

## **Indigenous and Tribal Peoples and Other Forest Dependent Communities and REDD+ in Africa: Issues and Concerns regarding REDD+ and stakeholder rights.<sup>1</sup>**

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### **Contextualizing the discussion**

The Right to Free, Prior and Informed Consent (FPIC) is a requirement, prerequisite and manifestation of the exercise of the fundamental, inherent right to Self-determination of Indigenous Peoples. FPIC for Indigenous Peoples is affirmed in many international laws and standards including General Recommendation XXIII of the United Nations (UN) Committee on the Elimination of Racial Discrimination, the UN General Assembly's Plan of Action for the 2nd International Decade of the World's Indigenous Peoples, International Labor Organization Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). During the UNFCCC COP 13 in Bali, the Forest Carbon Partnership Facility (FCPF) was launched. Some African countries immediately expressed interest in being part of the REDD readiness process and followed up by submitting R-Pins and subsequently RPPs. At the time of expressing interest in REDD+, governments had not consulted their constituents. While some lacked the means, others did not see the need to consult at that stage, thus robbing their citizenry the freedom to decide. May be this was "in national interests". But with the issue of "leakage" that constitutes a critical component in REDD+, communities have limited options but to be part of the national REDD+ programs. FPIC discussions should not therefore be geared towards a "no to REDD+" at the national level but rather towards appreciatively inquiring into REDD+ strategies to determine those that will deliver the maximum benefits for Indigenous and Tribal Peoples and other forest dependent communities in REDD+ participating countries in Africa. At this level, we must decide whether the "C" in FPIC means "consent" or "consultations leading to broad community support." If it is "consent", does it mean unanimity? How will this be determined? If it is "broad community support", what should be done with the divergent views?

Against this background, this discussion looks at a few issues that may be important to indigenous and tribal peoples and other forests dependent communities in REDD+ programs. It is important to consider that "indigenous and tribal peoples" may have different backgrounds and experiences from "other forests dependent communities" within and in different states and whether uniform guidelines will be appropriate for both.

### **Capacity building**

Capacity building is a critical element for FPIC both at the national and community levels. There is a lot of excitement about REDD+ and its potential benefits, especially the expected financial flows. Expectations are high. But the collapse of the Chicago carbon exchange calls for caution

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<sup>1</sup> This presentation is made at the UN-REDD workshop on FPIC in Tanzania, January 24, 2011.

especially in the message that reaches communities. The need for intensified capacity building efforts targeting communities is their critical to enable them make informed decisions.

But while resource constraints are an understandable challenge, capacity building initiatives should be targeted at building capacity of Indigenous and Tribal Peoples and other forest dependent communities to fully understand the REDD+ process at the community level and not just at the activist level. UNREDD+ countries and partners within those countries should ensure adequate budgetary allocations for this process. Cross border capacity building for communities living adjacent to each other should be designed and supported in order to develop, increase and build cooperation among and between them in line with ecosystem approaches to REDD+ and also regional integration processes like EAC, COMIFAC, SADC and ECOWAS. Capacity building should also be targeted towards enabling communities' measure carbon stocks in their territories and in MRV systems. Establishment of data clearing houses at the national level to enable sharing of information within and among communities, governments, NGOs etc should also be part of the capacity building initiatives.

### **REDD+ as a climate change adaptation tool through support to livelihoods initiatives.**

While much research has been done on the effects of climate change at the global level, there is little information available on the impacts of climate change at the community level especially in Africa. But communities are already living the impacts of climate change (e.g. the current drought in Kenya). The immediate need for communities is therefore adaptation compared to mitigation. However, very little activity is taking place in the adaptation arena. And much of the REDD+ talk has been centered on mitigation. Rural communities are developing strategies to adapt with entrepreneurship in the form of ecotourism, bee keeping, and trade in herbal medicine, provision of security services, charcoal burning, livestock trade, agriculture, urban migration and prostitution, alternative energy among others being the most visible tools to address poverty. For REDD+ to succeed, its early actions should foremost focus on the question of poverty as an underlying cause of deforestation and degradation. REDD+ should therefore initiate, support or upscale some of these adaptation strategies as part of the mitigation process. This could be done without having to wait for all REDD+ systems to be in place. It would generate enormous amounts of good will for REDD.

### **Land and governance issues**

The land and territories of Indigenous and Tribal Peoples and Other Forest Dependent Communities are potential REDD+ project sites as it is mostly in these territories that adequate land sizes necessary to support profitable REDD+ investments are found. The communities have for centuries sustainably managed their territories through strict customary laws. However, communities in Africa are experiencing a crisis over tenure as their rights have not been properly addressed in the post-colonial situation. Almost all African states fail to recognize pre-existing usage rights and tenure systems or lack the means to support them. Blanket laws and policies have seen communities lose their lands to Protected Areas, forestry investments, mining among other interests.

Over the past few years, the trend in most African countries has been leaning towards developing laws and policies that involve communities in forests tenure and management. But since the inception of REDD+ and its anticipated financial flows, states seem to be steering towards consolidating control over forests and forest resources through acquiring titles and militarizing forest areas among other activities. This is happening without any consultation, consent or compensation with communities that are also staking claim to those lands. Investors, anticipating REDD+, are also trying to control community lands through long term leases, ecotourism etc. At the same time, changing communities are also changing their land management systems in line with national laws. This is causing fragmentation of community lands into individual freeholds in some countries like Kenya. FPIC therefore becomes crucial in the design of land use plans that will support REDD+.

### **Carbon rights**

All Africa REDD+ countries lack laws and policies that clarify ownership of carbon rights. This needs to be urgently addressed as it will form a basis for investment and benefit sharing. It cannot be assumed that carbon rights are automatically tied to land ownership. In some countries, the state regulates the exploitation of trees found even in individual freeholds. It can therefore be possible for communities to own land (what they have been advocating for) and the trees but not the carbon stocks – a precarious situation that will see states infringe on community user rights. If individuals/communities own the land, the trees and the carbon, they could negotiate from stronger positions for significant REDD+ revenues rather than when the carbon is owned by the state or other entities. REDD+ could then be able to go down to the community directly rather than in the form of nursery schools, dispensaries and security guards. But would communities be able to access the carbon markets directly or will it be a carbon fund at the country level? This is an especially important aspect of FPIC against the background of the long term nature of REDD+ contracts?

### **Other community rights**

Potential REDD+ sites are also cultural and spiritual sites, sources of human and livestock food and medicine, water, timber among others. Communities have a close attachment to some of these sites and vast amounts of traditional knowledge and genetic resources contained in those areas. Whereas REDD+ will be a give and take, these issues need to be worked out through a consultation and participation process to enable FPIC.

### **Laws and Policies**

Existing national laws and policies in many African countries tend not to give communities the rights to their lands and/or resources. Others tend to give them a negligible degree of rights. Most of Francophone Africa, for example, has a tenure system where villagers have certain rights to their immediate village, and all other land and resources belong to the state. In some countries, positive progress has been made. Kenya's new constitution, for example, recognizes

community land identified on the basis of ethnicity, culture or similar community of interest. It extends this to include “lands lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and ancestral lands and lands traditionally occupied by hunter gatherer communities” But while the Kenya Forest Act 2005 empowers any member of a forest community to take from forests any commodity that is customarily used by that community, it subjects this user right to “conditions that may be prescribed” and for “purposes other than for sale”. There is an urgent need to develop and or review laws such laws to enable a smooth operationalization of REDD+ on the basis FPIC.

### **Recourse mechanism**

At REDD+ recourse mechanism at the international, national level and even community level is critical. At the moment, the recourse mechanism under the both the UNREDD and FCPF programs are not clear. Under the UNREDD, the country representatives or coordinators, are the only available avenue for complains. But in most cases, access to the country representatives/coordinators is quite difficult. The situation is even more complicated in cases where the coordinator does not identify with the indigenous movement.

The World Bank recourse mechanism is the Joint Inspection Panel. But since the FCPF, hosted by the World Bank, is a partnership between donors and recipient countries, it is not clear whether the Participants Committee would like REDD+ projects brought under the jurisdiction of the World Bank’s Joint Inspection Panel.

At the national level, most REDD+ countries have national recourse mechanism through environmental tribunals. But do these tribunals have jurisdiction over matters of contractual nature or human rights violations that may arise out of REDD+ projects? Will these tribunals comprising mainly of political appointees be fair in determining REDD+ disputes?

At the community level, there will be a need to strengthen existing recourse mechanisms as they will be important to resolve community disputes that may arise out of REDD+ projects. In most communities these are in the form of a council of elders that exercise executive, legislative and judicial functions at the community level. However, recent examples in Kenya show that the councils of elders are increasingly succumbing to political manipulations casting serious doubts on some of their decisions. In such cases, communities will then have recourse to the courts of law. However, the distances, expense, time and technicalities involved in court processes makes them a serious access issue for poor, illiterate Indigenous and Tribal Peoples and Other Forest Dependent Communities that often lack basic infrastructure like roads.

### **Expanding REDD+ reach**

Activists from Burundi and Rwanda who have been following REDD+ discussion at the international level request the inclusion of both countries in the UNREDD/FCPF programs. Inclusion of the two will see the REDD+ connected across the middle of Africa from the Atlantic to the Ocean without the Burundi-Rwanda gap that is currently the case.

There is also a strong feeling that the COMIFAC block may be receiving more REDD+ attention than other blocks in East Africa. While it is understandable that market opportunities determine decisions, the Congo basin alone cannot mitigate climate change. More results would be gained by linking discussions and strategies at the COMIFAC/ EAC level in this part of the world. SADC countries are also showing interest in REDD+ and this needs to be explored as the world gears for COP 17 in Durban.

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