

**Friends of
the Earth
International**

Views on issues relating to Indigenous Peoples and local communities for the development and application of methodologies

Submission from Friends of the Earth International 15 February 2009

Friends of the Earth International (FoEI) would like to thank SBSTA for the invitation to submit views on issues relating to Indigenous Peoples and local communities for the development and application of methodologies. These issues have for long been missing in the negotiations on Reducing Emissions from Deforestation and forest Degradation (REDD). In this submission, FoEI presents the legal and normative basis for taking Indigenous Peoples' and local communities' rights and interests into account when designing and implementing methodologies for REDD, and offers examples of their successful involvement. Subsequently, we present specific suggestions on how to include Indigenous Peoples and local communities' rights and interests in the development and application of REDD methodologies.

The rights of Indigenous Peoples and local communities in international law

FoEI would like to stress that by omitting the plural 's' of the word 'peoples,' the text of document FCCC/SBSTA/2008/L.23 denies Indigenous Peoples their status as peoples that share collective rights and responsibilities. This omission is a failure to acknowledge the legitimacy of the UN General Assembly resolution no. 61/295; the 'United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)' from September 2008. Collective rights are legally and normatively distinct from individual rights, which is indicative the rules of social, custodial and kinship obligation of Indigenous Peoples. The UNDRIP also clearly articulates the right to 'free, prior and informed consent' of Indigenous Peoples to actions on their nations or territories. This exact wording of 'free, prior and informed consent' must be included in the body of SBSTA decision text on methodological issues relating to REDD. It is essential to ensure international coherence with regards to Indigenous Peoples rights and therefore essential these omissions are corrected by SBSTA in its future work on matters relating to this issue.

The UNDRIP also refers to a number of other key rights, including the right to effective redress for actions which dispossess them of their lands (Article 8); the right to conservation and protection of indigenous lands and territories (Article 29) and the right to protect cultural heritage. The importance of respecting, protecting and ensuring the rights of Indigenous Peoples and local communities, including the right to ongoing cultural heritage practice, is also detailed in core human rights treaties through Article 7 of the International Covenant on Civil and Political Rights and Article 15 of the International Covenant on Economic Social and Cultural Rights.

ILO Convention No 169 (1989) concerning Indigenous and Tribal peoples in Independent countries, states, "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these

resources” (Article 15.1). The Convention on Biological Diversity (CBD) states that its parties shall “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities” and “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements” (Article 10 (c)).

The role of Indigenous Peoples and local communities is also expressed in Principle 22 of the Rio Declaration, which states, “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

In the spirit of striving for compliance between REDD mechanisms and these international instruments, any REDD mechanism under the UNFCCC must be built on and respect the rights and interests of Indigenous Peoples and local communities. However, as experience from the Clean Development Mechanism has shown, such synergies are not guaranteed. Therefore, the rules and incentive structures set up for REDD must be fully and explicitly in line with the rights and interests of Indigenous Peoples and local communities.

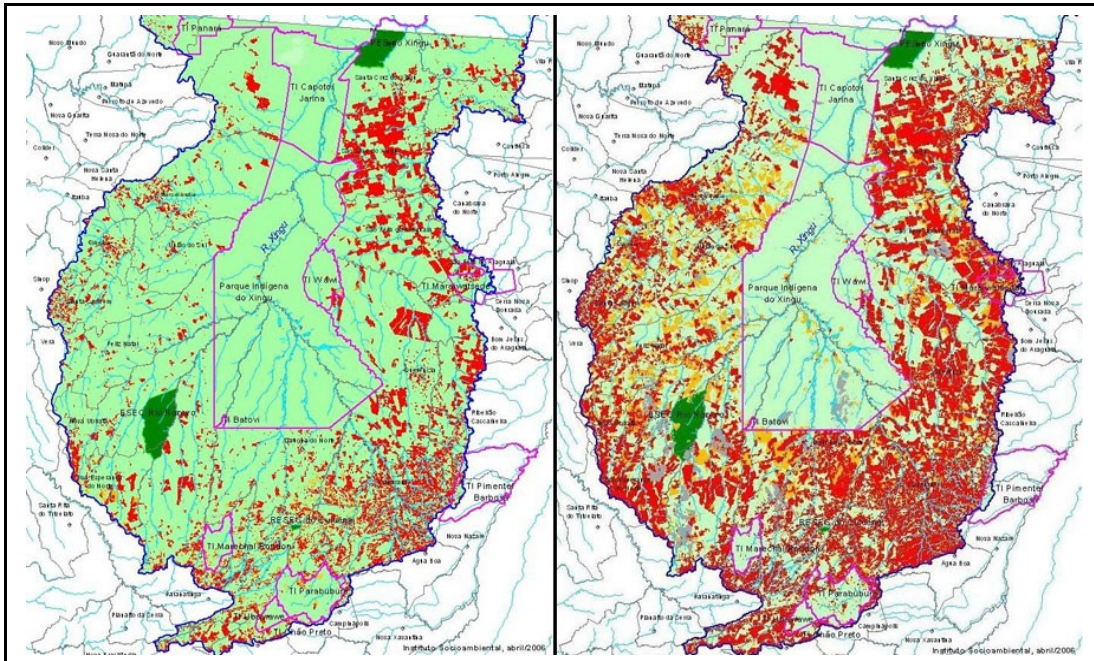
The role of Indigenous Peoples and local communities in REDD methodologies

Ensuring Indigenous Peoples' and local communities' rights and interests in the design of REDD is beyond a matter of state obligation. A rights based approach will also contribute to effectiveness and permanence of REDD programmes. Indigenous Peoples and local communities have an important role to play in monitoring forest lands and reporting on deforestation. Forest dwellers will normally be the first to notice illegal logging and other irregular activities taking place in their territories.

Legally recognising customary rights, including the mapping of Indigenous territories, is an essential pre-requisite to achieve permanent reductions in degradation and deforestation and to avoid social conflicts. Formalisation of Indigenous Peoples' and local communities' customary land rights increases their ability to protect their forests as they can activate a range of legal mechanisms if the forest is threatened by deforestation and degradation. This also can formalise and systematise Indigenous Peoples' and local communities' rights to claim REDD related benefits. Without recognition of customary land rights, the economic value awarded to the quantity of carbon stocks in forests gives new urgency to unresolved land right conflicts.

Several examples exist to show where Indigenous Peoples and local communities that have acquired land rights have successfully defended their land against commercial logging. Instituto Socioambiental (ISA) has shown that Indigenous territories in the Brazilian Amazon are virtually free from deforestation. In these territories, deforestation is only 1%, compared to an average of 2% in all protected areas, 8% in State level Sustainable use protected areas, and 19% outside the protected areas. The Xingu Indigenous territory in Brazil is a particularly telling example: Here the Indigenous Peoples patrol and protect their area against loggers, with the successful result that the area has retained almost complete forest cover, as shown on map. This is in stark contrast to the surrounding areas, which are rapidly being logged and turned into agricultural land.

Increasingly, Indigenous Peoples and local communities have also become involved in land demarcation. Through ‘ground based participatory mapping’ and GPS technology Indigenous Peoples and local communities can demarcate their territories – a relatively low cost first step to recognition of legal title. The collaboration between Indigenous Peoples and local communities, and governments may increase the understanding and respect of traditional forest use. In Indonesia, GPS technology has enabled the Orang Rimba in Sumatra, living inside the national park Bukit Duabelas, to educate forest authorities on how they use the forest. As a consequence the Forest Ministry has divided the national park into ‘user zones’ that take Orang Rimba’s traditional uses of the forest into account.



Deforestation is depicted in red around the Xingu reserve, Brazilian Amazon, in 1994 (left) and 2005 (right). Source: Instituto Socioambiental (ISA)

Implications of a rights-based approach to the development of methodologies

The need to base REDD on the rights and interests of Indigenous Peoples and local communities has important implications for the development of REDD methodologies. The traditional and sustainable use of forest resources by forest-dependent communities is protected by the Convention on Biological Diversity (CBD), Article 10 (c), cited above. This principle, as well as related principles of other human rights instruments, must be taken into account when designing methodologies for, *inter alia*, monitoring levels of deforestation and forest degradation.

Traditional practices in Indigenous Peoples and forest communities, e.g. many forms of shifting agriculture, often have very little impact on forest carbon stocks. Some of these practices are even known to increase carbon stocks in the long term, in addition to protect forest from disease, pests and fires. Targeting the traditional practices of Indigenous Peoples and forest dependent communities would increase the risk of displacement and eviction of these vulnerable groups, risk the loss of valuable local traditional knowledge, and ultimately fail to address the real drivers of emissions from deforestation and forest degradation.

Studies of previous displacement of Indigenous Peoples and forest-dependent communities in connection with forest conservation has found that “the consequences of the displacement and resettlement process itself have in turn a set of degrading effects on forest ecosystems.”¹ Furthermore, as previously shown, the Indigenous Peoples and

¹ Michael M. Cernea and Kai Schmidt-Soltau: “Biodiversity conservation versus population resettlement: Risks to nature and risks to people” (Bonn, Germany: 2003), http://www.cifor.cgiar.org/publications/corporate/cd-roms/bonn-proc/pdfs/papers/T4_FINAL_Cernea.pdf

local communities which risk displacement if their traditional practices are targeted can play a significant role in ensuring that intensive land-uses and related degradation does not occur. In FoEI's view, it is therefore important to ensure that such traditional practices are not wrongfully targeted in national strategies to reduce emissions from deforestation and forest degradation.

FoEI recommendations for REDD methodologies

FoEI would like to give the following recommendations for the development and application of REDD methodologies:

- REDD methodologies must be based on the recognition and respect for internationally protected human rights; customary rights and rights of free, prior, informed consent of Indigenous Peoples and local communities to lands, territories and resources, their traditional uses of the forest, and their right to choose their own development.
- Representative of Indigenous Peoples organizations and local communities should be able to participate in all relevant workshops, meetings and submissions on REDD, including SBSTA's work on REDD methodologies. Parties should be encouraged to include representatives of Indigenous Peoples and local communities on their delegations.
- Parties implementing REDD must develop and enforce a strategy for ensuring the full and effective participation of Indigenous Peoples and local communities in all stages of decision making in REDD and for ensuring that actions undertaken are consistent with their rights and interest.
- Methodologies for monitoring and reporting the social impacts of REDD must be developed as an integrated part of any REDD mechanism. Parties must be able to demonstrate the involvement of Indigenous Peoples and local communities in their national implementation of REDD methodologies.
- Mapping and clarifying the rights to land, territories and resources in a participatory manner must be a prerequisite for establishing national REDD schemes.
- Methodologies for monitoring deforestation and forest degradation must take into consideration, and not undermine, practices important for the livelihoods of Indigenous Peoples and traditional forest-dependent communities.
- The application by Parties of REDD methodologies, including those that protect the rights and interests of Indigenous Peoples and local communities, must be reviewed and monitored by independent third parties.
- A conflict-resolution mechanism must be incorporated within the overall REDD framework to address any conflicts that might arise between governments, Indigenous Peoples and local communities, and other stakeholders. Such a mechanism should ensure access by Indigenous Peoples and local communities as well as providing effective mechanisms for redress for actions which have the intention or effect of breaching their rights.