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Workshop on the management of the territory and its resources

***Reflection for an indigenous peoples declaration
to be submitted at the First Nations Forestry Forum
and the World Forestry Congress
in September 2003***

Discussion Paper

June 2003

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WORKSHOP ON THE MANAGEMENT OF THE TERRITORY AND ITS RESOURCES

REFLECTION FOR AN INDIGENOUS PEOPLES DECLARATION TO BE SUBMITTED AT THE FIRST NATIONS FORESTRY FORUM AND THE WORLD FORESTRY CONGRESS IN SEPTEMBER 2003

DISCUSSION PAPER

INTRODUCTION

This discussion paper was developed in a perspective of issue-oriented summary for the AFNQL workshop on the management of the territory and its resources. The working group's mandate is to prepare the reflection for the Indigenous Forestry Forum (on September 19, 20 and 21) that will be held within the framework of the XII World Forestry Congress (from September 21 to September 28) that will be held in September 2003, in Quebec.

The specific goal of this paper is to take into account national and international debates on forest management and Indigenous peoples and to identify the basic elements and principles so that the working group may, at a later stage, use them to prepare an Official Declaration Project establishing the Indigenous Peoples' common message to the World Forestry Congress.

The main documentary sources used for the purposes of this paper are the following:

- The *First Nations of Quebec and Labrador 26 principles* for adopted on May 18, 1998;
- The *First Nations of Quebec and Labrador Sustainable Development Strategy*, adopted in November, 1997;
- The proceedings of the *Royal Commission on Aboriginal Peoples, Canada 1991*;
- The *Canadian Forestry Strategy* of Canada (2003-2008);
- The *Canadian Strategy on Biodiversity* adopted in 1995;
- Forest certification;
- A reflection by Joji Carino from the *International Alliance of Indigenous and Tribal Peoples of the Tropical Forests* within the framework of the XI World Forestry Congress held in Antalya, in Turkey, in 1997;
- A text by Geoff Quaile from the GCCQ and Peggy Smith from the NAFA entitled "An Aboriginal perspective on Canada's progress toward meeting its national commitment to improve Aboriginal participation in Sustainable Forest Management;"
- The Introductory text of *Global perspectives on Indigenous peoples forestry. An international Conference*, Vancouver, June 4-6, 2002;
- *Action 21* program adopted at the *United Nations Conference on Environment and Development (UNCED)* held in Rio de Janeiro, in Brazil, in 1992;

- The Kari Oca (Earth) Declaration adopted in Brazil, 1992, during the *First Indigenous World Conference on Territory, Environment and Development*
- The Leticia Declaration, in Colombia, in 1996, adopted during the *International Meeting of Indigenous and Other Forest Dependent on the Management, Conservation and Sustainable Development of All Types of Forests*, event sponsored by the *Ad Hoc Intergovernmental Panel on Forests (IPF)* of the *United Nations Commission on Sustainable Development (UNCSD)*
- The Kimberley Declaration, in South Africa, adopted during the *International Indigenous Peoples Summit on Sustainable Development*, held August 20-23, 2002.

GLOBAL CONTEXT¹

Certain findings were identified within the scope of the issues that concern us.

History reveals that relations between Aboriginal peoples, governments and commercial forest interests/stakeholders/forest industry have often been conflictual.

Since the XVI century, various governments throughout the world have made a mockery of the traditional rights of Aboriginal peoples and delegated their responsibilities over vast sectors of the native forest to forest agencies, irrespective and often at the price of the life of its Aboriginal inhabitants. During the XIX century, most governments transferred their forest management rights to private companies able of investing financial capital for exploitation purposes, regardless of Aboriginal interests and aspirations. These policies prevented Aboriginal peoples from having access to their forest territories that are of utmost importance to their cultural identity, their way of life and their economic base.

The situation still prevails today and continues to widely affect the global state of the forest, giving rise to conflicts between Aboriginal peoples, governments and the forest industry.

However, this historical model is undergoing change due to the Indigenous peoples' increasing political power their increasing competitive ability. A few governments have started to correct historical injustices by recognising Indigenous property and human rights.

Statistically,² Indigenous communities would own or manage about 10% of public forests, a little more than the forest industry and almost the same percentage as the one of private forests. Several companies seized the opportunity to negotiate partnerships with Indigenous communities in order to diminish potential conflicts and risks as well as to bring stability to the operations of this industrial sector. In some countries, national and international processes lead to the integration of Indigenous community issues into forest

¹ Reflections drawn from articles mentioned in the file.

² Global Perspectives on Indigenous peoples Forestry, Linking Communities, Commerce and Conservation, an international Conference, Vancouver, B.C. Canada, June 4-6, 2002, Rationale p. 1

management. Several government and industry leaders see the strengthening of the power of Indigenous community-based enterprises more as a must than an opportunity, that is a commitment that will ensure the community's sustainable development, a sustainable market for forests products and sustainable forest conservation.

In most countries, the legal, political, regulatory and subsidy systems go against the rights and interests of the communities and constitute substantial commercial barriers to Indigenous enterprises and partnerships. The vast support network of policies, research, technical assistance, marketing and business associations that made the fortune of the industry is not available to Indigenous community-based enterprises and partnerships with conventional businesses. The communities themselves face important challenges of a cultural nature in the implementation of governance systems that can also manage commercial enterprises. Indigenous forests and forestry are a key issue in national and world debates on this topic.

Many representatives of Indigenous organisations throughout the world consider that the historical and increasing break between local and Indigenous communities and forests as well as the disposal of their lands figure among the essential reasons that explain the current forest crisis. This land disposal is deemed to be robbery without compensation by governments and companies.

In Canada, the dispossession and marginalisation of the territory and its resources explain in large measure the drastic changes in the Aboriginal way of life and the social disruptions embodied by poverty, the high suicide rate among youth, health problems and a poor level of education.

The marginalisation of local populations in forest management and exploitation decision-making has had drastic consequences for these populations and the forests. Transformation of a way of life affects not only the physical control of forest lands but also values and outlooks dealing with forests. Traditional control mechanism become obsolete and social destructure follows. Forest developments and the disruptions they cause to Aboriginal peoples' way of life play an important role in the loss of Aboriginal languages for they are born of the territory and life within the territory: they then lose their connection to the land. The special link of language with the land is thus broken. The big generous contracts given to the companies, added to widespread permissiveness in the matter of activities and public security control of several States, have resulted in the genocide of some Indigenous peoples. Others are still living with the threat of genocide.

The fact that local populations were kept out of forest planning and environment management disrupted the relations that existed between forests and peoples within forest communities and bioregions as well as the spiritual and ecological notions underlining such relations.

Over generations, the promotion and regulatory control of the wood industry were carried out at the expense of social considerations. Timber companies that control forest and

planning compare to foxes guarding the hen house: they are in conflict of interest. Some people assume that if the Aboriginal were stakeholders of the revenue sharing process, it would only serve justice and would avoid the soft lumber dispute with the United States.

Forests have been destroyed in the name of economic development without any regard towards the destruction of ecological balance. These activities do not benefit human beings, animals, birds or fish. The current barbaric way of operating timber concessions, intensive animal production and mining industry activities that interfere with ecosystems and ruin natural resources must stop. Developments have enriched the privileged and impoverished Indigenous peoples who end up being victims of the development when they are not simply eliminated.

The eurocentric notion of property destroys Indigenous peoples; we must go back to the Aboriginal conception of the world, land and development. The effects of industrialisation destroy the land. The land is sick and polluted. Human beings cannot stay in good health in several places on earth.

The advent of sustainable forests in the XXI century will have to be conditional to the restoration of forest relations, as a conscious political response learned from bad forestry practices of the XIX and XX centuries. We must stop practising the aggressive economic development that has lead to the destruction of forests.

The future well-being of Indigenous peoples depends on the regeneration and renewal of the forests, but mainly on the restoration and recognition of their historical link with forests, which will have to be the basic requirement for their sustainable development in the XXI century.

The State's centralised control over forests was realised at the expense of forest inhabitants. The most encouraging examples of sustainable forest development and renewal of degraded forest land are currently in the hands of Indigenous peoples and local communities.

The relation between forest institutions and Indigenous peoples is embryonic and the result of a history still often full of conflicts.

Some people think we must reconcile the conflicting objectives of overcoming poverty, developing the private sector and protecting the environment.

Ecological zoning for a highest and best use of the different parts of the forest must be fostered.

National planning operations do not deal with the issue of Aboriginal rights and have not allowed effective participation in their enunciation. Planning operations must be under the State's direction but must also be intersectorial, multidisciplinary and participatory. There are no mechanisms for a full and fair participation in current intergovernmental

processes nor is there any sharing in decision-making between the State and the other important groups.

In conclusion, Aboriginal peoples, from the moment they were exposed to the Europeans up until very recently,³ were excluded from all forest planning and forest operations on their ancestral territories. This exclusion, coupled with the ignorance of their ancestral rights and their Aboriginal title have marginalised their ways of life and their cultures, have led to the deconstruction of their societies, have destroyed their economy and destabilised their governance powers.

THE PRINCIPLES OF THE AFNQL

On May 19, 1998, the AFNQL adopted 26 basic principles on peaceful coexistence on the territory based on the Aboriginal right to self-government. Beyond the assertion of Aboriginal peoples' fundamental rights, some of the principles are more explicitly related to the territory and resources.

Aboriginal peoples are entitled to self-government over their traditional territories or the lands they own, occupy or use otherwise. They have the right to make decisions concerning their own social, political and economic institutions and to ensure the integrity of their societies and territories.

Aboriginal peoples have the right to preserve and strengthen the special spiritual and material connection to their lands, their territories, their rivers and coastal waters, and with other traditionally owned, occupied or otherwise used resources, and bear responsibility towards current and future generations.

Aboriginal peoples have the right to own, promote, manage and use their lands and territories that is their whole environment including lands, air, rivers and coastal waters, field ice, flora, fauna and other resources they traditionally owned, occupied or otherwise used. They are specially entitled to full recognition of their laws, traditions and customs, their land tenancy arrangement and of the institutions that exploit and manage their resources.

Aboriginal peoples have the right to hunt, fish, trap, harvest, gather and barter all year long in the zones they have traditionally owned, occupied or otherwise used.

Aboriginal peoples have the right to efficient measures on the part of non-Aboriginal governments to counter any interference with these rights as well as any alienation or limitation of said rights. In no case will Aboriginal peoples be deprived of their own means of sustenance, which include essential dimensions of an economic, social, cultural and spiritual nature.

³ It is still the case globally except for a few positive cases.

Aboriginal peoples have the right to decide their own priorities regarding the development process of their territories, their lands and their resources. For these purposes, they can enter into agreements concerning revenue sharing and other means of wealth distribution. .

In development planning and implementation, the compulsory principle of free, prior and informed consent of the Aboriginal peoples involved must be respected. The need to protect the environment for current and future generations, as well as the importance of sustainable and equitable development are fundamental principles.

THE SUSTAINABLE DEVELOPMENT STRATEGY OF THE AFNQL

The First Nations of Quebec and Labrador Sustainable Development Strategy was adopted in November 1997 by the Assembly of First Nations of Quebec and Labrador (AFNQL).

In the introduction of the document and in a brief historical background, we are reminded of the importance of the role played for thousands of years by the Aboriginal nations and peoples regarding the protection of the territory⁴ and the ecological balance as well as their self-government and their intimate sense of belonging concerning the territory⁵ and its resources. We are also reminded that they have been the victims of deprivation by the colonial authorities of the country and third parties for over a century and a half and we are finally reminded that Aboriginal Nations and Peoples are an unavoidable reality where building the country is involved.

The main Aboriginal values relating to sustainable development that foster balance between human needs and environment, social and economic requirements at the core of development projects.

Inspired by the work of the United Nations' main commissions and conferences on the issue, the First Nations' strategy is an ongoing process and it is based on the principles of sustainable development on which Indigenous principles are grafted.

Indigenous cultures are here seen in their integration to the universe as a whole; their elements are interdependent and they have a life and a soul. Indigenous cultures and languages are the core of Indigenous identities. Indigenous languages represent a special way of seeing the world, an ancestral wisdom, ecological knowledge and ways of life specific to Indigenous people.

The cultures and languages rooted in the territory are threatened by the destruction of burial grounds, the loss of wildlife habitats, excessive bush logging and pollution. The sustainable development approach and example involve protecting the quality of the

⁴ The territory: territory occupied and traditionally used by a first nation or one or several indigenous nations.

environment and its uses to ensure the retention, promotion and sustainability of the rich and diversified Indigenous languages and cultures. Political and legislative must be exercised by First Nations to protect their cultures and languages and be recognised by other governments.

Due to the immemorial connection of Indigenous people to the territory, which is a source of cultural, social, economic and spiritual revitalisation, the issue is a first rate issue. The question is to maintain precedence in the exercise of traditional activities, ancestral, territorial and Aboriginal rights with regard to other harvesting sources and development activities.

We want to be associates and partners in the formulation of laws, policies and programs as well as the management strategies of the territory and its resources. We foster an approach that adapts itself to the environment and requires minimal intervention in order to preserve the ecological integrity of the territory as well as the partnership with other users to improve planning and sustainable development modes. Genuine sustainable development is one that supports traditional Indigenous ways of life. The training of Indigenous experts in fields related to territory and resources management is encouraged. The proposed model is a model of optimisation, polyvalence, integrated management, sustained production and biodiversity components, integration of the needs of the users and the overriding role of Indigenous people.

Recovery of Indigenous powers and responsibilities over the territory and its resources is an essential condition for sustainable development and Canada must not act unilaterally in the name of First Nations any more. The *Indian Act* will be maintained as well as the fiduciary responsibility of the federal government but paternalistic attitudes will have to disappear. Any law, policy, program or decision will require First Nations' approval. Any project will require an agreement with the First Nations involved. Decision-makers will have to be on an equal footing and share equal power on a claimed territory; a right of veto will be recognised to First Nations if the project is situated on a site that is sacred, patrimonial, historical or spiritually important to Aboriginal people. The mechanisms provided for by treaties will be applicable. For other cases, mediation, arbitration or appeal mechanisms will be proposed.

Several specific objectives are identified concerning cultures and languages, quality of the territory and sustainability of resources, social and economic development, need for partnership, participation in the decision-making process.

An institution was be created to ensure the implementation of the strategy: the *Assembly First Nations of Quebec and Labrador Sustainable Development Institute (AFNQLSDI)*. Its objectives are identified.

A list of activities was to be identified in a joint action with First Nations and submitted to the government of Canada.

The document ends by reminding us that the cornerstone of the *First Nations of Quebec and Labrador Sustainable Development Strategy* is the recognition of the rights of the Indigenous Peoples and Nations and their access to the territory and its resources. The wish that it become a meeting place for cultures in the taking root in the territory and that it give rise to hope for reconciliation, understanding and tolerance each and everyone and mainly for the numerous youth who constitute a fundamental human capital, is expressed. A call on the political maturity of Aboriginal and Canadian institutions and on the virtue of courage needed to implement it is made.

THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

The Royal Commission on Aboriginal Peoples worked for nearly five years at studying the bases of an equitable and honourable relationship between Aboriginal and non-Aboriginal people in Canada. After 178 days of public hearings, it concluded that, for over 150 years, the colonial governments and the subsequent Canadian governments had followed the wrong course of action. The Commission submitted several recommendations regarding lands and resources.

The essential framework for the settlement of lands and resources issues is the framework of treaties. The treaties commissions and a Tribunal proposed by the Commission would be the main institutions with regard to this issue and the inherent right to self-government would be the basis of the powers of Aboriginal governments. The Commission recommends that the Canadian government issue an official Royal Proclamation to express endorsement of the principles regarding the ancestral title. The most important principle is the one that says that the extinction of ancestral land entitlement is not necessary to settle land claims or to close and implement new treaties. The second principle would be the recognition of the ancestral title as land entitlement.

The Commission requires interim relief while waiting for treaty negotiation to avoid that, meanwhile, the lands affected by the negotiations be sold, the forests cut down, the game wildlife destroyed or forced to migrate while the communities go on living in poverty.

The Commission is in favour of negotiations aiming at giving Aboriginal nations, within their traditional territories, exclusive or preferred access to certain renewable and non-renewable resources including water, or to a guaranteed portion of these resources, a guaranteed portion of the revenues generated by the exploitation of resources and of preferred or priority guarantees duly specified concerning economic advantages and opportunities resulting from projects promoting resources.

It is recommended that Aboriginal profit from financial transfers assessed on the basis of their needs for development and of a compensation for past and present exploitation of traditional territory and disruptive effect on the Aboriginal livelihood system.

The provinces and the federal government should draw up a national code recognising and confirming the right to go on exercising Aboriginal traditional activities on the

Crown's lands. The government must foster Aboriginal participation in the provincial forests planning and management. Are also aimed: fostering partnerships between Aboriginal people and claim holders and the wood product industry, a pre-emptive right on the Crown woods situated near reserves, seeing to the harmonisation and manifest more flexibility in their policies and guidelines regarding the requirements of annual utilisation, diminish annual forest harvest, decrease size of logging camps, and extend period during which certain sectors remain undeveloped.

FOREST CERTIFICATION STANDARDS

The goal of forest certification is, first of all, to bring objective proof of the application of sustainable forest practices while fostering the ongoing improving of these practices. It can be compared to a financial statement audit, an independent expert assessing the performance of the enterprise involved with relation to a set of objective standards and methods of sustainable forest planning.

Forest certification is an official approach through which an independent auditor gives a written guarantee that a forest is managed according to ecological, economic and social certified standards. A certification mark informs consumers that the products they buy come from a certified forest. Certification is therefore a marketing tool that encourages sustainable forest management to the extent that it establishes a connection between producers and consumers regarding responsible use of forest resources.

From the beginning of the 1900s, forest certification processes were adopted by various interest groups in environmental, economic and social sectors of numerous northern and southern countries. At the international level, a non-government organisation, the Forest Stewardship Council (FSC), founded in 1993, defined a certification program under the terms of which independent certification agencies can operate. The FSC prepared principles and criteria for responsible forest responsible management applicable worldwide. It encourages national working groups to adapt these principles and criteria to local context. At the end of 1999, over 17 million hectares of forest were certified according the principles and criteria of the FSC.

There are several certification standards of sustainable forest planning (SFP) in addition to the FSC standard: the Sustainable Forestry Initiative (SFI), the Canadian Standard Association (CSA), ISO 14001, etc.

The main issues involved are the following:

- Openness and accountability;
- Specific sustainable forest planning criteria;
- Audits held by third parties;
- Auditable results;
- Ongoing improvement;
- Ongoing consultation.

The goal is to guarantee that the high quality products we buy come from forest territory managed according to internationally recognised standards that respect sustainable social and environmental principles. It also implies the consensual definition of national standards for sustainable forestry, the use of these standards in the assessment of forest enterprises, faultless control of complete and total (sans faille) control of the complete wood itinerary, from the forest to the finished product including trade and processing (Chain-of-Custody), right up to the labelling and marketing of products that come from enterprises certified by a quality label. This also implies responsible consumers who, through their buying decisions, want to contribute to a forestry respectful of the sustainability of resources, as well as institutions concerned by the promotion of its implementation.

Several of these standards include dispositions regarding consultations of local or Aboriginal populations. Thus, an Aboriginal Chamber is currently working in Canada on the FSC standard for boreal forests. Prudence is a must when validating a SFM standard so as to avoid dangers of manipulation or false representation and ensure that Aboriginal principles of sustainable development are respected in the process. However, forest certification is an extraordinary mean that has been developed at the international level and that can be used successfully by Aboriginal peoples to promote their principles.

The important thing to remember about this reflection is that Aboriginal peoples must give themselves an Aboriginal standard of recognition of criteria respecting their rights and interests and make the most of it in any other standardisation system for the purposes of qualifying the quality of the products involved and to work at developing at the international level marketing niches for their products that would enable them to avoid been deprived of their lawful earnings for the purpose of equitable trade, as it has been developed for coffee and other products.

CANADIAN STRATEGY ON BIODIVERSITY

This strategy constitutes Canada's answer regarding the implementation of the Rio Convention on Biodiversity it ratified. The strategy recognises that biodiversity conservation and sustainable use of biological resources are fundamental for the Aboriginal communities of Canada. It includes a description of the mechanisms with which these communities will be able to develop their own understanding and response to the Rio Convention.

The fact that several Aboriginal communities, especially in the north, depend on sustainable harvest of biological resources for a big part of their food and revenue is recognised.

Traditional Aboriginal knowledge is identified as constituting an excellent base as a conservation approach and for the development of policies and programs regarding sustainable use of resources.

A chapter is devoted to the involvement of Aboriginal communities (p. 79 of document). It recognises that for centuries before the arrival of the Europeans, Aboriginal peoples depended on the land and its resources to meet their physical, social, cultural and spiritual needs. Several communities still have an intimate connection to the land and its resources. The people have a large range of knowledge that can contribute in a significant way to biodiversity conservation and sustainable use of biological resources.

The Canadian Constitution and the courts recognise the ancestral and treaty rights of Aboriginal peoples. Agreements between governments and Aboriginal organisations have led to the creation of co-operative regimes of fauna management, thus allowing Aboriginal peoples to bear increasing responsibility in resource management.

The Canadian Strategy endorses the principles of the Rio Convention on Aboriginal participation. It recognises that Aboriginal communities have developed a specific approach regarding the implementation of the Convention to better reflect their distinct Aboriginal values, their social networks, their economies, their traditional cultures, etc.

Aboriginal peoples want to improve the current network and consultation process to allow the communities to clarify their involvement in the implementation of the Convention.

They want to establish the role of Aboriginal knowledge and management in biodiversity conservation and share it. They want to foster community-based regimes for the purposes of preserving Aboriginal knowledge, innovations and practices and make known their economic, scientific, social and spiritual potential.

Aboriginal organisations want to establish relationships with the federal, provincial and territorial governments for the purposes of applying the convention. We must facilitate the maintenance of the social and cultural traditions that support communication of traditional knowledge and of use of resources between generations and between communities.

The strategy encourages the ongoing analysis of the convention by Aboriginal communities in reference with knowledge, innovations and practices of Aboriginal communities taking into account their rights on intellectual property and the use of genetic resources. The government is committed to examine means through which Aboriginal groups may share their knowledge and experience and to develop joint programs with them in and out of Canada.

THE NATIONAL FOREST STRATEGY (2003-2008)

In the framework of this policy, Canada has agreed to develop an Aboriginal forest strategy that respects the beliefs shared by Aboriginal peoples and their aspirations and assumes the conception of sustainable forest management models.

It includes the principle that says that Canada must recognise and guarantee the rights of Aboriginal peoples whose means of livelihood, community-based structure and cultural identity are closely linked to forest environment.

The Canadian Council of Forest Ministers works towards the implementation of the strategy. It is committed to a policy framework aiming at intensifying Aboriginal peoples' participation in the management of forest lands, in ensuring recognition of Aboriginal rights within the framework of forest management and developing opportunities related to the forest industry for Aboriginal populations.

The Strategy also deals with ancestral or treaty rights. The same council developed criteria and indicators for a sustainable forest management; one of them anticipates the participation of Aboriginal peoples to sustainable forest management. The assessment of this criteria is realised through the following indicators:

- Liberty of action of forest planning and management processes that take into consideration and respect the legal obligations regarding Aboriginal ancestral rights or stemming from treaties which are in full force and effect;
- Scope of Aboriginal participation in the economy which rests on forests;
- Extent to which planning of forest management takes into consideration the protection of Aboriginal sites, unique or of importance, or ones which have social, cultural or spiritual character;
- Stretches of land reserved for subsistence economy.

The strategy indicates that federal, provincial and territorial governments have the obligation to consult Aboriginal peoples in the planning and forest resource allocation processes. For Aboriginal peoples, the Canadian forest is a major provider for their cultural, spiritual and material needs. 80% of the Canadian Aboriginal population lives in a forest environment. Canada recognises that national forest policies should recognise and duly support the identity, culture and rights of Aboriginal peoples, their communities and other collectivities as well as those who live in the forest. Forest policy and forest management practices must reflect Aboriginal treaty rights. Forests are located near Aboriginal communities and are a support for resource sustainability such as soft lumber, hunting, fishing and gathering of medicinal herbs and plants.

Chapter 3 of the strategy deals more specifically with Aboriginal peoples: their rights and their participation. The objective consists in accommodating Aboriginal people and their treaty rights in the conservation and sustainability of forest lands and resources based on the legal historical position of Aboriginal peoples and their integral connection to ecosystems. Commitments are the following:

- Develop joint processes in order to establish a shared understanding of issues related to Aboriginal rights, roles and responsibilities;
- Establish constitutional arrangements to frame agreements, protocols, strategies and policies while giving effect to land claim settlements and treaties; including a national forest agreement and regional strategies, criteria and indicators;

- Incorporate traditional knowledge and Aboriginal who have said knowledge in forest management;
- Direct federal funding to support Aboriginal people implement the strategy;
- Provide fair share of benefits from use of forest lands and resources;
- Update of forest inventories of Indian Reserve forests.

ACTION 21 PROGRAM (adopted at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, in Brazil, in 1992

The Rio Summit inaugurated several multilateral agreements on environment that currently condition the strategies and approaches of governments in relation with the environment and development, especially where forest policies are concerned:

- Rio principles
- Action 21 program(Agenda 21);
- Convention on Biological Diversity;
- Framework Convention on Climatic Change;
- Forest Principles.

The Rio agreements represent a significant step in the recognition of Indigenous Peoples as a major group in environment management and development.

Principle 22 of the Rio Declaration shows that Indigenous Peoples and their communities have a vital role to play due to their traditional knowledge and traditions. States must recognised and duly support their identity, culture and interests and make possible their genuine participation in the realisation of sustainable development.

Chapter 26 of Action 21 program is entitled "Recognising and Strengthening the Role of Indigenous Peoples and their Communities" It is stated that Indigenous Peoples have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment.. Indigenous Peoples and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. It also recognises the right of Indigenous people to dispose of their lands, their intellectual property and cultural rights, the necessity to maintain customary and administrative practices; it also pleads for increased autonomy, encourages participation and proposes that Indigenous people be involved in resource management and conservation. The expression of Indigenous participation is done in these terms considering the relationships that exist between the natural environment and its sustainable development on one hand, and the cultural, social, economic and physical well-being of the Indigenous peoples on the other hand. An action on the national and international levels aiming at realising a healthy and sustainable development must recognise, promote and strengthen the role of Indigenous Peoples and their communities. States' objectives must, through national policies and legal instruments, aim at strengthening the active participation of Indigenous Peoples in the conception of policies, laws and programs regarding resource management. An inter-institutional co-ordination

between States and Indigenous organisations is needed to implement procedures to integrate Indigenous viewpoints in the conception and implementation of policies and programs.

Other Rio Summit documents limit Indigenous Peoples' participation by exaggerating the importance of national sovereignty, by refusing to recognise Indigenous Peoples as peoples with collective and particular identities, by not recognising their territorial rights, by considering them as study and development cases instead of autonomous subjects masters of their destiny and finally by limiting them to passive and reactive roles where participation and partnership are involved.

In spite of the political recognition of the role of Indigenous Peoples, women and local communities in the implementation of the Rio agreements, there are no mechanisms, in the current intergovernmental processes, for a full and equitable participation nor for the sharing of decision-making between the States and other major groups. It means that the viewpoints of the majority of peoples are not taken into consideration in the current negotiations in spite of the overwhelming presence of Indigenous Peoples in all territories of crucial importance for the protection of the Earth and its sustainability and in the actions carried out locally to set up sustainable communities.

The Convention on Biological Diversity states at article 8 that in the framework of a national policy, there must be respect, protection and safeguarding of the knowledge, innovations and practices of Indigenous and local communities that embody traditional ways of life respectful of the conservation and sustainable use of biological diversity and must encourage sharing the benefits which stem from the use of such knowledge, etc.

THE KARI-OCA DECLARATION (or the Earth Charter): Brazil 1992

This 109 point Declaration was adopted in the name of Indigenous Peoples of the Americas, Asia, Africa, Australia, Europe and the Pacific to celebrate their spiritual unity with Mother Earth. The Declaration is seen as a collective responsibility to carry out Indigenous minds and voices into the future.

From the smallest to the largest living being, Indigenous Peoples were placed the Indigenous Peoples upon their Mother Earth from the four directions, from the air, the land and the mountains. The footprints of their ancestors are permanently etched upon the land of their peoples.

They maintain their inherent right to self-government, the right to use their own laws, to raise and educate their children and to their own cultural identity without interference. They also maintain their inalienable rights to their lands and territories, to all their resources - above and below- and to their waters despite centuries of deprivation, assimilation and genocide.

They maintain that international law must respect the collective human rights of Indigenous Peoples and the incorrect concept of "terra nullius" in international law is denounced. "Terra nullius" means that the lands did not belong to anyone before they were discovered by the Europeans. They also denounced all internal laws of the States that deny Indigenous Peoples ownership of their lands.

The right of Indigenous Peoples to consent to projects must be recognised as well as their distinct and separate rights within their own territories, free right of passage at borders that divide arbitrarily their ancestral territories, the right to their way of life and their traditional spirituality, the right to be protected from transnational corporations despoilments, the right to good health including recognition, respect and protection of traditional knowledge, spirituality and medicine.

Where lands and resources are concerned, Indigenous Peoples declare that they belong to the land and cannot be separated from their lands and territories that provide the base of the development of their culture.

Ownership of the territory is inalienable and unassignable and its title cannot be denied. They are the owners and servants of the territory. They have the right to mark off their ancestral territories, including its space, the earth and waters.

Where the territory has been degraded, resources required for its restoration must be made available.

A compensation process for the historical ecological debt must be taken into consideration. The States cannot extend their jurisdiction on Indigenous lands that must be controlled by Indigenous Peoples.

Formal agreements must be negotiated by any individual or corporation that wants to use Indigenous lands to define the terms and conditions of said use.

Parks must not be created at the expense of Indigenous Peoples who cannot be thus dispossessed of their lands.

They do not tolerate burial or storage of toxic and nuclear products as well as military use of the territory and they encourage the production of traditional products instead of imported ones as well as the use of ancestral toponymy.

They approve biodiversity conservation efforts but reject the principles that says Indigenous people are an inactive diversity or economically accessible for scientific purposes or for folkloric reasons.

Indigenous Peoples must give their consent to any activity to be carried out on their territory and be totally involved in any decision, they must be given all necessary information concerning development projects and their impacts and these questions must be accountable before an international court.

Sacred and ceremonial sites must be respected, human remains and artefacts given back the Indigenous Peoples. Indigenous languages must be protected. The tourism industry must not affect Indigenous culture. Traditions cannot be separated from the land, territory or science.

THE LETICIA DECLARATION: Colombia, 1996

The Leticia meeting which gathered together Indigenous Peoples, States, international organisations and NGOs was one of the most constructive events of the United Nations environmental process concerning Indigenous Peoples.

The Declaration recognises the necessity of respecting the rights of Indigenous Peoples and forest dependent peoples on their lands and territories including the right to dispose of their resources.

Their institutions must be recognised and new mechanisms should be established to ensure the equal participation of Indigenous Peoples and other forest dependent peoples in decision-making on forests at all levels. To ensure efficient participation in planning processes, we must deal with a decision-making restitution mechanism at the local level so that customary systems of resource planning can be enforced.

Rights to and respect for Indigenous Peoples and other forest dependent peoples' lands and territories and tenure systems must be guaranteed in forms appropriate to them.

One of the main causes of deforestation and forest degradation is a lack of understanding of the holistic worldviews and ways of life of Indigenous Peoples and other forest dependent peoples.

Traditional forest-related knowledge is essential to sustainable forest planning in which women play an important role. The application and sustainability of this knowledge are intimately connected to land and territories ownership and control by Indigenous Peoples and other forest dependent peoples.

New legislative frameworks and innovative systems must be recognised and protect efficiently the Indigenous cultural heritage which rests on culture and authority structure..

Indigenous Peoples must have access to financial aid and transfer of technologies to facilitate their full participation in debates on forest policies on the international level.

All criteria and indicators for sustainable forest management must secure the spiritual, cultural and social well-being of Indigenous Peoples. And all international instruments and mechanisms dealing with forests should involve Indigenous Peoples in all stages of decision-making as equal partners.

THE KIMBERLEY DECLARATION OF INDIGENOUS PEOPLES: South Africa 2002

This Declaration reaffirms the Kari-Oca Declaration and previous declarations on human rights and sustainable development.

Since 1992, the ecosystems of the earth have been compounding in change. We are in crisis and in an accelerating spiral of climate change.

The commitments which were made at the Rio Summit have not been implemented due to the lack of political will of the States.

The Declaration reaffirms that the lands and territories are the core of Indigenous peoples' existence, that they are the land and the land is them, that they have a distinct spiritual and material relationship with their lands and territories and that they are inextricably linked to their survival and preservation and further development of their knowledge systems and cultures, conservation and sustainable use of biodiversity and ecosystem management.

Indigenous Peoples have the right to determine and establish priorities and strategies for their self-development and for the use of their lands and resources. Economic globalisation constitutes one of the main obstacles for the recognition of the rights of Indigenous Peoples.

Transnational corporations and industrialised countries impose their global agenda on the negotiations and agreements of the United Nations system, the World Bank, The International Monetary Fund, the World Trade Organisation and other bodies which reduce the rights enshrined in national constitutions and in international conventions and agreements..

Unsustainable extraction, harvesting, production and consumption patterns lead to climatic change, widespread pollution and environmental destruction, evicting us from our lands and creating immense levels of poverty and disease.

Governments are urged to invest in pastoralism and hunting-gathering as viable and sustainable economic systems.

Indigenous Peoples are determined to ensure the equal participation as well as equal access to resources for Indigenous Peoples throughout the world in all aspects of planning for a sustainable future with the inclusion of women, men, elders and youth.

The United Nations are urged to promote respect for the recognition, observance and enforcement of treaties and constructive agreements between Indigenous Peoples and States.

Languages must be protected.

Indigenous Peoples welcome the establishment of the *United Nations Permanent Forum on Indigenous Issues*. They call for a *World Conference on Indigenous Peoples and Sustainable Development* as a culmination of the *United Nations International Decade for the World's Indigenous Peoples* in 2004, and as a concrete follow-up to the *World Summit on Sustainable Development*. They reaffirm their mutual solidarity as Indigenous Peoples of the World in their struggle for social and environmental justice.

OTHER INTERNATIONAL PROCESSES

The International Labour Organisation recognises in *Convention 169 (1989) on Indigenous and tribal peoples in independent countries* that Indigenous Peoples must have rights and equal opportunities for development protected by national legislation, sharing in economic and social profits, protection of social, cultural, religious and spiritual values, participation in decision-making and respect of customary law. This convention was only ratified by a few countries but, like other conventions, it enables us to focus and identify the debates and use it to do so.

The United Nations Indigenous Peoples Working Group completed a Declaration on Indigenous Peoples' Rights before the question of the right to self-determination, which allows Indigenous Peoples to decide their own business, was settled. It entails the rights to full recognition of their laws, traditions and customs, of their land systems and their institutions responsible for resource planning and development, as well as the right to be protected by efficient State provisions against any form of interference, alienation or violation of said rights.

PRINCIPLES AND ORIENTATIONS

Several principles regarding the participation of Indigenous Peoples to territory and resources management can be drawn from the documents we briefly summarised. We are going to identify here the ones that seem most interesting for the Indigenous Peoples Declaration project, to be submitted at the World Forestry Congress.

Rights

Pursuant to their inherent rights to self-government and territory and resources management, and pursuant to their ancestral rights, including the Aboriginal title or their treaty rights, Aboriginal peoples have the right to maintain and strengthen the special, spiritual and material links they have with their lands, territories, rivers and coastal waters and other traditionally owned, occupied or otherwise used resources and assume their management and custodian responsibilities towards future generations.

Aboriginal peoples have the right to plan, manage or participate in joint planning regarding the management of their ancestral territories and the use of their resources.

Aboriginal peoples have a right to their fair share of the benefits that come from the use of their ancestral territory and its resources.

In the framework of their rights to self-determination, States must recognise Aboriginal rights to own resources, to control and use their territories, lands and resources, to exercise their customary laws, to govern their business and the right to represent themselves through their own institutions.

Aboriginal peoples have the right to practice traditional activities, harvest the resources of their territories and to barter.

Aboriginal people have the right to State protection against any alienation of their rights or against any hindrance to their exercise, to their means of livelihood, including in their economic, social, cultural and spiritual dimension.

Aboriginal peoples have the right to set priorities where the development process of their territories is involved, enter into revenue sharing agreements and regarding other means of distributing wealth.

Aboriginal peoples have the right to require that their full and informed consent be required in development planning and implementation as well the right to intervene upstream of the planning from the conception of the development projects on their territories.

Aboriginal peoples have the right to use their territories for social and economic development.

Aboriginal peoples have the right to protect their languages and cultures that are rooted in and nourished by their ancestral territories..

Priority of ancestral territory use must go to meeting the basic needs of the communities involved, not only in terms of forest products and vital needs, but also to provide for good health, nutrition, education, social cohesion and cultural identity.

The Canadian Crown has the obligation to assume fiduciary responsibility of the rights and interests of Aboriginal peoples of Canada.

Aboriginal peoples have the right to protection of the integrity of the environment, the quality of the territory and sustainability of the resources.

Powers

Aboriginal peoples have the capacity to give themselves political, legislative and executive powers regarding the administration and formulation of laws on territory and resources management.

Mediation, arbitration or appeal mechanisms must be set up for the purposes of settling disputes that could arise between the States, their representatives, proponents and First Nations.

Participation mechanisms

Forest and conservation interventions must not occur on Aboriginal territories and lands without their full and informed consent as expressed through the institutions that represent them. Any development project requires an agreement with First Nations involved.

Clearly defined and mutually agreed upon mechanisms must be set up, preferably following agreements freely negotiated, to ensure benefits and management sharing, decision control, choice of markets and involvement of the community in follow-up and assessment of ancestral territories of development projects.

States have the duty to recognise, integrate, promote and strengthen Aboriginal participation in sustainable forest management processes and in territory and resources management and conservation strategies.

The representation in lands and resources planning or management joint mechanisms must be equivalent in term or authority and equal number of representative between the States and Aboriginal organisations and must have the majority when sacred, patrimonial, historical or spiritual sites are involved. The relationship must be a government to government relationship in management committees.

Aboriginal needs must be an essential part of discussions on forest harvesting planning.

Means

Aboriginal peoples must have access to international proceedings to promote their viewpoints regarding use of their territories and resources.

An annual interinstitutional coordination mechanism between the States and Aboriginal organisations must be set up so procedures be implemented to integrate Aboriginal viewpoints and the implementation of policies and programs (Agenda 21).

The States and Aboriginal organisations must cooperate to the formulation of national policies and legal instruments that strengthen active participation of Aboriginal peoples

in the conception of policies, laws and programs regarding resource management (Agenda 21).

The States and Aboriginal organisations must assess possibilities of replacement measures regarding a use estimated too important or detrimental to the resources of the territory or the means of harvesting said resources.

The States and Aboriginal organisations must aim at reaching a form of participative forestry involving local communities.

Aboriginal peoples and States must strengthen their expertise in order to elaborate management models that respect sustainable development, promote education of the public and strengthen participation of women in territory and resources planning and management processes.

The States must provide necessary human, financial, technical and material resources in order to meet the needs of Aboriginal peoples regarding sustainable development.

Exploitation of renewable resources must take into account the respect of their renewal constraints and exploitation of non-renewable resources must be made through renewable mechanisms of other resources.

Values

Human beings are an integral part of ecosystems and share their benefits.

Aboriginal perceive relations in a holistic and egalitarian way.

The territory exist for the well-being of all living beings.

Nature is a fundamental source of harmony and healing for beings.

Aboriginal belong to the territory and are responsible for it, a management and custodial responsibility.

Aboriginal activities are conditioned be nature's cycles.

Respect, sharing and mutual aid are the bases of solidarity and social harmony..

Our cultures, languages, histories and the territory allow us to maintain our status of nation and distinct peoples.

Our territories are a meeting place for cultures, hope for reconciliation, understanding and tolerance for all..

Special attention must be given to vulnerable people, the elders, women and children.

CONCLUSION

The documents used for the purposes of this analysis deal with matters of national and international policy and national and international legal issues. We observe in examining them that the essential of the findings and propositions regarding the rights and interests of Aboriginal peoples regarding the territory and resources have already been defined. There are aspects of these principles that can be apply in a more specific manner to certain States, but on the whole they cover well the relevant issues that interest us. However, most assertions mentioned are, by definition, matters of principles and not practical matters; they have the merit of being at the base of any reflection or action on these topics but they remain theoretical.

The main criticism made concerning the declarations made public at international meeting of Indigenous Peoples or of meetings including State representatives or NGOs resides in the fact that the principles that were lied down have remained dead letter and have not found concrete application. However, we must not minimise the range of statements of principles, specially in certain countries, for minority groups and Aboriginal organisations can use them to demand changes in the ways of the authorities. Several States do not ratify international conventions or do not respect their commitments. The United States are a prime example: by not paying their part in the funding of UN activities, by refusing to recognise the authority of international tribunals and by not ratifying several international agreements.

It is also quite easy for a State to ratify international conventions or agreements without applying them. In the case that interests us, we feel that Canada is making a real effort to define in its national strategy on biodiversity, forest or, regarding the Kyoto Protocol⁶ on greenhouse gas emissions. At the Indigenous Peoples meeting in Kimberley, in South Africa, in 2002, the lack of political will of the States to apply the Rio principles was denounced.

In view of the Indigenous Peoples Declaration in the framework of the World Forestry Congress, some principles could be used again, but it is becoming important to indicate clearly how the propositions that will be identified can be applied concretely. This is the task the working group on territory and resources should now tackle.

⁶ with later involvement