



Views on issues relating to indigenous peoples and local communities for the development and application of methodologies

Submission of FERN and Rainforest Foundation UK to the UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA)

February 15, 2009

FERN and RFUK welcome SBSTA's invitation to Parties and accredited observers, contained in document FCCC/SBSTA/2008/L.23 10 December 2008, paragraph 11, to submit "views on issues relating to indigenous peoples and local communities for the development and application of methodologies".¹

Introduction

Upholding the rights and promoting the interests of indigenous peoples and local communities in the development and implementation of climate change mitigation and adaptation measures is not only necessary to ensure consistency with applicable international laws, norms and standards; it is also an essential prerequisite to ensure the effectiveness of climate measures. This is all the more true in the case of forest-climate policies, such as those aimed at "reduced emissions from deforestation and degradation" (REDD), because much of the world's remaining forests in developing countries are located in the ancestral and customary lands of indigenous peoples and local communities. Any UNFCCC forest-climate agreement will have major implications for the rights and welfare of indigenous peoples and local communities, and, in turn, indigenous peoples and local communities in forested areas will impact the effectiveness of the agreement.

Recognising and respecting rights is a legal obligation

International law recognises that indigenous peoples have inherent rights derived from their distinct identities and their close and special attachment to their ancestral lands. These rights, including *inter alia* the rights to self-determination and to free, prior and informed consent regarding any decision affecting their lands and territories, are established in several different human rights instruments, and are codified and consolidated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in September 2007. In addition, local communities' customary and traditional uses of land and resources are protected under international conventions, such as *inter alia*, the Convention on Biological Diversity (CBD). Any UNFCCC forest-climate agreement should be grounded in, and should respect and uphold these rights; the failure to do so could lead to outcomes which contravene Parties' legal obligations.

¹ Note: This paper draws to a significant extent on the text of the Forest Peoples Programme's February 15, 2009 Submission to UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA), but the conclusions expressed are solely those of the authors of this submission, FERN and Rainforest Foundation UK, and do not necessarily represent the views of the Forest Peoples Programme.

Securing rights is essential for effective, permanent forest protection

Forestry experts and scientists maintain that securing rights and addressing governance, equity, and land tenure issues are essential preconditions for sustainable forest policies. They emphasise that rights-based approaches are required to ensure that forest protection and climate change mitigation measures and methodologies are effective, efficient and fair².

Furthermore, a forest-climate agreement will not lead to lasting or “permanent” maintenance of natural forests where local peoples’ rights to land and forests are not clarified and respected. The need to secure communities’ rights and tenure as a prerequisite for any forest-climate mitigation measures has been clearly identified by, among others, Lord Stern in his landmark publication ‘The Economics of Climate Change’³ the governments of the Congo Basin countries in the COMIFAC Convergence Plan⁴ and the Ad-Hoc Technical Expert Group of the Convention on Biological Diversity in its report on climate change and biodiversity⁵.

Empirical evidence demonstrates that legally recognised common property regimes in forest areas help to reduce resource conflict, prevent deforestation and provide effective long-term forest conservation and sustainable use and management of forest resources.⁶ Recognising local ownership and the jurisdiction and decision-making powers of local forest management systems provides a powerful incentive for local people to protect and conserve forest resources. Scientific studies confirm that the sustainability of local forest management regimes and security of local livelihoods increases with the level of local management rights and the extent and quality of the forest under community stewardship.⁷

Monitor forest governance, not just forest carbon

To be effective, any new forest-climate agreement must include a mechanism that ensures the development and monitoring of appropriate rules and standards to improve forest governance, uphold peoples’ rights, reward community forest stewardship and incorporate methods to promote positive tenure, governance and equity reforms.

To date, there has been an almost singular focus on monitoring carbon, with little attention to monitoring the governance conditions that are prerequisites for lasting forest protection, nor to the

² For a compilation of presentations see presentations of *inter alia* W. Sunderlin, A Agrawal, at www.rightsanclimate.org

³ The Stern review recognise the need to address tenure issues: ‘At a national level, defining property rights to forestland, and determining the rights and responsibilities of landowners, communities and loggers, is key to effective forest management. This should involve local communities, respect informal rights and social structures...’ (page xxvi). It is also stressed that ‘Clarity over boundaries and ownership, and the allocation of property rights regarded as just by local communities, will enhance the effectiveness of property rights in practice and strengthen the institutions required to support and enforce them’ (page 541). Stern also notes the risks of perverse incentives created through incorrect baselines, corruption, rent-seeking behaviour and the capture of benefits by national elites (pages 549-550), but proposes few concrete measures to avert or minimise these risks.

⁴ See <http://www.comifac.org/plandeconvergence>

⁵ Draft findings of the Ad Hoc Technical Expert Group on Biodiversity and Climate Change, p. 9, CBD Secretariat, November 2008, <http://www.cbd.int/doc/meetings/cc/ahteg-bdcc-01/other/ahteg-bdcc-01-findings-en.pdf>

⁶ Nepstad, D., Schwartzman, S., Bamberger, B., Santilli M, Ray, D., Schlesinger, P., Lefebvre, P., Alencar, A., Prinz, E., Fiske, G., and Rolla, A (2006) “Inhibition of Amazon Deforestation and Fire by Parks and Indigenous Lands” *Conservation Biology* **20** (1) , 65–73

⁷ Agrawal, A (2008) ‘Livelihoods, carbon and diversity of community forests: trade offs and win wins?’ Presentation to ‘Rights, Forests and Climate Change’ A joint conference convened by Rights and Resources Initiative & Rainforest Foundation Norway Oslo, Norway, 15–17 October 2008

critical role of forest-dependent communities in monitoring the health and integrity of forest resources, documenting encroachment or damage to forests, and 'ground-truthing' satellite imagery of forest cover.

The full and effective participation of indigenous peoples and local communities in the design and implementation of monitoring methodologies is both a right and a necessity to ensure lasting forest protection. Only then will climate change mitigation instruments under the UNFCCC (outside flawed offset/emissions-trading instruments) have the potential to deliver effective, fair and efficient measures that could provide long-term benefits for the climate, forests and indigenous peoples and local communities.

An effective forest-climate agreement therefore should:

I. Recognize rights and FPIC as pre-conditions

- Any new forest and climate regime must contain binding commitments to fully recognize and uphold the rights of indigenous peoples and local communities **consistent with applicable international standards, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**.
- The establishment and implementation of national REDD programmes or sub-national projects should only take place **with the free, prior and informed consent of affected indigenous peoples and local communities in accordance with applicable international obligations**.
- **Clarifying and securing the forest tenure rights** of indigenous peoples and local communities should be a **prerequisite** for implementation of any forest-climate or REDD schemes.

Furthermore to be workable, the text of a forest-climate agreement needs to be **simple** but **effective**. Details can be elaborated upon in refined rules, frameworks or work programmes after a forest-climate agreement has been adopted.

II. Develop acceptable and effective methodologies to monitor governance improvements and social impacts of climate change mitigation measures

The UNFCCC process must adopt methodologies on rights and social standards that are agreeable to indigenous peoples and civil society. These methodologies must comply with all applicable international laws and standards, including *inter alia* the UN Declaration on the Rights of Indigenous Peoples, ILO and UN Conventions, and must apply relevant CBD standards on indigenous peoples and local communities, including CBD Articles 8 j and 10c, as well as COP decisions and work programmes on protected areas and forest biological diversity.

Furthermore a forest-climate agreement must not undermine a State's capacity to fulfil its obligations under international human rights law and the environmental treaties it has ratified.

To this effect the UNFCCC should work with indigenous peoples' organisations and UN agencies to develop **practical guidelines for the implementation of the UN Declaration on the Rights of Indigenous Peoples in climate change mitigation and adaptation activities, particularly those related to forests**. These should include, *inter alia*:

- effective procedures for public participation and transparency in forest and climate policy-making at all levels, including national participatory analyses of the direct and underlying causes of deforestation and forest degradation;

- mechanisms to enable the participation of indigenous peoples and civil society in the conduct, review and validation of social and environmental impact evaluations, land tenure studies and strategic options assessments;
- participation by representatives of indigenous peoples and local communities, where they so choose, in the oversight bodies of international and national climate change mitigation programmes and funds;
- transparency and disclosure of information to enable public scrutiny and accountability of mitigation proposals and related financial incentives and funding activities.

III. Recognise and protect collective and customary forest tenure and management systems, including measures to safeguard communities' subsistence, cultural or spiritual values

A UNFCCC forest-climate agreement must adopt methodologies for measuring and rewarding forest protection that respect indigenous peoples' and local communities' rights and safeguard their customary forest uses, including the sustainable use of fire and itinerant cultivation. Monitoring, reporting and verification methodologies must not simply count carbon but incorporate a variety of rights, environmental, social, governance and equity indicators. Environmental indicators must include measurements of forest cover and ecosystem health that are not only more readily and accurately tracked in many developing countries than is carbon content, but also more sensitive to non-carbon forest values and to changing impacts of activities on forests over time. To protect communities' collective and customary forest uses, a forest-climate agreement should *inter alia*:

- Establish monitoring methods that distinguish between permanent and large-scale forest loss and temporary local forest loss under sustainable shifting cultivation and agro-forestry systems
- Ensure definitions and criteria for "deforestation" and "degradation" protect sustainable traditional practices, including use of fire in rotational farming
- Involve methodologies at the national and local levels to protect the range of values forests hold indigenous peoples and local communities, including non-monetary cultural, spiritual and subsistence values.

In conclusion, we note that discussions on forests and climate in the UNFCCC have not, to date, adequately considered the issues outlined above. The failure to include these critical principles in the design and implementation of any forest-climate mechanism would lead to an ineffective and unjust agreement that risks generating perverse outcomes which could violate international law and norms.