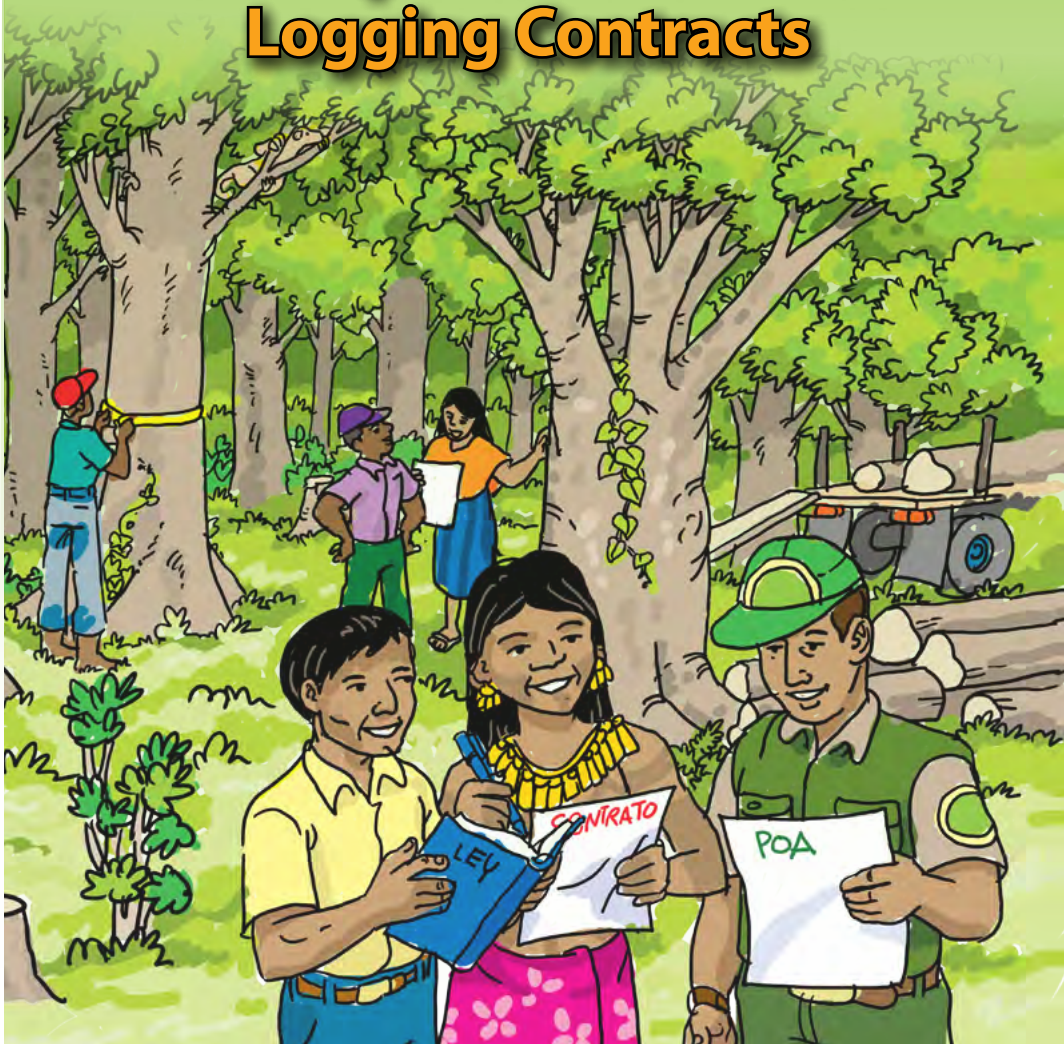


TOOL II

Protecting Our Lands and Forests: The Importance of Good Logging Contracts



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Protecting Our Lands and Forests: The Importance of Good Logging Contracts

TOOL II

Edgar Maravi

Tropical Agricultural Research and Higher Education Center (CATIE)
Division of Research and Development
Turrialba, Costa Rica
2014



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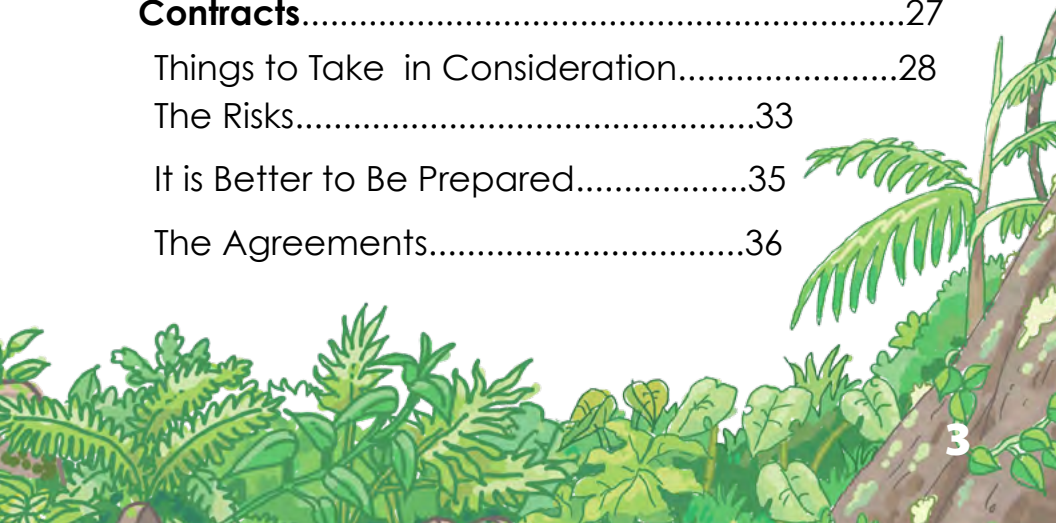
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Contents

Acknowledgements	5
Foreword	7
1. We Need to be Prepared Before Entering into Negotiation and Signing Our Logging Contracts	11
Our Contracts as Communities.....	12
How to Protect Our Community.....	17
Distribution of Benefits.....	18
2. Basic Principles for Agreeing on Sale Prices and Monitoring Our Logging Contracts	21
3. How to Negotiate Prices and Oversee Compliance with Logging Contracts	27
Things to Take in Consideration.....	28
The Risks.....	33
It is Better to Be Prepared.....	35
The Agreements.....	36



Partnerships and Alliances.....	38
Logging Contracts.....	42
4. Logging Contract: Negotiations, Conditions and Agreements	43
Useful Recommendations for Contract Preparation.....	47
Logging Contract Sample.....	56
Key Things to Take into Consideration When Preparing Logging Contracts.....	60
5. Contract Implementation.....	67
Forest Monitoring.....	68
Payments.....	72



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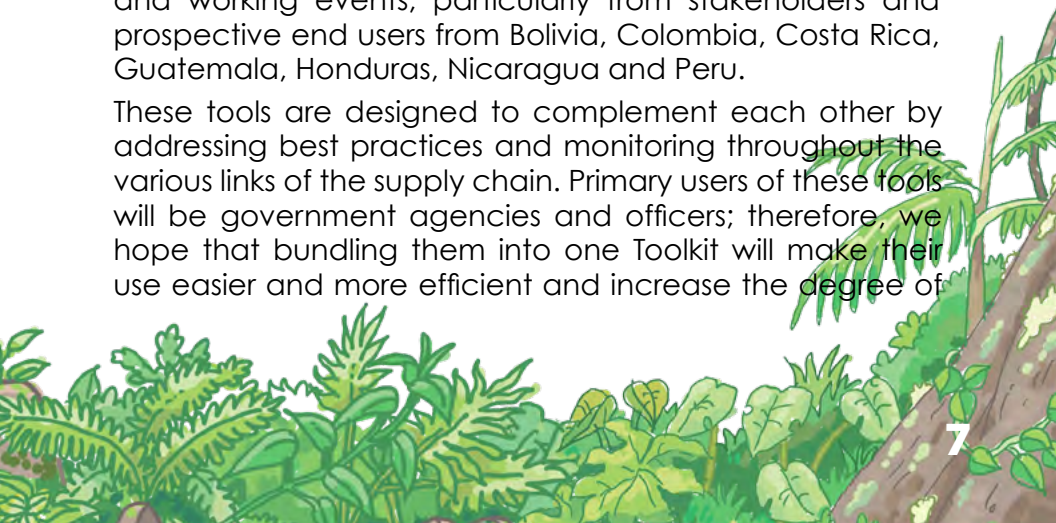
Foreword

Responsible economic, social and environmental logging practices remain the exception from the norm, even today, and are often limited to a few showcase areas. In too many places, loggers and traders still engage in unfair commercial practices, illegal logging, over harvesting or timber theft with severe negative impacts on the economy and natural resources of state-owned forestlands, indigenous and local communities. Monitoring and supervision of the legal origin and volumes of round wood and processed timber in forests, lumber yards, sawmills and warehouses are often limited.

CATIE, through its Finnfor II project, with the generous funding, technical assistance and extensive contribution of World Bank and PROFOR, has developed this practical Toolkit for Forest Control and Supervision. This set of tools builds on past experiences and includes: i) a user's field manual for verification of the legal origin of timber; ii) guidelines for achieving and monitoring fair economic benefit sharing and good environmental practices in logging contracts between forest industry and indigenous communities; and iii) a handbook for inspection of wood flows at sawmills and other processing facilities.

These innovative tools were developed in partnership with regional intergovernmental organizations, government agencies, forest stakeholder groups and NGOs. The lessons learned were collected from fieldwork, validation meetings and working events, particularly from stakeholders and prospective end users from Bolivia, Colombia, Costa Rica, Guatemala, Honduras, Nicaragua and Peru.

These tools are designed to complement each other by addressing best practices and monitoring throughout the various links of the supply chain. Primary users of these tools will be government agencies and officers; therefore, we hope that bundling them into one Toolkit will make their use easier and more efficient and increase the degree of



their adoption. Use of this Toolkit is expected to generate reliable, low cost data and prove a simple method for verifying timber legality, making the Toolkit particularly useful for tropical forest countries with limited budgets.

We hope that the practical suggestions and recommendations for community leaders, promoters and technical forest authority staff included in the Guidelines for monitoring of logging contracts between the forest industry and indigenous peoples will help communities in negotiating and monitoring compliance with logging contracts with middlemen and the logging industry. If used well, this tool will improve those contracts for the benefit of indigenous and local communities, while preventing illegal logging and forest degradation.

In closing, we would like to extend our gratitude to the World Bank, PROFOR and the Ministry for Foreign Affairs of Finland, as well as to the experts and specialists in forest control and supervision for their extensive contributions to this set of guidelines and recommendations. We would also like to extend our heartfelt appreciation to the leaders of indigenous and local communities, for their generous contributions to this Toolkit who endured validation working meetings and consultations. It is our sincere hope that this tool will contribute to improving forest management, reducing illegal logging and ensuring that communities see the benefits from commercial harvest of their forests.

Sincerely,

José Joaquín Campos, PhD.
General Director
CATIE

This tool includes a set of practical guidelines and recommendations for community leaders, community promoters and technical staff from forest authorities. It aims to help communities in negotiating good logging contracts with middlemen, the logging industry and monitoring their implementation. It will improve those contracts for the benefit of indigenous and local communities, while preventing illegal logging and forest degradation.



1.

We Need to Be Prepared Before Entering into Negotiation and Signing our Logging Contacts



Our Contracts as Communities

It is important to realize that indigenous peoples have strong ancestral cultural and traditional ties to forests which are very different from other mainstream societies and communities.





Our livelihoods depend on forests: Our food, medicine, water and many other non-timber forest products are necessary for our welfare.

It is important to recognize the spiritual and cultural importance of forests for our communities. It is also important to take in consideration our own traditional criteria and principles related to forest resource use.

**This tree is
sacred;
it should not be
logged.**





We should make sure logging contracts always respect International Labour Organization's Convention Nº 169 on the Rights of Indigenous Peoples and other international laws, as well as national legislation and indigenous community's laws.

It is also important to consider:

- The community's internal regulations
- Forestry laws



The decision to use our forests should be made under the prior, free and informed consent of the community.



How to Protect Our Community

Before signing any logging contract we need to know if there will be problems so that we protect ourselves.



It should be clear in the contract that trees to be logged should be only those marked for harvest.

And there should be a fine if the logger cuts unmarked trees.

For this reason it is important to get ready before we begin negotiations by making a list of things that we need to check beforehand.

Distribution of Benefits

Before signing the contract, it is very important that we all are in agreement how much the community will earn.



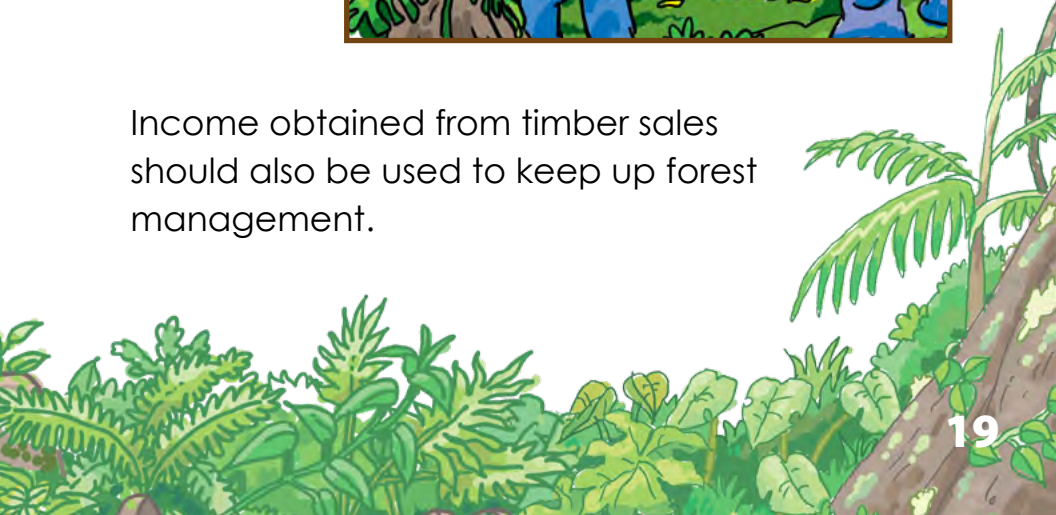
Income from timber sales should benefit the community as a whole. Community development activities are often better than individual cash distribution as cash often causes internal conflicts. Based on its bylaws, the community assembly should make the final decision about how benefits would be used and distributed.



If we agree to distribute cash from logging, we should make sure that distribution is fair and transparent, so that there will not be conflict between community members.

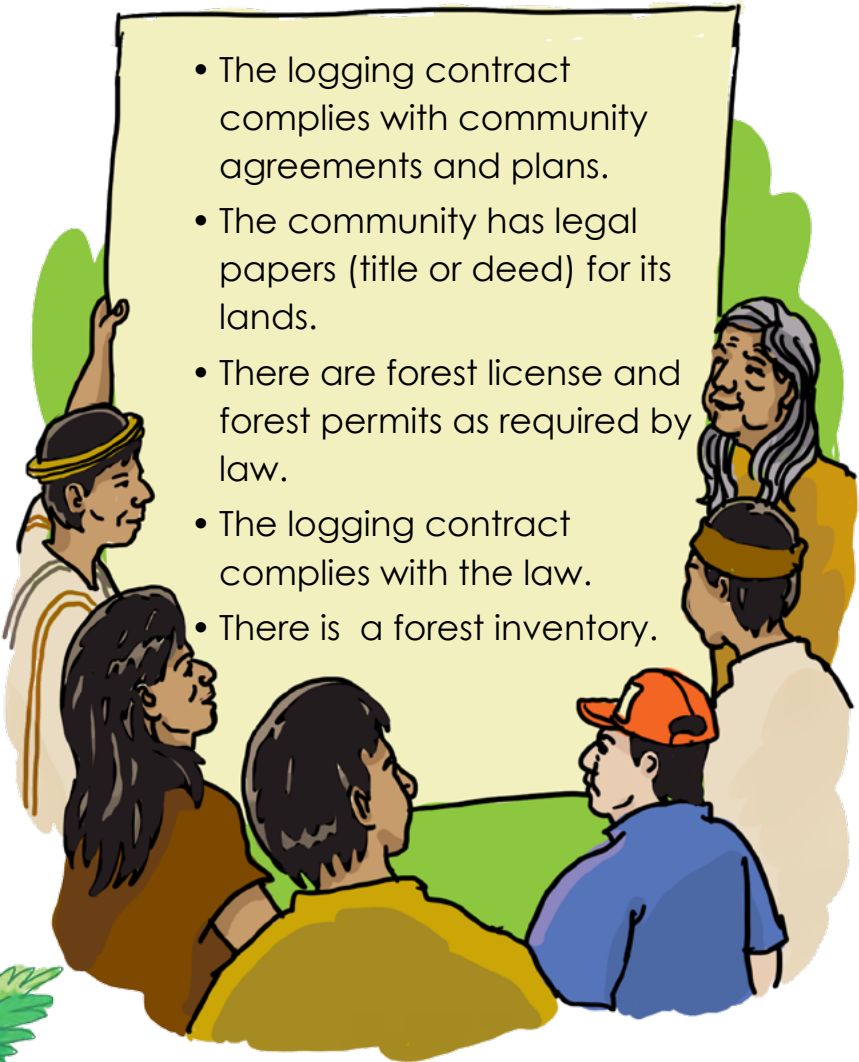


Income obtained from timber sales should also be used to keep up forest management.



Before entering into contract negotiation, making sure that:

- The logging contract complies with community agreements and plans.
- The community has legal papers (title or deed) for its lands.
- There are forest license and forest permits as required by law.
- The logging contract complies with the law.
- There is a forest inventory.



2.

Basic Principles for Agreeing on Sale Prices and Monitoring Our Logging Contracts



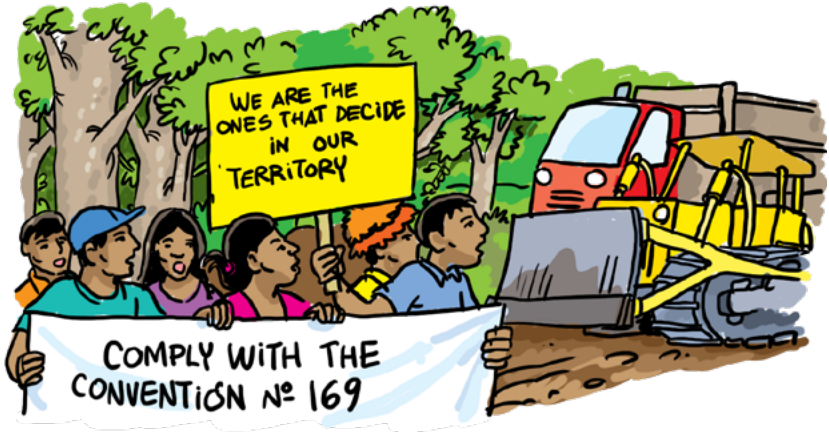
It is very important that the contract:

1. Complies with all forestry and conservation laws.



2. Complies with low impact practices and community forest management through the use of best logging and environmental practices.

3. Complies with national laws and regulations, and with international laws and those of indigenous people at the national level.




4. Ensures fair benefit sharing for all community members, ensuring full property rights for the community to the use of forest resources.





5. Takes place based on free decision making, good faith, transparency, community control and shared responsibility for timber resource use.



We are not obligated to sell our trees.

An illustration of five people in a discussion. A man in a yellow shirt is on the left, looking towards a woman in a pink top and purple skirt who is gesturing. To her right is a woman in a blue top and orange headscarf, looking towards a man in a blue shirt. Another man in a green shirt is in the foreground, looking towards the woman in pink. The background shows a wooden wall and a window with a view of trees.

It could be an opportunity to invest in the development of the community.

6. The contract should respect forest management plans.



7. The contract and logging activity should support forest conservation, combat illegal logging and corruption.

It is also important taking in consideration:

1. We need to understand the benefits and costs for the community, the overall economic context and how the logging contract would affect our families.



2. We may want to look for partnerships with other friendly organizations in order to get help or training in responsible forest use and monitoring the implementation of logging contracts.

3. It is very important that the forest authority give us the information needed for full compliance of logging contract.



3.

How to Negotiate Prices and Oversee Compliance with Logging Contracts



Things to Take in Consideration

Territorial demarcation, land deeds and full logging rights in community territories will help us to care for our forests and to better sell our timber, while improving the livelihoods of our families.



Other important aspects:

- Forest law compliance
- Respect for community traditions related to forest resource use.



The local forest authority must fully respond to our demands and approve our applications for forest management plans, AOP and forest permits so that we don't have to travel to the distant country capitals. In this way it will be easy for us to comply with the forest law and to better use our forest, resulting in direct benefits to the community.

The forest authority should comply with field inspections according to the law by checking in the field all trees to be legally harvested. Also, forest authorities should determine the total timber volume to be harvested, so that the issued forest permits include the right volume.



Loggers and forest companies involved in logging contracts are responsible, together with the community, for complying with the AOP and forestry laws.



Forests inventories or censuses are very important and should be part of the contract.



I need 300 hectares or I don't do business with you.

Before we didn't like logging; now, however, as long as we comply with our AOP it is OK to harvest those trees marked to be harvested.



It is very important that women from the community participate in controlling good logging practices and timber sales, in reporting back to the community, and in deciding about community investments.

The Risks

We need to be protected by laws and regulations, since often loggers with their money want us to allow them to cut too many trees, including seed producing trees or trees not ready for harvest.



We need to realize that our community knows little about timber marketing as we seldom do this kind of business. It is very important to be well informed about the activity. Logging contracts may be negative for us. They could even make us poorer. On the other hand, well negotiated and implemented contracts will help us.



We need to learn how to calculate the value of money and timber to know how much timber production costs and what we receive.

We all need to make sure that our contracts are not used for timber laundering or illegal logging.



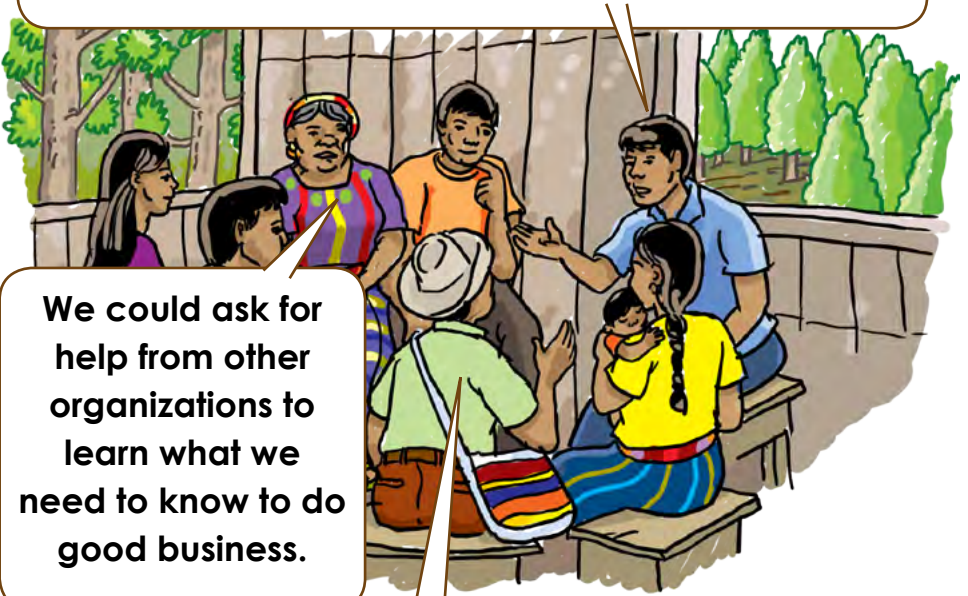
It is Better to Be Prepared

In order to have a successful business, it is important that we all are ready for the timber business and improve our organizational capacities.

In the same way we organize for our community activities, we should do it for selling timber.

We could ask for help from other organizations to learn what we need to know to do good business.

We should elect a Community Timber Committee in order to enforce legal compliance by us and the loggers, so that we will be able to better sell our timber.



The Agreements

Logging contracts should be guided by the local market price from other nearby communities, and towns and by the principle of fair trade, looking for mutual benefits and avoiding abuses and social exploitation.



All contracts should clearly state the obligations of our community and those of the loggers.

It is necessary to conduct an analysis of all costs and draw up business plans.



COSTS

- Travel costs
- Cost of Management plan
- Forest permit costs
- Forest roads & log yard costs
- Harvest preparation & felling
- Log cutting & preparation costs
- Transportation cost
- Marketing cost

TOTAL \$

Partnerships and Alliances

In order to achieve a good community forest management it is important that everyone cooperate:

- The community
- The government
- The courts
- Civil society



These partnerships help us in complying with the law, conducting responsible forestry and strengthening good governance.



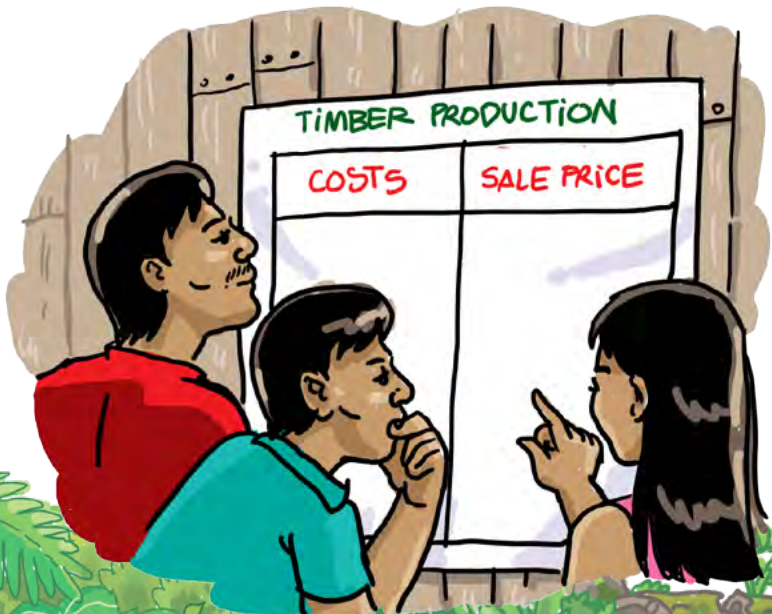
It is important to build alliances for mutual support among communities, with our representative federations, NGOs and others, for training and other needed activities.

These partnerships can help us with:

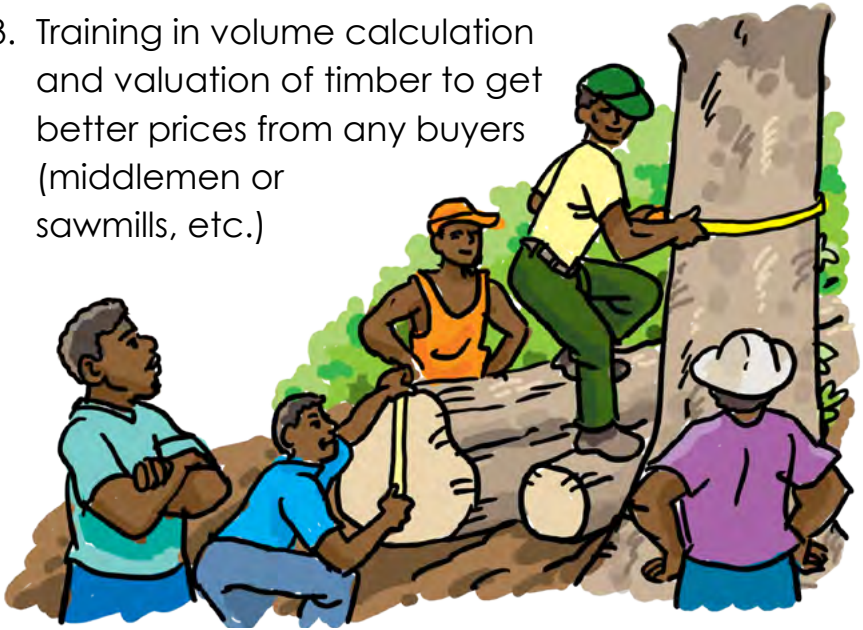
1. Technical assistance for preparing and complying with management plans, AOP and forest permits.



2. Assistance to report back to our community members on timber prices, logging costs and timber transportation costs.



3. Training in volume calculation and valuation of timber to get better prices from any buyers (middlemen or sawmills, etc.)

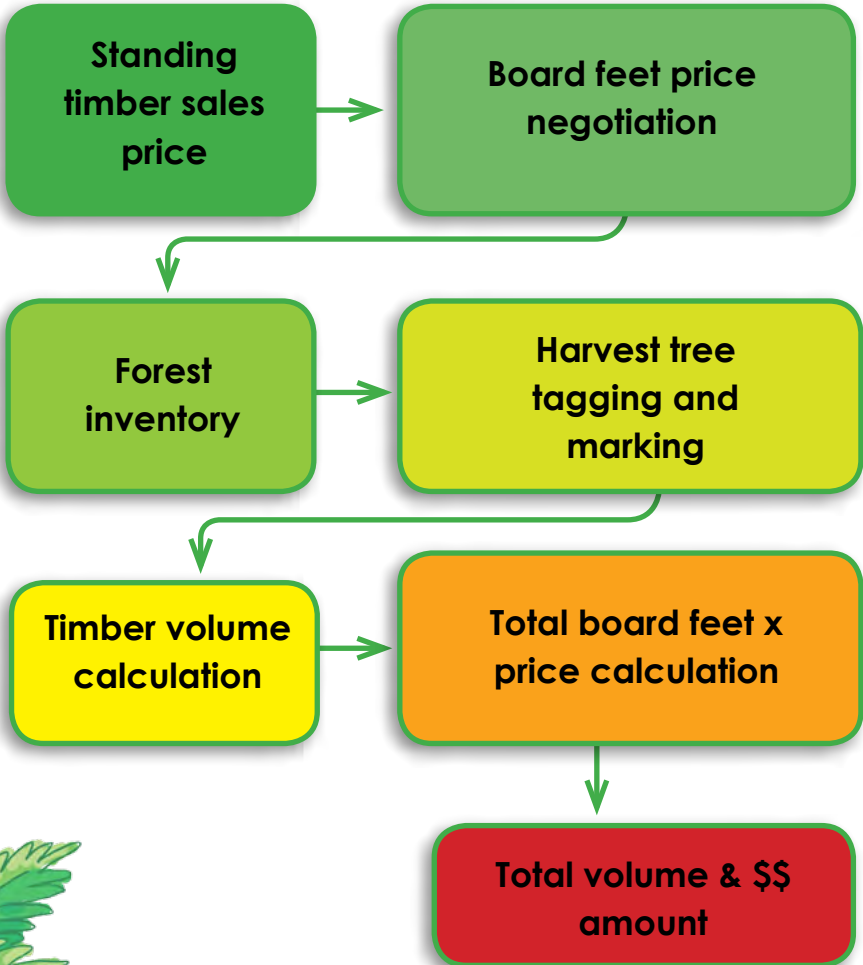


4. Training in sawmilling, marketing and fair benefit sharing at the community level.



Logging Contracts

All contracts must have the following information:



4.

Logging Contract: Negotiations, Conditions and Agreements



Contracts must have clearly laid-out voiding clauses:

Voiding clauses:

- Harvest of seed producing trees
- Harvest of unauthorized trees
- Cheating in volume calculation
- Environmental damage
- Illegal logging and inappropriate use of forest permits

In order to secure transparency and legality, our community leaders should obtain broad support from the community assembly before beginning any process for management plans, AOP preparation and forest permit requests. Only in this way will all related activities be fully legal.



I would propose to go ahead with timber sales.

In order to be transparent and avoid community conflict, our community assembly should make the final decision on timber sales contracts.



We should void all kind of timber sales with questionable social arrangements or unfair trade practices (advances, in-kind payments, etc.) as they prevent free and independent community decision about timber sales.



It is important that logging contracts be formally registered and notarized according to national regulations so that they are fully legal. Avoid informal verbal and simple agreements, since in most countries they do not have legal value.



Useful Recommendations for Contract Preparation

1. We should agree on the logging contract duration based on clear dates and deadlines for all activities including timber delivery dates. We also need to take in consideration deadlines established by law and other regulatory procedures of the forest sector such as forest permits.



2. Contracts should be clear, establishing timber quantity, quality and prices. It should also be clear how payments and timber volumes will be calculated (standing tree, logs, sawn wood, etc.)



Clarity in:

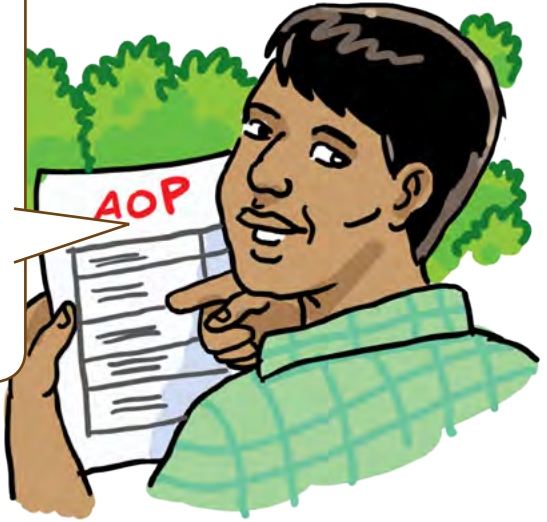
- Quantity
- Quality
- Price
- Delivery place
- Type & sales conditions
- Payment
- Duration
- Who pays taxes and permits

3. Contract need to include agreement on product delivery place (log yard, river port, etc.) and also provide details regarding any discounts related to the quality of products.

Where will we deliver the timber?



4. It is important to ensure that all harvested timber is included in the approved AOP and that it is within the Annual harvesting plot.



5. Logging contracts should include prices per board feet for each type of timber, based on the production cost and local sales prices.



Lower the price? No, why?
All prices we agreed on are written in the logging contract that you signed. Prices were set after careful calculation and negotiation.

6. Payments must take place as soon as timber is measured and delivered, according to the logging contract. It is recommended that payments be made in bank checks instead of cash, as it is more transparent, secure and benefits the community.



7. Timber prices should also include the cost of forest fees and taxes based on the country's laws and regulations.

Remember that the timber sales price includes forest fees, other fees for permits and taxes.



8. Payments for preparing and processing forest management plans, AOP and other permits are paid by the community, thus they should be included in the sales prices. If the logger pays them in advance, the total amount of those payments should be included in the contract, like all advance payments.

It is important to make sure that logging contracts include information about who is making those payments and the exact total amounts.



9. Selling timber as sawn wood or even logs is more beneficial for our community. However, considering our own capacity, wood may be sold as standing timber as long as the prices are right. If we agree to standing timber sales, it should be clear in the logging contract that the forest management plan and AOP compliance is a shared responsibility of both the community and the logger.

This year we are going to sell only standing timber. Thus the costs of logging, forest roads and transportation will be paid by you.



In this way the logger pays the cost of felling, skidding, field laborers and local botanists, even if they are community members.

10. In order to avoid illegal logging and related trade we must make sure that the only trees harvested are those authorized by the approved AOP.



11. Our community is accountable for monitoring protection of seed producing trees and compliance with best practices established by the management plan.

It is also important to check the accuracy of all information included in the AOP, particularly the number of trees to be harvested and their volumes according to conventional timber measuring practices.



12. The logging contract should include mandatory clauses related to the use of low impact logging practices.

13. Our community leaders and the loggers are obliged to report back to the community when the logging operation ends. This establishes accountability before the community assembly and forest authorities.



Logging Contract Sample

A contract will vary according to each country's particular situation, thus the following is only a sample partially based on a model contract created by WWF Bolivia in 2009.

1. Names: Logger or forest industry representative, community and representative leaders
2. Contract purpose : (timber sale types, amount of timber and type of sale), e.g. "standing timber" or "logs"
3. Contract duration
4. Delivery place and date
5. Price and payment modality
6. Agreements and obligations (timber measurement system to be used, grades, forest management plans and AOP compliance conditions, conditions for complying with best practices, for using forest permits, transportation documents, bill of sales and other forest control documentation, as well as use of environmental and social best practices)

BUYER-SELLER AGREEMENT FOR STANDING TIMBER

1. In signing this final contract the following PARTIES are involved:

The indigenous community The Sirari, with Legal Identification No. 123334 issued by the Departmental Government of Santa Cruz, herein represented by Mr. Juan Perez, with Identity Card 28220045 SC. For purposes of this contract, we will call them the "SELLER".

The Company "Turiro", registered under license No. 7770077 in the Bolivian Registry of Commerce (FUNDEMPRESA), with NIT 5678888, with legal office at No. 3456 Motoyoé Street, Santa Cruz de la Sierra, with forest registry No. SCZ-665, represented herein by Mr. John Smith with Identity Card No. 2552522 SC., acting under power of attorney.

2. The SELLER agrees to sell cedar wood [or mahogany or teak, etc.] in standing timber [or wood logs or lumber] that the BUYER acknowledges and accepts this timber for a total of xxxxx board feet [or cubic meters, etc.], and acknowledges and accepts the quality, phytosanitary condition and location of the trees [or logs or lumber], [or diameter and height, percentage of malformed and dead trees and other features of the stand] whose purchase is undertaken through this contract.

3. The SELLERS authorize through this signed contract the BUYER's entrance into the community forest that is the object of this sale; the period for harvest and removal of timber will be [X weeks / months].

4. The timber shall be delivered at the harvest site in the forest [or the landing or logyard located called XXXXXX and located in XXXXXX] and this delivery will occur between [date] and [date] in 2014. Within said period, the BUYER is free to determine the dates when the wood will be harvested.

5. The purchase price is \$ [amount spelled out in words] which will be paid as [cash or check or bank notes], at which time the SELLER will provide to the BUYER an invoice corresponding to the payment.

6. It shall be the duty of the SELLER to provide the CF01 to the BUYER. For the purpose of better control, the delivery thereof shall be made in relation to all harvestable trees and divided into four installments:

- Delivery of 25% of CF01 upon signing the contract.
- Delivery of the second 25% of CF01 upon delivery of a report demonstrating utilization of all CF0-1 previously provided.
- The third and fourth installment will proceed in the same way.

The SELLER prior to delivering the trees to the BUYER, shall provide the legal documents that allow this harvest and sale.

The BUYER will begin the logging with the technical supervision of the community's official certified forester as well as the Forest Manager appointed by the community, and will pay to the [Forest Authority] the amount corresponding to the Forest License, charged to this contract.

7. Conflict resolution and mediation clause

8. Provisions for voiding the contract (illegal logging, illegal use of forest control documents, harvesting unauthorized trees)

9. Contract monitoring (Federations, NGO, etc.)

10. Date and signatures

7. DISPUTES. Any dispute arising from a breach of contract by one of the parties shall first be submitted to dialogue between the BUYER and SELLER; if no satisfactory solution is found, the dispute shall be submitted to arbitration by the Authority for Oversight and Social Control of Land and Forests (ABT); and, in the case of a possible refusal by ABT, shall be brought before a Conciliation and Arbitration Centre, who will designate the appropriate court to resolve the controversy. The cost of arbitration shall be borne by the party which is determined to have caused the 50% plus one of the damages established through the arbitration process. If the responsibility is shared, the SELLER and BUYER shall divide equally the cost of arbitration.

8. Grounds for termination of the contract without judicial intervention, are as follows:

a) Attributable to the SELLER:

- Sell to a third party the forest product committed within this contract
- Failure to deliver in a timely manner to the BUYER the CFO1 corresponding to the annual harvest parcel

b) Attributable to the BUYER:

- Paralyze the harvest for more than 10 days after signing this contract, for reasons beyond the control of the SELLER
- Failure to comply with deadlines for payment for the timber sale
- Failure to complete the tree harvest during the current forest management season
- Cause environmental damage during any of the different logging stages (stream obstruction, destruction of wetlands and protected areas, etc.)
- Violate one or more of the obligations under this contract

9. Both parties declare that they agree to the participation of other individuals or representatives from trade organizations or NGOs in ocular inspections, unannounced visits to observe and monitor harvesting activities, meetings for volume measurement or product delivery, community assemblies etc., related to the production of the material subject of this contract.

10. We, Juan Perez, on behalf of the Indigenous Community **The Sirari**, and John Smith, representing the "**Turiro**" **Company**, declare our full compliance with and acceptance of each of the terms described in this agreement and obligate ourselves to its faithful execution by signing below.

Santa Cruz de la Sierra, 29 July 2009

Key Things to Take into Consideration When Preparing Logging Contracts



Our community should not enter into contracts using “revenue sharing systems”, as these include percentages, rather than prices and payment conditions. These contracts (e.g. 80% for the logger and 20% for the community, for example) are unfair (IIAP 2009).

Our community should not accept agreements separated from the main contract or informal arrangements such as in-kind payments (food staples, etc.) as advance payments. This will make us dependent on loggers.



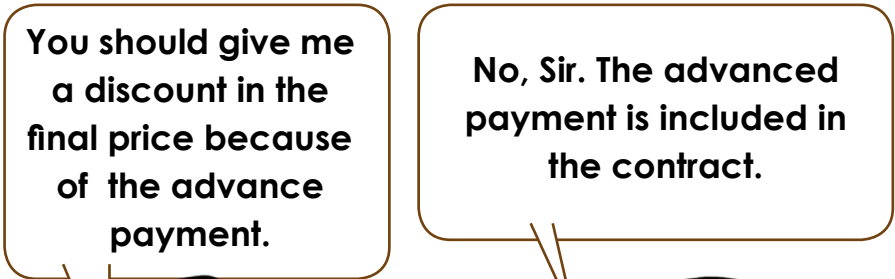
**This is an
advance
payment for the
timber.**

**No, thanks.
It would be
better to follow
contract
conditions.**

Before negotiating logging contracts, leaders and community members should be informed of timber prices in other nearby towns to secure fair prices for their communities.



In the case of communities harvesting timber themselves and in need of upfront capital from the logger or logging company, it is recommended that these advances aren't used to lower timber sales prices.



The contract should be established once timber prices, advance amount and re-payment conditions are agreed upon.



Logging contracts should support value chains for forest products from the forest to sawmills and final markets.

Logging contract conditions should ensure the use of forest management best practices, with the goal of achieving forest certification.

Some examples are:

Best Practices for Forest management

- Soil, forest and water conservation
- Legal compliance
- Community participation
- Low impact felling, skidding and transportation
- Accurate timber measurement
- Supervision by forest authority, community and civil society



Logging contracts should include a provision related to participation of the Forest Regent (in some countries established by law) and an independent monitor. Also, contracts should include conditions and obligations of each of the partners selected to help monitor contract implementation. This improves community capacity, increases transparency and community control, and prevents conflicts between loggers and communities.

I will make sure that the AOP is implemented according to the law.

I will make sure that the contract is fully implemented and enforced.



I will make sure that the community conserves its natural resources while making profits.

Our community should not grant legal power of attorney to any logger.



If for any reason power of attorney is needed, it should be given solely for a specific task and shouldn't be beyond the forest management plan approval. One good agreement should be that the community, not of the logger, hires the forest regent.

It would be better if the community hires and pays the forest regent.



5. Contract Implementation



Forest Monitoring

We should elect community control and supervision committees for forestry monitoring activities, such as *Veedurias Forestales*, Independent Forest Monitoring or other groups.

These committees should help to promote responsible forest management that benefits community livelihoods.



The following are some of the duties of our committee for logging contract implementation.



- The logging contract should specify who is responsible for monitoring and supervision of the contract.



- We should ensure compliance with best practices for felling, skidding, etc. We have to make sure that harvest includes only those trees approved in the AOP.

- We should ensure use of best practices for forest, water and soil conservation during construction of log yards, forest roads and other harvest infrastructure. These constructions should be built based on prescriptions in the management plan and AOP, thus avoiding damage to standing trees and streams. We should ensure protection of high conservation value forests.



- We should ensure direct participation in timber measurement by our control and supervision committee, forest regent, community and logger. Logs should be measured based on conventional measuring systems at the log yards or in an agreed-upon delivery place.



- We should request assistance from representative organizations, NGOs, etc. in contract negotiations and monitoring.

Payments

The best payment practice is to use banking checks. In case bank payments are not possible, payments can be made in cash, but in front of the community assembly to ensure transparency.



Internally, the community should foster good money management practices so that payment benefits all community members.



We should not allow any kind of direct or indirect informal or unauthorized payment to the forest authority or to community leaders.





Always keep in mind:

Signing a good contract and ensuring its compliance will help us to protect our forest and our rights as a community.



The Tropical Agricultural Research and Higher Education Center (CATIE) is a regional center dedicated to research and graduate education in agriculture, and the management, conservation and sustainable use of natural resources. Its members include the Inter-American Institute for Cooperation on Agriculture (IICA), Belize, Bolivia, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Venezuela and the State of Acre in Brazil.

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