

IGNORING THE MERCURY IN THE CLIMATE CHANGE BAROMETER: DENYING INDIGENOUS PEOPLES' RIGHTS

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I Introduction

UN Secretary-General Ban Ki-Moon recently declared that those least responsible for climate change bear the greatest burden:

Our earth is more fragile than we might think. Whole ecosystems that support millions of lives face significant disruption. In some cases, whole countries and peoples – not only animal species – are at risk of disappearing. And the effects are being felt most acutely by those least able to cope and least responsible for the problem. This is a moral issue. Our responses must be guided by the principles of common responsibility and the common good.¹

Indigenous peoples are amongst the groups most vulnerable to climate change and yet are the least responsible for the unnatural (ie, anthropogenic, human-induced) carbon cycle that is causing it. The absence of a human rights-based approach to climate change governance, which would recognise Indigenous rights to participation and other human rights, constitutes a major flaw in the processes, policies and measures of the entire climate change regime. Denial of these rights permeates processes under the 1992 United Nations *Framework Convention on Climate Change* ('UNFCCC')² and its 1997 *Kyoto Protocol*³, as well as the policies, measures, rules and procedures promulgated annually by Conferences of the Parties for determining how to break the unnatural carbon cycle. Participation is defined here as the right to contribute to the deliberations and decisions of decision-making bodies, in contrast to the mere opportunity to be consulted or to be an observer of proceedings at the behest of the state parties. Indigenous peoples' organisations are only able to obtain observer status⁴ in UNFCCC proceedings.

Despite the unique impact of climate change on Indigenous peoples, their organisations are among the groups least likely to have their substantive and procedural rights recognised. As a consequence, Indigenous peoples' rights are abrogated both by climate change itself and by the current measures to mitigate and adapt to it, including carbon trading. Both the 'clean development mechanism' defined in art 12 of the *Kyoto Protocol* and UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries ('REDD') are intended to reduce greenhouse gas emissions through the creation of a carbon market; thus far neither Indigenous peoples nor other global civil society actors have had the option of assessing the merits of carbon trading. At present, neither the human rights of Indigenous peoples nor respect for the governance principle of free, prior and informed consent is intrinsic to the climate change governance regime and the resulting carbon market.

This commentary stresses the urgent need to fill the human rights gap in climate change governance. The human rights-based approach imposes a threefold obligation upon states and the intergovernmental organisations through which they work internationally. In accordance with what was declared by the 1993 Vienna World Conference on Human Rights, this threefold obligation is to:

- respect rights by refraining from interfering with the enjoyment of people's rights;
- protect rights by preventing these from being violated by third parties such as corporations and other states as well as individuals;
- fulfil rights by taking action towards the full realisation of people's human rights through legislation, enforcement and expenditure.⁵

The process of implementing human rights imposes upon states a further set of obligations to:

- ensure a core minimum of rights is enjoyed by every citizen whatever the state's resource constraints;
- give priority to the rights of those most vulnerable and at risk;
- ensure the participation of people in designing and implementing measures which will affect their rights;
- establish mechanisms to respond to the violation of human rights and to monitor and report on the status of respect for human rights; and
- cooperate internationally in the realisation of human rights.⁶

The human rights-based approach to climate change governance must explicitly incorporate the substantive and the procedural human rights of Indigenous peoples (and of other highly vulnerable groups). As an intrinsic element of climate change governance, the human rights-based approach must be proactively integrated into the design, redesign, development and implementation of all climate change abatement measures,⁷ including regulation of the carbon markets.

The right to a healthy, bio-diverse and sustainable environment is not expressly articulated in the 'International Bill of Rights' – that is, collectively, the *Universal Declaration of Human Rights* ('UDHR'),⁸ the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR')⁹ and the *International Covenant on Civil and Political Rights* ('ICCPR')¹⁰ and its protocols – or elsewhere. As yet, no 'grundnorm' in international law specifies a human right to a healthy, bio-diverse and sustainable environment; therefore, the human rights-based approach to climate change mitigation and adaptation has to be assembled from the whole body of international law. Some experts¹¹ suggest that such a right is evolving, as an inferential step, from the recognition of the rights to health, life and other basic human rights, coupled with the duty of states not to commit trans-boundary environmental harm against other states. Two regional human rights treaties, the 1981 *African Charter on Human and Peoples' Rights*¹² and the 1988 *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*,¹³ while not enforceable by individuals or peoples, do recognise a right to an environment of a certain quality. They suggest that a possible avenue of recognition for environmental human rights comes by way of a corollary from the duties states

have accepted in relation to international environmental law under the 1994 *UN Convention on the Law of the Sea*,¹⁴ UNFCCC, and *Kyoto Protocol*.¹⁵ Nevertheless, the lack of an express right to a sustainable environment illustrates the urgency of the need to articulate and implement a human rights-based approach to climate change governance, as well as in response to climate change-induced disasters.

Climate change litigation at the international and national levels is an important, though limited, dimension to a human rights-based approach. Litigation is often a reactive response that is costly, time consuming and always hostage to the caprice of courts, human rights tribunals, other complaints mechanisms and, of course, governments.¹⁶ For example, in 2005 the Inuit peoples petitioned the Inter-American Commission on Human Rights to obtain recognition of their claim that United States greenhouse gas emissions have violated their human rights by adversely impacting upon every facet of Inuit life.¹⁷ The Inter-American Commission initially responded to the Inuit petition by stating that 'the information provided does not enable us to determine whether the alleged facts would tend to characterize a violation of the rights protected by the American Declaration [of the Rights and Duties of Man]',¹⁸ declining even to try to make the causal link between climate change impacts and human rights; however, in 2007 the Commission agreed to the request for a further hearing.¹⁹ To the author's knowledge the matter is still pending. Litigation in the climate change context has an important function in the 'politics of rights', where human rights do provide a valuable resource for articulating claims and critiquing the rupture between the rhetoric and the reality of 'rights-talk'.²⁰ That being said, climate change litigation *per se* is not the focus of this commentary.

Since 2007, at least, there are clear and positive indications that the building blocks for a human rights-based approach are being assembled. The UN finally started to explore how human rights can be integrated into the climate change regime at the December 2007 Bali Conference of the Parties to the UNFCCC. There the UN Deputy High Commissioner for Human Rights called for recognition of human rights and sustainable development in the context of the threat that climate change posed to the Millennium Development Goals.²¹ In March 2008, the UN Human Rights Council stated that it was 'concerned that climate change poses an immediate and far reaching threat to peoples and communities around the world and has implications for the full enjoyment of human rights'.²² At the same time the Council requested the Office of

the UN High Commissioner for Human Rights ('OHCHR') conduct a detailed study of the relationship between human rights and climate change.²³

In April–May 2008, the Seventh Session of the UN Permanent Forum on Indigenous Issues devoted several days of deliberation to Indigenous peoples' rights and climate change, and issued a statement requesting participation in UNFCCC's Conferences of Parties. By mid-2009, the OHCHR had received a substantial number of submissions on climate change and human rights²⁴ from states²⁵ as well as non-governmental organisations ('NGOs').²⁶ Notably, Oxfam International's briefing paper advocates a human rights-based approach, and is grounded in a rigorous critique of the political economy of the carbon market-based approach to mitigation and adaptation.²⁷

Amongst national human rights bodies, the Australian Human Rights Commission (formerly the Australian Human Rights and Equal Opportunity Commission) has shown leadership by identifying climate change as a human rights issue; and in this regard, the rights of Indigenous peoples are high on its agenda.²⁸ Excellent submissions made to the OHCHR by the Environmental Defenders' Office NSW²⁹ and by the Sydney Centre for International Law³⁰ also reflect recognition of the specific threat climate change poses to Indigenous peoples' human rights.

The UN High Commissioner for Refugees has also been working with other agencies on a human rights-based approach to humanitarian relief in the aftermath of climate-induced disasters, jointly producing comprehensive operational guidelines in 2008.³¹ Also in 2008, the Secretariat of the 1994 UN *Convention to Combat Desertification*³² published a report that links vulnerability and climate change to desertification, drought and land degradation, and advocates a human rights-based approach for Indigenous and tribal peoples, and the peoples of small island developing states.³³ The right to water is a key focus.

Unless a human rights-based approach becomes integral to climate change regime governance, there is a danger that recognition of such rights will be addressed retrospectively and reactively or neglected altogether. Integration of a human rights-based approach ought, therefore, to be a basic agenda item for the 15th UNFCCC Conference of Parties at Copenhagen in 2009, when it deliberates on the shape of the post-2012 climate change regime. Further, justiciable

Indigenous peoples' rights, as well as environmental, substantive and procedural human rights, ought to form the basis of a possible Australian bill or charter of rights, which is currently under review.³⁴ The coming years will be critical in addressing the problems of climate change and in attempting to alter the current trajectory to avert ecocide, and the consequential disastrous impacts on Indigenous people and their way of life.

II Climate Change: Impacts of the Unnatural Carbon Cycle

A Impacts on the Earth

The climate change regime is concerned with breaking the accelerating anthropogenic (human-induced) imbalance in the carbon cycle, so that greenhouse gas emissions will not accumulate in the Earth's atmosphere to produce dangerous climate change. The Intergovernmental Panel on Climate Change ('IPCC') has to date produced four assessment reports, in 1990, 1995, 2000, and 2007. Each of these has confirmed that human-induced climate change is occurring. The latest and most explicit, the 2007 Fourth Assessment Report, warns unambiguously that, left unabated, climate change will have serious negative consequences for life on Earth as we know it.³⁵

The IPCC's warning is based on research that shows an alarming rate of increase in greenhouse gas emissions from human activity since 1970; the extent to which land and sea temperatures are unequivocally rising, snow cover is decreasing, and global average sea level is rising; and the known and easily anticipated dire ecological and human impacts of temperature change on water, ecosystems, food, coasts and health. This data shows the disastrous consequences for life on Earth when temperatures rise by even two to three degrees from the 1980 to the 1990 levels.³⁶ It is beyond the scope of this paper to go into any great detail on the precise science of climate change, though interested readers are encouraged to seek out the IPCC's Assessment Reports as a starting point.

B Impacts on Indigenous and Other Vulnerable Peoples³⁷

In every region of the Earth, Indigenous people are on the frontline of climate change,³⁸ the impacts of which are more notable where the state is ill equipped or unwilling to

respond. Unabated, climate change seems likely to cause the poorest of the poor, of whom Indigenous peoples constitute a high proportion, to suffer profound adverse impacts and so derail the attainment of the UN's eight Millennium Development Goals.³⁹

Climate change governance at both local and global levels is state-centred, exacerbating Indigenous peoples' relative powerlessness. Colonisation, and its contemporary ideological manifestation in economic globalisation, perpetuates the denial of the right to self-determination of Indigenous peoples. This abrogation of Indigenous peoples' human rights is chronically demonstrated by the profound ambivalence that states evince towards recognition of Indigenous peoples' international legal personality.⁴⁰ States have often ratified international law instruments and/or domestic treaties promising otherwise; yet, despite the rhetoric, Indigenous peoples are excluded from participation in deliberations at the state level and international level about development, health services, ecosystem sustainability and climate change governance. Without self-determination, Indigenous peoples experience systemic and structured inequality of access to individual human rights in almost all regions of the world. The continuing abrogation of Indigenous peoples' human rights compounds their vulnerability to the negative impacts of climate change, through the lack of access to or control over mitigation and adaptation measures. Negative impacts include: loss of access to water, ecosystem collapse in the form of unprecedented species extinction, desertification and deforestation, food insecurity, rapid changes in coastal geomorphology due to sea-level rises, and worsening health conditions due to the spread of vector-borne diseases.⁴¹ Further, climate change is also accompanied by the intensification and increased frequency of natural disasters and subsequent massive dislocation of people, often from or into the lands of Indigenous peoples. It has been estimated that in 1995 there were up to 25 million 'environmental refugees', a figure that is expected to climb dramatically as climate change becomes more pronounced.⁴²

A brief region-by-region snapshot illustrates the widespread vulnerability to climate change of Indigenous peoples and the highly pernicious forms such climate change takes. In Australia, climate change particularly affects Indigenous people in the north. These include low-lying areas of the Torres Strait Islands and shores of the Gulf of Carpentaria that are vulnerable to sea-level rise, coastal erosion and storm surges; Kimberley coastal and inland communities

that are vulnerable to increased intensity and frequency of cyclones; Cape York communities facing biodiversity loss in tropical rainforests and increased coral bleaching on the Great Barrier Reef; and communities in central regions across the continent, which face the largest projected temperature increases and the least climate-proofed public infrastructure, services and housing.⁴³

In the Arctic, much of the region is experiencing among the most severe impacts of very rapid climate change.⁴⁴ As Nobel Prize nominee Sheila Watt-Cloutier points out, the Arctic is the world's barometer of climate change⁴⁵ and the Inuit are the mercury. Warming is fundamentally threatening the health and food security of Inuit and other northern Indigenous people so fast and so radically that mitigation and adaptation are very difficult.

In sub-Saharan Africa, drought and temperature rise are causing desertification, rendering 2.5 million hectares of the Kalahari area in southern Africa unusable for grazing or as a source of food for the San Indigenous people.⁴⁶

In areas of Asia, a 2–8 degree increase in temperature and decreased rainfall are leading to the collapse of forest systems, and to crop failures and fires. The coastal zones of Bangladesh and China are experiencing erosion, saltwater dilution of fresh water supplies and, as a result, the dislocation of coastal populations. In the Himalayas, glacial melt is leading to downstream floods and the collapse of high-altitude ecosystems.⁴⁷ In these areas pressures on Indigenous peoples' way of life, land and water are acute, due to the movement of people from adversely affected lower-lying areas.⁴⁸

In Central and South America and the Caribbean, from the Amazon basin to the alpine forests of the Andes, deforestation is widespread. Weather patterns have also altered, disrupting traditional agriculture and so threatening food security.⁴⁹ Coastal erosion is making areas of many small island developing states uninhabitable, forcing population movement onto scarce land. In the Pacific region, for instance, coastal erosion, high tides and stormy seas are threatening the existence of Tuvalu and Kiribati.⁵⁰ Climate change is likely to increase the vulnerability of Indigenous peoples to continuing poverty and poor health. In an increasingly competitive environment, Indigenous peoples' lack of political and economic power seems likely to continue to limit their ability to assert and defend their land tenure, to maintain access rights to natural resources and to sustain

diversified traditional livelihoods.⁵¹ Restricted access to information and communication technologies further limits Indigenous peoples' ability to adapt to or mitigate the effects of climate change.⁵²

Reaping few of the benefits of the economic growth and globalisation that have contributed to climate change, Indigenous peoples bear the burden of a non-compensable injustice from the destruction of their land and sea country, as a result of climate change. Indigenous peoples, because they are peoples and not states, fall into a governance gap through denial of their procedural rights to deliberate and decide upon what is to be done about climate change. Indigenous peoples' autonomous negotiating power is minimal because states tend to marginalise them and treat their land and sea country as that of the state.

Further, Indigenous peoples start the contest for rights with the hindrance of a profound, substantive and procedural, individual and group, human rights deficit. The human rights-based approach to climate change governance is necessary to redress this injustice, promote resilience and adaptation, reduce vulnerability, and ensure that ecocide and the resulting impacts on Indigenous peoples' way of life will not continue.

III Human Rights and Climate Change Governance

In 1988, the UN General Assembly declared that climate change was a 'common concern of mankind'.⁵³ Also in 1988, the World Meteorological Office and the UN Environment Programme set up the IPCC with a mandate to assess the emerging science on climate change, and specifically to detect global warming trends, in order to determine the extent that these are attributable to human activity.⁵⁴

The implications of the IPCC's First Assessment Report in 1990 gave the impetus for the UN General Assembly to start negotiation for a framework convention on climate change. An Intergovernmental Negotiating Committee was set up to steer the process.⁵⁵ A supplementary report of the IPCC and the adoption of ambitious greenhouse gas emissions targets⁵⁶ by the high-emitting member states of the Organisation for Economic Cooperation and Development paved the way for the UNFCCC to be open for signature by state parties at the Rio Earth Summit (the UN Conference on Environment and Development) in 1992. Five instruments were opened for signature or adopted at the 1992 Conference. Four of

these – the *Rio Declaration on Environment and Development*,⁵⁷ the *Convention on Biological Diversity*,⁵⁸ *Agenda 21*,⁵⁹ as well as the *Statement of Principles for the Sustainable Management of Forests*⁶⁰ – explicitly and extensively recognise the human rights of Indigenous peoples, including their right to participation. The UNFCCC does not. Nor does the *Convention to Combat Desertification*, though its secretariat published a report in 2008 that advocates a human rights-based approach.⁶¹ Despite the dire human consequences of climate change, forecast by the IPCC's assessment reports since 1990, the climate change regime has evolved without expressly incorporating or referencing human rights. The *Kyoto Protocol*, agreed on in 1997 but not in force until 2004 because of prevarication about ratifying by states such as Russia, the United States and Australia,⁶² perpetuates the neglect of references to human rights.

A Denial of Indigenous Human Rights

The UNFCCC art 4 and *Kyoto Protocol* art 10 oblige developed states to assist developing countries, notably with information and knowledge transfer. However, the climate change regime makes no explicit acknowledgment of the situation of Indigenous peoples, most of whom live in developing or least-developed states. Moreover, the contribution that traditional environmental knowledge can make to adaptation is not referenced.

Neither the UNFCCC nor *Kyoto Protocol* includes any human rights provisions concerning specific assistance or protection for people who will be directly affected by the impact of climate change. Yet, unless a human rights-based approach becomes central to responses, climate change-precipitated disasters will fundamentally threaten basic human rights for millions of people, many of them Indigenous.⁶³ The UN High Commissioner for Refugees, in noting that the concept of environmental refugees does not usefully fit with the mandate of his agency, has asked whether a new treaty is required and whether the human rights of climate change victims ought to become a consideration of the UNFCCC. He suggests that there are 'protection gaps' for climate-related internally displaced persons looming and that a human rights-based approach is essential to fill it.⁶⁴

The 1993 *Vienna Declaration* of the UN General Assembly declared all human rights to be 'universal, indivisible, interdependent and interrelated'.⁶⁵ Yet most states demonstrate ambivalence toward fulfilling their duty to

respect and protect the individual rights and, especially, group rights of Indigenous peoples. The quest for these rights is central to Indigenous peoples' struggles for social justice and climate justice, both locally and globally. The climate crisis highlights three inextricably linked types of human rights that are critical to the survival and wellbeing of Indigenous peoples. The first is the right to existence, a group right inferred from the UN *Genocide Convention*,⁶⁶ which established the right not to suffer genocide. The second is the group right to self-determination, now expressed in the 2007 UN *Declaration on the Rights of Indigenous Peoples*.⁶⁷ The right to self-determination originated in the ICCPR and ICESCR, though its application to Indigenous peoples was contested by states. This fundamental group procedural right embraces rights to self-government, to participatory development and to free, prior and informed consent, together with the recognition of traditional environmental knowledge and stewardship duties concerning the environment.⁶⁸ Third are individual human rights, which have developed in international law within the UN framework since 1945, under the umbrella of the 'International Bill of Rights' framed by the UDHR, ICCPR and ICESCR. Such rights are also expressed through a host of human rights conventions and declarations, including the *Convention on the Elimination of All Forms of Racial Discrimination*,⁶⁹ the *Convention on the Elimination of All Forms of Discrimination Against Women*,⁷⁰ the *Convention on the Rights of the Child*⁷¹ and the *Convention Against Torture*.⁷² These conventions and declarations articulate civil and political rights; social, cultural and economic rights; and, more recently, rights to development. The substantive human rights recognised by international law, which are abrogated by the failure to adopt a human rights-based approach to climate change mitigation, adaptation and disaster response, include:⁷³

- the right to conservation and protection of the environment;⁷⁴
- the right to life;⁷⁵
- the right to freedom from discrimination;⁷⁶
- the right to adequate food and means of subsistence;⁷⁷
- the right to respect for culture and property;⁷⁸
- the right to water;⁷⁹
- the right to health;⁸⁰ and
- the right to adequate and secure housing.⁸¹

Already about 200 million people a year are affected by disasters.⁸² Indigenous peoples are often on the frontline of natural disasters that are linked increasingly to greater

climate variability everywhere on Earth.⁸³ 'Natural' is a misdescription of climate change-induced events and processes given the consensus that these are human induced. Further, the magnitude of the consequences of disasters is a direct result of how states and societies react or fail to respond to them. The UN Inter-Agency Standing Committee advocates that UN bodies concerned with refugees and internally displaced persons adopt human rights-based operational guidelines for disaster relief, based on rights to protection of generic human rights. These rights include social, economic and cultural rights; civil and political rights; rights to the basic necessities of life; and rights to physical, mental and moral integrity. Specific rights are also identified in the operational guidelines applying to: internally displaced persons; women, children and adolescents; older persons; persons with disabilities; persons living with HIV/AIDS; single parent households; and ethnic and religious minority groups, as well as Indigenous peoples.⁸⁴

As highlighted above, the human rights-based approach to addressing the consequences of climate change is critical at the reduction, mitigation and adaptation, as well as the disaster relief, stages. To date, ambivalence towards Indigenous peoples' rights has resulted in a high degree of unpreparedness by states to confront and address the needs of those who will be most affected by the ecological threat climate change poses. Indigenous people are further disadvantaged by the lack of an enforceable right to participate in the design and development of the climate change governance regime.

B Denial of Procedural Human Rights

Recognition of core procedural human rights is most immediately within the powers of the Conferences of the Parties to address. The aspirational procedural rights found in international law instruments, which are likely to be abrogated by the climate change regime's failure to adopt a human rights-based approach to climate change reduction, mitigation and adaptation, include:

- rights of Indigenous peoples to full realisation of procedural participation, including self-government rights that states have duties to recognise;⁸⁵
- the right to participate in, access, and receive information from the state on environmental matters;⁸⁶
- rights of Indigenous peoples to give free, prior and informed consent to certain matters affecting them;⁸⁷

- the right to recognition of traditional environmental knowledge in decision-making.⁸⁸

While the *Convention on Biological Diversity*,⁸⁹ which pertains to the recognition of traditional environmental knowledge in decision-making, imposes duties on states rather than explicitly declaring rights, it can be argued that the Convention recognises correlative rights. Many such rights and correlative state duties have now been affirmed in the *Declaration on the Rights of Indigenous Peoples*, which serves as a standard-setting instrument. Special Rapporteur Professor James Anaya summarises the status of the *Declaration* as follows:

the Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples. The standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights. From this perspective, the standards of the Declaration connect to existing State obligations under other human rights instruments.⁹⁰

In light of the grave threat that climate change poses to both the population and the environment, two interrelated procedural human rights processes are required for good climate change governance. One is democratisation of the climate change regime at local, regional and international levels, by states themselves. The other is worldwide generalisation of the UN Economic Commission for Europe's 1998 *Aarhus Convention*,⁹¹ which

constitutes the only legally binding instrument so far to implement principle 10 of the Rio Declaration on Environment and Development, which provides for the participation of citizens in environmental issues by giving them appropriate access to the information concerning the environment held by public authorities, including access to judicial or administrative proceedings, redress and remedy. Access to scientifically based information and public participation in decision-making on environmental issues – as provided by the Convention – are widely recognized as an important foundation for climate change mitigation efforts.⁹²

The *Aarhus Convention* provides a model approach to public and, therefore, democratic participation⁹³ that should not be restricted to its few European signatories, but needs to be vastly strengthened. Within the complex body of institutions where climate change law and policy are presently made is a governance gap that is manifest in three areas. First, access to information is controlled by states party to the Conferences of the Parties, and there is no right of access to information for non-state actors.⁹⁴ Second, formal public participation is non-existent at the international level.⁹⁵ Few, if any, states base their positions on structured consultation with civil society organisations at the state level. Indigenous peoples' organisations, as well as other recognised constituencies of non-state actors,⁹⁶ currently have no effective right of participation in any of the formal institutions of the regime or in the IPCC. Third, access to justice concerning the impact of climate change is a very murky area, where scepticism about the causal links between climate change and negative impacts is contested, and the causes of action for litigation are unclear and untried. Articles 8 and 10 of the *Convention on Biological Diversity* make explicit reference to states' duties to use and respect Indigenous traditional environmental knowledge. This duty creates a correlative Indigenous peoples' right. The neglect of this duty and the correlative failure to protect these rights are at present another element in the climate change governance gap impacting on Indigenous peoples.

Until now, the IPCC has ignored traditional environmental knowledge in its analysis of data and tended to present Indigenous people as 'helpless victims of changes beyond their control'.⁹⁷ The Fourth Assessment Report, however, acknowledges the importance of traditional environmental knowledge in assisting scientists and policymakers as well as Indigenous and traditional communities to adapt to climate change.⁹⁸

Many Indigenous peoples are dependent on, and highly knowledgeable about, the ecosystems in which they live. They contribute to a sustainable environment through responsible stewardship based on their local traditional environmental knowledge. Indigenous peoples' traditional environmental knowledge can be utilised in conjunction with scientific research to help mitigate the impacts of climate change and develop more sustainable adaptation measures.

IV Indigenous Peoples' Participation in the Climate Change Regime

The UNFCCC defines the objectives and principles of the international climate change regime; outlines the commitments of parties to each other and in relation to emissions reduction, including reporting; and divides states into categories to allow for differential levels and paces of compliance.⁹⁹ In 1997 the *Kyoto Protocol* was unanimously adopted at the third Conference of the Parties to the UNFCCC. The *Kyoto Protocol* did not address the human rights dimensions of climate change; in my view, however, the third Conference of the Parties created a whole new category of *property* rights, for trade in the carbon market. Under the 2001 Bonn and Marrakesh agreements, compliance was made more 'flexible' by introducing a market-based mechanism, which was based on three flexibility mechanisms: the 'clean development mechanism', 'joint implementation' and emissions trading.¹⁰⁰

While the UNFCCC's Conference of the Parties usefully set emissions targets under the *Kyoto Protocol*, it departed abruptly from the traditional 'command-and-control' model for controlling pollution, to facilitate compliance with these targets. To promote flexibility in the modes of compliance, the UNFCCC – without the free, prior and informed consent of global civil society, including Indigenous peoples' organisations – sanctioned the creation of the carbon market. This has appeared to emerge as the major mitigation and adaptation strategy to climate change given that the post-Kyoto debate about climate change governance is structured around the *Kyoto Protocol*, which is now strongly identified with carbon trading despite the early vision reflected in art 6.1(d) that carbon trading would only be 'supplemental'. The carbon market is built around a set of economic instruments intended to incentivise compliance with targets by allowing emissions trading under a set of so-called flexibility mechanisms, such as the clean development mechanism and REDD. These mechanisms allow emissions targets to be met by the purchase of credits from low-emitting states by high-emitting states or their corporate surrogates in the carbon marketplace.

One problem with the carbon market approach to lowering emissions is the lack of enforcement and accountability, for instance in relation to forestry products. For Indigenous people, the lack of free, prior and informed consent and respect for land rights seem strongly associated with market

growth, resulting in human rights violations. As critics have argued:

For the markets to take off, however, measures will have to be found to structure enforcement and accountability into forestry products, reassuring policymakers, regulators, and investors that carbon offsets have practical value. Among the technical concerns to be addressed are permanence (will the forests planted today still be here tomorrow?), additionality (would the activity have happened anyway?), leakage (will a reforestation project in one place result in land-clearing somewhere else?), measurement, and verification standards.¹⁰¹

A The Exclusion of Indigenous Peoples' Organisations

Specific policies, rules and procedures of the UNFCCC evolve through yearly Conferences of the Parties including the state signatories to the UNFCCC and *Kyoto Protocol*. These primary bodies, along with subsidiary and related bodies, make up the elements of the climate change governance regime. The key institutions of the governance regime are:

- the Conference of the Parties – the supreme body of the regime;
- the Meeting of the Parties to the *Kyoto Protocol*;
- the Permanent Secretariat of the UNFCCC;
- the Subsidiary Body for Scientific and Technological Advice to the Conference of the Parties; and
- the Subsidiary Body for Implementation assisting the Conference of the Parties.

There is also a cluster of expert groups¹⁰² and ad hoc working groups¹⁰³ associated with the UNFCCC and the *Kyoto Protocol*.

Each key institution, expert group and technical workshop is a site managing processes in which Indigenous peoples could and should be involved. A simple step towards their participation would be to set up, as Indigenous peoples' organisations represented by bodies such as the International Indigenous Peoples' Forum on Climate Change have repeatedly requested, the 'Expert Group on Indigenous People – Vulnerability and Adaptation'.¹⁰⁴ Participation would need to be facilitated through funding, including funding directed towards the relevant research and networking necessary for the Indigenous working group

to operate on par with other expert groups and technical workshops.¹⁰⁵

Autonomous intergovernmental organisations, which work in partnership with the UNFCCC Conferences of the Parties, are the IPCC and the Global Environment Facility. The IPCC reports to the UN and its agencies and is made up of a large number of independent scientists who analyse and review the available data. The IPCC does not itself conduct the empirical research upon which its assessments are made. However, the IPCC does define the questions, determine the focus of its analysis and choose what literature to review for its assessments.¹⁰⁶ Thus the IPCC plays a pivotal part in defining the form, extent and seriousness of the climate change problem. Its definitions trigger responses by the climate change governance regime and determine the pace, degree of intensity and extensity of such responses. These are matters that have direct and unique implications for Indigenous and other vulnerable peoples. The Global Environment Facility owes its existence to the 1992 Rio Earth Summit and was set up by the UN Environment Programme, the UN Development Programme and the World Bank.¹⁰⁷ The World Bank is an international financial institution within the UN. The Global Environment Facility exists to facilitate developing countries to sustain biodiversity and the health of international waters, to prevent ozone depletion and subsequent land degradation, and to reduce the use and spread of persistent organic pollutants.¹⁰⁸

Under the UNFCCC, the Global Environment Facility operates to assist developing countries to achieve emission reductions through financial and technological assistance, as well as capacity-building.¹⁰⁹ As such, it has a key role in determining who gets funds and how they are spent on emissions reduction, mitigation of climate change impacts and adaptations to climate change. Such decisions have direct and unique implications for Indigenous and other vulnerable peoples. For instance, funding for forest carbon sinks and carbon sequestration projects, dams for hydropower, and plantation mono-cropping for biofuels have the potential to impinge directly in Indigenous peoples' lands, waters and ways of life. In the absence of free, prior and informed consent and respect for Indigenous customary title and land rights, there is the potential for Indigenous peoples to become the victims, not the beneficiaries, of mitigation and adaptation measures.

Far-reaching and fundamental aspects of climate change governance have emerged since 1992, notably the creation of the carbon trading market at the Conferences of the Parties in 2001, through the *Bonn Agreement*¹¹⁰ and *Marrakesh Accords*.¹¹¹ Profoundly important decisions will again be made, or not made, in 2009 at the Copenhagen Conference of the Parties, where the shape of the post-Kyoto regime will be deliberated.

Civil society organisations, such as Indigenous peoples' organisations and other NGOs, have no rights to participate in the decision-making processes of the Conferences of the Parties or of the meetings of its subsidiary bodies, as well as of the IPCC. Under art 7.6 of the UNFCCC, even to be an observer an organisation has to be formally admitted by the Conference of the Parties. Indigenous peoples have been observers at Conferences of the Parties since 2000.¹¹² Ever since the inclusion of Indigenous people as observers, Indigenous peoples' organisations have repeatedly made formal statements and unsuccessfully requested that the IPCC and UNFCCC give Indigenous peoples greater opportunities for participation in deliberations in all the institutions of the climate change governance regime. These include numerous declarations and statements made by the International Forum of Indigenous Peoples on Climate Change¹¹³ and a recent resolution passed by the UN Permanent Forum on Indigenous Issues,¹¹⁴ amongst others.¹¹⁵

The rationale and legitimacy for these persistent requests is eloquently stated in the 2000 *Declaration of Indigenous People on Climate Change*, which emerged from the Second International Forum of Indigenous Peoples on Climate Change held in The Hague. A 'statement of claim of the right to participate in these negotiations'¹¹⁶ of the UNFCCC, the *Declaration* could be as justifiably made in 2009, albeit with more urgency almost a decade later. In the *Declaration*, the International Forum refers to Indigenous peoples' special relationship with the Earth as stewards and holders of valuable traditional knowledge on sustainability, conservation and protection of their territories.¹¹⁷ Expressing 'profound concern' in relation to the denial of adequate Indigenous participation in discussions under the UNFCCC and the *Kyoto Protocol*, the *Declaration* articulates unease with the fact 'that the measures to mitigate climate change currently being negotiated are based on a worldview of territory that reduces forests, lands, seas and sacred sites to only their carbon absorption capacity.'¹¹⁸ The solutions to climate change posed under the UNFCCC and *Kyoto Protocol*, including emissions trading and carbon sinks, are rejected

under the *Declaration* because of their potential to 'adversely impact upon our natural, sensitive and fragile eco-systems, contaminating our soils, forests and waters.'¹¹⁹ Concluding the *Declaration* were a number of recommendations, including that Indigenous people be guaranteed 'the fullest and most effective participation' in the climate change governance regime. This would entail much greater formal involvement of Indigenous peoples in all levels of the governance system, including specific representation in the Conferences of the Parties, at the meetings of subsidiary bodies, in the UNFCCC Secretariat and on the IPCC.¹²⁰

Intransigence of state parties through the UNFCCC Conferences of the Parties and *Kyoto Protocol* Meetings of the Parties has consistently abrogated Indigenous peoples' rights to participation, to free, prior, and informed consent and to be consulted; rights articulated first in *ILO Convention No 169*¹²¹ and subsequently, in 1992, in arts 8 and 19 of the *Convention on Biological Diversity* and in Chapter 21 of *Agenda 21*. Significantly, this posture is now also inconsistent with the *Declaration on the Rights of Indigenous Peoples* (arts 18–20, 23, 25, 29 and 32). Yet in December 2007, the Conference of the Parties refused to accede to another proposal for a UNFCCC Expert Group on 'Indigenous People – Vulnerability and Adaptation' – though there was an undertaking that greater access for Indigenous peoples' organisations would be considered for the 2009 Copenhagen Conferences and Meetings of the Parties.¹²²

In May 2008, the UN Permanent Forum on Indigenous Issues held its Seventh Session in New York, on 'Climate Change, Bio-Cultural Diversity and Livelihoods: The Stewardship Role of Indigenous Peoples and New Challenges'. The Permanent Forum repeated the call for better recognition of Indigenous peoples by the UNFCCC, inclusion of Indigenous peoples' issues in the work of the IPCC, and acceptance by states that the *Declaration on the Rights of Indigenous Peoples* ought to be the framework for further interaction between states and Indigenous peoples, nationally as well as internationally.¹²³ In May 2009 at the Eighth Session of the Permanent Forum, Special Rapporteurs were charged with the task of examining: 'The extent to which climate change policies and projects adhere to the standards set forth in the United Nations Declaration on the Rights of Indigenous Peoples' – presumably including the activities of international bodies such as the UNFCCC Conferences of the Parties.¹²⁴

Based on the internet agenda planning for the Copenhagen Conference of the Parties in 2009, there has been no preparation to give Indigenous peoples' organisations a role greater than mere observers in its proceedings.

B No Free, Prior and Informed Consent

Free, prior and informed consent is a basic individual and group procedural right. It is a principle of good governance of special importance to Indigenous peoples, yet it is consistently missing from proceedings of the climate change regime. Since 2007, free, prior and informed consent has been clearly articulated in the *Declaration on the Rights of Indigenous Peoples* ('arts 8, 10, 11, 18, 19, 28, 29, 32, as well as the Preamble).

Following a workshop on the topic of free, prior and informed consent and Indigenous peoples, the UN Permanent Forum on Indigenous issues concluded that free, prior and informed consent consists of four interrelated elements or principles.¹²⁵ First, *free* requires that no coercion, manipulation or intimidation has been involved. Second, *prior* implies that consent has been sought sufficiently in advance of any authorisation or commencement of activities, and that the time requirements of Indigenous consultation and consensus processes have been respected. Third, *informed* entails the provision of information on the following topics at a minimum: the nature, size, pace, reversibility and scope of any proposed project or activity; the reason or purpose of the project or activity; the duration of the project or activity; the areas that will be affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including risks and fair and equitable benefit-sharing in the context of the precautionary principle; personnel likely to be involved in the project or activity; and procedures that the project may entail. Fourth, *consent* consists of consultation and participation as key elements. In terms of consultation, this must be done in good faith with mutual respect, adequate time and an effective system of communicating among interest holders. Participation must allow Indigenous peoples to engage in the process through their own freely chosen representatives and institutions, in a way that is sensitive to the perspectives of women, children and youth. The consent process may also include an option for the withholding of consent.¹²⁶

In terms of the practicalities involved in the process, free, prior and informed consent requires equal access to all

relevant information required to assess the impact of the proposed project or activity, and to participate in meaningful debate.¹²⁷ Authentic practice of free, prior and informed consent also requires independent mechanisms to monitor and oversee the conditions of agreement and adherence to the four principles described above. The monitoring aspect of the mechanisms will also allow for revocation of consent, where free, prior informed consent or the agreed conditions have not been adhered to.¹²⁸

The right to free, prior and informed consent can be partially respected, protected and fulfilled through the participation of Indigenous peoples' organisations in the Conferences of the Parties and in the work of other UN specialist bodies, such as the World Bank. These bodies are continuously designing and implementing global measures for climate change mitigation and adaptation. It is in the Conferences of the Parties where the important policies on climate change originate – for instance the *Kyoto Protocol's* market-based mechanisms for reducing emissions. Some of these mitigation measures, such as carbon sinks and renewable energy projects like hydropower dams and geothermal plants, while intended to be beneficial, have resulted in negative implications for Indigenous peoples, including loss of their traditional territories.¹²⁹ In addition, most have been introduced without free, prior and informed consent.

According to a number of NGOs, developing states are being encouraged into the carbon market by World Bank subsidies that are available for forest-related activities, such as plantation planting. There is widespread evidence that these subsidised initiatives are implemented without the free, prior and informed consent of Indigenous peoples. For instance, in Asia, planting of single crops (mono-cropping) for bio-fuels based on oil palms has led to deforestation of vast areas of tropical rainforest and loss of food security and biodiversity, with profound negative impacts on Indigenous peoples.¹³⁰ 'Re-forestation' projects, creating mega-plantations with exotic tree species to create carbon sinks for carbon-offset businesses in Europe, have led to violent forced eviction of Indigenous peoples from their traditional lands, as well as centralised control of their forests.¹³¹

A World Bank contribution to climate change reduction and mitigation consists of a fund known as the Forest Carbon Partnership Facility.¹³² This fund is intended to contribute millions of dollars to a UNFCCC program of action for REDD, proposed in 2007. Some NGOs suggest that the approach is

seriously flawed by the Bank's neglect of its own operating procedures,¹³³ as well as by the breach of the duty to allow participation in decision-making and to act only with free, prior and informed consent, gained after consultation with Indigenous peoples. There are already alleged to be repeated violations of Indigenous peoples' rights in those forest areas where there are World Bank-funded measures for emission reduction.¹³⁴ There are fears that under the REDD scheme problems of this sort will be exacerbated.

A survey in February 2008 of Indigenous peoples' views about the World Bank's Forest Carbon Partnership Facility and proposed Global Forest Partnership scheme highlighted concerns about flawed process and substance, in particular the absence of a rights-based approach.¹³⁵ A subsequent analysis by the Forest and the European Union Resource Network (known as 'FERN') in November 2008 of projects in developing states to trial REDD funding from the Forest Carbon Partnership Facility confirmed concerns that the Facility's projects appear designed to facilitate carbon trading rather than respect and protect Indigenous peoples' rights to self-determination and land tenure.¹³⁶ Further, the projects do not incorporate free, prior and informed consent, offer no way forward to address governance gaps, and do not address the underlying causes of deforestation. These problems in project conception and implementation are closely tied to the consequent problems of insecurity of tenure and the denial of rights for Indigenous peoples.¹³⁷

At the state level, parties to the UNFCCC (arts 4(1)(a)–(g)) and the *Kyoto Protocol* (art 3)¹³⁸ are committed to formulating and implementing regional mitigation, adaptation and emissions reduction programs. These can include emissions trading schemes, irrigation and rainwater catchment, disaster planning, measures to address coastal erosion, and forest management schemes, all of which are likely to intrude upon Indigenous peoples' existing ways of life. Participation, free, prior and informed consent and consultation, as well as recognition of traditional environmental knowledge, and respect for land rights and natural resources rights, are all likely to be areas of struggle between states and Indigenous peoples.

As the above summary of governance gaps resulting in the abrogation of Indigenous peoples' rights indicates, the human rights-based approach to climate change governance must urgently inform the practice of states, intergovernmental organisations and international financial institutions

participating in the climate change regime. Most significantly derelict in their international human rights law-based duties are states that constitute the Conference of the Parties and appoint the Conference's subsidiary bodies. Furthermore, states are the dominant participants determining the practices of centrally located intergovernmental organisations such as the IPCC and the Global Environment Facility. Similarly, states are the dominant participants determining the practice of international financial institutions, which provide funds for the Global Environment Facility and the Forest Carbon Partnership Facility. However, it is also the job of civil society to work to make international NGOs more accountable.

The non-compliance of the accountable (state) parties in the climate change regime is a source of deep concern, however of equal concern ought to be the performance and non-performance of the host of unaccountable non-state actors, such as corporations. This is because the carbon trading flexibility mechanisms of the climate change governance regime now rely upon the non-state actors as much as upon states. Many of these non-state actors have poor records of compliance with state law, and non-existent records of corporate social responsibility.¹³⁹ Corporate social responsibility requires compliance with human rights, environmental and labour standards, as well as anti-corruption measures. Presently, it is impossible to police corporate performance in these areas. The carbon market will only compound this problem. There is thus another gaping governance gap in the climate change regime. As John Ruggie observes:

history teaches us that markets pose the greatest risks – to society and business itself – when their scope and power far exceed the reach of the institutional underpinnings that allow them to function smoothly and ensure their political sustainability. This is such a time and escalating charges of corporate-related human rights abuses are the canary in the coal mine, signalling that all is not well.

The root cause of the business and human rights predicament today lies in the governance gaps created by globalisation – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.¹⁴⁰

Non-state actors are typified by transnational corporations, investors, and consumers, who participate in the carbon market as though it was just any other market. In the context of climate change regime enforcement, the rendering of non-state actors accountable for delinquent acts and omissions must be a critical consideration in the design and implementation of measures for climate change reduction, mitigation and adaptation, as well as in climate change disaster management.

V Carbon Rights or Human Rights?

A Carbon Trading: Solution or Problem?

For many citizens and, in turn, movements in global civil society the evidence of a profound democratic and human rights governance gap in the climate change regime is the emerging centrality of the carbon market. There has been little or no respect for the adoption of the global governance principle of free, prior and informed consent. Further, the carbon market itself relies on mitigation and adaptation measures that threaten the substantive human rights of everyone, including Indigenous peoples. As yet, market-based mechanisms for controlling pollution, even on a limited scale, do not work as effectively as their American neo-liberal proponents have promised.¹⁴¹ This raises the issue of whether carbon trading is the wrong solution to the climate change problem.

Misplaced confidence in market mechanisms is perhaps based on the success these have had in the United States and Europe, which introduced chlorofluorocarbon trading schemes to implement commitments under the 1987 *Montreal Protocol on Substances that Deplete the Ozone Layer*.¹⁴² The elimination of ozone-depleting substances, however, does not require long-term restructuring of the energy sectors central to industrialised economies – the climate change problem does.¹⁴³

The problem faced by designers of the present climate change regime is that Earth's capacity to absorb greenhouse gas emissions (or to be the carbon dump for the unnatural carbon cycle) has now reached the point beyond which dangerous climate change is predicted. The resulting temperature change is now posing the threat of ecocide to Earth. The present climate change regime promises a solution based on a *carbon market*, not the more obvious, predictable and certain *carbon tax*.¹⁴⁴ The idea of a carbon tax, which would be faithful to

the 'polluter pays' principle, has not been allowed to surface with any vigour. Supporting a carbon tax, Dr Jim Hansen, the eminent climatologist and father of CO₂ detection techniques, warned President Obama on his inauguration in January 2008 that carbon trading schemes 'did not work ... were a desperate error ... just greenwash'.¹⁴⁵ Likewise, the eminent Yale economist William Nordhaus critiques 'cap-and-trade' schemes and favours carbon taxes.¹⁴⁶

Under the *Kyoto Protocol*, state parties can meet their greenhouse gas emissions targets under art 3.1 by financing or purchasing emissions reductions generated overseas. New property rights – what I would call a 'right to emit' – were thus effectively created. These are owned by states and can be sold in the form of permits, capable of being traded as a commodity in newly devised carbon markets. Emissions trading schemes are now the centrepiece of the climate change regime. Yet this unprecedented shift from command-and-control governance, a shift that raises novel climate justice and environmental considerations, has occurred with no real participation in decision-making by civil society, including Indigenous peoples, in the momentous choices involved.¹⁴⁷

The *Kyoto Protocol* sets out emissions targets for greenhouse gases for each category of states.¹⁴⁸ Such flexibility is achieved by encouraging trading in credits for emissions reduction in global carbon markets. The system is based on a 'cap-and-trade' model.¹⁴⁹ Credits for emissions reduction can be created and traded; for example, there are credits for carbon sequestration through land use change and forestry, credits for joint mitigation projects between industrialised states, and credits for clean development mechanisms. Such credits allegedly assist developed and developing states to reduce and mitigate their level of emissions, in order to achieve their emissions targets.¹⁵⁰

Since 1997, emissions trading schemes based on the cap-and-trade model have also emerged within national and sub-state economies in the United States, Canada, Japan and the European Union. Australia is currently debating the emissions trading model it will adopt. New South Wales already has a scheme, the NSW Greenhouse Gas Abatement Scheme, based on a baseline-and-credit scheme.¹⁵¹

It is estimated that 20 per cent of greenhouse gas emissions during the 1990s came from deforestation and land use degradation.¹⁵² Developing countries played a large part in

this and were seen to be where emissions reductions could be most effectively achieved.¹⁵³ The 2005 Conference of the Parties to the UNFCCC therefore proposed to add REDD as a new flexibility mechanism that aims to enable developing states to generate emissions credits through the avoidance of deforestation and land degradation.¹⁵⁴ Under this proposal, which was adopted in July 2008,¹⁵⁵ developing states can sell credits earned from deforestation avoidance schemes to developed, high-emitting states that need credits to meet their own emission reduction targets, which they would otherwise exceed.

B Indigenous Rights and Carbon Rights

The 2000 Hague *Declaration of Indigenous Peoples on Climate Change* articulated the philosophical stance of Indigenous peoples on carbon trading that 'Earth is not a commodity',¹⁵⁶ and expressed Indigenous peoples' profound concern 'that the measures to mitigate climate change currently being negotiated are based on a worldview of territory that reduces forests, lands, seas and sacred sites to only their carbon absorption capacity.'¹⁵⁷

Indigenous peoples are finding that their land and sea country are identified as sources of carbon rights that they may or may not 'own'. The REDD scheme, for example, is predicted to encourage a land grab by states and corporations to 'own' carbon rights that attach to that land. Indigenous peoples are profoundly disturbed by this prospect since they already continuously experience the abrogation of their rights, including their customary rights as stewards of the forest and carers of country under the *Declaration on the Rights of Indigenous Peoples*.

International financial institutions under the UNFCCC regime are potentially, if not intentionally, funding a land grab that will further erode Indigenous peoples' human rights, including their rights to existence and self-determination, and jeopardise their modest gains in control of their territories, notably in relation to forested areas.¹⁵⁸ Old pressures on Indigenous peoples' land for food, fuel and timber are now converging with the new demand for rights in carbon in the forests, whether emitted, conserved or sequestered.¹⁵⁹

On 2 December 2008 at the opening of the 14th Conference of the Parties to the UNFCCC at Poznan, the Chair of the UN Permanent Forum on Indigenous Issues stated:

The Permanent Forum is of the view that undertaking reduced emissions from deforestation and forest degradation without the full and effective participation of indigenous peoples in making the design and in its implementation will lead to failure. It, therefore, calls on the international community and on the governments to ensure that the UN Declaration on the Rights of Indigenous Peoples be used as an overarching framework for the design, methodologies, implementation and monitoring and evaluation of REDD. No REDD project should be done on indigenous peoples territories without obtaining their free, prior and informed consent.¹⁶⁰

At the Poznan Conference of the Parties, perhaps in light of the recent adoption of the *Declaration on the Rights of Indigenous Peoples*, there was movement by the majority of states at the Conference of the Parties to include recognition of Indigenous people's human rights in their draft conclusions. Consistently with the posture they adopted towards the *Declaration* in the UN General Assembly, the United States, Canada, Australia and New Zealand opposed the inclusion of recognition of the rights of Indigenous peoples and local communities in the draft conclusion on REDD.¹⁶¹

The Permanent Forum Chair stated at the conclusion of the Poznan meeting:

I congratulate the Parties who insisted that the language of rights and the UN Declaration on the Rights of Indigenous Peoples remain in the draft conclusions. I know they fought hard for these and I certainly hope they will continue to do this in the future negotiations. Indigenous peoples will continue to oppose the REDD mechanisms if their rights are not recognized by States and the UN, including the UNFCCC and the World Bank. They are very vulnerable to the adverse impacts of climate change, but they are also providing the solutions to climate change. Their traditional knowledge on forests and biodiversity is crucial for the methodological issues being tackled under REDD. Their participation in designing, implementing, monitoring and evaluating REDD policies and proposals has to be ensured. Their free, prior and informed consent has to be obtained before any REDD mechanism is put into place in their territories. It is their right to decide whether to accept REDD or not.¹⁶²

The Permanent Forum Chair endorsed the concept of REDD though not to the extent of using forests in developing states to create carbon offsets for Annex 1 states (ie, primarily

industrialised state parties to the UNFCCC).¹⁶³ Instead it was suggested that both monetary and non-monetary incentives for Indigenous peoples to steward their forest country would be a preferable approach. Hence, cautious engagement, not an outright rejection of carbon trading, appears to be the current stance of the Permanent Forum, despite the deep apprehension stated by the Indigenous peoples' organisations in the 2000 *Declaration of Indigenous People on Climate Change* amongst other documents. Having expressed grave concern about the prevailing world view in climate change governance that reduces natural resources to their carbon absorption capacity, the 2000 *Declaration* goes on to state:

This world view and its practices adversely affect the lives of Indigenous Peoples and violate our fundamental rights and liberties, particularly, our right to recuperate, maintain, control and administer our territories which are consecrated and established in instruments of the United Nations.¹⁶⁴

In Australia, Indigenous peoples are being encouraged to enter the carbon marketplace. Indigenous leader Warren Mundine, who heads the new Indigenous Chamber of Commerce, is reported to have warned against entering into carbon trading agreements until the Federal Government's proposed emissions trading scheme (the Carbon Pollution Reduction Scheme) is in place. He warned of 'carbonbaggers' with an eye on gaining the carbon rights at Indigenous people's expense, in relation to the approximate 20 per cent of Australia's landmass that is Indigenous owned or controlled.¹⁶⁵

Native title lawyer Emily Gerrard suggests that new laws regulating the carbon market created by the new emissions trading scheme may further decrease Indigenous peoples' rights and interests in land, through the extinguishment of native title and loss of access to the use of natural resources.¹⁶⁶ Native title is merely a bundle of rights without the robustness of freehold, making it more susceptible to extinguishment. Furthermore, the Australian native title regime only recognises traditional rights and interests rather than traditional economies and commercial activities, unless these are deemed to be purely incidental economic advantages deriving from a traditional activity such as caring for country.¹⁶⁷

The West Arnhem Land Fire Abatement project is Australia's first example of Indigenous involvement in the carbon

market.¹⁶⁸ Traditional owners in the region participate in fire management to contain and control wildfires, which are a massive source of emissions. Their activities produce a tradeable carbon offset from savanna fire management by reducing the amount of country that is burnt and, hence, the emissions that result. The Fire Abatement project is not officially a carbon trading agreement; instead, it is a fee-for-service arrangement that produces a carbon offset. The purchaser of the service, Darwin Liquid Natural Gas, cannot on-sell the credits in an emissions trading scheme. The Australian emissions trading scheme is not yet operational with many uncertainties and, as yet, no clear industry regulations.

The Garnaut Climate Change Review was set up to design the ideal emissions trading scheme for Australia and it examined the Fire Abatement project as part of its review. The Review cautioned that while

full coverage of savanna fire emissions under an [emissions trading scheme] would be beneficial in expanding coverage of the scheme, and thereby reducing the overall cost of meeting national emission targets, it would also raise some very complex issues. For example, Indigenous land owners would become liable for the emissions generated from fire on their land, a liability it is unlikely they would be able to meet. In contrast to other liable parties, other than some trade exposed, emissions intensive industries, Indigenous people would not be able to pass on the costs of their liability. In addition, the high cost associated with monitoring and verification of emissions alone is likely to be beyond many Indigenous land owners. Liability could compound the economic and social disadvantage already apparent in Indigenous communities in northern Australia. At the extreme, liability could lead to alienation of Indigenous people from their traditional lands.¹⁶⁹

Thus in Australia, as well as worldwide, Indigenous rights and carbon rights are not easily compatible within existing property rights regimes. Furthermore, the commodification of the Earth and her resources seems inimical to the values that underpin Indigenous peoples' approach to governance. The gaps in climate change governance yet again highlight the fragility of promises to respect, protect and fulfil Indigenous peoples' human rights.

C If a Market in Carbon Rights Is the Answer, What Was the Question?

In creating tradeable carbon rights, the carbon trading market is intended to play the key role in keeping greenhouse gases in the ground by incentivising radical cuts to the emissions of these gases into the atmosphere. However, it is questionable whether this scheme will be effective.

Larry Lohmann offers a telling Q&A critique of this property rights-based, rather than human rights-based, approach to cutting emissions:

The world's carbon-cycling capacity, partly because it's very limited, has also become extremely valuable. For that reason, everybody is going to be interested in getting rights to it. ... Pressures will grow to divide up the global carbon dump among the world's people.

... [But] [w]hat kind of rights should people or governments have to carbon dump space, given the need to maintain climatic stability for current and future generations? And who will get these rights?

Do you divide up the dump space equally among the world's people? Do you give the world's worst-off disproportionate shares in the dump? Do you give the biggest shares to those who haven't yet had a chance to use much of the dump? Do you give the biggest shares to those who can least afford to cut down on their use of the dump? Do you give the most dump space to those who can use it to contribute the most to the global good? Or do you just give the most rights to the dump to those who are using it the most already? There are arguments for all of these ways of distributing the world's carbon-cycling capacity ...¹⁷⁰

The present approach to carbon markets answers the question of who gets these rights by granting states the power to create a new species of property rights (to emit/pollute) and sell or auction them to the highest bidder – a corporation or an over-target high-emitting state – and even allows states to give the right to emit/pollute away to corporations in trade-exposed, emissions-intensive industries.

So, does the current approach to carbon markets divide up the carbon dump space equally among the world's people, give disproportionate shares in the dump to the world's worst-off or give the biggest shares to those who have not yet had a

chance to use much of the dump? In each case, the answer is no. Does the current approach give the biggest shares to those who can least afford to cut down on their use of the dump, or give the most dump space to those who can use it to contribute the most to the global good? Again, in each case, the answer so far is no. Alarming, to the question of whether the most rights to the dump are given to those who are using it the most already, the answer appears to be yes!

One attempt to find a more ethical and equitable allocation of space in the global carbon dump is the 'contraction-and-convergence' model first outlined by Aubrey Meyers and subsequently explained by John Broad:

'Contraction' refers to the need to reduce global emissions of greenhouse gases to a level that would result in establishing what science regards as a probably tolerable atmospheric concentration. Effectively this would create a global 'budget' of greenhouse gas emissions. This budget necessarily declines over time until a stable point is reached. ... 'Convergence' allocates shares in that budget to the emitting nations on the basis of equity. This has three components. First, the budget is global; every country has shares in the atmosphere and any treaty that allocates its absorptive capacity only to a selection of countries effectively deprives the others. Second, the current situation whereby allocations are generally proportional to wealth would cease. Third, allocations should converge over time to a position where entitlements are proportional to population. After convergence, all countries would contract their greenhouse gas emissions equally until the necessary contraction limit is reached. No inflation of national budgets in response to rising populations would be permitted after an agreed set date.¹⁷¹

The per capita based approach modelled on contraction-and-convergence is cited approvingly by the 2008 *Garnaut Review* and the 2000 German Advisory Council on Global Change as well as the 2003 UK Royal Commission on Environmental Pollution. Garnaut regards something like the contraction-and-convergence model as essential for any sustainable post-Kyoto international agreement in 2012, between developed and developing states.¹⁷² Aubrey Meyers' Global Commons Institute suggest that the contraction-and-convergence model meshes well with a human rights-based approach to climate change because it 'establishes a constitutional, global-equal-rights-based framework for the arrest of greenhouse gas emissions.'¹⁷³

The contraction-and-convergence model sets a baseline for future action though it does nothing to address past excesses. Article 3 of the UNFCCC repeats the time-honoured formula for allowing states to meet their obligations by recognising their 'common but differentiated' responsibilities. Such common though differentiated responsibilities reflect wealth, stage of development and related factors, and lighten the burden for developing states vis-à-vis developed states.¹⁷⁴

Nonetheless, the justice that the contraction-and-convergence model can do for Indigenous and other vulnerable peoples is highly questionable. What is not factored into contraction-and-convergence is a way of reconciling disparity between the past and present economic benefits accrued from production of greenhouse gas emissions by industrial states of the economic North, and the grossly disproportionate burden borne by low-emitting peoples of the South, such as Indigenous peoples. Contraction-and-convergence cannot do climate justice if it is simply integrated into the governance scheme without a fundamental shift in power sharing and a decentering of the state within the governance regime. One small step towards doing climate justice through the redistribution of burdens and benefits would be to adopt a human rights-based approach to governance. This might make compensable the past harms done by climate change and allow Indigenous peoples formal standing as parties, in the design and implementation of the measures the regime employs to mitigate and adapt to the adverse impacts of climate change.

The compatibility of the contraction-and-convergence model with emissions trading and the whole emissions trading scheme project need detailed questioning. The form and regulations of the emissions trading scheme will have to be radically re-examined. In February 2009, the Rudd Government in Australia initiated an inquiry into 'the choice of emissions trading as the central policy to reduce Australia's carbon pollution.'¹⁷⁵

Lohmann compellingly argues that creating a market-based trading right to emit/pollute misses the objective of emissions reduction, which is ultimately to keep most remaining fossil fuels in the ground. Emissions budgets based on caps allocated, say, under the UNFCCC are short-term promises that no government or imaginable global system can enforce.¹⁷⁶ The carbon trading apparatus requires vast new bureaucracies in each state to measure, register, certify, validate and enforce millions of separate emissions cuts. Masses of ingenuity will be diverted into figuring out

how to milk or evade the system, rather than how to reduce emissions, as it is a market model where actors want the most for the least. Subsequently, both buyers and sellers have an incentive to conceal from the public whether emissions reductions have actually been made.

Knowledge that we do not yet have is required to make a carbon trading scheme work. Cuts are being made where it is easiest, not necessarily where it is most critical. The reduction of emissions is abstracted from the details of where emissions are made, how and by whom. For instance, emissions rights can be bought by American companies from European companies, which have created plantations in Uganda as a carbon sink. The carbon notionally sequestered in this sink creates credits that can be sold as carbon offsets to air travellers worldwide. Neither states nor international agencies are capable of the exact measurement of the innumerable emissions at the hundreds of thousands of locations that would be necessary to authenticate claims that cuts have been made and to validate compliance within allocated quotas.¹⁷⁷

Reliance on the carbon market is, thus, a highly problematic diversion with life-threatening consequences for global civil society, including Indigenous peoples. Carbon trading is tinkering with the emissions problem. Locating so much emissions reduction in a market takes the focus away from democratically accountable, mainstream and feasible emissions reduction measures. Markets are based on private property rights, not human rights, and on growth, not conservation. The Durban Declaration of the Durban Group for Climate Justice, which includes Indigenous peoples' organisations, summarises the nature of the problem for Indigenous peoples, other vulnerable groups and civil society in general:

History has seen attempts to commodify land, food, labour, forests, water, genes and ideas. Carbon trading follows in the footsteps of this history and turns the earth's carbon-cycling capacity into property to be bought or sold in a global market. Through this process of creating a new commodity – carbon – the Earth's ability and capacity to support a climate conducive to life and human societies is now passing into the same corporate hands that are destroying the climate.

People around the world need to be made aware of this commodification and privatisation and actively intervene to ensure the protection of the Earth's climate.

Carbon trading will not contribute to achieving this protection of the Earth's climate. It is a false solution which entrenches and magnifies social inequalities in many ways ...¹⁷⁸

The current carbon market is an under-policed private system prey to all the vagaries of other markets.¹⁷⁹ This is the same free enterprise system 'based on trust' applauded by George W Bush,¹⁸⁰ where political power trumped legal powers¹⁸¹ permitting the Bernie Madoff, Enron and World Com scams, the United States sub-prime mortgage crash and, ultimately, the current unprecedented global credit crunch and recession.

Whatever the manifold failures of states to respect Indigenous peoples' human rights, the market is even less accountable and transparent, and has proven itself over several hundred years to be powerfully resistant to recognition of human rights, especially those of Indigenous peoples. Mainstream emission reduction measures are more susceptible to a human rights-based approach and, hence, have the chance of doing climate justice. Mainstream emissions reduction measures include: investing in large-scale public works to shift domestic and industrial consumption off fossil fuels and onto solar and wind power, and, subsequently, onto energy and water conservation; shifting subsidies away from cushioning emitters and directing them towards rewarding emissions reduction activities; empowering direct command-and-control regulation of emissions; and, of course, imposing carbon taxes to make emitters pay.¹⁸²

Carbon trading ought to be categorised as the soft alternative approach that supplements mainstream non-market measures. It ought not to be the centrepiece of the climate change governance regime – and it would not be if this regime were based upon a human rights-based approach.

VI Conclusion

At the Poznan UNFCCC Conference of the Parties Victoria Tauli-Corpuz felt compelled to state:

Witnessing the way indigenous peoples rights are undermined by the very States who took the lead in formulating and adopting the UN Declaration on Human Rights, 60 years ago, is a tragic thing. These States are very keen to include REDD as part of the agreement on mitigation which will be agreed upon during the 15th Conference of

Parties in Copenhagen which will be held in 2009. However, they obstinately refuse to recognize the rights of indigenous peoples and other forest peoples, who are the ones who sacrificed life and limb to keep the world's remaining tropical and sub-tropical rainforests.¹⁸³

The human rights/governance gap in the climate change regime is presently very wide. The gap is at its widest for Indigenous peoples, and other vulnerable minority groups, whose rights to exist, to self-determination and to basic individual freedoms are not high priorities for states. States must embrace the human rights-based approach as an expression of their sovereignty and duty to citizens, not as a restriction upon this anachronistic expression of international legal personality. States must ensure that their actions in the international arena reflect this necessary shift, away from the mutually assured destruction that is likely under the present market-based regime, to an ecologically sustainable global governance regime based upon human rights.

The present trajectory of current solutions to the gross over-production of greenhouse gas emissions is to commodify rights in the carbon dump, and to trade these between low and high emitters. Carbon trading is a dangerous shell game that distracts everyone from mainstream emissions reduction measures. This has particularly pernicious consequences for Indigenous people, and other people whose lives and cultures are intimately bound to the health and sustainable biodiversity of the Earth. Their territory is likely to be the target of yet another land grab by 'carbonbaggers' who will trample their rights.

The next phase of development of the climate change regime must be grounded in human rights, not carbon rights, and based fundamentally on real emission reduction strategies. As it presently operates at the international level, where the governance gap is most conspicuous, as well as at the national level, where one can speculate that the chasm between states and civil society is even greater, the climate change regime has not served Indigenous peoples well. As expressed by the Chair of the Permanent Forum on Indigenous Issues at the closing of its Seventh Session:

while having the smallest ecological footprints themselves, indigenous peoples [have] suffered not only from the effects of climate change, but also from some of the 'solutions' imposed on them, such as biofuel plantations and large renewable energy projects, including hydroelectric

dams. Emission trading schemes [do] not bring direct benefits to many indigenous peoples.¹⁸⁴

Acknowledging Indigenous peoples' rights can be justified on the grounds of morality or legality, altruism or self-interest. The absence of a human rights-based approach represents an ethical, as well as legal, deficit that the global economic crisis must not be allowed to overshadow. Climate change governance internationally, regionally and nationally must be founded upon a human rights-based approach that includes as a fundamental principle free, prior and informed consent. The human rights-based approach will assist in bridging the governance gap, and will benefit all of global civil society. Ultimately, no one will be exempt from the impacts of global warming. Unabated climate change will radically degrade life on Earth as we know it, for present as well as future generations. The present plight of Indigenous peoples, without a human rights-based approach to climate governance, will be the future for all of humankind. Indigenous people are the miner's canary,¹⁸⁵ the mercury in the global warming barometer.

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- * Paul Havemann LLB (Hons) (London) LLM (London) is Professor of Law at James Cook University. The title of the article has been adapted from the remarks of Nobel Peace Prize nominee Sheila Watt-Cloutier upon receiving the Canadian Environment Awards Citation of Lifetime Achievement, Vancouver, 5 June 2006 <<http://www.inuitcircumpolar.com/>> at 10 January 2009. Grateful acknowledgment is made to: James Cook University for study leave; and also to Dylan Lino (*Australian Indigenous Law Review*) and the two anonymous referees; Larry Lohmann (The Corner House), Saskia Ozinga (FERN), Marcus Colchester (Forest Peoples Programme), Feja Lesniewska (School of Oriental and African Studies, University of London) and Christoph Schwarte (Foundation for International Environmental Law and Development) for their time and insights. Errors and omissions are entirely those of the author.
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 - 2 United Nations *Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) ('UNFCCC').
 - 3 *Kyoto Protocol to the United Nations Framework Convention*

- on *Climate Change*, opened for signature 16 March 1998, 37 ILM 22 (1998) (entered into force 16 February 2005). Articles 4.1(i) and 6(a)(iii) of the UNFCCC stipulate a duty on all parties to encourage, promote and facilitate participation generally. However, participation rights in these treaties attach only to state parties. Indigenous peoples' organisations have no standing in the Conferences of the Parties or subsidiary expert bodies of the UNFCCC or the *Kyoto Protocol* – unlike in the UN itself where the creation of the Permanent Forum on Indigenous Issues reflects recognition of the special status of Indigenous peoples even though they are not state parties. See further UNFCCC, *Civil Society and the Climate Change Process* <http://unfccc.int/parties_and_observers/ngo/items/3667.php> at 14 July 2009.
- 4 See further UNFCCC, *Civil Society and the Climate Change Process* <http://unfccc.int/parties_and_observers/ngo/items/3667.php> at 14 July 2009.
- 5 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN Doc.A/CONF.157/24 (1993), adopted by consensus on 25 June 1993 <<http://www2.ohchr.org/english/law/vienna.htm>> at 16 July 2009.
- 6 International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997) <<http://www.unhcr.org/refworld/docid/48abd5730.html>> at 2 January 2009.
- 7 An example articulating the human rights-based approach is the right to development co-operation adopted by the UN Development Group in 2003; see UN Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent*, 4th sess, UN Doc E/C 19/225/3 (2005).
- 8 *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 at 71 (1948) ('UDHR').
- 9 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('ICESCR').
- 10 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').
- 11 Sydney Centre for International Law, *Climate Change and Human Rights* (2008) 6 <<http://www2.ohchr.org/english/issues/climatechange/submissions.htm>> at 16 July 2009. This submission cites *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v Slovakia)* 1997 ICJ 92 (Separate Opinion of Judge Weeramantry) [A(b)]. See also Richard P Hiskes, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice* (2009) 92–116.
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- 13 *American Convention on Human Rights*, opened for signature 22 November 1969, 36 OASTS (entered into force 18 July 18 1978) art XIII.
- 14 *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).
- 15 Sydney Centre for International Law, above n 11.
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- 19 Letter from Sheila Watt-Cloutier, EarthJustice and the Centre for International Environmental Law to the Inter-American Commission of Human Rights, 15 January 2007 <http://www.ciel.org/Publications/IACHR_Letter_15Jan07.pdf> at 16 July 2009.
- 20 See Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change* (2nd ed, 2004) for an exposition of this critique.
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- 23 Ibid.
- 24 See OHCHR, *OHCHR Study on the Relationship Between Climate Change and Human Rights* <<http://www2.ohchr.org/english/issues/climatechange/submissions.htm>> at 16 July 2009.
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- 26 For theoretical and philosophical analysis see the submission of the International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide* (2008) <http://www.ichrp.org/files/reports/45/136_report.pdf> at 16 July 2009.
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- 28 Human Rights and Equal Opportunity Commission ('HREOC'), *Background Paper: Human Rights and Climate Change* (2008) <<http://www2.ohchr.org/english/issues/climatechange/docs/submissions/>> at 16 July 2009. This excellent paper discusses the situation of Indigenous peoples. See also John von Doussa, 'Human Rights and Climate Change: A Tragedy in the Making' (Speech delivered at the HREOC Seminar Series for the 60th Anniversary of the UDHR, 20 August 2008) <http://www.hreoc.gov.au/legal/seminars/speeches/john_von_doussa08.html> at 16 July 2009; Warwick Baird, 'Climate Change and Indigenous People' (Speech delivered at the Native Title Conference 2008, Perth, 4 June 2008) <http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/20080605_climate.html> at 16 July 2009; Emily Gerrard, 'Climate Change and Human Rights: Issues and Opportunities for Indigenous Peoples' (Speech delivered at the HREOC Seminar Series for the 60th Anniversary of the UDHR, 20 August 2008) <http://www.hreoc.gov.au/legal/seminars/speeches/emily_gerrard08.html> at 16 July 2009.
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- 36 See IPCC, *Climate Change 2007: Synthesis Report: Summary for Policymakers* (2007) 5, 3, 10 <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf> at 16 July 2009.
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- 77 ICESCR, art 11.
- 78 ICCPR, art 27; *Declaration on the Rights of Indigenous Peoples*, art 5, 9, 11.
- 79 ICESCR, arts 11–12; CEDAW, art 14(2)(h); CROC, art 24.
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- 82 Brookings–Bern Project on Internal Displacement, above n 31.
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- 95 See further above n 3.
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- 97 Salick and Byg, above n 38, 4.
- 98 M L Parry et al, 'Cross-Chapter Case Studies' in M L Parry et al (eds) *Impacts, Adaptation and Vulnerability* (2007) 864–7 <<http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-xccc.pdf>> at 16 July 2009.
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- 101 Vinca LaFleur, Nigel Purvis and Abigail Jones, *Double Jeopardy: What the Climate Crisis Means for the Poor*, Brookings–Blum Roundtable Report No 5/2008 (2009) 14 <http://www.brookings.edu/reports/2009/02_climate_change_poverty.aspx> at 16 July 2009.
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- 108 See Global Environment Facility <<http://www.gefweb.org/>> at 16 July 2009.
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- 110 See Decision 5/CP.6 adopted at Sixth Conference of the Parties, part II (2001).
- 111 See Decisions 2–24/CP.7 adopted at Seventh Conference of the Parties (2001).
- 112 Yamin and Depledge, above n 54, 55.
- 113 See 2000 *Declaration of the First International Forum of Indigenous Peoples on Climate Change* ('IFIPCC'), Lyon, France, September; 2000 *Declaration of the Second IFIPCC*, The Hague, Netherlands, November; 2001 *Declaration of the Third IFIPCC*, Bonn, Germany, July; 2001 *Declaration of the Fourth IFIPCC*, Marrakesh, Morocco; 2002 *Declaration by the IFIPCC Summit on Sustainable Development*, Kimberley, South Africa, August; 2003 *Declaration of the Sixth IFIPCC*, Milan, November; 2007 *Statement of IFIPCC Attending the Conference of the Parties*, Bali, November; 2007 *Statement by IFIPCC on REDD to the 13th Conference of the Parties to the UNFCCC Subsidiary Body for Scientific and Technological Advice*, November.
- 114 *Report on the Seventh Session of the UN Permanent Forum on Indigenous Issues*, UN ESCOR Supp No 23, UN Permanent Forum on Indigenous Issues, 7th sess, 2ff, UN Doc E/C.19/2008/13 (2008).
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