of understanding was signed in 2011 between AMAN and the National Land Authority aiming for recognized land rights for indigenous peoples in Indonesia (source: IWGIA yearbook 2012).

In Peru, the second largest Amazonian rainforest country, about 40 per cent of the population are indigenous. Sixty indigenous peoples live in the Peruvian Amazon. In Peru, as in Brazil, indigenous peoples are recognized in the Constitution. 1522 indigenous community territories have been established.

Turning to Africa, in the Democratic Republic of Congo (DRC) most of the 40 million people living in rural areas depend on forests for their everyday needs. The indigenous pygmies are a small minority, but estimates vary. A figure often used is 270 000 pygmies<sup>43</sup>. According to IWGIA<sup>44</sup> the DRC government estimates that there are around 600,000 pygmies in the DRC (almost 1% of the population). Indigenous peoples are not recognized in the country’s laws, and are subject to extensive discrimination as well as severe poverty. There are no indigenous territories, but the 2002 Forest Code allows community concessions in forest areas<sup>45</sup>.

In Indonesia, most of the forest is state forest. Some 122 million ha of Indonesia’s land are administered by the government; 0.23 million ha have been set aside for communities and indigenous peoples. The number of people (30–70 million) who could be considered indigenous is staggering, and as much as 80–95 million people are estimated to depend on forest for their livelihoods.

In Papua New Guinea, the local Melanesian communities and clans make up the majority of the population. As mentioned, according to the Constitution, it is the local people who are the owners of the forests.

3.2 Traditional management and indigenous knowledge

Within Bukit Duabelas in Sumatra (p.18), the Orang Rimba practice a complex system of use and protection of forest resources. There are rules for what can be harvested when, which areas should be left resting, what areas are sacred, as well as rules for hunting. These traditions must be understood in the overlapping realms of spirituality, culture and management practice, and help to maintain the balance of the ecosystem within the quite limited area of the national park.

In the Congo Basin, a walk in the rainforest with a guide from the local pygmy community reveals that they have a similar detailed knowledge of the ecosystem, the different species and how they can be utilized for food, medicines or materials. This shows the value of knowing the forest, and gives rise to the question of why indigenous knowledge about forests and non-timber resources is not more highly valued.

As noted, there is extensive geographical overlap between the world’s biodiversity and cultural diversity, most notably in the case of tropical humid forests<sup>46</sup>. Several studies have argued that the indigenous peoples, through their practices, may increase the biological diversity within their lands, by management of landscapes and knowledge of a wide range of species<sup>47</sup>.

As our examples show, the quality of life for indigenous peoples and local traditional communities in tropical forest areas is intimately linked to the maintenance of the forest and its biodiversity. But the relationship with nature is not merely an economic one. There is an understanding that

40 million people in DR Congo depend on resources from the forest for parts of their livelihood. Photo: Lionel Diss/RFN.



all living and non-living things and natural and social worlds are linked, reflected in the practices regulating the use and management of natural resources.

Sacred forests, mountains or rivers, as well as managed patches of forest or gardens, can serve as vehicles for forest and biodiversity protection. Home gardens and agroforestry systems, common in tropical forests regions of the world, can function as human-made refuge areas for species of plants and animals, notably in areas heavily affected by deforestation<sup>48</sup>. The case of Xingu shows how indigenous peoples’ knowledge of species variety can be developed into structured activities that both generate income and mitigate environmental degradation in surrounding areas. The production and marketing of honey from Xingu, local agricultural products in Managalas (p.28), and rubber in Bukit Duabelas (p.18) all show how local communities adapt and build on local knowledge to generate income opportunities and better livelihoods.

Knowledge about rainforest resources help forest-dependent indigenous societies secure their basic household requirements throughout the year, and to be prepared for crisis. Their knowledge about the resources in their environments, the extensive range of products and integration of different practices – small-scale agriculture, hunting and gathering, forest extraction, agroforestry, fishing, and handicrafts – results in the maximum utilization of landscapes. The low-intensity usage makes it compatible with forest protection.

However, their forest-based economy is not well adjusted to centralized markets’ demand for large volumes, uniform products and strict timing. In competition with commercial land uses, income generation based on indigenous resources often depend on external support, compensation for conservation measures or some variety of payment for ecosystem services (see chapter 4).

Education based on local culture and practices

The pressure on traditional forest communities and indigenous peoples towards culture loss and assimilation is immense. Education based on and respectful of their culture helps strengthen their identity, languages and culture. In turn, this helps local communities to resist discrimination, and keep alive the skills needed to live well in forest areas. A long history of resource use has generated extensive knowledge of the environment, which is usually transferred from generation to generation through oral tradition, making memory an important intellectual resource. Culturally sensitive education, where the knowledge and skills of the elders are transferred to younger generations, is an integral part of rights-based forest protection.





Local villagers welcoming guests, Mamberano, West Papua. Photo: Hege K. Ragnhildstveit/RFN.

The importance of indigenous peoples in biodiversity conservation is well established<sup>49</sup>, and the understanding that local forest-based communities play a major role in forest protection is also gaining support. That said, the examples from Xingu and Bukit Duabelas also show that, despite their success, factors like population pressure, market pressure, unsuitable practices and technologies, as well as failure to organize, may all threaten the positive linkages between local tenure and forest protection.

### 3.3 Participation, consultation and democratic development

A central element in rights-based approaches are the meaningful participation by local forest users in the long-term management of these resources. This is intrinsically linked to democratic development in general, and to the right to information and consultation in particular.

In DRC, the complaint filed by civil society and indigenous peoples to the World Bank's independent Inspection Panel concerning the Bank's violation of its safeguard on indigenous peoples and on environment, demonstrates this. Local communities, who had initially been neglected, have through active and persistent advocacy gained a place at the table where forest management is negotiated (see page 21). This will give more weight to sustainability considerations in forest planning and result in more democratic forest management, which is extremely important in a country in the process of establishing

democracy after decades of dictatorship and war. Participation by civil society has also proven very valuable in the development of REDD policies in DRC (see chapter 4).

As discussed in 2.3 and in the annex, some countries have officially recognized the existence of indigenous peoples within their borders, while others have been reluctant to do so. The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) has been adopted almost universally, creating momentum for advocacy for the principle of Free Prior Informed Consent (FPIC). FPIC is crucial to forest-based policies and measures because it prescribes the content of a good consultation process<sup>50</sup>.

Increasingly, the operational policies and policy documents of international finance institutions (IFIs) and UN organizations reflect an institutional commitment to human rights, including the rights of indigenous peoples, and to FPIC. Work is now underway in UN organizations and by UN Special Rapporteurs under the human right system to define the practical content of, and the ensuing state obligations linked to, the (collective) right to land, territories and resources; the right to self-determination; the right to participation and the right to consultation, and to Free Prior and Informed Consent.

While some communities, indigenous or other, are well equipped to assert their rights, other forest-based indigenous communities have little previous contact with the mainstream society

and are extremely vulnerable. They may have no awareness of their formal rights within the institutional framework of the state, and far less of international human rights law. On the other hand they may have a very clear understanding of their rights understood as rights to manage the land and resources as practised for generations, including the right to refuse other actors access to those resources.

The more vulnerable and marginalized a community is, the less aware it may be of its rights, and the more important it is for the state and government authorities to ensure that their rights to information and consultation are ensured. It is their obligation as principal duty-bearers under the relevant human rights conventions, and it is the right of the forest dwellers to have the opportunity to be heard and actually influence decision making. Here we should underscore the importance of respecting the right to culture, and how this is linked to resource management.

Rights-based, rainforest protection is a tool for local empowerment. It allows local communities to influence the external decisions that will affect them, and to take control over their own development.

### 3.4 Resolving conflict

Overlapping land claims and disagreements over resource use are sources of conflict in many rainforest areas.

Rainforests have tended to be 'hinterlands' with little or no state presence. Forest communities and indigenous peoples manage forest lands informally, mostly under customary arrangements. They may not even be aware that their forest lands are formally owned by the state, or that mining, logging and other concessions involving their customary lands have been granted. Conflicts may erupt when these companies arrive in the area and start exploring or exploiting resources in 'their' forest concessions. In such cases, customary law and management strategies clash with formal law and management.

Conflicts can also arise despite local people having the formal rights to land, as we see in Papua New Guinea. Here logging and mining companies use both bribing and threats to get control over forest land. Local clans have sued commercial companies, some of them international and extremely powerful, which have been exploiting their forest land. Even if these court cases may

take decades to resolve, they have on several occasions led to victory for the local forest-owners.

Conflict may also be based in ethnicity and different livelihoods, as with the indigenous pygmies versus Bantu communities in Itombwe in DRC (page 38). Here conflicts have been exacerbated by external actors who have tried to establish a protected area without the consent of the local communities. Solving conflicts is a necessary first step in forest protection, as competing interests and conflicts between user-groups will undermine the interest of local groups to participate and collaborate in long-term management of the resources. Efforts to establish agreement through participatory mapping is a useful tool.

When management plans are developed despite overlapping and unclear land rights, the interests of different forest stakeholders need to be reconciled. After the establishment of the Bukit Duabelas National Park in Sumatra, considerable effort has gone into reconciling the interests of the indigenous peoples living within the park with the interests of the smallholders of the surrounding area, who are also directly dependent on natural resources.

The case of the Orang Rimba in Sumatra is also a good example of what can be achieved through constructive collaboration between a government, civil society and forest-based indigenous peoples. Through advocacy towards the government at the right time, the Indonesian organization WARSI managed to convince the government to enlarge an existing protected area to include the area on which the Orang Rimba depend.

The protection of the Xingu river basin through collaboration involving farmers, the government, NGOs and indigenous peoples is also a good example of a multi-stakeholder approach. What happens upstream, including erosion and pollution, is of fundamental importance to the situation downstream in the Xingu Park. The case of Xingu shows the importance of involving all relevant stakeholders inside and outside the area if a territory is to be protected in a sustainable way.

In short, processes building on consensus and striving to ensure the rights and interests of all stakeholders are a way of building trust, and therefore a vital part of a strategy for sustainable rainforest protection.





Managalas, Papua New Guinea. Photo: Kamilla Berggrav/RFN.

## Solving local conflicts; protecting globally important forests

The Managalas Sustainable Development Project is an example of how secure forest rights can be the basis for conservation efforts, and how local communities may unite despite language barriers, to solve conflicts and build models for sustainable management of forest resources.

### The Managalas Sustainable Development Project

The Managalas Plateau in Papua New Guinea (PNG) is a high valley lying above the coastal plain of Oro Province. The 300,000 ha Managalas plateau encompasses an extraordinary diversity of natural environments, including alpine heath, mountain and hill forest, savannah, man-produced grassland and gardens. The Plateau is an area of high-quality agricultural land and relatively densely populated. The surrounding mountains, by contrast, are generally infertile and sparsely populated. In all, 20,000 people from some 150 clan groups live in 40 village communities on the Plateau, largely as subsistence farmers.

In PNG 70 per cent of the land mass is covered with forest, and the raw materials in the forest are attractive to extractive companies. Landowners have been experiencing constant pressure from logging, oil palm and mining companies seeking access to their land, but because ninety seven per cent of the forest is owned by local clans, and their legal rights are strong, companies cannot enter without their consent. Although the inhabitants would welcome the development opportunities often included in the proposals from the companies, the Managalas clans have opposed these projects, due in part to poor consultation processes and the failure to guarantee benefits and environmental protection.

In the 1990s the clans of Managalas decided to work together and develop the Managalas Sustainable Development Project. The aim was to get Managalas recognized as a protected area, and thereby preserve their forest land and resources for the future. In order for the inhabitants to live well in Managalas, the Project explored new and sustainable income opportunities.

The collaboration under the Managalas Sustainable Development Project is quite unique in PNG, as there is basically no tradition of consensus-building and joint decision making among the clans and larger groupings. Traditionally, conflicts have been the norm. Interaction is also hampered by a language barrier. On the Plateau, ten dialects are spoken that together make up three broad languages – Barai, Managalas and Aomie.

### A framework for decisionmaking

Consensus-building has traditionally taken place in family groups, and in the clans. Beyond the clan level, however, there had previously been no structure for decision making. The main challenge under the Project has been to establish a process of discussion and agreement at the higher levels: clans (villages), zones (between villages) and regions (the entire Managalas Plateau). It has been a long and cumbersome process, but zone forums and combined forums now provide a framework for decision making across a large geographic area and among different cultural groups. This allows for the establishment of common development plans and policies. As such, the Managalas Sustainable Development Project provides perhaps the most workable model for district-level decision making in PNG. This model for multi stakeholder collaboration helps land-owners develop common plans and to speak with one voice in the interaction with government and business actors.

### The conservation plan

In order for the conservation area to be established in Managalas, it was a precondition that the land areas belonging to the different clans were demarcated. In addition biodiversity surveys needed to be conducted. This was done in collaboration with the University of PNG. In the proposed plan, the local communities and the government agree not to get involved in industrial activities or commercial logging in the area. The preparatory work for the conservation plan for Managalas is now finalized, and will be presented to the government for approval.

### Alternative income

The communities have also developed ideas for sustainable forestry. The approaches chosen depend on the strategies of each clan, but all build on traditional land-use practices. Since part of the strategy is to reject logging, other income generating activities are being developed. Several villages have started producing coffee and okari nuts for the commercial market. So far, making an income from coffee and okari nuts has proven more difficult than hoped. The clan's land rights give them the option to choose their own development path. Much will however depend on whether they can manage to establish a sustainable economy around local products, or find other ways of creating income from the remaining intact forest.



Marketing local products from Managalas. Photo: Camilla Berggrav/RFN.





Clearing for soy cultivation, industrial scale. Photo ISA.

## CHAPTER 4 National policies and international incentives for rainforest protection

### 4.1 Establishing national policies for sustainable forest protection

Local communities and peoples play an important role in rainforest protection. Experience has shown that forests are generally well protected by local communities who have land rights.

Governments have the main official responsibility for forest protection. Management of forests takes place on many levels, from the national level, through regional and down to local government. In addition, companies, individual forest-owners, and local forest-based communities play a role. Among the non-governmental actors, the forest-based communities are the best allies in forest protection. By ensuring tenure rights, governments use the authority vested in them to strengthen the ability of local forest-based com-

munities to protect their forests, thereby contributing to forest protection.

Appropriate legal and policy frameworks, accompanied by the determination to implement them, is essential to ensure effective land rights and curb the activities of legal and illegal drivers of deforestation. Former president Lula da Silva's strategy for reducing deforestation in Brazil is a remarkable and inspirational success story. It shows that a determined government, choosing the right measures, regulations and incentives, may drastically curb deforestation in a matter of years. The box on page 31 shows the legal and political measures that Brazil applied to succeed.

Such political determination is encouraging – but will be vulnerable to shifts in government priorities and alliances and factors like world market prices for agricultural products.

### The Brazil success story

The Brazilian Amazon covers 500 million ha, almost 60% of the country's territory. What happens in the Brazilian rainforest has global implications. In March 2004, President Luiz Inácio Lula da Silva launched his action plan to prevent and control deforestation in the Amazon. In the course of the three previous decades, 15% of the Brazilian Amazon had been deforested, peaking at 27,429 km<sup>2</sup> in 2004.

The action plan was led by the President's Cabinet, and involved 11 ministries. It included a wide range of policy and legal measures. One measure was land tenure and territory planning, in which 10 million ha of indigenous territories were established, in addition to 23 million ha of protected areas and 3.9 million ha of sustainable settlement projects. Furthermore, the government put in place a range of incentives for sustainable forest production through new legislation and regulation.

To stop illegal logging, 66 thousand illegal land titles were cancelled, while environmental monitoring and control was strength-

ened. One million cubic meters of illegal logs were seized, and over 600 people imprisoned, including over 110 corrupt public servants. A real-time remote survey system to monitor deforestation and logging was also put in place. The results were spectacular. From 2004 to 2007, in only three years, deforestation decreased by almost 60%.

In 2008 President Lula followed up with two new plans. Regulations were imposed on public and private finance institutions, so that access to agricultural credit was linked to environmental conduct. Also, public lists exposed which companies were denied economic activities due illegal logging or deforestation. Incentives were also set in place, including socio-environmental reform, landscape restoration, sustainable forest management and forest conservation. Through legal and political measures, Brazil has managed to cut the deforestation rate by 2/3 from the 1996–2005 average. While the average annual deforestation amounted to 1.9 mill ha in this ten-year period, it has been drastically reduced since 2004. In 2011 it reached a record low of 640,000 ha.

### National policy

As shown by the example of Brazil, an overarching national plan for sustainable forest management will help coordinate policies towards one goal. Forest management plans will be more effective if they are anchored at a level above the individual ministries, rather than within one ministry<sup>51</sup>. Lack of coordination between ministries – or rather, the fact that different ministries have different alliances, plans and ambitions for the use of national forest areas – undermines results. Planning on the national level is necessary when dealing with problems like illegal logging and corruption. Illegal logging has serious environmental, economic and social consequences, and is often a part of a complex network of organized criminal activities. The World Bank estimates the economic loss from illegal trade in timber to be approximately 10 billion US dollars annually, and losses due to tax evasion and royalties on legally sanctioned logging to be approximately 5 billion US dollars. Illegal logging is a highly significant component of a complex array of problems that are leading to a worldwide crisis of forest loss and degradation<sup>52</sup>.

Forests have conventionally been regarded as a source of raw materials in national planning, but industrial logging and forest exploitation in tropical forests generally result in little revenues for the state. Expected taxes and other government revenues from the timber trade are often exaggerated, while the losses resulting from environmental degradation and loss of local livelihood are underestimated. The understanding that forests are far more than just timber, and that forests need to be protected for our common good, is gaining increasing support, in rainforest countries and internationally. It also makes economic sense. The costs of sustaining biodiversity and ecosystem services are much lower than the costs of allowing biodiversity and ecosystem services to disappear<sup>53</sup>.

Improved analysis of costs versus benefits is necessary in forest management planning, and will provide governments with a better background for making sound decisions for forest management. This can be further supported by a system whereby rainforest countries could receive economic support for protecting today's remaining forests.





Getting ready for harvesting honey in the high canopy of rainforest trees in Oriental, DR Congo. Photo: Johan Wildhagen.

### Protecting large tracts of rainforest through multi-stakeholder processes

Rainforests and rainforest biodiversity are vulnerable to degradation and fragmentation. When rainforests are opened up, forest degradation follows. The presence of roads can serve as a proxy indicator of forest degradation, and, over time, deforestation. The increasing problem of fragmentation is yet another argument for protecting large and still-intact rainforests areas.

Nelson and Chomitz<sup>54</sup> suggest, from the findings of a global study, that the best way to protect rainforests is by establishing overarching conservation strategies spanning different land-use categories, including indigenous territories, protected areas, government land, concessions as well as other uses. These plans may be subnational, national, or go beyond national borders.

Multi-stakeholder partnerships have proven useful in developing sustainable management plans for large rainforest areas under different

management models (see also 3.4). This finding is underpinned by the experiences described in this report, in particular the cases from Xingu (Box page 8) and Sumatra (Box page 18). Such an approach helps reconcile the interests of different owners, users and stakeholders. All interest groups should take part, including the various government institutions that have a say in the management of an area. Among the stakeholders, rights-holders have a special status. Their rights and opinions should be recognized and given due weight in multi stakeholder dialogues –even when customary rights are not reflected in formal titles. The work to protect the watershed of the Xingu river (See page 8), is an example of such a model. As seen in the case of Brazil, a wide range of regulatory measures and economic and other incentives are available to governments and may help them target policies for managing different forest categories<sup>55</sup>.



Settlement of Indians living in voluntary isolation in the Amazon. Photo: FUNAI

## PERU – Protecting the forests of indigenous peoples living in voluntary isolation

Some of the most biodiversity-rich intact forest areas in the Amazon are home to indigenous peoples who live without contact with outside society. In Peru indigenous organizations have been active in protecting these peoples, and the forest areas on which they depend.

### Pristine biodiversity and resource rich areas

The Amazon rainforest is home to many indigenous peoples who live in voluntary isolation. They have no contact with the outside world – except knowing that it exists – and actively reject engaging with strangers who attempt to contact them.

The pressure on the vast forest areas where they live is steadily increasing. These, the last uncontacted peoples of our planet, are in increasing danger of becoming extinct, due to the encroachment on forest land, infectious diseases<sup>56</sup>, forced contact, and large-scale aggression that ultimately amount to genocide<sup>57</sup>.

Understandably, the exact number of individuals living in voluntary isolation is hard to estimate, but according to RAISG<sup>58</sup>, there are at least 71 indigenous groups or fragments of groups living in voluntary isolation the Amazon area, the majority in Peru and Brazil.

### The role of the nation state

Brazil and Peru, but also Bolivia, Colombia, Ecuador and Venezuela<sup>59</sup>, are confirmed to have smaller or larger groups<sup>60</sup>, as well as the Gran Chaco forest that covers parts of Paraguay and Bolivia. The UN Human Rights system has urged governments to pay special attention to them, and take action to strengthen mechanisms for the protection of their human rights<sup>61</sup>. Brazil, Peru and also Ecuador have created territorial reserves, some of them very extensive, for peoples living in voluntary isolation<sup>62</sup>.

In the Peruvian Amazon at least some 15 to 20 groups from various language families are known



to live in voluntary isolation. Most live within the five protected areas (Áreas Naturales Protegidas) and five territorial reserves (Reservas Territoriales) established by the government with the intent of protecting them. However, policies are incoherent. While the Ministry of Agriculture has established protected areas<sup>63</sup>, the Ministry of Energy and Mining has established oil and gas concessions that overlap with the territorial reserves<sup>64</sup>. Even if Peru has ratified the ILO Convention 169, and the national legislation and Constitution of Peru are favourable to the rights of indigenous peoples living in voluntary isolation, the legislation on Territorial Reserves has a telling loophole: if a project is considered to be of 'national interest' the Territorial Reserves can be opened up to, for instance, oil extraction activities<sup>65</sup>. Moreover, once these formally isolated peoples have entered into contact, the official Territorial Reserve they depend on will cease to exist.

The establishment of the territorial reserves can be seen as a formal acknowledgement of their right to land, territories and resources. These territories would most likely not have existed if it had not been for the firm advocacy work of the Peruvian indigenous movement.

#### Indigenous peoples in Peru are protecting people living in voluntary isolation

In Brazil, the authorities represented by the federal agency FUNAI (Fundação Nacional do Índio) is working to protect indigenous peoples in voluntary isolation and their territories. In contrast, in Peru it is the indigenous movement that has, through legal work, advocacy, research and long-term field operations, attempted to secure the lives and territories of their 'un-contacted brothers and sisters'.

Among the most central actors are AIDSESP, the umbrella organization for indigenous peoples in the Peruvian Amazon, and one of its regional affiliates, the indigenous organization of Madre de Dios, FENAMAD. It took FENAMAD many years of mapping and advocacy work before the Territorial Reserve for Isolated Indigenous Peoples in Madre de Dios was finally declared. Rainforest Foundation Norway has worked together with FENAMAD throughout this process. Since 2006, the organization has managed a control post located in an indigenous Yine village, along one of the



Photo: Johan Wildhagen

main rivers running through the reserve of the un-contacted people. Villagers register sightings and other evidence of presence of the isolated groups. They also take a special responsibility for patrolling and actively protecting the borders of the territory and controlling movement on the river.

FENAMAD also conducts advocacy work for the enlargement of the Reserve, and builds alliances with regional politicians and bureaucrats in order to strengthen legal frameworks. In 2011, as a direct result of FENAMAD's work, two new regional laws protecting the isolated indigenous peoples in Madre de Dios were approved<sup>66</sup>. There has been close cooperation with the regional government and the national park authorities on the implementation of the law.

Many un-contacted groups live in the border area between Peru and Brazil. AIDSESP and FENAMAD and other Peruvian indigenous organizations now work with indigenous and government stakeholders in Brazil, including FUNAI, aiming to create common strategies for the integrated protection of the large tracts of pristine rainforest shared between Peru and Brazil.



Photo: Johan Wildhagen

## 4.2 International regulations and incentives

Also on the international level there exist laws, regulations and incentives that are relevant for rights-based forest protection. The agreements under the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD) are among the conventions and agreements that provide important direction for the protection of natural forests and biodiversity. The human rights instruments most relevant for forest-based communities and peoples are described further in section 2.3 and the Appendix to this report. When combined, conventions like the UNFCCC, the CBD and the human right conventions constitute a good framework for rights-based rainforest protection. Still, although these conventions have been designed by states themselves with the aim of making common agreed frameworks for action, and states voluntarily agree to be bound by them, the Conventions are not sufficiently strong in themselves to ensure the necessary action.

The FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan of the European Union is an important measure against illegal

logging. A central element of this EU strategy are trade accords with timber-exporting countries, known as Voluntary Partnership Agreements, to ensure legal timber trade and to support good forest governance in the partner countries. As a second element, the EU has established legislation to ban illegally-produced wood products from the EU market, known as the EU Timber Regulation<sup>67</sup>. The EU FLEGT Action Plan provides a range of measures to exclude illegal timber from markets, to improve the supply of legal timber and to increase the demand for responsible wood products.

In addition, the establishment of international incentives to enable rainforest countries to keep their forests standing is being discussed and could contribute to outweigh the foregone income opportunities from exploitation of rainforest resources. For this to work at sufficient scale, an agreed international framework and sustainable finance flows are required. REDD+ (Reduced Emissions from Deforestation and Forest Degradation) and PES (payment for ecosystem services) may provide systems for compensatory funding. REDD+ has received considerable attention during the UNFCCC climate negotiations, as a possible means to reduce carbon emissions into





Fire in the border areas of the rainforest, Mato Grosso, Brazil. Photo: Jørgen Braastad

the atmosphere. Additionally, the payment for ecosystem services (PES) schemes, which attach an economic value to ecosystem services<sup>68</sup>, may be scaled up and perhaps become an important way to generate income for protection and regulated sustainable use of forest resources. REDD+ and PES will not be discussed in depth here. Both do however raise important questions about how such mechanisms can be implemented in line with the rights of indigenous peoples and forest dependent communities. If implemented wisely, such approaches may contribute to the protection of biodiversity and healthy rainforests. The rights-based approach, presented in this report, should be the basis for REDD+ and PES schemes internationally and nationally. PES schemes have been tried out in several countries over the past decade, with considerable variation in design, implementation and financing. Financing may come through national or international funding and public or private funds. In Costa Rica, for example, petrol taxes have successfully financed protection efforts by local forest-owners since 1998.

Often PES is a system whereby private or state buyers pay for conservation services from rights-holders within a country, but it could also be based on international transfers. REDD+, negotiated under the UN Climate Convention (UNFCCC), can be seen as a form of payment scheme whereby the international community are willing to pay for forest conservation.

There are obvious challenges involved in setting a value on something as intangible as 'nature's services'. Moreover, those who value these 'services' the most may not have the purchasing power needed to pay<sup>69</sup>. Still, provided it functions to the satisfaction of stakeholders and rights-holders, such a payment-based system may become an important tool in efforts to counteract deforestation and climate change. One caveat, however: even if funds are made available, it will be a challenging endeavour to establish the right policies, legal conditions and implementing measures to curb deforestation in tropical rainforests areas where there are still unresolved land rights issues.

To lead to long-term, effective rainforest protection any funding mechanism should be based in the key elements of a rights-based approach identified in this report.

### **Making economic incentives like PES and REDD+ work**

The idea behind PES and REDD+ is simple and compelling. The maintenance of ecosystem services, and results related to forest protection and reduced emissions from forest destruction can become the basis for financial compensation. For this to work, PES and REDD+ need to be cost-effective instruments. That may not always be the case, due to the transaction costs involved<sup>70</sup>.

At the international level and nationally, discussions are underway on the need for good forest related policies, and on the need to safeguard REDD+ processes so they do not contribute to undermining human rights, biodiversity, natural forests etc. This safeguards issue has been debated particularly hotly in connection with UNFCCC, UN-REDD, and the World Bank's FCPF. Internationally, there seems to be an understanding that the interests of forest communities are well integrated in REDD+ plans and strategies – but the feedback from forest-dependent communities and civil society in rainforest countries indicates that considerable scepticism is warranted. There is still a big gap between theory and practice.

In many countries, like Papua New Guinea and Peru, the anticipated prospects of huge profits from carbon have created a rush by 'carbon cowboys' to get access to the forest resources – or 'carbon rights' – from local communities through fraud, threats and trickery<sup>71</sup>. Moreover, in several countries, there still seems to be little political will to implement the necessary policy and legal changes, and it is reported that national REDD+ consultation processes with national stakeholders and rights-holders have been tokenistic and unsatisfactory<sup>72</sup>. There has been scant discussion of the future sharing of benefits or payments under REDD+, which sends out bad signals to the actual rights-holders who live in and depend on the forests intended to be part of REDD+.

Good frameworks and national-level policies are needed to regulate the wide range of actors involved, with very different and at times conflicting agendas. Again, a first step towards a solution involves formalizing land rights for forest-based communities. In addition, a robust

rights-based policy framework will also help counteract negative effects.

The push for safeguards, including respect for the rights of forest-based communities and full and effective participation and consultation, has also had positive effects. The mainstreaming of this debate seems to have resulted in greater sensitivity and awareness of about rights issues and safeguards in general among climate delegates, state leaders and commercial actors. Concerns over possible downsides to REDD+ have led to frameworks for REDD+ implementation being developed by the UN (UN-REDD<sup>73</sup>) and by the World Bank (FCPF; Forest Carbon Partnership Facility<sup>74</sup>). Similarly, the REDD+ debate has focused new attention on the rights of indigenous peoples and forest dwellers. In Indonesia, discussions on the rights of indigenous peoples under REDD+ have given renewed momentum to their struggle for recognition as indigenous, and also for obtaining land rights. This is also the case in DRC and in several other countries.

To sum up, if there is sufficient interest in funding REDD+ and PES in the North, and if the will to pay is matched with real political will and ability to implement the necessary political and legal measures and reforms and to ensure rights in rainforest countries, there are promising opportunities for large-scale protection of rainforest.

Whether REDD+ and PES becomes effective tools for protection or not, the argument for strong rights-based approaches is equally valid. Local forest-based communities need to be involved and consulted in all measures taken to protect the forest, and they should, as rights-holders, be allowed to play a key role in the management of forests and in the implementation of forest protection measures.

People living within or near forests have a unique store of knowledge about their surroundings. They can provide early warning and respond rapidly to threats of deforestation, including forest fires and illegal activities. They are the ideal partners in rainforest protection – not only because the forests are their home, but because these people are the rightful owners of the forests.



## An alternative approach to conservation: The Itombwe Massif in South Kivu

In DR Congo, as in many other parts of Africa, local communities have lost access to land and resources when nature reserves have been established. In the Itombwe Massif, a rights-based approach combines biodiversity conservation with the respect and safeguard of the rights of local forest communities and indigenous peoples.

In 2006, the DR Congo's Ministry of Environment issued a ministerial decree<sup>75</sup> to convert a part of the Itombwe Massif in South Kivu into a protected area – an area of strict conservation where human activities are forbidden. Such a protected area could lead to displacement of local communities and indigenous peoples who depend on forest resources for their survival. All the same, no meaningful consultations were conducted, and the establishment of the protected area did lead to tensions and conflicts.

Civil society organizations protested against the lack of consultation and violation of local communities' traditional rights, and campaigned to get the government and conservation organizations to change their plans. In 2009, Rainforest Foundation Norway (RFN) and its local partners opted to collaborate with the involved organizations, WWF and the Wildlife Conservation Society (WCS), in order to render the process more inclusive. RFN has worked for the protection of tropical rainforest and the rights of local forest communities in the area for many years, focusing on the rights to traditional resources and practices, and the right of indigenous peoples to Free, Prior and Informed Consent (FPIC) in decisions affecting them<sup>76</sup>.



A very special process started in Itombwe. Workshops and discussions with and among the local communities resulted in a common activity plan aimed at making a 'contribution to the promotion of sustainable management of the resources of the Itombwe massif, founded in a conservation effort which integrates the development and the rights of the local and indigenous communities'<sup>77</sup>. Local NGOs played a key role and the Congolese Institute for Nature Conservancy (ICCN) took part in field visits and discussions.

### New maps

A key aspect of the work in Itombwe has been the revision of the map of the conservation area, based on the participation of local communities and the involvement of local authorities. As part of this work, the area is being divided into different zones, with differentiated rules concerning the use and management of resources. Socio-economic and ecological data are gathered through mapping exercises and subjected to discussion and validation from local communities. If disagreements persist, these are further discussed with local communities and other stakeholders. A land use plan for Itombwe will be developed, and there is an effort to create local management committees as an arena for future discussions and administration of the massif. Furthermore, collective advocacy has continued to denounce the large-scale industrial mining concessions that have been assigned within the borders of the Itombwe conservation area.

The mapping exercises, and the consultation and planning linked to it, have yielded valuable results. Communities are regularly invited to express their opinions about the future of their forests, and in evaluations people appreciate that discussions about management of Itombwe and its resources are no longer a matter solely for the local chiefs. Ordinary people, including representatives of the Pygmy people, are participating. Meetings are held within the borders of Itombwe, thereby bringing the discussions to the communities instead of the communities having to send representatives to the urban areas.

Conservation NGOs have started to talk about the rights and interests of local communities. The



Harvesting nature: Honey from the rainforest, Oriental, DR Congo. Photo: Johan Wildhagen

discourse has changed from talking only about the conservation value of Itombwe, to speaking of Itombwe's communities and their rights. As a consequence, there is less fear among the local communities of seeing their forests transformed into a fully restricted National Reserve (from which they would be excluded). Opposition and conflicts among different stakeholders and organizations working in Itombwe are decreasing.

The central objective is now to present an amended statutory proposal which includes the precise and commonly agreed limits of the reserve. The proposal is to make explicit the status of the reserve: as a community-based conservation area with regulated access to resources, and not a strictly protected area based on principles of exclusion and armed park guards. In the course of 2012 there will be further discussions and participatory mapping in order to develop the different user-zones within the reserve, to be defined in a land-use plan.

The immediate goal is to have an amended decree delimiting the reserve, but the work will not end there. The valuable experiences of participation on a local level will be important

for further advocacy work on the national and international level. It is important to show the results in terms of reduced conflict and constructive engagement to ensure that what is developed locally in South Kivu will not be challenged by central authorities, but will serve as an inspiration to national development.

Locally, it is crucial that consultations and the implication of local rights-holders continue during the elaboration of a land use plan in 2012 and beyond. There is the risk that this process may bring to the surface latent land and resource-use conflicts, but the consultative and participatory process conducted so far constitute a solid base for dealing with such conflicts. Further discussion is also needed as to the future form of management of the reserve, as well as future benefit sharing mechanisms.

Itombwe has the potential to become the first example in the DRC of linking biodiversity conservation with the rights and knowledge of forest-dependent communities, established through the joint efforts of local civil society, Congolese authorities and international actors.



## CHAPTER 5 Conclusions: How to succeed

There is an urgent need to protect the world's remaining tropical rainforests – to halt the irreversible loss of species, to safeguard valuable ecosystem services and to counter dramatic climate change. While this has been broadly accepted internationally for decades, and is reflected in international agreements, deforestation has continued at an unacceptable rate. In this report we have argued that the best way to counter this development is by recognizing the rights, the knowledge and ongoing efforts of local forest communities. Policies on the international, national, and local levels must promote rights-based, sustainable rainforest management. As part of this endeavour, the management strategies of forest-based communities should be acknowledged and supported.

In forest policies, as well as in conservation policies, local communities have often been seen as part of the problem, and not part of the solution. Rainforest Foundation Norway, with over 20 years of experience of rights-based rainforest protection, and now in all major rainforest areas, holds a different working view: indigenous peoples and local forest communities are the very key to sustainable forest management. They have an interest in protecting the forest: it is central to their livelihood. They have knowledge, experience and traditions that can be vital in finding solutions. The RFN's experience and views are supported by comprehensive scientific studies that have shown that forest are better protected where local communities have secure tenure rights (see 3.1).

This is not an easy process, though. Forests are valuable resources, and while most actors

would agree that the forest should be managed sustainably, the various interest groups often operate with very different perspectives as to what sustainable means. Conflicts over development strategies and access to resources will have to be solved in order to establish sustainable management, as highlighted by the cases in this report. In Papua New Guinea, local clans put old conflicts aside and agreed on a common management plan; in Sumatra, years of patient dialogue have solved conflicts between indigenous peoples and farmers in a way that protects the forest; in Xingu (Brazil), a very different stakeholders work together to reduce deforestation. In the Democratic Republic of Congo, attitudes and interest towards conservation changed once local people became involved as important stakeholders. In Peru, indigenous organizations are key actors in rainforest protection and in protecting the rights of isolated indigenous groups. In all these examples the influence of indigenous peoples and local communities is grounded in having, or having been able to establish, recognized collective land rights. **Identifying and securing tenure rights for forest-based communities over their ancestral lands and resources are among the first important steps in any plan for sustainable management of forests.**

Identification and securing of rights are necessary to solve conflicts and establish sustainable management plans, but the process of establishing such rights can in itself bring latent conflicts to the forefront. Commercial interests or government-led development may stir up conflicts over land – likewise with conservation plans as well as climate-change mitigation measures such as REDD+. **Real consultation with and mean-**



Photo: Bo Mathisen.

**ingful participation by affected communities may require substantial time, but is essential to solve conflicts and establish sustainable management.**

In many instances, a process involving different stakeholders with conflicting interests is the only way to go. All stakeholders must be involved, if the collaboration is to result in consensus and provide lasting results. Bringing the views, traditional knowledge and practices of forest-based communities into biodiversity conservation and forest protection can contribute to new and important knowledge. However, the process must acknowledge the special status of forest communities as rights-holders. **Broad multi-stakeholder processes involving forest-based rights-holders, civil society organizations, government institutions, land-owners and commercial actors (where relevant) are important tools for forest protection.**

The world's rainforests provide benefits for us all. If these benefits are to be upheld, the international community will have to share the costs. Core principles in any kind of PES or REDD+

scheme must be the rights and interests of the people living in the forests and the integrity of the ecosystem as a whole. **Secure and long-term international funding is needed if we are to put a halt to deforestation. In addition, the wealthier countries will have to curb their own drivers of deforestation.**

Rights-based rainforest protection must be grounded in comprehensive national laws and policies that encompass all relevant sectors and actors. This includes control of illegal logging, as well as anti-corruption and other measures for good governance. In order to counter the gradual fragmentation and degradation that threaten the world's rainforests, broad, integrated management plans encompassing different management units need to be developed – also across national borders. Integrating different management regimes under common comprehensive plans, as a mosaic of different land-use categories (for conservation, local use etc.), has proven useful. **The state is the main duty-bearer, and has the tools available to ensure realization of rights-based sustainable rainforest management on the necessary scale.**



# Annex

## More information on the collective and human rights of forest dwellers

### Who has what duties under a human rights-based approach?

All citizens are ‘rights-holders’, while states are the main ‘duty bearers’ towards them under the human rights system. Non-state actors like individuals, companies or NGOs have a minimum responsibility to do no harm (respect rights)<sup>78</sup>. It is the responsibility of the state to ensure that policies respect (‘do no harm’), protect (against ‘third parties’ – normally through laws and regulations) and promote and ensure the implementation of rights<sup>79</sup>.

According to UNDP, ‘A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.’

A human rights-based approach set standards both for the end result (contribute to fulfil specific human rights), and for the quality of processes. The human rights-based process should be accountable, and transparent, participatory and inclusive, non-discriminatory and based in equity and the ‘rule of law’<sup>80</sup>.

Countries that have ratified human right instruments must report regularly, and are held accountable as duty-bearers under human rights law. Claims based on human rights can be presented to international human rights institutions (‘Treaty bodies’), that will evaluate and if necessary question state conduct.

John Ruggie, Special Representative of the UN Secretary-General on the issue of business and human rights, has indicated that companies have a duty to respect, and also to provide remedy in cases where their activity cause harm<sup>81</sup>. The obligation to remedy brings in the need for a formalized complaint opportunity for those who are negatively affected.

### Who is ‘indigenous’ and ‘tribal’?

The terms ‘indigenous’ and ‘tribal’ have not been defined internationally, largely because this has been the will of indigenous peoples themselves, who claim their right to self-identification. However, we find a useful description in the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169), as shown in the box below.

In practical terms, these two categories – indigenous and tribal – may be hard to keep separate. Both tribal and indigenous peoples are characterized by traditional lifestyles and a culture and way of life different from other segments of the national population, in their livelihoods, language, customs, etc. They also have their own forms of social organization, their traditional customs and laws. It should be noted that the word ‘tribal’ is often perceived as less politically charged than ‘indigenous’, and may therefore be used for political reasons in countries where the presence of indigenous peoples is officially contested.

### ILO Convention 169 Article 1.1: This Convention applies to:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
  - (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

### Rights of non-indigenous forest dependent groups

Several hundred million people live in or close to forests, and depend on them for their daily survival or income. Tribal and indigenous peoples have collective rights (as peoples) in international human rights law. But in practice there are not necessarily always very clear distinctions between local forest-dependent communities, tribal peoples or indigenous peoples. Non-indigenous forest-dependent communities may lead lifestyles similar to those of indigenous peoples and need similar protection.

A further complication is that some forest-based communities may be indigenous or tribal by their own definition, but may not be recognized as such by the state. Especially in Africa and Asia, this is a major obstacle to having collective rights discussed and formalized. On the other hand, according to ILO 169 (Article 1.1.2), self-identification is a key criterion, and the international human rights system will tend to accept such groups as indigenous.

Traditional forest-based communities may also have a right to their lands. The International Covenant on Civil and Political Rights (ICCPR), Article 27 reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (UN, 1966a).

What does this mean? According to the UN Human Rights Committee (HRC) which provides interpretations, monitors the implementation and receives complaints related to the ICCPR, the right to enjoy their own culture could include the right to enjoy a particular way of life associated with the use of natural resources. Here the HRC gives the example of indigenous peoples, but without limiting the interpretation to them (in General Comment 23)<sup>82</sup>. The rights of these cultural minorities are the rights (of individuals) to live according to, and to express, their collective culture without discrimination. Such rights are also expressed in the International Convention on the Elimination of Discrimination (ICERD).

Finally, important rulings are being made in the Inter-American human rights system, which has been gradually defining, strengthening and expanding the jurisprudence around collective rights and the land and resource rights of forest dependent communities. For instance, the Inter-American Commission on Human Rights has ruled (in the Saramaka case) that the rights under the ILO 169 apply also in countries that have not ratified that particular convention. Further, it has established that this right applies for tribal ‘Africa descendants’ in Suriname, who live in rainforests and depend on forest resources for their livelihood<sup>83</sup>.

### The right of peoples to self-determination and FPIC

The legal significance of using the term *peoples* becomes clear when reading Article 1(2) of the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR): ‘all peoples may, for their own ends, freely dispose of their natural wealth and resources.... In no case may a people be deprived of its own means of subsistence’. ‘Peoples’ can here be understood in the sense of ‘nations’.

As seen in the box on page 44, there are similarities but also differences in the way the ILO 169, the UNDRIP and ICCPR deal with land rights, the right to participation, consultation and consent.

The UNDRIP takes ILO 169 a step further, expressing the collective right of indigenous peoples to lands, territories or other resources and their right to self-determination with regard to these. Indigenous peoples not only have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. Their collective rights as peoples also include a right to be consulted, based in the principle of free, prior and informed consent, prior to the approval of policies, projects or activities affecting their lands or territories and other resources (see especially Article 32 of UNDRIP)<sup>84</sup>.



Key rights and principles on indigenous and tribal peoples and cultural minorities

	ILO Convention 169 on the rights of indigenous and tribal peoples from 1989	UN declaration on the rights of indigenous peoples (UNDRIP) from 2007	International Covenant on Civil and Political Rights from 1966
Right to land	Article 131. ...Governments shall respect ... relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. Article 14:1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.	Article 26:1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.	Article 27: the right to enjoy one's culture may include a right to enjoy a particular way of life associated with the use of land resources. General Comment 23: 6.3. The Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting .. The enjoyment of those rights may require positive legal measures of protection
Right to decide priorities for development/ right to self-determination	Article 7:1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.	Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs.. Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development...	
Participation	(article 6): Governments shall (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decisionmaking in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;	Article 18: Indigenous peoples have the right to participate in decisionmaking 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 decisionmaking institutions.	The HRC, in General comment 23: The enjoyment of those rights (to culture) may require ...measures to ensure the effective participation of members of minority communities in decisions which affect them
Consultation / FPIC	1...governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; 2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.	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, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them..... Article 32:2. (and.. ) 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.	

Notes and References

1

RFN has been engaged in this area since 1992, starting up supporting indigenous border control to stop intrusion from farmers and loggers. Later RFN has supported education, income generation, and natural resource management. RFN is now supporting a common management strategy agreed among all 16 indigenous groups.

2

In biological terms the Xingu River Basin is termed a ‘corridor’ – a contiguous area of biodiversity.

3

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5

Red Amazonica de Informacion Socioambiental Geor-referenciada (RAISG). Table: % of total Pan Amazon within the country. [http://raisg.socioambiental.org/system/files/AMAZON2012\\_english.pdf](http://raisg.socioambiental.org/system/files/AMAZON2012_english.pdf)

6

The remaining rainforest area is shared among Bolivia (6%), Colombia (6%), Venezuela (6%), Guyana (3%), Surinam (2%), Ecuador (2%) and French Guyana (1%).

7

For a thorough discussion, see Forest Peoples Programme 2012. Numbers across the world 2012. [http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/forest-peoples-numbers-across-world-final\\_0.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/forest-peoples-numbers-across-world-final_0.pdf)

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10

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11

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The UN has identified the following three main components of human rights based programs and policies: (1) be operationally directed toward fulfilling human rights; (2) identify rights-holders and their entitlements and corresponding duty-bearers and their obligations, and work towards strengthening the capacities of rights holders to claim their rights and of duty-bearers to meet their obligations; and (3) be guided in all phases by standards derived from international human rights law.

21

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22

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24

The 22 countries that have ratified the ILO 169 are: Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain, and Venezuela.

25

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26

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