

Building accountability in REDD+ through independent grievance and redress mechanisms

A briefing paper from Rainforest Foundation Norway
May 2011





During the UNFCCC climate negotiations NGOs and indigenous peoples are present and contribute their insights. Roger Muchuba from DR Congo, Samuel Nnah from Cameroon and Kenn Mondiai from Papua New Guinea present at a side event at the 'COP 15' in Copenhagen. Photo: Julie Forchhammer, Rainforest Foundation Norway

Summary

REDD+ may deliver multiple benefits. It could be an effective measure against climate change, by reducing carbon emissions from deforestation and forest degradation. At the same time it may contribute to protecting forest biodiversity and the rights and livelihoods of forest based communities. On the other hand, because the envisaged REDD+ funding will increase the value of standing forests, REDD+ may also fuel already ongoing conflicts over land ownership in forest areas. Hence, strong safeguards (see box 1) and formal complaint mechanisms linked to REDD+ would help ensure good results for all.

REDD+ funding should be provided within the framework of policies and legal measures ensuring human rights in addition to environmental and social integrity. So far the political commitment to guarantee such safeguards under the UNFCCC climate negotiations has been rather weak. The Cancun agreement states that the safeguards (see box 1) "should be promoted and supported". This language is not strong enough to demand actual implementation of the safeguards. Weak safeguard protection increases the risk of human rights violations and conflicts and also opposition to REDD+.

The establishment of independent grievance and redress mechanisms at national and international levels would foster accountability and may help reduce conflicts among stakeholders. These mechanisms may also contribute to continuous improvement of REDD+ policies and projects through 'early warning' on adverse impacts of REDD+.

Ready for REDD+?

Even though there is no agreement on REDD+ under UNFCCC, a myriad of REDD+ initiatives and activities are going on. National REDD+ activities are undertaken under the World Bank's Forest Carbon Partnership Facility (FCPF), the UN-REDD Programme, and under the World Bank's Forest Investment Program (FIP). In addition REDD+ is discussed under the 'REDD+ Partnership' and several bilateral REDD+ agreements. A wide range of investors and NGOs are also involved in REDD+ projects.

These processes provide models for REDD+ implementation and create 'facts on the ground', without being regulated by common approaches or standards to ensure rights and safeguards.

Within the UNFCCC, indigenous peoples and civil society have voiced their concern over weak safeguards, violation of rights, and inadequate consultation with forest dependent communities ¹.

Box 1: "Safeguards" in REDD: what are they?

The Cancun Agreement states that:

" When undertaking activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:

- (a) Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of this decision;

- (e) Actions are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;
- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions.

From: Ad Hoc Working Group on Long-term Cooperative Action under the Convention
Thirteenth session Cancun, 29 Nov. - 10 Dec. 2010.
Annex 1.

1 K. Dooley, T.Griffiths, F. Martone and S. Ozinga (2011) Smoke and Mirrors: A critical assessment of the Forest Carbon Partnership Facility. FERN/FPP, Moreton-in-Marsh, UK.

A REDD+ without safeguards is harmful to all

Indigenous peoples and other forest dependent communities have throughout the centuries been the guardians of tropical forests. Their traditions, cultures and identities are connected to their lands. The pressure on lands, territories and resources has increased through the years. Neither the states nor other actors tend to acknowledge the contribution of indigenous and other forest based communities to forest preservation.



Forest dwellers know the rainforest and depend on it in their everyday life
Photo: Rainforest Foundation Norway

Some forest based communities have title to their land, in general through collective ownership. More commonly, communities lack formally recognized title to their lands and the resources they depend on for their survival.

If accompanied by a political commitment to formally recognize the lands occupied and used by indigenous peoples and forest based communities, REDD+ could lay the foundation for trust and peaceful dialogue. It is also a vital precondition for the overall goal of REDD; long term protection of forest. A recent World Bank publication supports this, showing that forests under indigenous peoples' control are more effectively protected than other forest areas ².

If rights are not acknowledged and safeguards are not applied, REDD+ may trigger land grabs, unrest and dispute and further marginalization of forest communities. Recent publications warn that these threats are already materializing ³.

Forest dwellers are being coerced into signing away any future rights to forest carbon. There have been examples where national laws and policies have been changed to weaken the rights of forest communities over land and natural resources, and in some instances also weakening their right and ability to challenge expropriation and land grabs. It is also reason for concern that international consultants suggest that it is more cost effective to address the alleged impact on forests by local communities than to address the impact of commercial companies ⁴.

Media attention to land grabs, conflicts and also human rights violations are likely to reduce public support for REDD+, and to reduce investments. The reputational risk to investors and the actors implementing REDD+ is considerable.

In short, poor REDD+ governance is likely to create conflicts, be associated with human rights violations, and undermine the sustainability and permanence of REDD+. The failure to take rights and long term safeguards properly into account may thereby seriously undermine the climate benefits REDD+ was meant to achieve.

² The World Bank. "Climate Change and the World Bank Group: Phase II: The Challenge of Low Carbon Development. Committee on Development Effectiveness" September 1, 2010.

³ Accra caucus: Realizing Rights, Protecting Forests: An Alternative Vision for Reducing Deforestation, 2010; Global Forest Coalition: REDD Realities. How strategies to reduce emissions from deforestation and forest degradation could impact on biodiversity and indigenous peoples in developing countries, 2009.

⁴ Rainforest Foundation UK (2010.) "McREDD: How McKinsey 'cost curves' are distorting REDD", Climate and Forests Briefing, November 2010

How to avoid harm caused by REDD?

REDD+ needs to be planned and implemented within a rigorous human rights framework that ensures the compliance with safeguards. To ensure this, REDD+ should be subject to continuous monitoring, reporting and verification (MRV) also with regard to rights and safeguards. In addition, there is a need for institutionalized mechanisms that allow feedback, participation and complaints from forest dwellers and those acting on their behalf, in addition to others experiencing that their land and interests are threatened by REDD+. Such a system would allow early warning and timely feedback, and adjustments and continuous improvements of REDD+ plans and policies.

Carefully crafted formalized feedback mechanisms will increase transparency and accountability in REDD+. They will help underpin democratic and rights based processes, and contribute to improved forest governance.

A grievance mechanism is needed

Even before REDD+ is implemented, the mere anticipation of future financial flows has set processes in motion in the national context. Consequently, there is an urgent need for mechanisms for conflict resolution. In fact, the need to establish proper grievance or conflict-resolution mechanisms in the readiness phase is already recognized and proposed. The draft FCPF/UN-REDD Guidelines on the Participation of Indigenous Peoples and Other Forest Dependent Communities suggests that

“The consultation process should define specific grievance and grievance redress mechanisms. This could include both local and national level conflict management systems, provided they are accessible and affordable.”⁵



Photo: Rainforest Foundation Norway

In line with this, the FCPF and UN-REDD's templates for development of national REDD+ plans⁶ require consultation with local stakeholders to map existing grievance and redress mechanisms on the national and local level, and also the establishment of new ones.

5 Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities. FCPF and UN-REDD program. DRAFT – November 17, 2010

6 Forest Carbon Partnership Facility (FCPF) Readiness Mechanism Readiness Preparation Proposal (R-PP) External Review Template (interim, January 10, 2011, from Program Document FMT 2009-1, Rev. 5

A human rights-based approach to REDD+

Grievance mechanisms will help build governance systems that respects, protects and ensures human rights, including indigenous peoples' rights. A human rights-based approach implies working towards the implementation of human rights, through a process characterized by human rights principles like accountability and transparency, participation and inclusion, non-discrimination and equity, and the 'rule of law'⁷.

Indigenous peoples are covered by universal human rights instruments in addition to the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UN DRIP).

A human rights based approach implies clearly identifying 'rights holders' and 'duty bearers', and holding the duty bearers accountable for human right violations. As shown, REDD+ may undermine human rights, including the rights of indigenous peoples to self determination, land, territories and resources, and also their right to give or withhold their Free, Prior and Informed Consent regarding measures that will affect them⁸.



Photo: Arild Hagen

In order to hold states or other actors accountable, 'rights holders' need access to grievance mechanisms. These may take many forms.

A grievance mechanism is here understood as an institution or process through which stakeholders are able to raise concerns, grievances and legitimate complaints. A grievance mechanism should be able to deal effectively with complaints from forest dependent communities, or others filing a complaint on their behalf. To fulfill this purpose, we suggest that a grievance mechanism for REDD+ should comply, among others, with the following criteria⁹:

- ability to respond quickly;
- independence, transparency, fairness and impartiality;
- easy accessibility, and set-up to hear plaintiffs;
- inclusion of independent (non-State) experts;
- inclusion of experts from indigenous peoples and civil society;
- authority to order restitution or compensation, and to stop ongoing or planned activities that would undermine human rights and safeguards.

Information about the existence of grievance mechanisms and their functions should be readily available to the public, including potential filers of complaints.

⁷ United Nations: The Human Rights-Based Approach. Statement of common understanding. Inter-Agency Workshop on a human rights-based approach in the context of UN reform, 3 to 5 May 2003.

⁸ See for instance IWGIA and AIPP. REDD+ and Indigenous Peoples. A briefing paper for policy makers, 2010.

⁹ These elements are partly taken from: NGO Forum on AIB (Asian Development Bank): Submission on the Accountability Mechanism Review. 15 September 2010. (www.forum-adb.org)

Existing grievance mechanisms

The following is an overview of some key national and international grievance and redress options that are, or may become, relevant to REDD+.

National grievance options

National grievance options would in general be easier to access for rights holders than international ones. Some grievance mechanisms are associated with the State's governance system, like local and national courts and dispute resolution mechanisms, ombudsman offices, and national human rights institutions.

National human right institutions and ombudsmen and government agencies dealing with indigenous peoples' issues may be charged with overlooking the national situation on REDD+.

In cases where their mandates are not relevant to REDD+, these could be broadened, and resources could be made available for capacity building or for expanding the staff to include experts on REDD+. The institution needs to be independent in order to provide sound and critical assessments of the national REDD+ situation. These bodies may receive complaints and provide conflict resolution and arbitration, investigate and if necessary build a case that could be taken on by national courts, the international human rights system, the World Bank inspection panel or other relevant entities. They would thereby also ensure national and international attention to problems linked to REDD+.

The national legal system may be invoked in cases where national laws have been violated. Claims may also be filed against a State or a business actor in the country of the alleged perpetrator.

The Aarhus Convention (UN/ECE Agreement on Access to Information Public Participation in Decision-making and Access to Justice in Environmental Matters) is directly relevant to REDD+. Individuals affected by REDD+ activities supported by a State Party to the Aarhus Convention may present claims through the Convention's non-compliance mechanism. A Compliance Committee safeguards the rights of indigenous and forest-dependent peoples, including the right to full and effective participation. NGOs that qualify as observers under the Aarhus Convention may nominate candidates to serve on the committee.

The National office of the public auditor could be called on if there is suspicion that REDD+ leads to corruption or other illegal acts.

National OECD focal points may deal with complaints related to business conduct. The National Contact Point (NCP) is a government office responsible for encouraging observance of the OECD Guidelines for Multinational Enterprises, working with corporate responsibility. Any person or organization may approach a National Contact Point with regard to matters related to the Guidelines. They interact with these and with companies, and provide annual reports and statements.

International grievance options ¹⁰

Complaint options also exist under international finance or credit institutions, like the World Bank Inspection Panel, the International Finance Corporation, and the Accountability Mechanism (AM) under the Asian Development Bank. These become relevant when REDD+ is financed through these entities.

International human rights based complaint options

The international human rights system also provides complaint options ¹¹, and several human rights bodies and mechanisms are charged with monitoring rights that are directly relevant to REDD+, and have been developing jurisprudence on REDD+ relevant issues for some time. The Saramaka case under the Inter-American Court on Human Rights (Box 2) is particularly interesting, because it rules that these non-indigenous forest dependent peoples have a collective right to their forest land, thus granting them the same protection as indigenous peoples.

These REDD+ relevant human rights bodies will not need a new mandate to work on REDD+, but may benefit from capacity building on REDD+.

Box 2: "The Inter-American Court on Human Rights: Saramaka People v. Suriname"

In 2000, the Saramaka of Suriname, who are descendants of African slaves, presented a petition to the Inter-American Commission of Human Rights to protect their land rights. In 2007 the Court granted them collective rights to the lands that they have traditionally occupied and used. These rights include rights to decide about "development or investment projects" on their lands, including logging and mining.

The Saramaka were also granted compensation from the government for damages caused by logging concessions awarded to companies.

Source: Inter-American Court on Human Rights: Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172

¹⁰ The section on international complaint options builds on a document developed by: Center for International Environmental Law (CIEL) for the Rainforest Foundation Norway (RFN) called: A complaint mechanism for REDD+. May 2011

¹¹ Including the complaint options under optional protocols of human right committees; the communications and urgent appeals under the Human Rights Council 'special procedures mechanisms', and the 'Human Rights Council Complaint Procedure' of the Human Rights Council in Geneva. Complaints can also be lodged with regional human right bodies and also with the Complaint procedure of the Governing Body of the International Labor Organization (ILO)

Conclusion

As this briefing paper suggests, existing grievance mechanisms should be better adapted to deal with REDD+. This could be achieved through capacity building, and in some cases, adjusted mandates. Dedicated national and international grievance mechanisms for REDD+ would help ensure that the REDD+ initiative leads to multiple social benefits and compliance with social and human right safeguards. They should respond to all the criteria for a grievance mechanism suggested above. Furthermore, any UNFCCC REDD+ agreement and other REDD+ instruments, like UN-REDD and FCPF, should require grievance mechanisms at the national level to deal with REDD+. International models for ensuring compliance with safeguards and avoiding adverse effects of REDD+ should also be explored.

Acknowledgements

We appreciate the inputs and comments to this text from:

Francesco Martone, Policy Advisor, Forest Peoples' Programme;

Robeliza Halip, Human Rights Advocacy Officer, Asian Indigenous Peoples' Pact

Kate Dooley, Forests and climate campaigner, FERN

Nat Dyer, Policy Advisor on Climate Change and Forests, Rainforest Foundation UK

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