

Who gives consent?

- Is the customary leadership enough?
- Is the introduced leadership system accepted?
- Indonesia: customary bodies lack legal personality
- Guyana: colonial village administration now accepted
- Every place will be different: right to choose their own representation

Social structures very varied: some 'acephalous', some hierarchical



Divided leadership: Pasaman Barat and PT PHP

- 'Adat' leadership divided
- Some pro and some contra
- Unclear which leaders have authority
- Divided leadership hinders community from strong negotiation with company



Challenges to participation

- Capacity
- Language
- Legal status
- Caste, class, status and gender divisions



Rule of thumb

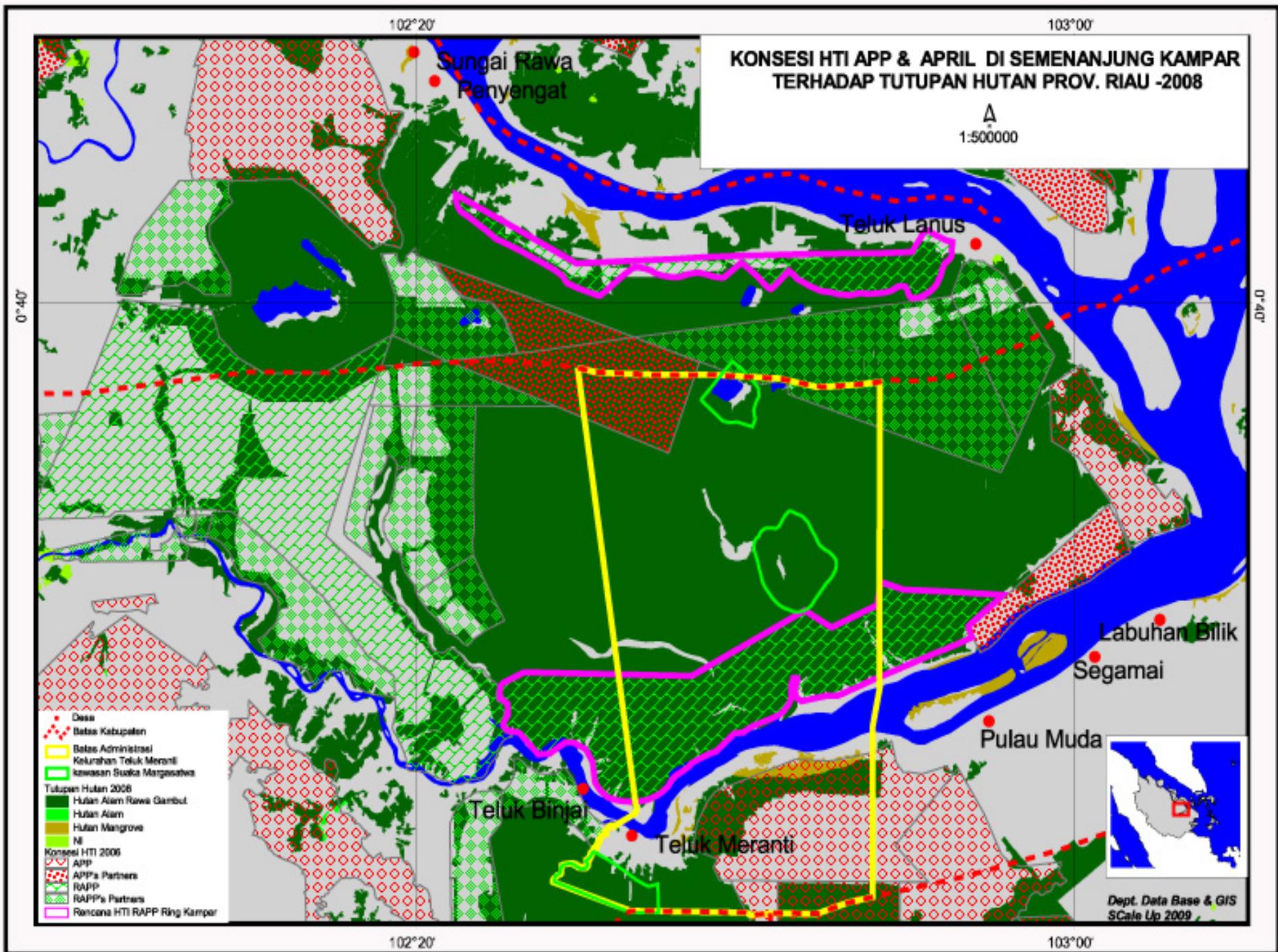
- Sound consensus-based decisions emerge best from processes that:
 - Are iterative
 - And inclusive
 - Take time and allow interim offers to be taken back to community for discussion
 - Ensure the right and the resources for chosen independent counsel (legal or NGO)
 - Allow scope for customary norms to be respected
 - Allow people to say 'no'.

Free of what?



Prior to what?

- Proposal?
- Planning?
- Permits?
- Operations?



KONSESI HTI APP & APRIL DI SEMENANJUNG KAMPAR TERHADAP TUTUPAN HUTAN PROV. RIAU -2008

▲
1:500000

0°40'

0°40'

102°20'

103°00'

102°20'

103°00'

- Daerah
- ▤ Batas Kabupaten
- ▭ Batas Administrasi
- ▭ Kelurahan Teluk Meranti
- ▭ Kawasan Suaka Margasatwa
- Tutupan Hutan 2008
- ▭ Hutan Alam Rawa Gambut
- ▭ Hutan Alam
- ▭ Hutan Mangrove
- ▭ HI
- Konsep HTI 2008
- ▭ APP
- ▭ APP's Partners
- ▭ RAAPP
- ▭ RAAPP's Partners
- ▭ Rencana HTI RAPP Ring Kampar



Dept. Data Base & GIS
Scale Up 2009

Consent by what process?



How long does it take?

Customary rights : customary laws



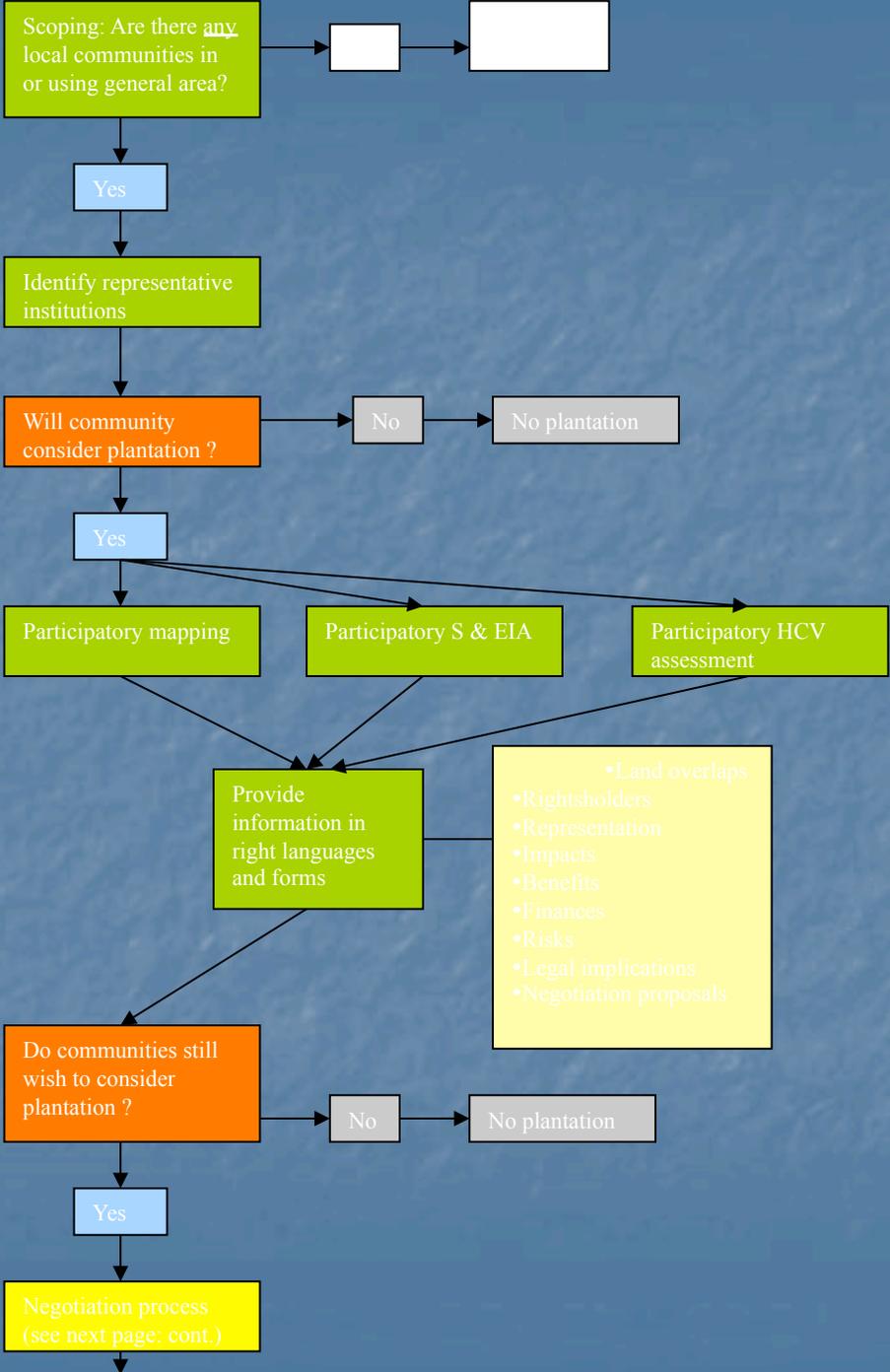


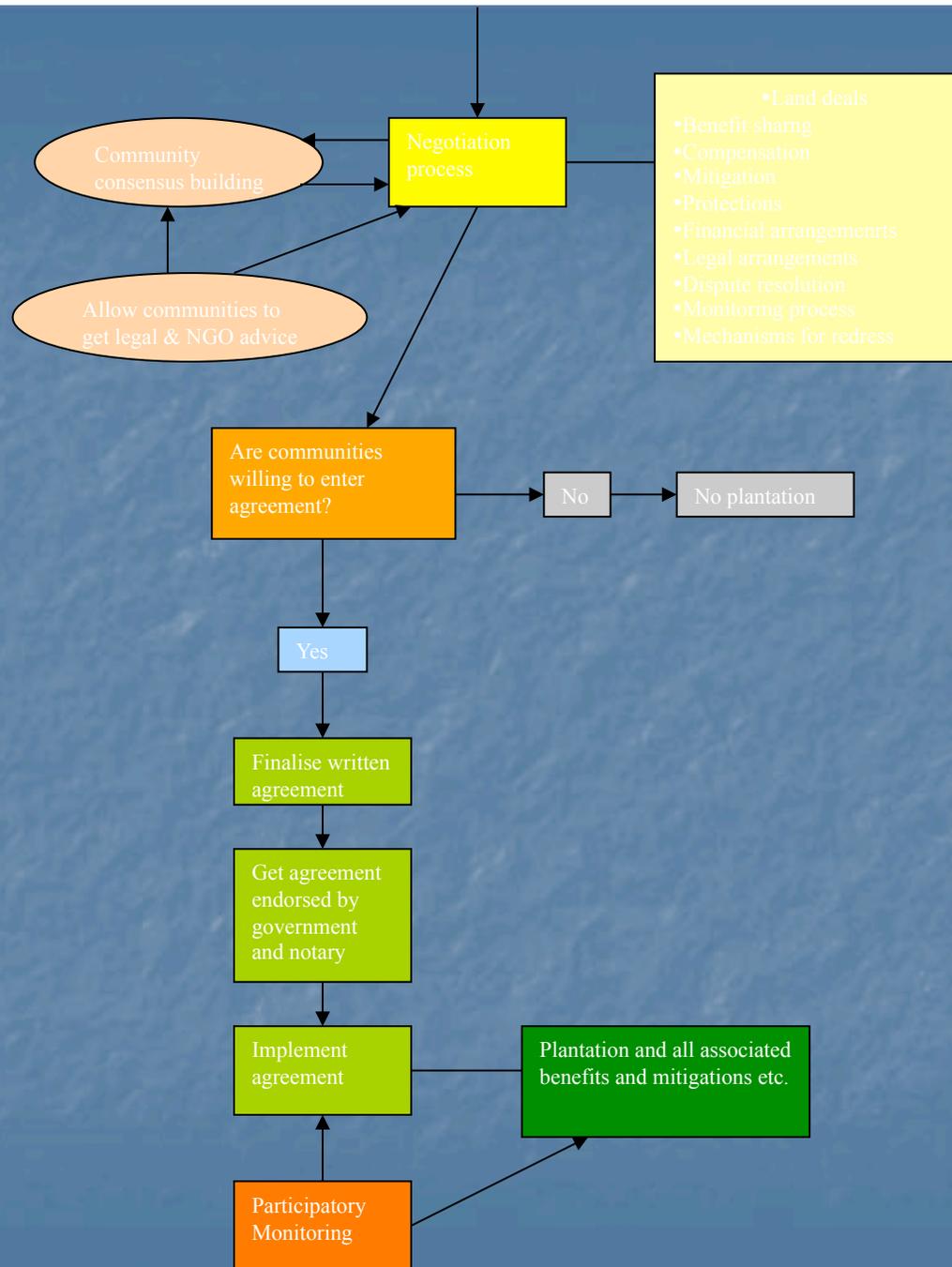
No to oil palm

Who provides the information?



Iterative processes





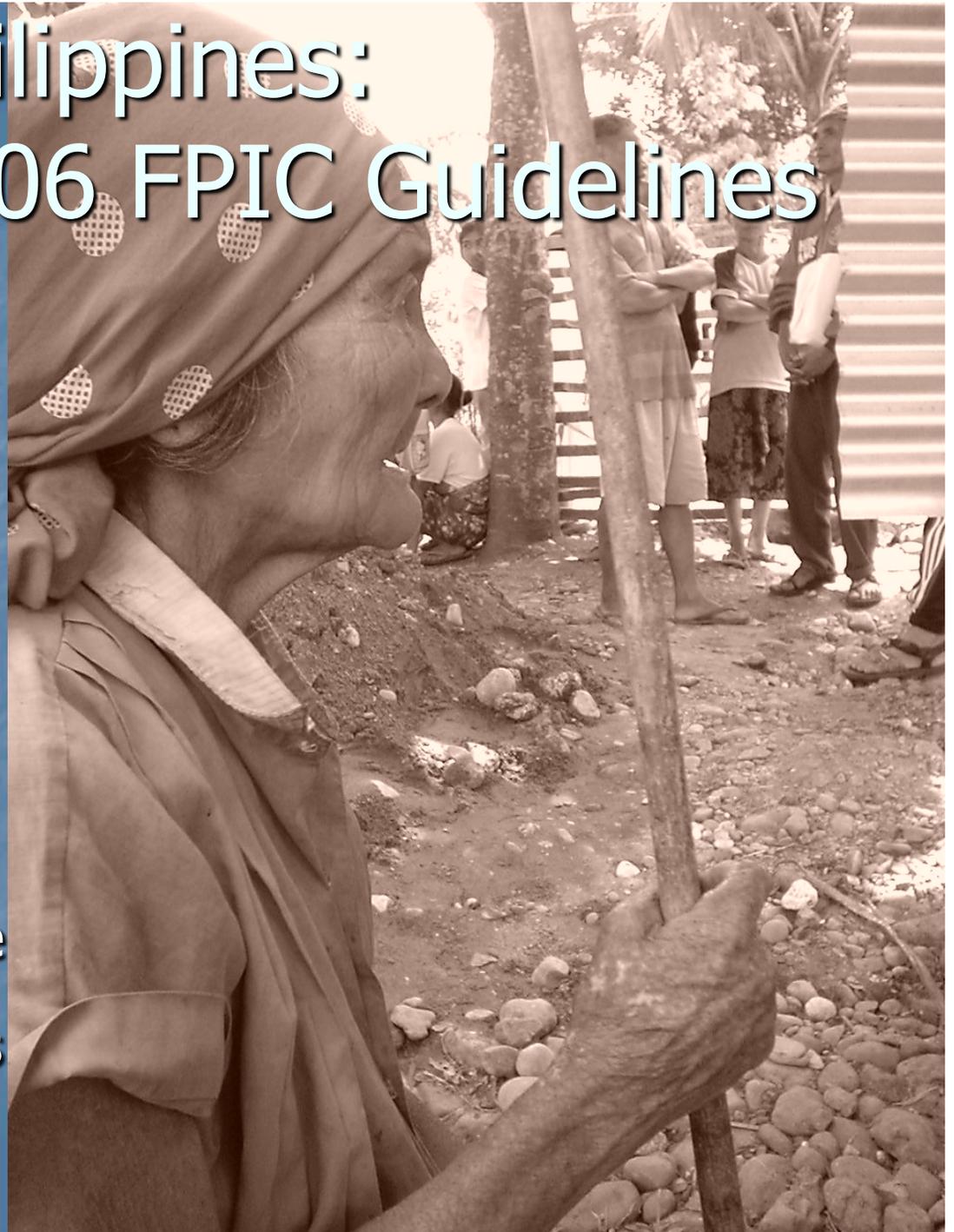
Who verifies FPIC was achieved?

- Certification bodies in FSC have not made FPIC requirement a 'major'
- So instead of being failed for non-compliance companies are asked to make 'corrective actions' over coming years
- Result: Communities lose what little leverage the process gave them



Philippines: NCIP and 2006 FPIC Guidelines

- FPIC has become technical and procedural, very complex, increasingly weakened
- Guidelines do not conform with the definition of FPIC
- It unduly imposes government standards and policies
- Shifts the burden to the Indigenous Peoples to substantiate their rights to ancestral domains



FPIC and REDD

- CCBA, CARE, UNREDD require FPIC
- World Bank FCPF Charter requires respect for countries' international obligations (but OP, which requires only FPIC on now being replaced by SESAs)
- UNREDD and FCPF now being combined? Which standards will apply? Who and how accountable?
- Meanwhile numerous requests for simplified guidance
- Risks of making FPIC a 'one stop shop' stand alone with simplified check list instead of iterative and
- Instead of part of wider RBA to development



BHP, Ekati Diamond Mine



Lessons from Indonesia: FPIC works!

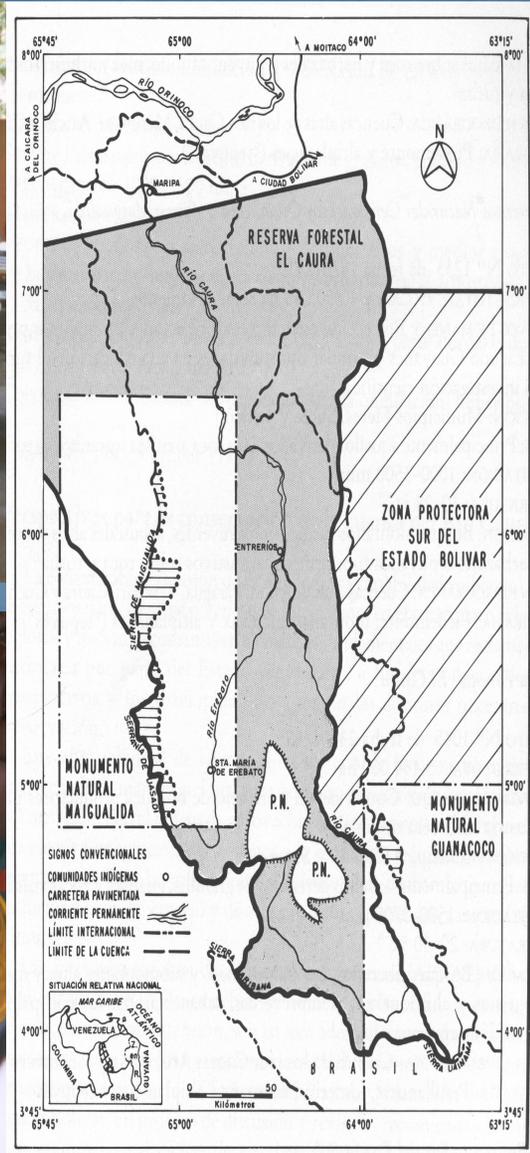
Obstacles:

- Lack of legal recognition of customary rights
- replacement of customary institutions by a uniform village administrative system
- unfettered exercise of the States' 'controlling power' over natural resources
- Forestry laws which are applied as if the State owned all forests
- Patrimonial and un-transparent governance
- Repressive use of security forces by private sector

Achievements:

- Agreements have been (re) negotiated on good faith basis
- oil palm companies have restituted lands to communities (Sambas)
- compensation has been paid for damages (Sambas)
- local governments to recognise community livelihoods in protection forests (Lewolema);
- communities have been able to revitalise their customary institutions (Lusan).

Community land care





www.forestpeoples.org

Thank you

FPIC in International Law:

International Human Rights Laws:

- FPIC is recognised explicitly in international laws
- UN Declaration on the Rights of Indigenous Peoples
- ILO : 6(2) y 7(1) (aim of securing consent)
- CBD : 8j (indigenous knowledge)

Jurisprudence:

- FPIC is explicit in legal interpretations
- Committee of Human Rights
- CERD Committee
- InterAmerican Commission and Court of Human Rights
- African Commission of Human and Peoples' Rights

Complex *adat* structure

- Land is owned by women and by kindreds
- Kindreds (*kaum*) choose leaders
- Leaders hand land to government
- Government hands land to company
- Company gives plasma to KUD
- KUD gives plasma to KUD members
- Lots of room for manipulation

