

Documentation ‚Rights before REDD‘

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Introduction (Anika Schroeder)

Today, up to 47-89% of the GDP of the poor depends on the forest. It is a habitat and a cultural site, which is threatened especially by soy, logging and cattle grazing. When it comes to the preservation of forests most forest rich countries focus on the work with small scale farmers instead of tackling the main drivers of deforestation.

There have been bloody conflicts due to forest grabbing between companies and governments on the one hand and communities on the other hand – both around (agro-) industrial forest grabbing and even nature conservation projects.

Since a couple of years, the urgently needed preservation of the forests regained land as it is now mostly discussed as a climate mitigation action under the term REDD+. This stands for

- Reducing emissions from deforestation
- Reducing emissions from forest degradation
- Conservation of forest carbon stocks (– not conservation of forest!)
- Sustainable management of forests
- Enhancement of forest carbon stocks.

The carbon content of forests is taken into account, but biodiversity not, which may be a threat to old growth and natural forests. Many Indigenous Peoples groups and NGOs have more fears than hopes for REDD, because it can destroy as much as it preserves. Furthermore, many cases exist where people have been evicted from their forest or were not able to use its biodiversity anymore and people fear that this system may be followed under REDD. Others are hoping that REDD brings in pressure and means to conserve and enhance biodiversity, livelihoods and culture. There are biodiversity risks which are also social risks because it implies the loss of habitat and of the cultural base. So what to think about REDD – is it a risk or an opportunity? One needs to keep in mind that so far REDD is kind of a political idea in the UNFCCC agenda. Pilot projects, schemes and readiness plans are being implemented but it is still unclear, what REDD is all about. To be more precise; an international agreement on REDD+ is currently being negotiated by member-states of the UNFCCC with initial agreement reached in the Conference of Parties (COP 16) as part of the Cancun agreement. This REDD+ agreement included social and environmental safeguards. However, these are not comprehensive and not consistent with international human rights obligations of states. Up to now, social and environmental safeguards are not comprehensive and strict enough to avoid risks.

Within the UN-REDD Program, the FAO, UNDP and UNEP are helping developing countries to prepare for REDD. The World Bank's Forest Carbon Partnership Facility (FCPF) is working in the same direction. They assist developing countries in their efforts by providing value to standing forests with a readiness package and a carbon finance package (Readiness Fund and Carbon Fund). But the greatest money flows for REDD preparation and pilot projects are transferred bilaterally – all with none or non-sufficient safeguards.

To complete the scenery, voluntary offset projects are being developed. A desk analysis of 16 different offset project standards used in Germany showed that only two standards addressed social aspects sufficiently: Plan Vivo and the CCB Standards.

To draw a conclusion: Many programs, projects and preparation processes around REDD are going on and it is difficult to keep the overview. It is especially hard to see if social safeguards are in place and being implemented in this broad new and fast growing environment.

To understand risks and challenges as well as opportunities of REDD the symposium “Rights before REDD” takes a look at the struggle of indigenous communities today and the Indigenous Peoples (IPs) rights in law and reality. The leading question is how human rights can be ensured in REDD – today and in the future.

Part I: Struggling for life. Indigenous Peoples in the forests.

Conflicts over Resources in the Tropical Forests (Minnie Degawan)

IPs in Asia survived colonization through strategies like grouping up, fighting and using traditional languages and cultures. Today IPs are victims of a new colonization, this time from their own government: land grabbing is taking place in the name of modernity and development.

IPs share a common identity with the land. Through landgrabbing the basis of livelihood is getting lost, and IPs lose their very basis of their culture.

Examples

An example is a Malaysian people, the Orang Asli of peninsular Malaysia: they are the most marginalized group in Malaysia and had to endure forced conversion to Islam and regrouping; since they were not as capacitated to fight they had to give up their land. Another example is the Mah Meri people who were displaced from their lands to build a golf course –their soil was needed.

IPs have the right to their territories and the right to Free, Prior and Informed Consent (FPIC). Sometimes, companies try to accept to build up a better reputation. For example, in Indonesia, the Indonesian government gave concession to Asia Pulp and Paper (APP). Although in former times the Dutch colonizers recognized the land rights of the Minangau people in Riau region, today there are no legal land rights in place. Nevertheless, APP wanted to respect the rights of the communities and started a FPIC process. A local NGO was asked to conduct the process but was not experienced in it. Instead of asking the communities how they want to be informed and consulted, they started to found women and youth groups to consult with and changed the community structure. APP financed several meetings to discuss, most likely to clean up their image, rather than to change their methods. After six years, APP stopped the consultation – it was too difficult. APP started its project without the consent of the communities and no one stopped them from converting forest and fields into plantations.

To draw a conclusion: Today, IPs no longer live in homogenous communities; most of the communities are mixed and traditional leadership and systems are being eroded through cash

economy and modern needs. The demand for resources is increasing and pressure of companies is intense.

The Philippines are a special case, because there is a specific law in which the IPs' rights to their ancestral lands are recognized. However, prior existing land titles are prioritized over indigenous claims.

There is a need to build capacity on the ground by informing the IPs what can be done. Existing methods for further cooperation in the communities need to be used and documented. Legal mechanisms make that they cannot take the decision they wish to do, and many Human Rights (HR) are being violated; there are many day to day issues that they face on the ground. Even without Climate Change and Climate Policies.

Rights of Indigenous Peoples (Kittisak Rattanakrajangsri)

According to the Human Rights definition, basic rights and freedoms are entitled to all people, regardless of nationality, sex, ethnic origin, race, religion, language and other status. It is conceived as universal and egalitarian, with all people having equal rights, by virtue of being human. But as the Universal Declaration of Human Rights failed to protect IPs rights the UN Declaration on the Rights on Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in September 2007. UNDRIP is an important international instrument for the recognition of collective rights. Bolivia has incorporated the UNDRIP in its Constitution. However, problems of implementation are still prevalent in many states, for instance:

- States continue to deny the existence of IPs in Asia and Africa
- Lack of governmental political will to legally recognize the collective rights of indigenous peoples
- The weakness of the indigenous community

In the international human rights law, the articles 3 and 4 are concerning political and civil rights, and articles 12 to 14 are tackling cultural rights. The right to land, resources and territories can have an important impact, as many resources are exploited by companies.

Free prior and Informed Consent (FPIC)

Yet, in order to take someone's land, there has to be FPIC. FPIC is a mechanism wherein IPs undertake their own independence by collective decisions concerning their right to land, territories, resources, their right to their self determination, and to cultural integration. It is a reiterative process to be undertaken in good faith to ensure mutual respect and meaningful participation in decision making. It is not merely a procedural process but a substantive mechanism to ensure the respect of IPs collective rights. FPIC is an independent process of collective decision making defined by IPs, free of coercion, intimidation and manipulation, and free from external influence, because it hinders self determination in the process to getting the consent.

Consent cannot be valid if it is taken from an authority which is not recognized. The consent consists of collective decisions of affected communities after undergoing their own process of decision making. Once consent is given, it cannot be taken back.

Informed consent must be sought before the start of any project activity and requires comprehensive procedure to ensure that IPs have sufficient time to understand and analyze the information received. They have the right to access information relating to any activity of project that affects them. This includes the full and legally accurate disclosure of information concerning proposed development in a form which is both accessible and understandable to IP communities especially in form and language. There have to be mechanisms for validation of information, especially of environment and social impact studies. Resources need to be provided to meet the information needs of IPs communities.

Time bound requirement for information dissemination should be compatible to the situation of IPs. The key challenges consist of:

- Lack of independent monitoring and recourse mechanism to be formed by credible individuals with deep understanding of IPs rights and with IPs Experts
- Access to IPs communities and effective communication channel with all parties
- Effectively address concerns of IPs and violations to the principles of FPIC
- Provision of the necessary resources.

Round of Discussion

It was a set of question discussed focusing mainly on the FPIC process e.g. what should informed consent look like? If FPIC is a process, isn't there a leader with concrete knowledge about the principles and the violations? Are there implementation problems? FPIC should be used for non-indigenous groups too - or do you have a different opinion on this?

The discussion summarized different key challenges of FPIC: It is hard to achieve an instrument which can be used in all communities, as communities are too different. FPIC will need time and consultation will differ from one community to another. They will define themselves how to undertake the process. FPIC needs to be understood and it needs to be put it into practice to succeed even if this takes more time. However, self determination and FPIC shouldn't be separated – there are more and more communities that are creating their own rules/protocols (benefit sharing etc).

Preliminarily, discussions with community leaders are needed but then the process should be brought up to the community. The people and communities have to know the value of their land and properties. In this regard, communal land (use) rights are important. This keeps the communities together and helps to keep the forests and land for the communities and also helps to conserve the forest. Rights for women etc. should not be forgotten within REDD and others. The principle of FPIC could also apply for local communities. However, local communities have their own set of rights, like the right to benefit, democratic rights.

Part II: Rights before REDD!

REDD+ in Asia: Myth and Realities from an Indigenous Perspective (Joan O. Carling)

Presently, there are ten REDD-countries in Asia (or rather REDD-readiness countries) including Indonesia, Nepal, Vietnam, Lao, Thailand, Cambodia, Philippines, Bhutan, Sri Lanka and Bangladesh. According to estimations, there are around 79-100 million IPs in those ten countries. Nevertheless, there are still difficulties with the legal recognition of IPs and their collective rights. Particularly their close relation to forests and its meaning for local communities is a major concern. Thus, REDD involves a real challenge for them due to the carbon approach and the monetary valuation of forest carbon stocks, which is alien for them. The value of forests can't be compensated by money. Anyhow, a fair benefit sharing is needed from REDD. Benefits are not necessarily monetary: the desired benefit has to be discussed and defined within the communities.

The current status of REDD is still in the readiness phase and accompanied by a range of problems. For instance, the lack of information is a critical issue. The majority of the people are not aware of the processes and mechanisms related to REDD projects which are taking place in their territories. Further critics points out to the insufficient representation of IPs in REDD related bodies, as well as the lack of consultation and dialogues and FPIC processes, which should be accomplished.

There are key issues that are expressed in existing policy reforms but are not being addressed. The recognition of land tenure rights is crucial and has to be the first big step. Additionally, the protection of livelihoods, the forest governance and the terms of benefit sharing require a further consideration in view of policy reforms.

There are various risks of REDD: REDD might lead to bad conflicts in regard to land tenure rights and the use of resources. Hence, REDD might threaten food security and may worsen hunger and poverty. The weakening of the rich traditional knowledge of indigenous groups and of forest governance as well as an unfair benefit sharing might be possible risks associated with REDD.

Three examples from Vietnam, Thailand and Indonesia reflect some of the named problems and risks of REDD implementation:

1. The lack of information sharing and dissemination in Riau, Central Kalimantan: Central Kalimantan is the biggest REDD pilot area in Indonesia and became a global spotlight for international investments, for instance, through the Letter of Intent (LoI) between Norway and Indonesia (1 billion US\$). The lack of information sharing and engagement with local and indigenous communities is now resulting in confusion and chaos. The government didn't conduct a process of capacity building, FPIC or even information sharing or consultation, although they received money especially dedicated for those procedures. Consequently, Indigenous Peoples' Alliance of the Archipelago AMAN prepared a letter of moratorium claiming for an immediate moratorium of all REDD+ processes and investments in Central Kalimantan and demanding for more transparency of the process as well as the engagement of IPs.

2. Failed FPIC procedure in Vietnam: For many, its very surprising that Vietnam conducted FPIC procedures, as it is a country where normally no consultation processes are taking place. Anyhow, since 2009 Vietnam is in the readiness phase and implementing capacity building activities. UN-REDD together with the government of Vietnam conducted FPIC in the Pilot areas in Lam Dong, Vietnam. However, the FPIC process has been conducted within a very short time period: The community itself didn't get the time for their internal consultations and deliberations. Further, the UN-REDD questions were broad, for instance 'Do you want to protect your forest?', without giving further information about the implications of REDD to the community. Nevertheless, the good will of the Vietnamese government trying to implement the FPIC process should be appreciated. This case shows that the implementation of FPIC is possible. Other REDD countries should take the lessons learned from that case in Vietnam to improve it. Furthermore, this example shows opportunities for better recognition of IPs rights in the future in other policy areas as well.

3. Shifting cultivation - a crime in Thailand: A common problem in Asian countries is that more and more frequently, IPs and their traditional land use are identified as major drivers of greenhouse gas emissions. Although it has to be taken into account that there are indeed some modern forms of shifting cultivation which are critical, the traditional one is sustainable and not climate harmful. But most of the Asian REDD-countries have policies of restriction for shifting cultivation or even prohibit that kind of land use. In Thailand shifting cultivation is already a crime: In early 2008 two small scale farmers have been arrested for up to two years of jail, and are requested to pay a high amount of compensation payments (up to USD 96.000). They were both charged of destroying forested area and thus contributing to global warming. That case elucidates the critical points and human right violations coming along with climate change mitigation processes.

An essential key step forward would be the full and effective participation of IPs and local communities in all processes concerning their territory, comprising inter alia FPIC, information sharing and capacity building. The process of full and effective participation should be determined by IPs themselves and not prescribed to them, and how it should be done. Further on the legal recognition of all indigenous groups, land tenure rights, a strengthening of the resource management and respect for traditional knowledge as well as a participatory MRV are essential.

Safeguards for REDD must ensure human rights, otherwise REDD will certainly fail. The full and effective participation including the implementation of FPIC for IPs must be guaranteed - they should be the main actors in the REDD process. For instance, community mapping should be done by the community itself, IPs possess the expertise and knowledge for that. Why spending a lot of money for technical measures, when indigenous people already know how to proceed?

Finally pressure on donor countries is needed to ensure that safeguards are fully respected and followed. Germany spends around 40 million US\$ for multilateral REDD programs and more than 200 million US\$ for bilateral REDD funding mechanisms. In total, Germany ensured to supply REDD measures with an amount of 503 million US\$ until 2012. However pledges are not always fully

given. Generally spoken, multilateral programs have at least safeguards on paper and even complaint mechanisms for communities in place. The bilateral haven't got any special safeguard policy on REDD.

To summarize, Indigenous Peoples rights in relation to REDD+ need to contain:

- Legal recognition of indigenous peoples as rights-holders (collective rights)
- Customary rights over forest/ forest tenure
- Respect for resource management systems and sustainable livelihoods
- Respect for socio-cultural practices and institutions
- Respect for traditional knowledge
- Effective participation and Free Prior and Informed Consent -FPIC
- Equitable benefit sharing where the benefit should be defined by indigenous peoples themselves

Round of discussion

Experiences from diverse pilot projects, such as the one in Guatemala, indicate that challenges coming along with the expectations of local communities. They are often aware of REDD and that it's related to financial compensations: people are expecting money; although there is no explicit REDD money right now and it's unclear whether it will reach the community level. The best way might be to ask the communities what kind of benefit sharing they prefer.

A short discussion about possible outcomes of REDD negotiations in Durban showed, that prospects are still mixed. It should be kept in mind, that there is no final REDD agreement by now and that it's quite risky to associate REDD only with negative connotations. The chance should be taken to change the current threats arising with REDD into opportunities by developing safeguards ensuring human rights and the conservation of biodiversity. E.g. there is already a grievance mechanism mentioned in the guidelines of FCPF and UN-REDD, but there is still a lot to be done to inform about.

For a process enhancement Indigenous People should be invited to the negotiations and should be able to participate actively in the negotiations on an equal level, not just as observers.

Guided Discussion: How to ensure Human Rights in REDD+?

The following points summarize the results of all presentations and discussions of the symposium.

How to ensure the implementation of IPs Rights in REDD on the national level?

- Ensure representation of IPs and local communities in REDD+ related bodies. Include more IPs into national UNFCCC delegations that are truly representing the interest and rights of IPs.
- Define and enlarge the given safeguards on the international level but don't try to change the ones UNFCCC have agreed upon. By this we may risk, an even weaker safeguard system.
- Pressure and influence German government to ensure HR in bi- and multilateral programs and activities.
- Insert reference to HR into shared vision of UNFCCC LCA: HR needed for all negotiation areas (make reference to and use 2009 Council Human Rights Resolution on Climate Change)
- More transparency: Register is needed about projects and activities related to REDD
- Include information about participation on websites, reports, etc.
- To pressure governments to improve HR perspective and/or HR reporting in bilateral agreements
- Ensure implementation of FCPF/UN REDD safeguards by pressuring donor and developing countries.
- Case based level – document cases – loop of aid – analyze concrete cases with regard to safeguards, tool
- Make reporting on HR an obligation, i.e. every three years.
- Install certain mechanism – shadow report and other. Although, this may not lead to full compliance, this will build up awareness and legal opportunities for communities and NGOs.
- Past experiences show: Blaming and shaming of HR violations is a useful way to ensure HR respected. However, one shall be careful as REDD is in the readiness phase and the overall opportunities of REDD may be limited if critics are being discussed only.
- The biggest window of opportunity to avoid human rights violation is REDD finance. It should be conditional to HR and developing countries will act accordingly.

How to ensure the implementation of IPs Rights in REDD on the international level?

- Representation in REDD+ related bodies
- Recognition of IPs knowledge, IP rights and land tenure
 - Legal recognition of indigenous peoples as indigenous
 - Legal recognition of indigenous peoples as rights-holders
 - Land tenure: resolution of all land conflicts and policy reform for collective land tenure, participatory mapping and delineation
 - Strengthen resource management systems and forest governance of IPs
 - Respect and enhancement of traditional knowledge
 - Documenting success stories of mitigation/adaptation practices of IPs – to avoid criminalization of shifting cultivation and other traditional practices
- Participatory MRV on performance and HR
- Full and Effective Participation: Effective participation shall be determined by IPs and not prescribed to them: good faith, inclusive, transparent and re-iterative process. Participation shall be underpinned by the recognition of collective rights for it to be effective, meaningful and substantive. Anyhow, basic principles can be developed:
 - Information dissemination in forms and ways understood by and accessible to indigenous peoples/ local communities

- Capacity building for indigenous representatives, leaders and communities; strengthening their collective decision making institutions
- Conduct Free Prior and Informed Consent
- Technical and logistics support to indigenous peoples for their effective engagement

What could be done by us in Germany?

- Define the given safeguards on the international level and lobby for concrete, comprehensive indicators
- Build up information system on safeguards in REDD finance
- Clear terms of agreements on safeguards, indicators for safeguard compliance and monitoring mechanisms as conditions for financial disbursements especially to bilateral agreements
- Review / evaluate the Readiness Preparation Proposal (RPP) and R-Package in relation to safeguard implementation. Full and effective participation of IPs and local communities, actions to address deforestation, and mechanisms for benefit-sharing etc. and raise concerns and proposal to donor-countries
- Monitor financial commitments vis a vis human rights conditions
- Support the establishment of effective and transparent grievance and accountability mechanisms
- Encourage direct funding for capacity building for indigenous peoples and local communities, case studies and piloting of FPIC, participatory community mapping and development of Participatory MRV tools
- REDD is an idea – use the process as opportunity to guarantee safeguards
- Lobby around FCPF meeting in Berlin in October 2011
- Comment on the readiness plans
- Sector policy on forests being revised in Germany