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JOINT SUBMISSION TO THE UN WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

ENSURING RESPECT FOR HUMAN RIGHTS IN THE CONTEXT OF "ECONOMIC DIPLOMACY"
AND INVESTMENT / TRADE PROMOTION

12 MARCH 2018

Both ENDS¹ and the Forest Peoples Programme² are Dutch and UK NGOs respectively working on issues related to business and human rights. Please accept this joint submission for consideration for input on the 2018 Annual Report to the Human Rights Council.

Executive summary

Despite increasing numbers of ambitious commitments by both governments and the private sector to respect human rights in business activities and along supply chains, the world is witnessing a growing number of human rights violations inflicted upon local communities and violence against human rights and environmental defenders. The expansion of industrial agriculture and extractive frontiers in tropical countries is a leading cause, driving widespread deforestation, land-grabbing, and conflicts between forest and indigenous communities and commercial land-users, their security staff and police forces, which in turn generate rights abuse and negative impacts on human rights.

A group of 14 human rights defenders and leaders of indigenous and community organisations from 11 agri-commodity producing countries (Peru, Colombia, Paraguay, Argentina, Guyana, Suriname, Liberia, Cameroun, Democratic Republic of Congo, Malaysia and Indonesia) came together with European NGO representatives in Amsterdam between 12 – 14 February 2018 for an international forum on *Closing the Gap: Human Rights, Deforestation and Supply Chains*.³

¹ Both ENDS works together with environmental justice groups from poor and developing countries, towards a sustainable, fair and inclusive world. We gather and share information about policy and investments that have a direct impact on people and their livelihood, we engage in joint advocacy, we stimulate the dialogue between stakeholders and we promote and support sustainable local alternatives. www.bothends.org/en.

² Forest Peoples Programme supports the rights of peoples who live in forests and depend on them for their livelihoods. We work to create political space for forest peoples to secure their rights, control their lands and decide their own futures. www.forestpeoples.org.

³ For detailed information regarding the international forum and detailed research presented and discussed therein, please see: <https://rightsanddeforestation.org/>.

The delegates and leaders produced a Call to Action and specific Proposals for Action to governments, the European Union, relevant United Nations entities, industry bodies and the private sector to address the widening gap between the human rights obligations of States and non-binding commitments of business enterprises on the one hand, and the escalating trend of deforestation and related human rights violations on the other.

The Call to Action and Proposals for Action are **annexed** at **Annex A** and, together with the information set out below, forms our joint submission.

We particularly draw your attention to the recommendations under Section A of the Proposals for Action (regarding protections for human rights defenders), but believe the recommendations for all actors have relevance to this call.

In addition, a copy of a recent FPP and partner report titled “Closing the Gap” is **annexed** at **Annex B**, in which Figure 1 in particular identifies the human rights impacts associated with uncontrolled industrial-scale deforestation driven by the agri-business and extractive sectors.

Human rights responsibilities and obligations of business enterprises and corporations

In 2018 it is indisputable that there is clear consensus within the international community that business enterprises and corporate entities, like transnational corporations, have responsibilities to respect international human rights law in their operations, investments, supply chains and decision-making. It is well established that companies and businesses also have legal obligations to fully apply with human rights laws and standards in national jurisdictions where they operate, invest or source commodities or services.

These responsibilities and obligations include both duties to avoid, mitigate and redress impacts on human rights directly caused by their actions, and also to avoid, mitigate and redress human rights violations *indirectly* caused by their business activities and actors in their *supply chains*.

Increasing number of voluntary commitments

There have been countless government and private sector commitments, policies, action plans, declarations and certification schemes (among others) recognizing the need for business enterprises to respect human rights preceding and particularly since the launch of the *UN Guiding Principles on Business and Human Rights* in 2011. National governments continually express, in various forms, their endorsement of the international community’s expectation that businesses and corporate entities must ensure their activities and supply chains respect human rights.

However, very few of these commitments are directly binding on State or non-state actors, and most have weak or non-existent mechanisms for enforcement. In too many cases it is unclear whether they have any discernable effect on corporate or State behaviour.

Clear link between international trade in agri-commodities and deforestation

At the same time, the international community has recognised the link between increasing global deforestation and climate change.⁴ Research suggests that the

⁴ World Economic Forum, (2017), ‘Commodities and Forests Agenda 2020: Ten priorities to remove tropical deforestation from commodity supply chains’, [white paper prepared by Climate Focus on behalf of the Secretariat of the

industrial/commercial agriculture alone is responsible for two-thirds of tropical deforestation in Latin America and one-third in Africa and sub-tropical Asia,⁵ and that over half of all global tropical deforestation (representing 15% of total global GHG emissions) is caused by the commercial production of four commodities: soy, palm oil, beef, and pulp & paper.

Consequently, there is international consensus on the urgency to make the global trade in agricultural commodities associated with deforestation (including soy, palm oil, beef, pulp & paper, timber) 'sustainable' and deforestation-free. To that end, governments and industries have also made non-binding commitments to 'no deforestation' and 'zero deforestation' trade. Yet the rate of global deforestation and its associated human rights and environmental impacts continues to increase.

Correlation between trends of global deforestation and human rights violations

Research shows that about half the land cleared globally for commercial agri-commodity expansion occurs *illegally* without community consultation or consent or adequate social or environmental impact assessments.⁶ On top of this, half the agri-commodities produced from *illegally* cleared land are grown directly for export markets and find their way into global supply chains.⁷

The global trade in agri-commodities like palm oil, soy, and beef has grown hand-in-hand with not only deforestation, but also land-grabbing, illegal forest clearing, and human rights violations including intimidation, violence, abuse and impoverishment of indigenous and forest peoples and rural communities. These rights violations frequently occur with the tacit support of local police and many communities report being 'criminalised' for asserting their rights against corporate land-users.

The world is now witnessing a growing trend of community leaders, trade unionists, workers and environmental and human rights defenders being intimidated, harassed, threatened and murdered in connection with commercial agricultural and industrial activities. 197 environmental defenders were violently murdered in 2017 – an average one murder *every 44 hours*.⁸

Despite all the voluntary business and governmental commitments to respect human rights and stem global deforestation, the gap between rhetoric and reality is *widening*.

Close the Gap: a call to action from indigenous community & civil society leaders

This widening gap between government and private sector commitments on business and human rights and deforestation-free trade, and the reality 'on the ground' of escalating human rights violations and increasing deforestation (both 'legal' and illegal) is the basis of a recent study⁹ undertaken by the Forest Peoples Programme and an international

Tropical Forest Alliance 2020], at p. 4, available at https://www.tfa2020.org/wp-content/uploads/2017/12/TFA2020_CommoditiesandForestsAgenda2020_Sept2017.pdf.

⁵ Kissinger, G., M. Herold, V. De Sy (2012), *Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers*, Lexeme Consulting, Vancouver Canada, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65505/6316-drivers-deforestation-report.pdf.

⁶ For example see <https://www.globalwitness.org/en/campaigns/forests/>.

⁷ Forest Trends (2014), *Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations*, Forest Trends Report Series September 2014, at p. 2, available at http://www.forest-trends.org/documents/files/doc_4718.pdf.

⁸ Monica Ulmanu, Alan Evans and Georgia Brown (2017), 'The defenders', *The Guardian*, available at <https://www.theguardian.com/environment/ng-interactive/2017/jul/13/the-defenders-tracker>. See also Jonathan Watts and John Vidal (2017), 'Environmental defenders being killed in record numbers globally, new research reveals', *The Guardian*, available at <https://www.theguardian.com/environment/2017/jul/13/environmental-defenders-being-killed-in-record-numbers-globally-new-research-reveals>.

⁹ See <https://rightsanddeforestation.org/>.

forum on *Closing the Gap: Human Rights, Deforestation and Supply Chains*, co-hosted by Both ENDS and the Forest Peoples Programme in Amsterdam between 12 – 14 February 2018.

The forum was attended by 14 indigenous community and NGO leaders from 11 agri-commodity producing countries (Peru, Colombia, Paraguay, Argentina, Guyana, Suriname, Liberia, Cameroon, Democratic Republic of Congo, Malaysia and Indonesia) along with European NGO representatives.

The resounding consensus was that many governments, ministries, industry bodies, and private sector stakeholders have policy commitments to respect human rights, often in terms consistent with the *UN Guiding Principles on Business and Human Rights* or the *OECD Guidelines*, but they are simply not being implemented or acted upon.

States continually express their expectations that business enterprises and corporate actors will respect human rights, but consistently fail to exert adequate pressure to ensure these expectations are met and repeatedly neglect to verify whether business enterprises and corporate actors registered in their jurisdictions are acting consistently with international human rights law.

In the case of agri-commodities and consumer countries, there is a potential serious conflict of interest between national strategic economic interests and enacting robust or binding measures to ensure corporate respect for human rights. In many cases, the ubiquitous prevalence of corruption, organised narcotics trade, weak law enforcement, land-grabbing, illegal deforestation, and human rights violations in regions where strategically important agri-commodities and other conflict commodities are produced, often means that the state's role as an economic actor unavoidably competes with the state's obligations to safeguard human rights.

While importing countries, including EU member States, continue to espouse proud and progressive rhetoric about business and human rights, they continually ignore the role of corporate actors resident in their jurisdictions in relation to human rights violations linked to the production-end of supply chains entering Europe. The same States neglect to exert meaningful leverage to require effective human rights due diligence by businesses, traders and investors; and thereby fail to ensure those corporate actors take steps to ensure their business activities respect basic existing human rights standards.

The Closing the Gap forum mentioned above has generated a series of actionable recommendations for achieving more effective frameworks for human rights due diligence in conflict commodity supply chains, as set out in the Proposals for Action **annexed** to this submission.

Both ENDS and FPP hope that the Working Group will find this submission informative and are willing to provide more information if required.

ANNEX A

CALL TO ACTION FROM THE CLOSING THE GAP FORUM – AMSTERDAM, 15 FEBRUARY 2018

After travelling from our communities and forest territories in Asia, Africa and Latin America, and following three days of urgent and intensive discussion in Amsterdam, we, the representatives of indigenous, forest and land-based communities from the organisations named below, with the support of Both ENDS and Forest Peoples Programme, issue the following call to action:

Indigenous, forest and land-based peoples around the globe are today suffering unprecedented developmental injustice. Our communities, lands and territories are impacted, degraded and stolen by the encroachment of industrial agribusiness; mining, oil and gas; logging; mega-projects and infrastructure; illicit crops; urban expansion and imposed climate-related projects. Even so-called 'legal' industries are so often linked to corruption, violation of communal land rights and impunity for environmental and human rights impacts, weakening local democratic institutions and creating space for criminal organisations.

Our traditional lands, territories and forests are being cleared against our will and at an increasing rate. According to the European Commission, the consumption of beef, soy and palm oil in the EU alone causes the clearance of 18 football fields of tropical rainforest every minute.¹⁰ As a result, our people endure increasing social injustice and environmental violations, threats to livelihoods, food and water sovereignty, abuses of community and indigenous cultural and territorial rights, displacement, oppression, intimidation, physical abuse and the murder of local people, their leaders and human rights defenders. Everywhere around the world our peoples are under increasing pressure, are being driven from their territories, and abused and murdered by the agents of commercial interests, often in collusion with corrupt government officials.

Increased global consumption is driving rampant deforestation, rights abuses and land and forest grabs, perpetrated by private and state-owned companies and their financiers. These companies, illegal actors, and abusive state agencies are often enabled by governments, unjust trade policies and unaccountable international finance. Despite voluntary commitments, companies and financiers continually fail to respect basic international human rights law and related standards. There is an abundance of government, industry, multilateral and voluntary schemes which purport to offer solutions, but all we see is a growing gap between what is promised and what is happening on the ground. On paper it seems our rights are respected, but in practice they are too often ignored or used as a way for business interests to enter our lands.

The link between disappearing forests and climate change is clear. Global deforestation and forest degradation releases almost as much greenhouse gas emissions as all the cars, trucks and buses in the world combined.¹¹ The 2015 Paris Climate Accord recognized our important role as indigenous peoples and local communities, and the role of our traditional knowledge in dealing with - and adapting to - climate change. Respecting our rights, especially our land and territorial rights, is the way to save the world's forest and protect us all from climate change.¹²

In order to deal with these problems we need to put people first – people are more important than company profits.

¹⁰ See http://ec.europa.eu/environment/forests/impact_deforestation.htm.

¹¹ Sims R., et al. 2014: Transport. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change and Smith P. et. al (2014): Agriculture, Forestry and Other Land Use (AFOLU). In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

¹² See <https://www.wri.org/sites/default/files/securingrights-full-report-english.pdf>.

Forest peoples are the protectors of the forest; if we had not been protecting nature, the forests would be gone by now. Despite all of the pressure being brought to bear on us, we are creating our own varied solutions, building on our unique cultures and 'cosmovisions' in harmony with nature. We need genuine recognition, protection and respect of our rights, political space, and at times limited support, to be able to realise these creative and collective solutions.

These solutions are based on demarcating and titling our land and territories according to our customary law and traditional systems of land tenure. Other essential actions and proven solutions for sustaining our cultures and forests include self-government, participatory mapping and monitoring our forests, strengthening our own alternative local economic models, developing agro-ecological systems, using legal cases and complaints mechanisms, as well as direct action.

We reject false solutions that are being imposed on us by outsiders, often in the name of climate change, 'development' or the 'national interest', without our free, prior and informed consent.

In light of the worsening situation of indigenous, forest and land-based peoples and accelerating forest loss around the world:

- We demand that all governments, companies, banks and financiers recognise and respect our customary land rights and the right to our own self-determined development, so we can defend, fully control and manage our land, territories and forests, for the benefit of our peoples and all the world.
- Concerned that global consumption is driving negative impacts on our lands, as well as marginalising small-scale producers in both producing and importing countries, we demand that governments, especially governments of high-consuming countries, act now to progressively reduce consumption, with a focus on empowering local production.
- We demand that governments ensure transparency, effective investigation, law enforcement and sanctions for human rights violations, financial and environmental crimes committed by governments, companies and their financiers, all along the supply chain and take robust steps to confront organised crime and illegal trade within these supply chains.
- We demand that governments take urgent measures to resolve land and forest conflicts in full respect of our rights, and put stronger protections in place at the local, national and global levels to guarantee the security and safety of our at-risk human rights and forest defenders.
- We demand that governments acknowledge past violations of our rights, ensure there is land restitution, reconciliation and reparations for the loss of land, water, livelihoods, cultural heritage and sacred forests, with guarantees of non-repetition.

Organisations:-

Association of Saamaka Authorities (VSG), Suriname

Autonomous Territorial Government of the Wampis Nation (GTANW), Peru

Federation for the Self Determination of Indigenous Peoples (FAPI), Paraguay

Federation of Native Communities of Ucayali (FECANOU), Peru

Indigenous Council of Middle Amazonas (CRIMA), Colombia

Land Workers Union (UTT), Argentina

OKANI, Cameroon

OPD, Colombia

PUSAKA, Indonesia

Réseau Ressources Naturelles (RRN), Democratic Republic of Congo

South Rupununi District Council (SRDC), Guyana

Sustainable Development Institute (SDI), Liberia

Sabah Environmental Protection Association (SEPA), Malaysia

Social Entrepreneurs for Sustainable Development (SESDev), Liberia

TuK INDONESIA, Indonesia

International Forum on Closing the Gap: Human Rights, Deforestation and Supply Chains

PROPOSALS FOR ACTION

Background: This set of recommendations is the result of a three-day meeting between 14 indigenous leaders, human rights defenders and activists from 11 countries (Peru, Colombia, Paraguay, Argentina, Guyana, Suriname, Liberia, Cameroun, DRC, Malaysia and Indonesia) working with different social justice NGO allies, who together held a forum on "**human rights, deforestation and supply chains**" in the city of Amsterdam, the Netherlands, between the 12 and the 14 of February, 2018. As a result of this meeting, we adopted a [Call to Action](#) in a consensual manner issued on 15 February 2018.

In addition, we formulated precise recommendations for different actors, sectors and initiatives supporting efforts to combat deforestation and involved in formulating policies on sustainable trade. The recommendations presented below are aimed at promoting and accelerating a positive and effective change in the global supply chains of commodities with a high risk of generating conflicts and serious harmful impacts on our peoples, lands, forests and territories.

A. To all national, provincial and local governments, the European Union, the United Nations, local and international civil society

Take urgent action to increase and improve protections afforded to human rights, forest and environmental defenders ("HRDs"), and their families, colleagues and communities by, *inter alia*:

1. Giving increased support to prevention and protection measures for human rights and forest defenders in their territories at the local level, including support, for community-based prevention and protection initiatives for strengthened early warning and security systems;
2. Raising public awareness and empathy of citizens in forest countries on the positive work of HRDs, using the media and dissemination of public information;
3. Establishing dedicated national protection programmes for HRDs, which include an early warning system to trigger the launch of preventive and protective measures and address risks to defenders' family and community members and colleagues;
4. Providing urgent training to security and law enforcement officials, including national police and security forces, on HRDs and the need to refrain from coercion, false imprisonment, intimidation and criminalisation of peaceful protesters and rights activists;
5. Prohibiting and sanctioning human rights abuses occurring in other countries that are committed, caused or contributed to by multinational corporations resident or registered in local jurisdictions and providing effective mechanisms of redress that enable foreign victims to pursue remedies in local jurisdictions;
6. Increasing support via bilateral and global programmes for HRDs, including targeted donor support to national initiatives and programmes on HRDs – such as the proposed Integrated Programme for the Security and Protection of Human Rights Defenders in local indigenous, ethnic and smallholder territories in Colombia;

7. Expand and strengthen existing HRD initiatives such as the “Shelter City Initiative” coordinated by Justice and Peace Netherlands, to afford protection to HRDs facing extreme levels of risk/when she or he feels under extreme threat.

B. To the Dutch Government and all signatories of the Amsterdam Declarations:

Pursue, strengthen and accelerate collective and individual efforts of the Amsterdam Declarations signatory countries to implement commitments in the **Amsterdam Declarations**, by, *inter-alia*:

1. Taking additional urgent actions to include stronger elements under this initiative to promote recognition and protection **human rights**, and guarantee secure rights of indigenous peoples and local communities over land and their territories;
2. Supporting traditional and local forms of self-government for defending communal and collective territories, lands and forests against deforestation pressures;
3. Establishing a central ombudsman’s office for this intergovernmental initiative, hosted by one of the signatory governments, with powers to receive, investigate and verify complaints and grievances from individuals, local communities and civil society organisations regarding different agri-commodity supply chain actors, including producers, financiers, certification schemes, and national and transnational companies;
4. Exploring country-led options for establishing an independent national sustainable trade ombudsman’s office in each signatory country with powers to investigate allegations of human rights abuses and illegal deforestation linked to companies registered in signatory countries (including financiers and consultancy firms) with operations or investments overseas;
5. Setting up public national human rights risk registers for each producer country to guide and carefully scrutinise foreign trade and investment agreements, and to inform due diligence by companies, traders and investors registered or resident in signatory countries;
6. Ensuring that where commodity certification standards are used as a proxy for supply chain sustainability (for palm oil, beef, soy etc), that these certification standards are **fully aligned with international human rights law norms**, backed by robust compliance, verification and accountability mechanisms and that any loopholes in such accountability frameworks are closed, including any gaps in complaints and redress mechanisms and/or membership rules are rectified;
7. Supporting **upward harmonisation of certification standards** and their complaints and redress mechanisms to meet minimum benchmarks for human rights, land rights and forest protection;
8. Adopting measures to require agri-commodity companies, financiers, investors, traders and retailers to undertake robust human rights, land tenure and territory and forest protection due diligence for their supply chains and investments, including through binding national laws on corporate due diligence obligations;
9. Imposing stricter and binding controls on financial institutions registered in signatory countries to ensure they comply with due diligence obligations and do not off-load responsibilities through using financial intermediaries and subsidiaries, banks and financial bodies, which do not adhere to the Equator Principles and fundamental human rights and environmental standards;

10. Adopting more explicit responsibilities for signatory governments themselves in ensuring supply chains entering their jurisdictions are sustainable, compliant with international human rights law and all applicable national laws, and introducing minimum benchmarks to ensure accreditation is only given to robust certification standards which incorporate international human rights norms;
11. Supporting industry and civil society actions, initiatives and programmes to strengthen compliance and increase supply chain accountability to communities, including through **closing accountability loopholes** and actions to make complaints mechanisms of palm oil and other agri-commodity certification schemes more independent, agile and accessible;
12. Providing targeted assistance to organisations and communities of indigenous peoples and other first peoples and/or forest dependent communities to monitor government, company and investor compliance with human rights and land tenure standards in agri-commodity and conflict-commodity supply chains;
13. Promoting well-resourced **national anti-corruption initiatives** in agri-commodity producing nations with high deforestation rates, learning lessons from the strengths and weaknesses of existing anti-corruptions drives in Indonesia and Malaysia;
14. Stepping up support to **inter-agency bilateral and multilateral programmes for police and justice cooperation** to tackle illegal forest conversion, forest crime and related human rights violations, backed by robust associated independent monitoring mechanisms;
15. Undertaking public education programmes in each country to raise awareness among citizens and young people of the human rights and deforestation impacts of conflict commodity supply chains, including violence, corruption, criminality, rights abuse and environmental harm associated with the international drug trafficking and the narcotics trade.

C. To the European Union and European Commission

Accelerate actions to ensure EU/EC policy coherence and implement commitments and targets on human rights, forests, conflict commodities and good governance of land tenure enshrined in different EU and EC policies, including the EU Guidelines on Human Rights Defenders (2008), EU's Trade for All Policy (2015), the EU Action Plan on Human Rights (2015), the European Consensus for Development (2017) and renewed EU and European Council commitments to the EUTR and FLEGT and FAO Voluntary Guidelines on Responsible Governance of Tenure ("VGGT"), through, *inter alia*:

1. Taking urgent decisions and concerted actions to develop and adopt a fully-fledged **EU Action Plan on Deforestation and Forest Degradation**;
2. Incorporating well-resourced **right-based components** in the aforesaid EU Action Plan, including:
 - a. Allocation of existing and new EC budget to create a **dedicated EU Community Forest Tenure Fund** providing direct support to indigenous peoples and other first peoples and/or forest dependent communities;
 - b. Targeted EC budget support for **community-conserved forests and territories**, enabling direct and easily accessible funds for grassroots actions in support of community forest management, autonomous traditional systems of self-government, sustainable livelihoods and self-determined development by indigenous peoples and other first peoples and/or forest dependent communities,

- including support for forest peoples to protect, restore and defend their customary lands, territories, forests and waters, especially in conflict areas;
- c. Assistance for **independent community-based monitoring of conflict commodity supply chains** to assess compliance with human rights, land and territorial rights and forest protection standards;
 - d. Setting up a new dedicated and permanent dialogue space to establish an "**EU-Indigenous Peoples Forum on Forest Defenders, Territories and Biodiversity**".
3. Formulating new **EU binding instruments to regulate conflict commodity supply chains**, including for agri-commodities (beef, soy, palm oil etc) linked to human rights abuse, illegal land acquisition and deforestation;
 4. Expanding and **reinforcing arrangements for preventing, monitoring and verifying human rights impacts of EU bilateral and multilateral free trade and investment agreements**, including via verifiable indicators and independent community-based monitoring and reporting initiatives, including through the development of an *EU Human Rights Risk Register by producer country*¹³ - to guide and scrutinise foreign trade and investment agreements, and to inform due diligence by the EC itself, European companies and EU member states;
 5. Adopting policies to ensure EU and EC commitment to, and alignment with, UNDRIP and related instruments on the rights of indigenous peoples are respected in EU trade agreements, including through a review of supply chain legality criteria for FLEGT VPAs to include international law and customary law as part of legality definitions;
 6. Strengthening compliance with the EU policy on Indigenous Peoples with improved **human rights safeguards and complaints mechanisms for all EC development cooperation**, including developing safeguards to prevent abuse of forest peoples' rights by recipients of EC development cooperation alongside clear criteria for the suspension of funding in cases of proven forced evictions and other right violations;
 7. Expanding EU support for crime-free and deforestation-free EU supply chains via **inter-agency, bilateral and multilateral programmes for police and justice cooperation** to tackle illegal forest conversion, forest crime and related human rights violations, including through involvement of Europol, Interpol, importing and producing countries, and local and international civil society organisations.
 8. Amending the EUTR scope and rules to cover forest-risk products like charcoal and require the seizure of timber placed on the EU market in violation of its Due Diligence provisions;
 9. Reinforcing existing EU support for human rights defenders through strategic partnerships to support national programmes and initiatives for those countries with a high risk violence against HRDs.
 10. Promote, scale up and empower alternative strategies for economically and environmentally sustainable systems of food production via increased support for local food security and food sovereignty and reforms in EU and EC agricultural, trade and development policies to enable strengthened local, diverse and ecological farming

¹³ This might include a public database of human rights risk factors and indicators, which could include, among others: customary land ownership and security; past or present reports of human rights violations including women's rights violations; prevalence of corruption; prevalence of narcotics trade; reported incidences of land-grabbing; evidence of non-compliance with or violation of international law and human rights conventions; serious lack of food security and food sovereignty; lack of water security and sovereignty for local and indigenous communities; intimidation, injury and murder of human rights, forest and land defenders; absence of proof that local communities have their own freely chosen representatives, safe spaces, and means to influence policies impacting their rights, livelihoods, land or territories.

systems both in third countries producing and supplying agri-commodities to Europe and in EU countries, including support for small scale technological developments.

General recommendation: Overhaul the current EC grant-making procedures and budget lines to reduce bureaucracy and remove barriers which currently channel the bulk of EC grant funds to consultancies, large global agencies and bigger international NGOs. Changes must ensure EC grants are more accessible to community organisations, indigenous peoples and other first peoples and/or forest dependent communities.

D. Tropical Forest Alliance 2020

To fulfil commitments to uphold forest peoples' rights, ensure effective participation of communities and fully align TFA2020 planning and initiatives (including the Africa Palm Oil Initiative ("APOI") and TFA2020 national action plans and operations) with the UN Declaration on the Rights of Indigenous Peoples and related human rights instruments; and to apply land tenure standards such as the FAO VGGT, the TFA2020 should, *inter alia*:

1. Better integrate full respect for human rights, including respect for customary collective community rights to land and FPIC for indigenous peoples and other first peoples and/or forest dependent communities in its policies through adoption of a human-rights based approach to sustainable supply chains and measures to combat deforestation;
2. Adopt clear mechanisms for the effective protection of customary community rights to land as a central plank of its policy and actions, as one of the most effective mechanisms for reducing deforestation;
3. Guarantee effective engagement with local and national human rights NGOs, as well as communities whose lands are affected by agri-commodity supply chains, including robust procedures to ensure community organisations and forest defenders are informed and supported to participate in any TFA2020 sponsored initiatives that may affect their lands territories and forests;
4. Include an independent, effective, accessible and agile human rights complaints mechanism, as well as a permanent monitoring committee with guaranteed representation indigenous peoples and other first peoples and/or forest dependent communities, in all national TFA2020 programmes and initiatives, with clear outreach and culturally appropriate information on technical policies such as jurisdictional approaches, High Carbon Stock Approach and High Value Forest tools;
5. Undertake annual independent audits of compliance with applicable human rights, tenure and forest protection standards in TFA programmes and projects and enable sanctions and enforcement of applicable laws.
6. Pursue effective conflict resolution and redress for human rights and land rights violations and provide rehabilitation and restitution for the victims and measures to restore the environment.

E. Commodity certification schemes

1. All existing and developing certification schemes (including those emerging schemes for agri-commodities like beef) must be harmonised to include obligatory standards requiring respect for customary community land rights, the right to a clean environment and the application of free, prior and informed consent prior to the acquisition or use of any lands and territories owned by indigenous peoples and other first peoples and/or forest dependent communities according to their customary laws. This requirement should be the subject of a direct, separate

confirmation independent validation with affected peoples and communities by certifying bodies prior to any verification or expansion;

2. All certification standards for agri-commodities and other supply chains of products that generate conflict must include specific norms on human rights, including policies on human rights defenders, and safeguards to avoid retaliation against whistleblowers;
3. Any time an audit is conducted of certified production, affected communities should be given the opportunity to submit information directly to the certifying body (to be considered alongside the auditor's report), in order to ensure that communities' perspectives are adequately represented before any decision on (continued) certification is taken.
4. Certification bodies must enable an active role for local communities and independent bodies chosen by rights holders in verifying company performance of FPIC requirements and adopt processes that place the burden of proof on companies to demonstrate that FPIC processes have been properly completed with the full and effective participation of indigenous peoples and other first peoples and/or forest dependent communities;
5. All certification schemes should have genuine, agile, independent and effective redress mechanisms available to communities and for rehabilitation of the environment in cases of environmental damage;
6. In view of the problem of companies exiting certification schemes when complaints, certification bodies should prepare an options paper, which considers options for dis-incentivising or otherwise penalizing companies which leave certification scheme for non-compliance or suspected non-compliance with their obligations (leaving affected communities and/or workers without redress). This options paper should consider the possibility of requiring a "deposit" or "bond" from producer companies. Once developed, this options paper should be the subject of discussions within the membership of the certifying body.

F. To companies and investors involved in projects acquiring or using customary lands with significant risk of impacts on human rights and ancestral, collective and/or community forests

1. All companies considering operations or investment (direct or indirect) in projects which involve the use or acquisition of lands and territories of indigenous peoples and other first peoples and/or forest dependent communities in forest, rural or peri-urban areas (subsequently referred to as "land investments") should conduct human rights due diligence in relation to the investment, with specific attention to the possibility of their project violating customary tenure rights (including unresolved claims or those not recognized under national laws). That due diligence should obligatorily include a site visit to consult with local people who may be affected by the proposal (rather than reliance on discussions with governments alone).
2. Companies involved in land investments should engage in internal training of their staff in relation to international human rights obligations, including particularly in relation to customary tenure rights of indigenous peoples and other first peoples and/or forest dependent communities, as well as the requirement of free prior and informed consent (FPIC). Companies should also develop strong internal protocols, compliant with international law, on the conduct of consultations and processes of free, prior and informed consent.
3. Companies should undertake to disclose and publish (redacting only genuinely commercially sensitive information) all contracts with national governments and

communities that relate to land investments. In particular, any contract or clause which relates to agreed benefits for communities should be published, and copies made physically available to communities concerned.

4. Companies should respect the letter and the spirit of their engagements with communities, and ensure that, when entering into such agreements, they are drafted in a form which will ensure they are binding and enforceable.
5. Companies should respect the culture of the territories in which they operate.
6. Companies should reconsider their project models, and ensure that all land investments which do or may affect indigenous peoples and other first peoples and/or forest dependent communities include real (and desired) benefits for affected communities. In particular, companies should, as a general principle, provide support to local development initiatives alongside any proposed development (including e.g. marketing support for local products, outgrowing schemes, local production systems, training and employment opportunities etc).
7. Financial institutions must have systems of control and due diligence to ensure that the lending to financial intermediaries and subsidiaries, banks and financial bodies providing credits for agro-industry sector such as soy maize and other commodities including the finances for big infrastructure projects, ports, railways, processing facilities/extraction plants, fully respect human rights, community tenure, protections for natural forests and fragile environments, including aquatic environments.

ANNEX B
CLOSING THE GAP REPORT



CLOSING THE GAP:

RIGHTS-BASED SOLUTIONS FOR TACKLING DEFORESTATION



Compilation and edition: This synthesis paper has been compiled by Tom Griffiths of Forest Peoples Programme (FPP), using case studies and information supplied by FPP partners, many of whom took part in the international workshop on deforestation and forest peoples' rights held in Palangka Raya (Indonesia) in 2014. Contributing organisations include Pusaka, Tuk Indonesia, SDI, APA, FECONAU, FAPI, SCPDA and SRDC. Case materials are also drawn from other FPP partners and allies working on human rights, agribusiness and forest policy reform in Africa and Latin America, most notably Okani, SesDev and the Regional Indigenous Council of Middle Amazonas (CRIMA).

Acknowledgements: Gratitude is also extended to Forest Peoples Programme colleagues who commented on different draft versions of this paper, including Conrad Feather, Marcus Colchester, Vanessa Jiménez, Tom Lomax, Chris Kidd, Carol Yong, Angus MacInnes, Andrew Whitmore, Clare McVeigh, Nadia Stone, Jak Wagnon, Maurizio Ferrari, Caroline de Jong, Justin Kenrick, Patrick Kipalu and Lassana Kone. Special thanks are also due to FPP volunteer Ana María Garrido for helping compile information and statistics. Peer review of country case study updates by Rodrigo Villagra of Tierra Viva (Paraguay) and Mayra Tenjo of Dedise (Colombia) is gratefully acknowledged alongside general review of the text by Gemma Tillack of the Rainforest Action Network (RAN).



This paper was funded by UK aid via the UK government through its Forest Governance, Markets and Climate Change programme, and by the Climate and Land Use Alliance (CLUA) under its Global Grants Programme. The views expressed in this publication remain the sole responsibility of FPP and do not necessarily represent those of the UK government or CLUA.

Top cover photo: Deforestation by oil palm plantation companies, Ucayali, Peru © 2014 Mathias Rittgerott

Bottom cover photo: Community members map land and resource damage caused by encroaching oil palm plantations for actions seeking land restitution and compensation, Maryland county, Liberia © 2017 Tom Rowley, FPP

Figure 1 photo: Deforestation for oil palm plantation in Liberia © Justin Kenrick, FPP

Design and layout: www.NickPurserDesign.com

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ISBN: 978-0-9955991-0-9

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Forest Peoples Programme is a company limited by guarantee (England and Wales) Reg. No. 3868836, our registered office is stated above. UK-registered Charity No. 1082158. It is also registered as a non-profit Stichting in the Netherlands.



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EXECUTIVE SUMMARY

This paper aims to inform forest policy makers, governments, businesses and others developing policies, standards and initiatives to reform global supply chains to tackle forest loss and uphold human rights. It synthesises findings from FPP and partner **case studies** on forest peoples' rights and tropical deforestation in Indonesia, Malaysia, Colombia, Peru, Paraguay, Guyana, Liberia, Cameroon and DRC. Additional analysis and updated information stems from wider ongoing FPP work on human rights and conflict commodity supply chains in the same countries.¹ Obstacles to reforms in supply chains driving forest loss and related rights violations are identified alongside multiple factors limiting the effectiveness of national and global forest and climate policies. Different zero deforestation (ZDF) policy approaches are evaluated and rights-based solutions are presented.

Along with actions to secure the land and territorial rights of forest peoples, this review finds that moratoria with conditions requiring government and company reforms before logging/land clearance bans are lifted can also be powerful in promoting change and safeguarding rights. Tools like the High Carbon Stocks Approach (HCSA) and jurisdictional policies, which combine the application of commodity and legal standards within a sub-national political geography or 'jurisdiction', may offer innovative approaches to respecting rights and ensuring legal and sustainable supply chains. However, these types of interventions are largely untested and carry considerable risks that top-down forest zoning and flawed law enforcement could marginalise and dispossess forest communities.

Key questions remain: How are past illegalities and injustices addressed? How are human rights protected? Who ensures the whole jurisdiction is 'compliant' and against which norms and standards?



Baka communities mapping traditional land use and tenure rights as defined by customary law and historical occupation in Ngoyla Mintom Forest, Cameroon
© 2016 Tom Rowley, FPP.

 FINDINGS:

- ▶ **Recognising and legally securing forest peoples' customary collective tenure and enabling strong community governance are proven to benefit communities and slow deforestation** via land titling and recognition and support for community rights to *govern, manage, monitor* and *control* their forests;
- ▶ Numerous governments (North and South) have made **progressive pledges to achieve zero deforestation by 2020 or 2030**, while commodity certification schemes and companies have made commitments to eliminate deforestation from supply chains, respect community tenure and uphold human rights, including the protection of the rights of indigenous peoples;
- ▶ Despite these positive commitments, and despite the evidence that rights-based approaches are effective, a **major implementation gap** exists: deforestation is *increasing* in many countries and threats to human rights and forest defenders are on the rise (e.g. Indonesia, Liberia, Paraguay, Peru, Colombia, DRC etc);
- ▶ **Rampant forest clearance is often linked to human rights violations**, land theft and harm to forest peoples' livelihoods alongside habitat destruction and damage to the global climate (all countries);

 OBSTACLES TO UPHOLDING HUMAN RIGHTS AND ACHIEVING 'DEFORESTATION FREE' SUPPLY CHAINS:

- **Aggressive and uncontrolled expansion of agribusiness, industrial plantations, extractive industries and trade in 'conversion' timber** driven by growing global and domestic demand for conflict commodities, including beef, soybean products, palm oil, timber, pulp, rubber, biofuels and minerals;
- **Weak land tenure security for communities, top-down (often corrupt) concession and land allocation frameworks** coupled with outdated national land and forest laws, which fail to recognise and protect the customary land rights of forest peoples and do not uphold the core standard of free, prior and informed consent (FPIC);
- **Contradictory global and national economic and development policies**, which promote key drivers of forest loss: agribusiness, bioenergy, large-scale mining, road building and other infrastructure (all countries);
- **Illegal resource use, land trafficking, corruption and organised crime**, including globalised illegal narco-trading linked to the timber, agro-commodity and mining industries (e.g. Colombia, Peru, Paraguay);
- **Faulty redress mechanisms**, which deny access to justice and allow impunity for human rights violators and forest destroyers (all countries);
- **Flawed industry certification schemes**: weak compliance, conflicts of interest, ineffective grievance mechanisms and major loopholes in accountability of company members;
- **Limited transparency and weak accountability in global supply chains**: weak business disclosure on due diligence, monitoring, verification and enforcement mechanisms and limited reporting on supplier compliance with Corporate Social Responsibility (CSR) policies;
- **Secretive international financial flows** along with incomplete due diligence by banks and investors;
- **Defects and gaps in multilateral, bilateral and national forest and climate schemes**, like REDD+;
- **Narrow 'forest centric' approaches** in zero deforestation laws and schemes, which risk marginalising forest peoples and causing rights abuse and deforestation to move or 'leak' to less regulated areas (e.g. Paraguay);



SOLUTIONS AND RECOMMENDATIONS:

Improving international and national forest and climate initiatives and enabling government, company and civil society to meet their positive commitments to eliminate deforestation, land grabbing and exploitation from global supply chains requires rights-based approaches, coherent policies and interventions that:

- Give primacy to ensuring **secure community tenure rights** and strong systems of community governance in global, national, sub-national and company schemes to combat deforestation;
- Put in place urgent **safeguards for untitled or unrecognised community lands and forests** in national policies, while land delimitation and demarcation processes remain pending;
- **Strengthen frameworks for the protection of human rights and forest defenders** locally and globally;
- Expand and **strengthen measures to combat organised crime, illicit trade and land trafficking** on the forest frontier backed by dedicated judicial initiatives to sanction human rights violators and illegal deforestation;
- **Enable reforms of outdated and unjust national land laws, forest tenure policies and resource concession frameworks** to ensure alignment with international human rights law and environmental standards, including reforms to ensure full respect for community customary land rights and FPIC;
- Ensure much stronger components and actions to **tackle the industrial and underlying drivers of forest loss**;
- **Combine supply side and demand side policies** to increase supply chain transparency and improve protections for human rights in global trade, including through both **mandatory legal instruments** as well as increased **regulation of international finance**;
- Undertake timely reforms to **resolve the “compliance and accountability crisis”** in commodity certification schemes through **improved enforcement, monitoring and verification mechanisms** and strengthened and more independent grievance and complaints procedures, including options for affected communities to access independent legal opinions and support;
- **Strengthen company compliance and due diligence systems** for the application of company CSR policies on human rights, land tenure and zero deforestation;
- Embed a **human rights-based approach** and measures to secure community land rights within jurisdictional and multi-stakeholder schemes for forest and climate protection, commodity certification and deforestation-free supply chains;
- Support and scale up independent **community monitoring** of conflict commodity supply chains and company compliance with no deforestation, no peat and no exploitation commitments;
- Accelerate progress towards a **binding international treaty** on business and human rights and ensure corporate actors of all sizes are subject to its provisions.



Tree nursery of the Indigenous Cañamomo Lomapieta Reserve (Caldas, Colombia), where Embera-Chami communities are restoring forests on ancestral lands recuperated from cattle ranchers © 2017 Camilla Capasso, FPP.



Industrial soy farming has resulted in displacement of indigenous peoples and massive deforestation in Eastern Paraguay © Tom Griffiths, FPP.

A. INTRODUCTION





Concerns about ongoing clearance and burning of natural forests in the tropics have generated multiple forest and climate initiatives and international forest funds over the past decade. The UN Climate Convention has established the Green Climate Fund to finance forest and climate protection, while governments like the UK, Germany and Norway have established bilateral funds supporting transnational ‘payments for results’ schemes to reward proven reductions in national deforestation rates. Most international forest policy makers now acknowledge that the primary cause of deforestation and greenhouse gas (GHG) emissions is large-scale forest clearance for industrial land uses propelled by growing global demand for commercial farm land, food, vegetable oils, fibre, biofuels, energy and minerals.

There is growing awareness that the trade in conflict commodities can have a heavy deforestation footprint in tropical forest countries. Over the period 1990-

2008, 27 EU member states imported 10% of global deforestation, of which more than a third was embodied in crop and livestock products exported from Southern forest nations.² Annual UK imports of palm oil, beef and soybeans alone, for example, require 7.9 million ha of land, often located in areas associated with high deforestation, land conflicts and human rights abuses.³ There is broad consensus that urgent actions are needed to reform ‘forest risk’ and conflict commodity supply chains to eliminate illegal deforestation, stop land grabs, and prevent clearance of high carbon stock and high conservation value forests.

An increasing number of governments, companies and civil society have pledged to work together to achieve “zero deforestation” or “zero net deforestation” by 2020 or to halt or reduce forest loss significantly by 2030 [Tables 1a, 1b, 1c]. For its part, the EU is currently considering options to develop an action plan to tackle imported or ‘embodied’ deforestation through an EU Action Plan on Deforestation and Forest Degradation (EUAPDD).

TABLE 1A - INTERGOVERNMENTAL BODIES AND GLOBAL INITIATIVES

 STAKEHOLDER	 FOREST AND DEFORESTATION	 SUPPLY CHAINS	 HUMAN RIGHTS/TENURE
Pledges and commitments			
CBD	Aichi Target 5: By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero...	Aichi Target 4: By 2020... Governments, business and stakeholders... have implemented plans for sustainable production and consumption	Aichi Target 18: Traditional knowledge, and practices of indigenous and local communities will be respected
UN SUSTAINABLE DEVELOPMENT GOALS (SDGs) (2015)	Target 15.2: by 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests...	SDG12: “Encourage companies... to adopt sustainable practices and to integrate sustainability information into their reporting cycle”	No explicit SDG goals on human rights: addressed indirectly ⁴ SDG1 on ending poverty contains targets and indicators on land ownership
NEW YORK DECLARATION ON FORESTS (2014)	Cut natural forest loss by 50% by 2020, and strive to end it by 2030 ⁵ Restore 150 million ha of degraded landscapes and forest lands by 2020 ⁶	Help meet private sector goal of eliminating deforestation from the production of agricultural commodities such as palm oil, beef and paper by 2020 ⁷	Strengthen forest governance and empower communities - recognising the rights of indigenous peoples, “especially those pertaining to their lands and resources”
TROPICAL FOREST ALLIANCE 2020 (2012)	Committed to achieve zero net deforestation by 2020 for palm oil, soy, beef, and paper and pulp APOI commits to adopting locally-adapted tools such as the HCV and HCS concepts	Latin America and Southeast Asia: aims to eliminate deforestation from key ⁸ agricultural and other forest commodity supply chains Africa: Africa Palm Oil Initiative (APOI) aims to transform palm oil sector into a sustainable driver of low carbon development ⁹	APOI-Marrakesh Declaration (2016) commits to... respecting... the rights of local communities and indigenous peoples

Name check:

conversion timber = wood from forest cut to make way for crops, pastures, plantations or infrastructure¹⁰

Fact checks:

- Half of tropical wood in international trade is ‘conversion timber’ (much cleared to make way for agribusiness), with at least 1/3 coming from illegal forest conversion.¹¹
- large industrial mines and medium scale mining make up 10% of deforestation in the Amazon and Central Africa.¹²

Fact checks:

- Imported palm oil makes up one third of all biodiesel produced and consumed in the EU.¹³
- The EU27 imports and consumes more than 1/3 of globally traded crops and livestock products associated with deforestation in tropical forest countries.¹⁴
- EU is the world’s 2nd largest importer of soy products after China (97% of soy used for EU livestock feed is imported).

TABLE 1B - REGIONAL BODIES AND INITIATIVES









 STAKEHOLDER	 FOREST AND DEFORESTATION	 SUPPLY CHAINS	 HUMAN RIGHTS/TENURE
Pledges and commitments			
EUROPEAN UNION/EC	Stop global forest loss by 2030 and reduce gross tropical deforestation by 50% by 2020 ¹⁵	Prohibition of placement of illegally harvested timber products on the EU market enforced by EU Timber Regulation (2013) ¹⁶	No direct link to tenure/ human rights commitments to date. The EU has committed to VGGT and has an Action Plan on Human Rights, plus commits to upholding human rights in its Trade for All Policy
AMSTERDAM DECLARATIONS GROUP (NETHERLANDS, FRANCE, DENMARK, UK, GERMANY AND NORWAY) (2015) 1) "Towards Eliminating Deforestation from Agricultural Commodity Chains with European Countries"; 2) "In support of a fully sustainable Palm Oil Supply Chain by 2020"	Support the private sector goal of eliminating deforestation from the production of agricultural commodities such as palm oil, paper and pulp, beef and leather and other commodities such as rubber and cocoa ¹⁷	Commitment to support the goal of a 100% sustainable palm oil supply in Europe by 2020 ¹⁸ Pledge to support EC to explore options to integrate eliminating deforestation... in bilateral EU trade and investment agreements Encourages countries to implement FAO-OECD Guidance for Responsible Agricultural Supply Chains (2016)	Welcomes EU Trade for All policy, which contains commitments on human rights
GOVERNORS' CLIMATE AND FORESTS TASK FORCE	CGCFTF commits to reducing deforestation by 80% by 2020 ¹⁹ if sufficient and long-term performance-based funding is available and guaranteed	Rio Branco Declaration conditions actions on available funding	Alignment of rural planning to develop agriculture while limiting deforestation...(and) intensifying sustainable strategies, including land tenure ²⁰

TABLE 1C - COMMITMENTS IN CASE STUDY AREAS

 STAKEHOLDER	 FOREST AND DEFORESTATION	 SUPPLY CHAINS	 HUMAN RIGHTS/TENURE
Pledges and commitments			
MALAYSIA	Maintain at least 50% of land areas as forest and tree cover ²¹	Starting in 2019 a certification scheme for sustainable palm oil production will be mandatory ²²	No mention of land tenure or human rights in NDC prepared under UNFCCC Paris Agreement
INDONESIA	Reduce GHG emissions by 26% (unconditional) and 41% conditional by 2020. This goal would be mainly achieved by reducing deforestation and peat land conversion ²³	In 2017 the President extended a moratorium on issuing new licences to harvest wood on primary forest and peatlands ²⁴	Moratorium efforts are meant to include civil society organizations, local communities and the most vulnerable groups (adat communities and women) ²⁵ NDC contains commitments to uphold human rights, including the rights of customary communities
CAMEROON	Restoring over 12 million ha of deforested and degraded land by 2030 as part of the Bonn Challenge Initiative ²⁶		Indirect mention of the need to protect vulnerable groups and minorities in NDC
DRC	Reduce greenhouse gas emissions from deforestation and forest degradation aiming to end the net loss of forest by 2030 ²⁷		Includes plans for a land tenure policy and clarification of tenure rights ²⁸ No mention of tenure or human rights in NDC
LIBERIA	Place 30% or more forested land under protected area status before 2020 ²⁹	Refrain from issuing any new logging concession until all the current ones are reviewed by an independent body ³⁰	Conduct pilots to see the outcomes of direct payments to communities for protecting forest ³¹ No mention of community tenure or human rights in NDC
COLOMBIA	Zero net deforestation by 2020 in the Colombian Amazon and in the entire country by 2030 ³²	Reduce grazing land and increase average stocking rates per hectare and increase non-livestock agricultural production in already deforested areas ³³	No direct mention of tenure or human rights in NDC
PARAGUAY	Extension of Zero Deforestation Law until 2018 in the eastern region of the country ³⁴		NDC does not address IP rights or tenure issues
PERU	Achieve Zero net deforestation across the whole country, and maintain 54 million ha of primary forest by 2021 ³⁵		NDC contains a footnote on the importance of IP tenure rights for climate change mitigation, but no actionable targets
GUYANA	Conservation of 2 million additional ha through Guyana's National Protected Area System ³⁶	Commit 50% of the Guyana's Forestry Commission staff to monitor timber exploitation to ensure its legality ³⁷	NDC acknowledges IPs contribution to climate protection, but contains no actions on land tenure

Forest crisis continues unabated:

Despite the establishment of international forest funds, important global policy gains and zero deforestation pledges, forest destruction is ongoing or even increasing, mostly in tropical countries [Table 2]. Widespread and rampant forest loss continues to result in severe social harm and long-term negative impacts on forest peoples, biodiversity and the climate.³⁸ In 2015-2016, Indonesia lost 840,000 ha of old growth forest. Indonesia’s high rate of forest loss is connected with multiple and widespread land disputes across the country.³⁹

Although elevated rates of forest loss have been cut back in some regions like the Amazon since the 1990s, the pace and intensity of forest clearance is on the rise again. In Peru, annual forest loss tripled between 2001 and 2015 and deforestation increased again by more than 5% in 2016 compared to the previous year.⁴⁰ In Colombia, deforestation increased by 44% from 2015 to 2016, while violence against rural land and forest defenders is continuing despite the signing of the Peace Agreement.⁴¹ In African countries like Liberia and DRC deforestation is likewise on the increase as land is cleared for agribusiness, infrastructure and mining development.⁴²

Fact checks:

- In 2017, the Paraguayan Chaco region registered forest loss at more than 500 ha/day, mainly for cattle pasture.⁴³
- In 2015, forest fires in Sumatra and Kalimantan destroyed or damaged close to 2.6 million hectares of land.
- Indonesia is the world’s 6th largest emitter of GHG emissions, stemming mainly from deforestation and peat drainage for palm oil/pulp plantations.

TABLE 2 - DEFORESTATION RATES (Case study countries)

COUNTRY	1990-2000	2000-2010	2010-2015 (TREND)**
MALAYSIA	0.35-0.40%	0.20-0.65%	0.10%*
INDONESIA	1.61-2.20%	0.5-1.91%	0.70% (INCREASING)
CAMEROON	0.90-0.94%	0.98-1.04%	1.10% (INCREASING)
DRC	0.07-0.20%	0.08-0.24%	0.20% (NO CHANGE/INCREASING) ⁴⁴
LIBERIA	0.60-0.63%	0.60-1%	0.70% (INCREASING)
COLOMBIA	0.08-0.42%	0.08-0.50%	0.24% (REDUCED/NOW INCREASING) ⁴⁵
PARAGUAY	0.85-0.90%	0.92-1.30%	2% (INCREASING)
PERU	0.13-0.2%	0.14-0.20%	0.20% (NO CHANGE/NOW INCREASING) ⁴⁶
GUYANA	0-0.01%	0-0.03%	0.06-0.1% (INCREASING)

Sources: Ranges and varying reports of forest loss rates are drawn from different sources, including - FAO, Global Forest Resource Assessment (FRA), 2015; <http://theredddesk.org>; Mongabay Deforestation Archive; Official statistics on deforestation from government agencies of Guyana, Colombia and Norway.

*Deforestation rates for Malaysia are contested (see Yong et al 2014)

** Where only one source is available for the period 2010-15, trends are measured against the same source in the previous time period (primarily FAO FRA)



Indigenous peoples and small holders in Mapiripán (Colombia) are negatively affected by oil palm plantation expansion, which restricts community rights to access customary land and forests © Inter-ecclesiastical Commission for Justice and Peace.

B. HUMAN RIGHTS IMPACTS OF DEFORESTATION

Alongside major environmental and climate impacts, aggressive large-scale deforestation is causing multiple and severe human rights violations with devastating impacts on forest peoples [Figure 1]. Community resistance to land grabs and forest clearing frequently results in violence being used against them, including: forced evictions, police harassment, intimidation, death threats and violent attacks, arbitrary arrest, and retaliatory litigation and criminalisation of community leaders, human rights defenders and activists. Community leaders also suffer intimidation and public smear campaigns in the media, while lawyers, local and international non-governmental organisations (NGOs) and journalists who seek to denounce violations and crimes against land defenders are subject to legal persecution and lawsuits by companies (often for libel or slander).

“ *Loggers are cutting down our medicinal plants. Our diet has been disrupted... When we protect against the invasion of our forests, the police come and arrest us and threaten us.* ”

Baka community member, Bikoro province, DRC, 2015

FIGURE 1: HUMAN RIGHTS IMPACTS OF DEFORESTATION



LAND AND TERRITORIAL RIGHTS

- Rights to collectively own, control and manage lands, territories and resources under traditional occupation, ownership, or use
- Right to access traditional land and resources

⚡ IMPACTS:

- Extinguishment or non-recognition of customary property rights (to land and natural resources)
- Fragmentation of territories
- Expropriation of land and subsistence resources
- Reduced land holdings and forced land sales
- Imposed company restrictions on movement and access to resources
- Imposed State jurisdictions (including resource concessions, parks etc)
- Insecure tenure and/or landlessness (State failures to title indigenous lands)

CIVIL AND POLITICAL FREEDOMS

- Right to liberty and freedom from arbitrary arrest and detention
- Right not to suffer arbitrary or unlawful interference with privacy or family
- Right not to be subjected to unlawful attacks on honour and reputation
- Freedom of expression, association and to take part in public life

⚡ IMPACTS:

- False imprisonment or arbitrary arrest and detention
- Criminalisation
- Repression
- Intimidation and defamation

RIGHT TO FREE, PRIOR AND INFORMED CONSENT (FPIC)

- Right to self determination
- Right to property
- Right to culture and other fundamental human rights of indigenous peoples

⚡ IMPACTS:

- Intimidation pressuring communities to accept land clearance
- Denial of access to information and misinformation
- Imposition of land and resource concessions on community forests
- Violent land conflicts and protracted disputes
- Forced displacement
- Imposed (rather than self-chosen) governance structures tasked with facilitating community collective decision making
- Lack of access to independent legal advice

RIGHT TO ADEQUATE STANDARD OF LIVING

- Rights to food
- Rights to water
- Rights to shelter
- Rights to education
- Rights to protection against forced eviction

⚡ IMPACTS:

- Damage to/elimination of forest farms, hunting grounds and fisheries
- Loss of housing and craft materials and sources of traditional medicines
- Forced resettlement and destruction of housing
- Pollution, lowered water tables and decreasing streamflow
- Landlessness
- Involuntary migration to urban areas
- Malnutrition, sickness and substance abuse
- Impoverishment and marginalisation
- Disruption to education due to displacement or eviction

Community leaders and activists harmed defending their communities and forests:

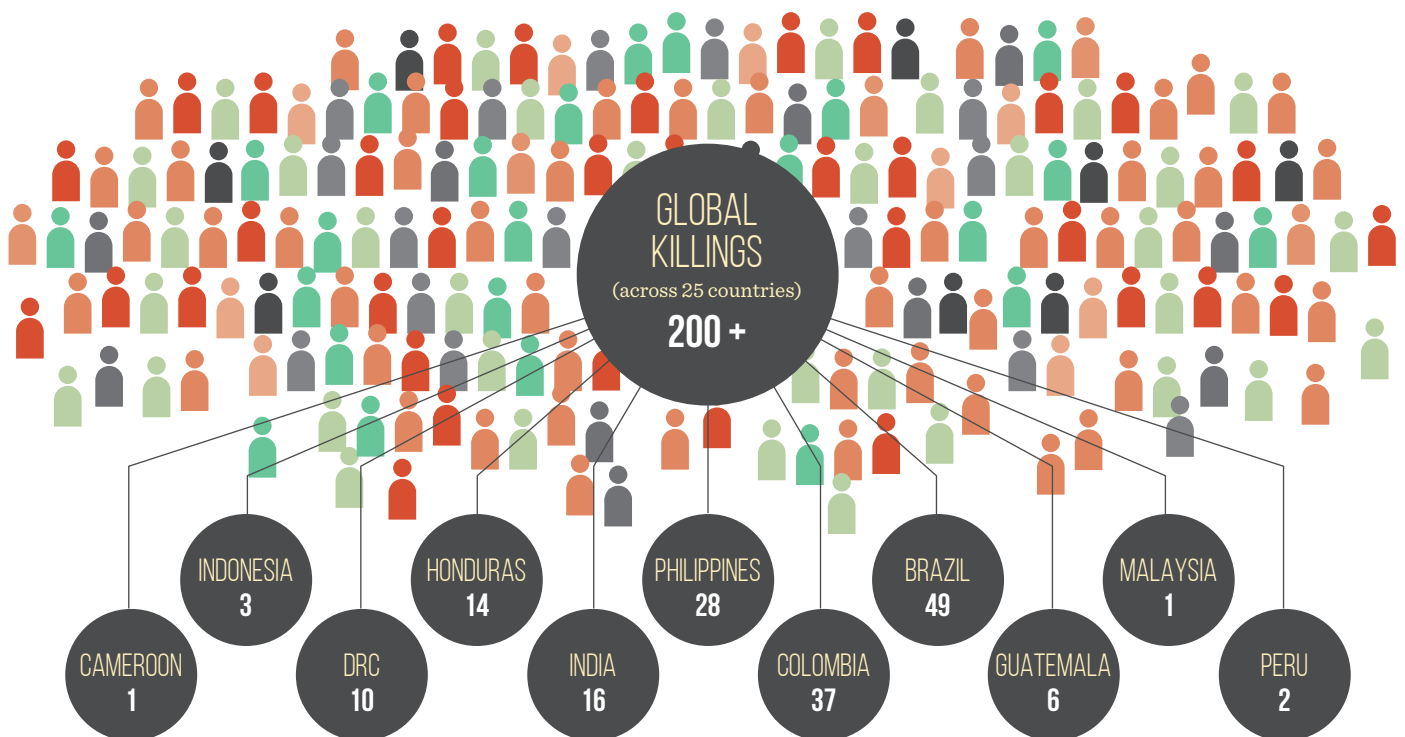
In 2016, more than 1,000 people in 25 countries were murdered, harassed, imprisoned or intimidated while fighting for their communities' rights: [Figure 2]. Of 281 recorded deaths, half were defending their land and homes.⁴⁷ According to Global Witness' *Defenders of the Earth* report, nearly 40% of the defenders of human rights who died were indigenous peoples defending their rights to their land and the environment. Worldwide the total number of victims is probably

much higher as reliable information on crimes against human rights defenders is not available for many countries, such as Paraguay, Guyana and Liberia. The shocking figures that are available are likely to be underestimates. In the Colombian case, the public ombudsman reported more than 100 killings of human rights defenders in 2016 and a further 52 deaths in the first six months of 2017.⁴⁸ On top of killings, violent land conflicts in deforestation zones are linked to attacks on forest communities. In Indonesia, for example, human rights and land defenders suffer assaults causing physical harm and psychological trauma.⁴⁹

FIGURE 2: GLOBAL KILLINGS OF HUMAN RIGHTS AND FOREST DEFENDERS (2016)*

We indigenous leaders find ourselves defenceless and faced with repeated death threats from groups of land traffickers, organised mafia and corporate entities opposed to the recognition and titling of our communities

Statement by FERISHAM indigenous organisation, Peru



“ When approaching the site, three shots were fired at the delegation by the invaders. One is well known to community members as an ‘enforcer’ associated with the operations of the palm oil company (currently known as Ocho Sur Pe SAC), which has converted an area of almost 7000ha of forest into an oil palm plantation on community lands without community consent⁵⁰ ”

*Adapted from Global Witness (2017) *Defenders of the Earth: Global killings of land and environmental defenders in 2016*

Vocal leaders who challenge illegal logging, monocultures, mines, dams or road projects are the subject of extrajudicial killings or murder by henchmen, gangsters and goons working for farming and plantation interests or narco-agricultural cartels.⁵¹ Local journalists who seek to expose illegal deforestation, rights abuses and links to organised crime receive death threats to their families, leading to a ‘conspiracy of silence’ in local and national media (e.g. in Paraguay).

Fact checks:

- Logging and mining interests in DRC are linked to criminal networks and paramilitaries responsible for disappearances, kidnappings mass killings, torture and rape of indigenous forest communities.⁵²
- Many countries have no effective frameworks for protecting human rights defenders (e.g. Paraguay, Cameroon, DRC).
- Countries with protection systems for human rights defenders often lack adequate resources (e.g. National Protection Unit, Colombia).
- Afro-descendant, peasant and indigenous land defenders challenging deforestation and land grabs by agribusiness in the Chocó region of Colombia are victims of murder, forced disappearances and forced displacement.⁵³
- As well as gross environmental damage, ‘legal’ and illegal miners in Guyana are accused of brutal sexual assaults on women and girls, sometimes leading to death (e.g. in mining fields around Baramita Village, Region 1).
- Between 2012 and 2015 violence linked to Indonesian land conflicts included three deaths, 35 cases of serious physical violence, 20 cases of criminalisation, six cases of forced prohibitions on association, and 14 cases involving threats of violence toward property, individuals or families.
- Dayak forest defenders on the Upper Mahakam in Kalimantan, Indonesia have suffered months of imprisonment for challenging loggers on their lands (2016).
- Community leaders in Paraguay are subjected to legal actions and criminal prosecutions made by companies that have expropriated community land.⁵⁴
- In Indonesia as many as 10% of land conflicts are related to violation of sacred sites by industrial plantation companies and loggers.⁵⁵

Mario Castaño Bravo, land rights activist and leader of Madre Unión Community and La Large Tumaradó Community Council (Colombia), was murdered in front of his family despite being under the guard of the National Protection Unit (UNP)... Hernán Bedoya, a land defender and leader of the community of Bijao Onofre, was murdered soon after - on 8 December 2017. Both ... peacefully challenged powerful oil palm, cattle ranching and banana plantation companies and denounced them for grabbing lands from displaced peasant farmers. As a consequence, they received multiple death threats and despite state protection, both are now dead.⁵⁶

In Indonesia, community members are often criminalised for resisting imposed agribusiness concessions and agrarian conflicts are increasing...

Sabah Resolution on Agribusiness and Human Rights, 2016⁵⁷

“ I do not remember the date I was arrested...I heard a lot of boats coming then I saw them, a whole swat team fully kitted out. I stood up and they had already surrounded me and my wife. It was like they were arresting a terrorist ”

Land and forest defender, Dayak Bahau Community of Long Isun, Indonesia⁵⁸

Violation of land rights, FPIC and the right to access information:

Customary land rights and community rights to meaningful and effective participation, access to information and free, prior and informed consent are routinely violated by State authorities responsible for zoning forests, declaring conservation areas, and allocating land to companies and investors [Figure 1]. If information is provided to communities by land and forest agencies, it is often late, incomplete, biased or even false. Communities are pressured or tricked into renting or leasing their lands or surrendering their rights entirely (see section C). A case in point is the Minangkabau people of Nagari Kapa in Pasaman Barat, Indonesia, who suffered such violations when their lands were taken and rights extinguished by a subsidiary company of Wilmar International with the connivance of the National Land Bureau (BPN) without their full knowledge and agreement.⁵⁹

Fact checks:

- Indigenous peoples such as the Penan in Sarawak, Malaysia, are pressured by state authorities to accept large infrastructure projects – against their will.⁶⁰
- In Liberia, FPIC is contained in 2009 Community Rights Law, but it is not implemented.
- In DRC a new FPIC Decree applies to REDD+, but not to other land use and development decisions.
- In Guyana and Peru, FPIC only applies to titled indigenous lands, so untitled customary community forests are vulnerable to expropriation and sale or lease to third parties.
- Positive rulings on FPIC by the Constitutional Court in Colombia are not implemented by state agencies.

Severe livelihood and cultural impacts:

The theft and takeover of community lands linked to the expansion of agro-industries and monocultures is transforming entire landscapes and eliminating vital resources on which forest communities depend for food, medicine and materials. Encroachment on forest peoples' customary lands, land expropriation and the destruction of their food and water security, diminished livelihood security, increasing landlessness and marginalisation often result in their impoverishment, malnutrition and ill-health. Women in particular are adversely affected by loss of forest resources and expropriation/privatisation of land and water sources by plantation companies and agribusiness. Land use change is also responsible for the desecration of sacred sites and erosion of traditional knowledge and local ways of life.

Fact checks:

- Forest fires in Indonesia in 2015 resulted in 24 deaths and more than 120,000 people seeking medical help because of the haze and smoke (Indonesian Health Ministry).
- Isolated peoples and gatherer-hunters are vulnerable to western diseases: Half of the Nahua people in the Peruvian Amazon died after contact with extractive industry workers.⁶¹
- Pesticides and fertilisers used for oil palm and soybean monocultures contaminate water supplies and watercourses.⁶²

“ Our lands are now like small islands of forest surrounded by deforested land. The soybean farmers spray pesticides from aircraft. The poison damages our crops. We sometimes suffer hunger. It pains us to see our land and water sources inside the private properties of Brazilians. These places are sacred to us...Our forests are being destroyed and our waters are being polluted. ”

Indigenous woman leader, Organización Pai Reko Pave, Paraguay

“ Illegal Brazilian miners are now pushing roads towards Blue Mountain, which is sacred to the Wapichan people. Our spiritually sensitive sites and forests used for gathering medicines and materials are being violated, important trees are being cut down and our water supplies and rivers are being polluted. This is hurtful to us. ”

Wapichan community forest monitor, Guyana

“ Oil palm, pulp and paper plantations are creating health and environmental crises for our communities. Children are sick from the forest fires. Deforestation and land drainage are making water scarce and there are food shortages. People are being pushed off the land, which is becoming concentrated in the hands of large companies. Inequality is growing. Self-sufficiency is being lost. People are being forced into exploitative work for the companies. ”

Indigenous leader and representative of Pusaka, Indonesia

“ Due to industrial logging...we no longer have enough resources. The honey, mushrooms and game animals have disappeared. There are fewer large trees. We have problems getting water during the dry season. ”

Village resident, Mambasa Province, DRC

Fact checks:

- Forest areas with livelihood resources and sacred sites important to the Wapichan and Atorad peoples in the Karawaimintao mountain range in SW Guyana are threatened by illegal road building and mining.⁶³



Large tracts of rainforest in Sarawak (Malaysia) have been cleared to make way for industrial oil palm plantations © BMF.

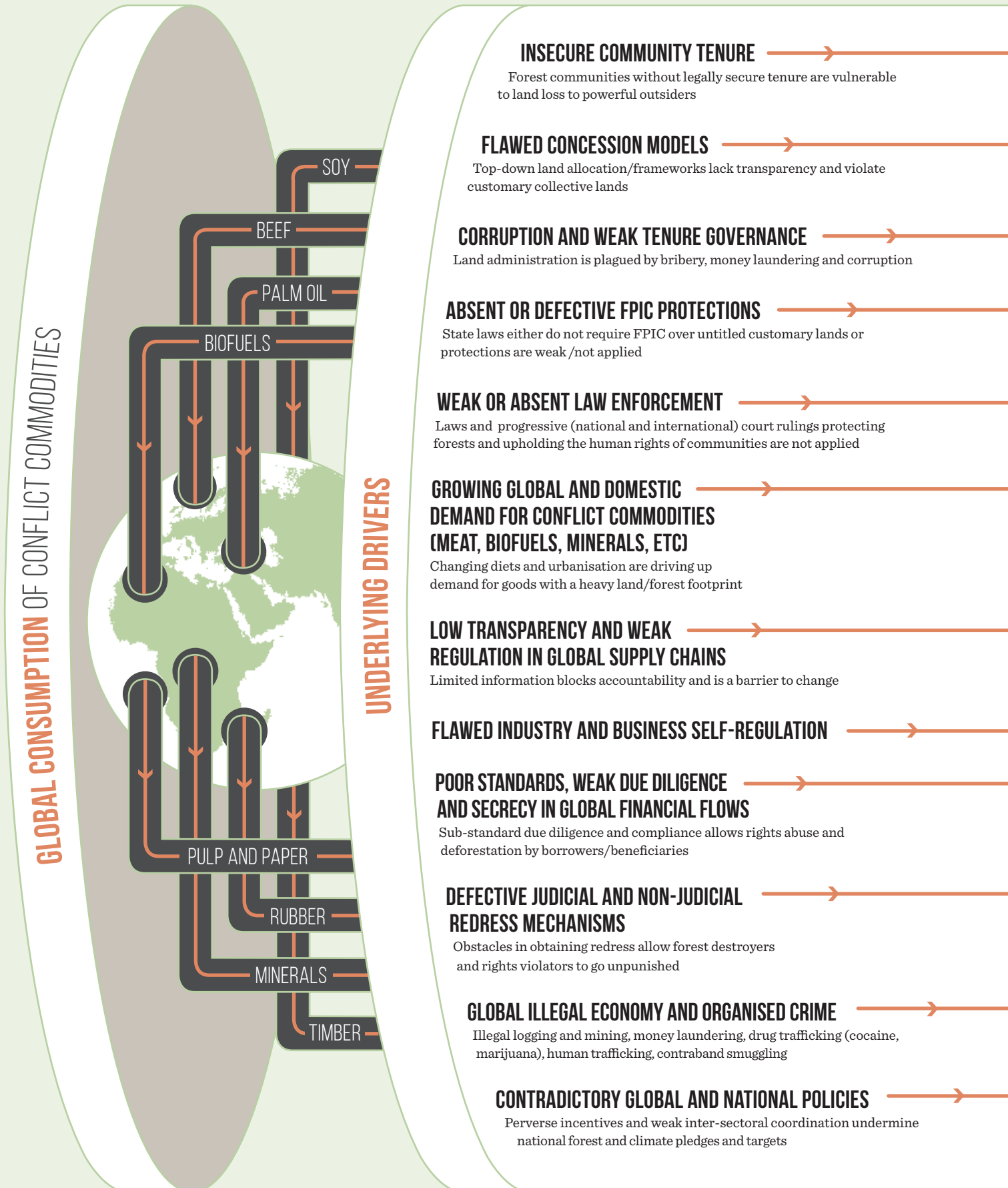
C. DYNAMICS OF DEFORESTATION AND RIGHTS ABUSES:

Global reviews confirm that the main direct or ‘proximate’ cause of forest destruction is commercial farming, which accounts for 80% of forest clearance in tropical countries.⁶⁴ Remote sensing evidence and forest monitoring updates from Latin America and Asia confirm that large-scale (over 1,000 ha) clearance for cattle (pastures), soybeans and palm oil are primary drivers.⁶⁵ Other drivers include illegal and industrial logging, cultivation of illicit crops (Latin America), mining, energy, infrastructure projects and urban expansion. Case studies highlight that roadbuilding is a major indirect driver of deforestation as access roads open up remote areas to logging, extractive industries and commercial farming [Figure 3].⁶⁶

Fact checks:

- Commercial farming drives more than 2/3 of forest clearance in Latin America, more than 1/2 in Asia and over 1/3 in Africa (and rising).
- Soybean cropping is the 2nd largest global driver of tropical deforestation by area.
- Cattle ranching is a primary driver in the Colombian and Peruvian Amazon and was expanding in 2017.⁶⁷
- Illegal logging accounts for over 70% of forest degradation in Africa and Asia.

FIGURE 3: THE REAL DRIVERS OF DEFORESTATION

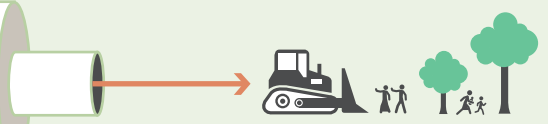


DIRECT DRIVERS

INFRASTRUCTURE

Roads, railways, dams, ports, airports, airstrips, oil and gas installations, pipelines, powerlines

Existing: e.g. Peru, Colombia, Paraguay, Liberia, Cameroon, DRC, Indonesia and Malaysia. **Emerging threat:** Guyana



CULTIVATION OF ILLICIT CROPS⁶⁸

Often precedes establishment of pasture or plantations

Existing: e.g. Peru, Paraguay, Colombia



PULP AND PAPER PRODUCTION

Existing: e.g. Indonesia, Malaysia



INDUSTRIAL AGRIBUSINESS AND COMMERCIAL FARMING

Forest clearance for pasture, monoculture plantations and cropland

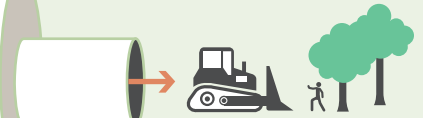
Existing: e.g. Indonesia, Malaysia, Liberia, Peru, Colombia, Paraguay
Emerging threat: DRC, Cameroon, Guyana



INDUSTRIAL LOGGING/ ILLEGAL TIMBER HARVESTING

Logs, conversion timber, and by-products such as charcoal
Clearcutting, selective felling and opening logging roads, ports, depots

Existing: e.g. Indonesia, Malaysia, Peru, Colombia, Paraguay, Guyana, Liberia, Cameroon, DRC



MINING AND EXTRACTIVES

Minerals, metals, diamonds, hydrocarbons

Existing: e.g. Peru, Guyana, Colombia, DRC, Cameroon, Liberia



URBAN EXPANSION

Towns, suburbs, slums, infrastructure links

Existing: e.g. Colombia, Peru, DRC, Indonesia, Malaysia, Liberia
Emerging threat: Guyana



“ Implementation of infrastructure and road projects like IIRSA...threatens to exterminate indigenous peoples and accelerate deforestation as it exposes forests to mining, logging and other exploitation... ”

Kamentsá leader, Upper Putumayo, Colombia

Following the example of the colonial rulers, post-independence laws (in DRC) dispossessed indigenous peoples and local communities of their customary rights... formal (written) law transferred land ownership to the State.⁷¹

Fact checks:

- In Peru planned bi-oceanic railroad and Pucallpa-Cruzeiro do Sol highway threatens uncontacted indigenous peoples and remote rainforest.⁶⁹
- City populations in DRC are growing at >4% per year causing more pronounced deforestation around cities and along road corridors between urban areas.⁷⁰

Insecure community land tenure:

Outdated land laws in tropical forest countries that fail to protect forest peoples' collective customary land rights constitute a key barrier to combatting deforestation [Figure 3]. These laws often emphasise individual rights, and prioritise the advancement of designated economic activities above all. Insecure lands and poor law enforcement expose community forests to encroachment and expropriation by illegal and 'legal' loggers, agribusiness companies and extractive industries and also to settlement and land clearance by displaced colonists and landless people. In many African countries, like Cameroon, community tenure rights remain insecure because the law defines forests as the property of the State without recognition of community customary land ownership rights. Forest peoples are pressing for forest tenure reform:

We, forest indigenous peoples, are asking the state of Cameroon to ensure that our ancestral lands, our living spaces and traditional practices are respected and recognised by collective legal title. We ask that the ancestral lands that have already been taken by third parties be returned to us so that we can exercise collective ownership rights for present and future generations

Declaration on land rights from the Gbabandi Platform, Cameroon, 2017

In DRC, some options now exist under Forest Decree 14/018 to obtain usufruct rights over customary forests, but it only confers management and harvesting rights for forest communities and places complicated requirements on rights holders. Despite the adoption of progressive legislation, full legal recognition of customary land rights remains a challenge. In Liberia, a draft Land Rights Act (LRA) has been under development following the 2013 Land Rights Policy, which promised to deliver protection for collective customary land rights. The House of Representatives approved a significantly weakened draft LRA in August 2017 prior to the October 2017 presidential elections. This would have circumvented proper civil society scrutiny on the final draft but for the decision of the Senate to return the bill to the committees for further work. Existing progressive Liberian laws such as the Community Rights Law with respect to Forest Lands (2009), though progressive on paper, have not afforded protection in practice as the State has continued to allocate large-scale agribusiness concessions to companies over unregistered community customary forests. Land transactions throughout Liberia are often fraudulent and sales are often enabled by corrupt local officials and courts, leading to dispossession and violent land conflicts.⁷²

Fact checks:

- Land conflicts in Indonesia increased in 2016 to 450 over an area of 1,265,027 ha involving 86,745 households scattered throughout the provinces.⁷³
- New public policies as well as legislation on lands and forests in Malaysia (2014) weaken, erode and/or extinguish legal protections for customary land and forests and promote privatisation.
- Unregistered community lands are considered by the Liberian government as 'available' for sale or lease to third parties.
- Mining businesses in Guyana retain contested land rights inside village land titles, driving conflicts.

Many Asian countries still define forests as State land and current government titling procedures limit the extent of community title boundaries. In Malaysia, Native Customary Rights (NCR) to lands are recognised to some extent in state and national laws, yet customary lands are continuously exploited through concessions and licences by the State, disrespecting court rulings that favour native landowners. In Indonesia, positive gains were secured in 2012 in the Constitutional Court on customary rights through sustained legal actions and high level dialogue by the national indigenous peoples' organisation AMAN, yet implementing legislation had still not been put in place at the end of 2017. Important public commitments have been made by the President to secure customary community land rights, yet the funding and staff to implement these pledges have not materialised. Positive initiatives like the *One Map Policy* have so far failed to prevent concession overlaps on community lands in Indonesia, largely because permit-issuing authorities and political interests in charge of concessions are reluctant to collaborate and disinclined to recognise community maps of customary land.⁷⁴ Meanwhile, lands and forests continue to be handed out to loggers and plantation companies.

Insecure community land rights and the use of unclear language in land acquisition (in Indonesia) lead many communities to forfeit their lands for little gain... Forests and fisheries are being destroyed. When deprived of livelihoods and lands, rural people are forced into piece work on estates... Community protests are too often met with police violence and criminalisation... State policies favour infrastructure development and tolerance of past injustices.

Pontianak statement on human rights and agribusiness in Southeast Asia⁷⁵

In Central and South America, with the notable exception of Suriname, land laws and updated national constitutions afford more recognition of collective land tenure of indigenous peoples to a greater or lesser degree. Legal frameworks provide inalienable communal land titles or long-term exclusive use rights over traditional lands held by indigenous peoples and customary landowners. While indigenous peoples and local communities own or hold recognised rights to over a fifth of the land area in Latin America, major blockages to good tenure governance and effective community control over their forests remain. Challenges include defects and gaps in property and land titling laws coupled with flawed national land zoning and allocation frameworks, and highly bureaucratic and cumbersome procedures for registering community land titles [Box 1].



'As mothers we can only give birth to children not to land. Don't let them take our children's land away. Otherwise, where will they live?' Dayak woman questioning the taking of land and forest by oil palm companies, Sambas District, West Kalimantan Province, Indonesia © Marcus Colchester, FPP.

BOX 1: OBSTACLES TO SECURING COMMUNITY FOREST TENURE

Partner action research, tenure assessments and FPP case studies in Colombia, Peru, Paraguay, Guyana, Liberia, DRC, Cameroon, Malaysia and Indonesia identify a series of common blockages to secure land rights for forest peoples. Key constraints include, inter alia:

1. Official legal procedures and frameworks for addressing community tenure are non-existent, slow, bureaucratic and government agencies lack staff and resources to process claims and applications (all case study countries).
2. National land allocation, land zoning and resource concession frameworks fail to respect untitled customary lands and 'unregistered' community settlements: these flawed frameworks impose concessions and public and private investment projects on communities (all case study countries).
3. Land cadastres, official maps and public information on tenure rights vary across government agencies, are incomplete, inaccurate, incoherent and often lack transparency (all case study countries).
4. Illegal land trafficking, fraudulent land transactions and corrupt land clearance licences for agribusiness, plantations, mining, logging and road building means customary tenure rights are often violated (all case study countries).
5. Land titling, demarcation and boundary delimitation procedures do not recognise and respect customary law and traditional systems of communal tenure, including through the denial of territorial titles favouring smaller-parcelled community titles (e.g. Paraguay, Guyana and Peru).
6. As a result of #5, land titles often only cover a fraction of collective customary lands leaving them vulnerable to expropriation, while communities endure defective legal mechanisms or no formal avenues at all to solicit enlargement of their land titles (e.g. Paraguay, Guyana, Peru, Malaysia).
7. Limited and separate community and village titles fragment collective forest territories, which suffer multiple overlapping and imposed jurisdictions including timber, mineral, hydrocarbon and agribusiness concessions as well as national parks, forest reserves and major infrastructure projects, including roads, dams, ports (e.g. Peru, Colombia, Guyana, Cameroon).
8. Countries sometimes lack any legislation to return customary lands taken without prior community consent, including lands obtained by force or deception, as well as lands allocated to third parties by the State (e.g. Guyana).
9. Even where restitution is legally possible, procedures are cumbersome and complicated compensation rules for third parties generate long delays (sometimes years) in settling land conflicts (e.g. Paraguay).
10. Specific national laws, policies and court rulings established to protect the rights of indigenous peoples and other customary landowners are not implemented (e.g. Law 904, Paraguay; Constitutional Court rulings on land rights and FPIC in Colombia).
11. Powerful national agribusiness, logging, mining and business interests control legislatures and otherwise seek to block, weaken or annul progressive legislation in support of community land rights (all case study countries).

“ Often the government knows very well that we are insecure and without land titles. The problem is that the whole process is complex and drawn out. Officials and lawyers that work for the government do not move the paperwork. The (title) applications are there: the problem is they are just sitting there and are not being processed. ”

Pai Tavyterá leader, Paraguay

In Peru, more than 20 million ha of community lands remain without official recognition in national registries, while in Guyana on average one third of indigenous forest communities still lack any form of legal land title security.⁷⁶ Even titled lands are subject to encroachment by illegal resource users and armed groups, while many communities are still ‘invisible’ to the State including in Colombia, Peru and Guyana.

Top down resource concession policies and weak governance:

Key indirect drivers of forest loss and rights violations are flawed national land allocation frameworks that do not recognise customary land rights, lack transparency and suffer from weak mechanisms for prior community consultation and FPIC [Figure 3]. The Malaysian State, for example, has powers under national law to extinguish unregistered rights over lands leased to plantation companies and other business interests.⁷⁷ In practice, the Malaysian State continues to issue concessions and leases in full violation and in disregard of community customary rights.⁷⁸

...community representatives from Sarawak note that plantations are being developed without their consent, imposed by ‘gangsters’ and provide paltry benefits to those who have lost their lands. NGOs supporting communities are under increased surveillance.

Pontianak statement on human rights and agribusiness in SE Asia

In Cameroon, logging, oil palm plantations, mining and new infrastructure schemes are causing galloping deforestation aided by colonial laws which deny our rights to our lands and forests...

Palangka Raya Declaration

“ Conversion of natural forests into rubber and coffee plantations ... leads to deforestation. Some clans no longer have any forests because they have been entirely converted into plantations. ”

Community representative, Bolomba Territory, Equator province, DRC

Fact checks:

- At least 25% of Liberia’s land area (c. 2.5 million ha) is the subject of logging, agro-industrial or mining concessions.
- Mining concessions cover 39% of DRC. Chinese mining companies have signed a US\$6 billion agreement to construct roads and dams in exchange for mining rights.
- In Peru, oil, gas, mineral, logging and agro-industrial concessions are imposed on indigenous peoples’ land and forests, while community land claims and customary lands are made ‘invisible’ by State agencies.⁷⁹
- Guyanese mining agencies have granted concessions on over 90% of Akawaio forests in the Upper Mazaruni watershed, in total disregard for prior community legal actions affirming customary tenure rights over same areas.⁸⁰

Lack of information disclosure and weak community participation:

Defective local participation and missing community agreements in land use zoning and concession allocation are common in many countries. In Cameroon, this lack of public information on land concessions prevents timely community mobilisation to assert collective rights and challenge unjust proposals for land acquisition and land use change.⁸¹ If people are informed about official land use decisions, they are often confined to village chiefs and leaders who are manipulated or pressured to accept forest clearance plans without the agreement of their wider community.

“ You cannot talk of proper consent if negotiations are held with a single person. This is a grave mistake. Free, prior and informed consent is for the whole community ”

Malaysian forest activist

“ The cattle ranchers are clearing forests without even letting the communities know about it. SEAM issues licences to the ranchers to deforest without giving us any say. We have never experienced any participation in the environmental licensing process. ”

Leader of Northern Enlhet people, Chaco region, Paraguay

Fact checks:

- Official land maps in Guyana do not show some titled communities and exclude most information on land claims of indigenous peoples.
- In Cameroon information on agribusiness, logging and mining concessions is denied to forest communities.⁸²

Organised crime, weak law enforcement and corruption:

The forest frontier in tropical forest nations is often associated with lawlessness, banditry, money laundering and criminal activity linked to illegal mining and logging, the cultivation of illicit crops and land trafficking (organised fraudulent land transactions).⁸³ Drug trafficking is also linked to shipments of illegal and ‘legal’ timber and agricultural goods.⁸⁴ Evidence is emerging from Peru, for example, that coca and other drugs are planted as understorey crops in oil palm plantations.⁸⁵ In countries such as Colombia, Peru and Paraguay, local authorities are suspected of complicity with criminal land and drug trafficking cartels where forest destruction is closely associated with the ‘narco-ranching’ and ‘narco-agroindustrial’ interests on the deforestation frontier.

Evidence shows that deforestation and rights violations penetrate or “leak” into neighbouring jurisdictions with “light” land environmental and social regulatory regimes, as happens in the Paraguayan Chaco where Brazilian agribusiness firms have occupied land with the stated intention of avoiding stricter regulation in Brazil.⁸⁶ Corrupt

practices of land and environmental authorities also enable violation of customary land rights and deforestation through certification of fraudulent land titles, irregular licences for forest clearance and the illegal acquisition of community lands in favour of powerful political or business interests in countries like Cameroon, Indonesia and Malaysia.⁸⁷

Fact checks:

- Forestry crime including corporate crimes and illegal logging account for up to \$152 billion every year, more than all official development aid combined.⁸⁸
- As much as 100 ha of forest are cleared each day for commercial coca production in Colombia.⁸⁹
- In Guyana and Peru, the drugs trade funds rapid and aggressive mining expansion causing human rights abuse and permanent forest loss.
- Drug traffickers and cartels in Colombia own at least half (4 million hectares) of the country’s fertile land.⁹⁰
- In countries such as Indonesia, Cameroon and Guyana, corruption and illegality are enabled by lack of transparency in land use and concession decisions.
- Environmental impacts studies legally required for forest clearance licences in countries such as Paraguay, Liberia and Malaysia are often missing, weak or are never undertaken.⁹¹
- 40% of timber extraction in Cameroon is estimated to be illegal.
- Corruption in the issuance of land clearance licences is a common cause of illegality in Malaysia.⁹²
- In Paraguay vast areas of forest are the subject of irregular and illegal land titles (“tierras malhabidas”).

Defective redress mechanisms:

Lack of rule of law, corrupt practices and defective local, national and global redress mechanisms allow impunity for forest destroyers, land grabbers and rights abusers, by failing to sanction legal violations and non-compliance with agreed standards [Figure 3].⁹³ Domestic laws may deny indigenous peoples the standing in courts to redress their collective rights. Local courts may not offer timely access to justice or issue rulings which are unfavourable to customary landowners and in support of commercial land use and the extinguishment of community rights, as in Malaysia (see above).

Fact checks:

- Senior forest officials, politicians and business interests in Cameroon have virtual immunity from prosecution.⁹⁴
- Local courts in Liberia are often very slow to resolve land conflict cases and fail to sanction human rights violations.⁹⁵
- The Indonesian judiciary is notoriously corrupt and few communities feel confident of a fair hearing in the courts.
- Local judicial bodies and environmental enforcement agencies in the Chocó region of Colombia reportedly often turn a blind eye to land grabs, violence against HRD and the illegal drugs trade.
- Community complaints over illegal land clearance are routinely disregarded by the Paraguayan police and authorities.⁹⁶
- Weak witness protection schemes in Paraguay prevent victims giving court evidence for fear of their lives.

“ Welcome to the land without law. From that (logging) inspection post all the way back here, there is no law. The only law is the law of the gun. ”

Late Asháninka leader and forest defender Edwin Chota, Peru

The ...systematic discrimination of the Paraguayan State against the Pai Tavyterã indigenous people is related to its complicity with privileges enjoyed by cattle ranchers, drug dealers and cartels... These are the main culprits responsible for the considerable and high number of homicides and disappearances aimed at Pai Tavyterã⁹⁷

Information gaps and secrecy in global finance:

The ‘real’ national and local drivers of forest loss, illegal resource use and rights abuse identified above and in Figure 3, are reinforced by weakly regulated global supply chains, which lack transparency and rarely (if ever) divulge any information to traders and consumers on tenure and human rights impacts (see

section D). Unaccountable and hidden international finance for investments and companies active in tropical forest countries is an added significant underlying driver of forest conversion. Scrutiny of the information in the leaked Panama and Paradise Papers confirms that offshore tax havens and tax avoidance schemes are being used to fund shell companies and subsidiaries of major pulp, logging and mining companies operating in deforestation and land conflict hotspots. Companies benefitting from these financial flows include the plantation conglomerate APRIL in Indonesia and the Glencore mining corporation in DRC.⁹⁸

Contradictory policies and perverse incentives:

All nine countries featured in this review suffer from policy contradictions whereby national and global policies and funding are fuelling deforestation drivers.⁹⁹ Global private and public financial institutions like the World Bank are promoting agribusiness and industrial infrastructure, while also hosting global funds for reducing deforestation and adopting a Forest Action Plan meant to foster cross sectoral coordination and support for the tenure rights of forest peoples. Patent contradictions are evident in Indonesia, where the World Bank is funding large-scale roadbuilding programmes, which impact on forests and forest communities.¹⁰⁰

Fact checks:

- DRC is promoting large-scale ‘agribusiness parks’ to attract foreign investment, with limited regulation to protect communities and forests.¹⁰¹
- Cameroon’s Vision 2035 national development strategy promotes mega-mining, infrastructure and agribusiness.
- The Peace Accord in Colombia aims to attract foreign agribusiness and mining companies, while tax rules incentivise the growing of oil palm and sugar cane for biofuels.¹⁰²
- National policies in Peru promote infrastructure, agribusiness and extractive industries – including through the IIRSA infrastructure programme supported by the Inter-American Development Bank.

At the national level, major legal and economic perverse incentives exist that drive forest clearance and emissions of GHG. In Colombia and Peru land and property laws and legal codes still favour land clearance in order to grant titles to smallholders.¹⁰³ Numerous countries now have targets to increase oil palm production and agribusiness development, including Indonesia, Liberia, DRC, Cameroon, Colombia, and Peru. Several also have tax breaks and subsidies to promote the planting and processing of biofuel crops (e.g. Colombia).

Indigenous leaders in Peru, for example, point out that zero deforestation pledges made by the government are directly contravened by policies that encourage biofuel plantations, agribusiness development and mega-infrastructure projects that threaten to open up remote old growth forests, including territories occupied by indigenous peoples in voluntary isolation. In Cameroon, the Vision 2030 strategy for national development includes major plans for roadbuilding, mega-mines, railroads and ports to boost extractive industries, industrial farming and export-led growth.¹⁰⁴



High Carbon Stock forest in company concession, Indonesia – prohibiting access, collection of forest products and shifting cultivation © Marcus Colchester, FPP.

D. COMPARING DIFFERENT POLICIES AND APPROACHES:

Previous global top-down and non-participatory approaches to tackling tropical deforestation have long been discredited as ineffective for upholding forest peoples' rights and curbing deforestation (e.g. Tropical Forest Action Plan of the World Bank and FAO), but have more recent public policies and private sector approaches to combatting forest loss and achieving zero deforestation been any more effective?

“ *The RSPO National Interpretation (NI) process here in Colombia is disappointing: the companies and FEDEPALMA say they cannot uphold free, prior and informed consent as it does not appear in our national laws. So what is the purpose of the RSPO certification? Why are these companies part of the scheme? Is it just a marketing tool?* ”

Colombian NGO activist, 2015

D.1 VOLUNTARY SUPPLY CHAIN STANDARDS

Commodity certification and voluntary standards:

Certification schemes now exist for timber, pulp and paper, palm oil, biofuels, sugar, soybeans, coffee and cacao, as well as for some minerals such as aluminium and coal. Certification standards also exist for farmed shrimp and prawns. Some key commodities, including beef and rubber, which are linked to deforestation and rights abuse, still do not have operating industry certification schemes. Several certification standards for palm oil and biofuels have clear environmental standards to tackle forest conversion to varying degrees, but some suffer from weak social and human rights protections (e.g. International Sustainability Carbon Certification – ISCC).¹⁰⁵ Meanwhile, no schemes require an independent public consultation and validation process in their audit process.

Even where robust standards exist to protect communities and their forests, implementation and compliance remains a major challenge. The Roundtable on Sustainable Palm Oil (RSPO) scheme, for example, has useful social safeguards for indigenous peoples and features New Planting Procedures (NPP), which require company members to undertake an evaluation of High Conservation Value (HCV) forests and assess community tenure risks before proceeding to conversion in their concessions. The Forest Stewardship Council (FSC) likewise has important social principles and criteria. NGO studies and community complaints, however, show that certification under the RSPO and FSC has consistently failed to apply agreed standards to uphold community rights and safeguard forests. This is due to weak compliance, redress mechanisms and poor performance by certification bodies (CBs) which suffer from conflict of interest problems and low capacity on tenure, FPIC and social compliance verification.¹⁰⁶

There are also major concerns regarding the so-called national interpretation processes whereby certification standards are ‘adapted’ to national conditions which in many countries appears to mean a watering down of social protections and rejection of core standards on customary land rights and FPIC (e.g. in Indonesia and Colombia). Communities and forest

peoples’ organisations also complain the existing certification schemes do not deal with past illegality and rights violations on land now occupied by certified companies.

“ What do we mean by the term sustainability? The palm oil industry has not dealt with many of the past and present violations of community rights by agribusiness developments. It is not enough to create voluntary certification schemes, while we continue to suffer land grabs and the on-going violation of human rights ”

Franky Samperante, Pusaka, Indonesia – during IP tour of the EU, 2016

Major loopholes in certification schemes’ accountability frameworks also exist where companies denounced for human rights violations, land grabbing and illegal deforestation can escape scrutiny by simply withdrawing from the scheme, as occurred with Plantaciones de Pucallpa in the Peruvian Amazon.¹⁰⁷

“ ...this is just another sign of impunity of these palm oil companies and the toothlessness of both the RSPO and the Peruvian government. It seems that this company can do what it likes. It was ordered by the government and the RSPO to suspend its operations and yet nothing has changed ”

Robert Guimaraes, President of FECONAU, 2016

Fact checks:

- When an FSC certificate is suspended, abusive companies are able to continue to violate rights with no recourse to FSC redress for communities (e.g. Long Isun case against PT Kemakmuran Berkah Timber (KBT), Indonesia).
- Where companies are found to be in violation of RSPO certification standards, the complaints panel sometimes just makes recommendations for ‘improvement’ and remedial actions, including requesting ‘consultations’ with affected communities after a plantation has been developed: see, for example, RSPO report on Poligrow Ltda, Colombia, 2017.¹⁰⁸

Company corporate social responsibility (CSR) policies:

In recent years a growing number of companies and some private banks have adopted corporate policies to address environmental and human rights matters in their investments, operations and supply chains. Nonetheless, numerous studies and reports confirm that most companies still lack effective systems to monitor, enforce and verify compliance with their social and environmental policies in their operations and supply chains.¹⁰⁹ In 2017, in most cases non-compliance is still mainly picked up by communities, their civil society allies and international watchdog NGOs.¹¹⁰

Community complaints, public campaigns and independent NGO reports invoking CSR policies and exposing violations of zero deforestation commitments can sometimes be motors for change in companies and international financial institutions. For example, in response to major NGO criticisms regarding deforestation impacts of its loans, HSBC adopted a “no deforestation, no peat and no exploitation” policy. In 2017 HSBC publicly pledged to suspend loans to borrowers found to be in contravention of the bank’s commitment. After international NGOs highlighted violations of the new HSBC policy by borrowers Noble Group and Goodhope Asia Holdings in Papua,¹¹¹ the bank called on the RSPO to investigate the allegations into Noble, as well as a complaint being raised against Goodhope Asia. The RSPO in turn issued a stop work order to Goodhope, while Noble triggered its own temporary stop work order until reviews were concluded and compliance assured.¹¹² Later, however, the RSPO disregarded its own conditions for lifting the restrictions by exempting Goodhope Asia from the stop work order to allow a mill to be built.¹¹³ Cases such as these again point to the need to reinforce certification compliance and sanction mechanisms.

Overall, experience confirms that CSR policies are really only effective if tied to robust compliance procedures and associated formal grievance and accountability mechanisms (e.g. through links to certification schemes). Without such mechanisms, CSR policies run the risk of being mere pledges on paper. Most worrying is that even where serious human rights abuse or environmental damage is placed in the public domain, traders, buyers and banks that fund agribusinesses and other companies producing conflict commodities rarely withdraw business relations.

Companies often still fail to make clear how they plan to respond to such reports of rights abuse, which contravenes their business and human rights policies. Nor do they have clear policies to offer technical assistance and resources to bring their subsidiaries, sub-contractors and other business partners into compliance, or cease relations when violations persist and/or remediation does not occur.¹¹⁴ Additionally, few companies and banks have published non-compliance protocols that state clearly the human rights violation benchmarks that will trigger suspension of a trading or purchase agreement or recall of a loan.

Corporate commitments on zero deforestation (ZDF):

In 2017, over 400 companies have pledged to eliminate deforestation from their supply chains with more than 700 specific deforestation commitments.¹¹⁵ Critics point out that the growing number of company policies on zero deforestation risks proliferating and confusing standards in the market place. Such policies may also be disconnected from local regulations and enforcement agencies and hence run the risk of alienating national and local government agencies as well as local suppliers. Some suggest that corporate ZDF policies are neo-colonial impositions that fail to respect local development agendas and constrain ‘legitimate deforestation’. Forest peoples and allied NGOs highlight that new zero deforestation land use zoning tools, like the High Carbon Stocks Approach (HCSA), risk applying carbon-centric and top down approaches that could marginalise communities and lead to ‘green land grabs’ unless stringent measures are put in place to ensure compliance with agreed HCS social standards.¹¹⁶ Independent studies conducted by FPP show that companies are struggling to implement their no-deforestation commitments and that community participation in land use zoning activities is often less than optimal.¹¹⁷ In May 2017, a revised HCSA methodology was released with more stringent social requirements and enhanced FPIC procedures. The ‘Social Requirements for Conserving High Carbon Stock Forests in Oil Palm Development’ are currently being trialled and additional guidelines will soon be published. It is critical that zero deforestation commodity production complies with these stringent social requirements to ensure that communities’ rights to their lands are respected, participatory community-land use planning and management is undertaken, and mapped community land use areas and livelihoods are secured alongside any identified HCS forests that are delineated for conservation in final Integrated Conservation and Land Use Plans.

Without genuine participation and enhanced FPIC mechanisms, ZDF and HCS initiatives run a high risk of repeating past errors of perpetuating ‘passive’ participation of forest communities. There are genuine dangers that community ‘involvement’ is primarily used to justify the expansion of large scale monoculture plantations and external business and forest conservation agendas without fully respecting local rights, livelihoods and community decisions.¹¹⁸ Like certification schemes, company CSR standards may also be costly for smallholders and communities to meet, thus raising equality and poverty impact concerns. Corporations that have adopted zero deforestation, or ‘no deforestation, no peatland and no exploitation’ voluntary commitments, must strengthen company compliance and due diligence systems to avoid perverse impacts on forest peoples. Implementation of corporate commitments must support, not undermine, secure land rights for forest peoples.

International guidelines on tenure governance and supply chains:

In response to growing concerns about the harmful impacts of agribusiness investments and related violent land grabs, numerous standards and guidelines have been developed in recent years by international agencies to reduce illegal land acquisition risks affecting communities, companies and governments. In 2012, the Committee on World Food Security (CFS) adopted the FAO *Voluntary Guidelines on the Responsible Governance of Tenure* (VGGT).¹¹⁹ The VGGT apply a human rights-based approach to the governance of tenure, and include a dedicated section on indigenous peoples and other customary landowners.¹²⁰ The standard prohibits forced relocation of indigenous peoples, upholds the core FPIC standard and contains clear guidance on the need to recognise and secure legitimate systems of customary tenure before States and companies make land allocation decisions or investments. Numerous international agencies and intergovernmental bodies, including the European Union, have pledged to apply the guidelines. Large agribusiness, food and drink companies have likewise committed to upholding the VGGT across their businesses, including Cargill, Nestlé and Unilever.¹²¹

More than 20 guides on how to implement the VGGT have now been developed by FAO, OECD and regional

intergovernmental bodies (including the African Union).¹²² Some guides provide specific advice on elements in the VGGT, including free, prior and informed consent (FPIC) and forest tenure.¹²³ NGOs, companies and governments have also developed progressive guides on approaches to deal with past land rights violations, including guidance on land restitution to communities.¹²⁴ While the voluminous guidance and wide commitment to the VGGT are certainly positive, it is unclear how governments and companies apply and account for the adherence to these tenure standards in practice. As noted below, most companies still lack robust compliance and reporting mechanisms for their sustainability policies, while score card systems tend to rely on company self-reporting on paper policies and commitments, rather than actual performance on the ground.¹²⁵ Critics also point out that the VGGT have been applied in a patchy manner in some countries and regions, such as West Africa, which has side-lined the core human rights-based framework in favour of big business and greenwashing of industrial agriculture.¹²⁶ With a clear application of the human rights-based approach and careful application of the guidelines on customary tenure, the VGGT in principle do hold potential for positive reforms in commodity supply chains.

D.2 PUBLIC POLICIES AND MANDATORY REGULATIONS:

Robust enforcement of laws that protect rights and provide access to justice is essential to uphold community rights and curb illegal forest loss. In practice, the effectiveness of public policies and statutory moratoria proscribing clearance of ‘natural’ forest in producer countries is variable and may have adverse outcomes for forest peoples. In Paraguay, the 2004 Zero Deforestation Law covering the eastern part of the country reduced forest loss there, but resulted in increasing pressures from industrial soy farmers on indigenous peoples’ lands and fallow forests in the same region, driving illegal land acquisition and forced displacement.¹²⁷ Overall, deforestation has more than doubled nationally (2011-2012), largely due to relocation of cattle farms to the western Chaco region where violent land grabs and extensive forest clearance on indigenous peoples’ lands have increased.¹²⁸

Law enforcement and statutory controls:

Studies report that tough ‘command and control’ measures, effective forest monitoring systems and sanctions for illegal deforestation in the Brazilian Amazon coupled with efforts to stop agricultural credit for farm expansion in forest areas had a major impact in slowing forest loss. Recent assessments in the Amazon, however, find that forest protection regulation may redirect unsustainable cattle and soy production to domestic markets without decreasing illegal land acquisition and forest clearance, while ‘legal’ and ‘deforestation-free products’ for export are produced on land that has already been cleared and expropriated from communities in the past.¹²⁹ Policies promoting intensification of farm and plantation output to relieve ‘pressure’ on natural forests are not founded on the evidence, which suggests that intensification does not necessarily reduce the demand for land clearance.¹³⁰ However, others suggest that the robust law enforcement approach has in part led to a pushback from agro-industrial lobbies leading to a weakening of forest protection law and a controversial and unjust amnesty for past illegal land grabs and unlawful forest clearance, which is strongly condemned by civil society.¹³¹

With regards to actions to combat illegal deforestation linked to the drugs trade, there is much evidence to show that military style operations and crop eradication programmes have generated perverse outcomes. In Colombia, for example, adverse impacts include severe damage to local food security and displacement of deforestation to more remote forest areas – more often than not on the customary lands of indigenous peoples and Afro-descendant communities. Critics argue that while law enforcement rightly has a role to play, supply-side policies must be combined with well-funded demand side measures to reduce demand for drugs in post-industrialised countries like the US, UK and Europe through drug education and rehabilitation programmes.¹³²

Moratoria:

Experience with deforestation moratoria is mixed across countries. The Indonesian moratorium on forest clearance for plantations in forest areas and peatlands under a Presidential Decree has not slowed forest conversion due to major loopholes (prior land

clearance licences are not covered). Although some companies have had concessions suspended for violation of the moratorium (e.g. APRIL in Sumatra), the absence of solid mechanisms for enforcement of the deforestation ban has allowed many companies to continue land clearance and peat drainage.¹³³

In DRC, the 2002 moratorium on industrial logging has never been fully enforced. Legal loopholes have allowed industrial logging to continue under the guise of ‘artisanal’ logging permits. In 2016 the ban was also violated with more than 20 concessions being issued to logging companies by the Minister of the Environment.¹³⁴ In response to intense national and international civil society criticism some, but not all, of the concessions have been revoked. At the same time, calls on the DRC government made by UN human rights bodies to cease all land allocation until community land tenure rights have been mapped and documented remain unimplemented.¹³⁵ Despite these loopholes, there is a general consensus that without the moratorium, much more of DRC’s forests would have been opened up (via logging roads), damaged or converted over the past decade. For this reason, citizens and communities continue to ask for the moratorium to continue and for loopholes to be closed until genuine land and forest policy reform is put in place.

In short, if moratoria apply clear binding conditions and benchmarks that must be met by government bodies and companies prior to the lifting of land use restrictions, then in theory powerful incentives for reform can be put to work. With proper enforcement and verification frameworks, such an approach could offer genuine potential for moratoria to stimulate positive change in supply chains and land governance.

Demand side regulation of supply chains:

One example of regulation at the global level is the EU Timber Regulation (EUTR). The EUTR came into force in 2013 and makes trade in illegal timber inside the EU a crime. Evaluations show countries were slow to implement the EUTR in 2013-15, while law enforcement and customs bodies have complained they do not have the resources to enforce the law and sanction wrongdoers. Evidence from 2016 indicates a modest increase in enforcement checks by countries like Sweden, the Netherlands and Germany. More than 50 sanctions and fines were imposed under the

EUTR in 2015-16.¹³⁶ Its effectiveness so far, however, remains unproven in slowing the inflow of illegal forest products into the EU, partly because the law contains significant loopholes (e.g. does not cover key wood products like charcoal). Nonetheless, with closure of loopholes, greater attention to human rights and robust enforcement, the EUTR holds potential to reform timber supply chains and change business behaviour.

Evidence for the application of the US 2008 Lacey Act suggests that demand side legislation can send important signals to traders and importers and help combat organised crime, corruption and illegal trade, especially where sanctions are enforced.¹³⁷ In order to increase global impact, major timber importer countries and global players like China need to adopt similar approaches to supply chain regulation and law enforcement.¹³⁸ At the same time, demand side measures need to be coupled with changes in producer countries, including stronger controls and screening at the point of export. In Peru, for example, illegal timber is traded overseas via falsification of documentation by timber export companies.¹³⁹

D.3 MULTISTAKEHOLDER AND HYBRID APPROACHES

National and sub-national approaches involving governmental and non-governmental stakeholders with a mix of mandatory rules, incentives and voluntary commitments by farm businesses, traders and retailers can be potentially effective for combatting agricultural drivers of forest loss. Experience in the Amazon shows that effectiveness can be undermined by regulatory loopholes, narrow application to single commodities, restriction to specific geographic areas or biomes as well as failures to include key actors or to tackle illegal operators who stay outside the initiative.¹⁴⁰ Critics stress that zero deforestation initiatives in Amazonia have tended to apply a narrow environment and ‘forest centric’ focus, which often lacks effective protections for community tenure rights. Schemes have suffered from over-emphasis on rules focused on safeguarding ‘natural’ forest, which again leaves other forest types vulnerable to encroachment and clearance, including community and smallholder secondary forests and fallows.¹⁴¹

At the international level, the EU Action Plan on Forest Law Governance and Trade (FLEGT) has

applied a multi-stakeholder and good governance approach to tackle the illegal timber trade. The EU FLEGT framework licenses only ‘legal’ tropical timber for export to EU markets via national legality assurance schemes set up under bilateral Voluntary Partnership Agreements (VPA) with timber export countries. While the approach has fostered participation by civil society and forest peoples, a narrow definition of legality tied to national laws has resulted in weak or limited treatment of human rights in VPAs and has tended to restrict FLEGT’s scope for protecting customary land rights.¹⁴² The existing FLEGT framework also excludes ‘conversion’ timber stemming from land clearance for agribusiness that makes up the bulk of illegal timber trade [Figure 3].

...The current (draft) FLEGT VPA legality definition is not in line with international and customary law. (It) only protects titled villages from external concessions...timber coming from untitled customary lands should not have the status as legal timber.

Observation of Amerindian Village leaders, Legality Seminar report, Guyana, 2015¹⁴³

More recent multi-stakeholder zero net deforestation (ZNDF) initiatives set up at UN Rio+20 Earth Summit in 2012 include the Tropical Forest Alliance 2020 (TFA2020), which supports partnerships between government agencies, civil society organisations and businesses. The Alliance enables partners to develop national land use and tenure action plans to promote “deforestation free” supply chains for palm oil, beef, soy, pulp and paper. In 2016 TFA2020 developed the Africa Palm Oil Initiative (APOI), which contains important commitments to respect “land tenure and the rights of local communities and indigenous peoples” and adhere to principles for the “recognition of community and human rights”.¹⁴⁴ The APOI is now developing national action plans on sustainable palm oil.

The completed action plan for Liberia upholds the FPIC standard, includes plans to establish a national grievance mechanism and calls for a participatory process for developing a national land use plan that must be validated through a multi-stakeholder process.¹⁴⁵ Despite these useful commitments and principles, governments, companies and conservation NGOs have so far largely dominated participation in national TFA2020 workshops. Direct participation

of land rights holders in Liberia has so far been limited, and specific commitments to uphold customary land rights are not clear in the action plan. Local communities have cautiously welcomed the TFA2020 programme, but also called for much stronger mechanisms for meaningful participation of customary land holders to ensure an accountable and effective multi-stakeholder engagement. A reply to these queries has not yet been forthcoming, raising further questions about transparency and the effectiveness of existing arrangements for community engagement.

“ Customary land owners need greater information on all aspects of the palm oil sector including the details of concession agreements, HCS, HCV, TFA2020, RSPO...at the community level. We are concerned that the imposed categories of land designation involved in HCS and HCV land planning will further increase pressure on our farm lands and force displacement and scarcity of resources ”

Community representatives and land rights holders, Liberia, 2016¹⁴⁶

With TFA2020 and other zero deforestation initiatives, forest movements and policy makers also highlight that a number of pledges refer to zero net deforestation. They raise legitimate concerns that proper application of this standard must include safeguards to prevent the clearance of natural forests for industrial monoculture plantations. Safeguards must also ensure industrial plantations are not accounted for as forest cover.¹⁴⁷

Multilateral Environmental Agreements:

Global initiatives and intergovernmental commitments to tackle tropical forest destruction have been ongoing since the first Rio Earth Summit in 1992, including pledges to involve forest peoples in national and international forest policies and initiatives and “Proposals for Action” developed by the Intergovernmental Forum on Forests (IFF), which became the United Nations Forum on Forests (UNFF) in 2001. The Convention on Biological Diversity (CBD) has several action plans and work programmes with elements seeking to reduce loss and degradation of forest biological diversity, but targets have not

sufficiently been met as forest loss continues apace. National Biodiversity Strategies and Action Plans (NBSAPs) have likewise been drawn up to safeguard forests and other ecosystems. The CBD adopted the Aichi Biodiversity Targets in 2010, including Target 5 in relation to forest ecosystems, and Target 18 in connection with traditional knowledge and customary sustainable land use of indigenous peoples and local communities.

On the ground, however, CBD policies have not been very effective to date. While, on the positive side, the CBD has been ratified by almost all governments on the planet, there has so far been weak implementation in most countries and there is no national enforcement mechanism. Implementation thus relies on the political will and action of all the relevant social sectors. This means most Parties to the CBD (more than 75%) do not report on traditional knowledge, land tenure or community customary sustainable use policies, and many fail to include applicable CBD targets in their National Biodiversity Action Plans.¹⁴⁸

International climate regime and forest and climate initiatives:

The UN Climate Convention has adopted agreements on Reducing Emissions from Deforestation and Forest Degradation (REDD+), which have been piloted by the World Bank and various bilateral agencies and conservation NGOs over the past decade. There is as yet no solid evidence that these schemes have been responsible for slowing forest loss [Table 2]. On the positive side, some indigenous peoples’ organisations report that REDD+ has opened important political space on land rights and FPIC at the global and national levels.¹⁴⁹ However, in practice, pilot REDD+ projects have not enabled changes to land laws in favour of forest peoples and have not ensured meaningful participation or genuine respect for FPIC for forest dwellers.¹⁵⁰ Other than a few cases such as Peru, Paraguay, Guyana and Colombia [Box 2], REDD+ and related national zero deforestation strategies have not included solid social components to secure and provide legal title for legitimate customary land tenure rights.¹⁵¹ Where positive tenure changes are emerging in forest nations, studies find that these cannot be attributed to REDD+ interventions, but rather to wider processes for land reform (e.g. in Liberia). REDD+ strategies have likewise generated patchy public policies, with several national REDD plans failing to include actions to tackle industrial drivers of deforestation or involve agribusiness, mining and infrastructure interests.¹⁵²



Village elder calls for secure land title for Apakoko community forest and demands action to remove illegal loggers and miners occupying customary forest land in Mambassa Territory, Ituri Province, DRC © 2017 Nadia Mbanzidi Banota, FPP.



Wampis community members and autonomous government enforce customary law and administer justice to evict illegal gold miners from their forest territory in the Peruvian Amazon © 2017 Andrés Larrea, GTANW.

In Peru, for example, sub-national REDD+ pilots have not tackled agribusiness and industrial drivers and have often failed to deliver meaningful local benefits for communities who have suffered restrictions on their livelihoods.¹⁵³ Official deforestation analyses and interventions under national REDD schemes in Africa and Asia still tend to unjustly blame and target communities and small-scale farmers for forest loss. These questionable assumptions that communities are the primary drivers of forest loss also underlie the design of local REDD schemes such as the controversial Mai Ndombe REDD+ pilot in DRC.¹⁵⁴ Yet science shows small scale subsistence farmers are not the cause of permanent forest clearance in countries like DRC.¹⁵⁵

Official studies of deforestation in the DRC still tend to blame forest peoples for forest loss... without giving adequate attention to industrial and economic causes linked to roadbuilding, industrial logging, mining and urban expansion.

DRC case study, 2016

D.4 RIGHTS-BASED AND COMMUNITY DRIVEN APPROACHES

Indigenous peoples and allied forest peoples' movements have maintained for decades that legal recognition and titling of their collective lands and territories is one of the most effective ways to slow forest loss and promote sustainable development.¹⁵⁶ The same call for action on indigenous land rights, local traditional knowledge and forests continues to be made by indigenous peoples today, including through repeated statements presented to governments in the UN Climate Convention and the Convention on Biological Diversity.¹⁵⁷

Securing collective community tenure rights:

There is mounting empirical evidence, particularly from Central and South America, which confirms that secure legal title for indigenous peoples and customary landowners is often associated with intact forest cover and low or zero deforestation rates, even in the face of intense pressure at the forest frontier where land

is being cleared for commercial farming.¹⁵⁸ Scientific studies show that indigenous titled lands managed through community governance frameworks are often more effective in sustaining healthy and intact forests and other ecosystems than conventional government-run protected areas.¹⁵⁹ As noted in section C, many forest peoples face a series of obstacles to securing collective tenure in line with their legitimate rights under international law and human rights treaties ratified by forest nations [Box 1]. Removing these obstacles and fast tracking reforms and enabling legislation to implement progressive rulings of both international and constitutional courts could bring transformational change for customary communities and indigenous peoples in countries such as Indonesia.

Despite the major positive potential for tenure and rights-based policies for combatting forest clearance and advancing livelihood security for forest peoples, surprisingly few forest and climate programmes contain well-funded and focused components to secure community forests and customary land tenure rights. Notable exceptions include Peru, Colombia and Guyana. Lessons from these countries where many of these programmes are being implemented with outdated forest tenure legislation indicate that timely and effective interventions are needed to apply new standards and safeguards to secure customary land rights. Early actions on tenure would help ensure land titling programmes are fair, transparent, objective and properly aligned with state obligations on the recognition of indigenous and community lands [Box 2]. It would also allow rights holders to fully participate in the governance and implementation of such land titling initiatives.

Recent experience in the Colombia Amazon demonstrates that innovative partnerships between indigenous peoples, government land agencies and civil society organisations can help advance and unblock pathways to legally secure indigenous territories. In the case of the Uitoto (Muina+), more than 0.5 million hectares of old growth rainforest received title in 2017 under two Indigenous Reserve (*resguardo*) boundary extensions adjacent to a deforestation hotspot. This major achievement has been made thanks to concerted efforts seeking title extension made by the Resguardo Councils, the regional collective Association of Traditional Indigenous Authorities (CRIMA), using socio-economic studies, surveys and demarcation work provided by NGOs, along with civil society advocacy support to the Resguardo Councils and CRIMA to

press the National Lands Agency to fast track the application and remove institutional blockages. While communities in the Middle Caquetá are pleased that progress is being made in legally securing a vital portion of their collective territory, they are concerned about reports suggesting that environmental and protected area conditions may have been attached to their titles without their knowledge and FPIC, thereby possibly diminishing the value of the title. In addition, the State appears to be asserting a continuing

jurisdiction over their ancestral forests under an outdated forestry law (Law 2 of 1959). The indigenous peoples and their organisations therefore seek to consolidate their gains by removing any overlapping claims of authority or limitations on their access or use imposed without their consent. This is sought in order to ensure full respect for their rights of governance and control over their forest according to their customary law in line with international law binding on Colombia.

BOX 2: LAND RIGHTS, FOREST AND CLIMATE PROGRAMMES AND ZERO DEFORESTATION INITIATIVES

Peru: German and Norwegian funding for government zero deforestation policies in Peru are channelling support to Native Communities in Ucayali for land titling work via regional GIZ projects. International funds are also being directed for registering, demarcating and titling Native Communities under the Dedicated Grant Mechanism (DGM) of the World Bank Forest Investment Programme (FIP). Experience shows that these positive tenure elements have been secured due to sustained and intense local, national and global advocacy over more than five years led by the regional Amazonian indigenous peoples' organisation AIDASEP.¹⁶⁰ Despite this important progress, challenges to securing legally recognised collective property rights over uncultivated forest lands remain. Indigenous peoples in Peru continue to demand full recognition of their land and territorial rights in line with Peru's international obligations and international human rights law.¹⁶¹

Colombia: Vision Amazonia 2020 in Colombia is funded by the UK, German and Norwegian governments under the REDD Early Movers (REM) programme. It contains a component for the extension of the land title boundaries of Resguardos, though the precise budget for land titling work was still unclear in 2017. Notwithstanding these positive tenure elements, this international forest and climate programme has been questioned by Amazonian indigenous peoples' organisations for failing to apply core safeguards like FPIC.¹⁶²

Guyana: The Amerindian Land Titling project (ALT) funded by the Guyana REDD Investment Fund (GRIF) resulted from prolonged advocacy by indigenous organisations and their allies calling for REDD+ readiness actions to resolve outstanding territorial claims and unresolved land title applications before climate investments go ahead on customary forests. Due the initial shortcomings in project safeguards, titling work was delayed until the UNDP and Government had agreed a robust set of safeguards, including FPIC in early 2017. Since adoption of the safeguard plan, progress remains painfully slow due to political obstacles (land title and title extension applications are being sent to Cabinet and stalled there) and lack of government capacity to implement the project in a timely manner.

Lessons:

- Embed robust social safeguards in line with international law standards on indigenous peoples' rights upfront in land titling programmes;
- Ensure titling programmes are well resourced and institutional and political obstacles to implementation are minimised as part of project design;
- Involve rights holders, beneficiaries and their representative organisations in the design, governance and implementation of land demarcation and titling initiatives.

At the global level, the establishment of the Land Tenure Facility (LTF) in 2017 to fund community mapping and land titling work is another potentially positive example of international collaboration in support of community tenure rights. This fund allows direct applications from indigenous peoples and forest communities to finance their land tenure work and collective actions to obtain legal recognition of their lands and forests.

Strengthening self-government:

Alongside actions to secure land and territorial rights grounded in customary tenure regimes, indigenous peoples and forest community organisations stress that States must also recognise and support local systems of self-government (including traditional governance structures preferred over local government mechanisms formulated and often imposed on indigenous peoples by law). Forest peoples seek recognition and support for local systems of community justice and the application of customary laws to ensure communities have effective control over their lands, territories and forest resources. In Peru, the law empowers Native Communities to administer local justice, and indigenous peoples such as the Wampis have formed their own collective self-governing body, and their communities have taken peaceful direct action on repeated occasions to remove illegal miners, land grabbers and other unwanted third parties from their titled lands and untitled customary lands. Indigenous peoples such as the Uitoto, Muinane, Nonuya and Andoque in the Colombian Amazon are likewise mobilising to call for the legal recognition of their traditional territory, including recognition of their autonomous self-governing collective bodies to oversee and protect the “Green Territory of Life” of the “People of the Centre.”

“ We do not need enlarged national parks and biological corridors imposed upon us and our traditional territories. Since time immemorial the traditional authorities of each one of our peoples has managed and cared for our territory and maintained its ecological function according to our traditional knowledge and our Law of Origin. What we seek is increased recognition and support from the national government for our own institutions and forms of collective traditional territorial governance... ”

Hernando Castro, Regional Indigenous Council of Middle Amazonas, Colombia

Community mapping:

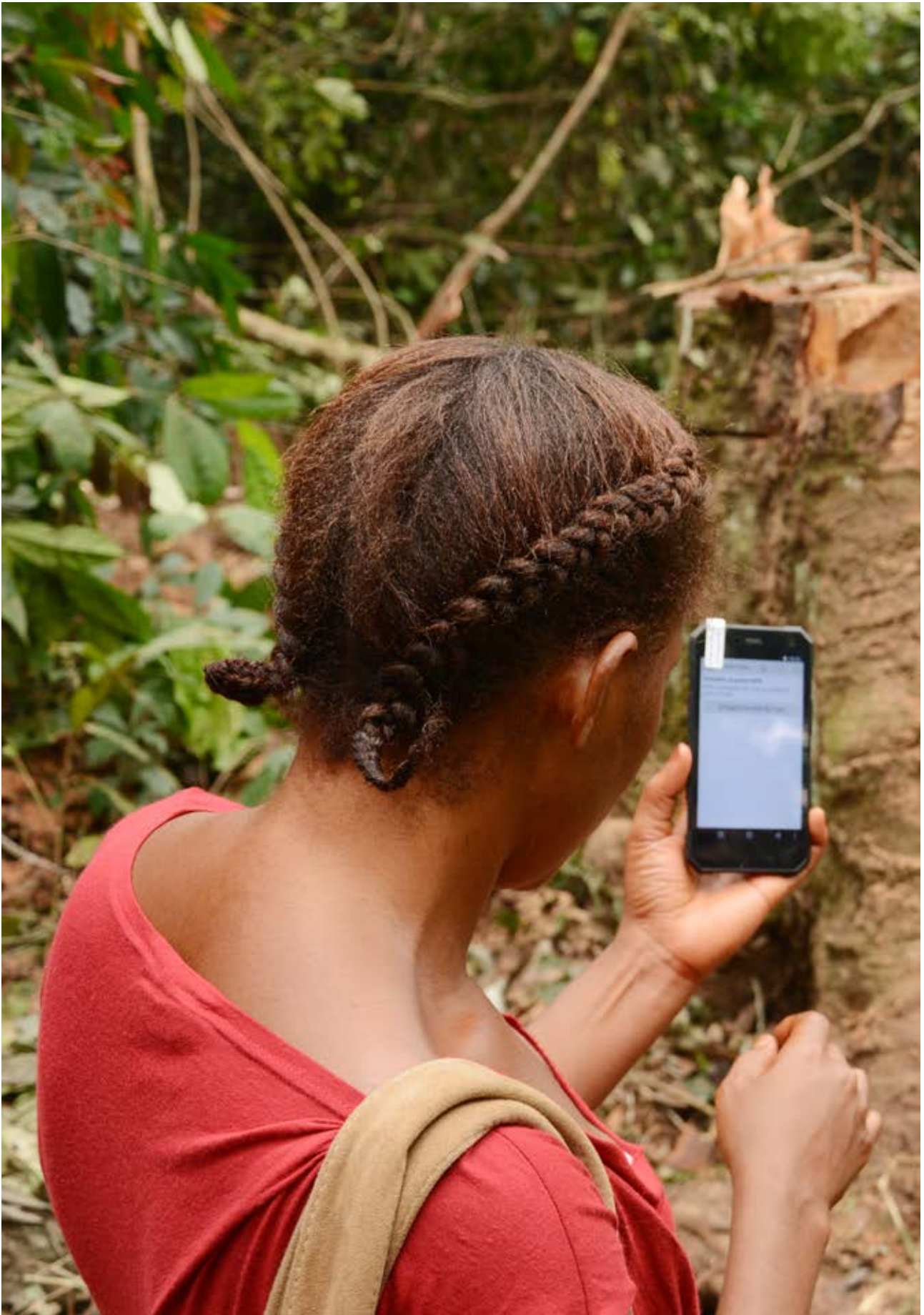
Community mapping of customary tenure and land, utilising GPS technology coupled with participatory approaches such as sketch mapping and community construction of three-dimensional maps, has proven to be highly empowering for forest peoples.¹⁶³ Community maps are used in dialogues with government land agencies, forest, and conservation authorities, to assert and legitimate customary land and livelihood rights.¹⁶⁴ In Indonesia, indigenous peoples and forest networks have set up country-wide community mapping networks such as the *Jaringan Kerja Pemetaan Partisipatif* (JKPP).¹⁶⁵ In Colombia, community maps have been used successfully in high level legal actions seeking land rights recognition, while in Guyana and Peru community maps are being used as part of formal applications for land titles and land title extensions.

Participatory mapping is being used by forest peoples and their allies in Latin America, Africa and SE Asia to challenge imposed resource concessions, illegal deforestation and land grabs linked to agro-industrial and mineral supply chains, including actions to secure restitution of forest land taken without community consent. Making community maps is a core part of social standards for the Community Land Use Planning (CLUP) tools used in the High Carbon Stock Approach to zero deforestation.¹⁶⁶

Participatory mapping is undertaken jointly to plot the full extent of customary rights and uses, including farmlands; forest fallows; hunting, fishing and gathering areas; reserves; sacred sites; and collective territories

HCSA Social Requirements¹⁶⁷

Community mapping is likewise a central part of FPIC standards and guidelines, where mapping is needed to define the geographic scope and jurisdiction over which the FPIC protections apply. This may involve mapping by a single community or by a collective of forest communities that hold a common territory and community forest.¹⁶⁸ Where land authorities, forest agencies, licensing bodies and companies respect community maps, they hold genuine potential to uphold rights in zero deforestation schemes, make supply chains more accountable and promote meaningful reforms in land use policies and zoning.



In Cameroon, communities are challenging illegal logging of their customary forests using evidence of land rights and FPIC violations collected by their own community monitoring teams © Viola Belohrad, FPP.

Community-based monitoring:

Forest peoples have mobilised in recent years to combine mapping and digital technology with innovative and empowering grassroots efforts to monitor their community forests, lands and territories. The Wapichan in Guyana, for example, have set up their own community-controlled monitoring system to expose illegal deforestation and challenge illegal encroachment on their customary lands by Brazilian miners. The Wapichan tools are now being rolled out in other parts of Guyana where indigenous peoples are seeking to adapt the territorial monitoring approach to specific monitoring of timber and mineral supply chain compliance with legality and sustainability standards, including in relation to land tenure and human rights.

“ Uncontrolled mining expansion on our lands is resulting in deforestation, desecration of sacred sites and irreparable damage to our creeks, rivers and water sources. The situation is getting worse and threats are increasing. This is why we have decided to watch over our lands and forests, and to get organised to collect and publish information to tell the world what is going on ”

Chairperson of the South Rupununi District Council, Guyana, 2017¹⁶⁹

In northern Peru, indigenous peoples including the Achuar and Wampis have used local monitoring to seek redress for environmental damage caused by oil companies in the Upper Amazon.¹⁷⁰ Community monitoring reports are now being used to feed into litigation for land restitution and compensation caused by illegal loggers and oil palm plantation companies by the Shipibo people in Ucayali, Peru. Where communities consider it useful, there are options to share their local mapping and monitoring information on regional and global platforms on land rights and deforestation.

In Paraguay, the Federation for the Self Determination of Indigenous Peoples (FAPI) has coordinated with other indigenous organisations and national and international NGOs to establish an interactive mapping and deforestation platform in collaboration with the World Resources Institute (WRI). This

platform enables local monitoring information on illegal deforestation and land rights violations to be shared on the Global Forest Watch (GFW) portal.¹⁷¹ It aims to give global visibility regarding the true situation of indigenous peoples and their lands and territories that are legalised or still under claim in Paraguay. At the same time, FAPI is working to monitor rights violations and initiate processes for legal redress and reparations.¹⁷² In Indonesia forest peoples are likewise using community monitoring to challenge infractions and illegal land encroachment by logging and plantation companies.

“ Now, we [the community] can check the company’s activities - take GPS coordinates of where they have been carrying out surveys or logging within our territory. We then work with a local NGO that has the skills to make maps and monitoring reports that we can then present to the local government or to the Forestry Commission as evidence that the company has entered our land without our consent. If we don’t have evidence how will anyone know outside of the community that these violations are going on? ”

Community activist, Long Isun Village, East Kalimantan, Indonesia

In Liberia, communities are now developing their own independent monitoring system to check oil palm company compliance with community agreements made under FPIC procedures. Elements to be monitored include respect for community rights, local benefit sharing and safeguarding of community forests.

D.5 JURISDICTIONAL APPROACHES

Policy makers, commodity and supply chain certification schemes, companies with zero deforestation pledges and REDD+ programmes all now propose ‘jurisdictional’ programmes to promote change and effective forest protection “at scale” (country, province, landscape). This approach combines legislative measures, enforcement and positive incentives within an agreed legal, administrative and geographic ‘jurisdiction’. This framework is considered conducive to cross-sectoral

approaches between different industries and government ministries regulating land policy and natural resource exploitation working together with companies who have made no-deforestation and no-exploitation commitments.¹⁷³ In theory, it also could offer opportunities to make progressive commodity standards on land tenure, FPIC and forests binding under statutory schemes operating at the level of the entire ‘jurisdiction’.

Silver bullet or a race to the bottom?

The jurisdictional approach is espoused as more friendly and cost-effective for smallholders and more amenable to a broader sustainable development approach at the landscape level.¹⁷⁴ The RSPO and government bodies are piloting this approach in Sabah (Malaysia) and plans are underway to roll this approach out for palm oil production in the Ecuadorian Amazon region.¹⁷⁵ Companies like Unilever have adopted new ‘produce and protect’ policies to source high risk conflict commodities from ‘low risk jurisdictions’.¹⁷⁶ TFA2020 is also proposing jurisdictional approaches to zero deforestation in Sabah, East Kalimantan (Indonesia), Liberia and Para (Brazil).¹⁷⁷ Some policy makers are now calling for international REDD+ finance to fund jurisdictional

‘sustainable development’ programmes like the Produce, Conserve and Include (PCI) programme in Mato Grosso, Brazil.

Critics emphasise that sub-national jurisdictional approaches are unable to address displacement of illegal actors, land grabbers and forest destroyers to other regions in the same country or in neighbouring countries. It is also unclear how they deal with national-level legal obstacles and the need for systemic tenure and agrarian reform. Analysts also point out that like all forest and land use programmes, they carry the risk of dominance by government and big business alongside elite capture of benefits, marginalisation of vulnerable groups and superficial treatment of tenure conflicts and customary land rights.¹⁷⁸ Others warn that there is a possible perverse incentive for these programmes to push standards downwards and opt for weak verification systems to reduce the chance of non-compliance by a few actors, which might then risk blacklisting the entire jurisdiction. Major questions remain about the accountability, redress and compliance mechanism for these schemes covering entire regions and multiple actors: How are past illegalities and injustices addressed? Who ensures the whole jurisdiction is ‘compliant’? Who verifies compliance at scale and how?



The Wapichan people seek legal recognition and international support for a community conserved forest covering 1.4 million ha of old growth rainforest on their customary land in the Upper Essequibo basin, southern Guyana © Philip Brown, SRDC.

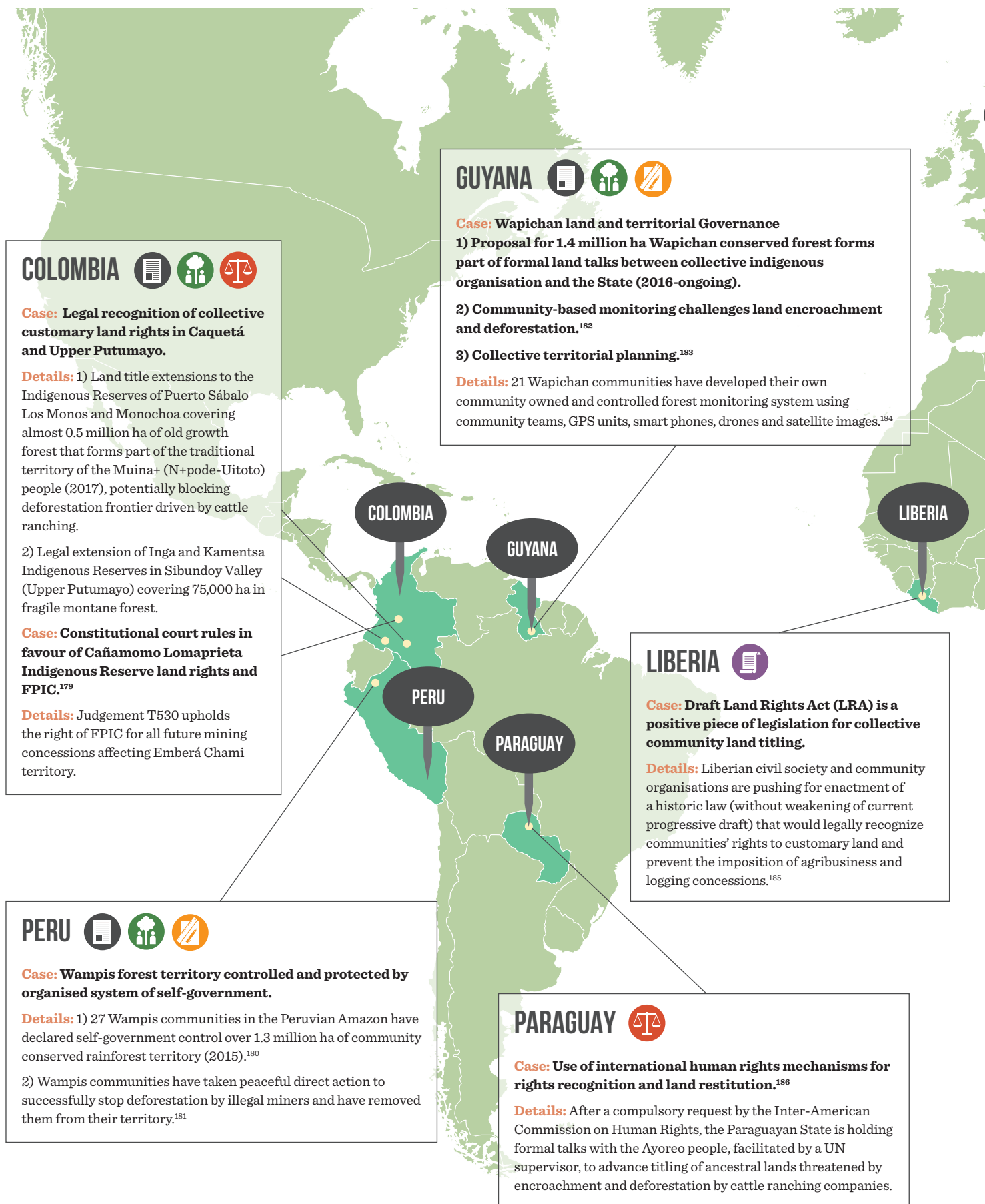
E. CONCLUSION AND RECOMMENDATIONS

Targeted actions in support of proven approaches to tackling forest loss are needed to promote more effective forest and climate policies and enable positive reforms in supply chains to ensure respect for human rights, better forest protection and reduced land use emissions. Promising community-driven and rights-based solutions have genuine potential to help close major gaps between pledges, principles and practice and merit much more support [Figure 4]. At the same time, global and national policy reforms and interventions are needed to address policy incoherence and remove barriers to transformative change. Proposals for action are set out below based on the findings in sections A, B, C and D.

“ *...now we will have our own government responsible for our own territory. This will allow us to defend our forests from the threats of logging, mining, oil and gas and mega dams. As every year goes by these threats grow bigger. This unity will bring us the political strength we need to explain our vision to the world and to the governments and companies...* ”

Andrés Noningo, Wampis elder and visionary, Peru, 2015 'A message to the world from the Wampis,' *New Internationalist*

FIGURE 4: LOCAL AND GLOBAL SOLUTIONS TO UPHOLDING HUMAN RIGHTS, TACKLING DEFORESTATION AND REFORMING SUPPLY CHAINS



SOLUTIONS KEY:



SECURING LAND RIGHTS AND TITLING



SELF-GOVERNMENT AND COMMUNITY FOREST MONITORING



PARTICIPATORY MAPPING



USE OF REDRESS MECHANISMS



NATIONAL LAW REFORM



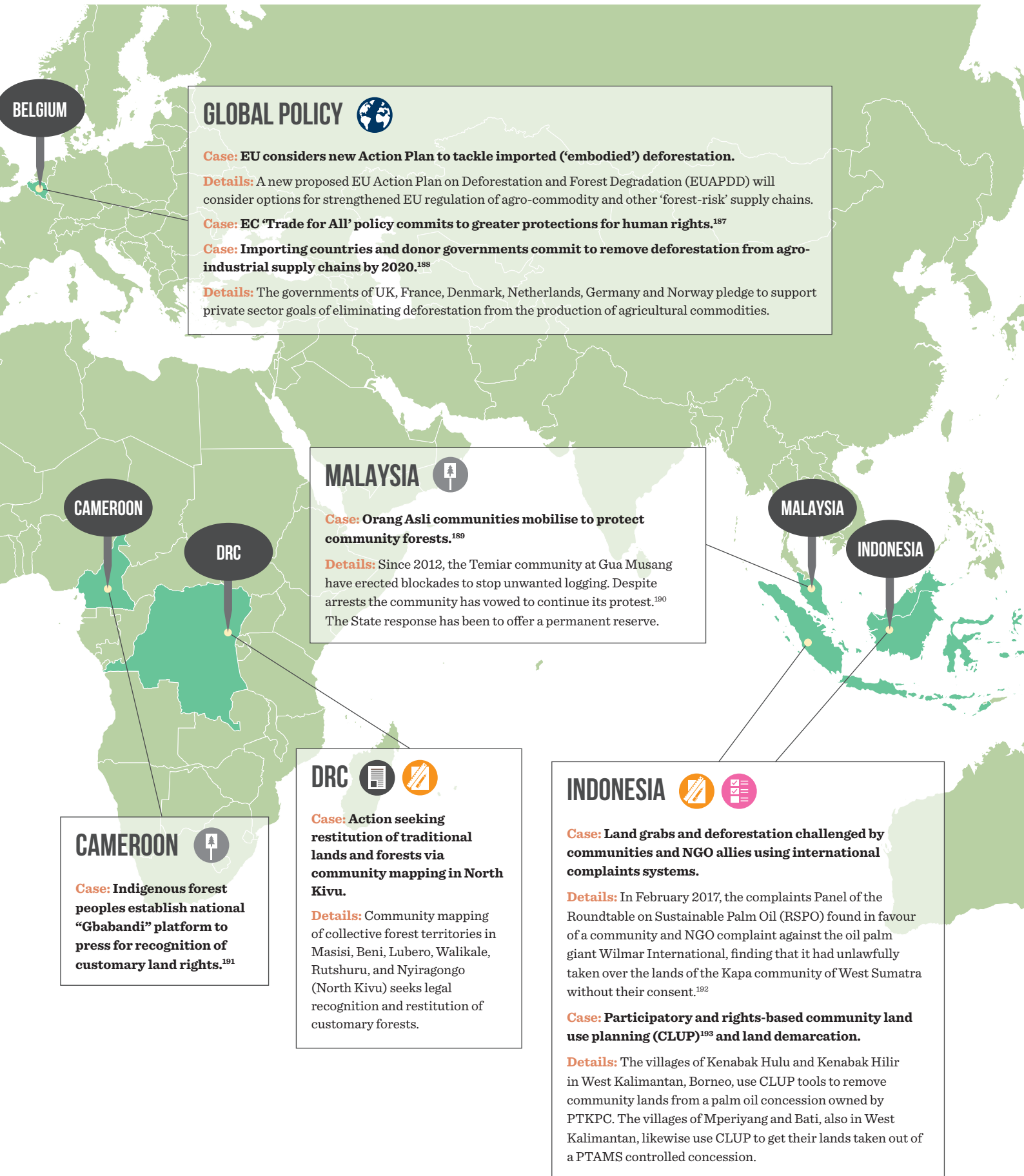
DIRECT ACTION AND FOREST PEOPLES' MOVEMENTS



LEGAL CASES



GLOBAL POLICIES AND INITIATIVES



BELGIUM

GLOBAL POLICY

Case: EU considers new Action Plan to tackle imported ('embodied') deforestation.

Details: A new proposed EU Action Plan on Deforestation and Forest Degradation (EUAPDD) will consider options for strengthened EU regulation of agro-commodity and other 'forest-risk' supply chains.

Case: EC 'Trade for All' policy commits to greater protections for human rights.¹⁸⁷

Case: Importing countries and donor governments commit to remove deforestation from agro-industrial supply chains by 2020.¹⁸⁸

Details: The governments of UK, France, Denmark, Netherlands, Germany and Norway pledge to support private sector goals of eliminating deforestation from the production of agricultural commodities.

CAMEROON

CAMEROON

Case: Indigenous forest peoples establish national "Gbabandi" platform to press for recognition of customary land rights.¹⁹¹

DRC

DRC

Case: Action seeking restitution of traditional lands and forests via community mapping in North Kivu.

Details: Community mapping of collective forest territories in Masisi, Beni, Lubero, Walikale, Rutshuru, and Nyiragongo (North Kivu) seeks legal recognition and restitution of customary forests.

MALAYSIA 

Case: Orang Asli communities mobilise to protect community forests.¹⁸⁹

Details: Since 2012, the Temiar community at Gua Musang have erected blockades to stop unwanted logging. Despite arrests the community has vowed to continue its protest.¹⁹⁰ The State response has been to offer a permanent reserve.

MALAYSIA

INDONESIA

INDONESIA

Case: Land grabs and deforestation challenged by communities and NGO allies using international complaints systems.

Details: In February 2017, the complaints Panel of the Roundtable on Sustainable Palm Oil (RSPO) found in favour of a community and NGO complaint against the oil palm giant Wilmar International, finding that it had unlawfully taken over the lands of the Kapa community of West Sumatra without their consent.¹⁹²

Case: Participatory and rights-based community land use planning (CLUP)¹⁹³ and land demarcation.

Details: The villages of Kenabak Hulu and Kenabak Hilir in West Kalimantan, Borneo, use CLUP tools to remove community lands from a palm oil concession owned by PTKPC. The villages of Mperiyang and Bati, also in West Kalimantan, likewise use CLUP to get their lands taken out of a PTAMS controlled concession.

SUPPORT AND PROMOTE SECURE COMMUNITY TENURE RIGHTS:

- Set up and resource fast-track initiatives to implement local, national and international court rulings upholding community customary land rights;
- Channel international funds directly to customary land owners for community tenure mapping, self-demarcation initiatives, and conservation efforts;
- Recognise and support the proposals of indigenous peoples and customary landowners for the creation of community conserved forests and territories;
- Insert dedicated and well-resourced community tenure components in global action plans and programmes seeking to eliminate deforestation and land grabs from conflict commodity supply chains;
- Enable access to justice and create mechanisms for land restitution (as opposed to mere compensation) to communities who have suffered land and resource theft and/or degradation or FPIC violations by land administration and licensing agencies, companies or land traffickers.

REINFORCE COMMUNITY GOVERNANCE AND CONTROL OVER COMMUNITY FORESTS:

- Assist forest peoples to strengthen their own systems of self-government and administration of justice and customary law to protect community rights and sustainably manage and control their lands, territories and forest resources;
- Empower community institutions and structures for claiming and exercising their human rights to, inter alia, their lands, resources, and culture (including the right to free, prior and informed consent (FPIC));
- Encourage and support (including via funding) community initiatives to maintain, protect and revitalise forest-related traditional knowledge and customary sustainable use practices; and to develop and implement long-term sustainable livelihoods options;

- Increase recognition of the critical contribution of forest peoples, including women, in forest protection efforts, including under national and global forest and climate policies (INDCs etc);
- Support forest peoples to establish community-based systems for monitoring and reporting on threats to their rights and forests (including on untitled customary lands) and for asserting their participation in State and corporate led monitoring and reporting mechanisms;
- Establish mechanisms to provide independent legal and technical support to communities affected by land conflicts, illegal deforestation and disputes with companies.

Adopt and enforce laws that secure the legal personality of our self-chosen institutions and application of customary laws and systems of land use and management based on our own knowledge and beliefs.

Palangka Raya Declaration, 2014

REFORM OUT-DATED LAND LAWS AND CONCESSION SYSTEMS:

- Conduct multi-stakeholder dialogues to assess national land concession frameworks for agribusiness and extractive industries (logging, mining, hydrocarbons) against applicable international standards and country obligations to protect community tenure rights and self-governance;
- Enable land tenure and agrarian reforms to bring national land laws and land and resource concession systems into alignment with international human rights laws and obligations;
- Put in place moratoria on land use change permits and implement rules and regulations to protect customary land rights in land use zoning and concession allocation decisions, including protections for untitled customary lands;
- Address land tenure insecurity through full legal recognition of the customary land rights of forest communities.

We urge the Government of Indonesia, of the Province of East Kalimantan and the District of Mahakam Hulu, as well as KomNas HAM and the Forest Stewardship Council to take urgent action to redress violations committed by PT Kemakmuran Berkah Timber (PT KBT), Roda Mas Group, which is actively logging primary forests in the Heart of Borneo against the will of the indigenous people.

Pekanbaru Resolution, Indonesia, February 2017

- Facilitate and promote judicial reforms to strengthen legal redress mechanisms and access to justice for community victims of violations, including those perpetrated by the private sector;
- Provide capacity to law enforcement and judicial officers (including judges) on human rights and their applicability in domestic cases;
- Adopt corporate policies to implement the business responsibility to ensure protections for human rights defenders and recognise their valuable role in ensuring responsible supply chains.

IMPLEMENT NEW RIGHTS-BASED NATURE CONSERVATION PARADIGM:

- Reform unjust and unsustainable ‘exclusionary’ forest conservation and protected area policies in order to uphold human rights and recognise and support forest peoples’ ability to protect and sustainably use forests and biodiversity;
- Enable collaborative partnerships between government agencies, civil society and forest peoples to implement the new people-centred conservation paradigm based on social inclusion, good governance and respect for human rights as defined in CBD and IUCN policies.

STRENGTHEN MEASURES TO UPHOLD HUMAN RIGHTS AND PROTECT HUMAN RIGHTS DEFENDERS:

- States must impartially investigate, sanction and prevent attacks and threats against human rights defenders in a timely manner;
- States must establish effective protection and security mechanisms to provide appropriate safety measures for human rights defenders under threat;
- States should support human rights defenders and publicly condemn efforts to defame and discredit their actions;
- States and companies must stop the criminalisation of land and forest defenders;

ADDRESS INDUSTRIAL DRIVERS AND UNDERLYING CAUSES:

- Double efforts to address industrial drivers and underlying causes in international forest and climate interventions and payment for results schemes, including perverse incentives, weak inter-sectoral coordination, insecure tenure and lack of FPIC protections;
- Stop global finance for major deforestation drivers via private and public international financial institutions (including loans and grants made by the World Bank Group and its financial intermediaries);
- Undertake robust national and sub-national deforestation analyses and stop blaming poor people and forest communities for forest loss and degradation;
- Tackle illegal land transactions and organised crime through special law enforcement and justice initiatives to sanction human rights violators, land grabbers and illegal resource users;
- Strengthen support and implementation of existing global frameworks for combatting corruption and money laundering, including the United Nations Convention against Corruption and UN Office on Drugs and Crime (UNODC);
- Address unsustainable global demand and consumption patterns, including demand for illegal drugs and narcotics (reduce food waste, change diets, consumer awareness etc).

REGULATE AND INCREASE TRANSPARENCY AND COMPLIANCE IN GLOBAL SUPPLY CHAINS:

- Strengthen company due diligence, compliance, monitoring and reporting mechanisms, including human rights impact risk assessments, to uphold human rights, prevent land grabs, help resolve long-standing land conflicts, and achieve deforestation free supply chains;
- Ensure company due diligence and human rights gap assessments of national laws, as well as prior social and environmental assessments prior to finalising project design and engaging in company activities/contracts with suppliers;
- Establish legal obligations on companies to exercise increased due care where their operations, suppliers or business dealings involve countries or sub-national jurisdictions with high levels of corruption, illegality, human rights abuse and deforestation;
- Establish contractual obligations between States and corporate actors to uphold human rights and environmental obligations;
- Include community rights of grievance and redress in Investor-State agreements as well as supply chain contracts;
- Ensure that Investor-State contracts, treaties and concession instruments enable human rights protections and access to grievance mechanisms for third party victims, including through the elimination or modification of stabilisation clauses that might otherwise infringe guaranteed human rights;
- Increase spaces for communities to influence reforms to international investment treaties limiting protections to human rights and potential access to grievance mechanisms;
- Establish systems of independent third party verification of compliance with company human rights and zero deforestation policies;
- Ensure corporate disclosure of suppliers of forest-risk commodities with information on geographic sources and legality compliance, including respect for human rights and land tenure standards;
- Adopt company policies and agile mechanisms to address documented allegations of human rights abuse in supply chains, including: commitments to issue a timely public statement on the company's response to documented breaches; disclose non-compliance protocols and policies that are used to bring its supply chain partners into compliance; and state clearly the human rights benchmarks that will trigger suspension or cancellation of relationships with repeated offenders;
- Develop new demand side and supply side legislative measures to enforce standards to eliminate human rights abuse, illegal land acquisition and deforestation from global trade flows, ensuring adequate resources for police, customs and export authorities;
- Enable independent community monitoring of global supply chains and company performance regarding compliance with human rights, tenure and environmental standards alongside corporate commitments on human rights and zero deforestation.

Businesses should support and respect the protection of internationally proclaimed human rights; and make sure they are not complicit in human rights abuse.

UN Global Compact



Community leaders from Indonesia, Colombia and Peru visit Canary Wharf, London to call for greater regulation of global agribusiness trade and finance
 © 2016 Kingsley Uzundu, Environmental Investigation Agency.

ENSURE COMPLIANCE IN COMMODITY CERTIFICATION AND INCREASE ACCOUNTABILITY:

- Strengthen enforcement mechanisms at all levels to apply agreed standards;
- Train Certifying Body staff on assessment compliance with standards for human rights and customary tenure protection;
- Remove conflict of interest risks, including for Certifying Bodies by establishing mechanisms for genuinely independent certification and auditing of compliance;
- Improve grievance procedures to make them more agile, accessible to communities and fully independent of scheme member companies;
- Ensure protections for complainants and whistleblowers using commodity certification grievance procedures, where they risk being harmed after denouncing rights violations;
- Close accountability gaps to prevent members leaving schemes when complaints are lodged against them or otherwise reorganising their corporate structures to avoid liability (e.g. dissolution, sale of subsidiary ‘problem’ companies or asset transfers). Loopholes might be closed through the introduction of innovative financial incentives e.g. setting up some sort of ‘performance bond’ or similar fiscal mechanism for all signed up member companies;
- Align National Interpretation of commodity standards with agreed minimum protections for human rights, FPIC and land tenure security;
- Support upward harmonisation of commodity standards and related zero deforestation policies to create minimum standards for ‘forest-risk’ conflict commodities, especially with regards to human rights and social safeguards (e.g. via initiatives like the International Accountability Framework).

INCLUDE HUMAN RIGHTS, LAND TENURE AND ANTI-CORRUPTION COMPONENTS IN JURISDICTIONAL SCHEMES:

- Jurisdiction programmes for zero deforestation, commodity certification and REDD+ must include integrated and well-resourced components to protect human rights, recognise and secure community customary land rights, address past human rights and tenure violations and ensure access to justice;
- Apply human rights-based approaches to landscape zoning and land allocation, using progressive social standards and community land use planning approaches;
- Mechanisms for remedies that go beyond compensation and include but are not limited to, land restitution, restoration of environmentally-damaged lands, apologies, and future prevention, should be set up for communities who have suffered land and resource theft or destruction, or FPIC violations by companies, land traffickers and/or government land administration and licensing agencies.



Wapichan and Makushi communities march in support of Global Call to Action on Community Land Rights, Guyana, 2016 © Tom Griffiths, FPP.

ACRONYMS

AMAN	Aliansi Masyarakat Adat Nusantara (Indonesia)	GHG	Greenhouse gas
APOI	Africa Palm Oil Initiative	GPS	Global positioning system
BPN	National Land Bureau (Indonesia)	HCS	High Carbon Stocks
CB	Certification body	HCSA	High Carbon Stocks Approach
CBD	Convention on Biological Diversity	HCV	High Conservation Value
CFS	Committee on World Food Security	HRD	Human Rights Defender
CLUP	Community Land Use Planning	IFF	Intergovernmental Forum on Forests
CRIMA	Regional Indigenous Council of Middle Amazonas (Colombia)	IIRSA	South American Regional Infrastructure Initiative
CSR	Corporate social responsibility	ISCC	International Sustainability Carbon Certification
DRC	Democratic Republic of the Congo	JKPP	Jaringan Kerja Pemetaan Partisipatif (Indonesia)
EU	European Union	LRA	Land Rights Act (Liberia)
EUAPDD	EU Action Plan on Deforestation and Forest Degradation	LTF	Land Tenure Facility
EUTR	EU Timber Regulation	NBSAP	National Biodiversity Strategies and Action Plan
FAO	Food and Agricultural Organisation	NCR	Native Customary Rights (Malaysia)
FECONAU	Federation of Native Communities of Ucayali (Peru)	NDC	Nationally Determined Contributions
FEDEPALMA	National Federation of Oil Palm Growers (Colombia)	NPP	New Planting Procedures (RSPO)
FERISHAM	Federation of Indigenous Shawi Peoples - San Martín Region (Peru)	REDD	Reduced emissions from deforestation and forest degradation
FAPI	Federation for the Self Determination of Indigenous Peoples (Paraguay)	RSPO	Roundtable on Sustainable Palm Oil
FLEGT	Forest Law Governance and Trade	TFA2020	Tropical Forest Alliance 2020
FPIC	Free, prior and informed consent	VGGT	Voluntary Guidelines on the Responsible Governance of Tenure
FPP	Forest Peoples Programme	VPA	Voluntary Partnership Agreement
FSC	Forest Stewardship Council	UN	United Nations
GFW	Global Forest Watch	UNFF	United Nations Forum on Forests
		ZDF	Zero deforestation
		ZNDF	Zero net deforestation

ENDNOTES

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