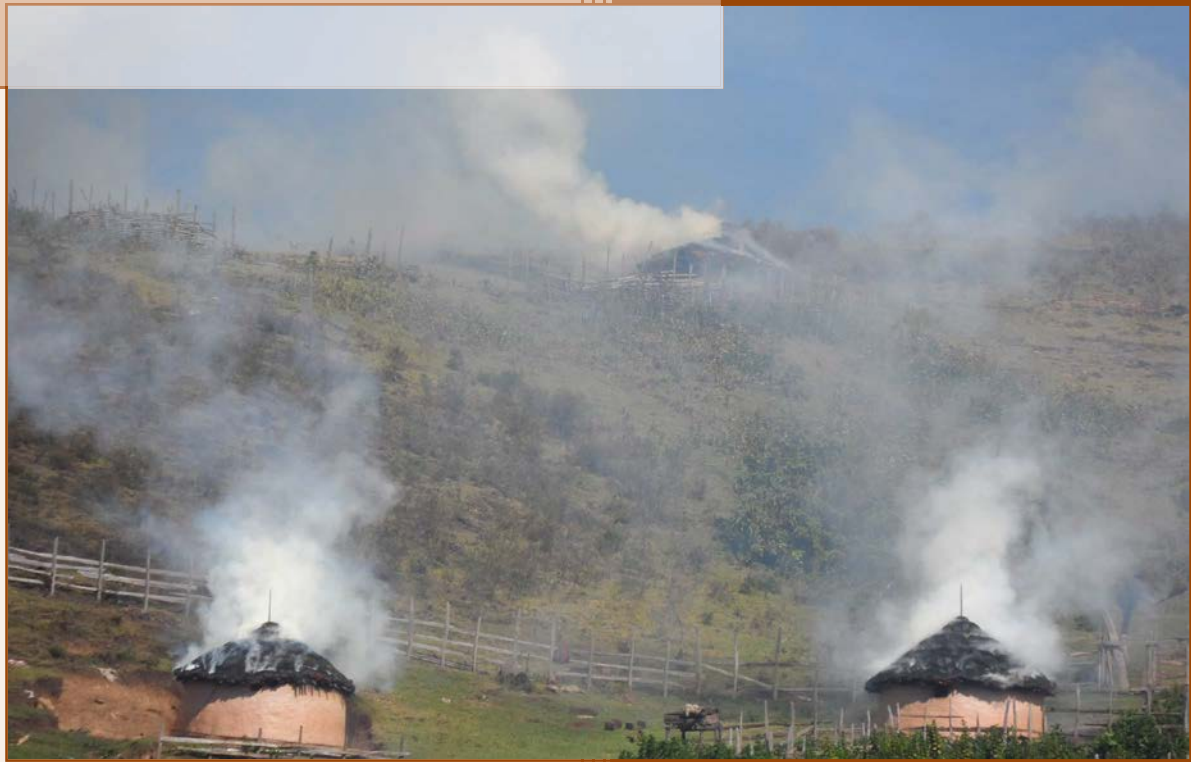


# FPP E-Newsletter: February 2014



Forest  
Peoples  
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**Photo on front cover:** Kenya Forest Service guards are forcibly evicting Sengwer indigenous people from their ancestral lands and burning their homes. [See Article 1 of this newsletter for more information.](#) © Justin Kenrick (FPP)

Dear Friends,

The UN General Assembly during its 69th session, on 22-23 September this year, will convene a high-level plenary meeting - the World Conference on Indigenous Peoples – to review the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) since its adoption in 2007, and to identify outstanding issues and actions pertaining to indigenous peoples and development.

Reports included in this issue of FPP's Newsletter highlight some of the issues that need to be urgently addressed, including ethnic and gender-based discrimination and violence.

Foremost among these is the human rights obligation to avoid and minimise involuntary displacement which has been shown to cause serious harms and impoverishment for affected persons and communities. For indigenous peoples, whose lives, cultures and well-being are closely tied to their lands, territories and resources, their free, prior and informed consent is required for any proposed action or decision that may affect their rights and interests. Forced relocation is expressly prohibited under international law and voluntary relocation may only take place after agreement of fair and just compensation (preferably in the form of alternative lands and territories), appropriate benefit sharing arrangements, and, where possible, the option of return.

The violent eviction of the Sengwer people from the Embobut forest by the Kenya Forestry Service, despite the High Court's injunction forbidding such actions, has drawn widespread national, regional and international concern, including from James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples ([see Article 1](#)).

The World Bank Inspection Panel is investigating related human rights violations with respect to its Natural Resource Management Project (NRMP) in the Cherangany Hills, in a case possibly illustrative of its wider record of social and environmental harm, as chronicled in the book "Foreclosing the Future? The World Bank and the Politics of Environmental Destruction.", a review of which is included in this newsletter ([see Article 6](#)).

Also threatened are the indigenous peoples living in voluntary isolation in Peru, following formal approval by the Ministry of Energy and Mines of the Camisea gas project's expansion plans within the Kugapakori, Nahua and Nanti Reserve ([see Article 2](#)).

Strongly criticised clearances of forests and peatlands by palm oil companies has led to their adoption of forest conservation standards. In Indonesia, field investigations of efforts by Golden Agri Resources (GAR) to pilot its Forest Conservation Policy in its subsidiary PT KPC in West Kalimantan, revealed on-going land grabs and resulting land shortages experienced by Dayak communities, in clear violation of standards set by the Roundtable on Sustainable Palm Oil (RSPO). Similar conservation approaches being applied more widely by GAR and sister companies in Borneo, Sumatra, Kalimantan and Liberia, must learn lessons by starting with respect for communities' land rights ([see Article 4](#)).

The EU's Forest Law Enforcement Governance and Trade (FLEGT) Action Plan, could also be strengthened by integrating international law and the customary law of indigenous peoples and local communities, in its approach and definition of "legality" in its voluntary partnership agreements ([see Article 3](#)).

An International Workshop on Deforestation Drivers and the Rights of Forest Peoples to be held on 9-14 March in Palangkaraya, Central Kalimantan, Indonesia will address all these issues, share lessons and generate recommendations to stem deforestation, promote human rights and local livelihoods ([see Article 7](#)).

The UN Declaration on the Rights of Indigenous Peoples sets out the minimum international standards for the protection of the rights and well-being of indigenous peoples. The need for robust standards and, crucially, improved mechanisms for their implementation, is borne out by the severe impacts on indigenous communities when its principles and rights are violated. Hopefully the World Conference on Indigenous Peoples will strongly communicate this message to governments, financial institutions, business, civil society and indigenous peoples, so the reported problems can be justly addressed.

Joji Cariño, Director

# 1. Kenyan Government's forced evictions threaten cultural survival of the Sengwer

The lead article in the last [FPP E-Newsletter](#)<sup>1</sup> focused on the superb progress the Ogiek of Chepkitale, Mount Elgon, Kenya, have made in their efforts to secure their forests and livelihoods by writing down their sustainability bylaws and embarking on the process of enforcing them. This process has resulted in their arresting charcoal burners, and the Kenya Forest Service (KFS) has now begun to restrict some of the charcoal burners', as well as encroaching agriculturalist activities that were leading to the destruction of the indigenous forest.



Kenya Forest Service guards have been burning Sengwer homes forcing communities to flee their ancestral lands © Justin Kenrick

In contrast, this article focuses on the plight of the Sengwer of the nearby Cherangany Hills. In the last few weeks they have been subjected to the torching of their thatched homes and forcible displacement from their forests – thousands of homes have been burnt, and thousands of people have been forcibly displaced. This has occurred despite an interim injunction granted in the High Court forbidding such actions. This injunction was first obtained on 26 March 2013, and renewed on 21 November 2013. The burnings have also occurred despite a national, African and international Appeal, and despite the UN Special Rapporteur on the Rights of Indigenous Peoples making a [public statement](#)<sup>2</sup> on

1 <http://www.forestpeoples.org/topics/customary-sustainable-use/news/2013/11/chepkitale-ogiek-community-document-their-customary-by>

2 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14163&LangID=E>

13 January 2014 urging the Kenyan Government to stop the forced eviction of these indigenous Sengwer communities.

What we may be seeing in Kenya is an end game in which a civil society-led process of entrenching human rights in the 2010 Kenyan Constitution, and recognising community rights in the draft Community Land Bill, is coming up against an elite that appears determined to appropriate community lands in complete disregard of the constitution, and before the Community Land Bill becomes law.



Guards approach a homestead, Embobut, Kenya 2014 © FPP

Forest peoples such as the Sengwer and Ogiek are working to regain their rights to their lands, and to develop the means to communicate and enforce their sustainability bylaws. This is in line with the new constitution and the best scientific evidence that forest communities securing their rights to their land is the most secure way to ensure forest conservation. At the same time, KFS and people in Government eye the potential REDD money they believe they may be able to gain if they have removed the indigenous communities from their lands, despite international and national law, and despite the fact that at nearby Mount Elgon we have seen that, left to themselves, KFS can put indigenous forests at risk.

At no stage have the Sengwer of Embobut or elsewhere been meaningfully consulted in relation to resettlement, and nor has their free, prior and informed consent (FPIC) been sought and obtained. There has been no reasonable benefit offered, nor has there been a remotely adequate offer of alternative land and compensation if they were to consent to resettlement. To the contrary, the Sengwer of Embobut wish to remain on their land, obtain title to that land and reparation for the harm experienced to date from forced eviction and harassment. The Sengwer also want to come to an enduring and amicable settlement with the Government of Kenya on ways that this can be



achieved while also conserving the forest environment and ensuring environmental services for the benefit of all Kenyans.

On 15 November 2013, the Kenyan President, Deputy President and Senator Kipchumba Murkomen headed a government delegation to Embobut, where the President promised 400,000 Kenyan Shillings per family in Embobut for what he called the forest 'Evictees'<sup>3</sup>. At no stage were the Sengwer meaningfully consulted in relation to this new resettlement proposal, nor was their free, prior and informed consent sought and obtained. Furthermore, a government representative also informed Sengwer community residents that they could accept the money being offered, and stay where they were living, as the money was to compensate them for past sufferings.<sup>4</sup> Some Sengwer are understood to have refused to put their names down on lists to receive money, while others who did put their names down, never received the money. In any case, none of those who did put their name down signed any document confirming their agreement to leave the forest. It is reasonably speculated that those who did put their names down and who had not heard that they could take the money and stay, may well have done so in the belief that they would almost certainly be evicted anyway. *In summary, the Sengwer were not adequately consulted, and nor were they presented with any meaningful choice about their resettlement.*



Houses being burnt: 'All the childrens uniforms, our cooking pans, water containers, cups have been burnt. There was no consultation.' © Justin Kenrick

On 18 January 2014, the High Court at Eldoret gave orders that the County Police Commandant and County Administration Police Commandant enforce the injunction and prevent KFS acting in defiance of

it (including by arrest). Unfortunately however, the Administrative Police were then witnessed supporting the KFS-led evictions. As the police are complicit in the evictions, it is clearly unlikely that the police will enforce the court injunction to stop the evictions. A Sengwer community representative stated: "*It is a disaster. The government of Kenya is forcing Sengwer community into extinction.*"<sup>5</sup> The Sengwer have appealed to the Finnish Government to withdraw their substantial funding from KFS until such time as KFS respects human rights. They have also appealed to the World Bank to desist from providing REDD funding to Kenya, especially since the Bank's Natural Resource Management Project (NRMP) in the Cherangany Hills has been a precursor to REDD, and has built KFS capacity to carry out such evictions, evictions that happened in every year of the project (2007-13) except 2012. Significantly a request from the Sengwer to the World Bank Inspection Panel, asking them to investigate alleged violations of Bank safeguards and associated human rights abuses by the NRMP, was found admissible by the Inspection Panel which recommended a [full investigation](#).<sup>6</sup> An investigation mission took place in the Cherangany Hills from 13-17 September 2013, and the investigation's findings are expected in [April 2014](#).<sup>7</sup>

Meanwhile, on 27 January 2014, having originally denied that the KFS forest guards were burning homes, and then having accused home owners of burning their own homes, the County Commissioner, Arthur Osiya, admitted that KFS *had* been burning homes and that KFS would now demolish these homes, or what remained of them.<sup>8</sup> The County Commissioner (who seems to

<sup>5</sup> David Yator Kiptum (SIPP), pers comm.

<sup>6</sup> The request to the Inspection Panel and other documents can be reviewed at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:23350855-pagePK:64129751-piPK:64128378-theSitePK:380794,00.html>

<sup>7</sup> For information on the World Bank project and associated Inspection Panel request, see: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:23350855-pagePK:64129751-piPK:64128378-theSitePK:380794,00.html>

<sup>8</sup> See following sample news reports for reference:

- On 7 January 2014, the Daily Nation referred to Marakwet East sub-county commissioner Husein Alaso Husein as having confirmed that police would not burn houses or destroy property in Embobut. However the burning of Sengwer houses by KFS with police support started on or around the 10th January 2014 and is continuing to date. (See: Suter/Daily Nation. 'Police sent to evict Embobut squatters' Daily Nation, at: <http://mobile.nation.co.ke/news/-/1950946/2138252/-/format/xhtml/-/nh1oo2/-/index.html>)

See also: Ndanyi/The Star, 'Sengwer Cry Foul As Police Evict Embobut Forest Squatters' at <http://www.the-star.co.ke/news/article-150749/sengwer-cry-foul-police-evict-embobut-forest-squatters#sthash.h5Zyb6jm.dpuf>

- However, on 25 January 2014, when an evicted young man described on TV how "police came, kicked them out and immediately torched their homes", the County Commissioner Arthur Osiya 'explained the

<sup>3</sup> Sunday Nation, 'How Embobut Evictees agreed to leave the Forest' page 40, November 17 2013

<sup>4</sup> David Yator Kiptum/SIPP, pers comm.

have taken a central role in coordinating the evictions with the KFS, its parent Ministry, and the police) has confirmed that houses are being burnt and that the government will continue to flush every illegal settler out of the ecosystem, even stating: “It may seem wrong and primitive to burn houses, but gentlemen, look, we have to face the reality in this one and tell our people that the forest is out of bounds henceforth”.

It has become evident that the evictions of Sengwer and other groups are being expanded beyond Embobut. As such the eviction represents a calculated attempt by the Government of Kenya to completely remove the Sengwer people from the entirety of the Cherangany Hills forest. If this is not prevented and quickly reversed, the Sengwer will come to exist entirely as a scattered diaspora, and almost certainly face cultural extinction thereafter, having lost the vital connection to land, resources and place, on which their culture is wholly dependant.

*Justin Kenrick, Africa Policy Advisor, FPP*

#### Further information:

- To sign the Avaaz petition against these illegal evictions, please visit: [http://www.avaaz.org/en/stop\\_the\\_forced\\_evictions\\_loc\\_kenya\\_pa\\_uk/?bHTAbab&v=35531](http://www.avaaz.org/en/stop_the_forced_evictions_loc_kenya_pa_uk/?bHTAbab&v=35531)
- Funds are urgently needed to continue the legal effort to stop these appalling evictions now, and to ensure that Sengwer families can safely return to the forest. To donate please visit this JustGiving page: <https://www.justgiving.com/SupportSengwerLegalBattle>
- *Kenya defies its own courts: torching homes and forcefully evicting the Sengwer from their ancestral lands, threatening their cultural survival:* <http://www.forestpeoples.org/topics/legal-human-rights/news/2014/01/kenya-defies-its-own-courts-torching->

reason behind the burning of the houses’ in the same TV program as follows: “[As there are] some individuals who are getting out during the day and getting back with the animals again during the night. So we decided that we should bring down all the structures so that we can fully take charge of the forest”. (our transcription - see Citizens News, 25 January 2014, at <http://www.citizennews.co.ke/news/2012/local/item/16648-embobut-forest-evictions>)

- On the 26 January 2014, it was reported that ‘the County Commissioner [Arthur Osiya] confirmed that houses were being burnt and the government will continue to flush every illegal settler out of the ecosystem. “It may seem wrong and primitive to burn houses, but gentlemen, look, we have to face the reality in this one and tell our people that the forest is out of bounds henceforth,” he said. (See Suter/Daily Nation, 26 January 2013, ‘Politicians ‘see’ pain of evictees as squatters’ houses go up in flames’ at: <http://www.nation.co.ke/news/politics/houses-go-up-in-flames/-/1064/2160528/-/okmsvi/-/index.html>)



Children flee armed guards - Embobut, Kenya 2014 © FPP

#### [homes-and-forcefully-evi](#)

- For background information on how the World Bank is implicated in these forced and illegal evictions, please visit: <http://www.forestpeoples.org/sites/fpp/files/news/2013/12/How%20the%20World%20Bank%20is%20implicated%20in%20today%E2%80%99s%20Embobut%20Evictions.pdf>
- For more background information and a timeline of events leading up to these evictions please visit: [http://www.forestpeoples.org/sites/fpp/files/news/2013/12/Updated%20Timeline%20of%20forced%20eviction%20of%20Sengwer%20communities\\_0.pdf](http://www.forestpeoples.org/sites/fpp/files/news/2013/12/Updated%20Timeline%20of%20forced%20eviction%20of%20Sengwer%20communities_0.pdf)
- On 23 December 2013 Forest Peoples Programme and over 60 international organisations launched an appeal to stop the forced and illegal evictions of the Sengwer indigenous people. To view the appeal, please visit: <http://www.forestpeoples.org/sites/fpp/files/news/2013/12/International%20APPEAL%20re%20Embobut%20Forest%20eviction%2015012014.pdf>
- Further information relating to this appeal can be found here: <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2013/12/urgent-appeal-against-forced-eviction-sengwercher>
- *Kenyan Government torches hundreds of Sengwer homes in the forest glades in Embobut:* <http://www.forestpeoples.org/topics/legal-human-rights/news/2014/01/kenyan-government-torches-hundreds-sengwer-homes-forest-glade>
- *Forced eviction by Kenya threatens indigenous communities’ human rights and ancestral forests:* <http://www.forestpeoples.org/sites/fpp/files/news/2013/12/Embobut%20press%20release%206%20Jan%202014%20FINAL.pdf>



## 2. Camisea project expansion plans given green light by Peruvian Government

On 27 January 2014, Peru's Ministry of Energy and Mines formally approved the Camisea gas project's expansion plans within the Kugapakori, Nahua and Nanti Reserve after the Ministry of Culture finally gave its endorsement of the project. In so doing, and as the recently published Forest Peoples Programme report titled *Violating rights and threatening lives: The Camisea gas project and indigenous peoples in voluntary isolation*<sup>9</sup> highlights, it is considered to have violated its own human rights obligations to safeguard the rights to life, health and self-determination of the Reserve's inhabitants as well as disregarded the [recommendations](#)<sup>10</sup> of international human rights bodies including the UN Special Rapporteur on Indigenous Peoples Rights.

*Conrad Feather, Project Officer FPP*



Camisea gas pipeline route © FPP

For further information please visit this page: <http://www.forestpeoples.org/tags/expansion-camisea-gas-project-peruvian-amazon>

<sup>9</sup> <http://www.forestpeoples.org/topics/extractive-industries/publication/2014/violating-rights-and-threatening-lives-camisea-gas-pro>

<sup>10</sup> <http://www.unsr.jamesanaya.org/statements/declaracion-del-relator-especial-sobre-los-derechos-de-los-pueblos-indigenas-al-concluir-su-visita-al-peru>

## 3. Legality without justice? How to ensure that FLEGT Voluntary Partnership Agreements (VPAs) achieve both

This article seeks to touch base with the policy objectives of the [European Union \(EU\)'s 2003 Forest Law Enforcement Governance and Trade \('FLEGT'\) Action Plan](#),<sup>11</sup> and highlight lessons learnt during Forest Peoples Programme's EU-funded *Strong Seat at the Table* project.<sup>12</sup> With partners *Centre pour l'Environnement et le Développement* (Centre for the Environment and for Development, CED), FERN and ClientEarth, the 'Strong Seat' project supported the legal capacity of civil society partners engaged in VPA-related legal reforms in West and Central Africa.

By way of background, the FLEGT Action Plan included an approach to addressing illegal logging that uses bilateral trade treaties between the EU and timber producing countries, called Voluntary Partnership Agreements ('VPAs'). VPAs are intended to frame the legal, governance and institutional reforms necessary to ensure that all timber exports from VPA countries carry a FLEGT license verifying their legality.<sup>13</sup>

The VPA focus on legality and the insistence on a multi-stakeholder process has been innovative, and VPAs are recognised as the most participatory trade agreements ever made (albeit with minimal participation of forest

communities, except in the case of Liberia).<sup>14</sup> Several VPAs have been successful in opening up political space for civil society organisations, which has in turn helped improve transparency, coordination and accountability in the forestry sector.

<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF>

<sup>12</sup> This article was also delivered as a presentation during the launch of the Strong Seat project's *Securing community land and resource rights in Africa: A guide to legal reform and best practices*, held in Brussels on 23 January 2003.

<sup>13</sup> The countries now implementing concluded VPAs are: Cameroon, Central African Republic, Ghana, Indonesia, Liberia, and the Republic of the Congo. Those countries currently negotiating VPAs are: Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand, and Vietnam. A number of other countries have expressed an interest, including Peru, Ecuador, Colombia, Burma, Philippines and Papua New Guinea.

<sup>14</sup> See for example, Fred Pearce, *'Forest Stands: How new EU trade laws help countries protect both forests and peoples'* FERN (2012), Moreton-in-Marsh & Brussels

The EU's 2003 Action Plan notes that it serves to promote multiple policy objectives in the EC's development agenda, including human rights, good governance, and environmental sustainability. The Action Plan highlights that where laws promote sustainable forest management, law enforcement will be positive – where this is not the case, the EU should encourage reform. However, a key missing ingredient in the Action Plan is a clear understanding of what 'legality' means, merely defining illegal logging as "timber harvested in violation of national laws". It does not expand on what the sources of 'national laws' might be, or what implications this would have for VPAs and their implementation.

The European Forest Institute (EFI)/EU *'Guidance for developing legality definitions in FLEGT Voluntary Partnership Agreements'* (September 2012) explores these implications in more detail (though there is still no mention of customary law). It does for example expressly include international law in the likely long-list of relevant legislation, and suggests that this list should go beyond merely forestry-specific law, and include areas such as "respect for community and indigenous peoples' tenure and use rights". In terms of addressing inconsistencies between applicable laws, the Guidance also suggests that the reforms needed to address that gap analysis should be set out as additional measures in the VPA appendices. This guidance is too late for the five African VPAs currently being implemented which were all concluded prior to 2012.

In practice, VPA partner governments, the EU and civil society have to date defined legality with reference to existing statutory laws, at the expense of customary and international law. Although many VPAs expressly include reforms that integrate international law into national law, these provisions have yet to be properly implemented. This has created problems for communities in many African VPA countries, whose land rights derive most protection from customary and international law, and whose land rights are most threatened by the dispossessing and marginalising effects common in (often out-dated) national statutory laws.

A change of approach to legality within FLEGT and VPA processes is therefore long overdue. FLEGT licensing must be predicated on legal reforms that integrate customary and international law into national statutory laws. Where this is obviously not happening in VPA implementing countries, all stakeholders will need to take a determined stand to make sure that a post-facto gap analysis is completed and agreed, and that the necessary programme of reforms is properly implemented. All of this will require a fully multi-stakeholder process that includes meaningful participation of forest communities.



The central safeguard against unjust laws is to ensure that forest communities directly influence the content of legal reforms affecting them and their forest lands © FPP

However, countries in the process of negotiating VPAs have the opportunity of crafting VPAs that better set the scene for legal reform, in a more detailed appraisal of the statutory changes that would be needed to give due weight to customary and international law. Those VPAs should also better spell out key procedural requirements for legal reform processes, to ensure that stakeholders and rights-holders – especially forest and indigenous communities – are not excluded from those reform processes.

The recent joint FPP-partner publication *Securing community land and resource rights in Africa: A guide to legal reform and best practices*<sup>15</sup> sketches out how any statutory reform process relevant to land and resource rights – VPA-related or otherwise – can better recognise the legal pluralism present in many African countries. This includes guidance on structuring legal reform processes; legislating to protect customary land and resource rights; recognising and strengthening customary governance institutions; and ensuring compliance with key principles such as gender equality and the protection of indigenous peoples.

In conclusion, many VPAs stand to be implemented without the necessary reforms taking place, carrying the risk of legitimising unjust and unsustainable laws, and missing the EU Action Plan's policy goals. A conscious change of approach is therefore needed by all stakeholders which adopts an understanding of legality based on integrating customary law and international law into statutory law. This change of approach needs supporting by a more robust EU strategy for accepting nothing less from partner Governments, and a similarly

15 <http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2014/securing-community-land-and-resource-rights-af>



robust advocacy strategy by civil society (national and international). In both cases, the central safeguard against unjust laws will be to ensure that forest communities are in a position to directly influence the content of legal reforms affecting them and their forest lands.

*Tom Lomax, Lawyer, FPP*

## 4. Palm Oil company efforts to slow deforestation not sustainable

Palm oil companies have long been criticised for their damaging clearance, of both forests and peatlands, which contributes significantly to global warming. It is estimated that Indonesia, where deforestation is still increasing despite Presidential promises to halt it, is the world's third highest emitter of green house gases. This is mainly due to large scale land clearance for palm oil plantations, pulp and paper ventures and transmigration. Considering the ineffectiveness of Government efforts, getting companies to set aside forest and peatland areas within their concessions seems like a sensible way to limit the problem. But, given that most concessions are handed out by governments without first recognising and [securing the lands of local communities](#),<sup>16</sup> what are the implications of these set-asides for the rights and livelihoods of forest peoples?

A [new report](#)<sup>17</sup> from the Forest Peoples Programme and *Transformasi untuk Keadilan-Indonesia*<sup>18</sup> (TUK-I) explores how one of Indonesia's largest palm oil companies, Golden Agri Resources (GAR), is piloting its new Forest Conservation Policy in its subsidiary PT Kartika Prima Cipta (PT KPC) in Kapuas Hulu District, West Kalimantan, an upland area famous for its large lakes, extensive peat swamps and productive inland fisheries.

The findings are quite startling. Far from being a model project which reconciles community rights and forest conservation efforts with palm oil plantations, what we found was an ongoing land grab in clear violation of the standards of the Roundtable on Sustainable Palm Oil (RSPO), of which GAR is a prominent member. Moreover, recently imposed schemes to set aside areas for 'high conservation values' and 'high carbon stocks' are being imposed in ways that ignores the peoples' own systems of land use, land ownership and land classification and thus limit their livelihoods and options for income generation. Affected Dayak communities are now experiencing a land shortage, while along the rivers affected Malay fisherfolk complain of river pollution, causing declining fishstocks and problems for fish-breeding ventures.

16 <http://www.forestpeoples.org/conflictorconsent>

17 <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2014/independent-review-social-impacts-golden-agri-resources-forest>

18 <http://www.tuk.or.id/>

Although not all community members are against oil palm and some do see real benefits, the impositions have caused major rifts in almost all the communities. Ever since 2007, when the concession was first announced, there have been protests and demonstrations against these perceived injustices and these have continued right up to 2013. The company has paid the police to disperse protesters.

These shortcomings were reported to GAR in July 2013 but the company was very slow to take remedial action on the ground. Recently, however, the company has committed itself to improve things and is open to dialogue and taking advice, even from its critics.

The problems identified by FPP and TUK-I have wide relevance. GAR is applying this same approach in 8 plantations in Borneo and in its massive, highly controversial concession in Liberia, [Golden Veroleum Limited](#).<sup>19</sup> GAR's sister company Asia Pulp and Paper is now applying the same policy to its 2.4 million hectare pulp and paper estates in Sumatra and Kalimantan. Recently the world's largest palm oil developer, Wilmar, which trades some 22 million tonnes of palm oil every year, about 45% of the world trade, has also committed itself to the 'high carbon stocks' approach, though it is yet to roll this out in practice. Many of the other major traders, retailers and investors in the palm oil sector seem poised to follow suit.

FPP is calling on them to refine their approach. Forest conservation efforts can't work if forest set-asides are grafted onto 'land grabs'. Instead, the companies must start by respecting communities' land rights, securing their livelihoods and making clear from the start which areas they seek to take over for both plantations and conservation. As Anton Widjaya, Director of WALHI-West Kalimantan, the local chapter of Friends of the Earth, puts it:

These kinds of projects are only going to work once local and national governments first recognise peoples' rights and companies understand that they are there as guests of the local communities rather than as feudal landlords. This is what it means when we say that all such operations require communities' free, prior and informed consent.

We can't talk about 'sustainable palm oil', if the rights of indigenous peoples and local communities are undermined and their livelihoods made unsustainable in the process. Instead forest conservation efforts must build

on community rights, accommodate their livelihoods



Community member in palm oil plantation © FPP

and work with the communities' representatives. As the leader of one Dayak community put it:

They came here and ... said they wanted to help us guard our forest. They also promised [oil palm] smallholdings to us if we would surrender our forests. We replied that these areas will be preserved by us but we don't want to release our lands, we want to protect the forest ourselves. It is strange from our point of view. We have conserved these areas ourselves and now they want to take them....

An older woman from another village put things more starkly:

It's already enough! We don't want more land taken for oil palm let alone for this 'carbon'!

*Marcus Colchester, Senior Policy Advisor, FPP*

<sup>19</sup> <http://www.forestpeoples.org/topics/palm-oil-rspo/news/2012/10/letter-complaint-round-table-sustainable-palm-oil-rspo-indigenous>



## 5. Indigenous women of the Americas fighting against discrimination

Indigenous and human rights organisations from across the Americas are working together to develop a specific methodology for investigating, documenting and fighting indigenous women's cases through the justice system. The organisations involved include ONIC, the National Indigenous Organisation of Colombia; COAJ, the Board of Indigenous Organisations of Jujuy (Argentina); SER, Mixe People's Services (Mexico); QNW, Quebec Native Women (Canada); and AJDH, Lawyers for Justice and Human Rights (Mexico). This work is being carried out within the framework of a project called Ethnic and gender-based discrimination in the Americas: the case of indigenous women.



Workshop in Jujuy, Argentina ©

The project was conducted over a period of more than seven years. During that time, the organisations worked on specific rights in turn. These included: the right to education (Argentina); the right of women to a life free from violence in the context of armed conflict (Colombia); the right to health (Mexico); and the right to identity (Canada). The main points of action were: strengthening awareness of rights, public policies, investigating/documenting, legal action and advocacy. The following were among the outcomes of the work conducted: a conceptual framework created with the women who were part of the process; advocacy regarding public policies in Argentina and Colombia; the emergence of organisational processes that are strengthening new indigenous women's leaderships; legal action in cases still underway; and assimilation of lessons learned on how to tackle discrimination against indigenous women.

Furthermore, work was carried out on refining a shared process for investigations and legal action that resulted in the publication, with the support of Forest Peoples Programme, of *Indigenous women of the Americas: methodological and conceptual guidelines to confront situations of multiple discrimination*.<sup>20</sup> The guidelines set out various principles, ethical considerations and means of dealing with both the invisibility and the obstacles that indigenous women face when seeking justice. They conclude that discrimination against indigenous women can only be tackled from the perspective of the women themselves. This means that their spirituality, the laws and cosmovision of their own peoples, as well as internationally recognised human rights of indigenous peoples and women must be considered when confronting discrimination. This framework is not only useful for documenting cases of discrimination within the justice system, it also assists in scrutinising public policies that apply to indigenous women.

Any methodology that effectively investigates and documents the situation of indigenous women must adopt indigenous principles. It must work on the basis that the women themselves are agents for change in their own reality, supporting their efforts of empowerment, and offering appropriate alternatives for cultural and spiritual restitution and recuperation.

*ONIC, the National Indigenous Organisation of Colombia, COAJ, the Board of Indigenous Organisations of Jujuy, SER, Mixe People's Services, QNW, Quebec Native Women and AJDH*



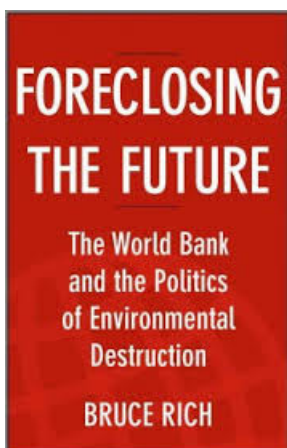
Kankuama woman - Chemesquemena Community - workshop on sexual and reproductive rights © ONIC, COAJ, SER, QNW, AJDH

20 <http://www.forestpeoples.org/topics/gender-issues/publication/2014/indigenous-women-americas-methodological-and-conceptual-guidel>



## 6. Book Review: World Bank still backing unsustainable development: will it ever learn?

Book review: Bruce Rich, (2013) *Foreclosing the Future? The World Bank and the Politics of Environmental Destruction* Island Press, Washington DC and London ISBN 13:978-1-61091-184-9



A powerful new book by environmental campaigner Bruce Rich, titled “Foreclosing the Future”, pulls together a mountain of evidence to document how World Bank projects and development finance over the last two decades have continued to cause major local and global environmental damage and inflict harm on communities in borrower countries. Problems with large

scale corruption in Bank lending and procurement are also exposed in the book, which charts the evolution of the Bank’s environmental and social policies and assesses the effectiveness of internal Bank reforms intended to “mainstream” environmental and social issues, tackle corruption and reduce poverty.

Drawing on Bank studies, project evaluations and sectoral reviews, it is shown that the World Bank still suffers from a pervasive “loan approval culture” driven by a perverse incentive system that pressures staff and managers to make large loans to governments and corporations without adequate attention to environmental, governance and social issues. In 2013, Bank Staff who highlight social risks and seek to slow down project processing still risk “career suicide”.

Detailed accounts of controversial Bank projects, including the Yacyretá dam (Paraguay and Argentina), Chad-Cameroon Pipeline Project, Bujagali Dam (Uganda), Nam Theun II dam (Laos) Yanacocha and Marlin gold mines (Peru and Guatemala) and forestry projects in the Democratic Republic of Congo and Cambodia, among others, all demonstrate poor implementation of the World Bank’s and International Finance Corporation (IFC)’s social and environmental safeguards that are meant to protect the environment and vulnerable groups.

Persistent and systemic problems include underestimation of risks, faulty social and environmental impacts assessments, weak integration of environmental and social issues and a lack of monitoring and supervision. Another core problem is insufficient attention to borrower corruption and weak governance structures, which in cases like the Chad-Cameroon pipeline have led to misappropriation of Bank funds, social conflict and human rights abuses. Even if good environmental and social work is completed, this analysis too often has limited influence on the final project design, which is still usually stacked in favour of powerful government departments and big business.

Efforts by different Bank presidents to promote change, including James Wolfensohn’s far reaching decentralisation reforms in the 1990s, are found to have weakened environmental mainstreaming. Later reforms re-locating environmental staff within infrastructure and energy departments have also resulted in less internal coordination across sectors and further marginalised social and environmental specialists whose advice is increasingly ignored.

The Bank’s “institutional amnesia”, “culture of arrogance” and inability to learn from past mistakes are also pinpointed as key obstacles to achieving sustainable outcomes for the environment and the poor. The whole book highlights how the need to address the root causes of weak environmental and social performance, including actions to eliminate perverse incentives, has been put to senior managers and the Bank’s governing body ever since the Bank’s Wapenhans report in 1992. The need to prioritise governance and respect human rights have likewise been communicated time and again through the Inspection Panel investigation reports on problem projects and through sectoral reviews sponsored by the Bank, including the World Commission on Dams (WCD) and Extractive Industries Review (EIR). Yet the Bank has consistently chosen to reject or disregard the findings of most of these studies.

Rather than heed civil society calls for the need to channel finance to alternative economic models focused on poverty reduction, empowerment of communities and sustainability, the Bank has chosen to back “high risk/high reward” mega dam, energy and infrastructure projects and is taking measures to speed up lending to please its borrower country ‘clients’. It is also directing ever larger loan volumes to subsidise large transnational mining, energy and industrial companies through the IFC in the name of ‘poverty reduction’, when internal Independent Evaluation Group (IEG) reviews question the poverty benefits of these IFC investments.

In short, instead of learning from experience of decades

of development work, senior Bank staff and government 'clients' have pushed back against safeguards, which they incorrectly claim are costly and block development benefits for the 'poor', when all the aforementioned evidence points to the exact opposite. At the same time, the Bank is channelling more and more financing through non-project lending, including through financial intermediaries, development policy loans (DPLs) and direct budget support initiatives like the "Programme for Results" that are only subject to limited environmental, social controls and superficial risk assessments.

This failure to develop a robust safeguard framework to regulate DPLs and other programmatic lending is as a fatal policy gap and a key reason why the Bank has not delivered on its promise to promote sustainable development in the last 20 years.

Fundamental disconnects in World Bank policies and sectoral strategies are identified as another core obstacle to sustainability. One glaring example is Bank policies and finance for the forest sector. In the 1990s the Bank sought to protect rainforests and promote community forestry, yet at the same time its much larger structural adjustment loans to borrower governments have bolstered key international and macroeconomic drivers of forest loss in tropical countries, including support for currency devaluations, trade liberalisation and exported agricultural expansion.

Deep contradictions in World Bank energy and climate policies are also laid bare as a fundamental cause of environmental damage. As the World Bank has become a "trustee" of the world's global climate funds, including forest and climate programmes, it has continued to binge on enormous loans to oil and gas extraction, coal-fired power stations and large-scale mining generating environmental damage, forest loss and massive carbon emissions.

The Bank's promotion of a flawed carbon offset market plagued by fake carbon offsets, faulty carbon accounting and false claims of "additionality" is denounced as "scandalous" and "lacking environmental integrity". The author condemns the Bank's duplicitous activities in facilitating the 'grotesque' misuse of public funds under the Clean Development Mechanism (CDM) for the payment of billions of dollars of carbon credits to factories and power stations in China, India and South Africa.

The author concludes that in order to achieve its stated mission of poverty reduction, the Bank must resist pressures to 'simplify' and accelerate lending coming from powerful borrowers and transnational companies who demand money with no strings attached. Instead of trying to compete with Southern Banks by lowering

standards, the Bank must refocus its energies to build a global institution fit for the 21st century by targeting finance towards best-practice projects and programmes with robust social and environmental design and solid frameworks to prevent corruption and ensure proper monitoring and effective implementation.

The answers to accountable development finance will not stem from public-private partnerships, "natural capital accounting" nor slick IT initiatives, the "blogosphere" or "cyber utopia", argues Rich, but in progressive leadership at the World Bank Group. This means that leaders must have the conviction to face down the old guard and redesign the Bank as a financial institution and development bank that rewards attention to social and environmental issues, good governance, and rule of law, equity and sustainability.

As well as presenting powerful arguments for reform, the book is crammed full of facts about the Bank and international development finance. It also documents two decades of civil society campaigns to hold the Bank accountable and promote reform. For these reasons, it will be of great interest to civil society activists and campaigners in the North and South.

Any arguments that this book is already out of date, that lessons have been learned and the Bank has changed just won't stand up: in January 2014 the World Bank and IFC were again under intense public scrutiny for their finance for deeply destructive agribusiness and natural resource management projects involving forced evictions and human rights abuses in [Honduras](#)<sup>21</sup> and [Kenya](#).<sup>22</sup>

This is why this book is recommended reading for the current World Bank President Jim Yong Kim and his advisors leading the latest 'modernisation' drive for the Bank. Will they repeat the same mistakes of past World Bank reforms or will they act on evidence and experience? Will they address well documented weaknesses, glaring gaps and implementation problems in the Bank's safeguard system? Will they learn from the current atrocities funded with World Bank funds?

Past experience with this global financial institution shows we should not hold our breath.

*Tom Griffiths, Coordinator, Responsible Finance Programme, FPP*

21 <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2014/joint-ngo-letter-calling-ifc-action-address-damning-findings-i>

22 <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2014/02/kenyan-government-s-forced-evictions-threaten-cult>

## 7. Looking Ahead: International workshop on Deforestation Drivers and the Rights of Forest Peoples, Indonesia

An international workshop organised by Forest Peoples Programme and Pusaka will bring together forest peoples, governments, NGOs, international agencies and forest scientists from Africa, Southeast Asia and Latin America on 9 -14 March 2014 in Palangkaraya, Central Kalimantan, Indonesia.

The aim of the workshop is to share lessons and generate recommendations on effective measures to stem deforestation, promote human rights and secure local livelihoods.

Workshop participants will review the findings of five country case studies and four thematic papers on deforestation drivers and forest peoples' rights from Peru, Colombia, Paraguay, Guyana, Cameroon, Democratic Republic of Congo (DRC), Liberia, Indonesia and Malaysia.

In many tropical countries, up-to-date information on direct and underlying causes of forest loss is lacking or relies mainly on self-reporting by governments. Currently information is often based on non-participatory government desk-based assessments completed in 2010-2011 as part of national REDD+ Readiness Proposals for the World Bank Forest Carbon Partnership Facility (FCPF). Therefore, this workshop aims to provide up-to-date information on deforestation drivers in nine different tropical forest countries with a priority on local experiences, participatory assessments and community-perspectives on direct and underlying causes and solutions.

It is intended that the results of this international workshop will complement national and global assessments of the drivers of deforestation and increase knowledge and understanding among policy makers about the social, economic and political factors underlying forest loss and degradation. A key goal of the workshop will be to pinpoint community-based solutions and strategies to tackling forest loss and land use emissions in forest nations.

Outcomes of the workshop will be published in future editions of the FPP E-Newsletter and channelled to relevant international policy discussions, including the 20th session of the Conference of the Parties (COP20) to the United Nations Framework Convention on Climate Change (UNFCCC) in Peru in December 2014.

## 8. Partner Spotlight: National Indigenous Women's Federation (NIWF) (Nepal)

### Background:

National Indigenous Women's Federation (NIWF) is a Kathmandu based umbrella organisation of Adivasi Janajati (Indigenous Nationalities) specifically women's organisations. The multiple roles that Nepalese Indigenous women play contribute to maintain, preserve and promote the distinct identity of Indigenous Peoples. Their language and cultural skills, and traditional knowledge in management of community and resources are distinct. Importantly, they are the knowledge holders to nurture mother earth, the environment and natural resources, and play a vital role in sustainable management of mother earth and environment, thus they also contribute to all human society nationally and globally. Traditionally and culturally indigenous women are decision makers in family and society and often play roles in peace building and reconciliation.

However, their roles and contribution are not recognised by the state. Laws, policies and practices highly marginalise, exclude, deprive, and discriminate against indigenous women. Despite this fact, indigenous women retain some or all of their knowledge, skills, culture, decision making roles and traditional institutions as well. So women leaders from different indigenous organisations established NIWF as a federation in 1999 and registered NIWF in 2000, with the aim of ensuring the right to participate in all state structures with their distinct identity. Presently, 31 Indigenous Women's Organisations are affiliated under this umbrella organisation.

In Nepal, Adivasi Janajati Women have bitter experiences of inherent structural patriarchy and dominated political systems. Social exclusion based on gender has for centuries been an important part of the Nepali milieu. Similarly, social exclusion based on ethnicity has been another reality in Nepal. Thus, Indigenous Nationalities Women face social exclusion not only because of them being women, but also because of their ethnicity. Women comprise 50.4 percent of Nepal out of which 37.5 percent are Adivasi Janajati women. It is a fact that the state has not recognised the "identity" of Adivasi Janajati women, deprived them from policy making processes and has been including them under the general term "Nepali women". In addition, Adivasi Janajati Women are marginalised and excluded from the mainstream of



national development. Adivasi Janajati Women suffer from triple forms of discrimination: first for being women, secondly for being Adivasi Janajati and thirdly for being Adivasi Janajati Women.

### Objectives:

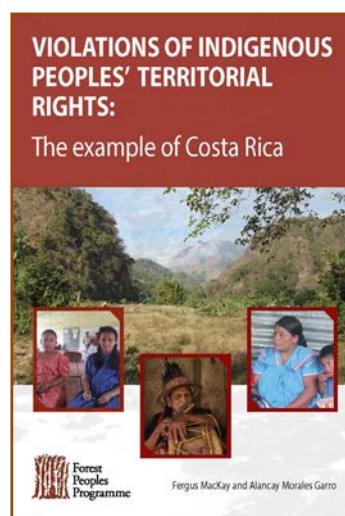
1. Ensure constitutional, legal, political, social, cultural, religious, educational, economic and customary rights of indigenous women.
2. Ensure indigenous women's rights in ethnic, linguistic and regional autonomous regions through the organisations of indigenous women and capacity development of their organisations.



National Indigenous Women's Federation (NIWF) (Nepal)  
©NIWF

## 9. Latest publications:

### 1. Violations of indigenous peoples' territorial rights: The example of Costa Rica



This study explores the issues of widespread illegal occupation of indigenous lands on a national scale. Approximately 6000 non-indigenous persons are occupying at least 43 % of the areas belonging exclusively to indigenous peoples.

The study presents a comprehensive analysis of the multidimensional nature of the law regarding indigenous peoples' lands, territories and resources, along with its relationship to their cultural integrity and survival. This is explored in detail with reference to three particular territories: China Kichá, Térraba and Salitre. In addition, the relationship between territorial rights and the right to self-government, self-representation, effective participation in decision-making and the legal personality of indigenous peoples is explained.

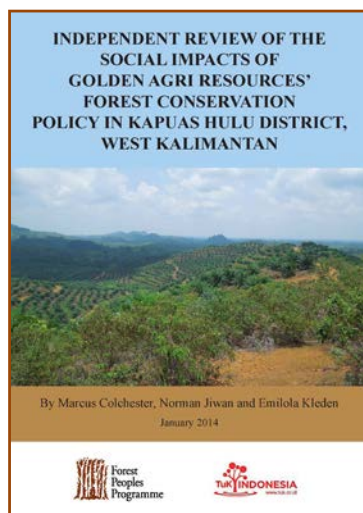
The authors examine the issues in the light of Costa Rica's obligations under national legislation, as well as the country's obligations under international law. Special attention is given to the case law of the Inter-American Commission and the Inter-American Court of Human Rights.

The study identifies specific actions for working towards a solution to the illegal occupation of indigenous lands in Costa Rica, and for allowing indigenous peoples full and effective enjoyment of their territories. Such actions are dependent on the willingness of the Costa Rican state.

Read this report in English or in Spanish here:

<http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2014/violations-indigenous-peoples-territorial-right>

## 2. Independent Review of the Social Impacts of Golden Agri Resources' Forest Conservation Policy in Kapuas Hulu District, West Kalimantan



Plantation companies seeking to avoid destroying forests and causing climate change have been advised to set aside forests and peatlands within their concessions. But what are the implications for forest peoples? Do they benefit or does this further curtail their rights?

This field study looks at how Golden Agri Resources (GAR) is piloting this approach in the centre of Indonesian Borneo, in Kapuas Hulu, an upland area famous for its large lakes, extensive forests and peat swamps, and productive inland fisheries.

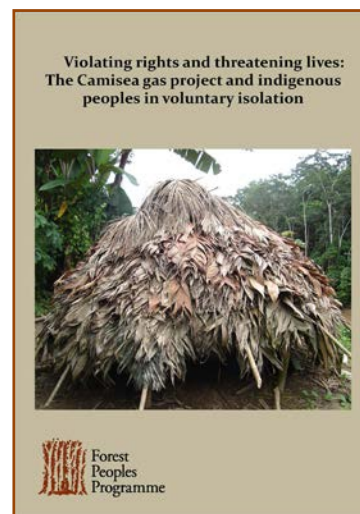
The findings are startling. Not only are 'high carbon stock' set-asides very unpopular but the whole operation is contested. Community lands have been taken without due process, in violation of the RSPO standard. Forest-living Dayaks, losing lands to plantations and set-asides, complain of land scarcity, while Malay fisherfolk accuse the company of river pollution, declining fishstocks and problems breeding fish.

In this case GAR has now promised to put things right. This will mean starting again, by mapping land rights and renegotiating access to community lands – and accepting that when communities say 'no', then the company should back off.

Read this report in English here:

<http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2014/independent-review-social-impacts-golden-agri-resources-forest>

## 3. Violating rights and threatening lives: The Camisea gas project and indigenous peoples in voluntary isolation



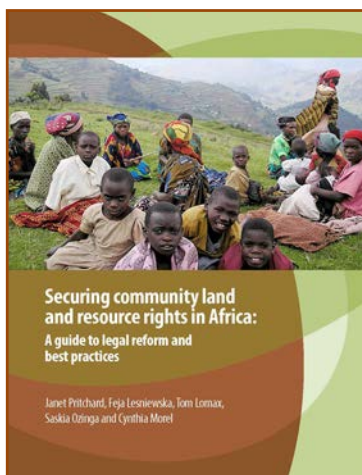
This report highlights the existing impacts of the Camisea gas project in the south-east Peruvian Amazon on indigenous peoples living in 'voluntary isolation' ('isolated peoples') in the Kugapakori-Nahua-Nanti and Others' Reserve. It also summarises the evidence documenting the occupation and use of the Reserve by isolated peoples and describes

how the project's current planned expansion risks causing further negative impacts for isolated groups and threatens to violate their fundamental rights to life and a healthy environment, territorial and cultural integrity and self-determination. In sum, the report finds that this project threatens their very existence and survival as indigenous peoples.

Read this report in English or Spanish here:

<http://www.forestpeoples.org/topics/extractive-industries/publication/2014/violating-rights-and-threatening-lives-camisea-gas-pro>

#### 4. Securing community land and resource rights in Africa: A guide to legal reform and best practices



This Guide, produced by FERN, the Forest Peoples Programme (FPP), ClientEarth and the Centre for Environment and Development (CED), explains key aspects of law and land rights that are important for securing community ownership and control of land and resources – also referred to as secure land and resource tenure. It explains how to identify

and create opportunities for law reform and offers examples of reforms that have taken place in several African countries.

##### **This Guide is not exhaustive but aims to:**

- support an understanding of key aspects of a ‘good’ law and law reform process. By ‘good’ we mean laws and reforms that both respect human rights and are implemented, enforceable and participatory.
- give guidance on how to critically analyse an existing law or a proposed draft law;
- provide ideas on how to make the best use of law reform opportunities that arise.

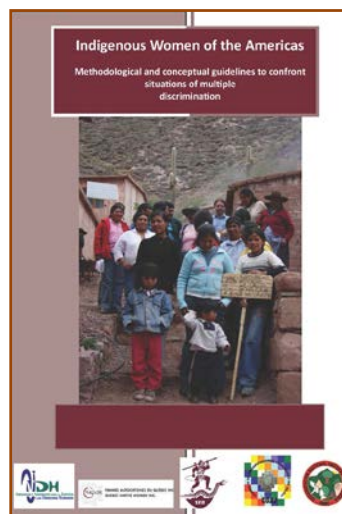
##### **The Guide is set out in six parts:**

- Part 1 offers political and economic arguments in favour of reforming land tenure and natural resource laws to clarify and secure community land and resource rights.
- Part 2 explains the elements of good laws, different sources and systems of law, and the living reality of legal pluralism.
- Part 3 outlines how international and regional human rights law can be used to support a reform process and address a lack of coherence between national laws and international/regional laws.

Read this report in English or French here:

<http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2014/securing-community-land-and-resource-rights-af>

#### 5. Indigenous Women of the Americas - Methodological and conceptual guidelines to confront situations of multiple discrimination



This document, presents guidelines for working with indigenous women, that were collectively created from experiences in Canada, Mexico, Colombia and Argentina. We hope that our efforts will contribute to the building of a detailed methodology to deal with discrimination against Indigenous Women both when bringing cases to justice and when conducting research.

“Our methodological construction process drew on the experience of organized indigenous women. Each team and each situation took the perspective of indigenous communities into account as well as the experiences of regional and national indigenous and human rights organisations. It was an intercultural and multidisciplinary experience. We worked together to help strengthen awareness of rights among women themselves, documenting instances of discrimination from their own experience and strengthening the capacity of our organisations to facilitate access to justice.”

Read this report in English or Spanish here:

<http://www.forestpeoples.org/topics/gender-issues/publication/2014/indigenous-women-americas-methodological-and-conceptual-guide/>

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