The other side of the story
The Danish public procurement policy on timber and wood products.

Sille Stidsen

"We [the indigenous peoples in Sarawak] urge buyers to come into our back yard and to see personally by yourself the true situation of logging in Sarawak. I personally appeal to all you buyers of Malaysian timber please spare my old parents, young school children, innocent poor communities and our future generation from being displaced from mother earth please."

These desperate words of a headman from one of the indigenous communities of Sarawak (Malaysian Borneo) can be found in a joint NGO press release from late 2005. Indigenous communities all over the world have protested for years at logging companies encroaching onto their lands and undermining their livelihoods. But their voices seldom reach the people who are ultimately responsible for their forests being cut down – namely the consumers of timber and wood products in Europe and other parts of the world where these products have a high market value.

The need for market regulation
The European Union is one of the largest importers of timber and wood products (both legal and illegal) in the world. The link between European consumers, the timber companies that supply these markets and the indigenous communities of Borneo and other forests of the world is thus quite clear. According to World Bank figures, approximately 60 million indigenous peoples around the world are almost wholly dependent on forests for their livelihood. So, in a way, the headman from Borneo quoted above speaks on behalf of many when he asks consumers of wood products to remember that we have a responsibility for the continued existence of his people.

But how can people planning to get a new tropical hardwood floor for their office in some institution in Denmark make sure that they do not support companies that have harvested the timber on an indigenous community’s land without their consent? A community unfortunate never to have obtained any papers stating their rights over the forest and which is thus left defenceless when the logging company comes with their heavy machinery and chainsaws. It is obviously quite difficult for individuals, and even large public institutions, to assess exactly what consequences their purchase has when they buy wood products here in Europe that come from thousands of kilometres away. Some may have heard about certification schemes guaranteeing the sustainability and legality of timber and wood products, but it is also very likely that they have not. Policies regulating the market and setting standards on what can be sold, or what should be bought, on European markets are therefore needed. Such policies are currently being, or have recently been, developed in a number of European countries. Denmark was the first European country to develop a timber procurement policy in 2003. Other countries have followed since then, and to date a total of five European countries (United Kingdom, Denmark, Belgium, the Netherlands and France) plus Japan each have their own policies. The Danish policy targets public and semi-public institutions, and deals with tropical timber and wood products only. Its impact was evaluated in late 2005, and a revision is currently underway.
In this article, we will look specifically at the Danish public procurement policy on timber and wood products and highlight some of the critical issues that need to be dealt with in the ongoing revision if it is to be of real significance for forest-dependent indigenous communities. On a more general level, this discussion touches upon the implications and significance of “legality” and “sustainability”, as seen from an indigenous rights perspective.

The Danish Environmental Guidelines for Purchasing Tropical Timber

The Danish guidelines for purchasing tropical timber aim to make it easier for concerned consumers to make responsible choices when purchasing tropical timber or wood products. The guidelines describe legal and sustainable forest management and timber production, and stress that it is up to consumers to support initiatives to manage forests well. They conclude that public institutions should buy legal and sustainable timber/wood products whenever available. If legal and sustainable products are not available, it is recommended that they buy legal products from sources that are “on their way to being sustainably managed”. The final option, if the above are not available, is to buy timber/wood products that can at least be proven to come from legal sources. In order to make these guidelines operational and translate them into simple tools for the consumer to use, they include a list of certification schemes that have been assessed as living up to or guaranteeing these three levels of recommendation. In this list, the FSC (Forest Stewardship Council) certificate is recommended as proof of sustainability and legality (the number one recommendation) and the MTCC (Malaysian Timber Certification Council) certificate is given as proof of the timber being legal and produced in a way that is “on its way to becoming sustainable”. No specific labels are included for the last recommendation on buying timber that can at least be proven to be legal. Instead it is specified which kind of verification the purchaser should demand in order to be sure that the timber or wood product is produced in a legal manner.

As the name suggests, the guidelines are not binding, and are thus intended as a tool for those who wish to act responsibly when buying tropical timber but need guidance to do so. This, and the fact that the guidelines are aimed at public institutions only, which account for as little as one-fifth of the total consumption of tropical timber and wood products in Denmark, may give the impression that this is an insignificant piece of paper with little potential to cause real change for the world’s tropical forests and their peoples. From an indigenous rights perspective, though, the Danish guidelines are significant in at least three ways:

- they include socio-economic and cultural conditions in their definition of sustainability, with direct reference to indigenous peoples’ rights to their land, resources and cultural integrity
- they set a standard that defines the future market for timber and wood products and thus give a clear signal to timber companies that legal and sustainable timber is going to be in demand in the future
- they have helped pave the way for other European countries to develop similar guidelines or policies and thus have the potential to influence the timber trade at European, not only Danish, level.

Furthermore, the Danish guidelines’ overall recommendation to buy FSC-certified timber and wood products whenever available is very positive from an indigenous rights angle since the FSC scheme’s standard for sustainability makes very clear reference to indigenous peoples’ rights to control their land and resources, and have
their special cultural and religious sites protected. On top of this, the FSC scheme has a complaints mechanism that ensures that all stakeholders have a right to complain when certain principles are not implemented in certified concessions.

But there are problems too: with the guidelines, Denmark became the first country to accept the MTCC certificate as proof of legality. The MTCC label is even recommended as “on the way to sustainability” – that is, a better option than products that only have proof of legality. This middle category in the three level recommendation system was apparently included in order to recognize and award certification schemes that work towards improving their standards. Only the MTCC label was recommended on this level. This has been criticized heavily by environmental and indigenous organizations in Malaysia and Europe, who argue that Denmark thus helped pave the way into European markets for a product that is neither sustainable nor legal as it claims but, on the contrary, highly problematic for Malaysian forests and their indigenous inhabitants.

MTCC and indigenous rights

Indigenous organizations in Malaysia have come out heavily against MTCC certification. A number of well-documented cases show how the MTCC certifies timber from indigenous territories, logged without their free, prior and informed consent. A recent example is the Samling Concession in Sarawak (Sela’an Linau Forest Management Unit in Ulu Baram), which has had much international exposure over the past months: the Samling Concession was granted an MTCC certificate in January 2005 even though the area overlaps with the indigenous Penan people’s territory. The Penan, traditionally hunter-gatherers and thus highly dependent on an intact forest base for their continued existence, have a long tradition of defending their territory and protesting against logging operations. In 1998, they filed their land claim in court under the provisions for Native Customary Rights. The MTCC certificate was awarded to the Samling Corporation despite the pending land claim, and despite the Penan expressing their objection to the logging operation by blocking roads to keep the machinery out. The Penan keep protesting at the local level, and campaigning at an international level in cooperation with European organizations such as the Bruno Manser Fonds of Switzerland. For the Penan it is simple: “Without our forests, we, the Penan, cannot survive”. This was a clear message from 17 Penan headmen in a letter sent in April 2006 to a British timber company that trades with the Samiling Corporation, urging them to stop all cooperation with the Samiling Group.

Unfortunately, the Penan case is not unique. According to newspaper articles, in Sarawak alone more than 100 cases of Native Customary Rights claims have been filed and are still pending. In Peninsular Malaysia, too, there have been a number of reports of allegedly “legal” logging operations violating Orang Asli indigenous communities’ rights to land and livelihood. The case of the Semelai community in Bera is one of them: here a logging contractor has been issued a permit to log 1,000 tonnes of timber even though the area, which is the Semelai’s ancestral territory, has been officially given to them under the Federal Land Consolidation and Rehabilitation Authority Scheme. The land was never gazetted, and thus not protected or properly secured as Orang Asli land. According to newspaper sources, this is normal practice: more than half of the 50,008 ha of land in Peninsular Malaysia approved as Orang Asli land has yet to be gazetted. In practice, this means that the people living there are defenceless against so-called legal contractors coming in to get their hands on the forest’s timber resources.
The national Malaysian network of indigenous peoples and NGOs, JOANGOHutan, opposes the MTCC scheme fiercely, and urges European companies and governments not to accept it as proof of legality. Apart from ignoring indigenous communities’ customary land rights, protected by Malaysian law and international human rights law, they highlight that the MTCC does not even live up to its own set standards for sustainability and legality. For JOANGOHutan, the MTCC is a “greenwash” of illegal and unsustainable logging that serves to open up new markets and make profit in the name of responsible forest management.

**Legal timber and indigenous rights**

As the problems described above with the MTCC scheme show, the “legality” of timber is a weak concept when seen from an indigenous rights perspective: a certificate proving “legality” does not give much of a guarantee that the timber is produced in a responsible or acceptable way. Forest-dwelling indigenous communities live on the margins of society, and a proper rights framework protecting them as peoples is, in many – and probably most – countries, not in place. In those countries where some kind of a policy framework does exist, the recognized rights are often not implemented properly. In some cases because recognized rights are contradicted by other laws (for example forest legislation, land use laws, etc.), in others because of problems in the administrative and judicial systems. Timber that is allegedly “legally produced” may therefore very well come from indigenous peoples’ lands, having been logged without their free, prior and informed consent. In this sense, the MTCC examples above are not unique.

In the following, we shall briefly examine the interface between forestry law and the protection of indigenous peoples’ rights in international human rights law. Denmark ratified ILO Convention 169 on Indigenous and Tribal Peoples in 1996, and has played an active role internationally in terms of promoting indigenous peoples’ rights and establishing mechanisms to protect these rights. With the ratification of ILO Convention 169 Denmark is obliged to promote and protect indigenous peoples’ rights in all national policies. In order to draw some conclusions on how this can best be ensured in the context of the current revision of the Danish public procurement policy on timber and wood products, we shall look briefly at how international human rights standards have been applied to forestry conflicts involving indigenous peoples in recent years.

In recent years, ever more indigenous organizations and support NGOs have started to apply international human rights instruments in the defence of forest-dwelling indigenous communities’ against logging companies’ encroachment onto their territories. Indigenous communities’ rights to their land, livelihoods and cultural integrity are all enshrined in international treaties and binding instruments such as the UN Convention on Civil and Political Rights, the UN Convention on the Elimination of all Forms of Racial Discrimination and ILO Convention 169 on Indigenous and Tribal Peoples. On top of this, the UN Human Rights Council adopted the UN Declaration on the Rights of Indigenous Peoples in June 2006 – a declaration that provides an even more comprehensive framework for an international standard on indigenous peoples’ rights to land, resources, cultural integrity and, most importantly, self-determination. The Saami case described in Lawrence and Raitio’s article in this volume is one example of how these principles have been used to defend communities from logging companies: in Finnish Sápmi, the Saami people’s traditional reindeer herding came under increasing pressure throughout the 1990s due to increased logging activities. The Saami Council, individual Saamis and a couple of
environmental organizations responded with campaigns defending the Saami people’s right to their land and to practice their traditional livelihood activity. The case was brought to the UN Human Rights Committee and, in late 2005, this resulted in the Committee ordering the state of Finland to stop all logging operations in the Nellim area until the land rights issue had been settled.  

Another example is the submission to the UN Committee on the Elimination of Racial Discrimination (known as the CERD Committee) in June this year by indigenous organizations in the Democratic Republic of Congo (DRC) in cooperation with the British NGO Forest Peoples Programme (described in further detail in Lucy Mulvagh’s article in this volume). The submission highlights how DRC’s 2002 Forest Code neither recognizes nor guarantees sufficient protection for indigenous peoples’ rights to land and resources, and its implementation leads to gross violations of indigenous peoples’ human rights. Logging concessions are given on and around indigenous peoples’ territories without consultation or consent (at the time of submission, at least 103 logging concessions were in operation), and they have not been consulted in connection with the elaboration of the Code’s implementing laws. According to the submission, the situation is so serious that some indigenous peoples are threatened with extinction.  

In Malaysia, organizations defending communities of Sarawak from logging operations have recently succeeded in having the national Human Rights Commission (Suhakam) visit some of the Penan communities in Sarawak that are suffering most from forest loss due to logging. The commission subsequently issued strong statements on the human rights violations being suffered by the Penan.  

**Conclusions**

What does all this mean, then, for the Danish and other European public procurement policies on timber and wood products? First of all, the examples from both Malaysia and Finnish Sápmi show that only a policy framework that promotes indigenous peoples’ rights will make a real difference to forest-dwelling indigenous communities that otherwise face a very uncertain future. Until and unless their rights to their forests, their traditional livelihoods and their cultural integrity are endorsed specifically in national forestry legislation, these rights will not be secured. Denmark and other European countries that are revising or developing public procurement policies for timber and wood products can influence these national processes by clearly demanding that if specific certification schemes are to be recognized as “legal” in our procurement policies then they must have a clean human rights record with no well-documented cases of indigenous communities being negatively affected by the logging. This obviously means non-acceptance of the MTCC certificate. At the same time, it calls for an open complaints mechanism whereby certificates accepted and recommended by the policy are up for scrutiny on a regular basis, with the possibility of civil society interests filing complaints when certification schemes have not lived up to their written standards.

Another lesson learnt from the examples above is that the only way the Danish policy can be really consistent with Denmark’s position as an advocate of indigenous peoples’ rights in various international processes is by making a strong case for sustainable rather than “legal” timber. As we have seen, the “legality” of timber and wood products is a weak concept in terms of respect for internationally established human rights standards. Accepting sustainable timber only, FSC certified or of the same standard, is thus the only way to ensure that the timber is not logged on indigenous territory without the people’s free, prior and informed consent. If other
labels are included as proof of sustainability in the forthcoming revised policy, it is crucial that these have the same human rights standards as the FSC certificate – that is, special reference to respect for indigenous peoples’ rights to territory, control of resources and cultural integrity.

Lastly, it must be stressed that there is no doubt that procurement policies play an important role in defining future markets for timber and wood products in Europe. Timber companies are, needless to say, interested in dealing with large public institutions, so the standard they are going to demand will eventually be available on the market. If the policy comes out with a clear and strong recommendation for public institutions to accept only FSC-certified wood, or products that can prove to be of a similar standard with alternative means of documentation, then there is hope that Danish and European public procurement policies can actually make a real difference to the forest-dwelling indigenous communities who are now suffering from the destructive practices of logging companies whose business success depends on the quantity of timber they can sell rather than its quality (in terms of sustainability).

The European NGO FERN has already suggested that a future harmonisation of EU public procurement policies on timber and wood products should take its starting point as the Dutch and Danish policies, since these are the most comprehensive and proactive of the existing policies. In the light of this, the current revision of the Danish policy is important not only for Denmark but also, potentially, for indigenous peoples in timber-producing countries that supply European markets.

References


Other sources:

Joint press release by 66 NGOs, 1 December 2005: NGOs urge European governments and industry not to accept Malaysian Timber Certification Scheme MTCC based on its disregard for indigenous peoples’ rights. Available at: http://www.fern.org/media/documents/document_3469_3470.pdf

The Rainforest Foundation, Norway, 2005: Serious shortcomings in Malaysia’s certification scheme. Available at: http://www.regnskog.no/html/265.htm

The Borneo Resources Institute (BRIMAS) web site: http://brimas.ww1.50megs.com/. Information on Sarawak’s indigenous communities’ struggle for land and resource rights, including press releases, links to newspaper articles, etc..

Sille Stidsen is an anthropologist and Project Coordinator at IWGIA. She is presently representing IWGIA on the consultative steering committee for the revision of the Danish Timber Procurement Policy.
Notes

1 Statements of Indigenous People of Sarawak regarding the Malaysian Timber Certification Council scheme (MTCC), appendix to a joint statement by 66 European NGOs, February 2005, urging European governments and industry not to accept the MTCC based on its disregard for indigenous peoples’ rights.

2 According to the European Commission, around half the timber and wood products imported to Europe come from illegal sources (quoted in the background information to a discussion in the Danish Parliament on a ban on imports of illegal wood, available in Danish at: http://www.ft.dk//samling/20051/beslutningsforslag/B17).

3 See for example FERN, Greenpeace and WWF, 2004.


5 The Danish policy is available (in Danish and English) at:
http://www.skovognatur.dk/Udgivelser/Tidligere/2003/tropisk_trae.htm

6 The evaluation is available (in Danish and English) at:
http://www.skovognatur.dk/Emne/Skov/Miljoe/Indkoeb/Evaluering_rapporter.htm

7 The existing policy deals with tropical timber only, the new revised policy that will come out in 2007 will cover all timber and wood products.

8 A number of timber certification schemes have been developed at international and national levels in order to give consumers simple tools with which to make responsible choices – and for the timber industry to have clear brands under which to market legal and sustainable timber.

9 This includes: make sure the producer has obtained the necessary permits to carry out the logging, has fulfilled all national legislation regarding forest management, paid for permits and any taxes due, and has obtained all statutory documentation from the authorities.

10 Danish Forest and Nature Agency, 2006, Sub project A: V.

11 Read the principles and more background information on the FSC certification scheme at the organization’s website: http://www.fsc.org/en/.


14 Times online, 5 May, 2006: Dying tribe takes on timber giants over lost habitat. By Richard Lloyd Parry and Devika Bhat.


17 JOANGOHutan, 2005.

18 Perhaps not surprisingly, a recent study by the Centre for International Forestry Research (CIFOR) on forest law enforcement and its impact on rural livelihoods concludes that “forest laws have typically been heavily influenced by the timber industry lobby” (Colchester 2006).

19 The problem of the “implementation gap” between legislation protecting and promoting indigenous peoples’ human rights and the day-to-day reality has been identified by the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples as being one of the main issues that states need to address. His 2006 report to the 62nd session of the Commission on Human Rights highlights this.

20 Denmark played an active role in the drafting of the UN Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council in June 2006, and in the processes leading to the establishment of the UN Permanent Forum on Indigenous Issues in 2002.

21 See for example FERN 2001, Colchester 2006, Forest Peoples Programme 2006a, and IWGIA 2006: 45-50. In a recent report the Forest Peoples Programme summarizes how an increasing concern to ensure that forest policies lead to sustainable forest management while at the same time respecting the rights of communities in forests is also reflected in a number of inter-governmental declarations on forest issues: “Through the Rio Declaration and Agenda 21, the non-legally Binding Statement of Principles on All Types of Forests, the ‘proposals for action’ agreed at the UN intergovernmental Panel on Forests and the Inter Governmental Forum on Forests, the decisions of the Commission on Sustainable Development, and the Convention on Biological Diversity’s Expanded Programme of Work on Forest Biological Diversity, governments have committed themselves inter alia to:

• address forest issues in a holistic and cross-sectoral manner
• ensure the participation of local communities and indigenous peoples in the formulation, planning and implementation of national forest policies
• recognize and support the identity, culture and rights of indigenous peoples and other forest dependent people
• formulate policies and laws to secure land tenure for indigenous peoples and local communities
• recognize and support community-based forest management
• develop regimes to protect traditional forest related knowledge”.

(Forest Peoples Programme 2006 b:4)

22 Read more about the Inari and Nellim logging case in Raitio and Lawrence’s article in this volume, in IWGIA 2006, and at www.samicouncil.org. Read more about similar cases in Colchester 2006, pp. 53.

23 The full submission can be downloaded from the Forest Peoples Programme’s website at: www.forestpeoples.org (see the full reference above under Forest Peoples Programme 2006a).

24 Links to press releases and newspaper articles on this can be found at BRIMAS’ website: http://brimas.wwl1.50megs.com/. See for ex. MalaysiaKini, September 26, 2006: Penan plight shocks Suhakam team. By Bede Hong.


Text Box: British company stops purchase of Sarawak timber

As this article goes to print, we receive a press release from the Bruno Manser Fund in Switzerland (12 December 2006), saying that the British timber company Jewson Ltd. will stop purchasing and selling timber from Sarawak. This is the company to whom the 17 Penan leaders sent their letter of complaint in April, quoted above.