



# Reduced emissions from deforestation and forest degradation (REDD) and human rights

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## What is REDD?

Deforestation accounts for an estimated 17% of global greenhouse gas emissions—more than the global transport sector (IPCC 2007). The burning and clearing of tropical forests is responsible for the majority of these emissions, due to their high carbon stocks and the rate at which they are being lost: approximately 13 million hectares per year (FAO 2005). Reducing emissions from tropical deforestation is therefore a necessary component of any strategy to avert catastrophic climate change. In addition to regulating the climate, standing forests provide many other important ecosystem services to society. These include provisioning food, fuel and water; regulating floods and the spread of disease; stabilising soil and maintaining plant pollination; and conserving cultural and aesthetic values (MEA 2003). However, because the values of these ecosystem services are not reflected in the prices of the commodities that often drive forest clearing (soy, beef, oil palm, timber), farmers, companies and governments—seeking immediate financial gains—often decide that forests are worth more cut down than standing. A new approach to battling tropical deforestation,

commonly referred to as 'REDD', seeks to provide positive incentives to tropical countries for forest conservation. The basic idea of Reduced Emissions from Deforestation and Forest Degradation (REDD) is to make standing forests more attractive than agricultural and timber products by valuing the carbon in forests for its climate regulating benefits.

The United Nations is currently considering including a REDD mechanism in international climate change policy. While many details of the overall REDD architecture have yet to be decided, a growing consensus points to a system where developed countries make payments to tropical countries for reductions in national deforestation levels, and such payments would be conditional on performance. This will involve estimating a reference scenario that projects the amount of deforestation that would have occurred in the absence of the payment. If deforestation is then reduced below this established baseline, then countries will be paid for the forest carbon emissions avoided. Some of the most debated issues regarding REDD include:

- how to set baselines;
- what scope of countries and forest carbon activities should be included;



Sustained access to forests for the harvesting of food, fuel, medicine, and other non-timber forest products is critical for rural livelihoods and substantive rights. Customary lands of the Dii people in the Mbe District, Adamaoua Province, Cameroon. (© Kathleen Lawlor)

- to what extent REDD mechanisms should be linked to carbon markets;
- what the role of sub-national projects should be; and
- how concerns about impacts on indigenous and other forest-dependent communities will be addressed.

States are likely to use a variety of approaches to implement REDD. These may include:

- clarification of property rights;
- removal of agricultural subsidies;
- creation of new protected areas;
- stronger enforcement of forest laws; and
- payments to landowners for forest conservation.

The choice of policies and measures to reduce deforestation will, ideally, be based on an analysis of what drives deforestation in a particular country. However, the task is by no means easy. Tropical deforestation is driven by a complicated causal web of direct and underlying factors, which vary from region to region. (Geist and Lambin 2002, Kanninen *et al.* 2007).

## **How might REDD affect indigenous peoples and other forest-dependent communities?**

Climate regulation is an important ecosystem service that forests provide globally. Yet there is concern that by valuing forests for this globally important service, REDD programmes could undermine some of the ecosystem services that forests provide locally, such as providing food, fuel and medicine to the millions of poor who live in and depend on the forests. REDD could create new incentives for states to restrict these people's access to forests. The insecurity of land tenure for many indigenous and other forest-dependent communities (Sunderlin *et al.* 2008) may make them especially vulnerable to this risk. Some potential risks to forest dwellers associated with REDD are:

- violations of customary land rights and harsh enforcement measures. These could lead to loss of access to forests for subsistence and income generation needs, land use conflicts, or physical displacement from forests;

- marginalisation by new land use zoning exercises. Governments might undertake such exercises to capitalise on forest carbon revenues for the state, stalling or reversing the recent trends of decentralising forest ownership and management responsibilities to communities;
- decoupling forest carbon rights from forest management or ownership rights, blocking communities' legal right to financially benefit from new forest carbon programmes;
- inability to participate in conservation payment programmes due to lack of property rights (to forests or forest carbon), lack of information, high implementation and transaction costs, or because historical contributions to conservation render them ineligible;
- exploitative carbon contracts. These could lead communities to unknowingly accept terms that sign away land use rights, assume liability for forest loss, or accept payments that undervalue the true opportunity costs of the land use foregone, which could create food security risks;
- capture by elites of intended REDD benefits, due to inadequate forest governance systems; and
- decreased production of food locally, creating food security risks and deepening poverty.

Yet, if well designed and governed, REDD also provides significant opportunities to positively affect forest-dependent livelihoods, notably by:

- encouraging governments to secure and formalise land tenure for forest dwellers (so that those closest to the resource have positive incentives for conservation);
- generating revenue that governments could direct to social services in rural areas (health care centres, schools, water systems, etc.);
- creating new income streams for forest dwellers if they are sub-national sellers in carbon markets, participants in conservation payment programmes, recipients of carbon fund distributions, or monitors of forest areas;
- maintaining forests' regulating ecosystem services, (flood control and disease prevention), which may enhance adaptive capacity in a changing climate, where risks of extreme weather and disease are projected to increase; and
- maintaining forests' provisioning ecosystem services (fuelwood, medicine, food), which may also help buffer communities from the shocks of reduced agricultural yields that may occur due to climate change.

### **Box 1. The Noel Kempff experience**

One of the longest standing and most often cited examples of REDD-like projects is the Noel Kempff Mercado National Park project, in Bolivia, which was established in 1997. This project extended an existing protected area and succeeded in avoiding emissions of over 1 million tonnes of CO<sub>2</sub> equivalent between 1997 and 2005. This was achieved primarily by reducing slash and burn agriculture (Johns and Johnson 2008). The project, which covers over 800 000 ha of tropical forest, is expected to generate a reduction of close to 6 million tonnes in CO<sub>2</sub> emissions during its 30 year timeframe. The project includes activities for supporting local livelihoods as well as efforts to secure land tenure for indigenous people. However, the Noel Kempff project has also attracted some criticism, notably with regards to a perceived lack of consultation in the early stages of project design. Some villagers felt excluded from the project, which they felt was carried out without their prior consent (Asquith *et al.* 2002). There have also been concerns related to the benefits generated by the carbon credits. These seem to have accrued to state agencies, local governments and conservation organisations instead of local communities (May *et al.* 2004, Robertson and Wunder 2005, Griffiths 2007).

## **Sharing benefits: A matter of effectiveness or equity?**

Whether and how REDD revenues and benefits will be distributed to forest communities is a contentious issue. Experiences with REDD-like projects have so far yielded mixed results (see Box 1). Many indigenous and other traditional communities point out that they have helped preserve and protect tropical forests historically. They insist that REDD regimes should compensate them for their role in forest conservation (Manaus Declaration and Areas of Consensus and Disagreement 2008). Signatories to the Manaus Declaration agreed that REDD regimes should ‘... recognise the capability of sustainable management of forests as exercised by indigenous peoples and traditional communities, as well as the historical role of these peoples and communities in the conservation and in the equilibrium of global climate and to develop a compensation system’ (Manaus Declaration Areas of Consensus and Disagreement 2008).

Similarly, many argue that participation in the international REDD regime should not be restricted to countries with historically high rates of deforestation (UNFCCC 2008). Here, both the international regime and national conservation payment programmes run into complicated questions of ‘additionality’. Proving ‘additionality’ means showing that deforestation has been reduced and that such reductions would not have happened in the absence of the programme. ‘Additionality’ is an important concept for the international REDD regime. It is especially so if REDD mechanisms

are integrated with carbon markets and emitters are allowed to offset emissions with reduced deforestation credits. Credits are not additional if they represent emissions reductions that would have happened without the new program. Because non-additional 'reductions' would be easy to achieve, if credits are issued for them then carbon markets could potentially be 'flooded' with a large number of 'hot air' carbon credits. This increase in supply would decrease the price of carbon credits, and, along with it, the incentives for emitters to make reductions themselves or to invest in clean technologies (Angelsen 2008, Karsenty 2008). Further, paying for forest conservation that would have happened anyway is not efficient.

Yet it is difficult to know what would have happened in the absence of new incentives. Deforestation that would have occurred in the absence of a REDD programme cannot be observed. Thus proving 'additionality' is based on an estimate of deforestation that is *projected* to occur. However, the past does not perfectly predict the future. Countries with low deforestation rates in the past could increase their deforestation rates in response to changing economic conditions and incentives. These incentives could, in fact, be created by REDD itself. The expansion of commercial agriculture, for example, driving deforestation in one country could simply shift to another country if incentives are not in place for both countries to protect their forests. This shifting of deforestation drivers is known as 'leakage'. Risks of leakage undermining the system can be minimised by increasing the scope of systems that track land use change and offer conservation incentives (Murray 2008).

The international REDD negotiations seem to recognise these risks. There is a growing consensus that incentives for forest conservation should also be provided to those countries that have historically conserved forests, already reduced deforestation, or increased forest area. This can be done in ways that adequately guard against leakage yet also protect carbon markets from the risks presented by non-additional credits. For example, incentives for reducing deforestation in countries with historically high deforestation can be provided through the carbon market while incentives for maintaining forests in countries with historically low deforestation rates can be provided through fund-based mechanisms (Olander *et al.* 2009). Establishing high baselines for countries producing reduced deforestation offsets would help to keep the supply of these credits in check and avoid 'flooding' the carbon market (Angelsen 2008). Developed countries could also adopt deeper emissions reductions targets to create more demand for carbon credits (Angelsen 2008).

Within countries, national governments will also have to consider leakage and additionality. They will likely seek to apply policies and measures that most efficiently reduce deforestation (offer the most additionality), yet

they will also need to guard against in-country leakage. In regions with the highest deforestation rates (Brazil and Indonesia), commercial agriculture and logging are the main direct drivers of deforestation (Bellassen *et al.* 2008, Hansen *et al.* 2008). Small-scale agriculture and wood harvesting contribute much less to deforestation; this is mainly because the poor simply do not have the capital that it takes to clear large areas of forest (Chomitz 2007). And the further communities live from roads and markets, the less they contribute to deforestation (Chomitz 2007).

Therefore, if governments want to reduce national deforestation rates by making conservation payments to landowners, they may overlook individuals and communities that appear to pose little threat to forests. However, communities that have historically conserved forests may not always do so. Populations grow and cultures change. Further, REDD itself could change the way communities use land. There may also be



The UN DECRIPs specifies that the rights of indigenous peoples include the rights to own and exercise control over activities on the lands they have customarily occupied and used. Ngobe-Bugle indigenous territory, Panama. (© Kathleen Lawlor)

leakage from new REDD conservation areas to forest communities' lands. Exclusion from REDD schemes could provide communities with a perverse incentive to clear forests. Further, in some regions (such as the Congo Basin), deforestation and degradation are primarily driven by small-scale agriculture and wood harvesting (Bellassen *et al.* 2008). For all these reasons, it could be in the interests of tropical governments to make sure that forest people have positive incentives for conservation.

Whether human rights norms and standards provide the basis for an equity argument to pay forest communities for their historical conservation is not entirely clear. However, as the above discussion shows, an argument based on programme effectiveness could also be made. In all cases, where forest dwellers are asked to bear some of the costs of national REDD programmes, such as restricted forest access, human rights norms are instructive regarding how REDD benefits should be shared. We now discuss what insights human rights norms provide regarding the design of REDD.

## **How would a rights-based approach to REDD deal with risks, opportunities and benefits distribution?**

There is an array of human rights instruments relevant to REDD. These could form the basis of a rights-based approach (RBA) to the design of an international REDD regime and the implementation of national programmes. The following section analyses the implications of a non-exhaustive set of relevant rights instruments and provisions for a RBA to REDD. It reveals how a RBA to REDD might deal with the aforementioned issues, guarding against risks and promoting opportunities for forest communities while striking an equitable solution to the benefits distribution issue.

### **Indigenous peoples' rights**

Much of the current discussion on guarding against risks to forest communities from REDD has focused on the internationally recognised rights of indigenous peoples (see Box 2). The 1989 International Labour Organization's Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169) outlines the special rights of such peoples regarding activity on their customary lands. Relevant passages of ILO 169 include the following:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives ... and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. (Article 7)

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. ... Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. (Article 14)

... the peoples concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations. ... Persons thus relocated shall be fully compensated for any resulting loss or injury. (Article 16)

In 2007, with 143 nations voting in favour, the United Nations approved the Declaration on the Rights of Indigenous Peoples (DECRIPS or Declaration), which was first introduced in 1977. There were only four nations that voted against its passage: Canada, New Zealand, Australia (which changed its position and signed in 2009) and the United States (Graman 2007). The Declaration's language is similar to, though stronger than, that of ILO 169. It emphasises the requirements that parties grant legal title to indigenous peoples' customary lands and ensure their **free, prior, and informed consent** for any activity on, or their resettlement from, their lands. The following passages of the Declaration are worth noting in the context of REDD:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (Article 10)

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. (Article 26)

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. (Article 27)

Both ILO 169 and DECRIPS provide a strong foundation for indigenous peoples to assert that their lands be legally titled and that their free, prior, and informed consent (FPIC) be given for any activities on, or their resettlement from, their lands. The requirement that states grant legal title is especially important since the vast majority of forest area is still owned by the state in most tropical countries (Sunderlin *et al.* 2008). The absence of legal title can complicate communities' abilities to assert FPIC (Finer *et al.* 2008, Anaya and Grossman 2002).

**Implications for a rights-based approach to REDD:** An international REDD regime based on ILO 169 and DECRIPS would guard against the risk that states could take away land from indigenous people in order to capture REDD revenues. For countries implementing REDD, alignment with these instruments could lead states to clarify land tenure as an initial step in national programmes. Such exercises would need to be carried out with the transparent and meaningful participation of indigenous people.

## Box 2. REDD and indigenous people at the UNFCCC

Throughout the United Nations Framework Convention on Climate Change (UNFCCC) negotiations, there has been a great deal of contention regarding how an international agreement should guard against negative effects on forest dwellers. Representatives of civil society and traditional and indigenous groups have become increasingly vocal in the negotiations and some may withhold their support for REDD if they believe the international agreement does not include adequate safeguards to protect forest dwellers. Much of the discussion has focused on the internationally recognised rights of indigenous people. At the recent 14th Conference of the Parties to the UNFCCC (December 2008) in Poznan, Poland, discussions over the language in the draft decision related to REDD were heated (see, for example, Accra Caucus on Forests and Climate Change 2008). Following COP14, the UNFCCC requested parties and observers to submit their views on how to address concerns about indigenous and other forest-dependent communities in the international agreement. The European Union's submission notes that 'the effective implementation of the provisions on REDD in a future climate agreement will depend on the involvement and cooperation of local communities and indigenous peoples' (UNFCCC 2009). The submission outlines several areas where indigenous people have a role to play in REDD implementation (such as data collection and monitoring). Further, it notes that safeguard policies could be used to ensure that REDD does not undermine basic human rights.

However, adherence only to ILO 169 and DECRIPS would leave out many of the relevant human rights of indigenous people and members of the many forest-dependent communities who are not technically considered indigenous. This could raise particular concerns in the African context, where state ownership of land dominates (Sunderlin *et al.* 2008) and concepts of indigeness are complicated.<sup>1</sup> For example, there are hundreds of thousands of indigenous Pygmy people that live in the Congo Basin who are severely marginalised. They are in serious need of safeguards to protect and promote their rights and dignity. Yet there are also many other forest-dependent poor people of Bantu descent who have inhabited the area for thousands of years, but who are not commonly described as 'indigenous'. Many of these communities also lack secure tenure and are thus vulnerable to the risks, cited above, that REDD creates for forest communities.

## International universal human rights

Other human rights instruments and case law outline additional human rights norms and standards that could be relevant for reduced deforestation mechanisms and forest-dependent people (including, but not limited to, indigenous peoples).

**Right to Property:** Article 17 of the 1948 Universal Declaration of Human Rights, as well as other human rights instruments, defines the right to hold property as a human right. Article 17 states, 'Everyone has the right to own property alone as well as in association with others'. Article 21 of the American Convention on Human Rights also upholds the right to hold property:

Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

An important precedent is established by the case of *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. In this case the Inter-American Court of Human Rights found, in 2001, that the state must obtain consent from indigenous communities for activities on lands they have historically occupied and that the state must enact procedures to grant these communities legal title to their lands in order to uphold the Right to Property, as defined in Article 21 (Anaya and Grossman 2002). The recent landmark case of the *Saramaka People v. Suriname* is also relevant. In 2007, the Inter-American Court on Human Rights found that Article 21 indicates the right of the Saramaka people to property. It was further found

that this right requires the state to grant them legal title to their customary lands. However, while the court found that the Saramaka people have the right to also own the natural resources on their land, this does not prohibit the state from granting concessions on their territory to logging and mining companies (as in this case) or to other concessionaires (as the case may be) because the state may still restrict the 'use of property in circumstances that are defined by law and that are proportionate to the achievement of a legitimate objective' (Harrison 2008). Yet, in order for the state to place such restrictions on the right to property the Court ruled that Suriname must undertake the following steps:

1. produce an Environmental and Social Impact Assessment before granting concessions;
2. engage in informed consultation with the affected community, to gain the community consent necessary for 'major developments'; and
3. share with the affected community the benefits that are produced as a result of the property rights restrictions placed on their lands (Harrison 2008).

The Court also ordered Suriname to compensate the Saramaka People for the damages the logging had inflicted upon their lands (Harrison 2008).

**Implications for a rights-based approach to REDD:** The right to property could be interpreted to mean that people have a right to possess legal title to lands which they have traditionally occupied. A rights-based approach to REDD, that takes the human right to property into consideration and follows this interpretation, would ensure that land titling exercises are undertaken for the general population. The rulings of the Inter-American Court of Human Rights may prove to be particularly relevant if states claim ownership over forest carbon, including forest carbon on lands traditionally occupied and used by communities. Based on these rulings, a rights-based approach to REDD might take the stand that where states decide to overrule peoples' right to property (in order to create new protected areas or grant forest carbon concessions to a third party, for example), affected communities must be adequately informed, and receive not only compensation, but also share any REDD revenues that the new conservation efforts produce. The creation of new protected areas or forest carbon concessions could also be considered a 'major development' for which communities would need to provide consent.

**Right to development:** The 1986 UN Declaration on the Right to Development speaks of the rights of people to participate in the development decisions that affect their lives. Article 2 specifies that, 'States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful



Customary lands of the Dii people in the Mbe District, Adamaoua Province, Cameroon.  
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participation in development and in the fair distribution of the benefits resulting there-from.’

**Implications of a rights-based approach to REDD:** It could be argued that the right to development points to the need for people to participate in land use zoning, property rights reforms, and decisions regarding the management of forest carbon revenues. This instrument could also be interpreted to mean that REDD benefits should be distributed among all forest dwellers, including those who have historically conserved forests and do not appear to be at risk of future deforestation.

**Right to means of subsistence:** Some commentators also highlight the relevance of Article 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Article 1 specifies that, ‘In no case may a people be deprived of its own means of subsistence’.

**Implications for a rights-based approach to REDD:** This could be interpreted to mean that forest communities cannot be denied access to food, medicine and fuelwood in forests (Brown *et al.* 2008).

## Conclusions

These various human rights instruments, and the standards they put forth, provide a normative basis for establishing a REDD system based on human rights. In such a system, forest people would have continued access to their land, and would participate in the decisions affecting how forests are used, who owns them, how populations are compensated for any costs they bear

and how REDD revenues are shared. Policies to make these principles operational could require citizen participation in the design of new REDD programmes and land tenure reforms, revenue transparency mechanisms, grievance mechanisms and the FPIC of indigenous and other affected communities (Lawlor *et al.* 2009).

REDD policies and measures will have important implications for both procedural rights (rights to FPIC and participation) and substantive rights (rights to property and wellbeing). Whether the resulting impacts on forest-dependent communities are positive or negative will largely be a function of whether or not, and how, both sets of rights are respected. Important procedural responsibilities of governments relate to transparency, participation and accountability. Ongoing negotiations have yet to provide a clear picture of what a future REDD regime might look like (see Box 2). As such, the implications of REDD for the rights of forest-dwelling communities are still largely unknown.

Yet there is potential for the international REDD regime to adopt a rights-based approach—either explicitly, by referencing rights; or implicitly, by referencing principles or adopting policies that have a normative basis in human rights law. A rights-based approach to REDD could contribute to the overall success of the scheme by enhancing its political acceptability and reducing risks of reversal by granting those living in forests secure tenure, conservation incentives and engaging them in monitoring and enforcement. Framed this way, negotiators may in fact conclude that the overall sustainability of an international REDD regime depends on its capacity to ensure that both substantive and procedural rights are respected.

## Endnotes

- 1 The World Bank Group's social and environmental policies remark that, 'There is no universally accepted definition of 'Indigenous Peoples' (IFC, 2006). Dove notes that, 'Whereas the connotations of popular use of the term indigenous focus on nativeness, formal international definitions focus more on historic continuity, distinctiveness, marginalization, self-identity, and self-governance.' (Dove 2006). And while ILO Convention 169 offers a definition of indigenous and tribal peoples based on these latter concepts, the Convention is clear that, ultimately, determinations of indigeness are to be made by people themselves. The Convention states that, 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.'

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