In 2011, indigenous peoples’ right to participate in decision-making processes was high up the national and international indigenous agenda. Special focus was on the states’ duty to consult indigenous peoples in order to seek their free, prior and informed consent when issues that will affect their lives and future are planned.

In September, the final study on indigenous peoples and the right to participate in decision-making, elaborated by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), was presented to the UN Human Rights Council. This important study gives an authoritative interpretation of indigenous peoples’ rights to participate in internal as well as external decision-making processes in accordance with international human rights norms. The study makes it clear, for example, that the right of indigenous peoples to participate in decision-making processes is a substantive as well as a procedural right based on the right to self-determination, and that indigenous peoples’ right to participation also includes their collective right as peoples to have decision-making authority and to affect the outcomes of consultations. EMRIP’s study also gives advice on consultations and on the implementation of Free, Prior and Informed Consent (FPIC). In relation to FPIC, it makes the following precision:

The element of “free” implies no coercion, intimidation or manipulation; “prior” implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes; “informed” implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; “consent” implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.¹
As the articles in this volume demonstrate, such clarification is vitally needed, and should urgently be implemented, not least considering that the escalating momentum of the extractive industries is seriously threatening indigenous peoples’ lives, livelihoods and cultures worldwide.

Positive steps forward

To start with some of the positive developments: The Indigenous World 2012 gives a general impression that more governments are willing to establish dialogue with indigenous peoples and are developing some sorts of modalities for consultation. Cases in point are, for example, the preparation of a regulation governing the consultation of indigenous peoples in accordance with ILO Convention 169 in Guatemala; the initiative of the Suriname government to discuss the land rights of indigenous peoples and seek the advice of the UN Special Rapporteur on the rights of indigenous peoples (SR) in the matter; the promulgation of a law on consultation in Peru; and initiatives to establish dialogue between the government and indigenous representatives to improve the situation of the Batwa people in Burundi and Rwanda.

To this must be added the new constitution in Morocco, which officially recognises the Amazigh identity and language and, not least, the promulgation of Law No. 5-2011 on the promotion and protection of the rights of indigenous peoples in the Republic of Congo, which was the result of a year-long participatory process involving civil society and indigenous communities.

The inclusion of indigenous peoples in some government delegations at the Climate Change negotiations, e.g. Kenya and the Philippines, and the participation of indigenous representatives in national working groups on REDD+, e.g. in the Central African Republic, Tanzania, Nepal and Indonesia, must also be mentioned as positive achievements. Besides this, the active participation of indigenous peoples’ in these processes seems to have been an engine for opening up new spaces for indigenous participation in other areas and a step forward in the recognition of indigenous peoples in some African and Asian countries. A good example is Indonesia, where the indigenous umbrella organisation, AMAN, has played a very important role in planning the national REDD+ strategy, which seems to be paving the way for an important improvement in indigenous peoples’ legal status, especially with regard to land.
Implementation gaps

The above examples represent positive developments indeed. However, when it comes to their practical implementation, the pattern is less optimistic: all too often, governments renegade on their commitments when they find the demands of indigenous peoples and the real implications of the standards they themselves have formally adopted too fundamental and far-reaching to implement. In Peru, for example, the law on Prior Consultation of Indigenous Peoples did not, as expected, specify when FPIC has to be obtained, leaving the final decision in this regard to the relevant state body; in Suriname, the government put a sudden end to its own national conference on land rights, organised to follow up on the SR’s recommendations, when presented with indigenous and tribal peoples’ clear demand for recognition of their land rights; and in Guatemala, the proposed consultation regulation was prepared without any participation on the part of indigenous authorities and submitted to a unilateral consultation process that gave indigenous peoples very limited opportunities to respond.

In Kenya, the government, which in 2011 accepted recommendations from both the African Commission on Human and Peoples’ Rights (ACHPR) and the Universal Periodic Review (UPR) with regard to implementing the 2010 African Commission’s decision on the land rights of the Endorois, totally ignored its duty to consult the Endorois in 2011 when nominating the Great Rift Valley Lake System for inclusion on the UNESCO World Heritage list. The World Heritage Committee, for its part, accepted the nomination without taking into consideration the lack of substantive consultation with the region’s indigenous peoples. The inscription on the World Heritage list will undoubtedly put new and severe restrictions on the implementation of the territorial rights of the Endorois. It is particularly regrettable when such a decision is taken by a body of the UN system, such as UNESCO, which has an obligation to respect the international human rights instruments.

With regard to REDD+, it remains to be seen whether and how indigenous peoples will be consulted and whether they will also be allowed to participate in the benefit sharing when the process reaches the implementation phase.
The right to land and natural resources

The right to land and natural resources is a central aspect of indigenous peoples’ struggle for self-determination. Some positive developments were recorded in 2011 in this regard, but the discrepancy between the amounts of land titled in favour of indigenous peoples and the enormous tracts handed out in concessions to large-scale enterprises – for agriculture, mining, drilling or even windmills – is enormous. In Cambodia, to give just one example, ten years on from promulgation of the land law entitling indigenous peoples to communal ownership of the land, three indigenous communities received collective land titles. Meanwhile, concessions totalling over two million hectares of land have been granted to agro-industrial companies, while mining concessions account for at least a further 1.9 million, according to the Cambodia country report. Many of these concessions are within indigenous territories, but have been issued without any meaningful consultation with indigenous peoples and without any respect for their right to free, prior and informed consent.

Given the enormous number of concessions granted to companies for extractive activities, it comes as no surprise that, in this year’s country reports, the extractive industries figure as the main threat to indigenous peoples’ economic, social and cultural rights and the cause of innumerable social conflicts.

Extractive industries and social conflicts

At the start of 2011, the Peruvian government was juggling 239 different social conflicts, half of which were socio-environmental and, during the year, several of these escalated into large-scale popular protests, resulting in strikes, road blockades, violent encounters and states of emergency. One example was the protest against the Conga mining project in Cajamarca region, which is likely to affect four headwater lakes, lead to the disappearance of various ecosystems and directly affect more than 100,000 people, whose lands will either be flooded or affected by drought.

In Malaysia, 1,100 cases of violent conflicts over indigenous lands were recorded between 2005 and 2010; in Indonesia, while positive legal instruments and procedures are being developed, the lands of indigenous communi-
ties are, at the same time, being grabbed on an unprecedented scale by armed companies to make way for economic development. There were more than a thousand reported cases of related human rights violations in 2011 alone.

In the Plurinational State of Bolivia, a country which has ratified ILO Convention 169, endorsed the UNDRIP as law and realised extensive land reforms to the benefit of indigenous peoples, the last few years have also seen an escalation in social conflict over land and lack of prior consultation. In the second part of 2011, the plan to construct a trans-oceanic highway through an indigenous territory and nature reserve (TIPNIS) triggered a great popular protest march. The proposed highway, which would open up TIPNIS to e.g. extractive industries, had been decided without seeking or obtaining FPIC from the title holders. The state’s initial response was to embark on a smear campaign against the indigenous organisations, accusing them of standing in the way of national development and, later, to send in armed troops to break up the demonstration. A law was subsequently passed suspending the project. There is, however, a prevailing lack of respect for indigenous peoples’ FPIC and a lack of appropriate consultation measures that would prevent similar social conflicts from erupting in the future.

Human rights and business

As noted by the UN Special Rapporteur on the rights of indigenous peoples in his annual statement to the United Nations General Assembly in 2011, there seems to be an increasing polarisation and radicalisation of positions around extractive activities. Many country reports contained in this yearbook confirm the tendency towards private companies defending their economic interests with back-up from the military, state police and/or armed private security forces, who are allowed to operate with impunity (see e.g. the articles on Indonesia, Guatemala and Ethiopia). In contrast, many indigenous and local peoples face arrest and heavy prison sentences when they stage social protests (e.g. Chile, Ecuador and Kenya).

In 2011, the legitimacy of such social protests was confirmed once more when an Ecuadorian court found the North American company, Chevron-Texaco, guilty of the environmental and social destruction of the Ecuadorian Amazon following its 26 years of operations there. Meanwhile, the Sarayaku com-
munity is awaiting the final verdict in its case against the Ecuadorian government for promoting oil exploitation on their territory without even informing them, far less consulting them, and, in contrast, sending in armed forces to crack down on any opposition. The verdict of the Inter-American Court of Human Rights is expected in 2012. It will be binding upon the Ecuadorian government and will set an important precedent with regard to a state’s duty to consult and respect indigenous peoples’ right to FPIC.

As reflected in the present volume, there is a clear need for change in the general conception of states and businesses corporations with regard to human rights standards if indigenous rights protection instruments are to have any meaningful effect on policies and actions related to the extraction of natural resources. Without a real political commitment on the part of governments with respect to indigenous peoples’ human rights, and without a better understanding of the serious implications that extractive industries have on the lives and future of indigenous peoples, the application of indigenous rights standards will continue to be contested or ignored, and indigenous peoples will continue to be vulnerable to serious abuses of their individual and collective human rights.

In June 2011, the UN Human Rights Council approved a framework to respect and protect human rights in the context of business operations based on the following three guiding principles; 1) the duty of states to protect all human rights against abuses committed by or involving business enterprises and corporations; 2) the responsibility of business enterprises to respect all human rights, and 3) the need for access to effective remedy including appropriate legal or extralegal mechanisms. The HRC also agreed to establish the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, the mandate of which is especially relevant for indigenous peoples. There are therefore high expectations that this new working group will place special attention on the impact of corporations on the human rights of indigenous peoples.

A rights-based approach to development

The sustainable alternative to the ongoing development aggression is to take a genuine rights-based approach to development. Here, it is of crucial impor-
tance to get both business and donor agencies on board, and IWGIA therefore welcomes initiatives such as the one taken by the UN to establish a Working Group on Business and Human Rights, the new EU Strategy 2011-2014 for Corporate Social Responsibility, and the increase in rights-based foreign aid policies. It is, however, necessary to monitor such initiatives to ensure that they do not become mere window dressing behind which “real” development is sought through the usual instruments of economic growth.

Unfortunately, this book signals an escalating global race for resources in which the urgency of exploiting a diminishing natural resource base, the financial crisis and an uncertain global power structure, with new strong players not known for attaching any strings to business deals or foreign aid, justifies a de facto laissez faire politics. As noted in relation to the UN Climate Change negotiations this year: “The issue of rights was, while acknowledged in form, considered as a hurdle or irritant in already very tense negotiations, and thus succumbed to ‘realpolitik’.”

At the country level, this tendency is reflected in the fact that, from the USA to Rwanda - despite the increasing openness of governments to discuss how states can better extend social services to so called “individuals, local communities, or minorities in situations of special vulnerability” and perhaps seek their opinion on economic, social and cultural issues - many states are still not ready to commit to actually addressing or solving the structural inequalities affecting indigenous peoples in terms of recognition, land rights and self-determination.

**Future issues**

In 2012, indigenous peoples and IWGIA hope that the World Bank will finally revise its safeguards policy on indigenous peoples and bring it in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and, particularly, that it will explicitly include the principle of FPIC in its Indigenous Peoples Policy.

We also hope that the ASEAN member states, who have all supported the adoption of the UNDRIP, will include a reference to indigenous peoples’ recognition as distinct peoples with inherent collective rights to their lands, territories and resources in the forthcoming ASEAN Human Rights Declaration.
In 2012, the international community has a unique opportunity in the United Nations Conference on Sustainable Development, which will take place in Rio de Janeiro in June, to make a renewed and strong political commitment to the protection and promotion of indigenous peoples’ rights and thus to move the global sustainable development agenda forward in a comprehensive way.

Based on the agreement from the global indigenous peoples’ preparatory meeting for Rio + 20, which took place in Manaus (Brazil) in August 2011, the indigenous peoples have identified five key issues in relation to the Zero Draft, which will form the starting point for the negotiations in Rio: 1) a key role for the UNDRIP; 2) the cultural pillar as the 4th pillar of sustainable development; 3) protection and respect for indigenous peoples’ rights to lands, territories and resources; 4) recognition and respect for traditional knowledge and diverse local economies and their role in poverty eradication and as a cornerstone for the Green Economy; and 5) support to indigenous peoples’ holistic framework and self-determined development within the Green Economy.

In 2011, another of the themes that was given special attention by the indigenous peoples and which was considered both during the session of the UN Permanent Forum and during the EMRIP session was the follow-up to the decision taken by the UN General Assembly in November 2010 to celebrate a World Conference on Indigenous Peoples in 2014. To the indigenous peoples, limited participation in this conference process would be absolutely unacceptable and would be contrary to the UNDRIP, which explicitly recognizes their right to participate in all decision-making processes that affect them. If the UN member states are consistent with their own instruments and are really committed to advancing the practical implementation of the rights of indigenous peoples, the UN should secure the necessary procedures to ensure indigenous participation in this process. IWGIA hopes that the UN, in 2012, will take the necessary decisions and establish the modalities required to ensure the full and effective participation of indigenous peoples, as these latter have been demanding throughout the year.

**About this book**

First and foremost, IWGIA would like to thank all the contributors to this volume for their commitment and their collaboration. Without them, IWGIA would never
be able to publish such a comprehensive overview of the past year’s developments and events in the indigenous world. The authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA’s network. They are identified by IWGIA’s regional coordinators on the basis of their knowledge and network in the regions. This year, the volume includes 61 country reports and 12 reports on international processes. All the contributions are offered on a voluntary basis – this we consider a strength, but it also means that we cannot guarantee to include all countries or all aspects of importance to indigenous peoples every year. Unfortunately, this year we were not able to include an article on Sápmi and reports on several countries in Africa, the Middle East, Central America and the Pacific are also lacking. We find it important to stress that this omission is not an indication that there are no indigenous peoples or no human rights issues for indigenous peoples in these countries.

The articles in the book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated therein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is nonetheless our policy to allow those authors who wish to remain anonymous to do so, due to the political sensitivity of some of the issues raised in their articles. A number of country reports presented here take their point of departure as ethnographic regions rather than strict state boundaries. This policy has attracted criticism from states that consider this a lack of respect for national sovereignty, but it is in accordance with indigenous peoples’ worldview and cultural identification which, in many cases, cut across state borders.

The Indigenous World should be seen as a reference book and we hope that you will be able to use it as a basis for obtaining further information on the situation of indigenous peoples worldwide.

Cæcilie Mikkelsen, editor and Lola García-Alix, director
April 2012
References
