

Climate Law & Policy Project

COMMENTS ON AGENDA ITEM 5, PARAGRAPHS 10 AND 11 (REDUCING EMISSIONS FROM DEFORESTATION IN DEVELOPING COUNTRIES: APPROACHES TO STIMULATE ACTION)

Submission by Climate Law & Policy Project to the Subsidiary Body for Scientific and Technological Advice

The following comments are in response to the invitation of the Subsidiary Body for Scientific and Technological Advice (SBSTA) to submit views on capacity-building issues for the development and implementation of methodologies relating to degradation (paragraph 10), and on issues related to indigenous peoples and local communities (paragraph 11).¹

Introduction

Indigenous peoples' (IP) forest practices may have once been sustainable, but recent studies indicate that traditional IP practices and management techniques are no longer sustainable with respect to climate and other environmental impacts. There are many reasons for these changes – however, the main reason is that commercial activities and other forces (e.g. urban growth) have encroached on traditional lands, thereby reducing the lands on which IPs can safely practice traditional methods, such as “slash and burn” agriculture. While other forces, such as commercial farming and logging, were once the sole drivers of deforestation and forest degradation, IP forest practices are increasingly known to be a contributor to the problem.

Considering that IP forest practices now contribute to deforestation and forest degradation, IPs and their local communities must be an integral part of any solution. To accomplish this goal, the Parties to the UNFCCC must take into account IP rights and needs through public participation in policymaking and other decision-making processes. Recent reports, such as the Arctic Climate Impact Assessment (ACIA), show that environmental issues affecting a particular locale can only be fully understood and addressed if IPs are directly engaged in the process. In addition, the Parties to the UNFCCC must create a means by which IPs are directly represented in the climate negotiation process.

If the Parties fail to recognize IP rights and needs through public participation and direct involvement in the negotiation process, more than a billion indigenous and other forest-dependent peoples are at risk of economic and cultural devastation, according to indigenous leaders at the World Conservation Congress held in October 2008. As such, any policy approaches and incentives to reduce emissions from deforestation and forest degradation in developing countries (REDD), including the development and implementation of methodologies to account for degradation, must be designed to: (1) promote sustainable development; (2) recognize indigenous rights to forests and forest resources; and (3) provide opportunities for informed and effective public participation in the decision-making processes.

¹ U.N. Doc. FCCC/SBSTA/2008/L.23 (Dec. 10, 2008).

A. Promoting Sustainable Development

REDD policies, including the development and implementation of methodologies to account for degradation, must promote sustainable development that will retain and enhance carbon stocks, increase the resilience of forests to climate impacts, and encourage communities to adapt to climate change.

Although a precise definition of sustainable development is beyond the scope of these comments, at least with respect to forest projects, a commitment to the concept of sustainable development requires that REDD policies give a preference to projects that provide additional forest and biodiversity benefits and/or provide economic and cultural benefits to local communities. At the very least, REDD policies should not violate international principles as recognized in various multilateral environmental and human rights agreements. For example, given the potential that REDD projects could interfere with legitimate claims of land titles held by indigenous peoples, such projects proposed on lands subject to the claims of indigenous communities must only be conducted with the full consultation and participation of indigenous communities.

B. Recognizing Indigenous Rights to Forests and Forest Resources

Although the property rights to and tenure of forests are often poorly defined, REDD policies must secure the rights of indigenous and other forest-dependent peoples to control and manage their forests and forest resources. By doing so, indigenous peoples will be able to continue using and managing the forest resources and retain their traditional and local knowledge systems, cultures, and territories.

As described by The Forests Dialogue, “[p]oorly designed forest-based climate change mitigation measures could undervalue proven traditional and local knowledge systems and the experiences accumulated by customary owners in sustainably managing their resources over many generations.”² Therefore, REDD policies, including the development and implementation of methodologies, must fully recognize the property, tenure, and carbon rights of indigenous peoples and communities, and devise effective mechanisms for direct benefit-sharing. Further, REDD policies must establish mechanisms to engage and build capacity among IPs and other local stakeholders so they can participate effectively in decision-making processes.

C. Recognizing Rights to Public Participation in Decision-Making Processes

REDD policies must provide meaningful opportunities for indigenous and forest-dependent peoples to participate in decisions affecting the communities in which they live. Speaking on behalf of the United Nations Permanent Forum on Indigenous Issues (UNPFII), Victoria Tauli-Corpuz stated that indigenous peoples “remain in very vulnerable situations because most States still do not recognize our rights to these forests and resources found,” and therefore must be fully involved in designing, implementing and evaluating REDD initiatives.³ To engage in the development and implementation of REDD policies, indigenous peoples must first be afforded a

² The Forests Dialogue, *Beyond REDD: The Role of Forest in Climate Change*, available at <http://www.wbcsd.org/DocRoot/pVG14xChqTkuI6kenBQ4/TFDclimatestatement.pdf>.

³ UNPFII, *Statement on the Announcement of the World Bank Forest Carbon Partnership Facility* (Dec. 11, 2007), available at http://www.tebtebba.org/index.php?option=com_docman&task=doc_download&gid=86&Itemid=27.

formal structure within the UNFCCC negotiation process that not only allows for the full, direct and active participation of indigenous peoples but also provides funding and support for this participation.

1. Providing Informed and Effective Public Participation

The importance of informed and effective public participation in environmental decision-making has achieved international recognition. The 1992 United Nations Conference on Environment and Development (UNCED) recognized the many benefits of public participation to government, local communities, regulated entities and society as a whole. The Rio Declaration and Agenda both endorsed the principle of public participation as a crucial component of sustainable development. Both public and private development projects have frequently gone awry because local people were not informed or consulted, even when projects that directly affect them are being designed and developed.

Through these international processes, informed and effective public participation has been defined to include three equally important components: access to information, public participation in decision-making and access to justice. Informed and effective participation requires that the affected public has the right to access to information, subject only to necessary, limited and explicit restrictions, that they know that a decision is being made, and that they have a right to participate in that decision. Notice of a pending decision must come early enough in the process for the public to review relevant materials, inform themselves on the issues and prepare their input. Notice must be made in a way reasonably calculated to reach the affected public. Moreover, the process must allow adequate time for the decision-makers to process the public input and incorporate it into their decision-making process. For the public to be willing or interested in participating they must be certain that their views will be taken into account in the decision-making process. Finally, there must be some independent (or at least quasi-independent) body for reviewing decisions and ensuring that the requirements for informed and effective public participation have been followed.

The UNFCCC Parties, while committed to promoting access to information, public awareness and NGO participation, must go farther in incorporating informed and effective public participation into REDD decision-making processes. They should commit to provide early notice to all potentially affected constituencies, including indigenous and other forest-dependent peoples, NGOs, businesses, and governments, about which areas and resources are being considered for REDD projects and a meaningful opportunity to participate in project design, implementation and monitoring. Such a commitment should take the form of a written policy on information access, public consultation and monitoring. They should provide for a transparent and appropriate process for involving locally affected peoples in decisions on REDD projects as well as in REDD project design, implementation and monitoring. REDD policies must also provided for notice and consultation at the local level, especially with indigenous peoples and other long-term occupants directly dependent on forest resources being considered for inclusion in a REDD project.

2. Ensuring Formal Participation within the UNFCCC Negotiation Process

In addition to providing meaningful opportunities for public participation, the Parties to the UNFCCC must create a means by which IPs are directly represented in the climate negotiation process. IPs must have a sanctioned voice within the negotiations, so that they are able to participate in crafting forest-related mitigation policies that affect their ownership, control and management of forests and forest resources.

REDD policies that provide opportunities for public participation further along in the implementation stages will not be effective unless IPs are directly involved in negotiating and drafting the policies themselves. Such participation may take any number of forms. For example, the Indigenous Peoples Caucus and many other groups have called for the creation of an UN Experts Working Group for Indigenous Peoples to present the perspectives of IPs and their communities within the formal negotiations. Another possible approach to be considered by the Parties is that similar to an NGO umbrella group, such as ENGOs and BINGOs. Regardless of which approach is used, the direct participation of IPs in the initial stages of the negotiation process would create goodwill and trust among the key stakeholders, and would ensure a greater likelihood of success during implementation of REDD policies.

Conclusion

In conclusion, REDD and other forest-related mitigation policies will only be successful if they promote sustainable development, recognize indigenous rights, and provide opportunities for informed and effective public participation in the decision-making processes. By engaging IPs in the development and implementation of REDD policies, REDD will foster sustainable forest management that not only provides climate benefits but also recognizes the rights of indigenous peoples and communities that depend on the forests and forest resources.