

# REDD Realities

**How strategies to reduce emissions from deforestation and forest degradation could impact on biodiversity and Indigenous Peoples in developing countries**





## Executive Summary

This publication includes independent monitoring reports on the development of national strategies to Reduce Emissions from Deforestation and Forest Degradation by NGOs and Indigenous Peoples' Organizations from 9 different developing countries, as well as links to reports by NGOs in 3 additional countries. The country reports included in this research illustrate the very different on-the-ground circumstances that will apply to (REDD) projects as and when they are implemented in countries across the world.

Critically, there is an immense variation between countries with respect to the existence of effective legislation protecting biodiversity and Indigenous Peoples' rights. The involvement of Indigenous Peoples and other forest-dependent communities in the development of national REDD strategies and projects also differs significantly from country to country. Nevertheless, a closer look at the results of each report allows us to draw some general conclusions that are particularly relevant to the way in which REDD is being crafted at the international level, and implemented at the national level. Seven key concerns emerge.

- In some countries there has been a relatively high degree of engagement and information dissemination (but even in these countries there is significant room for improvement); in others there is little or no involvement in or knowledge about REDD, and civil society is unable to plug the information gap.
- Even though REDD's potential negative impacts could fall disproportionately on women, there seems to be almost no evidence that gender issues are being considered in REDD development processes or that women are being proactively engaged in national debates on REDD.
- Countries likely to engage in REDD typically have very high levels of biodiversity, but existing legislation on biodiversity at the national level is not always implemented effectively, and in some cases is being progressively weakened to meet economic objectives. REDD could accelerate this dynamic.
- The potential inclusion of Sustainable Forest Management (SFM) (according to FAO's current definition, which includes the establishment of monoculture tree plantations and 'low impact logging') within REDD is of great concern. In addition to destroying biodiversity and damaging the lives and livelihoods of Indigenous Peoples, it threatens to thoroughly undermine efforts to protect the world's natural forests.
- The extent to which countries protect the rights of their Indigenous Peoples varies enormously. Some countries have legislation in place to protect Indigenous Peoples' rights, including in relation to forest biodiversity, although the extent to which such laws are implemented is variable. REDD may be more effective in these countries. However, others continue to violate or condone the violation of the rights of Indigenous Peoples, which often involves extreme violence: these countries are most unlikely to implement REDD in a way that benefits Indigenous Peoples. The degree to which governments have explicitly sought to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) at the national level is also mixed.
- Land rights and tenure continues to be one of the most problematic areas when it comes to the implementation of REDD: those without tenure may not be able to claim compensation under REDD.
- Market-based approaches to REDD are complex yet lucrative, a combination that discourages community participation but encourages fraud and corruption.

These challenges need to be addressed before REDD is implemented. To this end, the REDD debate needs to be focused on ensuring that an effective and equitable forest conservation regime is put in place, and that such a regime is based on policy coherence with respect to the main legally binding agreements related to forests, including UNFCCC Article 4.1(d), the Convention on Biological Diversity, and related human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).



This will entail intergovernmental agreement on a text that explicitly promotes coherence and rights-based objectives, and the establishment of processes that will ensure the full and effective implementation of these objectives at the national level.

Any forest conservation regime established should ensure policy coherence and compliance; respect the rights of Indigenous Peoples and other forest-dependent communities; address the underlying causes of deforestation and degradation; provide a broad range of positive incentives for Indigenous and Community Conserved Areas (ICCAs); and exclude REDD and forests in general from carbon markets.

To this end, it is essential that the international and national aspects of any forest conservation regime, including REDD agreements, programs and projects, are elaborated with the full involvement of Indigenous Peoples, small farmers and women.



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## Introduction

Because deforestation is a major source of greenhouse gas emissions, governments see curbing deforestation as a 'cheap' way of reducing greenhouse gas emissions and stabilizing the concentration of CO<sub>2</sub> in the atmosphere relatively quickly. Governments are discussing a proposal on Reducing Emissions from Deforestation (and possibly degradation) in Developing Countries (REDD), which they hope to conclude in the near future.

The basic idea underlying REDD is the creation of a system of positive incentives that will persuade developing countries with tropical forests to reduce their deforestation rates, by rewarding them financially. This is in keeping with the fact that developing countries are not responsible for climate change. Governments agreed to consider REDD further in 2005, after 'Compensated Reduction' was formally proposed by Papua New Guinea and Costa Rica, on behalf of a group of countries now known as the Coalition for Rainforest Nations (CfRN). Costa Rica's support for REDD is based on its implementation of a similar national Payment for Environmental Services scheme (see box).

There is a great deal of enthusiasm for REDD amongst governments: this is partly because of the tens of billions of dollars that researchers have estimated REDD could generate annually, which many countries, companies and communities hope they might benefit from. REDD is seen by some industrialized countries as a way of bringing some developing countries to the climate change 'table'. It is also being promoted as a win-win-win option with 'co-benefits': many argue that as well as helping to mitigate climate change, REDD could also contribute to alleviating poverty, protecting biodiversity and conserving watersheds.

However, whether or not REDD will really generate any of these benefits depends on several key variables: the way it is designed; how funds are sourced, managed and distributed; whether a range of major technical difficulties can be resolved; and – critically – the degree to which countries are genuinely committed to protecting biodiversity and Indigenous Peoples' rights, in accordance with multilateral agreements such as the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Thus there is still a great deal of uncertainty about what a REDD will eventually look like and what impacts it will have.

However, in spite of this uncertainty, and even though REDD has not yet been agreed to within the UNFCCC, REDD is rapidly being put in place at the national level. 'Readiness' plans are being approved and funded, mainly by the World Bank's Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme. It seems that the prospect of REDD funds is even leading some countries to second guess the outcomes of UNFCCC deliberations (as seems to be the case in Indonesia, which already has REDD legislation in place incorporating Sustainable Forest Management and funding through carbon markets).

It seems that these projects are being pushed through with undue haste. The first FCPF project proposals, for example, have been accepted in spite of concerns expressed by the Technical Advisory Panel, because "the political pressure to move the process forward won the day, with approval of the Guyana and Panama plans, and approval pending for Indonesia...Both donor and REDD country representatives on the PC [Participants Committee] expressed concern that if the PC didn't approve the plans now, there would be little progress to show in Copenhagen in December, undercutting the ability of nations advocating UNFCCC adoption of REDD to point to real on the ground advances."<sup>1</sup>

<sup>1</sup> <http://www.redd-monitor.org/2009/07/01/world-bank-bulldozes-ahead-with-redd-in-guyana-and-panama/>





### **Costa Rica's Payments for Environmental Services (PES) scheme**

The idea of compensating landowners for the environmental services provided by their forests is not a new one: Costa Rica has had a national system of Payments for Environmental Services (PES) in place for some years (and this of course goes some way to explaining why Costa Rica was also one of the first countries to propose REDD). But Costa Rica's PES scheme has had both positive and negative impacts, and it is worth considering these further, to see what light this may throw on REDD.

PES funding comes from a fossil fuel consumption tax. There are also other funding sources, such as the Certificates for Environmental Services (CSA) system, which gets funding from companies and institutions that benefit from environmental services and pay the owners of the forests for conserving those services. CSA is also financed by the business sector, institutions and other governments, for forest protection and reforestation. Currently, contracts have been signed with private national hydroelectric dams, the Government of Norway, the Global Environmental Facility and KFW (a German Bank). But, without doubt, the greatest problem for the system at the moment is securing consistent and good quality resources.

Although PES has supported the conservation and recuperation of 10% of the national territory, it has also favored monocultures and selective logging, under the banner of Sustainable Forest Management. The Forest Contingency Plan has allowed the big logging companies to establish monoculture plantations and actually intensify the exploitation of lumber from forests and other agro-ecosystems. In fact, PES has contributed to the establishment of extensive plantations, including for the production of lumber to make pallets for exporting pineapple.

A further obstacle is that participants opting for this incentive scheme need to be able to prove they hold the title to the lands in question. This makes it difficult for small land owners like small farmer communities or communal landholders to receive payment, even though the environmental services that their lands provide may in some cases be superior to these services provided by titled land. In general, the areas with most land use change and illegal lumber extraction are precisely those areas where the land is not titled. Much of this land is also found in priority areas including biological corridors, protected areas and strategic watersheds. It is also noteworthy that PES has not respected Indigenous Peoples' rights and the distribution of the funds from PES has caused many conflicts in Indigenous territories and provoked divisions.

There are a variety of opinions about the social impacts of forest resource use. On one hand, organizations linked to the productive sector have analyzed the statistics provided by business and concluded that logging has had a positive impact on the country in terms of aggregate value, trade balance and the creation of rural job. Others have pointed out that Costa Rica's forestry policies have favored big business, and that industry and business have reaped the lion's share of the profits. Furthermore, it has been documented that it is precisely in the areas where the lumber is produced that poverty is and remains worst.

*Source: REDD in Costa Rica, an independent monitoring report by COECO-CEIBA*

This report considers how these REDD plans are developing in a number of countries and considers how REDD may actually unfold in each, given existing legislation – or lack of legislation – on biodiversity and Indigenous Peoples' rights. Will REDD really develop as its proponents argue? Or could it have serious negative social and environmental impacts when put into practice?

### **Status of REDD project proposals**

Most of the countries considered in this research were selected because they are participating in the World Bank's Forest Carbon Partnership Facility (FCPF). Most do not yet have dedicated REDD policies in place (Indonesia is a significant exception here), but all have REDD development processes of one kind or another underway. At the time of writing only one has an Readiness-PLAN that has been accepted by the World Bank FCPF (Panama). India and Brazil were included as significant players in the global debate on REDD+, and climate and forests in general. Moreover, the history of forest management in India provides a number of important lessons about the importance of community management of forests, which are highly relevant for future REDD initiatives.



**Table 1: status of REDD project proposals in case study countries**

Countries in this report	FCPF Readiness - Project Information Note	FCPF TAP review	R-Plan or R-Project Plan submission on FCPF website	R- Plan or Project Plan approved	Other documents available on FCPF website	UN-REDD	UN-REDD approved
Brazil							
Colombia	✓	✓					
Costa Rica	✓	✓					
Ghana	✓	✓	✓		Summary of Participants Committee discussion.		
India							
Indonesia	✓		✓		R-PP progress report. World Bank progress update.	✓	✓
Kenya	✓	✓					
Mozambique	✓	✓					
Nepal	✓	✓			R-PP formulation update,	✓	
Panama	✓	✓	✓	✓	R-PP progress report.	✓	✓
Paraguay	✓	✓				✓	
Uganda	✓	✓					

Source: data available on the following websites as of 20/11/2009: Forest Carbon Partnership Facility, <http://www.forestcarbonpartnership.org/fcp/Node/19>; UN-REDD, <http://www.un-redd.org/UNREDDProgramme/CountryActions/tabid/584/language/en-US/Default.aspx>

What does REDD Readiness include? Uganda's approach is perhaps typical, and aims to include a Consultation and Outreach Plan; and terms of reference for:

- development of the greenhouse gas emissions Reference Scenario;
- development of a national REDD strategy, including means of assessing potential impacts, and any REDD implementation framework;
- establishing the Monitoring, Reporting and Verification system for determining changes in forest cover and changes in carbon stocks at the national level; and
- estimating investment requirements for, and evaluation of, the REDD strategy.

Indonesia, however, can be said to be one step ahead of many other countries, since it already has a number of national REDD implementation policies in place, issued by the Forestry Ministry, which will no doubt act as a precedent for other countries considering similar legislation (see country case study for details).



## General concerns about REDD

There are a range of concerns associated with the implementation of REDD projects, but the speed with which strategy and planning processes are proceeding means that these concerns may not be fully addressed. From the point of view of Indigenous Peoples and minority / marginalized groups these include:

- Indigenous People and minority groups may be denied access to the forests for firewood and herbs, whilst lessees are granted the rights to harvest trees.
- Carbon traders may require land titles, to the carbon in the forest or to the land, which Indigenous People and minority groups may not have.
- Profits for loggers, deforesters and polluters will open a way for lessees to profit from logging in the name of sustainable harvesting.
- REDD may mean that forests come to be viewed as mere mechanisms for carbon sequestration.
- REDD may lead to a change in priorities, with economic priorities taking precedence over cultural, social, spiritual and environmental issues
- There could be displacement from traditional territories as a result of implementation of REDD mechanisms that do not consider the rights of indigenous peoples, minority groups and local communities.
- Equity issues might not be resolved, meaning that benefits may not reach the communities preserving the forests.
- Agrofuels may be further promoted through REDD, at the expense of natural forests.

This document considers the likelihood for outcomes such as these in a range of countries. It also looks to the many policies, laws and acts that are relevant to the formulation of REDD-specific policies in these countries. These may need to be reviewed to reflect specific issues relating to REDD, particularly in case a separate policy on REDD is not developed in the country in question. They should clearly address the concerns, fears and expectations of people that are often marginalized and left out of development processes.



*Indigenous Ngoba women proclaiming the approval of the Law of Autonomy of Indigenous Peoples, which carries 15 years in the Legislature, Costa Rica.*

*Photo: Alejandra Porras.*





## REDD in Colombia

*An Independent Monitoring report by CENSAT Agua Viva/ Friends of the Earth-Colombia*

### Colombia's forests

Fifty-nine percent of the Colombian territory is forested,<sup>2</sup> that is to say close to 606,340 square kilometers.<sup>3</sup> Colombia also ranks second in the world in terms of its biodiversity, and is thought to be home to some 10% of the world's species.<sup>4</sup> Like other countries in the tropical belt, the majority of the forest ecosystems are found in the lowlands (less than 1000m above sea level), but there are also high-to-medium mountain and alpine ecosystems, which is one of the reasons for its immense biodiversity.

Representative forest ecosystems include: Amazon, biogeographic Chocó, tropical humid forest, mangroves, tropical dry forest, savannas, *páramos* and cloud forests. Each of these ecosystems has specific characteristics that give it a high degree of variability and a high incidence of endemic species, as well as a tremendous diversity of flora and fauna.

Calculations of the rates of deforestation tend to be unreliable and far from ideal when it comes to interpretation or analysis, but official estimates from the Instituto de Hidrología, Meteorología y Estudios Ambientales (IDEAM) state that close to 101,000 hectares of forest is lost each year.<sup>5</sup> However,<sup>6</sup> other sources calculate the rate of deforestation could be as high as some 600,000 hectares annually.<sup>6</sup>

Analyses and interpretations of the causes of deforestation tend to cite obvious direct causes: logging, agriculture, cattle ranching and, in the particular case of Colombia, drug-trafficking and the cultivation of illicit crops. However, underlying causes of deforestation include the impacts of macroeconomic policies (both national and international), including imposed economic measures; the gradual dismantling of the national environmental system over the course of the last eight years; and the design and implementation of detrimental legislation that promotes the exploitation of forests. Similarly, the government's failure to take decisive action in relation to the titling of Indigenous Peoples' and Afro-descendants' territories and the impact that this has had on deforestation or degradation is generally overlooked.

It is worth emphasizing that the rates of deforestation and degradation in Colombia's forests have tended to remain high and may even be increasing specifically because of the dismantling of the National Environmental System (SINA), whose institutions used to regulate and control the use of the forests; and because the process of recognizing and titling of Indigenous Peoples' and Afro-descendants' territories is almost paralyzed.

### Colombia's forest policies and biodiversity

Colombian forest policies clearly reflect the many backward steps taken with respect to the national environmental policy over the last decade. These are epitomized by the dismantling of SINA, and the drafting and implementation of Act 1021 of 2006 (the General Forestry Act) and Act 1152 of 2007 (the Statute on Rural Development). These have been declared unconstitutional<sup>7</sup> because they were not based on a prior consultation process, and because of the lack of recognition of the rights of peoples and local communities (Indigenous, Afro-descendant and small farmers) and the suppression of measures to control the establishment of tree plantations and illegal logging.

<sup>2</sup> <http://rainforests.mongabay.com/20colombia.htm>

<sup>3</sup> [http://unstats.un.org/unsd/environment/envpdf/Country\\_Snapshots\\_Sep%202009/Colombia.pdf](http://unstats.un.org/unsd/environment/envpdf/Country_Snapshots_Sep%202009/Colombia.pdf)

<sup>4</sup> <http://rainforests.mongabay.com/20colombia.htm>

<sup>5</sup> Colombia avanza en investigación y base científica para los proyectos de reducción de emisiones por deforestación, IDEAM Institute of Hydrology, Meteorology and Environmental Studies, 10 July 2009, online:

<http://www.ideam.gov.co:8080/noticias/noticia.shtml?x=37483>

<sup>6</sup> [http://www.eltiempo.com/vidadehoy/ciencia/home/la-deforestacion-pone-en-riesgo-a-500-especies-de-plantas-en-el-pais\\_4382859-1](http://www.eltiempo.com/vidadehoy/ciencia/home/la-deforestacion-pone-en-riesgo-a-500-especies-de-plantas-en-el-pais_4382859-1)

<sup>7</sup> "The Colombian government has since had to renegotiate these laws to act within the Constitution and to allow consultation with indigenous groups." <http://www.americasquarterly-digital.org/americasquarterly/2009summer/?pg=103>



Nowadays there is a clear and very definite tendency to deregulate control over forests, including in the seven forest reserve zones in the country (which were created by Act 2 of 1959). There is also a patent willingness to use market-mechanisms, and to sell off Colombia's heritage, when it comes to the use, conservation and management of the country's forests. For example, when the General Forest Act was declared unconstitutional, there was an immediate push to pass a bill on commercial tree plantations as soon as possible, and to promote and create plantations as carbon sinks, as well as certifying them as forests.

It should come as no surprise, then, that the Ministry of the Environment, Housing and Territorial Development (MAVDT)'s Office on Climate Change - which is in charge of guiding and furthering forest policies with respect to the Framework Convention on Climate Change, including the REDD strategy - is neither considering nor mainstreaming the Convention on Biological Diversity's Expanded Program of Work on Forest Biodiversity.

This is clearly demonstrated by the following response to a question about how the Office on Climate Change is implementing the Program: "Lastly, with regard to the Expanded Program of Work on Forest Biodiversity, it is a technical document that was drafted from 2003 to 2005 by the Ad Hoc Expert Group in the framework of the Convention on Biological Diversity, independent of the whole process of the definition of the REDD mechanism."<sup>8</sup> One can conclude from this that there is no intention to implement the provisions of the Convention on Biological Diversity (CBD) with respect to REDD.

### **Protecting Indigenous rights and national initiatives for implementing UNDRIP**

The government's processes for implementing the rights of Indigenous Peoples and other tribal peoples in Colombia, like the Afro-descendants, are few, insufficient and deficient, in terms of the state's compliance with UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other related conventions.

This lack of compliance translates into a systematic violation of rights in practice, and has prompted Indigenous organizations in Colombia to launch a national mobilization and resistance called the "Minga"<sup>9</sup> of Social and Community Resistance." The Minga's goal is to achieve respect for the rights of Indigenous Peoples and all the other popular sectors in the country. It involves a process of dialogue and negotiation that has a five-point agenda, considering the economic model; right to life; unfulfilled agreements; sovereignty, land and territory; and the peoples' agenda.

The Minga illustrates the grave situation that Indigenous Peoples in Colombia find themselves in: they suffer systematic violation of their human and collective rights, and from a lack of policies and effective measures to protect and guarantee their fundamental rights. Furthermore, Colombia was not even an original signatory to UNDRIP, which demonstrates that there is a clear lack of political will to implement the rights of Indigenous Peoples in the country. This is also illustrated by the lack, manipulation or incorrect use of the principle on the right to Free, Prior, Informed Consent (FPIC) established in Convention 169 of the International Labour Organization (ILO).

Prior consultation on projects that may affect their community is a constitutional right for Indigenous and black communities in Colombia but "In practice...with few exceptions, most have been a farce in the best case and a source of conflict and violence in others."<sup>10</sup> One example of this is the planned development of a multipurpose port in the municipality of Dibulla in Guajira, by a company, Brisa: the Interior Ministry said there were no Indigenous communities in the area, even though several years ago, in 2001 and 2002, they had declared just the opposite. Eventually, a number of meetings were held, but only after the license to start work had been issued. However, the meetings were subsequently suspended. As soon as the meetings were completed, the Interior Ministry withdrew the order that had been preventing the start of the work, even though the communities had objected to it. The Indigenous Peoples of the area currently have a request lodged with the constitutional court.<sup>11</sup>

<sup>8</sup> Climate Change Mitigation Group (GMCC), Ministry of Environment, Housing and Territorial Development, August 2009, Communication by e-mail.

<sup>9</sup> A 'minga' is a collective action by the community when a call for assistance is issued.

<sup>10</sup> <http://justiciapazcolombia.com/La-Consulta-Previa-farsa>

<sup>11</sup> <http://justiciapazcolombia.com/La-Consulta-Previa-farsa>



The UN has also commented on this dire state of affairs in relation to Indigenous Peoples' rights in Colombia. On 28 July, for example, the UN news service reported that during his visit to Colombia, James Anaya, the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples "urged the Colombian government to consult with [indigenous peoples] on all issues that affect them."<sup>12</sup> He also urged the government of Colombia to respect the rights of Indigenous Peoples, and highlighted the fact that there are many commercial interests in the natural resources found in Indigenous Peoples' Territories.

Anaya's remarks are particularly relevant to the design and implementation of REDD in Colombia. Even though the territories of Indigenous Peoples and afro-descendants in Colombia are of prime interest for REDD, these peoples have not been included in the national roundtable on REDD nor have they been taken into account in the design of REDD policies, programs or projects.

The Colombian government's disregard for the rights of Indigenous Peoples is also reflected in the World Bank's independent external review of Colombia's R-PIN relating to its application to participate in the Forest Carbon Partnership Facility (FCPF), which was undertaken by the Technical Advisory Panel (TAP). This states that, "It is not apparent how the private sector or indigenous communities would have an immediate responsibility for the implementation of a REDD strategy and how they would be involved" and that, "No consultative processes have taken place yet...Earlier experience suggests that stakeholder consultation has been largely focused on higher government levels. However, local consultations are clearly advisable as a large proportion of the forest lands are owned by communities, keeping consistency with the ILO Convention and the UN Declaration on the Rights of Indigenous Peoples."<sup>13</sup>

### **REDD policies and processes**

Since Colombia has applied to be one of the pilot countries implementing the strategy on Reducing Emissions from Deforestation and Forest Degradation (REDD), the Ministry of the Environment, Housing and Territorial Development (MAVDT) and its Climate Change Mitigation Group have designed a proposal which includes both sub-national implementation and individual projects for the carbon market.

However, the process for the design of the national policies and positions, as well as the implementation of REDD, has so far been closed to Colombian civil society, with no participation by those who hold the rights to the territories in question (ie the Indigenous Peoples and afro-descendants) or other relevant social and community actors such as the social movements and organizations or NGOs (with the exception of a few large international conservation NGOs.)

IDEAM, which is in charge of monitoring and follow-up of the supply and demand of forest resources, and of establishing the areas where REDD projects may be developed, listed some of the names of the organizations active in the process in a presentation on the REDD framework for Colombia: Fundación Natura, Minambiente, WWF, The Nature Conservancy (TNC), Asocars, USAID, and Fundación Ecovera (IDEAM, 2009). None of these entities represent the communities and/or peoples that will be affected by the implementation of REDD in Colombia.

The Climate Change Mitigation Group has also mentioned a National Roundtable on REDD created by civil society, but there is no detailed information about its creation or composition. Neither the Indigenous Peoples' Organizations nor the NGOs that are following REDD know the particulars of this roundtable. In fact, many of the social actors, peoples and communities in Colombia are not even aware of this process and its implications, since they have not been invited to the meetings where Colombia's policies and positions have been defined. However, a number of governmental institutions and research institutes have been included.

It is also worth highlighting that none of the available documents reviewed for this report, nor the responses to information requested from official sources, contained any mention of the role or

<sup>12</sup> UN, UNITED NATIONS, July 28, 2009, online at: <http://www.un.org/spanish/News/fullstorynews.asp?newsID=16142&criteria1=Colombia&criteria2=indigenas>

<sup>13</sup> <http://www.forestcarbonpartnership.org/fcp/node/63>



relationship of women with forests, let alone any stipulation regarding their participation in the design or implementation of REDD. In this regard, no progress is noted in the recognition of the rights and specific needs of women in the REDD strategy in Colombia.

According to official sources, the current state of play on REDD in Colombia is that, “the implementation methodology has not been articulated yet and is pending the outcomes of the COP-15 negotiations; nonetheless there is an alternative methodology on the voluntary market prepared by BioCarbon Fund (2008) which is entitled “Methodology for Estimating Reductions of GHG emissions from Mosaic Deforestation” RED-NM-001/ version 0.”<sup>14</sup>

With the purpose of furthering the methodological aspects of REDD, an official pilot carbon sequestration project (San Nicolás) has already been recognized by the environment ministry. This project has been described as “testing a new financing system, which combines sustainable forest management with the possibilities offered to the forest sector by the Clean Development Mechanism of the Kyoto Protocol (CDM) and with the participation of the international investors.”<sup>15</sup>

There is also another pilot project in Colombia in the biological corridor formed between the National “Cueva de los Guacharos” Park and the National Puracé Park (Huila and Cauca Provinces). This project is supported by the French Global Environment Fund (FFEM), and technical assistance is provided by ONF International.<sup>16</sup> But this project is not identified by the corresponding entity in MAVDT. **The existence of pilot projects outside the official framework points to the potential parallel implementation of REDD.**

**Furthermore, carbon traders or individuals, on their own initiative or representing organizations (NGOs), are already canvassing Colombian territories with forests and offering the inhabitants (Indigenous, Afro-descendants and small farmers) contracts to ‘sell oxygen’ on the international market.**<sup>17</sup> This situation illustrates the sort of threats that REDD could pose, especially to the land rights and sovereignty of the legitimate owners and inhabitants of the territories.

These ‘carbon cowboys’ are offering projects in exchange for the signing of contracts that hand over the right to make decisions about the territory and the corresponding heritage and resources, and/or negotiating on behalf of the communities with a view to managing the funds derived from any carbon trading ventures. In fact the situation is already so acute that the environment ministry has issued a series of communiqués to the population to warn them of possible scams and how they may be victimized by signing such contracts (see Annex 1).

## Conclusions

The implementation of the REDD process is clearly guided by a market approach and market values, without due regard for the guarantees already provided in relation to the protection of the environment.

The design and implementation of the REDD strategy in Colombia is also completely divorced from the Convention on Biological Diversity. The relevant Ministry considers that the technical document on the Expanded Program of Work on Forest Biological Diversity does not relate to the process of defining the REDD mechanism.

In addition, Colombia has not recognized the UN Declaration on the Rights of Indigenous Peoples, nor are other relevant instruments like Convention 169 of the ILO duly implemented. The situation with respect to the violations of Indigenous Peoples’ rights in Colombia is grave. Given this panorama, the conditions for respecting Indigenous Peoples’ and other people’s rights with respect to implementing REDD simply does not exist.

<sup>14</sup> Climate Change Mitigation Group (GMCC), Ministry of Environment, Housing and Territorial Development, August 2009, Communication by e-mail

<sup>15</sup> [http://www.empa.ch/plugin/template/empa/\\*32764/---/l=2](http://www.empa.ch/plugin/template/empa/*32764/---/l=2)

<sup>16</sup> Planet Action online: <http://www.planet-action.org/web/85-project-detail.php?projectID=829>

<sup>17</sup> <http://www.redd-monitor.org/2009/09/28/colombian-government-warned-a-year-ago-against-oxygen-buyers/>



Overall, there are many concerns about the impacts and possible consequences of implementing REDD in the Indigenous Peoples' territories, including those identified by organizations involved in the design of the REDD strategy. These include leakage or the transfer of deforestation from REDD conserved areas to other regions, a lack of full and effective participation by different stakeholders in the design and implementation of REDD processes at the local level, and the violation of local communities' fundamental rights. The current situation in Colombia indicates that these concerns or threats are very real: at the moment key sectors are excluded, the forest legislation is weak and the violation of rights in the country remains at extremely worrying levels, particularly in relation to Indigenous People, Afro-descendants and peasants.

## Recommendations

In conclusion, the Colombian government needs to:

- Recognize and reaffirm the role of Indigenous Peoples in Colombia as 'environmental authorities' within the context of the National Environmental System (SINA), thus guaranteeing the effective participation of Indigenous Peoples in the country's national environmental policy.
- Generate spaces and instruments to allow the full and effective participation of social sectors, Indigenous Peoples' Organizations and Afro-descendants in the processes designated for the design and implementation of REDD policies in the country.
- Demand that Colombia's positions on REDD are published, to facilitate analysis by these sectors.

## ANNEX

*Official Public Notification of the Ministry of the Environment, Housing and Territorial Development, Republic of Colombia*  
(UNOFFICIAL TRANSLATION)

### How Can Oxygen Be Bought?

The Ministry has received a significant number of complaints and questions about a supposed NGO that says it buys oxygen from the owners of land with forests. In the first place, it raises suspicions that persons who purport to be specialists in climate change and forestry issues do not use the correct terminology since the sale of oxygen does NOT EXIST.

What does exist is the possibility to do REFORESTATION projects in the framework of the Clean Development Mechanism (CDM) of the Kyoto Protocol. These projects can be done by any person, community or entity that has eligible areas and takes the necessary steps WITHOUT the need of intermediaries or NGOs. This is reforestation for CO<sup>2</sup> CAPTURE, which is measured and turned into Certificates of Emissions Reductions (CERs) which are exchanged on the international carbon market. The Ministry of the Environment, Housing and Territorial Development has an Office on Climate Change with specialized personnel to give advice on these kinds of projects and to help persons to verify if the offers that are made are real or if they are potential scams. We urge those who are interested to use this service.

As for the areas with natural forests, please be advised that unfortunately international mechanisms that provide incentives for conservation or avoided deforestation still DO NOT EXIST. Colombia is taking the lead in the international negotiations so that in the near future this kind of project is accepted and there is a payment for avoided deforestation; but the negotiations are ongoing and there are still no methodological guides nor parameters that allow for the creation of a market with the characteristics that these supposed oxygen sellers are promoting.





## REDD in Costa Rica

*An independent monitoring report by COECO-CEIBA/Friends of the Earth-Costa Rica*

### Costa Rica's forests

Costa Rica has a vast diversity of forest ecosystems defined by characteristics such as climate, topography and geographic location. According to the Holdridge classification system,<sup>18</sup> which is based on factors like temperature, precipitation and humidity, the country has 12 life zones and 12 in transition.<sup>19</sup>

According to this classification system, the five largest forests are:

- Very Humid Tropical – 539,531 ha (10.5% of national territory)
- Very Humid Pre-montane – 372,742 ha (7.2%)
- Wet Lower Montane – 301,974 ha (5.9%)
- Wet Pre-montane – 289,400 ha (5.6%)
- Tropical Moist – 283,213 ha (5.5%)

These forests are home to 5% of the world's biodiversity, including 10,000 species of plants and trees, more than 1,200 orchid species, more than 35,000 insect species, 160 amphibian species, 220 reptile species, 850 bird species and 205 mammal species. The marine and coastal ecosystems are also crucial for the country and include wetlands, mangroves and coral reefs. There are eleven Ramsar wetland sites of international importance (listed under the Ramsar Convention on Wetlands).<sup>20</sup>

The principal forest tracts are found in Indigenous Territories. The country has a total of 24 territories covering a total of 334,447 ha (6.5% of the national territory). Of that total, 131,559 ha (39.3%) are in the hands of non-indigenous entities, and regeneration on these lands has been minimal. Other forested lands belong to the state, and are under the management of the Institute of Agrarian Development (IDA). Additionally, there are forests managed by small farming communities, often on land with rugged terrain and with water sources used by neighboring communities. No information is available about the forest cover in these areas.

There are different types of ownership of private properties with forest cover (forests, tree plantations and trees outside of forests): they include owners with legitimate property rights, duly registered in the Public Property Registry, who are permitted to request permission to cut the trees, and to initiate reforestation projects and receive payment under Costa Rica's Payment for Environmental Services (PES) scheme.<sup>21</sup> But they also include those who do not have tenure and therefore have no comparable rights. This is the case for many small farmers.

### Changing forest cover

In its R-PIN, submitted to the World Bank's Forest Carbon Partnership Programme, Costa Rica describes itself as having a positive net deforestation rate. In other words, there is more forest recovery than deforestation (although it does also observe that "the age of these new forests and their carbon capture rate have yet to be studied" and that "there are indications of forest degradation processes in the country, which could affect the existence of carbon but there is still little information and it is not possible to provide reliable estimates").<sup>22</sup>

<sup>18</sup> See <http://www.epa.gov/wed/pages/publications/abstracts/archived/lugo.htm> for more information.

<sup>19</sup> According to Quesada Ruperto, Los bosques de Costa Rica, ponencia para el IX Congreso de Ciencias de Costa Rica, 24 y 25 de agosto del 2007, Costa Rica has 12 life zones and another 12 in transition.

<sup>20</sup> Informe Nacional sobre el sistema de áreas silvestres protegidas, San José, Costa Rica, 2003.

<sup>21</sup> Lo bueno, lo malo y lo feo del PSA en Costa Rica, mimeografiado, Javier Baltodano, which can be found at [www.coecoceiba.org](http://www.coecoceiba.org).

<sup>22</sup> Costa Rica's R-PIN, Technical Advisory Panel review and grant agreement can be found here: [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Nov2009/Costa\\_Rica\\_FCPF\\_R-PP\\_Formulation\\_Grant\\_Agreement.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Nov2009/Costa_Rica_FCPF_R-PP_Formulation_Grant_Agreement.pdf)



But this masks a complex situation in which deforestation is still occurring and still having significant environmental and social impacts. The causes are and have been diverse, and include public policies that promote exports, an absence of control mechanisms, and the impoverishment of rural communities. Various studies also indicate that the main causes of deforestation in areas of recovering secondary forest relate to changing land use to make way for monocultures (especially pineapple and African oil palm) and tourism, which entails the construction of deluxe leisure facilities causing fragmentation of the forest and severe erosion. Additionally, in some areas aggressive cycles of deforestation and recovery prevent the forest maturing. Importantly, some critical zones of primary forest connectivity face deforestation and significant alteration.<sup>23</sup>

In general, forest cover in Costa Rica has been influenced by economic policies adopted over the last five decades. These have been based almost exclusively on increases in agriculture and livestock farming, driven by an export-oriented model that promotes large-scale agriculture with fewer owners and hired seasonal workers, and investments of transnational capital. This has undermined the food sovereignty of the country and changed the distribution of land tenure. It has also contributed to environmental damage because of the huge quantity of agrochemicals used on the country's soils with the well-known consequences of pollution of surface and subterranean waters.

Similarly, the interests of investors have threatened the forests of both of Costa Rica's coasts, where concessions are granted and land is 'sold' without legitimate documents. (Legally speaking, the land in coastal areas cannot be bought and sold, but comparable commercial transactions, often with no legitimate documents, do still take place, for purposes of tourism for example.<sup>24</sup>) Furthermore, certain regulations and plans for the coast are not elaborated in accordance with proper procedures.

There is a severe lack of information about the technical aspects of management plans for both logging of natural forests and plantations. There have been few studies and those that have been conducted have been short term and on too small a scale. As a result there is a marked lack of information about the dynamics of tropical forest ecosystems and the forest species being exploited in Costa Rica. This leads to the continuation of high impact logging in certain areas.

A 2006 study elaborated by the University of Alberta (Canada) and the Instituto Tecnológico de Costa Rica (ITCR) with funding from the Fondo Nacional de Financiamiento Forestal (Fonafifo),<sup>25</sup> shows that in 2005 forests covered 48% of the country (excluding mangroves, plains and forest plantations). However, the study also highlights the fact that regenerating areas of forest "are very vulnerable to being deforested again"; and that, of the areas covered with forests, only 43% (1,050,015 ha) are under some kind of protection, while 57% (1,381,147 ha) are unprotected. Costa Rica's Payment for Environmental Services (PES) system has been used to fund a significant part of this (although the scheme itself is not without its drawbacks, see below): "outside of protected areas, a total of 451,500 ha, have been under conservation with Payment for Environmental Services (PSA) from 1997 to 2005; this amounts to 18% of the national forest cover in 2005."<sup>26</sup>

### Costa Rica's forest policies

The development of Costa Rican environmental legislation has made great strides in the last decade. Specifically, one of the common denominators of this evolution has been the establishment of limits on property rights and free enterprise. Yet these improvements have also occurred at a time when there is a marked general tendency to deregulate and simplify procedures, open markets to foreign trade and investment, negotiate free trade agreements and actively seek investment. All of this makes for a confusing, complicated and contradictory context: on one hand there has been a tendency towards adopting environmental laws that restrict economic activities, while at the same time there has been and continues to be a push to deregulate and facilitate business and investment.

<sup>23</sup> State of the Nation 2007, Costa Rica, <http://www.estadonacion.or.cr/Info2007/Paginas/indice.htm>

<sup>24</sup> Tenencia y ocupación de la tierra en zona marítimo terrestre, Capítulo de armonía con la naturaleza, por Mirian Miranda, Estado Nación, 2007, <http://www.estadonacion.or.cr/Info2007/Ponencias/Armonia/Informe-ZMT.pdf>

<sup>25</sup> <http://www.sirefor.go.cr/coberturaforestal.html>

<sup>26</sup> Bosques Cobertura y Uso Forestal, Capítulo de Armonía con la Naturaleza, por Javier Baltodano, Estado de la Nación 2007, <http://estadonacion.or.cr/Info2007/Ponencias/Armonia/Bosque-recursos-forestales.pdf>



The Biodiversity Act (No 7788), for example, which is one of the most important of these laws, was passed specifically to implement the CBD in Costa Rica, and a vast diversity of social sectors participated in its drafting. This legislation stipulates, *inter alia*, that biodiversity and the knowledge that it sustains may not be expropriated by private entities and intellectual property mechanisms such as patents. It also stipulates that those who develop new products based on biodiversity must guarantee that they do so respecting, from the outset, the public institutions and the rights of local communities that have conserved that biodiversity, since the law recognizes the right of autonomous peoples to object to the use of biodiversity for cultural reasons.

However, the United States stipulated that before the US-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) could enter into force for Costa Rica, the Biodiversity Act would have to be modified to eliminate the provision that blocked the use of intellectual property for inventions derived from knowledge associated with traditional biological practices. The Costa Rican government accepted this condition and a group of organizations and persons under the umbrella of the Biodiversity Coordination Network have subsequently taken legal action against this decision.<sup>27</sup>

There were numerous forestry laws and regulations in place before the adoption of the Convention on Biological Diversity (CBD). These included several relevant intergovernmental instruments including agreements on or relating to avoiding the sale of endangered wild flora and fauna; the Ramsar Convention; and the International Labor Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples, as well as the UN Framework Convention on Climate Change, which was signed on the same day as the CBD. Costa Rica has also adopted a law for the creation of a National Commission of Indigenous Issues and a National Parks Service, the Indigenous Law, the Law for the Conservation of Wildlife, and a Mining Code.

The following laws are also noteworthy: The Hydrocarbons Act; the Regulation of the Rational Use of Energy Act; the Environment Act (which has provisions on pollution, organic ecological agriculture and environmental impact assessments); the Forestry Act; the Soil Use, Management and Conservation Act; and the Biodiversity Act passed in 1998.

In Costa Rica, many forests are also protected by the System of Protected Wild Areas (ASP), and are either located in Indigenous Territories or privately owned. Under the ASP system, there are a total of 160 protected areas under eight distinct management categories. The total surface area of the continental and marine protected areas is 1,340,079 ha (22.74% of the national territory).

### **Costa Rica's use of market-based mechanisms**

REDD does not yet formally exist in Costa Rica, although it is said that the country's Payment for Environmental Services (PES) scheme is a predecessor to REDD which justifies the latter's introduction and the right to solicit funds for it. Costa Rica's government developed PES, a system of financial incentives for conservation, under the auspices of Fondo Nacional de Financiamiento Forestal (FONAFIFO), which rewards the owners and holders of forests and forest plantations for the environmental services they provide. PES is partly funded through a national fuel tax levied by Act 8114 on Fiscal Simplification and Efficiency.

However, while the use of funds from a fossil fuel consumption tax to help fund PES is a factor that has impacted positively on forest conservation, it is arguably not the only cause of recovery. There are many other factors, including the abandonment of specific industrial activities.

There are also other funding sources, such as the Certificates for Environmental Services (CSA) system, which gets funding from companies and institutions that benefit from environmental services and pay the owners of the forests for conserving those services. Potential investors and partners are assessed, from the National Power & Light Company through to companies like Holcim, and the amount invested is dependent on the amount of acres they wish to protect, the minimum being one acre. The company then deposits the money and receives a certificate.<sup>28</sup> CSA is also financed by the

<sup>27</sup> This legal action and the related web page are being prepared, but more information about them can be obtained from Isaac Rojas, of COECOCEIBA, at [Isaac@coecoceiba.org](mailto:Isaac@coecoceiba.org)

<sup>28</sup> For more information go to: [www.fonafifo.com](http://www.fonafifo.com)



business sector, institutions and other governments, for forest protection and reforestation. The mechanism consists of signing a financial agreement to pay for the environmental services provided by a specific area, thereby complementing the funds from the FONAFIFO programs. Currently, contracts have been signed with private national hydroelectric dams, the Government of Norway, the Global Environmental Facility and KFW (a German Bank).

According to Forestry Act No 7575, Costa Rica recognizes environmental services, including the mitigation of greenhouse gases; the protection of water for urban, rural or hydroelectric use; the protection of biodiversity for its conservation and sustainable, scientific and pharmaceutical use, research and genetic improvement; the protection of ecosystems and life forms; natural scenic beauty for tourism; and for scientific purposes.

Between 1997 and 2006, 671,278 hectares were remunerated for environmental services through the PES scheme. Of this, 89% of the funds were for forest protection, 6% for reforestation, and 5% for forest management.

However, one key concern is that the PES program combines recognition of the environmental services provided by ecosystems and funding for logging<sup>29</sup> under the banner of Sustainable Forest Management. It is noteworthy that reforestation is also called 'PES' which gives the impression that the aim is to finance monoculture plantations and not forests. In addition, PES fails to include forest restoration as a way to guarantee long-lasting high-quality environmental services. But, without doubt, the greatest problem for the system and for FONAFIFO at the moment is securing consistent and good quality resources.

A further obstacle is that participants opting for this incentive scheme need to be able to prove they hold the title to the lands in question. This makes it difficult for small land owners like small farmer communities or communal landholders to receive payment,<sup>30</sup> even though the environmental services that their lands provide may in some cases be superior to these services provided by titled land. In general, the areas with most land use change and illegal lumber extraction are precisely those areas where the land is not titled (which, of course, makes it impossible to use them legally). Much of this land is also found in priority areas including biological corridors, protected areas and strategic watersheds.

There is also the possibility of sequestering CO<sub>2</sub> through afforestation/reforestation projects under the Kyoto Protocol's Clean Development Mechanism (CDM). Eight CDM projects are currently being developed, and are expected to run for 20 years with the expectation that their contracts will subsequently be renewed. However, there are problems, since the CDM's inclusion of afforestation/reforestation is causing the accelerated expansion of monoculture tree plantations, which pose grave threats to the environment, including the loss of biodiversity, the concentration of land in the hands of a few, and corporate control of production. COECOCEIBA has opposed such projects.

### **Responses to the CBD's Enhanced Programme of Work on Forest Biological Diversity**

Costa Rica ratified the Convention on Biological Diversity (CDB) in 1992, by passing Act No 7416 on 28 July 1994. This ratification was consolidated by the passage of the Biodiversity Act No 7788 in 1998, and the subsequent adoption of the Rules on Access to Biochemical and Genetic Elements. Together, they constitute one of the world's most advanced and complete legal frameworks on this issue.

However, this has not completely stemmed the threats to forests posed by economic activities such as large-scale tourism, which also concentrates land in the hands of the few. The Forest Contingency Plan has allowed the big logging companies to use the mercantilist concept of incentives, as embodied in the PES system, to establish monoculture plantations and actually intensify the exploitation of lumber from forests and other agro-ecosystems according to profit- and market-oriented criteria.

<sup>29</sup> "Por qué no pagar servicios ambientales a monocultivos forestales", Lobo, Jorge, en *Ambientico* 123, 2003

<sup>30</sup> This applies to those living on redistributed 'unused' lands and land under the authority of the Costa Rican Atlantic Port Authority (JAPDEVA).



In fact, PES has contributed to the establishment of extensive plantations, including for the production of lumber to make pallets for exporting pineapple. Pallet production is creating increasing demand for lumber, meaning that Costa Rica does not have enough lumber for other uses. In 2006, the Ministry of the Environment warned that the country “was running out of wood” and that soon it would be necessary to import it.<sup>31</sup>

There are a variety of opinions about the social impacts of forest resource use. On one hand, organizations linked to the productive sector have analyzed the statistics provided by business and concluded that logging has had a positive impact on the country in terms of aggregate value, trade balance and the creation of rural jobs.<sup>32</sup> Others have pointed out that Costa Rica’s forestry policies have favored big business, and that industry and business have reaped the lion’s share of the profits.<sup>33</sup> Furthermore, it has been documented that it is precisely in the areas where the lumber is produced that poverty is worse and most widespread.

Many communities complain that “logging companies just build bad roads, damage bridges and pay low wages.” The main cause of this is the model of extraction: wood is cut in rural areas by logging companies that, until recently, paid less than 13% of the total value of the wood contained in standing trees, which means that the greatest percentage of the profits goes to the companies (as much as 33%) and the middleman (as much as 55%).<sup>34</sup> Furthermore, logging and poorly planned logging roads and paths through the forests and farmland make communities more vulnerable to natural disasters. In fact, there is a corollary between intensive logging in highland watersheds and flooding in the lowlands.

Another threat to biodiversity is the extinction of species caused by excessive logging. Costa Rica has already passed laws prohibiting the cutting of 18 species of precious wood trees now in danger of extinction,<sup>35</sup> but a recent study on the state of conservation of plants in the country concludes that 53 species of plants are in danger, 30 of which are highly endangered.<sup>36</sup> All 30 are tree species that have been logged unsustainably. Another study based on a compilation of previous studies published by different national and international institutions and experts, which focuses on the gravity of the threat to plants, shows that Costa Rica has 300 species of trees that are threatened to some extent.<sup>37</sup>

The reality is that the forest policies implemented to date have not been successful in ensuring sustainable wood production or protecting Costa Rica’s vast biological wealth; nor in generating or distributing economic wealth fairly in the lumber-producing areas. At that the same time, the accelerated expansion of monocultures to grow pineapple, banana, agro-fuels and wood has caused severe environmental damage including the loss of biodiversity, the concentration of land in the hands of a few and corporate control of production.

One of the greatest current threats is the entry into force of the free trade agreement between the United States and Central America and the Dominican Republic (DR-CAFTA), which promotes a model of development that is highly destructive of the environment and overrides other international agreements such as the Kyoto Protocol, the Convention on Biological Diversity and the Cartagena Protocol. DR-CAFTA also overrides Costa Rica’s environmental legislation, and the legal framework that regulates and controls the exploitation of natural resources including the Biodiversity Act, the Mining Code, the Hydrocarbon Act, and the Water Act.<sup>38</sup>

Furthermore, DR-CAFTA puts pressure on and displaces community practices and the artisanal use of natural resources, including community forest management, which is usually practiced on a small scale to supply local markets. Free trade agreements are also closely linked to the expansion of

<sup>31</sup> Madera, bosque y comunidades, Javier Baltodano, COECOCEIBA-AT. San José, Costa Rica 2006.

<sup>32</sup> La madera de Costa Rica y su impacto socioeconómico. Barrantes Alfonso, 2005, Editorial Milenio Comunicación Integral, 2005.22pp. San José.

<sup>33</sup> COECOCEIBA-AT, op cit, 2003

<sup>34</sup> El bosque, la Madera y la gente. Propuesta esologista para producir Madera respetando el bosque y las comunidades, COECOCEIBA-AT, 2003

<sup>35</sup> State of the Nation 2007, Costa Rica, <http://www.estadonacion.or.cr/Info2007/Paginas/indice.htm>

<sup>36</sup> Evaluación y categorización del estado de conservación de plantas en Costa Rica. Rodríguez Alexander, Estrada Armando, Sánchez Joaquín. 2006. INBio, Museo Nacional de Costa Rica. San José.

<sup>37</sup> La amenaza de extinción en Costa Rica: listado de especies de flora que han sido catalogadas bajo algún grado de amenaza de extinción. COECOCEIBA-AT, 2003b. San José: Neovisión, 38p.

<sup>38</sup> De cómo tratan de matar la vida, COECOCEIBA, 2006 at [www.coecoceiba.org](http://www.coecoceiba.org)





monocultures. In Costa Rica, monocultures include *melina* and teak tree, banana, oil palm, soy and pineapple plantations.<sup>39</sup> Monocultures such as these take over the most fertile agricultural land, cause chronic pollution of waterways and harm the natural biodiversity of forests and agro-ecological systems.

Currently in Costa Rica, the Enhanced Program of Work on Forest Biological Diversity has not been implemented nor adequately monitored, as there is no institutional coordination in the environmental sector; nor is it integrated into national plans and strategies. Furthermore, no coordination exists with grassroots or indigenous peasant organizations and these communities and groups - along with the majority of environmental organizations - remain completely unaware of this program.

### **Protecting Indigenous rights and national initiatives for implementing UNDRIP**

Costa Rica has ratified Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples (Convention 169). It also has an 'indigenous law' from the 1970's, and is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These standards become policy and the State, therefore, has an obligation to comply with all the corresponding provisions. But, in reality, it does not, as the following examples show:

- The Indigenous territories are demarcated and established by executive decrees but they do not totally belong to the Indigenous Peoples. For example, 90% of the territory of the Ngobe Bugle People of Alto San Antonio is owned by non-indigenous persons and in Abrojo Montezuma, the Indigenous inhabitants are not guaranteed access to drinking water since the faucet is on a farm owned by a non-indigenous person. In Alto Laguna, a non-indigenous person claims to own 300 hectares in the midst of the forest and similar situations are found in 21 other territories.
- Indigenous Peoples have the right to self-govern their territories based on their traditional authorities, but under the Indigenous law, the State created an authority called the Association of Integral Development (ADI) that has caused internal conflicts in all the Indigenous territories. The State also created the National Commission on Indigenous Issues (CONAI) to represent Indigenous Peoples to the State. But neither CONAI nor ADI constitute traditional means of governance for Indigenous Peoples: rather, they have been imposed. Furthermore, CONAI was run by a Belgian national for many years.
- Governmental institutions (ministries, regional agencies, etc) manage the natural resources found in Indigenous territories, contrary to Indigenous Peoples' established right to autonomy; for example they gave permission to use the water that is produced in Indigenous territories to other communities without the local Indigenous Peoples' consent.
- According to Article 6 of ILO Convention 169, Indigenous Peoples have the right to be consulted on any project or policy that affects them as a People or as a territory. However, Indigenous Peoples were never consulted on the Free Trade Agreement with the United States and Central America and the Dominican Republic (DR-CAFTA) despite the multiple ways in which it impacts on their lives and livelihoods (in fact, in the plebiscite on DR-CAFTA, all the Indigenous territories voted against it.) Recently, and without any consultation process, the government also issued a decree that legalizes the privatization and patenting of traditional knowledge. Legal action has been taken to declare this decree unconstitutional since it threatens traditional medicine and the very culture of Indigenous Peoples.<sup>40</sup> There have also been attempts to impose infrastructure projects such as large dams in Indigenous territories, although these have not prospered thanks to the resistance of the Peoples.
- The right to a law that guarantees Indigenous rights, which was drafted by the Peoples themselves, has yet to be respected. The first proposal was drafted sixteen years ago, and three years ago the latest version, which is the most thoroughly consulted bill in the history of

<sup>39</sup> Liberalización Comercial y Bosques. Baltodano, J; Rojas, I. 2007. COECOCEIBA-ATCR. Programa de Bosques. San José, Costa Rica.

<sup>40</sup> For more information contact Isaac Rojas, Coecoceiba, at [Isaac@coecoceiba.org](mailto:Isaac@coecoceiba.org)



the country, was produced by Indigenous Peoples themselves. This bill guarantees fundamental rights including the right to autonomy, Indigenous education systems, protection of traditional medicine and self-government. However, this bill has not been adopted by the Legislative Assembly.

In conclusion, Articles 1, 3, 4, 5, 8, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 32, 34 of UNDRIPs are violated. These violations have been duly documented,<sup>41</sup> and there is no indication that the REDD policies will protect Indigenous Peoples. On the contrary, they may very well result in more violations.

### **Costa Rica and REDD: policies and implementation**

Costa Rica was one of the first countries to launch the idea of negotiating what is now known as REDD. The government's stance is based on the belief that market mechanisms can solve any problem including those of the environment, deforestation and forest conservation. Official representatives have consistently taken the position, through successive governments and at many international forums, that all funds gathered to stop deforestation and conserve forests should be channelled through the market. This position is based partly on the mercantilist vision of neoliberal governments, but also on Costa Rica's previous experience of Payment for Environmental Services (PES).

But as described above, PES has had both positive and negative impacts, and its development in Costa Rica is relevant for other countries considering implementing REDD policies. For example, some aspects of PES can inspire public policies to foster land management, channel funds to impoverished rural areas, and subsidize agroforestry and the production of wood. On the other hand it also has aspects that have a strong commercial character, and there has been continued pressure to use market mechanisms from institutions like the World Bank. Also, PES is an expensive system, taking up 30% of the budget of the Ministry of the Environment; it has provided a subsidy to logging companies; and there seems to be no planning or criteria for prioritising where resources should be invested.

In a similar way, Costa Rica's position on REDD has been market-based, focusing on the financial aspects of the issue and ignoring other important aspects that should be considered.

The government has now started developing its strategy for implementing a REDD program in Costa Rica. To achieve this goal, Costa Rica has been participating in the World Bank's Forest Carbon Partnership Facility (FCPF), which is currently focusing on implementing pilot projects and providing countries with financial and technical support to prepare and train entities to benefit from a future system of positive incentives from REDD. The national organization in charge of leading this process is the FONAFIFO (Fondo Nacional de Financiamiento Forestal – National Fund for Forestry Financing).

In Costa Rica, it is important to highlight that FONAFIFO has been responsible for implementing Costa Rica's Payment for Environmental Services (PES) program for more than ten years and that most of its projects focus on avoided deforestation, as REDD is likely to do. Currently the PES program includes 554,200 hectares of protected forest. However, even though some Indigenous Territories have received millions of Costa Rican colones through PES, little progress has been made towards ensuring Indigenous ownership of Indigenous Territories, because most of those territories are in the hands of non-indigenous peoples and PES funds tend to be channelled to ADI. In summary, PES has led to conflicts in Indigenous territories and provoked divisions.

According to FONAFIFO,<sup>42</sup> in Costa Rica REDD will include the following initiatives: a strategy to control illegal logging (ECTI), forestry inventories, forest cover studies, the PES program, ecosystem services markets and the National Strategy on Climate Change which is based on the 'Carbon Neutral' concept. Some of these elements and concepts have been used previously and others are new. Some, like the strategy on climate change, are a series of incoherent initiatives, which serve the purpose of

<sup>41</sup> For more information and documents on this theme contact Isaac Rojas, Coecoceiba, at [Isaac@coecoceiba.org](mailto:Isaac@coecoceiba.org)

<sup>42</sup> REDD strategy for Costa Rica: the conservation, management and recovery of forests for the consolidation of more than 10 years to mitigate the impacts of environmental, social and economic systems to climate change. FONAFIFO, 2009.



promoting private business ventures under the auspices of market-based mechanisms like carbon neutrality, which are not only false solutions but scams.<sup>43</sup>

Upon joining the FCPF, Costa Rica will receive a donation of \$200,000 to elaborate its REDD strategy, and prepare an 'R-Plan' which is the fundamental prerequisite for accessing a donation of \$3.4 million. Several institutions and organizations were invited to work on this but so far none have shown any interest in the undertaking and the design of the REDD strategy has not moved forward.<sup>44</sup>

According to the proposal of the FONAFIFO, the content of the R-Plan, when developed, should include the following components:

- Preparation and consultation, to establish a national system for coordinating and promoting REDD as well as fundraising.
- Design of a REDD strategy, and framework for its implementation.
- Establishment of a national baseline.
- Design of a national monitoring system.

The objective is that Costa Rica presents its R-Plan for approval by the FCPF in March 2010. The idea is to develop a methodology that includes a broad consultation process that would also serve as a methodology for the 'national' REDD program. This process would effectively be the only way that Costa Rica's inhabitants could be involved in a national consultation relating to the Climate Change Convention. As previously explained, however, this process has yet to move forward.

The R-Plan process purports to be "very participatory." Accordingly to officials of FONAFIFO, "REDD is a countrywide initiative which offers all the actors an opportunity to contribute to its development and implementation and thus to guarantee that it is meaningful, inclusive, carefully planned and coordinated." However, when small farmer groups, Indigenous Peoples and environmentalists have inquired about how their participation was going to be financed and how to ensure that they have time to prepare proposals and organize discussions in their respective communities. FONAFIFO said there were no funds available for that purpose which is indicative of the kind of "participatory" process FONAFIFO is planning.

Based on the documents read and activities attended by COECOCEIBA-AT staff, it is foreseeable that the Costa Rican REDD strategy will be based on the carbon market and PES methodology that has been developed by Costa Rica. Some of the studies on methodology - which reach such heights of complexity that they seem almost esoteric - aspire to show that the recuperation of forest cover, and a consequent increase in carbon stocks in Costa Rica, is thanks to the PES Program. However, other studies show that this recuperation is actually a consequence of the diminishing international meat market and the move to abandon vast cattle ranches.<sup>45</sup>

## Conclusions

The REDD proposal for Costa Rica is based on the PES experience in the country. Although PES has supported the conservation and recuperation of 10% of the national territory, it has also favored monocultures and selective logging rather than forest protection. In particular, PES for plantations has become an indirect subsidy for exporters that need cheap lumber for making pallets for export crops such as pineapples. Other drivers are often responsible for the increase in beneficial forest cover, including direct public policies, the efforts of the ecological movement (both peasant and Indigenous), and the abandonment of commercial enterprises. Unfortunately, even when such recovery occurs, it is outside the biologically important areas mentioned above.

It is also noteworthy that PES has not respected Indigenous Peoples' rights. Furthermore, the implementation of the CBD, that should in theory contribute to the protection of the collective rights of

<sup>43</sup> Guía para entender el cambio climático, sus consecuencias y propuestas para sobrevivir; COECOCEIBA-AT San José, Costa Rica, 2009, [www.coecoceiba.org](http://www.coecoceiba.org)

<sup>44</sup> This was confirmed through personal correspondence via email, by the Coordinator of the Resource Management Area, Alexandra Faerron of FONAFIFO.

<sup>45</sup> Liberalización comercial y bosques, Baltodano, Javier, COECOCEIBA-AT, mimeografiado, 2007



Indigenous Peoples and the protection of traditional knowledge of Indigenous Peoples and local communities, is ineffective. The government has favored a series of policies that facilitate the privatization of this knowledge and its patenting. The public policies favor the interests of transnational corporations rather than grander goals such as the conservation of biodiversity and the protection of the rights of communities.

Costa Rica has played an important role in promoting REDD globally. The government views REDD as an opportunity for obtaining resources. But given Costa Rica's experiences with PES, there is good reason to argue that this model should not be exported to other countries as it will further the expansion of plantations.

Instead, Costa Rica should shift its focus to tasks and actions focused on strengthening public policies based on conservation, the sustainable use of resources and the recovery and bolstering of food sovereignty, providing various resources to rural and indigenous communities, to enable them to play a crucial role in the conservation of forests.

It is also critical that small farmers, Indigenous Peoples and women participate in the discussion about REDD. There need to be serious, open and profound discussions about the very nature of the REDD proposal, involving all who play a crucial role.

There also to be an independent analysis of the government's proposals and enough time to make and discuss that analysis before decisions are made. This necessarily entails funding for the transportation of participants to meetings and workshops that the FONAFIFO convenes, as well as financial support for organizations to hold their own internal workshops to analyze the proposals and elaborate alternatives. The need for this funding should be recognized and accepted based on the rights that these social actors enjoy, which have been recognized in international instruments.

This support would also allow for discussions on a just mechanism for Costa Rica, taking into account the real causes of deforestation and degradation of forests, which could transcend the dominant concept of forests as mere reservoirs of carbon.



*Most of the Financing of PES, is aimed at large timber companies like this in the Northern Zone, which are plantations owned by Melina (Gmelina arborea), with exotic species. Picture by: Mariana Porras. 2006.*



## REDD in Ghana

*An Independent Monitoring Report by Friends of the Earth-Ghana*

### Ghana's Forests

Ghana is richly endowed with forest resources, which are vital for the country's development and future economic prosperity; they contribute to the welfare of most Ghanaians.

The Food and Agriculture Organization's (FAO) Global Forest Resources Assessment of 2005 defines 'forests' as 'Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach these thresholds *in situ*.' It does not include trees that are predominantly under agriculture or urban land use. Using this definition, the FAO reports that Ghana's forest coverage as at 2005 stood at 5,574,000 hectares. This represents 24.2% of Ghana's land. This coverage is down from the 1990 figure of 32.7% of land area, a decline of 35% over a fifteen-year period.

Part of this forest resource is tropical high forest which is concentrated in the central to southwestern parts of the country, and which over the last century has declined from 8,000,000 hectares to 1,600,000 hectares (Amelia *et al*, 2007). According to the Forestry Commission of Ghana, the rate of deforestation in Ghana stands at 65,000 hectares per annum (Tropenbos, 2005). These estimates all point to a severe deforestation trend.

Yet, the forest and its wildlife resources are of enormous importance to the socio-economic development of the country: it contributes 6% to the country's Gross Domestic Product, and provides direct employment to over 100,000 people and indirect employment to over 2.5 million (FC). 60-70% of Ghana's population also depends upon the forest resources for livelihoods and cultural purposes (Amelia *et al*, 2007) 14 million m<sup>3</sup> of fuelwood also accounts for 75% of Ghana's energy needs (FC). Current export earnings from forests and wildlife are reported to be approximately US\$400 million per annum. Environmental benefits cannot be quantified, but includes the provision of ecological stability, watershed protection, and a reliable source of food, medicinal plants, and building materials.

In addition, there is an alarming trend towards forest degradation in Ghana, and this is principally because of the unsustainable logging of commercial timber, policy failures in the timber sector, burgeoning population in both rural and urban areas, increasing local demand for agricultural and wood products, high demand for wood and forest products on the international market, and limited development in farming systems. Added to this are the activities of giant foreign multinational mining companies, who are using surface mining technologies in the forest zones; some are even operating in the forest reserves. Records indicate that timber production and logging accounts for 70% of the damage caused to the forests by foreign timber companies that operate in Ghana (Green Dove, 2007). Timber products are mostly exported to Europe and the United States of America.

It is worth noting that in order to reverse the over-harvesting of timber and to ensure that harvesting is undertaken at a rate that is sustainable, an official timber allocation procedure has been put in place to be observed by the timber industry; this pegs the Annual Allowable Cut (AAC) of timber at 2.0 million m<sup>3</sup> per annum. However, the reality is that the annual harvests are exceeding the AAC year after year. Weaknesses in the enforcement of the forest sector's rules, coupled with a lack of assertiveness on the part of the forest regulating institutions are the main reasons for non-compliance and accelerating deforestation.

### Ghana's forest policies

Ghana's current forest policy is the Forestry and Wildlife Policy of 1994. Until 1994, forestry policy was driven by the need for commercial timber production mainly for export. The aim set out in the Policy, however, is the "conservation and sustainable development of the nation's forests and wildlife resources for maintenance of environmental quality and perpetual flow of optimum benefits to all segments of society." The specific objectives of the policy are:





- Management and enhancement of Ghana's permanent estate of forests and wildlife resources;
- Promotion of viable and effective forest based industries, particularly in secondary and tertiary processing;
- Promotion of public awareness and involvement of rural people in forest and wildlife conservation so as to maintain life-sustaining systems, preserve scenic areas, and enhance the potential of recreation;
- Promotion of research-based and technology-led forestry and wildlife management, utilization and development, to ensure resource sustainability, socio-economic growth and environmental sustainability;
- Development of effective capability at national, regional and district levels for effective forest and wildlife management.

The implementation of the policy is to be carried out through a number of strategies including restoration of degraded forest estate; regulation of uncontrolled harvesting, protection of forest reserves and wildlife protected areas; encouragement of local community initiatives to protect natural resources for traditional, domestic and economic purposes; encouragement of value-added processes in the timber sector to maximize income and related benefits; increasing public awareness and people's involvement in the conservation of forests and wildlife; public participation through the development of consultative participatory mechanisms to enhance farmers' land and tree tenure rights; and ensuring access to traditional use of natural products.

An analysis of the policy reveals a number of challenges impeding the achievement of those aims, however, and cites fair access to forest resources, fair benefit sharing, corporate exploitation, and greater participation in forest policy-making and management as major governance challenges (Poku *et al*). This has a direct bearing on the government's ability to enforce the laws that restrict industry's access to resources, develop rules that will facilitate greater communal access to timber and non-timber forest products, and to enforce the revenue sharing schemes set out in the Constitution of Ghana. Furthermore, stakeholders have pointed out that there is a disconnect between official policy and legislation, citing collaborative forest management as an important component of the 1994 Policy, which has still not been captured in legislation (Tropenbos, 2005).

Regarding the Convention on Biodiversity (CBD), though Ghana is a signatory to the Convention, a national CBD Forest Programme of Work does not exist as such. What does currently exist is Ghana's 2002 National Biodiversity Strategy (NBS). According to the Ministry of Environment and Science (the national focal point for the Convention), this Strategy misses out on a number of the CBD's programs of work including that on forest biological diversity. In order to bring the country's strategy up to the current requirements of the Convention, and to include the CBD Expanded Programme of Work on Forest Biodiversity, the NBS is currently undergoing a review.

However, the existing NBS does state that Ghana's policy relating to the conservation of biodiversity and the sustainable utilization of biological resources are guided by the three objectives of the CBD Convention, namely:

- the conservation of biological diversity
- the sustainable utilization of biological resources; and
- fair and adequate sharing of the benefits arising from the use of genetic resources.

### **Ghana and Indigenous Peoples' rights**

Ghana is a signatory to UNDRIP<sup>46</sup>. Protection of the rights and access of local communities to their resources, such as forests, already exist in Ghana, although is scattered throughout a number of time-tested traditional systems of authority and sectoral policies. Some of these form the basis of the common law of the country.

In the forestry sector, benefit sharing for natural forest timber revenue exists, including royalties, and social responsibility agreements (SRAs), which give forest communities a financial stake in

<sup>46</sup> [http://www.pantribalconfederacy.com/confederacy/pdf/UNDRIP\\_vote.pdf](http://www.pantribalconfederacy.com/confederacy/pdf/UNDRIP_vote.pdf)



commercial timber operations. Timber permit holders are required to negotiate social responsibility agreements with local communities. However, as has been noted already, fair access to resources, fair benefit sharing from corporate exploitation, greater participation in policy-making processes, and enforcing the laws are the main governance challenges in practice (Amelia *et al*, 2007). There have also been conflicts between communities over royalties.

'There have already been significant clashes between communities on one hand and the Forestry Commission and the police on the other hand. Communities have also clashed with logging companies. There have been eruptions between rival forest communities over entitlements of royalties.' (Amelia *et al*, 2007)

'Although, equitable benefit sharing in the forest sector [is] seen globally to be one factor that could contribute to sustainable forest management practices, and policy frameworks have been proposed and implemented in many parts of the world, some of the mechanisms seem not be working in Ghana, payment of royalties and social responsibility agreements (SRA) - the main incentive frameworks between resource extractors, Forestry Commission and forest fringe communities - were evaluated and found not to be accomplishing the policy objectives.' (Green Dove, 2007)

### Proposed REDD policies and processes in Ghana

What had been started in Ghana as REDD (Reduced Emissions from Deforestation), has now changed to 'REDD+', which refers to Reduced Emissions from Deforestation and forest Degradation with biodiversity conservation and carbon stocks components (Nketia *et al*, 2009). REDD+ operates on the basis that about 20% of global greenhouse gas (GHG) emissions are generated by deforestation and forest degradation, including bush burning. REDD+ essentially seeks to assist developing countries like Ghana to reduce their deforestation and forest degradation by paying them for verified reductions (Nketia *et al*, 2009).

The development of REDD+ is ongoing; just now it is in its early stages.<sup>47</sup> The process involves:

- 1) The submission of a REDD+ Readiness Plan Idea Note (R-PIN) to the World Bank, expressing Ghana's interest in participating in the Bank's REDD+ initiative, which was completed by the Forestry Commission. Approval was received July 2008.
- 2) The development of a REDD+ Readiness Preparation Proposal (R-PP). This was developed through a number of stakeholder meetings and consultations, and aims to assist Ghana to prepare itself for reducing emissions from deforestation and forest degradation, and become ready for implementation of an international mechanism for REDD. This process was facilitated by a consultancy consortium composed of Winrock International, Climate Focus and the IDL Group. The draft has been reviewed by working groups of the National REDD+ Steering Committee, and will be finalized after the upcoming COP-15 before submission to the World Bank, possibly in early 2010.<sup>48</sup> On approval of the R-PP, the country shall be granted an amount of US\$ 3.4 million to implement the REDD+ R-PP expected to span a period of 2-3 three years (Nketia *et al*, 2009).
- 3) Upon successful completion, Ghana will move on to the final stage, which is the actual implementation of REDD+ in Ghana.

<sup>47</sup> Documents submitted to the World Bank can be found here: <http://www.forestcarbonpartnership.org/fcp/node/68>

<sup>48</sup> However, a draft has already been submitted to the World Bank and is publicly available.



According to the Forestry Commission, the R-PP elaboration was conducted in stages, consisting of information sharing; initial consultation; expert consultation; and validation, all of which took place in 2009 under the direction of the National REDD Steering Committee (NRSC). Working Groups such as the Strategic Working Group, Technical Working Group, Consultation Working Group, and a consultant team to the Forestry Commission were set up and acted as contributors to the process. The composition of the working groups spans government, development partners and NGOs. Over 200 individuals were engaged in these phases.

### **Initial REDD+ Candidate Strategies**

According to the R-PP draft, REDD+ strategies are in two thematic areas, comprising:

- 1) Forest sector policy, legislation and governance. The strategy will focus on traditional forest and timber sector operations, process, policies and laws, and on the potential for broadening public participation in the sector and its management. Already the National Forest Policy and Wildlife Bill and the Forest Sector Master Plan are under review. Under this strategy, attention is given to the functioning of the timber industry, and increasing efficiency and value addition; tree tenure security, to give incentives to off-reserve farmers to conserve and plant trees; and land and carbon rights.
- 2) Agroforestry carbon conservation activities. According to the R-PP, much of deforestation relates to agriculture or agroforestry conversions. The strategy will target the cocoa production sector, other agro forestry, agriculture and farm practices for REDD+.

### **Concerns about the participation of NGOs**

FOE-Ghana's monitoring activities indicate that although the REDD+ process should involve the broad participation of the NGO community, especially since there is a large NGO community in the country, but this appears not to have been the case. This is in view of the fact that the consultations appeared to have focused mainly on forest sector NGOs, to the disadvantage of other NGOs working in relevant crosscutting sectors such as development, human rights, and land and water management. In this manner, critical issues of a crosscutting nature pertaining to development, environment and forests could be overlooked by the process, raising the concern that the REDD+ regime in Ghana will not address the real concerns of the majority of the people. It is worthy to note that climate change is both an environmental and development issue, demanding the involvement and participation of all.

In addition, information sharing about the outcomes of the various consultation workshops held by the Forestry Commission has hardly extended beyond the conference participants. Due to the highly technical nature of the REDD+ discussions, media sensitization of the public would have gone a long way to promote public awareness, understanding, interest and participation, and to let the REDD+ development issue touch down with the majority of Ghanaians. Because of this lack of information dissemination, however, the majority of communities and NGOs in Ghana lack knowledge about the REDD+ process and its status.

### **Funding for REDD+ and Speculations**

According to Ghana's Forestry Commission (FC) it is not yet known whether REDD+ in Ghana will be based on a carbon market mechanism or not; the full answer depends on the outcome of the funding architecture for REDD established in the upcoming UNFCCC COP-15 in December 2009. The FC explained that there are two options for REDD+ funding, carbon credit or through public funds, hinting that the country is considering going for a mixture of these.

The official view in Ghana is that REDD+ is a new opportunity for receiving financial support for the struggle against deforestation and forest degradation. REDD+ is therefore an add-on to on-going initiatives to address deforestation and forest degradation, namely the Ghana-EU Voluntary Partnership Agreement (VPA) under the Forest Law Enforcement, Governance and Trade (FLEGT) Initiative; the five-year forestry sector reform program that commenced in 2008 and is being funded through a multi-donor sector budget support arrangement; and the various plantation development programs. REDD+ is also seen as providing the brightest chance for bringing in new external finances



to the forestry sector to address deforestation and forest degradation, and it is believed that this can be achieved if the country supports REDD+ under carbon market conditions.

FOE-Ghana's consultation among NGOs and forest fringe community people, however, indicates that the majority of them are opposed to a carbon-market based REDD+ mechanism in Ghana. Key concerns are that:

- benefit-sharing in the forest sector in Ghana has never been fair to the forest communities and local people, and they fear that the situation might be the same under a REDD+ market-based regime;
- local people living in off-reserve zones already face high tree tenure insecurity, raising an enormous challenge for the fair and equitable sharing of REDD+ benefits;
- there is a general lack of enforcement of policies and regulations in the natural resources sector in Ghana, culminating in governance challenges;
- a REDD+ market-based mechanism could challenge the normal forest use and practices of the local people impacting negatively on them and their livelihoods, including by taking away local people's right of access to land and forest resources such as food, medicine and water, which are fundamental to their existence and dignity of life;
- REDD+ under markets could also lead to the abuse of human rights in forest communities - similar to that currently experienced by mining communities - by the 'new' owners of their forests, who are likely to be foreign investors looking for profits rather than a reduction in deforestation rates.

The NGOs and community stakeholders are also of the opinion that REDD+ will shift greenhouse gas mitigation efforts from developed countries to developing countries like Ghana, and that this will constitute climate change injustice. Instead of carbon trading under REDD+, they call for a global fund to pay developing countries to undertake sustainable land, water and forest management.

## Conclusions

In the wake of Ghana's participation in the World Bank's Forest Carbon Partnership Facility (FCPF), forest sector policy, legislation and governance, and agroforestry carbon conservation have all been identified as initial REDD+ candidate strategies, all in the name of carbon stock enhancement. Accordingly, new legislation on carbon rights will be formulated to create the enabling environment to implement the R-PP in Ghana between 2010 and 2013. As we write this report, the laws on forestry and also Ghana's Biodiversity Strategy are being reviewed and a new Wildlife Bill is being drafted.

It is noteworthy, however, that focusing on forest carbon and carbon rights has never been part of the country's sector policies or legislation, be it in the forestry, biodiversity or agriculture sectors. The current attempt to put in place new legislation focused on carbon rights is a way of forcing carbon trading into our national laws and giving legal backing to carbon market trading in Ghana. The REDD+ strategy of bringing about carbon rights legislation is not coherent with Ghana's policy on forests, biodiversity and agriculture.

Legislation to ensure the rights of people to their own natural resources is not a bad idea; the major threat here is the element of carbon rights. This will change the forest management landscape by putting a premium on forest carbon in Ghana compared with all the other important roles that forests play. The areas of interest to those implementing REDD+ strategies are in dire need of funds; thus, under the guise of carbon rights legislation and climate change, the relevant institutions will now design, implement and prioritize carbon enhancement programs to attract those financial flows, rather than focusing on restoration and sustainable natural resources management for the enhancement of livelihoods and the transformation of our society. Just as, in the past, forest sector policies were driven by the need for timber production, due to the revenue that the timber sector brings to government, with the consequence that the timber sector accounted for 70% of forest degradation in the country, as reported elsewhere in this report.



## Recommendations

In Ghana, the local people and communities already live in poverty-stricken conditions. This makes them vulnerable to accepting and adopting new sectoral programs and packages to earn income. Thus incentives to promote and reward carbon rights are likely to push traditional forest and agricultural management practices which used to protect forest and its biodiversity to the background, replacing it with 'carbon businesses' in forestry and agriculture. Communities will be encouraged to cut down their local species and replace them with monoculture trees ascertained to have a higher carbon value. Forest communities have already been reporting that natural forests in forest reserves are being replaced with monoculture trees, and this practice might become widespread under REDD+, with new legislation supporting carbon rights.

Forests play a key role in biodiversity conservation, and forest biodiversity contributes to the health of forests. However in Ghana, there is currently a lack of data on the status of biodiversity. In the absence of such data, it will also be difficult to do any meaningful monitoring and evaluation of whether REDD+ is having any positive impacts on the forest and biodiversity.

The R-PP formulation stage is not participatory enough. Therefore, during the next stages of designing the REDD+ Candidate Strategies, there is a need to ensure the engagement of *all* stakeholders including NGOs and the private sector<sup>49 50 51 52 53 54 55 56 57</sup>.



*Strengthening Voices for Better Choice's Ghana assessment Report.*  
Photo: Emilia et al, April 2007, Ghana.

<sup>49</sup> Amelia et al (2007). 'Strengthening Voices for Better Choices' Ghana Assessment Report, Amelia et al, April 2007.

<sup>50</sup> Draft Readiness Preparation Proposal Ghana Submitted to Forest Carbon Partnership Facility. September 2009.

<sup>51</sup> FC. Robert Bamfo, Forestry Commission of Ghana, Head of Climate Change Unit

<sup>52</sup> FOE-Ghana Consultation and Meetings with Forestry Commission, Forest fringe community and forest stakeholders in Ghana.

<sup>53</sup> Green Dove, 2007. Green Dove, No 39 October, 2007 a Publication of Green Earth Organisation "The State of Our Forests: Present and Future."

<sup>54</sup> Green Dove, 2009. Green Dove, No 42 April 2009 a Publication of Green Earth Organisation "Who Controls the Timber Money?"

<sup>55</sup> National Biodiversity Strategy for Ghana, Ministry of Environment and Science, 2002.

<sup>56</sup> Nketia et al (2009). K.S Nketia, Paul Osei Tutu, Alex Asare: The Forest Dialogue-TFD, Implementing REDD+ in Ghana: Contextualization and Some Challenges. A background Paper for REDD+ Readiness Field Dialogue in Ghana, November, 2009.

<sup>57</sup> Tropenbos (2005). Reconciling Policy Reforms with Forest Legislation; Tropenbos International-Ghana, 2005.





## REDD in India

### *An Independent Monitoring Report by Equations*

India covers 2.5% of the world's geographical area and is home to 1.8% of the world's forests. India also supports 17% of the world's human population and 18% of its livestock population. The Indian forests are home to around 100 million people and provide sustenance to them.

India is rich in flora and fauna with more than 45,500 flowering plants and 91,000 animal species found in 16 major forest types. India's forests meet nearly 40% of the country's energy needs and 30% of its fodder needs.<sup>58</sup>

According to the State of Forest Report 2005 published by the Forest Survey of India<sup>59</sup>, the recorded forest area in the country is 769,626 km<sup>2</sup> (or 23.41% of the country's geographic area). Of this, 419,028 km<sup>2</sup> is Reserved Forest (54.4% of the total forest area), 216,605 km<sup>2</sup> is Protected Forest (28.14%) and 133,993 km<sup>2</sup> is Unclassed Forest (17.4%).

Reserved Forest is an area notified under the provisions of either the India Forest Act (1927) or the State Forest Acts, and has full protection. In a Reserved Forest all activities are prohibited unless they have been explicitly permitted. Protected Forest is also notified under the provisions of the same Acts, but the degree of protection is more limited: in Protected Forests all activities are permitted unless prohibited.

Unclassed Forest is an area recorded as forest but not included in any other forest category. Unclassed forests are actually outside the control and management of the forest departments and primarily belong to communities and individuals.

According to the Ministry of Environment and Forests, in 1999, around 31 million ha of Indian forests were degraded.

The total forest cover of the country as per the 2005 assessment is 677,088 km<sup>2</sup> and this constitutes 20.6% of the geographic area of the country.<sup>60</sup> Of this, 54,569 km<sup>2</sup> (1.66%) is very dense forest, 332,647 km<sup>2</sup> (10.12%) is moderately dense forest, and 289,872 km<sup>2</sup> (8.82%) is open forest cover. Madhya Pradesh with 76,013 km<sup>2</sup> has the maximum area under forest cover, followed by Arunachal Pradesh (67,777 km<sup>2</sup>) and Chhattisgarh (55,863 km<sup>2</sup>). In terms of the actual proportion of a state under forest cover, Mizoram has the maximum percentage (88.63%). It is followed by Nagaland (82.75%), and Arunachal Pradesh (80.93%).

### **Precursors to forest governance in India**

Prior to the advent of the East India Company and the subsequent establishment of the British Colony in India, there was no formal forest policy. Various princely states had different approaches to managing the forestry resources available in their areas.

British rule, though, brought with it 'scientific' forest management, with a narrow agenda focused on sustained commercial timber production. This favored a few commercially valuable species to the exclusion of all else, thereby providing regular profits to the colonial empire. However, this management practice, spurred by the economic interests of the age, was based largely on conjecture and blindly copied European production-based forestry models.

The basic colonial approach was to declare forests as state property and curtail the rights of the forest dwellers to areas with commercially valuable species. Clear-felling of vast tracts of forest was the favored method of 'forest operations', followed by complete closure to grazing and other human activities, such as the collection of firewood, fodder, medicinal plants, bamboo, etc. The Forest

<sup>58</sup> India's Fourth National Report to the Convention on Biological Diversity, Ministry of Environment and Forests, Government of India, 2009

<sup>59</sup> State of Forest Report 2005, Ministry of Environment and Forests, India, 2005, [http://www.fsi.nic.in/sfr\\_2005.htm](http://www.fsi.nic.in/sfr_2005.htm)

<sup>60</sup> *ibid*



Department (FD) was created in 1864 to oversee these operations. This assertion of state monopoly right and the exclusion of forest communities, a process by which the British gradually appropriated forest resources for revenue generation, thus shaped the organizing principles of forest administration in modern India.

Towards the end of the 19<sup>th</sup> century, almost 80% of the forests was owned by communities and private individuals. Today, state ownership has increased to more than 80% of the recorded forest area.

### Indian forest policies and their implications

The objective of the first Indian Forest Policy in the colonial period (adopted in 1894) was to manage state forests for the public benefit. It viewed forests as potential sources for generating profits, although it did stress the need to preserve forests in hilly regions and to treat income generation as a secondary priority if local needs conflicted with their management of forests as revenue-earning properties.

This policy marked a significant shift in consolidating the state's property rights regime over forests. The forest communities were not only denied their traditional rights and privileges but were given no role in preserving and managing India's forests. It marked the beginning of the process of marginalization of these people.

The Permanent Settlement of 1757 and the 1894 forest policy resulted in rebellions and revolts of the forest and Indigenous tribal communities that started in 1784 and continued until the first quarter of the 20<sup>th</sup> century. They were primarily directed against the new land and forest policies of the British. But the British crushed them ruthlessly, bringing fresh areas under their control and formulating new legislation to legitimize the transfer of property rights from the community/individual to the state. The Forests Acts of 1878 and 1927 and the forest policy of 1894 facilitated the strengthening of this new order.



*Degraded open forest in the tribal heartland of Chhattisgarh in central India. Photo: Souparna Lahiri*

#### Chronology of forest policies and legislation in India

##### British Colonial Period

- The Indian Forest Act, 1865
- The Indian Forest Act, 1878 (modified)
- The Indian Forest Policy, 1894
- The Indian Forest Act, 1927 (amended and modified)

##### Independent India

- National Forest Policy, 1952
- Wild Life Protection Act, 1972
- National Commission on Agriculture, 1976
- Forest Conservation Act, 1980
- National Forest Policy, 1988
- Joint Forest Management Circular, 1990
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006



Following independence, India's Forest Policy Resolution of 1952 and the 1976 National Commission on Agriculture (NCA) report also stressed the importance of production forestry and achieving self-sufficiency in the supply of wood products from the nation's forests. The 1952 policy also called for the protection of wildlife and the preservation of fauna by demarcating forests for sanctuaries and national parks.

The 1988 Forest Policy, however, departed from these economic priorities by treating forests first and foremost as an ecological necessity; then as a source of goods for use by the local populations, with particular emphasis on Non Timber Forest Produce (NTFP); and finally as a source of wood and other products for industry. It also set a target of increasing forest cover to 33% of India's land area. Additionally, it advocated that this area be increased to two-thirds in the hills to prevent erosion and land degradation and to ensure the stability of these fragile ecosystems.

The NCA recommendations flowed directly from the increasing threats to existing forests. They recognized the protective and aesthetic functions of forests, regulation of grazing and shifting cultivation, and the domestic needs of the people for various forest products, such as fuel wood and fodder.<sup>61</sup> Thus, the NCA advocated a social forestry model involving industrial plantations on degraded forests lands and non-forest lands to meet the growing domestic demand for forest products and the fuel wood and fodder of local communities. Social forestry was seen as a way to reduce pressure on natural forests and the dependence of forest communities on those forests.

The basic objectives of the 1988 Forest Policy were:

- Maintaining environmental stability through preservation and restoration of the ecological balance.
- Conserving the country's natural heritage by preserving its remaining natural forests.
- Checking soil erosion and denudation in water catchment areas.
- Checking the proliferation of sand dunes.
- Increasing forest/tree cover through afforestation and social forestry programs on denuded, degraded and unproductive lands.
- Meeting the requirements of rural and tribal populations for fuel wood, fodder, minor forest produce and small timber.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilization of forest produce and maximizing substitution of wood.
- Creating a massive people's movement, with the involvement of women, to achieve these objectives and minimize pressure on existing forests.

The 1988 policy also paved the way for the implementation of Joint Forest Management (JFM). The program was promoted by a Government of India circular to all states and union territories giving guidelines for the "involvement of village communities and voluntary agencies in the regeneration of degraded forests." This document, for the first time, specified the rights local communities have over forest lands, giving the protectors usufructs such as grasses, NTFPs, and a portion of the proceeds (ranging from 20-100%) from the sale of trees when they mature.

### **Forest legislation, conservation and forest-dependent communities' rights**

The first Colonial Forest Act was drafted in 1865, primarily for the colonial government to declare forests as state property, and carry out 'scientific forestry' to gradually replace existing mixed forests with monocultures of commercially valuable species. That 1865 Act was modified in 1878, as the colonial establishment found that people's rights were interfering with the clear felling of commercially valuable forests. The provisions were found to be too friendly to the traditional rights of forest people and not stringent enough in curtailing them. This was the reason underlying the division of forests into Reserved Forests (RF), Protected Forests (PF) and Village Forests (VF). The 1878 Act enabled the government to severely curtail traditional rights (called concessions in the Act) in the first two categories, on the basis that the Village Forests would meet the basic needs of village communities.

<sup>61</sup> Report of the National Commission on Agriculture: Forestry, Volume IX, New Delhi, Ministry of Agriculture and Irrigation, Government of India, 1976



The Indian Forest Act of 1927,<sup>62</sup> the legislative foundation of the forest sector in independent India, was derived from that Colonial 1878 Act. Since independence, several states have enacted their own legislation, while others have amended the Act to suit local needs. Critically, the Act gave state governments the power to divert forest land for other uses. Although the 1952 policy criticized this clause, it did not change the law, leading to millions of hectares of forest land being diverted between 1951 and 1980. During this time period, 4.3 million ha of forests were lost.<sup>63</sup> The 1927 Forest Act does not support people's participation in forest protection and management, and it does not promote social forestry either.

The **Wildlife (Protection) Act 1972 (WLPA)**<sup>64</sup> is also relevant to the rights of forest-dependent communities, even though it differs significantly from the Forest Act in that it gives primacy to conservation over exploitation. The objectives of WLPA have been used to justify curtailing the legitimate daily survival activities of forest-dependent people in wildlife habitats, evicting them forcibly and without proper resettlement, and centralizing the management of these habitats in the hands of a callous and unresponsive bureaucracy. It created the two major types of protected areas we see today: National Parks (NPs) and Wildlife Sanctuaries (WLS). Its blanket ban on all human activities, except tourism, is causing considerable suffering among the thousands of local people, who have been deprived access to the forests they depend on for their sustenance and survival, leading to conflicts between them and the Protected Areas (PA) authorities, together with a sharp decline in public support for conservation. To further complicate matters, however, WLPA has not been effective in fending off the pressure of commercial and industrial interests. In effect, the Wildlife Protection Act (WLPA) of 1972 criminalized forest people and took away their traditional Non-Timber Forest Products and fishing rights in protected forests, while poaching continued unabated.

There are 96 National Parks and 509 Wildlife Sanctuaries, covering 15.7 million ha, which is about 4.78% of the geographical area of the country. About 20% of India's forests fall within the Protected Areas network.

The **Forest Conservation Act (FCA) of 1980**<sup>65</sup> was the first legislative attempt to slow deforestation by controlling government behavior. It limited the power of state governments to de-reserve Reserved Forests or divert forest lands for non-forest purposes without the permission of the central government. The Act also required state governments wanting to divert forest land for non-forest uses to identify an area of non-forest land of at least equal size for compensatory afforestation. In addition, a charge was levied. The Ministry of Environment and Forests (MoEF) was created in 1984, to monitor state compliance with the provisions of the legislation.

This legislation has also caused and continues to cause immense deprivation and suffering to millions of forest people across the country. Villages are routinely denied basic amenities like roads and water supply pipelines. Forest and Taungya (forest workers') villages are denied schools and health centers as well. Yet large parts of protected NPs and WLS still get de-notified regularly for destructive activities like mining, quarrying and building of large dams.

The threat of eviction had loomed large over the forest people of this country ever since the promulgation of the 1972 WLPA and the 1980 FCA. The Supreme Court of India passed several interim orders to clear encroachment of forest lands. The November 2001 MoEF order acts as the basis of the most draconian government orders of recent times. This order directs state governments and union territories to summarily evict all encroachers from forest land. Because the Court and MoEF define all land under the Forest Departments as 'forest land', irrespective of the actual use of those lands, the government order can be (and is being) used to evict even traditional settlements in forest areas. As a result, the Forest Conservation Act of 1980 has rendered more than 20 million forest people as encroachers, even though it has not stopped the massive deforestation and diversion of forests resources to industry.

<sup>62</sup> available at <http://moef.nic.in/index.php>

<sup>63</sup> India's Forests, Forest Research Institute, Government of India, Dehradun, 1984

<sup>64</sup> available at <http://moef.nic.in/index.php>

<sup>65</sup> available at <http://moef.nic.in/index.php>



A **Joint Forest Management (JFM) circular** recommending 'involvement of village communities and voluntary agencies in the regeneration of degraded forest lands' was issued on 1 June 1990, by the MoEF. It was merely a government order with no force of the law behind it, but most states have passed resolutions to introduce JFM and comply with the order because they were also faced with threats of curtailment of centrally-sponsored schemes. JFM has had some impacts in situations where state control had already completely eroded traditions of community forest management. However, in areas where traditional forest management practices still exist (like the north-eastern states, Madhya Pradesh, Chattisgarh, Jharkhand, Orissa and Uttaranchal), JFM is undermining and commercializing traditional systems and bringing community-protected forests under the control of the forest department.

JFM was essentially imposed on the forest dwellers without appropriate consultation at any stage of its planning and implementation. It has also led to the marginalization and displacement of tribals and the violation of their customary and traditional rights: the defining feature of its implementation has been its policy of evicting 'forest encroachers', which has led to many forest dwellers losing their lands and access to forest resources. There were 56 JFM project-related police firings in Madhya Pradesh during the five-year JFM period under the World Bank Forestry Project, some of which resulted in the death of tribals.<sup>66</sup> In 1997, for example, two tribal villagers were killed by the armed forces in Mandla and Dahinala when they tried to defend their crops.

The Public Hearing on Forest Rights held in Harda district of Madhya Pradesh in 2001, whose panel comprised eminent academics Dr Nandini Sundar and Madhu Sarin and journalist Rakesh Diwan, highlighted the manipulative and threatening tactics employed by the forest department to extract money, food and *begar* (a form of bonded labor, where tribal women are obliged to cook, clean and wash for the village forest officers). These, among many other documented grievances, led organizations like the Adivasi Mukti Sangathan (Sendhwa), Shramik Adivasi Sangathan, Jana Sangharsh Morcha and Bharat Jan Andolan to develop large-scale opposition to JFM and the Forestry project.

As a reaction to this opposition, the World Bank established a Joint Review Mission in 1999 to evaluate the claims made by the Mass Tribal Organisations (MTOs). The Mission, formed by representatives of the World Bank, the Madhya Pradesh (MP) Forest Department and the MP Mass Tribal Organisations, investigated the impact JFM had had on Adivasi communities in the state through field visits and interviews. Throughout the process, consensus between the three participant groups was reached for every statement made for the report. The report found that amongst other negative elements of the project<sup>67</sup>:

- There was little to no participation of forest-dependent communities in the planning, implementation or evaluation of the JFM project;
- The customary rights of forest dwellers were denied; and
- The livelihoods of the forest dwellers had been threatened by the project.

On the eve of the publication of the report, the Madhya Pradesh Forest Department pulled out, in an effort to de-legitimize the whole process. The Bank then followed suit, abandoning the Joint Mission. The Mass Tribal Organisations in Madhya Pradesh published the report unilaterally in May 1999, and have since been awaiting the promised formal response to the report from the Bank. The mass demonstrations held both locally at Forest Department offices in 1999 and in New Delhi at the World Bank's offices in 1999 and 2000 to obtain this response have been to no avail.

### The Forest Rights Act

The Forest Rights Act (2006), however, marked a real watershed in the history of forest communities' struggle in India. For the first time, the Government of India through the **Scheduled Tribes and the Other Traditional Forest Dwellers (Recognition of Forest Rights), Act (2006)** admitted that "forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State

<sup>66</sup> Village Forest Protection Committees in Madhya Pradesh: an update and critical evaluation, Emily Caruso, Anurag Modi, Forest Peoples Programme, 2004

<sup>67</sup> a summary of the Joint Mission's findings can be found in the document cited above in footnote 9.





Forests during the colonial period as well as in independent India resulting in historical injustice to the Scheduled Tribes and other traditional forest dwellers who are integral to the very survival sustainability of the forest ecosystem.”<sup>68</sup>

After a prolonged struggle in the wake of forest communities being evicted as encroachers as per the WLPA 1972 and FCA 1980, and heated debate in the Indian Parliament, this Act was passed to recognize and vest the forest rights and occupation of forest land in forest-dwelling scheduled tribes and other traditional forest dwellers, who have been residing in such forests for generations but whose rights could not be recorded.

The significant provisions of the 2006 Forest Rights Act are that it provides:

- Tenurial security and access rights to forest dwellers.
- The right to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood.
- The right of ownership access to collect, use and dispose of minor forest produce that has been traditionally collected within or outside village boundaries.
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing and other traditional resources accessed by nomadic or pastoralist communities.
- Rights of settlement and the conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests (whether recorded, notified, or not) into revenue villages.
- The right to protect, regenerate, conserve or manage any community forest resource that they have been traditionally protecting or conserving for sustainable use.
- The right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

This Act empowers the Gram Sabha<sup>69</sup> (the traditional village assembly) to play the pivotal role in ensuring the rights of forest dwellers, decision-making, planning and management. The functioning of the Gram Sabha is vested with the village-level Forest Rights Committee (FRC).

According to the Act, forest rights recognized in critical wildlife habitats in National Parks and Wildlife Sanctuaries are violated unless it is clearly established that co-existence is not possible and there is no other alternative. The free and informed consent of the Gram Sabha will also be necessary in relation to any resettlement and other consequences.

The forest rights to land under actual occupation will be restricted to an area not exceeding four hectares, and is heritable, and inalienable. Such rights shall be registered jointly in the name of both the spouses in case of married persons and in the name of a single person in case of a household headed by a single person, and in the absence of a direct heir, the right shall pass on to the next-of-kin.

The Act overrides any other forest act in terms of implementation and interpretation. The Forest Rights Act is a step in the right direction not only in passing age-old rights back to the forest communities, but also for protecting, conserving and ensuring the sustainable use of the forests and its ecosystem. However, even though it was passed in December 2006, implementation has so far been very poor, primarily due to covert opposition from the Forest Department which does not want to share its absolute power with the forest communities and still regards itself as the biggest landlord in the country. Officials of the Forest Department together with the wildlife lobby have been creating umpteen obstacles to this Act from the very first day. This is the reason why the FD still recognizes the Joint Forest Management Committees – the FPCs in their official documents and reports, instead of Forest Rights Committees as per the Forest Rights Act 2006.

<sup>68</sup> Available at <http://tribal.gov.in>

<sup>69</sup> Gram Sabha is a traditional village council/assembly, where the council is constituted of every adult villager with equal voting rights including women.



## Rights of Indigenous People and UN Declaration on Rights of Indigenous Peoples

The working definition of Indigenous communities and peoples arrived at by the UN Secretariat of the Permanent Forum on Indigenous Issues reads:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

“This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- a) Occupation of ancestral lands, or at least of part of them;
- b) Common ancestry with the original occupants of these lands;
- c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
- d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- e) Residence on certain parts of the country, or in certain regions of the world;
- f) Other relevant factors.”<sup>70</sup>

However, the Government of India and its administrative authorities do not recognize or use the term Indigenous. Instead, the Indigenous and/or tribal communities in India are recognized through provisions of Article 366 and 342 of the Indian Constitution under a special category referred to as “scheduled tribes”. This defines them as “such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes.”

The criteria used to specify a community as a scheduled tribe include indications of primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness. These criteria are not spelt out in the Constitution itself but have become well established in practice. They subsume the definitions contained in the 1931 Census, the reports of the first Backward Classes Commission 1955 and the Advisory Committee on Revision of SC/ST lists (Lokur Committee),

The total population of Scheduled Tribes was 84,326,240 according to the Census in 2001, which accounts for 8.2% of the total population of country.

However, within civil society groups in India, tribal groups, experts and academics, the categorization of certain tribal communities as scheduled tribes is controversial. The grouping of ‘scheduled tribes’ does not include all the tribal communities in India and the criteria used for scheduling is not without debate. In the north eastern part of the country the terms ‘tribal’ and ‘indigenous communities’ are mostly used, whereas in the rest of the country such communities are referred to as ‘Adivasis’.

<sup>70</sup> The Concept of Indigenous Peoples, background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issue, New York, 2004



### India and the definition of Indigenous Peoples

In United Nations negotiations over the years, India has consistently refused to recognize the tribal communities as Indigenous Peoples, even though India voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly of September 2007. In relation to UNDRIP, Indian Representative Ajai Malhotra said his country had consistently favored the promotion and protection of Indigenous Peoples' rights: the fact that the working group had been unable to reach consensus was only reflective of the extreme complexity of the issues involved. While the Declaration did not define what constituted Indigenous Peoples, the issue of Indigenous rights effectively pertains to peoples in independent countries who were regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belonged to at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retained some or all of their socio-economic, cultural and political institutions.

The Indian government's position on this contentious issue is further clarified by the statement of the then Chief Justice of Supreme Court, Y K Sabharwal while speaking in the International Law Association Conference (2006) in Toronto:

"Firstly, it is argued that it is not easy to identify indigenous peoples in India. For there have been continuous waves of movement of populations with different language, race, culture, religion going back centuries and millennia. Tribal communities have been a part of this historical process. In the circumstances the question arises as to how far back in history should one go to determine the identity of "indigenous peoples"? Whatever the nature of determination it is likely to be extremely arbitrary and controversial. Secondly, tribal and non-tribal peoples have lived in India in close proximity for over centuries leading to, as one author puts it 'much acculturation and even assimilation into the larger Hindu Society.' Thirdly, in the case of India some tribes are no longer tribes but have become, as the eminent sociologist Andre Beteile puts it, 'castes or something else'. Fourthly, tribal peoples in many cases may have settled in India long after some non-tribal peoples in other parts of India. Finally, attention has been drawn to the serious national sovereignty issues involved revolving around question of "self-determination" and ownership of lands."

Justice Sabharwal further said, "It may not be fair to say that the claim of some countries like that of India are not correct. India is indicted, unjustifiably though, at times on the ground that it is resisting to accept the existence of indigenous peoples in its society. When one looks at it from the standpoint of a person other than Indian, it may appear that India's stand is not correct. But one who is familiar with the Indian scenario may agree with the Indian perception. India has a history of cultural assimilation even while we agree to some communities maintain their distinct identity within the nation. India always presented a unity in diversity and diverse cultural identity is no insignia of the existence of indigenous group.

"Indeed, India accepts the existence of different tribes within its larger system again not different from the main culture in terms of the core values. True to its tradition of cultural assimilation and spirit of accommodation the Indian constitution presents the picture of the larger system of permitting the smaller political systems of tribal populations to be part of the system to remain distinct culturally but to be part of the larger system politically with sufficient autonomy wherever necessary and possible. Schedules V and VI of the Constitution of India specifically make provision for safeguarding the interests of the tribal people in India located in what is called tribal areas."

While controversy still exists over the very notion of the scheduling of certain tribal groups, the criteria followed for such selective scheduling, and national sovereignty issues around the question of self-determination and the ownership of lands, are at the crux of India taking a position in complete contrast to the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) within the country.

The majority of tribal groups and communities have long demanded political autonomy over decision-making and governance on issues related to them and in their areas, and recognition of their traditional and customary rights over their ancestral land and habitats. Strong public mobilization, tribal



movements and electoral politics resulted in the enactment of a separate Provisions of the Panchayat<sup>71</sup> (Extension to the Scheduled Areas<sup>72</sup>) Act (PESA) in 1996 which provides:

- Autonomy over customary law, social and religious practices and traditional management practices of community resources.
- A village community to manage its affairs in accordance with traditions and customs.
- A Gram Sabha to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- That the Gram Sabha should *approve* of the plans, programs and projects for social and economic development before they are taken up for implementation by the Panchayat at the village level.
- That the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects.
- For the recommendations of the Gram Sabha or the Panchayats at the appropriate level to be made mandatory prior to the granting of prospecting licenses or mining leases or concessions.

Panchayats at the appropriate level and the Gram Sabha are also specifically endowed with:

- The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.
- The ownership of minor forest produce.
- The power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

While the PESA Act did devolve some powers to the tribal village communities and councils in Scheduled Areas, the same Act does not expressly recognize the *sole* rights of the tribal village council or their traditional self governance institutions: it thus allows the 'Panchayats at appropriate level' to usurp these powers. Also PESA, the Land Acquisition Act, the Rehabilitation & Resettlement Policy, environmental decision-making processes and clearances for development projects in Scheduled Areas do not reflect the spirit of 'free and prior informed consent' as enshrined in UNDRIP. Moreover, provisions of PESA are restricted only to the communities living within Scheduled Areas.

Furthermore, the draft National Tribal Policy only addresses India's Scheduled Tribes: it does not represent other tribal and Indigenous communities or all adivasis in India.

The draft Tribal Policy says that, "There is a very strong symbiotic relationship between the STs and the forests and they have been at the forefront of the conservation regime. Due to faulty processes of declaring forests in the past, the rights of the tribals over their traditional land holdings in the forests have gradually been extinguished. Insecurity of tenure and fear of eviction from these lands has led the tribal communities to feel emotionally as well as physically alienated from forests and forest lands."<sup>73</sup>

Nevertheless, though the draft policy talks of mandatory consultation with the Gram Sabha and the Tribal Advisory Council, it is conspicuously silent on the issue of consent of the communities and the safeguard and protection of ancestral lands and sacred groves of the tribal population.

On the implementation of the PESA, the draft policy states "PESA requires the State Governments to change their existing laws, wherever these are inconsistent with the central legislation. In reality, however, in the decade since its passage, very little has happened. Many State Governments have passed laws or amended existing ones, but not fully in conformity with the Central law. The implementation of the law has been severely hampered by the reluctance of most State Governments to make laws and rules that conform to the spirit of the law. The non-empowerment of tribal

<sup>71</sup> A Panchayat is a constitutionally recognized elected body of self-governance at the lowest tier of the three tier self governance system in India. Panchayats enjoy some form of autonomy as per the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments.

<sup>72</sup> Scheduled Areas are constitutionally recognized scheduled tribes' majority areas with various forms of autonomy and formally categorized as Schedule V and Schedule VI areas.

<sup>73</sup> Available at <http://tribal.gov.in>



communities remains one of the most critical factors responsible for the less than desired outcomes in all the interventions, monetary or otherwise meant for their development.”

## India and the Convention on Biological Diversity

India's Fourth Report on the Convention on Biological Diversity was officially released in June 2009.

In what seems to be a new initiative 'Key Biodiversity Areas (KBAs)' have been established in the Western Ghats. The report states that, "India is committed to contributing towards achieving three objectives of the Convention on Biological Diversity (CBD), the 2010 target and the Strategic Plan. Strategies and plans for conservation and sustainable use of biological resources based on local knowledge systems and practices are ingrained in Indian ethos and are enshrined in the Constitution of India (Article 48A and Article 51 A(g)) in the form of environmental protection. In recent times, the major building blocks of policy frameworks, legislations and action plans that drive the country in achieving all the three objectives of the CBD include, among others, Biological Diversity Act (BDA), 2002, National Wildlife Action Plan (NWAP) (2002-2016), National Environment Policy (NEP) 2006, National Biodiversity Action Plan (NBAP), 2008 and National Action Plan on Climate Change (NAPCC), 2008."<sup>74</sup>

The policies, legislations and action plans cited above, are, however, not without controversies and severe criticisms.

While the Biological Diversity Act (2002) faced severe criticism from the communities and related NGOs, the processes resulting in NEP 2006 and NAPCC 2008 were also accused of being non-participatory and non-transparent. The MoEF also rejected the National Biodiversity State Action Plans developed and formulated by the rural communities, tribal groups and forest people in 2002, and no action was taken to implement the recommended action plans. In addition, the National Agriculture Policy (2000), National Seeds Policy (2002) and National Wildlife Action Plan, also mentioned in the Fourth Report, were drafted and finalized unilaterally without any meaningful and proper consultation with or the participation of stakeholder communities.

The Government of India claims the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), the establishment of the Wildlife Control Bureau, the integration of biological diversity concerns into the Environment Impact Assessment Notification (EIA, 2006), the draft Coastal Management Zone Notification (2008) and the National Tiger Conservation Authority are all measures taken to strengthen implementation mechanisms in policy, legislative and administrative measures targeted at biodiversity conservation and management.

In reality, even after the Indian Parliament passed the Forest Rights Act in 2006 December, it took the Government one full year to notify the Act, primarily due to the opposition of the wildlife lobby, a section of MoEF bureaucrats and the strong Forest Department lobby.

Furthermore, there is nothing to indicate that legitimate biodiversity concerns have been integrated into the EIA Notification 2006. On the other hand, the NGOs, tribal groups and adivasi communities have accused the MoEF of diluting the earlier notification of 1994 to pave an easy way for the project developers to get their projects cleared. These groups have demanded scrapping of the EIA Notification 2006.

The draft Coastal Management Zone Notification is another government folly. This draft was surreptitiously introduced in an attempt to replace the earlier Coastal Zone Regulation Notification, at the behest of the strong real estate, tourism and infrastructure lobby, who want to free India's vast coastline of the fishing and other coastal communities, even though this would deprive them of their livelihood and traditional habitat. Amidst consistent protest from the fishing communities, the Government was forced to let the draft Notification lapse by the end of July 2009.

<sup>74</sup> India's Fourth National Report to the Convention on Biological Diversity, Ministry of Environment and Forests, Government of India, 2009, available at <http://moef.nic.in/index.php>





There is really nothing to indicate that the Indian Government is genuinely keen to protect and conserve its rich forest biodiversity, except the steps and instruments that it has put on paper – which remain on paper only.

Consider the biodiversity rich states of Arunachal Pradesh, Sikkim, Uttarakhand and Himachal. More than 300 mega hydro projects, oil exploration, cement plants, chemical plants and extensive mining activities are proposed in these states, even though Sikkim and Arunachal Pradesh are part of the Indo-Myanmar Biodiversity Hotspot with hundreds and thousands of rare and endangered plant and animal species. Thousands of hectares of pristine forests are diverted for non-forest activities and destroyed, much subsequently replaced by monoculture plantations in the name of afforestation. Similarly, the forests and habitats of tribal communities are cleared and given to global mining and steel giants in the central Indian states of Madhya Pradesh, Chhattisgarh, Orissa and Andhra Pradesh.

## India and REDD

India has championed the concept of 'Compensated Conservation' since negotiations in Nairobi, in 2006 (in particular through a workshop in Cairns,<sup>75</sup> and a Subsidiary Body for Scientific and Technological Advice (SBSTA) meeting in Bonn.<sup>76</sup>



Plantations on forest land along the highway - Chhattisgarh  
Photo - Souparna Lahiri

At the 13<sup>th</sup> meeting of the Conference of the Parties (COP-13) to the UN Framework Convention on Climate Change (UNFCCC) negotiations in Bali, in December 2007, the Indian delegation claimed a breakthrough in putting forth India's concern with forest conservation as central to negotiations on Reducing Emissions from Deforestation and Forest Degradation (REDD). The Indian proposal on forest conservation and the sustainable management of forests, and incremental increases in forest cover, put forward as a policy approach to enhance carbon stocks, found place not only in the preamble but also in the operative part (paragraphs 3 and 7) of the COP's decision on REDD. Similarly, the COP decision on the Bali Action Plan contains references, *inter-alia*, to

policy approaches and positive incentives relating to the role of conservation, the sustainable management of forests and the enhancement of forest carbon stocks.

India's focus on the importance of including the conservation of forests and sustainable forest management, and improvements in forest cover, in REDD received the usual support from Costa Rica, China, Panama, Malaysia, Gabon, Ghana and African countries amongst others. Collectively, they demanded:

- The inclusion of forest degradation, the conservation of forest and/or increase in forest cover in the REDD draft text.
- That REDD projects should be accounted for and conducted at the national and/or sub-national level.

India's two main approaches to REDD are 'compensated reduction' and 'compensated conservation' where it says that carbon is saved from reducing deforestation and degradation, and carbon is added through conservation, the sustainable management of forests and increases in forest cover (afforestation and reforestation). Both have to be compensated equally.

<sup>75</sup> Views from ICFRE, Dehradun, India (an Observer organization) to UN FCCC on REDD, India's Submission to Cairns SBSTA, 2007, [www.icfre.gov.in](http://www.icfre.gov.in)

<sup>76</sup> REDD Negotiations: Case for HFLD Countries, Indian Council of Forestry Research and Education, 2009. This is a comprehensive document explaining Indian Government's approach to REDD from Montreal COP to Bonn, available at [www.icfre.gov.in](http://www.icfre.gov.in)



India's arguments rest heavily on the claim that India is a low deforestation country. This is contentious. The forest groups in India have said all along that the loss of dense to moderately dense forests within the recorded forest area is being hidden under the garb of increasing forest and tree cover. The first enumeration of forest and tree cover in India was covered by the State of Forest Report 2001. According to this report, forest cover has been taken as comprising all lands more than one hectare in area, with a canopy density of more than 10 per cent, irrespective of land use and ownership. All perennial woody vegetation (including bamboos, palms, coconut, apple, mango, neem, peepal, etc.) has been treated as tree in the report. Thus, all lands with tree crops, such as agro forestry plantations, fruit orchards, tea and coffee estates with trees, etc. have been included as forest cover since 2001.

The 2003 assessment reveals an overall increase of 2,795 km<sup>2</sup> or 0.41% in forest cover across the country. But there is a decrease in dense forest cover to the tune of 26,245 km<sup>2</sup> (6.30%) and the open forest cover has increased by 29,040 km<sup>2</sup> (11.22 %). Moreover, because satellite data is still treated as 'classified' in the country, and 'ground-truthing' (if any) is carried out in a similarly clandestine manner, it is difficult if not impossible to verify exactly how much natural forest is vanishing every year, and where from. However, from the State of Forests reports, it can be seen that degradation of forests is not confined to any particular province or region, but is happening, almost uniformly, throughout the country.

The incremental increase in forest and tree cover is also due to industrial plantations both on degraded forests and non-forest land, and compensatory afforestation programmes to compensate diversion of recorded forest land for development projects. According to the information collected from the Ministry of Environment and Forests by an NGO Kalpavriksh (through the Right to Information Act) between 1980 and 2007, 1,140,177 ha of forest land were diverted for non-forest purposes. Out of this a whopping 311,220 ha were cleared recently between 2003 and 2007.

According to the National Forest Commission in 2006, about 41% of the country's forest cover has already been degraded and dense forests are losing their crown density and productivity continuously. At present, 70% of forests have no natural regeneration and 55% are prone to fire.

India's conservation regime as it is implemented through a set of Protected Areas (PAs) has also been extremely controversial, displacing and violating the basic human rights of the forest people. There is little basic data of the number of forest dwellers being displaced by the PAs or practically imprisoned in them without basic amenities and rights over NTFP, fuel wood or fodder. The National Forest Commission (2006) indicates that an estimate of around 4 million are imprisoned within the Indian PAs.

Large scale displacement of forest people and loss of usufruct rights have been reported in the National Parks of Tawa, Nagarhole, Pench, Kanha, Buxa, Palamau, Rajaji, and Tadoba and scores of Wildlife sanctuaries during the last 35 years. The GEF funded India Eco-Development Project, which emphasized conservation by reducing dependence of forest communities on forests, itself contributed to the displacement of more than 200 villages in the NPs of Nagarhole, Pench, Kanha and Buxa.<sup>77</sup>

India is therefore, claiming financial incentives for a forest management regime that displaces and violates the rights of forest people, continues to divert large tracts of forests, often dense to moderately dense, and then replaces it with industrial, monoculture plantations.

## Conclusions and recommendations

The REDD text agreed in COP-13 in Bali did not include the rights of the indigenous people who are living in the forests in the tribal and hill districts. These forests include unclassed forests, community conservation areas managed and controlled by the communities. It is the forest communities who have continued to conserve and preserve the pristine forests of the north east, Khutkatti areas of Jharkhand, forests under Van Panchayats in Uttarakhand or the community conserved forests of Orissa. The forest departments have no role. Yet, when it comes to claiming the incentives, REDD will

<sup>77</sup> Data compiled by the author from various sources.



provide financial incentives only to the national government. The REDD text does not include any mechanism whereby the incentives could be shared by the forest communities or benefit them.

Considering the legacy of the forest bureaucracy in this country, the absolute power that they enjoy over forests and its resources, the landlord-like attitude that is reflected in its relationship with the forest people, it is difficult to imagine that the incentive from REDD will be passed on to the forest communities.

Take for example the afforestation funds collected from industry for the diversion of forest lands and the Net Present Value (NPV) levied per ha of forest land diverted, as directed by the Supreme Court since 2003-2004. The Compensatory Afforestation Management and Planning Authority (CAMPA) was created to deal with funds collected through both NPV and compensatory afforestation schemes. Today this fund has risen to a whopping Rs.112000 million and remains unused. The MoEF has decided to disburse this amount to States for greening India – to increase tree and forest cover rather than forest regeneration. In July 2009, the government decided to release Rs.50000 million to the States for the next five years for afforestation and increase of tree and forest cover. There is no mention of any mechanism to compensate the forest communities whose land have been diverted or acquired, from this fund. This huge sum under CAMPA was primarily collected from the heavily forested regions of Orissa, Andhra Pradesh, Chhattisgarh, Madhya Pradesh and the north eastern part of the country where sizable tracts of forest land are traditionally owned by the communities and individuals.

Things have become more complex with the enactment of the Forest Rights Act, 2006. Large tracts of forests in India will legally come under community governance. How will REDD recognize the legally binding rights of the forest communities, and their contribution to conservation and sustainable management of forests and biodiversity? Who can then claim the incentives for reducing deforestation and degradation? Will REDD undermine the community conservation efforts and rights of the forest communities and strengthen a centralized form of forest governance practiced by countries like India, eroding the recent gains that forest communities have snatched at a great cost? Will REDD be the nemesis for the Forest Rights Act, 2006 in India?

In all likelihood it seems that REDD and other forest-related funds will only promote an artificial greening of the country, whilst increasing the financial clout of the forest bureaucracy and thereby undermining the rights and entitlements of the forest people. The way things are currently moving in the forest sector in India, market or fund-based financial mechanisms like REDD may tend to act as a disincentive towards the decentralization of forest governance. The majority of the forest people in India have already shifted to areas which are of less intrinsic value and considered uneconomic. REDD could be the final straw for forest dependent communities, if both the state and private sector actors are then tempted to stake their claims to these 'uneconomic' areas.



*Dense, community controlled and governed forest in Dibang Valley of Arunachal Pradesh, north east India.  
Photo - Souparna Lahiri.*

It seems that the emergence of a REDD fund in India is unlikely to lead to the conservation of natural old growth forests, or regeneration of forests, or improvements for the life and livelihood of the forest people. The commodification of India's forests may well be completed, at the cost of its protectors – the forest people and forest communities.



## REDD in Indonesia

*An Independent Monitoring Report by Forest Watch Indonesia*

### Indonesia's forests

Deforestation and forest degradation have been identified as a key sources of climate changing greenhouse gases (GHGs): changing patterns of land management are estimated to be responsible for nearly one fifth of the world's anthropogenic GHG emissions at present. It is therefore generally assumed that protecting the planet's remaining forest cover will be an effective means of mitigating climate change. This assumption has led to a new climate change mitigation scheme being proposed, which places the forestry sector center stage: Reducing Emissions from Deforestation and Forest Degradation (REDD) is being pitched as a key component for global protection against climate change in the next phase of the Kyoto Protocol, which is due to start in 2012.

Indonesia is at the heart of the REDD debate, because of its huge but rapidly disappearing tracts of tropical forest. The function of Indonesia's forest may be transformed: previously considered by many primarily as a source of timber, the forest is increasingly being thought of as the savior of earth's ecosystem, because of its capacity to absorb and store carbon.

Deforestation rates in Indonesia are severe, although different publications report varying rates of both deforestation and forest degradation. The Ministry of Forestry estimates that 2.83 million ha per year were lost during the period 1997 – 2000. But in the Food and Agriculture Organization's (FAO) State of the World's Forests 2007 report, Indonesia's natural forest area was ranked as the eighth largest in the world, with 1.87 million ha of forest lost per year (both in the period 1990-2000 and from 2000-2005). In terms of the total area of forest lost per year, the country had the second fastest rate of deforestation in the world (after Brazil).<sup>78</sup>

Due to these conflicting statistics, Forest Watch Indonesia (FWI) has attempted to calculate the real rate of deforestation between 1989 and 2003. Provisional analysis shows that Indonesian land cover has in reality experienced forest degradation and deforestation to the tune of some 4.6 million ha per year (of which deforestation accounts for approximately 1.99 million ha).<sup>79</sup>

In general, the condition of Indonesia's remaining forests continues to deteriorate. The development of natural forest and plantation forest concessions, timber harvesting (IPK) and industrial plantations, mining, land burning, nomadic land management, and illegal logging (which is still difficult to control) all continue to influence Indonesia's forest cover.

Forest management in Indonesia is typically influenced by the state's economic policies. The high rates of deforestation and forest degradation have come about primarily because forests are considered a state asset, which can be used to boost inflows of foreign exchange (although in reality actual income from the forestry sector has fallen since the 1990's as some restrictions on timber extraction and exports have been put in place).

### Indonesia's forest policies

There are several hierarchies in Indonesia's national legal system including the 1945 constitution, government regulation, ministerial decrees, ministerial regulation and regional regulation.

The highest state institution is the MPR or People's Consultative Assembly, which is responsible for broad state policy, amendments to the constitution and judicial reviews. Meanwhile, the People's Representative Council (DPR, whose members also participate in the MPR) is mandated to deal with

<sup>78</sup> State of the World's Forests 2007 Annex 2, Food and Agriculture Organization, <http://ftp.fao.org/docrep/fao/009/a0773e/a0773e10.pdf>

<sup>79</sup> Brief Notes: Taking Stock Of Indonesian Forest Conditions and Forest Stakeholders Performance. Forest Watch Indonesia (FWI). 2007. <http://fwi.or.id/english/?p=130>





government regulation and law. However, in many cases, these require technical legal instruments, and the relevant minister can issue decrees or regulations.<sup>80</sup>

In the forestry sector, Law No 41/1999 is the basis for national law regulating forest management and planning, forest research, development and education: this law defines the status and function of Indonesia's forest, and ultimately determines what may or may not happen in production forests, protected forests and conservation forest zones. It also regulates related dispute processes. Law No 41/1999 is, however, much criticized, especially when it comes to recognizing indigenous forest and management rights. There has thus been an ongoing campaign by Indigenous people and local communities, who insist that the law be amended to recognize Indigenous forest.

With respect to implementing the Convention on Biological Diversity (CBD), the relevant legal instrument is Law No 5/1994, Ratification of United Nations Convention on Biodiversity. By ratifying the CBD, the Indonesian government committed to actively participating in biodiversity conservation. Furthermore, as an outcome of the ninth Conference of the Parties to the CBD in 2008, the Indonesian government noted that many things need to be followed-up on in order to improve the effectiveness of the CBD's Programme of Work on Protected Areas (PoWPA) adopted by the 7th CBD Conference of Parties in 2004. Indonesia is implementing a National Action Plan on Protected Areas (NAPPA), which is now entering its final draft stage.

Another law that relates to the CBD is Law No 5 of 1990 on the Conservation of BioNatural Resources and its Ecosystem,<sup>81</sup> which provides a reference for managing the conservation of protected areas and biodiversity in Indonesia. A sub-policy issued under this Law includes the Government's Regulation No 68 of 1998 on Wildlife Reserve Area and Natural Conservation DZone. The government has also focused on implementing the CBD's Programme of Work on Protected Areas in line with the strategic plan of the Directorate General of Forest Protection and Nature Conservation, in order to develop Indonesia's National Action Plan for Protected Areas (NAPPA).

### **Indonesia's policies on Indigenous rights and UNDRIP**

So far the issue of protecting Indigenous People's rights in Indonesia has only been debated. There is no legal instrument to protect and recognize these rights. The first Congress of Aliansi Masyarakat Adat Nasional / Indigenous Peoples Alliance of the Archipelago (AMAN), held in 1999, was an initial step in restoring the relationship between Indigenous people and the Indonesian government. The Indonesian Indigenous people are struggling against injustice, human rights violations and environmental degradation.<sup>82</sup>

In their struggle to gain recognition, the Indonesian Indigenous people have now become involved in negotiations on national policy. The first experience of this was engagement over a policy amendment to Law No 22/1999 on Local Government (which substitutes Law No 5/1979 on Village Administration). The Indigenous people then succeeded in urging the government to amend the 1945 Constitution in 2000 stipulated in Article 18 B verse 2 stating: "The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law."<sup>83</sup> Furthermore, MPR's Decree (issued by The People's Consultative Assembly) IX/2001 on the Agrarian Reform and Natural Resources Management mandated a natural resources management process that is more responsive to the existence of the Indigenous People nearby the natural resource area. However this decree is not yet settled and civil society organizations and Indigenous Peoples in Indonesia continue to struggle to engage in national policy decision-making.

<sup>80</sup> Carbon Brief. *Perangkat Hukum Proyek Karbon Hutan di Indonesia*. CIFOR, 2005.

<sup>81</sup> [http://www.eu-forest.org/images/reference/law/05\\_A\\_1990\\_Law\\_5\\_TheConservationOfBioNaturalResourceAndItsConservation.pdf](http://www.eu-forest.org/images/reference/law/05_A_1990_Law_5_TheConservationOfBioNaturalResourceAndItsConservation.pdf)

<sup>82</sup> Forest for the Future. *Indigenous Forest Management in a Changing World*. Down To Earth, 2009.

<sup>83</sup> <http://www.us-asean.org/Indonesia/constitution.htm>





## Indonesia: REDD policies and process

Indonesia can be said to be one step ahead of many other countries, since it already has a number of national REDD implementation policies in place, issued by the Forestry Ministry, which will no doubt act as a precedent for other countries considering similar legislation. The processes by which these regulations have been developed has been much criticized however.

The first regulation is ministerial regulation PP No 68/2008, on organizing REDD demonstration activities on reducing carbon emissions from deforestation and forest degradation. This regulates the procedures that must be adhered to when carrying out demonstration activities, as a precursor to full implementation of REDD in the second phase of the Kyoto Protocol, which is scheduled to begin in 2012.

The second regulation is the Forestry Minister's Regulation No 30/Menhut-II/2009 on the REDD scheme in general, dated 1 May 2009.<sup>84</sup> It regulates the criteria for REDD implementation in a range of forest types, and the criteria, including in relation to tenure, in the different forest types. It also specifies that REDD projects must be based on a recommendation from and coordinated by local government (who can also determine tenure issues); that REDD proposals must be approved at Ministerial level; and that REDD credits can be traded internationally and used by developed countries to meet the emissions reductions of developed countries.<sup>85</sup>

The most recent regulation is the Forestry Minister's Regulation No 36/Menhut-II/2009 on Procedures for Licensing of Commercial Utilisation of Carbon Sequestration and/or Storage in Production or Protected Forests.<sup>86</sup> This governs procedures for obtaining business licenses to engage in carbon sequestration or carbon storage activities. It explicitly includes Sustainable Production Forest Management under this heading (even though Sustainable Forest Management (SFM) is currently a controversial area in the UNFCCC REDD negotiations). Acceptable REDD activities in Indonesia therefore include production-related activities such as lengthening the cycle of cutting, environmentally-friendly cutting, and "protection and security" in areas with protection functions.

The Indonesian government has undertaken consultation processes in relation to REDD, but these have been criticized for being insufficiently detailed and transparent. The Forestry Ministry on behalf of the Indonesian government, established the Indonesia Forest Climate Alliance (IFCA)<sup>87</sup> and initiated studies by ICFA in 2007,<sup>88</sup> which have been used as key references in the development of REDD policies. There have also been some national and regional consultation meetings. But most inputs from national NGOs and Indigenous People were not well responded to by the Indonesian government, and their involvement in drafting REDD regulations has in reality been very limited. The Indonesian government has tended to involve international institutions and international conservation NGOs instead. This has led to considerable dissatisfaction when the regulation concerning REDD in Indonesia was officially legalized and announced to the public.

<sup>84</sup> [http://aseanforest.chm.org/document\\_center/knowledge\\_networks/arkn\\_fcc/redd\\_documents/indonesian\\_minister\\_of\\_forestry\\_regulation\\_on\\_redd\\_permenhut\\_p\\_30\\_menhut\\_ii\\_2009.html](http://aseanforest.chm.org/document_center/knowledge_networks/arkn_fcc/redd_documents/indonesian_minister_of_forestry_regulation_on_redd_permenhut_p_30_menhut_ii_2009.html)

<sup>85</sup> The Forestry Minister's Regulation No 30 of 2009 is also unusual in that it mentions that REDD can be carried out in indigenous forest area, whereas the term 'indigenous forest' is not recognized in the Forestry Law 41/1999<sup>85</sup>, which defines Indonesia's forest types.

<sup>86</sup> <http://forestclimatecenter.org/files/Minister%20of%20Forestry%20Decree%20on%20Procedures%20for%20Licensing%20of%20Commercial%20Utilisation%20of%20Carbon%20Sequestration%20and%20-%20or%20Storage%20in%20Production%20and%20Protected%20Forests%20P%2036%20-%202009.pdf>

<sup>87</sup> <http://redd.pbworks.com/>

<sup>88</sup> REDDI : Reducing Emissions from Deforestation and Degradation in Indonesia. REDD Methodology and Strategies: Summary for Policy Makers,

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/INDONESIAEXTN/0..contentMDK:21576161~menuPK:50003484~pagePK:2865066~piPK:2865079~theSitePK:226309.00.html>



## Conclusions

Although REDD policies are now in place in Indonesia, it is still too early to determine REDD's actual impacts, including coherence with the CBD and UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

However, if we look to the regulations as they are written, the existing REDD scheme and CBD regulations in Indonesia are correlated. REDD regulation in Indonesia could be used to strengthen the implementation of the CBD regulation, since REDD policies and projects will regulate forest areas for a certain period as carbon storage and absorption areas. Thus, during the contract period with REDD, the forest should be safe from wood extraction activities, and the biodiversity in that area relatively well-maintained. However it is not clear how likely it is that this will happen consistently across Indonesia in reality, since the Indonesian REDD regulations also include production forests and Sustainable Forest Management, meaning that REDD finance could still be channeled to logging operations (they also allow for REDD funding through carbon markets, which is likely to be unstable). Thus REDD and the CBD could come into conflict in practice, at least in some areas of Indonesia.

There are also significant concerns about coherence between REDD regulations in Indonesia and the country's commitments to the Indonesian Indigenous Peoples under UNDRIP. As described above, in the development of Indonesia's REDD policies, the Indonesian government has neglected Indigenous People's participation. But MPR Decree IX/2001 clearly stipulates that natural resources management *must* be responsive to the existence of Indigenous People living in or nearby the natural resource in question. Thus REDD policies must be implemented with this decree in mind.

The application of the principle of Free, Prior and Informed Consent (FPIC) - which has been striven for by Indigenous Peoples - needs to be heard clearly by stakeholders involved in developing REDD projects in the future, whether public or private actors.

Furthermore, the Indonesian government needs to provide more in-depth understanding and information about REDD to the local and Indigenous People as the regional consultations held to date are insufficient to inculcate a real understanding of REDD activities across the country.



## REDD in Kenya

*An Independent Monitoring Report by the Dorobo Trust*

### Deforestation and forest degradation trends

Although Kenya's forests only cover 1.7% of its total land area, and it is thus considered a low forest cover country<sup>89</sup>, it is still experiencing high rates of deforestation and forest degradation. According to FAO,<sup>90</sup> Kenya lost 5% of its forests and other wooded land between 1990 and 2005. Deforestation occurred at a rate of 12,000 ha/year during the period 2000-2005, and other wooded land was lost at an even higher rate of 40,000 ha/year during the same period. The key drivers of deforestation and forest degradation include poor, uncoordinated policies; agricultural expansion; and logging and energy needs.<sup>91</sup>

FAO estimates that Kenya's forests store carbon at an average rate of 348 tCO<sub>2</sub>/ha in the combined above-ground and below-ground biomass: this carbon would otherwise be released by deforestation and subsequent land conversion for agriculture or pasture. As such, an annual deforestation rate of 12,000 hectares would result in the release of some 4,176,000 tons of CO<sub>2</sub> into the atmosphere every year (which equates to 1,138,800 tons of carbon).

### Managing Kenya's forests

The 2005 Forest Act No 7 provides for the establishment, development and sustainable management of Kenya's forest resources, including through their conservation and rational utilization, particularly as a means of promoting socio-economic development. The Act recognises the vital role that forests play in stabilizing soils and ground water, enhancing biological biodiversity, and providing fuel wood, non-wood forest products, and raw materials for wood-based industries.

Under the Act, Kenya is committed to the inter-sectoral development and sustainable use of the country's forest resources, and to relevant international conventions and other agreements to promote the sustainable management, conservation and utilization of forests and biological diversity generally.

The 2005 Forest Act brought about significant reforms in Kenya's forest sector, including the creation of a new organizational structure aimed at ensuring sustainable forest management across the entire country. Key components are the Kenya Forest Service (KFS), the lead agency,<sup>92</sup> which is mandated to oversee the management of all types of forests, and the Forest Conservation Committees (FCC), which oversee the regional management of forests in individual conservancies across the country.

Though the Act does not itself define 'forests' the KFS defines forests as "land spanning more than 0.5 hectares with trees higher than 5 metres and a canopy of more than 10 percent."<sup>93</sup> The main forest types in Kenya are natural high forests, dryland forests referred to as woodlands, and forest plantations. Woodlands, bush lands and wooded grasslands in Arid and Semi Arid Lands (ASALs) cover 37.59 million hectares.

About 1.7 million hectares (2.9 % of Kenya's total land area) are gazetted as protected forest, and demarcated into 258 forest blocks. A further 684,000 hectares of forests fall outside these protected areas but are managed as trust lands by local authorities. Farmlands and settlements also contain reasonably extensive tree and forest cover, of around 9.54 million hectares.<sup>94</sup> Plantation forests accounted for some 200,000 hectares in 2005.<sup>95</sup>

<sup>89</sup> Looked at against FAO's definition of forests and recommended forest area.

<sup>90</sup> Forest Resources Assessment 2005, Food and Agricultural Organization, <http://www.fao.org/forestry/fra/fra2005/en/>

<sup>91</sup> Dorobo Trust, Global Forest Coalition-supported Underlying Causes of Deforestation and Forest Degradation initiative in Kenya, 2008.

<sup>92</sup> KFS was established in February 2007.

<sup>93</sup> KFS brochure.

<sup>94</sup> The Kenya Forestry Masterplan of 1994.

<sup>95</sup> Kenya's R-pin to the Forest Carbon Partnership Facility.



The Forest Act 2005 introduces stringent measures concerning the formal or informal degazetting of forest lands, and their conversion into private ownership (a significant cause of forest loss in Kenya). The Kenya Forest Service can only recommend degazetting or a change to forest boundaries after consulting the relevant Forest Conservation Committee, which should include at least four people from the local forest community.<sup>96</sup>

### **Kenya: existing policies to protect Indigenous rights and national initiatives to implement UNDRIP**

Officially, Kenya has 42 communities. But the number may be as high as 90<sup>97</sup> if all communities are recognized. The social and economic backgrounds of these communities range from agriculture and pastoralism, through to hunting and gathering, and fishing.

The pastoralists, hunter-gatherers and a small number of fisher folk have been claiming recognition as Indigenous People in Kenya. They are not claiming superiority over other communities: rather they ask to be treated fairly as citizens, with rights equal to those of Kenya's other citizens, and equal and guaranteed access to opportunities within the country.

However, the Kenyan government does not formally recognise any community as Indigenous, choosing instead to recognise *all* Kenyans as Indigenous.<sup>98</sup> Kenya was even one of the four African countries that abstained from voting during the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>99</sup> Kenya, like other African countries, is not comfortable with the concepts of self-determination and free, prior, and informed consent, which are enshrined in UNDRIP. Consequently, there are no formal policies in place to exclusively protect the rights of Indigenous communities in Kenya, nor are there any initiatives to formally implement UNDRIP.

However, UNDRIP does not introduce new rights for Indigenous Peoples as such: rather it affirms rights already enshrined in various international instruments including the African Charter on Human and Peoples Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention against Racial Discrimination (CERD) and the Convention on Discrimination Against Women (CEDAW) among others. Similarly UNDRIP itself provides that nothing in it will be seen to contravene the UN Charter or the integrity and sovereignty of states.<sup>100</sup> Kenya therefore has no excuse not to implement UNDRIP.

That said, constitutional safeguards already provide all Kenyans with equality before the law and equal rights to protection through the legal system; citizenship; property; freedom of movement and residence; freedom of speech, assembly and association; and safeguards against discrimination. The draft national land policy (which is currently before the cabinet, awaiting approval) also recognizes communal land ownership – an important component in Indigenous Peoples' human rights struggle.

Other efforts that the government has taken to spur development at the grassroots level include the establishment of the Constituency Development Fund (CDF), in which 2% of the annual national budget is channelled directly and proportionately to all 210 constituencies for development projects on the basis of communities' priorities. A Ministry of Arid and Semi Arid Lands has also been established to address the rights and interests of, mainly, pastoralist communities. In this year's national budget, the Minister of Finance channelled an additional Kshs 1.2 billion to every constituency to spur economic growth at the grassroots level, and thereby stimulate national economic growth. The government has also taken measures to cushion pastoralists against the impacts of droughts by purchasing their livestock during periods of drought.

The 2005 Forest Act No 7 also recognizes forest communities' rights to continue to use the forest produce customarily taken from the forest, so long as these are not to be sold on.<sup>101</sup> The Act also empowers communities to participate in the conservation and management of state or local authority

<sup>96</sup> The Forest Act, 2005, S. 28, provides for the inclusion of forest communities in the management of local forests.

<sup>97</sup> Draft Constitution popularly known as the "Bomas Draft" that never saw the light of day.

<sup>98</sup> A view supported by the Kenya National Human Rights Commission for a long time.

<sup>99</sup> 1 September 2007 and the UN General Assembly, New York.

<sup>100</sup> Article 46 of UNDRIP.

<sup>101</sup> Section 21, The Forest Act, 2005.



forests.<sup>102</sup> But to enable this, a forest community, together with other members or persons resident in the same area should register as a Community Forest Association (CFA) under the Societies Act<sup>103</sup>. Communities doing so may also be granted forest user rights relating to the collection of medicinal herbs; harvesting of honey; harvesting of timber or fuel wood; grass harvesting and grazing; collection of forest produce for community based industries; ecotourism; plantation establishment; and other community wood and non-wood forest-based industries (provided that these activities do not conflict with the conservation of biodiversity).<sup>104</sup>

The CFA should however have no existing prior agreement or licence<sup>105</sup>, and should develop a management plan where there is no management plan for that area or if they propose a new management plan<sup>106</sup>. This has enabled the government to include community representatives on various taskforces including the Prime Minister's Taskforce on the Mau forest, whose report will shortly be tabled before the cabinet and parliament; and recognition of Indigenous communities in Kenya's Readiness Plan Information Note (R-PIN),<sup>107</sup> the first step towards developing a national strategy on Reducing Emissions from Deforestation and Degradation (REDD) under the World Bank's Forest Carbon Partnership Facility (FCPF) process.

The issue is not therefore one of lack of policies or initiatives designed to protect the rights of Indigenous Peoples or implement UNDRIP. Rather it is the inability of Indigenous Peoples to use the provisions of existing laws, policies and mechanisms to further their rights and interests on the basis of the UNDRIP. Most Indigenous Peoples do not even know that UNDRIP exists, and Indigenous activists lack the resources to create awareness about it. There is no political will favoring the declaration, and the government has done nothing about creating awareness about it or mainstreaming its provisions.

### **Proposed REDD policies and participation in their development**

So far, Kenya has no comprehensive policy on REDD, though it is in the process of being developed. However, Kenya is an active participant in the UNFCCC discussions, including on REDD, and formally expressed its interest in joining the World Bank's Forest Carbon Partnership Facility (FCPF) in January 2008. From February through to May 2008, Kenya engaged in REDD preparation through several processes, including the appointment of a National REDD focal point.

The preparations also included the development of a Readiness Plan Information Note (R-PIN) in accordance with the requirements of the FCPF. Kenya's R-PIN was developed through a consultative process with key stakeholders that included the KFS, Kenya Wildlife Service, Department of Remote Sensing, Kenya Forestry Research Institute, and Nature Kenya, among others. There was close collaboration with the World Bank's East Africa team leader. The R-PIN was then subjected to a peer review through a Ugandan-based consultancy firm that does work for the World Bank in East Africa.

Kenya submitted its R-PIN to the World Bank in June 2008; it was accepted in July. In October, Kenya participated in the FCPF Participants' Committee meeting and soon after signed its partnership agreement to formally become an FCPF participant country. The process of signing the Participant Agreement was tedious and time consuming, and involved the Ministry of Finance and the Attorney General's office as well as the Ministry of Forestry (which will actually manage REDD).

However, Kenya's request for US\$200,000, which is available to each REDD Participant Country to enable to develop a Readiness Plan Project Proposal (the R-PPP, which was formerly known as R-PLAN), is just a small part of a larger REDD strategy being developed by Kenya; the main priority must be addressing the underlying causes of deforestation and forest degradation.

Kenya envisages the development of the R-PPP as a consultant-led process, which takes away the country's ownership of the process, unless the consultant is a local and working closely with the national REDD committee. The government issued an expression of interest for consultancy services in February 2009. The R-PPP will set out a roadmap of preparation activities, indicating how REDD

<sup>102</sup> Section 45

<sup>103</sup> Section 46 (1)

<sup>104</sup> Section 46 (2)

<sup>105</sup> Section 46 (2)

<sup>106</sup> Section 46 (4)

<sup>107</sup> Paragraph 4, Kenya's Readiness Plan Information Note can be found at: <http://www.forestcarbonpartnership.org/fcp/node/70>





preparation work will be organized and managed, what capacity-building and financial resources are needed and who would provide them, and a clear plan, budget and schedule for the identified activities, including the support foreseen from the FCPF.

The first consultative meeting on REDD was held at the Kenya Forest Service Headquarters, on 14 July 2009, and attended by 30 participants, from the government, large international conservation NGOs, civil society and representatives of the Danish and Finnish embassies. Participants discussed and agreed that in addition to the consultative forum that will meet regularly, two operational consultative bodies will also be formed: a REDD Steering Committee of not more than 12 people, to provide policy direction; and a REDD Working Group to provide the technical support and consultations necessary to deliver the required outputs.

The participants also identified key institutions that will be required to participate in the process. These include:

- Government Ministries: Ministry of Environment and Mineral Resources, Ministry of Forestry and Wildlife, Ministry of Local Government, Ministry of State for Provincial Administration and Internal Security, Ministry of Agriculture, Ministry of Livestock, Ministry of Energy, Ministry of Education, Ministry of Northern Kenya and Other Arid Areas.
- Government Agencies: National Environment Management Authority (NEMA), Kenya Forest Service (KFS), Kenya Wildlife Service (KWS), Kenya Meteorological Department (KMD), Department of Resource Surveys and Remote Sensing (DRSRS), Kenya Agricultural Research Institute (KARI) and others.
- Academia and Research Institutes: Kenya Forestry Research Institute (KEFRI), Kenya Agricultural Research Institute (KARI), Universities, ICIPE.
- Civil Society & NGOs- World Wide Fund for Nature, Greenbelt Movement, Forest Action Network FAN, Nature Kenya, Kenya Forest Working Group.
- Development partners- World Bank, International Centre for Research in Agro forestry (ICRAF), United Nations Development Program (UNDP), United Nations Environment Programme (UNEP), Food and Agriculture Organization (FAO), Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Danida, embassies (from US, European countries and Russia), Japan International Cooperation Agency (JICA), African Development Bank (AfDB).
- Private Sector- the Kenyan Private Sector Alliance (KEPSA), the Kenya Tea Development Agency (KTGA), together with representatives from the charcoal, timber, power and wood carvers' sectors.
- Forest Communities – Community Forest Associations (CFAs), tree farmers, grassroots conservation groups, forest adjacent communities, forest dwellers,
- Faith organizations.
- Politicians- MPs, Councillors.
- Professional Bodies- Forestry Society of Kenya (FSK), Institution of Engineers of Kenya (IEK).
- Micro enterprises.

Participants agreed broadly on the Terms of Reference of the Steering Committee that will include:

- Policy guidance derived from the National Climate Change position and national development goals.
- Co-ordination of (the implementation of) REDD activities.
- Approval of REDD working plans and budgets.
- Resource mobilization .

The Terms of Reference of the Working Group that will include among others:

- Development of the organizational structure for preparation of REDD Readiness activities.
- Implementation of interventions.
- Development of the REDD proposal and strategy.
- Preparation of work plans and budgets (including capacity-building activities).
- Monitoring and evaluation of REDD activities.
- Entrenching stakeholder participation / consultations.



- Communication and awareness.

A clear roadmap for developing a national REDD strategy will be discussed at a later meeting but participants were informed that once the initial funding for RPP preparation is released it should be possible to finalize the document in about six months. Preparation of the strategy will then be taken forward after successful completion and approval of the RPP by the World Bank.

It is clear (from the recently revised Forest Act, and the engagement of communities in REDD discussion to date) that the government is serious about involving Indigenous and forest communities in the national REDD strategy. Indigenous peoples, through GFC and IPACC support, have also been sensitized about REDD and are aware that what is needed is a program that will support their full participation in the processes at the local and national levels.

### **Marginal involvement of women and children**

However women, especially Indigenous women, are only marginally involved in the process though they are the ones that will be most affected by REDD. In Kenya, traditional gender roles have inhibited the participation of women and youth in forestry development. In particular, the role of women and youth in forest and tree resource utilization and management has not been fully recognized, although initiatives by women and youths have convincingly demonstrated the necessary and potential value of their participation in forestry development, especially at the community level. The Government, in recognition of the important role played by women in communities adjacent to forests, made provision for their involvement in the current Forest Policy:<sup>108</sup>

- Policy statement 4.5.1: More opportunities for women and youth will be enhanced in forest training and education.
- Policy statement 4.5.2: The Government will endeavour to deliberately involve women and youth in participatory forest management.
- Policy statement 4.5.3: The youth will be encouraged to take on more responsibility in the management of forest to ensure that future generations are catered for when decisions affecting forests are made.

The Policy informed the Forest Act 2005, which is relevant to the new paradigm shift in forest management, as it dedicates a whole section to community participation<sup>109</sup> (as also discussed above). Under the guidelines established, Community Forest Associations (CFAs) are mandated to form committees comprised of four members, one of whom must be a woman and one a youth representative.

### **Lack of resources for site-specific cost/benefit analyses**

As a way of tackling poverty, some CFAs have now started engaging in income-generating activities, which vary from forest to forest. These include eco-tourism, bee keeping, butterfly farming, silk-worm farming, tree nurseries, cultivating aloe species, and mushroom and fish farming, among others. To enhance the function of CFAs some civil society groups have also been assisting with training on governance and management issues.

However, cost and benefit sharing mechanisms have not been fully established in all the forest sites. This has led to delays in negotiations on management agreements. One particular problem is a lack of adequate resources to carry out comprehensive cost/benefit analyses for each site.<sup>110</sup> This could indicate that similar difficulties will be encountered in the establishment of REDD projects.

### **Conclusion**

It is important to recognize community participation in forest protection and sustainable forest management. An effective consultation process will strengthen community rights while promoting

<sup>108</sup> Sessional Paper No. 4 of 2006 on Forest Policy.

<sup>109</sup> Forest Act 2005: Part IV

<sup>110</sup> Participatory Forest Management experience in Kenya (1996-2007)



conservation of biodiversity. However, the forest policies already in place in Kenya do recognize that there are benefits arising from the involvement of local communities and other stakeholders in forest management; they also emphasize the importance of forests for water and biodiversity conservation and addresses benefit sharing. It is critical that this approach is carried over into any discussions and decisions about REDD projects, and fully implemented.

Recognizing and safeguarding Indigenous People's territorial rights over their own, often widespread, forest areas has also proven to be a highly effective policy for reducing deforestation in many countries including for example Colombia and Panama. The recognition of their territorial rights forms an important incentive for these peoples to foster their traditional sustainable forest management systems. The speedy adoption of the national land policy by the cabinet would really be a blessing. Though Kenya abstained from voting for the adoption of UNDRIP, it has ratified many other international instruments that already provide for the rights enshrined in the declaration. The declaration does not declare new rights but only affirms the rights enshrined in these international instruments. Kenya therefore has no reason not to support or implement the declaration.

In addition, the historical role and positive contribution of women in the governance and nurturing of forests must be recognised and their full participation in decision-making must be ensured<sup>111</sup>. It should be understood that any program for forest management will have to consider the role of women. A gender sensitive co-management strategy should account for gender differentiated activities, property rights, negotiation and forest resources claims, and place these within the context of social relations.

Finally, any REDD mechanism must provide forest communities with adequate financial resources to compensate them for the economic benefits they forgo by reducing deforestation and degradation, as well as ensuring their ability to properly engage in the technical aspects of REDD (such as monitoring and verification).



*Kenya's forests. Photo Kanyinke Sena / Praxedes Tororey, Dorobo Trust*

<sup>111</sup> Recommendations of the Mumbai Initiative in combating forest degradation and forest deforestation under the REDD strategy.



## REDD in Mozambique

*An Independent Monitoring Report by Justica Ambiental*

### Introduction

Deforestation “is the conversion of forest to another land use or the long-term reduction of the tree canopy cover below a 10% threshold. Deforestation implies the long-term or permanent loss of forest cover and its transformation into another land use.”<sup>112</sup> Tropical forests cover almost 15% of the earth’s land and contain 25% of the terrestrial biosphere’s existing carbon; close to 13 million hectares of these forests are cleared annually for alternative land uses.<sup>113</sup>

One of the negative impacts of deforestation is the emission of greenhouse gases; it is estimated that deforestation is responsible for 18% of CO<sub>2</sub> emission,<sup>114</sup> contributing massively to the growth of global warming. Typical activities driving this process include itinerant agriculture, logging and charcoal exploration, mining exploration and uncontrolled burning. In Mozambique, uncontrolled burning is a particular hazard, even though the Ministry of the Environment has been trying to raise awareness about the impacts of burning and has tried to find ways to minimize it. The production and use of charcoal as a source of energy is another big problem.

At the 11<sup>th</sup> Conference of the Parties (COP-11) to the UN Framework Convention on Climate Change (UNFCCC), held in Montreal in 2005, Papua New Guinea and Costa Rica, supported by eight other countries, proposed a mechanism for Reducing Emissions from Deforestation and Degradation (REDD) in Developing Countries. During this meeting a working group was created and two years later the process of exploring REDD options began in earnest.



Figure 2. Location of Mozambique

However, discussions about the mechanism have been complex, both because of methodological complexities and various political implications. For example, how should benchmarks to measure changes in deforestation rates be calculated? What kind of emissions-reducing activities should be eligible? What about countries that have already protected their forests? And should the mechanism be funded through voluntary donations or markets? And what about the violations of Indigenous Peoples’ rights, already an issue in relation to carbon crediting mechanisms such as the Clean Development Mechanism?

Countries are currently investigating different options, and many have chosen to participate in pilot projects<sup>115</sup> including those being operated by the UN, known as UN-REDD<sup>116</sup> and those of the World Bank’s Forest Carbon Partnership Facility (FCPF).<sup>117</sup>

According to the UNFCCC’s Bali Plan of Action (defined at the 13<sup>th</sup> Conference of the Parties (COP-13)), if REDD is to be included in the frame of reference beyond 2012, decisions need to be made by COP-15, to be held in Copenhagen in December 2009. Having a consensus on this issue is considered to be important for a global agreement in relation to climate change.

### Forest and deforestation in Mozambique

Mozambique is situated on the African Oriental Coast, between the Rovuma river mouth (10° 30’ S) and the South African border (26° 49’ S). It includes an area of approximately 784,755 km<sup>2</sup>, bordering

<sup>112</sup> <http://www.fao.org/docrep/009/i9345e/i9345e07.htm>

<sup>113</sup> PARKER Charlie, *et al* (2009). Pequeno livro Vermelho do REDD+. Global Canopy Programme. Reino Unido

<sup>114</sup> <http://www.cbc.ca/technology/story/2009/02/18/tropical-forests.html>

<sup>115</sup> CAMARGO, M. (2009). Workshop REDD - Cooperação Sul-Sul: Brasil-Mozambique. Power Point Presentation. Maputo.

<sup>116</sup> The UN-REDD Programme, a collaborative partnership between FAO, UNDP and UNEP, was created in response to, and in support of, the UNFCCC decision on REDD at COP 13 and the Bali Action Plan.

<sup>117</sup> The FCPF Programme was created by World Bank to support the UNFCCC decision on REDD.





with Tanzania on the north, Malawi, Zambia, Zimbabwe, South Africa and Swaziland on the west, South Africa on the south and the Indian Ocean on the east. The country is divided into ten provinces: Cabo Delgado, Niassa, Nampula, Zambézia, Tete, Manica, Sofala, Inhambane, Gaza, and Maputo.

The climate is predominantly semi-arid, with 80% of the area being classified as tropical semi-arid and 15% as a sub-humid zone. The extreme zones (arid and humid) constitute respectively 2% and 3% of the total area of the country. In the southern region (provinces of Maputo, Gaza and Inhambane) the annual precipitation averages 600mm – 800mm and the annual temperature averages 23°C in coastal regions and 25°C in the interior. In the central region (provinces of Sofala, Manica and Zambezi) the annual precipitation averages 800 mm – 1,200 mm and the annual temperature averages 20°C - 25°C. The northern region has an annual precipitation averaging 800 mm – 1,400mm, and annual temperature averages 20°C - 26°C.<sup>118</sup>

Mozambique is rich in forest resources with a total forest area of approximately 40.1 million hectares.<sup>119</sup> These resources are extremely important for the country's development: forests are an important source of income for the government and local communities. Apart from timber/logging activities, including for construction materials, forests also provide food and medicinal products.

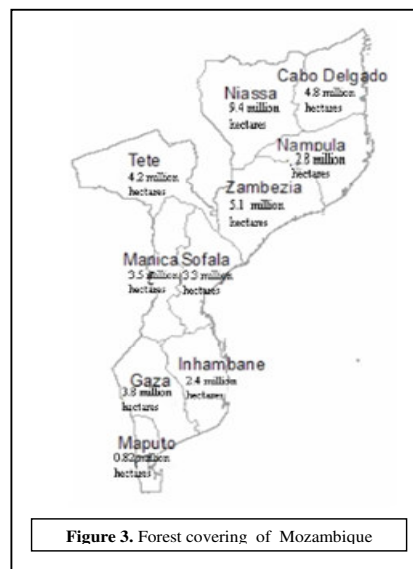
There are about 13 forest conservation areas in the country. Six of these are in the north (Ribáué, M'palue, Matibane, Mecuburi, Baixo-Pinda in Nampula Province, and Derre in Zambezia Province); six are in the center (Inhamitanga, Nhampacue, Mucheve in Sofala Province, and Maronga, Moribane and Zomba in Manica Province); and one is in the south (Licuáti in Maputo Province).<sup>120</sup>

However, the expansion of agricultural areas, illegal forest exploration, logging, coal/charcoal production for energy, and uncontrolled burning have contributed greatly to the transformation of closed forests and wooded grasslands into agricultural areas, open spaces and shrub land. Between 1991 and 1999, agricultural areas increased annually by 38.8%, open areas by 35.2% and shrub land by 24.6%. During the same period the rates of change of forest cover and annual deforestation in Beira Corridor<sup>121</sup> were estimated at 25.3% and 1.17 % respectively. Annually 219,000 hectares of forest are lost, the equivalent of 0.58% of the land (although this rate varies from province to province).

**Table 1.** Rates of deforestation from province

Province Annual changes of forest areas (1000 ha)	Rates of annual deforestation 1990 – 2002 (%)
Cabo Delgado (25)	0.54
Gaza (13)	0.33
Inhambane (11)	0.52
Manica (23)	0.75
Maputo (16)	1.67
Nampula (33)	1.18
Niassa (21)	0.22
Sofala (20)	0.63
Tete (27)	0.64
Zambézia (31)	0.71
Total (219)	0.58

Source: National Directorate of Lands and Forests (2007)



**Figure 3.** Forest covering of Mozambique

<sup>118</sup> MICOA (2007). Estratégias Ambiental Para o Desenvolvimento Sustentável de Moçambique Aprovada pelo Conselho de Ministros a 27 de Julho de 2009.

<sup>119</sup> DNTF (2008). Inventário Florestal Nacional. National Directorate of Lands and Forests (DNTF), Maputo

<sup>120</sup> SITO, A., GUEDES, B. (2009). Investigação florestal na UEM em suporte do REDD. Power Point Presentation in workshop de apresentação do REDD. Maputo

<sup>121</sup> The Beira Corridor is situated between Sofala and Manica Provinces, and is 260 km long. Studies show that the expansion of agricultural areas, illegal forest exploration, logging, coal/charcoal production for energy, and uncontrolled burning are the principal reason of deforestation in this area





## Greenhouse gases emission and 'carbon livelihoods'



Figure 3. Uncontrolled burning in Manica Province

According to the latest national inventory of greenhouse gases in 1994,<sup>122</sup> the total emissions in Mozambique were approximately 9,262 Gg of CO<sub>2</sub>, 272 Gg of CH<sub>4</sub>, and 3 Gg of N<sub>2</sub>O. When expressed in terms of global warming potential, these emissions are the equivalent of 15,907 Gg of CO<sub>2</sub>. However, since 1994 there have been significant land use changes in the country, and significant increases in deforestation: much more research is needed in this area, so that up-to-date information can be made available.

There are a few carbon offset projects in Mozambique already. There is one Clean Development Mechanism (CDM) project – still at the validation stage - which involves switching from coal to natural gas in the rotary kiln of a plant manufacturing clinker (a component of cement) outside Maputo.

Another project recently submitted concerns reforestation in the Sanga district, Niassa province: the project participant is the Malonda Tree Farm Company and is financed by Green Resources AS (GRAS) Norway.<sup>123</sup>

UK-based company Envirotrade<sup>124</sup> also has a Carbon Livelihoods Project operating in Quirimbas National Park (districts of Macomia, Quissanga and Meluca), in Marromeu (Nhampakué and Inhamitanga Forest Reserves) and Gorongosa National Park (Nhambita community). In 2007, this project established a Mozambique Carbon Livelihoods Trust (MCLT) to safeguard the interests of communities and individual farmers through payments for sequestered carbon. Approximately one third of the proceeds of any carbon sale go directly to this fund, which is used to pay individual farmers over seven years, to make annual contributions to a community trust fund and other payments for forest management and conservation. The MCLT Committee is constituted of program partners - one representative from each community association participating in the project, Envirotrade, and WWF Mozambique (which is responsible for ensuring that funds are properly managed and payments made). An accounting firm based in Beira, is responsible for the daily management of the fund, and the fund's transactions are monitored by BioClimate Research and Development (BR & D), an organization based in Edinburgh responsible for certifying Plan Vivo standards.<sup>125</sup>

## Constraints

This research proved to be particularly difficult to conduct for a number of reasons including the following:

- Increasingly limited access to local information from government institutions (Mozambique is getting ever worse in terms of accessing data and information from the government, especially in relation to REDD: repeated requests and even meetings have no result.)
- Difficulty in getting official interviews, due to lack of knowledge of REDD.

<sup>122</sup> Mozambique's first national communication to the UNFCCC, submitted in 2006, refers back to this 1994 data. <http://unfccc.int/resource/docs/natc/moznc1.pdf>.

<sup>123</sup> <http://www.undp.org/climatechange/carbon-finance/CDM/mozambiqueOpp.shtml>

<sup>124</sup> This is a UK company, which has developed a business model using the sale of carbon offsets to support the conservation and management of existing forests and the planting of new ones. <http://www.carbon-livelihoods.org/Zambezi.htm>

<sup>125</sup> For more information about the Carbon Livelihood project go to <http://www.carbon-livelihoods.org/Fundo.htm>. For more information about Plan Vivo standards go to <http://www.planvivo.org/>



- Difficulty in conducting some interviews (limited access to and identification of the focal points on the part of the contacted institutions who were involved in the process).
- Lack of willingness to share information by the NGO that did the research on REDD (Centro de Terra Viva (CTV)).
- REDD is still a new concept and not well understood.

Eventually, most of the information in this report was acquired from a workshop held 27-28 of August, rather than from the interviews attempted or actually conducted. Most of those interviewed either did not know or did not want to explain exactly what REDD is, what Mozambique's position on REDD is, or what REDD pilot projects might exist.

## Results & conclusions

### Mozambican REDD: First step, R-PIN and FCPF

REDD is a new concept in Mozambique. The Ministry of Environmental Co-ordination and Action (MICOA) and the Ministry of Agriculture - National Department of Land and Forestry (MINAG - DNTF) are the institutions responsible for REDD strategy in Mozambique.

The Mozambique government, with technical support from Indufor and financial support from the Norwegian Embassy, has completed and submitted an R-PIN<sup>126</sup> to the World Bank's Forest Carbon Partnership Facility<sup>127</sup> (FCPF). The report has been approved but the funds have not been disbursed yet.

### Mozambican REDD: Second step, South-South cooperation

In March of 2009, Mozambique's Ministry of Coordination of Environmental Affairs (MICOA) and Fundação Amazonas Sustentável (FAS) in Brazil signed a memorandum of Understanding (MU), on South-South Cooperation on REDD. This joint initiative is intended to promote zero deforestation, and will provide technical assistance and participation in the development of the national REDD strategy and subsequently a national program on REDD.



Figure 1. Deforestation in Cabo Delgado Province

*Deforestation in Cabo Delgado Province.  
Photo: Justiça Ambiental*

This memorandum has 4 main components:

- 1) Promoting a deeper understanding of experiences across Mozambique through exchanges in a multi-institutional working group, led by MICOA meeting and facilitated by the Centro Terra Viva (CTV) International.
- 2) Design of a national public consultation for the development of strategy and programs for REDD, led by the International Institute for Environment and Development (IIED).
- 3) Development and implementation of payment mechanisms for environmental services and public policies related to REDD, also under the jurisdiction of IIED.
- 4) To bring in the experience of Indufor on monitoring systems related to emissions baselines, especially in relation to the proposal put to the Forest Carbon Partnership Facility (FCPF). The company was contracted by the Government of Mozambique, with financial support from the Norwegian Embassy in Maputo.

126 Readiness Plan Idea Notes can be found here <http://www.forestcarbonpartnership.org/fcp/Node/174>

127 The Goal of this fund is to assist 37 pre-selected developing countries in reducing emissions from deforestation and degradation (REDD)



The reforestation of Maputo Province and application of forest stock<sup>128</sup> in Derre Reserve (Zambézia Province) will be undertaken under the ambit of the MU.

### **Mozambican REDD: third step R-Plan - R-PP Readiness Preparation Proposal**

Mozambique has also started designing the R-Plan - R-PP "Readiness Preparation Proposal" (also with support from FAS, Indufor and IIED). This is the second step in the FCPF preparation process, to become 'ready for REDD'. As part of this process there will be a workshop to present the REDD initiative (but only in the capital of country). A REDD working group will also be established, including MICOA, the Ministry of Agriculture and the University Eduardo Mondlane in Maputo.

### **Conclusions**

The conception and understanding of REDD in Mozambique is weak, verging on non-existent. Most of the Mozambican population have never heard of REDD; and even the people that are working on the REDD process, who presumably understand the general concept, don't appear to have much information. Information about the Clean Development Mechanism and carbon credit projects is also very restricted.

However, for those who have heard of REDD, or who at least know about carbon credit projects, plantations and livelihoods projects, there is a high expectation and hope that incomes will increase, development projects will prosper, and that international financial funds will flow into the country. It is easy to overlook the possible social and environmental impacts, such as the conservation of natural resources and the protection of community rights.

A further concern is that REDD will be used to fund plantation of exotic trees and agrofuels projects, and that this will have an enormous impact on the area, since many of these crops are invasive, require excessive quantities of water and impact on soils.

More information is urgently needed, including field research in the provinces where projects are planned, and also on Mozambique's overall greenhouse gas emissions.

In Mozambique, community consultations often lack sufficient transparency and may also be loaded with promises that are never delivered. This is exacerbated by weak dissemination of information and a lack of translation of documents into local languages. Resolving such shortcomings is also usually difficult, especially for communities that lack resources and information about the relevant legal processes (DUAT or Direito de Uso e Aproveitamento de Terra, the Right to Use and Develop the Land). There is thus a risk that a rush to present a position for the development of REDD in Mozambique, without an understanding of all the related issues and potential impacts, could lead to an increase in land conflicts, the abuse of community rights, and other significant environmental and social impacts.

The immediate goal of Mozambique's government was to have something to present at COP-15 in Copenhagen in December. But the three months that were available provided not enough time to develop a draft of Mozambique's REDD strategy, involving civil society in a transparent and participative process.

Also – and importantly – Mozambique is in the middle of an electoral campaign, and community consultations or workshops in the provinces undertaken in this season are unlikely to have sufficient levels of transparency or provide a real understanding of the issue. Communities are also likely to view this as part of a policy campaign and their understanding of REDD may therefore be colored, one way or another, by their political perspectives.

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<sup>128</sup> This mechanism aims to prevent extension of communities' growing areas through the creation of incentives.



## REDD in Nepal

*By the Federation of Community Forestry Users of Nepal (Fecofun)*

Many of the forests in the Nepalese hills were degraded before 1978, but nowadays, in 2009, there is no hill without trees. Community Forestry User Groups are currently managing 1.2 million ha (25%) of the national forest. 8.5 million people (33% of the population) benefit from community forestry. Indigenous Peoples, women and other marginalized groups are fully and effectively participating in community forestry and the system is market by functional social institutions.



Namdu, Nepal, in 1978



Namdu, Nepal, in 2005

### The following factors have made this success-story possible:

- Conducive policies and legal environment
- Ownership over the forest resources
- Partnership between government organizations and NGOs
- The full and effective participation of local communities, including women and Indigenous Peoples
- A regular and participatory monitoring system
- Self sustained pro-poor Community Forestry User Groups
- A strong federation of Community Forestry User Groups and
- The mobilization of and investment in people instead of projects

The question now is whether the REDD-process in Nepal, which has been started up through financial support from the World Bank Forest Carbon Partnership Facility, will build on this existing success. Despite the recognized success of community forestry in Nepal there was no robust bottom up approach in the development phase of the Readiness Project Information Note submitted to the World Bank and there has not been any proper consultation with Civil Society Organizations and IPOs. It is not clear if REDD will invest in technology, inventory, and monitoring (i.e. in carbon) or in people and their demonstrated capacity to care for their forests.

What we can learn from the Nepalese experience is that people's rights need to be clarified and supported by proper policies to restore forests. Communities and their institutions deliver more than carbon. Moreover, while funding is important, it is only one component of the overall reform that is needed to ensure successful forest conservation and restoration.

### Recommendations:

- Ensure community rights on forest, land and carbon
- Expand the area of community forestry and invest in communities
- Rethink the conservation model and trust local people. Communities and their social capital will deliver conservation as well as carbon
- Build sustainable community enterprises
- Remove dependence on aid

*For a full presentation on REDD in Nepal, please visit*

<http://www.globalforestcoalition.org/img/userpics/File/presentations/REDD-Nepal.pdf>





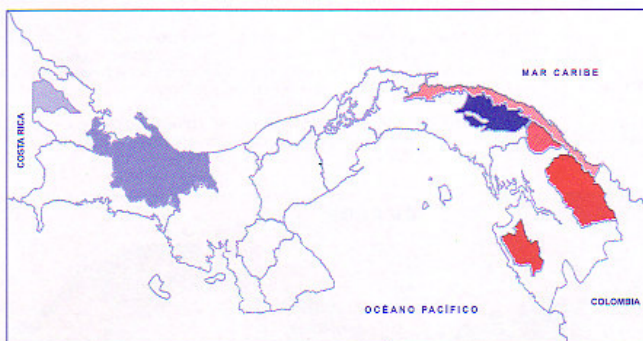
## REDD in Panama

*An Independent Monitoring Report by the Asociación Indígena Ambiental*

### Panama's forests

The Republic of Panama has a territorial extension of 75,717 km<sup>2</sup> and is located in the southern most part of the Meso-American Biological Corridor in Central America. To the West, it borders Costa Rica and to the east, Colombia. The scientific community recognizes Panama as one of the world's most biodiverse territories, with its tropical climate and a diversity of ecosystems that includes 12 of the 30 Holdridge life zones. Panama has 8 of the 200 eco-regions recognized in the world.<sup>129</sup>

The vegetation of the country is classified in 24 categories that include forests, savannahs, swamps, albinas, mangroves, floating and submerged formations of aquatic plants, plains vegetation, productive systems of woody vegetation, homogeneous and heterogeneous tree plantations, and other ecosystems such as coral reefs. The Atlantic region has the greatest concentration of forests in the country, as well as the most biological diversity in terms of ecosystems and species of flora and fauna that are in a relatively intact and healthy state of conservation.<sup>130</sup>



#### LEYENDA:

<span style="color: lightblue;">■</span> Prop. Comarca Naso Teribe	<span style="color: pink;">■</span> Comarca Kuna Yala
<span style="color: darkblue;">■</span> Comarca Ngobe-Bugle	<span style="color: red;">■</span> Comarca de Wargandi
<span style="color: mediumblue;">■</span> Comarca de Madungandi	<span style="color: orange;">■</span> Comarca Emberá-Wounaan

In 2000, there were 3,364,591 hectares of undisturbed primary forest (45% of the total land surface of the country). There are also 921,553 hectares of other primary and secondary forest, which means that the total forest cover is even higher. From 1992 to 2000, 41,321 hectares were deforested.

A project to map Panama's vegetation<sup>131</sup> found a forest area of 36,951.60 km<sup>2</sup> in 1992 (49.3% of the total land area). By 2000 this had declined to 33,507 km<sup>2</sup>; and by 2008 it stood at 32,433.12 km<sup>2</sup>. However, the annual net rate of deforestation has decreased, from -430.53 km<sup>2</sup> in 1992-2000, to -134.28 km<sup>2</sup> in 2000-2008.

In 2000, Panama had 43 declared protected areas covering 26% of the national territory. According to the Report on the Protected Areas System, in 2006, this had increased to 65 declared protected areas (34.43% of the country); and again to 70 in 2008 (35.81% of the national territory). The same study indicates that the area of forest cover in these protected areas actually declined, from 20,350.7 km<sup>2</sup> in 2000, to 19,889 km<sup>2</sup> in 2008. The difference represents a loss of 461.37 km<sup>2</sup>. The annual net rate of deforestation is -57.56 km<sup>2</sup> and the annual recovery is 6.31 km<sup>2</sup>.

However, in the Kuna Yala Comarca,<sup>132</sup> forest coverage continues to be 90% and there is no noticeable deforestation thanks to the agroforestry system practiced by the *kunamar* producers. The

<sup>129</sup> <http://www.worldwildlife.org/wildworld/>

<sup>130</sup> <http://www.cbd.int/countries/profile.shtml?country=pa>

<sup>131</sup> Proyecto de asistencia técnica para la actualización del mapa de vegetación, uso y cobertura boscosa de Panamá. Informe final de actualización de la cobertura boscosa y uso del suelo en la República de Panamá: 2000 – 2008. ANAM/CBMAP, CATHALAC, BM. Panamá, 2009.

<sup>132</sup> Comarca is a Panamanian term that refers to the land, territory and homeland of Indigenous Peoples. Given the negative historical legacy of the terms "reserve" and "reservation" and since a dignifying English equivalent that confers the wealth of meaning of the original does not exist, the translator uses Comarca.





already disturbed forests in areas such as the Kuna Yala Comarca are also recovering, that is to say that they are regenerating naturally. Indeed Indigenous Peoples across Panama eventually end up with natural regeneration in their agroecological plots, although this traditional knowledge is gradually being lost.

The provinces with the greatest forest surface are Darien, Panama, Bocas del Toro and the Embera-Wounan Comarca, where 62% of the forests of the country are found. However, the provinces of Darien and Panama also have the highest rate of deforestation in the country, along with the Ngöbe-Bugle Comarca.

There has been more attention paid to the environmental situation in the central Western region of Panama, since socio-economic development has been more pronounced there. Nonetheless, the Caribbean region is increasingly under pressure from new development, and planning is required to prevent environmental problems in untouched natural or wild areas with great biodiversity (the Atlantic coast still has unprotected natural forest). The tendency towards environmental destruction needs to be thwarted, through proper implementation of existing policy and with the active participation of the communities that live in and control the forests.

The causes that have influenced changes in forest cover and degraded the forests come from outside the forestry sector. They generate profoundly interconnected economic, social and demographic processes with complex causal interlinkages. To understand these processes, it is necessary to distinguish three kinds of factors: the agents, the immediate causes and the underlying causes.

### Tree plantations

The Panamanian State considered it necessary to draft legislation to promote and further the establishment, improvement and development of the forestry industry. Accordingly, Act 24 was passed on 23 November 1992, promoting and regulating the reforestation of Panama. That reforestation is based on (monoculture) tree plantations.

Currently, the reforested surface area has increased due to a number of factors including the adoption of the Act on Reforestation Incentives, which consists mostly of tax breaks. This act has prompted around 1,500 individuals and companies to register in the Forestry Register of the National Authority on the Environment (ANAM) and to develop reforestation projects covering some 55,000 hectares across the country.<sup>133</sup>

Up to December 2007, the reforested area included 42,994 ha of teak (*Tectona grandis*), 10,851 ha of pine (*Pinus caribaea*), 1,679 ha of cedar hawthorn (*Bombacopsis quinata*), 1,335 ha of acacia (*Acacia mangium*), 1,275 ha of African mahogany (*Khaya senegalensis*) and 7,857 hectares other species such as oak (*Tabebuia pentaphylla*) and laurel (*Cordia alliodora*).<sup>134</sup> Overall, there is an increase of 243.2 km<sup>2</sup> of plantations between 2000 and 2008,<sup>135</sup> the majority being teak. In the canal basin over 5,000 hectares have been planted with teak.

Forest plantations with areas exceeding 50 hectares are scattered in different areas of the Republic of Panama. The provinces of Panama, Colon and Veraguas have the most plantations. Chiriqui and Darien also have large forest plantations. The provinces of Cocolé, Herrera and Los Santos have lower levels and the province of Bocas del Toro has the least. Of the protected Indigenous areas, Ngöbe Bugle shows the greatest number of forest plantations.

However, ANAM is currently looking for a better way of issuing and renewing permits for logging companies in Indigenous areas, because current measures are not working (because of the inequitable relationship between the companies and Indigenous communities). Indeed the current scenario tends to promote illegal opportunities, particularly in view of the fact that domestic demand is

<sup>133</sup> Plan Nacional de Desarrollo Forestal: Modelo forestal sostenible. Gobierno Nacional, ANAM. Panamá, 2008

<sup>134</sup> Fuente: Departamento de Desarrollo y Manejo Forestal, ANAM, 2007. En: Plan Nacional de Desarrollo Forestal: Modelo forestal sostenible. Gobierno Nacional, ANAM. Panamá, 2008

<sup>135</sup> Proyecto de asistencia técnica para la actualización del mapa de vegetación, uso y cobertura boscosa de Panamá. Informe final de actualización de la cobertura boscosa y uso del suelo en la República de Panamá: 2000 – 2008. ANAM/CBMAP, CATHALAC, BM. Panamá, 2009.



rising rapidly because of a boom in construction. Ultimately, this is added to other factors such as the harvesting of species of forest for handicrafts and firewood. La Chunga (*Astrocaryum standleyanum*), for example, provides fibers that are used to weave baskets, create art or handicrafts by the women of the Embera and Wounaan tribes, and is an example of a species of tree most under threat from the local population.

While the private forestry sector is represented in several organizations, its members play no active part in creating policies or the implementation of laws. There is even less involvement of the Indigenous peoples and local communities. In this respect, the principal agency for the coordination of forest interests is the Council for National Forest Management (CONAGEFOR).

### **Important policies on forests and REDD**

The most important policies and programs developed by the Panamanian government relating to forests and the reduction of emissions from deforestation and forest degradation (REDD) date back to the adoption of Act 41, also known as the General Act on the Environment, on 1 July 1998, when the ANAM was created. This law establishes the principles and basic norms for the protection, conservation and recuperation of the environment, and promotes the sustainable use of natural resources. It also regulates environmental management and mainstreams it into social and economic objectives to achieve sustainable human development within the country.

Based on the General Act on the Environment, policies, laws, norms and instruments on environmental management are proposed; environmental information is offered; a culture of sustainability and training is promoted; new styles of development are designed and encouraged; advice is provided on the optimal use of resources; and regulation, monitoring, taxation, incentives and penalties are administered. All these activities benefit the State, society and the ecosystems of Panama.

In 1999, the first National Strategy on the Environment (ENA) for 1999-2006 was adopted and based on it, two GEO-Panama reports were published; one in 1999 and another in 2004. The Strategy also includes a Participatory Strategic Plan (1999-2004). In 2004, the Strategy was further updated with a focus on "Conservation for Sustainable Development" for 2004-2009. Further updates of the Strategy have since been published, and the 2009 GEO-Panama report was published in June<sup>136</sup>.

The current focus of the environmental strategy is the construction of a Panamanian society which fosters a healthy environment, protects Panama's forest ecosystems and practices a culture of sustainability, in the hopes of achieving the highest level of human development. In this regard, it is clear that the Strategy covers the objective of reducing emissions from deforestation and the degradation of forests (REDD) and climate change mitigation.

ANAM has designed a Sustainable Forest Model (MFS) corresponding to the principles and basic goals of the ENA and Forestry Policy of Panama.<sup>137</sup> This is intended to provide the population with alternatives, including the promotion of reforestation on both a commercial and community scale; conservation and restoration; reduction of emissions from deforestation and degradation of forests; forestry research and education; institutional strengthening and the creation of employment.

The scope of forestry policy is divided into inter-sectoral, sectoral and sub-sectoral categories: thus transcending the traditional parameters of forestry and becoming part of the overall process of decision-making, harmonizing forestry activity with all policies and strategies designed to further the diverse institutions of the primary sector which consumes natural resources, and to strengthen the forest management of ANAM and civil society.

In addition, section III, chapter 7, of The Political Constitution of the Republic of Panama establishes the ecological regime and four fundamental principles that should be interpreted inter-dependently: environmental health; sustainable development; the rational use of renewable and non-renewable natural resources; and the proper management and development of natural resources.

<sup>136</sup> [http://www.anam.gob.pa/joomla/images/stories/documentos\\_pdf/INFORME\\_GEO\\_PANAMA\\_2009.pdf](http://www.anam.gob.pa/joomla/images/stories/documentos_pdf/INFORME_GEO_PANAMA_2009.pdf)

<sup>137</sup> Executive Decree 2, 17 January 2003.



Section III, chapter 8 on the Agrarian Regime also stipulates that the State will pay particular attention to the holistic development of the agro-fishery sector, promote the optimal use of land and monitor its rational distribution and adequate use and conservation, to ensure its productivity and to guarantee the right of all farmers to a good existence. Article 259 of the same instrument stipulates that the forest and land concessions should benefit social wellbeing and public interest.

Act 1 (Section I, Chapter 2) entitled “The Forestry Legislation in the Republic of Panama is hereby established and other provisions are stipulated,” adopted on 3 February 1994, consecrates Panama’s Forestry Heritage. Its Article 10 states that this is made up of all the natural forests,<sup>138</sup> and the lands on which these forests are found. Tree plantations created by the State in land it owns are also included in this heritage.

Panama ratified all parts of the United Nations Framework Convention on Climate Change (UNFCCC) with the adoption of Act 10 on 12 April 1995. Panama ratified the Kyoto Protocol on 5 March 1999 (on the basis of Act 88 passed 30 November 1998).

In compliance with the adoption of these instruments, Resolution AG-0040-2001 took effect 14 February 2001, creating the National Program on Climate Change (PNCC), which is charged with helping ANAM implement activities and commitments stemming from ratification of the UNFCCC. Under this program, four subprograms were created with the objective of achieving national implementation of the activities defined in the international arena. Its sub-programs are: compliance; vulnerability and adaptation; mitigation; and public awareness.

Executive Decree 35 issued on 26 February 2007 contains the National Policy on Climate Change, including principles, objectives, and guidelines for action. It includes recognition of the commitment to implement measures for the adaptation and mitigation of the adverse impacts of climate change, in particular taking into account areas of poverty, so as not to compromise economic, environmental and social development. Nationally, policy and issues related to climate change should be coordinated through ANAM, which is also the designated national authority and focal point for the UNFCCC.



Parade of Kuna to protect the environment. Photo: Geodisio Castillo.

Finally, Executive Decree 1 issued on 9 January 2009 creates the National Committee on Climate Change in Panama (CONACCP), to support ANAM as it implements and follows-up the National Policy on Climate Change. This Committee includes government officials, academics and business representatives, but it appears that so far it has no Indigenous or non-indigenous representatives from civil society,<sup>139</sup> although the participation of civil society groups is written into the decrees relating to National Climate Change Policy and the creation of the National Climate Change Committee.

## Panama and the Convention on Biological Diversity

In the five legally-established Indigenous Comarcas - Kuna Yala, Madungandi, Wargandi, Emberá-Wounaan and Ngöbe Bugle - and in others that are in the process of struggling for legal recognition,

<sup>138</sup> Natural forest: All native, woody vegetal formation with a majority of tree species, or that which for its function and composition should be considered as such. Article 5 of At 1 adopted on February 3, 1994, Forestry Law.

<sup>139</sup> <http://faolex.fao.org/docs/pdf/pan86813.pdf>



such as Nasso-Teribe and Tierras Colectivas, the CBD's Expanded Program of Work on the Biological Diversity of Forests is not known. The Indigenous Peoples of the country did not know if the government held consultations and public discussions for the design, implementation and monitoring of the program.

When interviews were conducted with the personnel of government institutions, in particular the staff of the Department of Protected Areas and Wildlife and the Department of Forest Management of and the National Authority on the Environment (ANAM), it became clear that they did not know of the program either. They just referred to activities that were being implemented that were indirectly related to the Program. For example, the Tupiza<sup>140</sup> forestry management project in the Emberá-Wounaan Comarca, in the Cémaco District; and national reports and strategies on the environment and biodiversity.<sup>141</sup>

Currently, however, there are a number of legislative initiatives to protect forest biological diversity. There are also laws that recognize Indigenous territories, but not the traditional knowledge of Indigenous Peoples, which, like other relevant environmental issues, has received little attention. Article 97 of the General Act of the Environment, which focuses on Indigenous and local communities ignores the fundamental principle of free, prior and informed consent of the holders of that knowledge, which effectively opens the flood gates to those who want to commercialize the knowledge of Indigenous Peoples and local small farmers. Article 97 is an exact copy of the text of the CBD's Article 8(j) with one alteration, a word that is most notably by its absence: the text leaves out the word "approval" that would trigger a requirement to ensure free, prior, informed consent from Indigenous and local communities, allowing them the right to the use and promotion of their traditional knowledge.<sup>142</sup>

### **Panama and the rights of Indigenous Peoples**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) highlights the right of Indigenous Peoples to participate directly in decision-making processes on issues affecting their lands and territories. However, until now, the traditional authorities of Indigenous Peoples in Panama have not been authorized to participate fully in the debate on REDD.

In the Republic of Panama, the 1998 General Act on the Environment establishes the relationship between the national authorities and the Comarcas and Indigenous Peoples (in Section VII). Panama is currently divided into nine provinces and five separate Indigenous comarcas; Ngöbe-Bugle, Emberá-Wounaan, Kuna Yala, Madugandí and Waergandí. The lands of the Comarcas are collective property by constitutional mandate and are inalienable.<sup>143</sup>

This means there is a constitutional principle whereby the State will respect, preserve and maintain the knowledge, innovations and practices of the Indigenous and local communities that embody traditional lifestyles related to the conservation and sustainable use of biological diversity, promoting its broadest possible implementation with the participation of said communities; and that the state will promote the equitable sharing of the benefits derived from these activities.

According to this regulation, Indigenous Peoples must be consulted about works and projects, and the exploration, exploitation and use of natural resources that are authorized in the lands or territories of the Comarcas or Indigenous Peoples. In addition these activities must not be detrimental to Indigenous Peoples' cultural, social, economic integrity and spiritual values. Article 103 of the same Act stipulates that in the event that such activities, works or projects are developed in the territory of Indigenous communities, procedures for consultations must be designed to establish agreements with community representatives according to their rights and customs, and should specify compensating benefits for the use of their resources, knowledge and lands.

<sup>140</sup> Composite Plan of Forest Management for Río Tupiza, Cémaco District, Darién, Panama, February 2005, p.72

<sup>141</sup> Panama, 2007, Third National Report on Biodiversity, ANAM/UNEP Project, DGEF No. GFL/4833. ANAM. P. 208

<sup>142</sup> The two clauses can be compared here:

[http://www.anam.gob.pa/joomla/images/stories/normasambientales/Ley\\_general\\_del\\_ambiente\\_panama.pdf](http://www.anam.gob.pa/joomla/images/stories/normasambientales/Ley_general_del_ambiente_panama.pdf)

<http://www.cbd.int/convention/articles.shtml?a=cbd-08>

<sup>143</sup> [http://www.anam.gob.pa/joomla/images/stories/normasambientales/Ley\\_general\\_del\\_ambiente\\_panama.pdf](http://www.anam.gob.pa/joomla/images/stories/normasambientales/Ley_general_del_ambiente_panama.pdf)



Similarly, Article 105 indicates that in the event that activities for using natural resources are realized in the lands or Comarcas of Indigenous Peoples, they will have a right to participate in the economic benefits derived from the activities, regardless of whether those benefits are contemplated under law.

In addition, there has been no political decision on mitigating the hidden or underlying causes of environmental destruction that affect Indigenous Peoples in Panama. The Kuna Comarca of Madungandi, for example has an ongoing environmental problem: the people of Madungandi complain that the government has not provided full compensation for ecological damage related to the development and construction of a dam, in spite of the fact that Panama's National Forest Strategy (PNDFS) explicitly refers to the need to "Build a model of integrated use of goods and services generated by the forest through sustainable forestry practices, with the participation of indigenous communities of the Madungandí Comarca."<sup>144</sup>

There is also the case of the Recovery of the Ancestral Territories of the Kuna People of the Kuna Yala Comarca. It concerns a conflict over the use and exploitation of land in the boundary between the Kuna people of Kuna Yala and the District of Santa Isabel whose resolution requires inter-cultural consensus building with the parties.<sup>145</sup> Several authorities indicate that the Kuna people have lived, worked, and used these lands and its resources long before the birth of the Republic of Panama in 1903. That's why the Kuna people know precisely the extent of his limits, far beyond "east of Punta Escribanos"<sup>146</sup> and well within the present day District of Santa Isabel. The Kuna's leadership is clear about the situation: the Kuna's claim for their ancestral lands is intended to create a natural conservation area where both populations - Kuna and people from the Colon province - continue using or exploiting natural resources amicably, and preserve it and protect it from potential exploitation by large companies, with support from Law 2 of 7 January 2006.<sup>147</sup> The situation has not so far been resolved and the dialogue on the part of Kuna leadership is open.<sup>148</sup>

The lack of effective implementation of government policies on Indigenous Peoples' rights - especially their rights to their territories – has been the structural cause of many deforestation processes in Panama, many of which would not have occurred if those rights had been duly recognized.

### The participation of women

The historic contribution of women to the conservation of forests has been ignored, not only in Central America but also in other regions. Indigenous, Afro-descendant and small farmer women, who have a vast wealth of intimate knowledge about the forest, and are the primary caretakers and guardians of those forests. But woman are not taken into account in many programs let alone in the actual planning of projects and programs.

Changing technologies and the loss of forests has specific gender-differentiated and gender-exacerbated adverse impacts, including the violation of women's traditional rights to use the forest, which can rupture their relationship with the forest and in turn changes their relationship to their family, as well as creating other related problems.

In Panama, for example, the social division of work is very defined amongst Indigenous Peoples. Amongst the Emberá and the Wounann as well as among the Ngöbe and Bugle, woman participate both in domestic work and agricultural and artesian work, although this is not so common amongst the

<sup>144</sup> Programa Nacional de Desarrollo Forestal Sostenible PNDFS / FAO TCP / PAN 3002, <http://www.fao.org/forestry/media/16078/0/178/>

<sup>145</sup> Castillo, G. *et al.* 2005. Zona de amortiguamiento, corredor biológico y proyectos integrados de conservación y desarrollo sostenible: Alternativas al conflicto de uso de la tierra por los límites de la Comarca Kuna Yala y el Distrito de Santa Isabel, Panamá. Informe preliminar sujeta a revisión, para la Junta Ejecutiva del Congreso General Kuna. Panamá. 28 p. + Anexos Castillo, G. *et al.* 2006. Recomendaciones a la buena vecindad en los límites entre el Área Protegida de Kuna Yala y el Distrito de Santa Isabel. Comisión Técnica de Límites del Congreso General Kuna. Informe presentado y aprobado en el Congreso General Kuna, 16 al 19 de noviembre de 2006. Comarca Kuna Yala.

<sup>146</sup> El gobierno de la Gran Colombia, en 1871 crea Tulenega, que incluye las tierras ubicadas dentro del área en conflicto hasta Portobelo (Morales Gómez 1995; Roldán Ortega 2000). Otra fuente: Secretaría de lo Interior i Relaciones Exteriores. Memoria al Congreso de Colombia, 1871. Bogotá. 22-27 pp.

<sup>147</sup> Ley que regula las Concesiones para la Inversión Turística y la Enajenación de Territorio Insular para Fines de su Aprovechamiento Turístico y dicta otras disposiciones.

<sup>148</sup> Artículo de OKKE ORNSTEIN con fecha 6 de septiembre 2009 publicado en la página: <http://www.isthmian.net/?p=50&cpage=1#comment-439>





Kunas. Yet the only women participating in consultations on policy discussions about issues such as REDD tend to be those representing women's non-governmental organizations. Therefore, women should be taken into account in all programs and projects, such as REDD, because those projects and programs will adversely affect them if they are not allowed to participate in their design, implementation, monitoring and evaluation.

### Developing REDD

It is important to note that REDD has not been implemented in Panama yet and that the new government is still in discussion with the actors that are going to be involved in it.

The government's primary concern seems to be financial and Panama has presented an R-PIN and Readiness Plan (R-Plan)<sup>149</sup> to the World Bank's Forest Carbon Partnership Facility (FCPF), to secure significant tranches of funding to begin to implement its national strategy for Reducing Emissions from Deforestation and Degradation (REDD). This plan has now been approved.<sup>150</sup>

A government team on REDD has been created, but the direct participation of Indigenous Peoples is not yet assured: at least representatives of Indigenous Peoples had not been included at the time of this research.

In the same vein, the original proposal from Panama to the World Bank (the R-PIN<sup>151</sup>), did refer to Indigenous Peoples as stakeholders, but made no reference to the rights of Indigenous Peoples, the World Bank's safeguards relevant for Indigenous Peoples or the UN Declaration on the Rights of Indigenous Peoples. The Technical Advisory Panel (TAP) review of the R-PIN similarly revealed a series of deficiencies and omissions, principally relating to the rights of Indigenous Peoples, which it recommended should be improved in the R-Plan.<sup>152</sup>

Including these references and putting them into practice would bring Panama's REDD proposals into line with the country's Constitution, which outlines the territorial rights of Indigenous Peoples in Panama; and with Panama's General Environmental Law 41, Article 103, which states that: "For activities, works or projects, developed within the territory of indigenous communities, the consultation procedures will aim to establish agreements with representatives of communities on their rights and customs as well as to obtain benefits, and compensation for use of their resources, knowledge or land."<sup>153</sup>

Panama's recently approved R-Plan now has rather more to say about the involvement of Indigenous Peoples in REDD, although it seems that overall the recommendations of the TAP review have largely been ignored<sup>154</sup>. Specifically, the TAP review made the following observation and recommendation: "Consultation with and respect for the rights of Indigenous Peoples is a particularly important issue in this case, since according to government figures 34% of all Panama's forests are in the five officially recognized Indigenous Comarcas (territories), and an un-known additional percentage of forests is in areas with pending indigenous land claims. Panama has gone further than many countries in recognizing indigenous territorial rights and the right to self-government, and there have been several meetings about REDD between ANAM and a few Indigenous leaders. However, these discussions are still at a rather initial stage and most of the Indigenous Peoples' elected authorities recently signed a letter expressing strong dissatisfaction about how ANAM has handled the issue. For REDD efforts to fully succeed in Panama in indigenous territories, the government will have to seek active participation of Indigenous Peoples in the design and implementation of REDD strategies (and not just inform them of those strategies). They will also almost certainly need to address outstanding conflicts over land

<sup>149</sup> <http://www.forestcarbonpartnership.org/fcp/Node/119>

<sup>150</sup> Noticia aparecida el 2 de noviembre de 2009, en la página: <http://www.anam.gob.pa>

<sup>151</sup> [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Panama\\_FCPF\\_R-PIN.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Panama_FCPF_R-PIN.pdf)

<sup>152</sup> The TAP review and other FCPF materials relating to Panama can be found here:

<http://www.forestcarbonpartnership.org/fcp/node/77>

<sup>153</sup> [http://www.anam.gob.pa/joomla/index.php?option=com\\_content&view=article&id=350&Itemid=29&lang=en](http://www.anam.gob.pa/joomla/index.php?option=com_content&view=article&id=350&Itemid=29&lang=en)

<sup>154</sup> See relevant reports here: <http://www.bicusa.org/en/Article.11278.aspx> and here:

<http://www.redd-monitor.org/2009/07/01/world-bank-bulldozes-ahead-with-redd-in-guyana-and-panama/...>



tenure and territorial rights, among other aspects. Indigenous Peoples have relevant rights under both Panamanian and international law and all possible efforts should be made to respect those rights.”<sup>155</sup>

A further outstanding concern is that the principle of Free, Prior, Informed Consent (FPIC is not mentioned in Panama’s R-PIN or R-Plan. In fact, the legislation of Panama does not explicitly recognize FPIC as such, just “prior consultation,”<sup>156</sup> which is what is proposed for various of the components of REDD, especially in relation to supervision, evaluation of the reference situation and the overall REDD strategy. Furthermore, the FCPF’s own criteria – which are in fact the same as the World Bank Operational Policies and Procedures on Indigenous Peoples - only require the borrower to engage in a process of free, prior, and informed *consultation*”, not *consent* (emphasis added).<sup>157</sup>

However, Panama is committed to the obligations established by the International Convention on the Elimination of all forms of Racial Discrimination (ratified by Panama, August 16, 1967). This treaty on human rights has now been interpreted – through case law - as demanding that states procure the free, prior, informed *consent* of indigenous peoples before making any decisions or taking any measure that could affect their lands that they have traditionally occupied or their interests in general.<sup>158</sup>

It should be recognized that Panama has supported the principle of FPIC in international forums elsewhere, as the document that was submitted to the UNFCCC’s Subsidiary Body for Scientific and Technological Advice (SBSTA) in February 2009 demonstrates, which states that, “Any REDD strategy, plan, methodology or activities should respect the UN Declaration on Indigenous Rights (*sic*)”<sup>159</sup> and that “Any REDD strategy, plan, methodology or activities implemented in indigenous territories should obtain the prior and informed consent and respect traditional activities.”<sup>160</sup> However, this recommendation could simply be rhetoric or even aesthetic, since another document submitted together with Costa Rica to SBSTA on the same issues does not mention UNDRIP.<sup>161</sup> Of course, there is also a saying that “there is a huge abyss between saying something and doing it.”

In Panama’s strategic REDD plan then, the state has an obligation to guarantee the establishment of transparent and credible procedures of free, prior and informed consent (as opposed to mere ‘consultation’ which the World Bank promulgates as ‘FPIC’); and these need to be implemented before finalizing and implementing any REDD plan that affects the customary lands of Indigenous Peoples including the lands they have occupied and used traditionally or historically.

During 2008, nine forums were held on climate change, desertification and REDD, in all Panama’s provinces: Chiriquí (2) Los Santos (1), Veraguas (2), Herrera (1), Coclé (1), Bocas del Toro (1), Darién (1).

<sup>155</sup> [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Panama\\_FCPF%20\\_R-Plan\\_TAP\\_synthesis\\_review\\_and\\_summary\\_final\\_06-01-09.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Panama_FCPF%20_R-Plan_TAP_synthesis_review_and_summary_final_06-01-09.pdf)

<sup>156</sup> “In the event that there are activities, works or projects, developed in the territory of indigenous communities, the procedures of consultation will be oriented in such a way as to establish agreements with representatives of the communities on their rights and customs as well as on obtaining compensatory benefits for the use of resources, knowledge or land.” The way this sentence is drafted makes it clear that it is not a prerequisite to reach an agreement with the indigenous community but simply a mere “orientation.” Furthermore, the right to grant or deny consent is not recognized.

<sup>157</sup> [http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0..contentMDK:20553653~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184\\_00.html](http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0..contentMDK:20553653~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184_00.html)

<sup>158</sup> For an adequate analysis of the international obligations, see ‘The rights of indigenous peoples and the Reduction of Emissions from Deforestation and Degradation – the Case of the Saramaka People vs. Suriname, Forest Peoples Programme, March 2009, [http://www.forestpeoples.org/documents/ifi\\_igo/suriname\\_saramaka\\_and\\_redd\\_judgment\\_mar09\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/suriname_saramaka_and_redd_judgment_mar09_eng.pdf) This document refers to a judgment by the Inter-American Court of Human Rights that reaffirms that (i) “indigenous and tribal peoples’ property rights do not depend on domestic law for their existence, but, rather, are grounded in and arise from customary laws and tenure. This means that the property rights of indigenous peoples exist even if they do not hold titles to the ancestral territories they have historically used and occupied” and (ii) “For some projects, the state has a duty not only to consult with the Saramaka, ‘but also to obtain their free, prior, and informed consent, according to their customs and tradition.’ In its interpretation judgment, the Court ‘emphasized that when large-scale projects could affect the integrity of the Saramaka people’s lands and natural resources, the state has a duty not only to consult with the Saramakas, but also to obtain their free, prior and informed consent in accordance with their customs and traditions.”

<sup>159</sup> Document presented by Panama to the UNFCCC SBSTA and included in *Issues relating to indigenous people and local communities for the development and application of methodologies*, February 2009, FCCC/SBSTA/2009/MISC.1

<sup>160</sup> See, footnote 9.

<sup>161</sup> Document presented by Panama and Costa Rica to the UNFCCC SBSTA, see note 9.



With regards to Indigenous populations, there were informative sessions with Indigenous authorities from two of the five indigenous Comarcas of the Republic of Panama. The first was held the day the new authorities of the Congress of the Emberá-Wounaan Comarca were chosen. The recently elected chief, Betanio Chiquidama, gave the floor to the ANAM to explain the general principles and the status of negotiation on REDD and to agree on a follow-up meeting.

In the Kuna Yala Comarca, the General Chief was invited by ANAM to participate in the Conference of the Parties (COP-14) in Poznan, Poland. To prepare for this, there was also a meeting in the Comarca to explain the progress made in the negotiations to a group of leaders of the Congress and its technical advisers, before participants left for Poland. In this meeting, ANAM's REDD presentation was listened to, but no agreements were made (because agreements have to be made in the General Kuna Congress); however, the Indigenous leadership did request support for the supervision, control and joint management of the Comarca's protected area.

After COP-14, Panama held a consultation workshop on REDD for Indigenous Peoples, under the auspices of the Smithsonian Institute of Tropical Research in collaboration with ANAM. This event was useful, because it provided information on the REDD Strategy to all the Indigenous groups in Panama; also it clarified many doubts that Indigenous groups have about REDD due to previous misinformation. In addition to convening almost all the Indigenous groups of Panama, this meeting helped to create a group that will represent the interests of all these Indigenous groups in the country (Original Authorities of Indigenous Peoples of Panama).

On 20 August 2009, another meeting on REDD was held with ANAM and the National Coordinator of Indigenous Peoples (CONAPIP). The Kuna General Congress has also taken the initiative of informing its own communities about REDD in its own workshops. COONAPIP has approved and validated Panama's R-Plan (although consultations continue).

## Conclusions

- **Consultation and information on REDD have been lacking but are improving**

Local communities and indigenous peoples in Panama have felt excluded because they do not have a complete understanding of REDD, even though there have been presentations to some groups of community representatives. Furthermore, in Panama, the social division of work is very defined amongst some Indigenous Peoples, and women participate both in domestic work and agricultural and artesian work. Yet the only women participating in consultations on policy discussions about issues such as REDD tend to be those representing women's non-governmental organizations. In addition, the National Committee on Climate Change in Panama (CONACCP), created in January 2009, includes government officials, academics and business representatives, but seems to have no Indigenous or non-indigenous representatives from civil society. Thus local communities and women in particular still feel that they have not participated in the negotiations on REDD.

These shortcomings are reflected in World Bank's Technical Advisory Panel (TAP) review of Panama's REDD proposal. The government of Panama must take these recommendations on board and comply with the obligation to ensure a real culturally appropriate consultation with all Indigenous Peoples of the country to ensure that they give their consent to participate in the national strategy on REDD.

- **Panama already has legislation on Indigenous Peoples' Rights but its needs to improve it significantly and implement it effectively**

Panama already has some legislation relevant to REDD and its impacts on Indigenous Peoples and other forest-dwelling communities. Section III, chapter 8 on the Agrarian Regime, for example, stipulates that the state will pay particular attention to the holistic development of the agro-fishery sector, promote the optimal use of land and monitor its rational distribution and adequate use and conservation, to ensure its productivity and to guarantee the right of all farmers to good existence. Article 259 of the same instrument stipulates that the forest and land concessions should benefit social wellbeing and public interest.



However, some legislation clearly requires improvement. As stated above, Article 97 of Panama's General Law on the Environment is an exact copy of the text of the CBD's Article 8(j) on the rights of Indigenous Peoples, but has one significant alteration, a word that is notable because of its absence: the missing word is "approval", which would trigger a requirement to ensure free, prior, informed consent from Indigenous and local communities, allowing them the right to the use and promotion of their traditional knowledge. Similarly, Panama's domestic legislation does not explicitly recognize Free Prior and Informed Consent (FPIC) as such, just "prior consultation,"<sup>162</sup> which is what is proposed for various of the components of REDD, especially in relation to supervision, evaluation of the reference situation and the overall REDD strategy.

These legislative nuances could be critical when it comes to the implementation of any REDD projects: they indicate a very hesitant and non-committal 'acceptance' of Indigenous People's rights. This is confirmed by the fact that the traditional institutions of government rarely comply with the commitments that they have made with local communities. In particular, the hidden or underlying causes of deforestation and degradation of forests often remain unaddressed. This lack of effective implementation of government policies in relation to Indigenous Peoples' rights - especially their rights to their territories - has been the structural cause of many deforestation processes in Panama, which might not have occurred if those rights had been duly recognized.

Elsewhere, the Panamanian government has referred to Indigenous Peoples as a 'key stakeholder', commenting that REDD should serve to improve income for rural communities, helping them to better adapt to changes; and strengthen Indigenous Peoples and other forest-dwellers through community investment projects.<sup>163</sup> Such commitments need to be strengthened and implemented effectively.

- **Panama also has legislation on biodiversity and climate change, but this does not mean it is implementing or will implement international commitments on these issues or REDD effectively.**

Currently, there are a number of legislative initiatives to protect forest biological diversity. There are also laws that recognize Indigenous territories, although not the traditional knowledge of Indigenous Peoples, which, like other relevant environmental issues, has received little attention.

However, the existence of these laws is no guarantee of implementation of international commitments. For example, in the five legally-established Indigenous Comarcas and in others that are in the process of struggling for legal recognition, the Convention on Biological Diversity's Expanded Program of Work on the Biological Diversity of Forests is not known. The Indigenous Peoples of the country do not know if the government held consultations and public discussions for the design, implementation and monitoring of the program.

### **Recommendations:**

Before implementing any programs relating to REDD:

- **The Panamanian government must recognize that it is legally obliged to accept the principles of Free, Prior and Informed Consent, and implement it at the national level, including by involving Indigenous Peoples consistently and meaningfully in any and all REDD-related processes.**

Panama needs to improve its national legislation on Indigenous Peoples' rights, especially in relation to the protection of Traditional Knowledge and Free, Prior and Informed Consent. In particular, case law relating to conventions such as the International Convention on the Elimination of all forms of Racial Discrimination (CERD) (ratified by Panama in 1967) indicates that states must procure the free,

<sup>162</sup> "In the event that there are activities, works or projects, developed in the territory of indigenous communities, the procedures of consultation will be oriented in such a way as to establish agreements with representatives of the communities on their rights and customs as well as on obtaining compensatory benefits for the use of resources, knowledge or land." The way this sentence is drafted makes it clear that it is not a prerequisite to reach an agreement with the indigenous community but simply a mere "orientation." Furthermore, the right to grant or deny consent is not recognized.

<sup>163</sup> <http://www.slideshare.net/rightsandclimate/national-redd-strategy-panama-presentation>



prior, informed consent of Indigenous Peoples before making any decisions or taking any measure that could affect their lands that they have traditionally occupied or their interests in general.

The government also needs to recognize that any local scheme that compensates for avoided emissions from deforestation and degradation of forests must use local communities' and Indigenous People's own mechanisms for channeling the funding for REDD through their own clearly identified and legally accredited institutions. These groups must also be able to present their own policies and programs proposals and projects on REDD.

Women in particular should be taken into account in all programs and projects, such as REDD, because those projects and programs will adversely affect them if they are not allowed to participate in their design, implementation, monitoring and evaluation.

- **Panama also needs to improve its implementation of internationally agreed commitments relating to biodiversity, climate change and REDD.**

This should include, for example, implementing the Convention on Biological Diversity's Expanded Programme of Work on Forest Biological Diversity effectively.

The Panamanian government must also offer more information and dialogues on REDD with local communities and/or Indigenous Peoples in Panama, to ensure that the proposed REDD policies are consistent with the existing policies intended to implement the CBD and UNDRIP.



*Indigenous Emberá-Wounaan Comarca. Photo: Geodisio Castillo*





## REDD in Paraguay

*By Sobrevivencia/ Friends of the Earth-Paraguay*

On 15 August 2008, Fernando Lugo became President of Paraguay, ending 60-plus years in power by the Colorado Party of the former dictator Stroessner. One of the main challenges for the new government is defeating the deep-rooted corruption and clientelism in the Paraguayan bureaucratic system.

It was the old government that initiated discussions with the World Bank, and later with the UN REDD program, on a national REDD strategy. As the old government had no policy of consultation with Indigenous Peoples or local communities, only a handful of large, partly foreign conservation organizations had been consulted when the Readiness Project Information Note (R-PIN) was submitted to the World Bank in July 2008. This note mentioned a "network of Indigenous organizations" that had been consulted but there is no such network in Paraguay, and the main Indigenous Peoples' coalition, the Coordinadora para la Autonomia de Pueblos Indigenas (CAPI), had not been informed of the initiative at all. International Indigenous observers to the World Bank Forest Carbon Partnership Facility together with Sobrevivencia, a national NGO, alerted CAPI to the misinformation contained in the R-PIN. CAPI wrote a furious letter to the World Bank, which led to the FCPF process being halted.

The new Government, which had formally committed itself to Indigenous participation in public policy-making, decided not to make the same mistake with the project proposal for the UN-REDD program. They formally declared that they would ensure Indigenous participation in the elaboration of the proposal, and invited CAPI to the technical team that was to elaborate and implement the REDD strategy. However, CAPI was faced with the challenge that its own membership, which consists of 17 different Indigenous Peoples speaking an equal number of Indigenous languages (with Spanish only spoken as a second language by half of the membership), was totally uninformed of REDD and its possible implications for their rights and needs. It thus asked for more time, information, and capacity-building, before it could even formally decide whether it would accept the invitation to be part of the technical team or not. In October 2009, two capacity-building workshops were organized, and CAPI is now trying to develop a joint internal position regarding the current REDD proposal.

However, while CAPI was trying to get up to speed in terms of enabling its membership to participate in the process, a detailed, advanced draft UN-REDD project proposal was developed by UNDP consultants. Sobrevivencia has pointed out that this draft proposal is partly based on existing laws that were developed by the old regime, like the Payment for Environmental Services law and the Reforestation law, which establishes a fund to subsidize plantation development. Both laws are feared to have potential negative impacts on Indigenous Peoples and biodiversity.

The Payments for Environmental Services law could lead to the privatization of Indigenous lands and the further economic marginalization of Indigenous communities that lack the technical skills required to 'sell' environmental services (which requires, amongst other things, a comprehensive environmental impact assessment). As it is financed through biodiversity offsets it would also allow continued deforestation, as the law stipulates that landholders are allowed to offset forest conversion (although forest conversion is formally prohibited in the Eastern half of Paraguay).

The Reforestation law, which has remained largely non-operational until now due to a lack of funds, could trigger a massive expansion of exotic monoculture tree plantations if it were to be financed through a UN-REDD grant. Large-scale monoculture tree plantations have had dramatic impacts on Indigenous Peoples and biodiversity in neighboring countries like Brazil and Argentina.

Indigenous Peoples were not consulted about the elaboration of these laws either, so incorporating them into the UN-REDD strategy would imply a violation of the principle of Free Prior and Informed Consent as enshrined in the UN Declaration on the Rights of Indigenous Peoples, which has been embraced by the new Paraguayan Government and the UN-REDD program alike. For that reason, Sobrevivencia has recommended that all references to these existing laws are removed from the draft REDD proposal, and that the proposal is entirely redrafted so as to genuinely incorporate the concerns of CAPI and national civil society.

*A full presentation on REDD in Paraguay can be downloaded at:*

<http://www.globalforestcoalition.org/img/userpics/File/presentations/REDD-realities.pdf>



## REDD in Uganda

*An Independent Monitoring Report by NAPE/Friends of the Earth-Uganda<sup>164</sup>*

### Uganda's forests and deforestation and forest degradation trends

Forest cover in Uganda today is estimated to be only about 21% of the country's total land mass. Of this forest cover, only about 30% of the total forest cover is owned by the government; the remaining 70% is privately owned. However, it is thought that only a small proportion of these are well-stocked due to the difficult political situation (with many people abandoning their homes and living in camps, because of more than two decades of political insecurity). There are also an unknown number of on-farm plantations, agro-forestry systems and private small-scale woodlots. This gives an idea of the distribution of forest ownership in Uganda.

Uganda has been experiencing persistent change in its forest cover over the last few decades. Between 1970 and 1990 alone, forest cover was reduced by 50%. Between 1990 and 2000, Uganda lost an average of 86,500 hectares of forest per year. The tropical high forest covered 12.7% of Uganda in 1900: today it only covers 5% of the total land area. This amounts to an average annual deforestation rate of 1.76%.

Between 2000 and 2005, the overall rate of forest change went up even more, increasing by 21.2%: it reached 2.13% per annum. In total, between 1990 and 2005, Uganda lost 26.3% of its remaining forest cover (around 1,297,000 hectares). Measuring the total rate of habitat conversion (defined as change in forest area plus change in woodland area minus net plantation expansion) for the 1990-2005 intervals, Uganda lost 24.7% of its forest and woodland habitat.<sup>165</sup>

These figures reflect a long history of deforestation in the country. According to the new 2009 Food and Agriculture Organization report<sup>166</sup> on the state of the world's forests, the forestry sector in Uganda is estimated to be contributing 4% to the country's GDP and employs about 4,000 people. However, if this rate of forest loss continues, in 20 years' time there will be no forests left in Uganda.<sup>167</sup>

### Description of existing forest policies

There are a number of existing policies and acts that are related to the management of forests and/or relevant to the implementation of the Convention on Biological Diversity's Expanded Programme of Work on Forest Biological Diversity. These policies and laws include:

#### a) The Constitution of the Republic of Uganda (1995)

The Constitution of Uganda (1995) is the supreme law governing the country. Its provisions have significant implications for the management of forestry and a number of other natural resources in Uganda. In particular, the Constitution is rather ambiguous when it comes to land ownership, stating that land in Uganda belongs to its citizens and that every individual has a right to own property, but also qualifying that by asserting that the government or local government may acquire land in the public interest. The concern here is that the government has already used such articles to grab peoples' land, and that this has implications for all subsequent laws and policies that are developed regarding forests, wetlands etc.

#### b) The Forest Policy for Uganda (2001)

<sup>164</sup> The National Association of Professional Environmentalists (NAPE) is a national non-governmental organization that lobbies and advocates for the sustainable management of natural resources for the benefit of all Ugandans. NAPE is currently monitoring REDD activities in Uganda. During the implementation of the first quarter of the monitoring project many issues related to REDD were identified.

<sup>165</sup> Forest Resources Assessment 2005, Food and Agricultural Organization, <http://www.fao.org/forestry/fra/fra2005/en/>

<sup>166</sup> State of the World's Forests 2009, Food and Agriculture Organization, Rome, <http://www.fao.org/docrep/011/i0350e/i0350e00.HTM>

<sup>167</sup> Uganda's State of Environment reports can be found here: <http://www.nemaug.org>



The forest policy outlines a vision for managing forests in Uganda, and considers ways in which forests could be utilized in future. It considers forests as a resource to be used for eradicating poverty, creating wealth, conserving biodiversity, providing vital ecological and social services and making a contribution to the global community. The forest policy is implemented through the National Forest Plan (NFP), which guides all developments in the forestry sector.

#### **c) The National Forestry and Tree Planting Act (2003)**

This Act provides for the sustainable management of forestry resources, biodiversity conservation and community participation. The Tree Planting Act (2003) calls for the establishment of a Tree Fund to be managed by the Minister, to implement tree planting programs. However, the tree fund has never been put in place: as a result the objectives of the Tree Planting Act have not yet been met. A further concern is that the act fails to emphasize the importance of planting indigenous trees; it only emphasizes afforestation and reforestation and most of the trees that have been planted are monocultures and exotic. Combined with Article 39 Clause 1, which states that the minister or district council is responsible for directing the planting and growing of trees, this could explain why a lot of alien tree species have been promoted in Uganda.

#### **d) The Uganda Wildlife Policy (1996)**

The policy is aimed at (i) conserving wildlife resources within National Parks and other protected areas and (ii) enabling the people of Uganda and the global community to derive ecological, economic, aesthetic, scientific and educational benefits from wildlife.

#### **e) The Wildlife Act (Cap 200, 1996)**

This Act deals with the sustainable management of wildlife. The Act provides for Wildlife Use Rights, and takes into account sustainable use and equitable sharing. The policy objective also stresses collaborative natural resources management (CNRM), where resources such as timber, water and biomass are accessed by communities. Additionally, it also consolidates the laws relating to wildlife management, and establishes a coordinating, monitoring and supervisory body.

This Act also has a provision directing that a percentage of proceeds from these resources are ploughed back to support community initiatives. However the major problem in Uganda today is enforcement of such laws. And because of this lack of enforcement, encroachment, poaching and degradation have become enormous problems. There has also been evident harassment of communities by game rangers, with subsequent violence resulting in deaths on both sides.

#### **f) The National Environment Act (Cap 153, 1995)**

This Act is the framework law on environment. It provides for the sustainable management of the environment and wise use of natural resources, and establishes a coordinating, monitoring and supervisory body. The National Environment (Access to Genetic Resource and Benefit Sharing) Regulations No 30 of 2005 specifies the criteria and conditions for accessing and transfers of genetic materials within and outside the country.

### **Ugandan policies on implementing the rights of Indigenous Peoples and local communities**

There are no national policies in Uganda deliberately designed to implement the rights of Indigenous Peoples as stipulated under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This therefore means that the rights of the Indigenous minority are not recognized.

Article 8(j) of the Convention on Biological Diversity (CBD) is similarly intended to ensure that parties respect, preserve and maintain the knowledge, innovations and practices of Indigenous and local communities. As required by the CBD, the Ugandan government has designed national biodiversity strategies and action plans: but even in these plans, the issues of Indigenous minority people's rights are not well defined. Thus for example, people living in forests before they are gazetted are still considered to be encroaching in to the forests, and their rights are violated.



While the CBD is clear on issues of Indigenous People's rights, the constitution of Uganda remains passive on the issue. According to the constitution, there are about 56 Indigenous tribes. The argument has been that all or most of the communities are Indigenous. However, among these Indigenous communities there are some Indigenous minority tribes that are particularly dependent on forest resources, such as the Benet (indigenous to Mt Elgon), the Batwa (to Mt Rwenzori and Bwindi forests), and the Banyabutumbi and Ik peoples in Karamoja, whose rights, especially in relation to their lifestyle as forest communities, are not taken into account. The above Indigenous groups are said to have lived in those forests before being removed when the government gazetted the areas as forest reserves.

Furthermore, Indigenous minority groups are not adequately represented at the national level.

### **Uganda: the development of REDD-related policies and programs**

Uganda is one of the few countries in Africa that is thought to have very good environmental policies, even though it is also one of the most highly deforested countries in Africa. The country is currently developing a climate change policy and has also developed a REDD Readiness plan, which will contribute to the development of a national program on REDD. The relevant policies being developed include:

- **Climate change policy**

Uganda's general climate change policy is being developed with a view to addressing numerous environmental challenges within the country. The policy will help the country to harmonize different environmental policies that are institutionally fragmented, being dealt with by a range of climate-related institutions. The policy will, among other things, address some of the challenges of forest degradation, and will contribute to efforts to reduce emissions from forest degradation and deforestation.

The climate change policy formulation process is being spearheaded by the Climate Change Unit, which is located in the Ministry of Water and Environment (MWE). This is the same Ministry that prepared Uganda's National Adaptation Plan of Action (NAPA) as part of a regional initiative, the Regional Climate Change Action Plan (RCCAP), aimed at mitigating climate change. The Climate Change Unit is responsible for coordinating and serving as a clearing-house for all climate change related issues in Uganda. It is being supported by the Danish International Development Agency (DANIDA) for a period of four years ending in 2012.

The Climate Change Unit is undertaking the following activities as part of the government's commitment under the United Nations Framework Convention on Climate Change (UNFCCC) in Uganda:

- Developing a climate change policy paper.
- Preparing climate change negotiators to represent the government.
- Contributing to an East African master plan for climate change mitigation / adaptation strategy.
- Developing National Appropriate Mitigation Action Plans (NAMAs).

Uganda also aims to access the Kyoto Protocol's Clean Development Mechanism (CDM). The main purpose of CDM is to allow for emissions reduction, avoiding or sequestering activities (although it excludes agricultural (soil) sequestration, and forest conservation and management). Uganda however, like many African countries, has not been able to attract meaningful CDM funding. The only successful CDM project in the country has been the Nyagak Small Hydropower project in the west Nile region of Uganda.

- **Land use policy**

While land tenure is recognized as being relevant to the sustainable management of forest resources, it is also important to acknowledge the importance of organized use of land and land resources. The



Ugandan government is currently in the process of formulating a national land use policy with the primary aim of regulating, guiding, and taking into account land use suitability across the country.



*Kalangala: BIDCO has decimated the forest and planted oil palm plantations. Photo: Kureeba David.*

As part of this process, the government is reviewing policies that influence different land tenure systems in the country, and this is likely to affect the ownership of some of Uganda's forests. In relation to The Land Act (Cap 227), which deals with issues of land tenure, ownership, management and the protection of natural resources, an amendment bill has already been presented to the parliament.

Due to a lack of proper land tenure and land use policy land grabbing has become prominent in recent years. This has included human rights violations, the destruction of cultural sites, including cultural forests and sacred sites, and the conversion of forest and agricultural land into monoculture plantations (especially by agribusiness corporations producing

agrofuels feedstocks). In Uganda this is particularly evident in the districts of Kalangala, Mukono, Jinja, and Wakiso. As a result there have been significant negative impacts on forest resources and biodiversity, food sovereignty and rising food prices.

However, the land reform process is still underway and it is not possible to tell what its precise outcomes will be yet. The government's end goals are unknown. But the land issue is an extremely sensitive one, especially given that Uganda is moving towards 2011 elections. So far, however, it can be said that the new land bill in Uganda has generated a lot of suspicion among many land owners. A poor land tenure system will work against the successful implementation of REDD in Uganda.

- **Developing REDD Readiness plans**

In a bid to improve the management of forests in the country, the government put in place a National Forestry Authority (NFA) in 2004. The responsibility of NFA is to manage all gazetted national forest in Uganda (although forests in wetlands are managed by the Wetland Management Department). The NFA is the national focal point for REDD in Uganda, and is developing a REDD Readiness plan.

To help promote the good governance of forests, the government also decentralized the management of forestry services to districts in 1993. The districts manage their forests under the District Forestry Services (DFS). Despite this decentralization, however, recent forest statistics indicate that forest degradation has increased.

The REDD Readiness Plan being prepared is expected to help the country in laying out and organizing the steps needed to achieve "Readiness" to undertake activities reducing emissions from deforestation and forest degradation (REDD), in the country context. The ultimate result will be the development of a REDD plan or strategy for the country.

The 'REDD readiness' will conclude a Consultation and Outreach Plan (to be implemented during the implementation phase of the Readiness Plan) and consultations with key entities; and terms of reference for:

- development of the greenhouse gas emissions Reference Scenario;
- development of the national REDD strategy, including means of assessing its potential impacts, and any REDD implementation framework;





- establishing the Monitoring, Reporting and Verification system for determining changes in forest cover and changes in carbon stocks at the national level;
- estimating investment requirements for, and evaluation of, the REDD strategy.

The REDD readiness plan is not yet completed but from an analysis of current documents and conversations with government officials, it seems likely that there are, so far, no explicit safeguards for biodiversity protection. There is also a high chance that the plan will promote both indigenous and exotic tree species.

- **Establishing a Forest Carbon Partnership Facility (FCPF) pilot project**

The Ugandan government is hoping to finance the development of its REDD readiness plan by participating in the World Bank's Forest Carbon Partnership Facility (FCPF) and has submitted an initial information note or 'R-PIN'. If this R-PIN is accepted the government can expect to raise US\$200,000 to start on its Readiness Plan. At the national level, however, there seems to be little information on the state of play of the FCPF with regards to Uganda, and at the time of this research it was not clear whether the money had been received from the World Bank or not. No REDD-related activities seem to be underway; and the number of staff working on REDD was few, and many of those were focused on preparing for COP-15 in Copenhagen. Documents on the World Bank's website, however, indicate that the funds were authorized by the Bank in August 2009.<sup>168</sup>

### **Potential impacts of REDD on local communities indigenous peoples, women and the environment**

The broad definition of Indigenous People employed in the Ugandan context is cause for concern that the rights of Indigenous minority groups will not be adequately addressed. Currently, there seems to be no participation by Indigenous People's organizations (IPO's) in the planning processes, even though it is these groups that suffer most from the effects of climate change. The national REDD Readiness plan includes consultation with vulnerable groups, but it is not clear whether this includes the Indigenous minority groups or not.

It is also uncertain how issues of gender, especially women's roles, needs and rights, will be tackled. In a similar manner, NGOs and the wider public have not been given roles in the process. Overall, this exclusion does not augur well for the future of Indigenous People/communities.

These concerns are borne out by the language used by the Ugandan government in its R-PIN to the World Bank, in which it makes a very ambiguous reference to Indigenous People and only comments that it will ensure "fair treatment for minority communities...on their own merit". Concern about this was reflected in the review conducted by the Technical Advisory Panel, which states that better articulation of the Ugandan government's intentions on this issue is necessary, although this does not seem to have stopped the Bank from authorizing the first tranche of funding anyway.<sup>169</sup>

Clearly the R-PIN does not address the rights of the Indigenous minority as clearly stated in UNDRIP, even though Uganda is signatory.

Key concerns for Indigenous Peoples and minority / marginalized groups are:

- Indigenous People and minority groups are likely to be denied access to the forests for firewood and herbs, whilst lessees will be granted the rights to harvest the trees.
- Carbon traders may require land titles, to the carbon in the forest or to the land, which Indigenous People and minority groups may not have.
- Profits for loggers, deforesters and polluters will open a way for lessees to profit from logging in the name of sustainable harvesting.

<sup>168</sup> Uganda's R-PIN, TAP review and authorization of the first tranche of funding can all be found here: <http://www.forestcarbonpartnership.org/fcp/node/82>

<sup>169</sup> *ibid.*



- REDD may mean that forests come to be viewed as mere mechanisms for carbon sequestration.
- REDD may lead to a change in priorities, with economic priorities taking precedence over cultural, social, spiritual and environmental issues
- In Uganda, there is also a fear that there will be displacement from traditional territories as a result of implementation of REDD mechanisms that do not consider the rights of indigenous peoples, minority groups and local communities
- Equity issues might not be resolved, meaning that benefits may not reach the communities preserving the forests.
- The government is still promoting agrofuels at the expense of natural forests, even though it is preparing a REDD Readiness plan.

### What works and what doesn't?

To date, most carbon offset funded reforestation projects have failed (see box). Key difficulties have been forceful and even violent evictions from traditional territories; the cost of participating in CDM projects; and technical problems associated with measuring carbon uptake by trees. CDM projects are also failing because of a lack of information about implementation. This is likely to be compounded under REDD: even now, there is little or no information about REDD available to most Ugandans.

#### Cases of failed forest restoration initiatives in Uganda

*In eastern Uganda, in 1995, FACE Foundation restored degraded forest areas inside the boundary of the Mt Elgon forest reserve. However, this initiative by the Ugandan Wildlife Authority (UWA) had a negative impact on some of the Benet indigenous people who were evicted, as well as land owners adjacent to the forest and forest enclavers, in spite of the fact that some of the evictees had titles to their pieces of land.*

*In 1995 NFA decided to create a buffer below the park boundary, which was demarcated in 1993. This act by NFA took even more peoples' land, culminating in disputes that went to court.*

*In western Uganda, the wildlife authority and FACE rehabilitated part of the Kibale forest amidst community protest. There were forceful evictions of forest encroachers. As a result, forest dependent communities were denied access to forest resources.*

### Conclusions

So far, there are no completed REDD policies for Uganda. However, the government is in the process of initiating a national REDD Readiness plan. But it is not clear if the REDD national focal point will ensure that Indigenous minority groups are consulted under the activity on 'consulting vulnerable groups'. In addition, there are no national policies in Uganda deliberately intended to implement the rights of Indigenous Peoples as stipulated under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

There is thus particular concern that REDD implementation in Uganda is likely to deny Indigenous People and minority groups access to the forests for firewood, herbs, food and other necessities. REDD lessees, for example, may be the ones granted the rights to harvest the trees, and carbon traders may acquire land titles, to the carbon in the forest or to the land. Generally, since the REDD process started very few people have been involved. Most people are not informed about REDD.

The Ugandan government is also reviewing the land policy, which will influence the different land tenure systems in the country, and this is likely to affect the ownership of some forests in the country. The new land bill in Uganda has generated a lot of suspicion among many landowners, because of proposals that tenants should be granted ownership of land on which they have been staying as bonafide occupants.

In addition, there are already many policies, laws and acts that are relevant to the formulation of REDD-specific policies. However, these need to be reviewed to reflect specific issues relating to



REDD, particularly in case a separate policy on REDD is not developed. They should clearly address the concerns, fears and expectations of people that are often marginalized and left out of development processes. For example, even in national biodiversity strategies and action plans, the issues of Indigenous minority people's rights are not well defined.

Other areas that need attention include:

- The decentralization of the management of forestry services, which has been accompanied by increased forest degradation.
- The promotion of agrofuels by government, which is being driven forward without clear guidelines or policies and has resulted in human rights violations, land grabbing, and the destruction of forests and cultural sites. It is also impacting on food sovereignty.
- The fact that no tree fund was ever implemented in support of the Tree Planting Act (2003); and that the Act needs to be amended to prioritize the use of indigenous species.

## Recommendations

The following will be critical in Uganda:

- REDD policies and projects should include explicit recognition of the rights of Indigenous Peoples and minority groups, especially Indigenous communities that are particularly dependent on forest resources, such as the Benet (indigenous to Mt Elgon), the Batwa (to Mt Rwenzori and Bwindi forests), the pigmies in Bunyaruguru, the Banyabutumbi and the Ik peoples in Karamoja.
- Any REDD programme should be based on collective forest resources management to effectively involve vulnerable groups.
- Meaningful and effective implementation of REDD in Uganda should focus on the development of alternative energy sources.
- Gender roles, needs and rights (especially those of women) should be mainstreamed in any project process.
- Indigenous communities need to be adequately represented at national and international levels in REDD discussions.
- Problems with land tenure and the recognition of traditional territories should be addressed forthwith if REDD implementation in Uganda is to benefit the poor indigenous minority and local communities, especially in the face of land ownership, forced evictions by landlords, government and agribusiness proprietors.
- There is a need for Uganda to develop comprehensive climate change adaptation and mitigation policies.
- There is a need for funding Uganda's National Adaptation Programme of Action.
- The government should develop a policy for regulating the promotion of agrofuels.



## Conclusions

The country reports included in this research illustrate the very different on-the-ground scenarios that could apply to REDD projects as and when they are implemented in countries across the world.

Critically, there is an immense variation between countries with respect to the existence of effective legislation protecting biodiversity and Indigenous Peoples' rights. The involvement of Indigenous Peoples and other forest-dependent communities in the development of national REDD strategies and projects also differs significantly from country to country.

Nevertheless, a closer look at the findings of each report allows us to draw some general conclusions that are particularly relevant to the way in which REDD is being crafted at the international level, and implemented at the national level. Seven key concerns emerge:

- (1) The participation of Indigenous Peoples, local communities, social movements and NGOs in national REDD policy debates and decision-making forums varies significantly from country to country. In some, there has been a relatively high degree of engagement and information dissemination (but even in these countries there is significant room for improvement); in others there is little or no involvement in or knowledge about REDD, and civil society is unable to plug the information gap.**

Even in Nepal, where community forestry is a recognized and notable success, there has been no robust bottom up approach in the development phase of the Readiness Project Information Note submitted to the World Bank and no proper consultation with civil society organizations and Indigenous Peoples' Organizations.

The Indonesian government has undertaken consultation processes in relation to REDD, but these have been criticized for being insufficiently detailed and transparent. There have also been some national and regional consultation meetings, but most inputs from national NGOs and Indigenous People were not well responded to by the Indonesian government, and their real involvement in drafting REDD regulations has therefore been very limited.

Similarly, Panama has held several consultations on climate change, desertification and REDD, with groups of community representatives in all of its provinces and with Indigenous Peoples. However, information still has to be disseminated more widely: local communities and Indigenous Peoples still feel that they have been excluded because they do not have a complete understanding of REDD and because consultations and information could have been more inclusive.

Again, consultation is not the end of the story: in spite of these meetings, Panama's original R-PIN submitted to the World Bank's FCPF made no reference to the rights of Indigenous Peoples, the World Bank's safeguards relevant for Indigenous Peoples or the UN Declaration on the Rights of Indigenous Peoples. The Technical Advisory Panel (TAP) review of Panama's R-PIN also revealed a series of deficiencies and omissions, principally relating to the rights of Indigenous Peoples, which it recommended should be improved in the R-Plan.

As a result, Panama's recently approved R-Plan now has rather more to say about the involvement of Indigenous Peoples in REDD. A government team on REDD has been created, although the direct participation of Indigenous Peoples is not yet assured: at least representatives of Indigenous Peoples had not been included at the time of this research. But, as the TAP review on Panama commented: "The government will have to seek active participation of Indigenous Peoples in the design and implementation of REDD strategies (and not just inform them of those strategies). They will also almost certainly need to address outstanding conflicts over land tenure and territorial rights, among other aspects. Indigenous Peoples have relevant rights under both Panamanian and international law and all possible efforts should be made to respect those rights."

A lack of public information and knowledge about REDD and processes related to it is also a key feature in some countries, meaning that communities do not even know that there is an important debate taking place, that might affect their lives and livelihoods. Local NGOs and Indigenous Peoples



Organizations lack the resources to plug this information gap. This is certainly the case in Colombia, and in countries where the status of Indigenous Peoples is uncertain. In Uganda, for example, NGOs and the wider public have not been given roles in the process and it is not clear if the REDD national focal point will ensure that Indigenous minority groups are consulted under the activity on 'consulting vulnerable groups'. Similarly in Mozambique, information on REDD is scant, and requests for information are unlikely to receive a positive response: a workshop held in August 2009 proved to be the only source of information available on the issue. Again, in Mozambique REDD is still a new concept and not well understood.

It is also the case in countries such as Ghana, that only a certain sector of civil society has been consulted. The Ghanaian government has only consulted with forest sector NGOs, but those working in relevant crosscutting sectors such as development, human rights, and land and water management have so far been excluded. Here again, the general public remains almost completely unaware about REDD and its potential consequences.

There is also evidence that large international NGOs have often been included in national consultations, even in countries where local civil society has been deliberately excluded. It is particularly worrying that this is precisely what has happened in Colombia. It could be argued that of all the countries considered in this report, Colombia is one of the least likely to implement REDD in a progressive and equitable manner. Yet its consultations have included NGOs including the World Wide Fund for Nature (WWF) and The Nature Conservancy, even though these entities do not represent the communities and/or peoples that will be affected by the implementation of REDD in Colombia. Indigenous Peoples and Afro-descendants in Colombia, whose territories are of prime interest for REDD, have been excluded from the national roundtable on REDD and have not been taken into account in the design of REDD policies, programs or projects.

The Colombian government's disregard for the rights of Indigenous Peoples is also reflected in the World Bank's independent external review of Colombia's R-PIN application to participate in the FCPF, undertaken by the Technical Advisory Panel (TAP). This states that, "It is not apparent how the private sector or indigenous communities would have an immediate responsibility for the implementation of a REDD strategy and how they would be involved" and that, "No consultative processes have taken place yet... Earlier experience suggests that stakeholder consultation has been largely focused on higher government levels."

**(2) Even though REDD's potential negative impacts could fall disproportionately on women, there seems to be almost no evidence that gender issues are being considered in REDD development processes or that women are being proactively engaged in national debates on REDD.**

Indigenous and small farmer women have a vast wealth of intimate knowledge about forests, and it is frequently the women that are the primary caretakers and guardians of those forests. Nevertheless, it seems that women are not being taken into account in many REDD-related strategy discussions, let alone in the actual planning of projects and programs. This is clearly reflected in reports from Colombia, Panama and Uganda, for example.

Changing technologies and the loss of forests has specific gender-differentiated and gender-exacerbated adverse impacts, including the violation of women's traditional rights to use the forest, which can rupture their relationship with the forest, and in turn change their relationship with their family and create other related problems.

In Kenya the situation is slightly better. Until recently, women, and especially Indigenous women, were only marginally involved in the process, even though they are the ones that will be most affected by REDD. Traditional gender roles have inhibited the participation of women and youth in forestry development. However, in recognition of the important role played by women in communities adjacent to forests, the government has made provision for their involvement in Kenya's current Forest Policy,. It has provided more opportunities for women and youth to receive forest-related training and education; mandating the deliberate involvement of women and youth in participatory forest management; and encouraging youth to take on more responsibility in the management of forests, to ensure that future generations are catered for when decisions affecting forests are made. Kenya's





Community Forest Associations committees must comprise four members, one of whom must be a woman and one a youth representative. In Kenya, it seems increasingly likely that women could be involved in REDD.

**(3) REDD proponents need to bear in mind that countries likely to engage in REDD typically have very high levels of biodiversity, but existing legislation on biodiversity at the national level is not always implemented effectively, and in some cases is being progressively weakened to meet economic objectives. REDD could accelerate this dynamic.**

Many of the countries likely to engage in REDD have extraordinarily high levels of biodiversity by virtue of their varied forest ecosystems, and this is certainly the case for Colombia, Indonesia and India, who are ranked second, fourth and tenth in terms of the world's most biodiverse countries.<sup>170</sup> However, this biodiversity is frequently threatened by extensive logging: in terms of the percentage of primary forest lost per year between 2000 and 2005, for example, Colombia ranked fifth and Indonesia eleventh.<sup>171</sup>

All the countries studied had some form of legislation in place to conserve biodiversity, but some were particularly reliant on the Protected Areas approach. As concluded in the analysis of the implementation of the Expanded Program of Work on Forest Biodiversity in 22 different countries, published by GFC in 2007<sup>172</sup>, over-reliance on Protected Areas as the main strategy to conserve biodiversity can lead to conflicts with local communities and Indigenous Peoples in the targeted areas. Moreover, forests outside those areas, which often form the majority of the forest cover in a given country, are left with little or no protection.

Whether or not REDD policies are integrated with these national biodiversity policies could have a positive or negative impact on a country's biodiversity: it depends upon the nature of the legislation in place and whether REDD policies then work to support or suppress that legislation. In particular, any form of REDD that allows or furthers the replacement of natural forests with plantations of exotic tree species would work to the detriment of biodiversity.

Specifically in relation to the Convention on Biological Diversity (CBD), there is often little or no knowledge about its Expanded Program of Work on the Biological Diversity of Forests, both amongst civil society and at the official level,<sup>173</sup> even though this is closely related to REDD's supposed 'win-win' objectives (carbon sequestration, biodiversity conservation and poverty alleviation). In Colombia, officials argue that the CBD's Expanded Program of Work on Forest Biodiversity is independent of REDD, thus they don't apply the CBD's provisions to REDD.

Uganda provides a good example of a country where environmental legislation is generally of a high standard, even though it is also one of the most highly deforested countries. Uganda has a number of policies and acts concerning the management of forests and/or relevant to the implementation of the CBD's Expanded Programme of Work on Forest Biological Diversity. Uganda's 2001 Forest Policy, for example, considers forests as a resource to be used for eradicating poverty, creating wealth, conserving biodiversity, providing vital ecological and social services and making a contribution to the global community. Similarly, Uganda's 2003 National Forestry and Tree Planting Act provides for the sustainable management of forestry resources, and mandates biodiversity conservation and community participation. Uganda's Wildlife Act also provides for the sustainable management of wildlife, stressing collaborative natural resources management, where resources such as timber, water, and biomass are accessed by communities; and has a provision directing that a percentage of proceeds from these resources are ploughed back to support community initiatives. On the other hand its 2003 National Forestry and Tree Planting Act fails to emphasize the importance of planting

<sup>170</sup> Data from: [www.mongabay.com](http://www.mongabay.com), sourced from: World Conservation Monitoring Centre of the United Nations Environment Programme (UNEP-WCMC), 2004. Species Data (unpublished, September 2004).

<sup>171</sup> [http://rainforests.mongabay.com/03highest\\_biodiversity.htm](http://rainforests.mongabay.com/03highest_biodiversity.htm)

<sup>172</sup> [http://rainforests.mongabay.com/primary\\_alpha.html](http://rainforests.mongabay.com/primary_alpha.html)

<sup>173</sup> Forests and the Biodiversity Convention: independent monitoring of the implementation of the expanded programme of work, summary report, Global Forest Coalition, May 2008,

<http://www.globalforestcoalition.org/img/userpics/File/IndependentMonitoring/ForestandtheBiodiversityConventionSummary.pdf>

<sup>173</sup> Forests and the Biodiversity Convention: independent monitoring of the implementation of the expanded programme of work, summary report, Global Forest Coalition, May 2008,

<http://www.globalforestcoalition.org/img/userpics/File/IndependentMonitoring/ForestandtheBiodiversityConventionSummary.pdf>



indigenous trees, thus resulting in most of the trees that have been planted being monocultures of exotics.

In some countries, existing environmental legislation is being progressively weakened, primarily to facilitate economic objectives. REDD could accelerate this dynamic. In Colombia, for example, there is already a clear tendency to deregulate control over forests. There has also been a progressive dismantling of the National Environmental System (SINA), whose institutions used to regulate and control the use of the forests. This is combined with a patent willingness to use market-mechanisms and to sell off Colombia's heritage, especially when it comes to the use, conservation and management of the country's forests.

Similarly, in Costa Rica, environmental legislation has made great strides in the last decade, including by establishing limits on property rights and free enterprise. Yet these improvements have also occurred at a time when there is a marked tendency to deregulate and simplify procedures, to open markets to foreign trade and investment, negotiate free trade agreements, and actively seek investment.

In some other countries, like Ghana, implementation lags behind legislation on the sustainable use of resources, in relation to areas such as timber harvesting restrictions, fair access to forest resources, and greater participation in forest policy-making and management for example. This has a direct bearing on the government's ability to enforce the laws that restrict industry's access to resources, develop rules that will facilitate greater communal access to timber and non-timber forest products, and to enforce revenue sharing schemes. These existing realities may apply equally to REDD.

**(4) The potential inclusion of Sustainable Forest Management (SFM) (according to FAO's current definition, which includes the establishment of monoculture tree plantations and 'low impact logging') within REDD is of great concern. In addition to destroying biodiversity and damaging the lives and livelihoods of Indigenous Peoples, it threatens to thoroughly undermine efforts to preserve the world's forests in order to protect the planet's climate.**

There is a real risk that REDD will be used to fund the expansion of plantations, even though it is now recognized that most plantations store less than 20% of the carbon that intact forests do<sup>174</sup> - plantations are not forests. The replacement of forests with tree plantations could even *increase* due to new proposals from countries proposing to calculate 'net' loss or gain of forest cover (deforestation rates). This would enable them to allow logging and agricultural expansion into the forest in some areas, if they compensate for it by planting trees in grasslands and other areas without forest (whilst profiting from both). Zero 'net' deforestation is *not* the same as halting the conversion of forests to industrial tree plantations.

The inclusion of SFM in REDD at the national level is clearly illustrated in Indonesia, where a number of REDD policies are already in place. The most recent regulation is the Forestry Minister's Regulation No 36/Menhut-II/2009 on Procedures for Licensing of Commercial Utilisation of Carbon Sequestration and/or Storage in Production or Protected Forests. This governs procedures for obtaining business licenses to engage in carbon sequestration or carbon storage activities. It explicitly includes Sustainable Production Forest Management under this heading. Acceptable REDD activities in Indonesia therefore include production-related activities such as lengthening the cycle of cutting, environmentally-friendly cutting, and "protection and security" in areas with protection functions. Allocating REDD carbon credits to logging or plantation companies for such activities could turn into a logging subsidy and thus allow these companies to finance yet more logging, including in primary forests.

Including plantations as forests also makes it particularly difficult to measure and determine the fate of real forests. Take India, for example. India's two main approaches to REDD are 'compensated reduction' and 'compensated conservation' where it says that carbon is saved from reducing

<sup>174</sup> Palin et al. (1999). Carbon Sequestration and trace gas emissions in slash-and-burn and alternative land uses in the humid tropics, Palin et al., ASB Climate Change Working Group, CGIAR, Final Report, Phase II, [www.asb.cgiar.org/pdfwebdocs/Climate%20Change%20WG%20reports/Climate%20Change%20WG%20report.pdf](http://www.asb.cgiar.org/pdfwebdocs/Climate%20Change%20WG%20reports/Climate%20Change%20WG%20report.pdf)



deforestation and degradation, and carbon is added through conservation, the sustainable management of forests and increases in forest cover using tree plantations (afforestation and reforestation). India's arguments rest heavily on the claim that India is a low deforestation country, but this is actually contentious. Forest groups in India have said all along that the loss of dense to moderately dense forests within the recorded forest area is being hidden under the garb of increasing forest and tree cover. For example, the first enumeration of forest and tree cover in India was covered by the State of Forest Report 2001 in which all perennial woody vegetation (including bamboos, palms, coconut, apple, mango, neem, peepal, etc) was treated as tree cover. The incremental increase in forest and tree cover is also due to industrial plantations, both on degraded forest- and non-forest land, and compensatory afforestation programmes which compensate for the conversion of recorded forest land for development projects.

**(5) The extent to which countries protect the rights of their Indigenous Peoples varies enormously. Some countries have legislation in place to protect Indigenous Peoples' rights, including in relation to forest biodiversity, although the extent to which such laws are implemented is variable. Others continue to violate or condone the violation of the rights of Indigenous Peoples, which often involves extreme violence: these countries are most unlikely to implement REDD in a way that benefits Indigenous Peoples. The degree to which governments have explicitly sought to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) at the national level is also mixed.**

Indigenous Peoples are likely to be significantly impacted, one way or another, by the advent of REDD, since it will directly affect those forest resources that millions of Indigenous People and forest-dependent communities around the world depend upon for all their needs. India's forests alone are home to around 100 million people.

It is also the case that the principal forest tracts are often found in Indigenous Territories, since they have been better protected in those areas. This is the case in Costa Rica, for example, and in Panama, where the extent of the preserved forest coverage in the Kuna Yala Comarca continues to be 86% and there is no noticeable deforestation, thanks to the agroforestry system practiced by the *kunamar* producers.

However, even those countries with good legislation on Indigenous Peoples' rights could implement it more effectively. In Panama for example, many - but not all - Indigenous Peoples have territorial rights and there are five legally-established Indigenous Comarcas, which are collective property by constitutional mandate, and are inalienable. The State is obliged to respect, preserve and maintain the knowledge, innovations and practices of the Indigenous and local communities that embody traditional lifestyles related to the conservation and sustainable use of biological diversity; and to promote the equitable sharing of the benefits derived from these activities. Indigenous Peoples must be consulted about works and projects, and the exploration, exploitation and use of natural resources that are authorized in their territories; and there must be compensating benefits for the use of their resources, knowledge and lands.

Yet this legislation has not been consistently implemented. This has been the structural cause of many deforestation processes in Panama, many of which would not have occurred if these rights had been duly recognized. In addition, Panama has certain nuances in its legislation, which could have significant impacts for Indigenous Peoples' rights in relation to REDD. For example, Article 97 of Panama's General Law on the Environment is an exact copy of the text of the CBD's Article 8(j) on the rights of Indigenous Peoples, but has one significant alteration, a word that is notable because of its absence: the missing word is "approval", which would trigger a requirement to ensure free, prior, informed *consent* from Indigenous and local communities. Similarly, Panama's domestic legislation does not explicitly recognize Free Prior and Informed Consent (FPIC) as such, just "prior consultation."

These legislative nuances could be critical when it comes to the implementation of REDD projects: they indicate that in reality Panama's government has a rather hesitant and non-committal approach to Indigenous Peoples' rights. This is confirmed by the fact that the traditional institutions of government rarely comply with the commitments that they have made with local communities. In particular, the hidden or underlying causes of deforestation and degradation of forests often remain unaddressed.



In the same vein, the original proposal from Panama to the World Bank (its R-PIN), did refer to Indigenous Peoples as stakeholders, but made no reference to the rights of Indigenous Peoples, the World Bank's safeguards relevant for Indigenous Peoples or the UN Declaration on the Rights of Indigenous Peoples. The Technical Advisory Panel (TAP) review of Panama's R-PIN also revealed a series of deficiencies and omissions, principally relating to the rights of Indigenous Peoples, which it recommended should be improved in Panama's R-Plan.

Costa Rica provides another example of the way in which legislation that looks good on paper may be implemented rather less successfully in reality. Costa Rica's Biodiversity Act, for example, stipulates that those who develop new products based on biodiversity must guarantee that they do so respecting, from the outset, the public institutions and the rights of local communities that have conserved that biodiversity. Costa Rica has also ratified ILO Convention 169, has an 'indigenous law' from the 1970's, and is a signatory to UNDRIP.

But the implementation of certain measures relating to the CBD, which should in theory contribute to the protection of the collective rights of Indigenous Peoples and the protection of traditional knowledge of Indigenous Peoples and local communities, is ineffective. The Costa Rican government has favored a series of policies that facilitate the privatization of traditional knowledge and its patenting. Indigenous Peoples were never consulted on the Free Trade Agreement with the United States and Central America and the Dominican Republic (DR-CAFTA) despite the multiple ways in which it impacts on their lives and livelihoods; and the government recently issued a decree that legalizes the privatization and patenting of traditional knowledge. There have also been attempts to impose infrastructure projects such as large dams in Indigenous territories, although these have not prospered thanks to popular resistance.

The status of previously accepted legislation must also be called into question. The Paraguayan government, for example, has formally committed itself to implementing the principle of Free Prior and Informed Consent (FPIC) in relation to REDD and Indigenous Peoples. However, there is still a proposal to include two laws in its national REDD system - the Payment for Environmental Services law and the Reforestation law - which have been elaborated without any form of consultation, and certainly without the consent of Indigenous Peoples. It is clear that incorporation of these two existing laws in REDD would render the 'prior' criteria of FPIC meaningless.

India provides a further example of the way in which Indigenous Peoples' rights may be neglected. In spite of laws promoting social forestry and protecting Scheduled Castes, India's 1972 Wildlife Protection Act (WLPA) and its 1980 Forest Conservation Act have created havoc: large scale displacement of forest people and loss of usufruct rights have been reported in scores of National Parks and Wildlife sanctuaries during the last 35 years. (In contrast however, the Indian government rejected the National Biodiversity State Action Plans developed and formulated by the rural communities, tribal groups and forest people in 2002.)

Implementation of India's social forestry model and Joint Forest Management (JFM) program, which specifies the rights local communities have over forest lands, has also been problematic. JFM was essentially imposed on forest dwellers without appropriate consultation at any stage, and has had negative impacts in areas where traditional forest management practices still exist. In general, JFM is undermining and commercializing traditional systems and bringing community-protected forests under the control of the Forest Department. It has also led to the marginalization and displacement of tribals and the violation of their customary and traditional rights: the defining feature of its implementation has been its policy of evicting 'forest encroachers', which has led to many forest dwellers losing their lands and access to forest resources.

Even implementation of India's new 2006 Forest Act, which marks a real watershed in the history of forest communities' struggle in India, has been difficult. For the first time, the Government of India - through the Scheduled Tribes and the Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006) - recognized and vested the forest rights and the occupation of forest land in forest-dwelling scheduled tribes and other traditional forest dwellers, who have been residing in such forests for generations but whose rights could not be recorded. However, even though it was passed in December 2006, implementation has so far been very poor, primarily due to covert opposition from the Forest Department, which does not want to share its absolute power with the forest communities and



still regards itself as the biggest landlord in the country. Officials of the Forest Department together with the wildlife lobby have been creating umpteen obstacles to this Act.

There are other countries that have legislation on Indigenous Peoples' rights but do not implement it consistently. In Ghana, for example, protection of the rights and access of local communities to their resources, such as forests, already exists, although is scattered throughout a number of time-tested traditional systems of authority and sectoral policies. In the forestry sector, benefit sharing for natural forest timber revenue exists, including royalties, and social responsibility agreements (SRAs), which give forest communities a financial stake in commercial timber operations. Timber permit holders are required to negotiate social responsibility agreements with local communities. However, fair access to resources, fair benefit sharing from corporate exploitation, greater participation in policy-making processes, and enforcing the laws are not implemented well in practice (Amelia *et al*, 2007). There have also been conflicts between communities over royalties from the revenue raising schemes.

Other countries including Colombia, Kenya, Indonesia and Uganda, have no effective policies on Indigenous Peoples' rights. Colombia and Kenya also abstained from voting on UNDRIP.

The situation in relation to the violations of Indigenous Peoples' rights in Colombia is particularly grave. In addition to not recognizing UNDRIP, other relevant instruments like Convention 169 of the ILO are not duly implemented, and the process of recognizing and titling of Indigenous Peoples' and Afro-descendants' territories is almost paralyzed. The drafting and implementation of Acts on Forestry and Rural Development have also been officially declared unconstitutional, because they have not complied with the prior consultation process. This lack of compliance, and disregard for responsibilities translates into a systematic violation of rights in practice, and has prompted Indigenous organizations in Colombia to launch a national mobilization and resistance 'Minga of Social and Community Resistance'. Overall, with respect to implementing REDD this is clearly one country where the necessary conditions concerning the rights of Indigenous Peoples and others simply do not exist.

However, in some other countries it can be difficult to predict precisely what the consequences of failing to implement UNDRIP will be. The Kenyan government, for example, does not formally recognise any community as Indigenous, choosing instead to recognise *all* Kenyans as Indigenous. In addition, Kenya is not comfortable with the concepts of self-determination and free, prior, and informed consent, which are enshrined in UNDRIP. However, it is clear from the recently revised Forest Act, and the engagement of communities in the REDD discussion to-date, that the Kenyan government is serious about involving Indigenous and forest communities in its national REDD strategy. In addition, Kenya's 2005 Forest Act No 7 recognizes forest communities' rights to continue to use the forest produce customarily taken from the forest and empowers communities to participate in the conservation and management of state or local authority forests. The issue is not one of lack of policies or initiatives designed to protect the rights of Indigenous Peoples or implement UNDRIP: rather it is the inability of Indigenous Peoples to use the provisions of existing laws, policies and mechanisms to further their rights and interests on the basis of the UNDRIP. Most Indigenous Peoples in Kenya do not even know that UNDRIP exists, and Indigenous activists lack the resources to create awareness about it. At the same time there is no political will favoring the declaration, and the Kenyan government has done nothing about creating awareness about it or mainstreaming its provisions. As a result, REDD initiatives are still leading to conflicts with Indigenous Peoples. A key example of this is the planned eviction of inhabitants of the Mau forest, including the Indigenous Ogiek People, to make way for a UNEP-funded forest conservation project that would be partly funded through carbon offsets.

More generally though, it seems that a lack of concern for UNDRIP is likely to translate into a failure to properly recognize Indigenous Peoples rights or to involve them in REDD negotiations. In Uganda, for example, there are no national policies to implement the rights of Indigenous Peoples as stipulated under UNDRIP. As required by the CBD, the Ugandan government has designed national biodiversity strategies and action plans: but even in these plans, the issues of Indigenous minority peoples' rights are not well defined. Thus people living in forests before they are gazetted are still considered to be encroaching on the forests, and their rights are violated.





## **Forest People May Lose Home in Kenyan Plan**

### **With the stroke of a pen, the last of Kenya's honey hunters may soon be homeless.**

By Jeffrey Gettleman, New York Times, November 2009

Since time immemorial, the Ogiek have been Kenya's traditional forest dwellers. They have stalked antelope with homemade bows, made medicine from leaves and trapped bees to produce honey, the golden elixir of the woods. They have struggled to survive the press of modernity, and many times they have been persecuted, driven from their forests and belittled as "dorobo," a word meaning roughly people with no cattle. Somehow, they have always managed to survive.

Now, though, the little-known Ogiek, among East Africa's last bona fide hunters and gatherers, face their gravest test yet. The Kenyan government is gearing up to evict tens of thousands of settlers, illegal or not, from the Mau Forest, the Ogiek's ancestral home and a critical water source for this entire country. The question is: Will the few thousand remaining Ogiek be given a reprieve or given the boot?

"Tell Obama and his men to help us," pleaded Daniel M. Kobei, an Ogiek leader, who still seems almost stunned that the Ogiek may have to leave a forest they have battled for decades to conserve. "It's not that we're special, but this forest is our home."

No doubt the Mau Forest is crucial. It is — or more accurately, used to be — a thick, staggeringly beautiful forest in western Kenya, capturing the rains and the mist and, in turn, feeding more than a dozen lakes and rivers across the region, even contributing to the flow of the Nile.

But in the past 15 years, because of ill-planned settlement schemes (the government essentially handed out chunks of forest to cronies), 25 percent of the trees have been wiped out. Much of the forest is now simply meadow. The Ogiek say there are fewer antelope and bees. They constantly use the Kiswahili word "haribika," which means spoiled. Scientists say the environmental destruction has led to flash floods, micro-climate change, soil erosion and dried up lakes.

The results were painfully obvious this summer when East Africa was hit by one of the worst droughts in years. In Nairobi, Kenya's capital, the water taps went dry for weeks. And because Kenya gets a lot of electricity from hydropower, the water shortage meant blackouts, which many Kenyans believe contributed to the recent spike in crime and unemployment.

Suddenly, the Kenyan government seemed to spring into action, commissioning hefty environmental reports and insisting on ejecting all settlers from the Mau Forest so that the government could plant millions of trees and get the country's water sources churning again. But the sudden environmental altruism has bred suspicion as well. Many Ogiek wonder if Kenyan politicians, notorious as among the world's most corrupt, are driven by another kind of green.

"The government wants that forest for economic reasons, not conservation reasons," said Towett Kimaiyo, an Ogiek leader. "The only people who are going to benefit are the saw-millers."

Almost as if to prove his point, beyond the bird chirps and cow bells tinkling across the smooth green hills was a different noise, a deeper, steadier noise, like a growl: bulldozers, many of them. Upon closer inspection, it was clear that timber companies are continuing to chew up large tracts of the Mau, knocking down giant trees and turning them into doors and plywood for export.

"I don't want to talk about that," said Julius Kavita, this area's district commissioner, when asked what was going on.

Mr. Kavita said it was "complicated" and left it at that. But Kenyan environmental groups contend that powerful politicians control the timber companies, just as they control the dairies, the tea farms and other engines of Kenya's economy.

To the Ogiek, all this is sadly familiar. Though they are among the oldest communities in East Africa, many were marched off their land by British colonists in the 1930s and herded into "native reserves" where countless Ogiek died from diseases they had no natural resistance to, like malaria. The British felled their forests and planted pine trees, good for commercial logging, though in the Ogiek's eyes, for little else.

The persecution continued after Kenya's independence in 1963, with the Kenyan police burning down Ogiek huts to drive the people out of the woods. In the 1990s, the government began handing out thousands of acres in the Mau Forest to political friends, which squeezed the Ogiek even further. The Ogiek sued in Kenyan courts, and the Ford Foundation helped pay their legal bills, but their forest continued to melt away.

Mr. Kavita said the Ogiek, compared with the outside settlers who have chopped down trees to make cornfields, were "so kind to the forest." But he was noncommittal on whether the Ogiek would get a special exemption from the planned evictions.

Nowadays, many of the same people who used to derisively refer to Ogiek as dorobo are claiming to be Ogiek themselves, "Ogiek originals," in the hope they might get a break, too.

This could be a problem because the Ogiek are not great record keepers. Recent reports indicate that 8 of 10 Ogiek cannot read. Their total population is estimated at 5,000 to 20,000, many of them balancing their traditions with the trappings of modern life. It is not uncommon to see an Ogiek man with a quiver of eagle feather arrows in one fist and a cellphone in the other.

"I have one question," said an Ogiek boy in a village near Marashoni. "Will the government evict us or not?" Another young man tramped off into the woods to check a honey trap at the top of a tall tree. He was carrying a smoking coconut — "to make the bees sleep," he explained — and wearing an antelope skin pouch and a pair of muddy sneakers. The last thing he did before shimmying up the bark and disappearing into the leaves was to kick off his shoes, a symbol of the world he was leaving behind, however fleetingly.



Even more worryingly, the Indian Wildlife Protection Act (WLPA) has been used to justify curtailing the legitimate daily survival activities of forest-dependent people in wildlife habitats, evicting them forcibly and without proper resettlement, and centralizing the management of these habitats in the hands of a callous and unresponsive bureaucracy. Its blanket ban on all human activities except tourism, is causing considerable suffering among local people, who have been deprived access to the forests they depend on for their sustenance and survival, leading to conflicts between them and the Protected Areas (PA) authorities, together with a sharp decline in public support for conservation. To further complicate matters, however, WLPA has not been effective in fending off pressure from commercial and industrial interests.

India's Forest Conservation Act also rendered more than 20 million forest people as 'encroachers', even though it too has failed to stop deforestation and a massive diversion of forests resources to industry. This has resulted in immense deprivation and suffering to millions of forest people across the country: villages, for example, are routinely denied basic amenities like roads and water supply pipelines. India is therefore, claiming REDD financial incentives for a forest management regime that displaces and violates the rights of forest people, continues to divert large tracts of forests, and then replaces it with industrial, monoculture plantations.

**(6) Land rights and tenure continues to be one of the most problematic areas when it comes to the implementation of REDD: those without tenure may not be able to claim compensation under REDD.**

There remains a distinct possibility that people without official title to their lands (or the trees on that land), including Indigenous People and small farmers, will find it extremely difficult if not impossible, to benefit from REDD. In Ghana, for example, local people living in off-reserve zones already face high tree tenure insecurity, raising an enormous challenge for the fair and equitable sharing of REDD+ benefits. In Costa Rica, small farmers that do not have land tenure have been unable to participate in and receive payments under Costa Rica's Payment for Environmental Services (PES) scheme.

In many countries, PES schemes are seen as a "logical" form of implementing REDD, although there is no reason why REDD funding for a country's effort to reduce deforestation could not be used for strategies that have proven to be more effective and efficient, like strengthening Indigenous Peoples' rights and community control over forests, and improving forest law enforcement and governance.

Indonesia, has, however, made provision for land tenure difficulties in its Forestry Minister's Regulation No 30/Menhut-II/2009 on REDD, which amongst other things mandates local governments to determine tenure issues (they can do so by issuing a letter). However, whether this will resolve the situation in the case of Indonesia, or whether it will simply work to exacerbate corruption at the local level, remains to be seen.

In some countries there are also land reform processes underway which could influence the implementation of REDD one way or another (or perhaps be influenced *by* the prospect of REDD).

Take Uganda, for example. Due to a lack of proper land tenure and land use policy, land grabbing has become prominent in recent years. This has included human rights violations, the destruction of cultural sites, including cultural forests and sacred sites, and the conversion of forest and agricultural land into monoculture plantations (especially by agribusiness corporations producing agrofuels feedstocks). As a result there have been significant negative impacts on forest resources and biodiversity, food sovereignty and rising food prices. But the government's end objectives are not clear, and the new land bill in Uganda has generated a lot of suspicion among many landowners. A poor land tenure system will work against the successful implementation of REDD in Uganda.

In India, land tenure remains a complicated and constantly changing issue. Things have become more complex with the enactment of the Forest Rights Act, 2006. Large tracts of forests in India will legally come under community governance. But there is now a question about how REDD will recognize the legally binding rights of forest communities, and their contribution to conservation and the sustainable management of forests and biodiversity. Will communities be able to claim the incentives for reducing



deforestation and degradation under community governance? Or will REDD undermine the community conservation efforts and rights of the forest communities, and strengthen a centralized form of forest governance practiced by countries like India, eroding the recent gains that forest communities have snatched at great cost?

The way things are currently moving in the forest sector in India, market or fund-based financial mechanisms like REDD may tend to act as a disincentive towards the decentralization of forest governance. The majority of the forest people in India have already shifted to areas, which are of less intrinsic value and considered uneconomic. REDD could be the final straw for forest dependent communities, if both the state and private sector actors are then tempted to stake their claims to these 'uneconomic' areas. Given the history of forest dependent communities' rights in India, it seems there is a strong possibility that REDD and other forest-related funds may only promote an artificial greening of the country, whilst increasing the financial clout of the forest bureaucracy and thereby undermining the rights and entitlements of the forest people.

In complete contrast, in Nepal established Community Forestry User Groups are currently managing 25% of the national forest, with 33% of the population benefitting from community forestry. Indigenous Peoples, women and other marginalized groups are fully and effectively participating in community forestry and the system is marked by functional social institutions. Many of the forests in the Nepalese hills were degraded before 1978, but nowadays it is hard to find a hill without trees.

**(7) Market-based approaches to REDD are complex yet lucrative, a combination that discourages community participation but encourages fraud and corruption.**

In Colombia, for example, 'carbon cowboys' are already on the trail. Carbon traders or individuals, on their own initiative or representing organizations (NGOs), are canvassing Colombian territories with forests and offering the inhabitants contracts to 'sell oxygen' on the international market. These 'carbon cowboys' are offering projects in exchange for the signing of contracts that hand over the right to make decisions about the territory and the corresponding heritage and resources, and/or negotiating on behalf of the communities with a view to managing the funds derived from any carbon trading ventures. In fact the situation is already so acute that Colombia's environment ministry has issued a series of communiqués to the population to warn them of possible scams and how they may be victimized by signing such contracts.

In Paraguay there are also strong concerns about the possible inclusion of the existing Payments for Environmental Services system in REDD, as it creates a market in biodiversity offsets that has proven to be inaccessible for Indigenous communities.<sup>175</sup> Speculation around these biodiversity offsets and voluntary carbon offset projects has already led to a serious limitation of Indigenous Peoples' access to their original territories and the privatization of Indigenous lands. Due to the highly inequitable distribution of land in Paraguay, a PES system will by definition benefit large landholders, while marginalizing the overwhelming majority of Paraguayans with little or no formal title to land, even though the latter are in reality responsible for managing most of the country's forests.

<sup>175</sup> Life as Commerce: the impact of market-based conservation on Indigenous Peoples, local communities and women, Global Forest Coalition, October 2008, <http://www.globalforestcoalition.org/img/userpics/File/publications/LIFE-AS-COMMERCE2008.pdf>



## **An Open Letter by Social Movements on REDD in Brazil**

We are socio-environmental organizations and movements, male and female workers in family and peasant agriculture, agroextractivists, members of *Quilombola* (descendants of runaway slaves) communities, women's organizations, urban grassroots organizations, fishermen and women, students, traditional peoples and communities, and native peoples sharing the struggle against deforestation and for environmental justice in the Amazon and in Brazil at large. We gathered at the seminar "*Climate and Forest - REDD and market-based mechanisms as a solution for the Amazon?*," held in Belém, state of Pará, Brazil, on October 2-3, 2009, to analyze proposals for Reducing Emissions from Deforestation and Degradation (REDD) for the region in the light of our experiences with policies and programs implemented in the region in recent decades. In this letter, we are publicly calling on the Brazilian Government to reject the idea of using REDD as a carbon market-based mechanism and of accepting it as a means to compensate the emissions from Northern countries.

We reject the use of market-based mechanisms as tools to reduce carbon emissions based on the firm conviction that the market cannot be expected to take responsibility for life on the planet. The Conference of the Parties (COP) and its ensuing results showed that governments are not willing to take on consistent public commitments and that they tend to transfer the practical responsibility for achieving (notoriously insufficient) targets to the private initiative. As a result, public investments in and control of compliance with targets falter, while the expansion of a global CO<sub>2</sub> market is legitimized as a new form of financial capital investment and a means to ensure the survival of a failed production and consumption model.

The REDD proposals under discussion do not make any distinction between native forests and large-scale tree monoculture, and they allow economic actors – which have historically destroyed ecosystems and expelled populations from them – to resort to standing forest appreciation mechanisms to preserve and strengthen their economic and political power to the detriment of those populations. In addition, we run the risk of allowing industrialized countries not to reduce their fossil-fuel emissions drastically and to maintain an unsustainable production and consumption model. We need agreements to force Northern countries to recognize their climate debt and to assume the commitment to pay it off.

For Brazil, international climate negotiations should not be focused on discussing REDD and other market-based mechanisms, but rather on the transition to a new production, distribution and consumption model based on agroecology, on a solidarity-based economic approach, and on a diversified and decentralized energy matrix capable of ensuring food security and sovereignty.

The main challenge for addressing deforestation in the Amazon and in other biomes in Brazil lies in solving the serious land ownership problems facing the country, which are at the roots of its socio-environmental conflicts. Deforestation - resulting from the advance of monoculture and of policies that favor agribusiness and a development model based on the predatory exploitation and export of natural resources - can only be avoided if the land issue is appropriately addressed through a Land Reform and sustainable territorial reorganization measures, and if territories occupied by traditional peoples and communities and by native peoples are legally recognized.

We have a different vision on what territory, development and economics are all about, which we are building over time, based on the sustainable use of forests and free use of biodiversity. A set of public policies is necessary for ensuring recognition of and appreciation for traditional practices, on the basis of a balanced relationship between production and environmental preservation.

We are committed to keep on fighting for what we believe in the light of this vision and to make sure that any mechanism for reducing deforestation is based on a comprehensive set of public policies and public and public and voluntary funds that can ensure our rights and life in the Amazon and on the planet.

*A full report on REDD in Brazil by Friends of the Earth-Brazil will be available in December 2009 on <http://www.globalforestcoalition.org/img/userpics/File/presentations/REDD-in-Brazil.pdf>*



**Belém Letter signed by:**

- Friends of the Earth – Brazil
- ANA – National Agroecology Articulation
- Tijupá Agroecological Association
- Terrazul Alternative Civil Association
- APACC – Association in Support of Poor Communities of the State of Pará
- APA-TO – Alternatives for Small-Scale Agriculture in the State of Tocantins
- CEAPAC - Center in Support of Community Action Projects
- CEDENPA – Center for Studies and Defense of Black People of the State of Pará
- COFRUTA – Fruit Growers' Cooperative of Abaetetuba
- Coletivo Jovem Pará
- Sapê do Norte – State of Espírito Santo – Quilombola Committee
- CONTAG – National Confederation of Agricultural Workers
- CUT – Single Workers' Union
- FASE – Solidarity and Education
- FAOC – West Amazon Forum
- FAOR – East Amazon Forum
- FEAB – Federation of Agronomy Students of Brazil
- FETAGRI – Federation of Agricultural Workers of the State of Pará
- FETRAF – National Federation of Family Agriculture Workers of Brazil
- FMAP – Forum of Women of the Amazon in the State of Pará
- FORMAD – Forum for Development and Environment of the State of Mato Grosso
- BR 163 Forum
- Carajás Forum
- DEMA FUND
- GIAS – Sustainable Agriculture Exchange Group of the State of Mato Grosso
- GMB – Group of Brazilian women
- IAMAS – Instituto Amazônia Solidária e Sustentável (Solidarity-Based and Sustainable Amazon Institute)
- MAB – Movement of People Affected by Dams
- Malungu – Coordination of Associations of Communities of Descendants of Runaway Slaves (*Quilombos*) of the State of Pará
- MAMEP – Women's Movement of the State of Pará
- MMM – World Women's March
- MMNEPA – Women's Movement of the Northeast Region of the State of Pará
- MMTA-CC – Movement of Working Women of Altamira, state of Pará
- Xingu Vivo para Sempre Movement
- MST - Landless Movement
- RBJA – Brazilian Environmental Justice Network
- Brazil Network on Multilateral Financial Institutions
- REBRIP – Brazilian Network for the Integration of the Peoples
- RECID – Rede de Educação Cidadã (Citizenship Education Network)
- Cerrado Network
- Network Against Green Deserts
- SDDH – Society for the Defense of Human Rights of the State of Pará
- STTR - Rural Workers' Union - Abaetetuba
- STTR – Rural Workers' Union - Cametá
- STTR – Rural Workers' Union - Lucas do Rio Verde – State of Mato Grosso
- STTR - Rural Workers' Union – Santarém
- NGO Terra de Direitos (Land of Rights)
- UNIPOP – Popular University Institute
- Via Campesina Brazil





## Recommendations

**The debate on Reducing Emissions from Deforestation and Degradation (REDD) needs to be refocused on ensuring that an effective and equitable forest conservation regime is put in place, and that such a regime is based on policy coherence with respect to the main legally binding agreements related to forests, including UNFCCC Article 4.1(d),<sup>176</sup> the Convention on Biological Diversity, and related human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).**

**This will entail intergovernmental agreement on a text that explicitly promotes coherence and rights-based objectives, and the establishment of processes that will ensure the full and effective implementation of these objectives at the national level. Without such agreements and processes, REDD should not proceed.**

In light of the need for coherence with international human rights standards, including those enshrined in UNDRIP, and to ensure the equitable and effective design and implementation of forest policies, it is essential that the international and national aspects of any forest conservation regime, including REDD agreements, programs and projects, are elaborated with the full involvement of small farmers, Indigenous Peoples and women. This will require governments to:

- disseminate information much more broadly, including to all Indigenous and forest-dependent communities, about international and national REDD strategies and project proposals. This will necessitate the translation of all relevant documents into local languages.
- generate spaces and instruments that permit the full and effective participation of Indigenous Peoples' Organizations and forest-dependent communities, especially women, in the processes designated for the design and implementation of national REDD policies. These spaces should allow for serious, open and profound discussions on a just mechanism, taking into account the real direct and underlying causes of deforestation and degradation of forests, and transcending the dominant concept of forests as mere reservoirs of carbon. In certain cases, this might imply revisiting policies that have been developed without such engagement.
- ensure that the pace of such consultations and decision-making processes allows sufficient time for independent analysis of governmental proposals and the development of national REDD strategies based on fully transparent and participative processes.
- provide funding for the transportation of participants to meetings and workshops, and financial support for organizations to hold their own internal workshops to analyze the proposals and elaborate alternatives.
- mainstream gender roles, needs and rights (especially those of women) in all REDD strategy discussions and project process, since REDD could adversely affect women in particular, especially if they are not invited to participate in design, implementation, monitoring and evaluation.

Any forest conservation regime subsequently established should:

### 1. Ensure Policy Coherence and Compliance

- ensure full coherence between different international agreements in the field of forests and forest peoples' rights, including the Convention on Biological Diversity (CBD) and its Expanded Programme of Work on Forest Biological Diversity, and the UN Declaration on the Rights of Indigenous Peoples. This requires the inclusion of explicit commitments on the rights of Indigenous Peoples and the

<sup>176</sup> "All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances shall: ... (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems." [http://unfccc.int/essential\\_background/convention/background/items/1362.php](http://unfccc.int/essential_background/convention/background/items/1362.php)



implementation of UNDRIP in all intergovernmental REDD agreements; and innovative cooperative structures between the institutions responsible for implementing these agreements.

- ensure the implementation of and full coherence between national commitments and legislation in the field of forests and forest peoples' rights, and promote the strengthening of such commitments, in all countries that might decide to participate in REDD.

- contribute to a more equitable climate regime by taking into account the principle of common but differentiated responsibilities, which implies a legally binding emission reduction commitment by developed countries of at least 40% by 2020 compared to 1990 levels, and compliance with the financial commitments made at the 1992 UN Conference on Environment and Development.

- ensure that any emission reductions through forest conservation policies in developing countries are in addition to emission reductions in industrialized countries.

## **2. Respect Rights and Address Underlying Causes**

- include explicit recognition of the rights of Indigenous Peoples and minority groups in all REDD policies and projects, including at the national level. Case law relating to conventions such as the International Convention on the Elimination of all forms of Racial Discrimination (CERD) has established that states must procure the free, prior, informed *consent* of Indigenous Peoples before making any decisions or taking any measure that could affect their lands that they have traditionally occupied or their interests in general.

- ensure equitable treatment of Indigenous Peoples, communities and countries that have successfully conserved forests and/or reduced deforestation. This implies that incentives should be de-linked from emission reductions.

- shift focus to tasks and actions focused on strengthening public policies based on conservation, the sustainable use of resources and the recovery and bolstering of food sovereignty, providing various resources to rural and Indigenous communities, to enable them to continue to play a crucial role in the conservation of forests.

- take into account the gender dimension of different policies and incentives to conserve forests and fully respect the rights, needs and role of women in forest policies.

- respect traditional and local institutions for natural resource management.

- secure effective forms of representation in co-management bodies and ensure participatory democracy in general.

- address underlying causes of forest loss, including those related to unsustainable consumption of products like wood, meat and transport fuels.

- focus on the development of alternative energy sources, taking into account the dramatic potential impacts that the large-scale production and consumption of agrofuels and biomass would have on forests and climate change.

## **3. Provide a Broad Range of Positive Incentives for Indigenous and Community Conserved Areas (ICCAs)**

- Support a broad range of social, cultural, legal and economic incentives for forest conservation and restoration, including by respecting the historical territorial and use rights of Indigenous Peoples and local communities, and by recognizing and supporting Indigenous Territories and Community Conserved Areas.

- Address problems with land tenure and the recognition of traditional territories to ensure that Indigenous Peoples and local communities are able to participate and benefit.



- Ensure all other forest policies recognize, respect and/or are based on the historical territorial and use rights of Indigenous Peoples and local communities.
- Ensure these groups are able to present their own policies, programs proposals and projects to conserve and restore forests.
- Recognize that any local REDD schemes must use local communities' and Indigenous Peoples' own mechanisms for channelling REDD funding through their own clearly identified and legally accredited institutions. Incentive schemes should not undermine the customary governance systems of Indigenous Territories and Community Conserved Areas, and the values that have led to their success in terms of forest conservation.
- Prohibit the use of REDD to fund plantation of exotic trees and agrofuels projects, since many of these crops are invasive, require excessive volumes of water and impact negatively on soils and local communities.

#### 4. Exclude REDD and forests in general from carbon markets

Many NGOs, Indigenous Peoples Organizations, academics and government policy-makers have pointed out that there is a large number of virtually unsolvable methodological problems that prevent forest-based carbon offset schemes from being part of an effective and equitable global climate regime.

Market-based financing of REDD would also exacerbate many of the social and environmental problems that have been outlined in this report. Market-based approaches have led to a marginalization of economically less powerful groups in forest policy, including Indigenous Peoples, women, and the poor in general.<sup>177</sup>

The use of carbon markets to fund REDD would diminish public control over REDD, making it more complicated to safeguard the rights of Indigenous Peoples and local communities and the conservation and enhancement of biodiversity.

For that reason, REDD and other ecosystem-related initiatives should be explicitly excluded, now and in the long run, from carbon markets and other market-based financing schemes. If this is not done, REDD could be exploited in the same way as the CDM, with few benefits if any for the host countries, while industrialized countries are able to continue to pollute whilst dominating the global economy.



*Kangala in Uganda. Photo: Kureeba David.*

<sup>177</sup> Life as Commerce: the impact of market-based conservation on Indigenous Peoples, local communities and women, Global Forest Coalition, October 2008, <http://www.globalforestcoalition.org/img/userpics/File/publications/LIFE-AS-COMMERCE2008.pdf>



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### **Photos cover:**

Dense, community controlled and governed forest in Dibang Valley of Arunachal Pradesh, north east India. Photo - Souparna Lahiri.

REDD protected forests surrounded by plantations in Sevilla, a small town in the Andes mountains of Colombia. Photo: CENSAT Agua Viva.

### **Photo rear:**

African palm plantations recently expanded into the Indian territory Abrojo Ngobe of Montezuma in the South Pacific Zone of Costa Rica. A national policy to produce 20% of national consumption by biofuels triggered the expansion of this crop and increased the pressure for land in indigenous territories. Photo: Javier Baltodano.

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