



Forest Peoples Programme

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Additional evidence for the Environmental Audit Committee inquiry into reducing greenhouse gas emissions from deforestation (submitted on 9th March, 2009)

Further to oral evidence provided to the EAC on 24th February 2009, the Forest Peoples Programme is pleased to submit additional written evidence and clarifications on key topics. We hope this additional evidence will be useful to the work of the Committee.

I. Risk of eviction and rights violations:

Many tropical forest countries have outdated statutory forestry and conservation laws and policies that fail to recognise the customary land and resource rights of indigenous peoples and forest-dependent communities. Unjust laws and policies still enable resettlement outside parks and prohibit traditional subsistence farming, hunting and fishing inside protected forest areas.¹ These discriminatory policies undermine livelihood security, cause impoverishment and violate peoples' rights.

Weak governance and corruption in the forest sector in developing countries and widespread unjust treatment and exploitation of forest communities by government forest departments and commercial interests are well documented.² Government imposition of logging and mining concessions, dams, industrial plantations and road schemes remains commonplace and continues to damage community forests, cause displacement and increase rural poverty in many developing countries.

Without measures to secure rights and promote land tenure and governance policy reforms, there are serious risks that financial incentives stemming from forest and climate programmes could result in land grabbing by government and/or speculators and commercial interests claiming possession of forest lands in order to receive rewards or compensation. This is likely to cause displacement, conflict, fraud and elite capture of benefits and incentives.

II. The role of international financial institutions and ODA:

Given the problems of poor forest governance and insecure tenure in many developing countries, the rapid development of top-down REDD/AD policies and related international ODA and private finance "demonstration" activities poses new additional threats to indigenous peoples and forest communities. In early 2009, there are already worrying signs that new multilateral forest funds established by international financial institutions like the World Bank are failing to properly address critical issues like land rights. They are also in danger of swamping long-term progressive forest reform processes in tropical countries (e.g., Liberia and Ghana).

World Bank Forest Carbon Partnership Facility:

REDD projects in developing countries funded under the World Bank's Forest Carbon Partnership Facility (FCPF), for example, have so far been rushed. Bank-assisted REDD readiness plans are being compiled by governments, conservation NGOs and consultants without the participation, review and agreement of forest-dependent peoples.

Scrutiny of emerging pilot plans for REDD reveals that they often overlook unresolved territorial rights claims, disregard conflicts over land and customary resource rights, and fail to propose measures for necessary governance and tenure reforms.³ FCPF-assisted REDD planning also exhibits a disturbing level of misguided and unjust attention placed on ‘slash and burn agriculture’ and the collection of fuel wood as the primary drivers to deforestation (e.g., in Panama, Guyana, Paraguay, DRC, Liberia, Ghana, Lao-PDR, Vietnam).⁴

In Guyana, for example, public and community consultations have been dominated by government perspectives and the process has been superficial (with very brief visits by forest department officials to some communities to “explain” REDD). Official REDD plans and proposals presented by the government of Guyana to donors like Norway and to agencies like the World Bank have swept major unresolved land and territorial claims under the carpet. They also include unjust and ill-conceived proposals to target traditional farming practices and to use REDD funds to “reduce” the dependence of indigenous peoples’ on forest land and resources – plans that risk violating people’s rights to livelihood and to culture.⁵

In Indonesia, where REDD planning is to be assisted by the UN-REDD programme led by UNDP, FAO and UNEP, draft national regulations for REDD require that the State be the sole regulator of forest areas without recognizing or protecting the rights and forest stewardship role of traditional and indigenous peoples. In both word and intent, the draft regulation as it stands now serves to reiterate existing violations of indigenous peoples’ rights found in other national laws.⁶

These cases indicate that in 2009 international finance for REDD and avoided deforestation is already at risk of directly or indirectly promoting unsustainable policies that threaten to undermine peoples’ rights and deliver little or no benefits to forest peoples.

Requirements for sustainable and accountable ODA:

As noted by FPP and FERN in the oral evidence to the Committee, it is essential that UK funds and other donor initiatives use a stepwise approach to official assistance for REDD and avoided deforestation programmes in developing countries. The first phase must ensure genuine, independent national and local multi-stakeholder processes to ensure that new forest policies and proposed incentive measures have demonstrable public acceptance. Additionally, there is a need for targeted and culturally appropriate consultations with indigenous peoples, who are often marginalised by more powerful groups in multi-stakeholder processes. The early preparation phase must address the concerns of rights-holders like indigenous peoples, identify the correct direct and underlying drivers of deforestation, and pinpoint required legal, tenure and governance reforms.

ODA finance stemming from the UK and other donors must precondition funding with core standards on human rights; land tenure rights; and free, prior and informed consent (FPIC). It must also enable independent community and civil society monitoring of the social, rights and poverty impacts and outcomes of climate change mitigation projects.⁷

Need for a rights-based approach:

It is strongly recommended that DFID take specific measures to ensure that its official rights-based approach to overseas aid adopted in 2000 is systematically applied to all its UK funding for overseas forest and climate change mitigation.⁸ This applies to the use of targeted bilateral aid, like the Congo Basin Forest Fund, as well as UK support for multilateral initiatives such as those of the World Bank Group and Global Environment Facility (GEF).

At the same time, the UK government must ensure that there is a sufficient number of in-house staff in DFID with forestry and social development expertise to provide proper oversight of this rights-based approach in all UK-assisted forest and climate initiatives in developing countries.

III. Minimum standards and public accountability:

Social *and* environmental rules and procedures are required to ensure that forest and climate change mitigation measures are sustainable and accountable to the public and to affected communities. Standards must comply with all applicable international standards on human rights, environment and sustainable development.

In relation to indigenous peoples, relevant standards are enshrined in the provisions and jurisprudence of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights (ICSECR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), ILO Convention No. 169, the Convention on the Rights of the Child (CRC), the American Convention on Human Rights and the African Charter on Human and Peoples Rights, among others. UN bodies and experts advise that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) restates the existing rules of international law and codifies the correct norms for designing and implementing programmes, projects or investments that may affect indigenous peoples.⁹

Rules and procedures must also conform to relevant standards on indigenous peoples and local communities established under the Convention on Biological Diversity (CBD), including the CBD Articles 8(j) and 10(c), and COP decisions and work programmes on protected areas and forest biological diversity.

To address the threats of displacement, land grabbing and evictions noted above, it is essential that forest and climate policies and schemes include strict rules to prohibit forced relocation; and include mechanisms to recognise and protect customary land rights and secure collective land tenure for indigenous peoples and forest-dependent communities. Effective implementation of agreed standards must be backed up by appropriate participatory tools to clarify tenure rights and methodologies to identify and prevent potential adverse impacts, including social and environmental impact assessments, and tools for poverty risk assessment and vulnerability analysis.¹⁰

Sustainability measures must also include transparent procedures for monitoring, reporting and verifying the rights, governance and equity impacts of mitigation measures and not just carbon. National and international independent complaints and redress mechanisms should also be established to enable affected communities and the public to appeal where they consider standards and commitments have been breached.

IV. Methods and actions to clarify and secure tenure rights:

National- and local-level processes for clarifying and securing indigenous peoples' and community land rights must be an essential precondition for REDD/AD schemes. In relation to indigenous peoples, land tenure rights must be clarified according to their customary systems of land tenure defined by the traditional occupation and use of forest lands. Procedures for delineating and securing indigenous peoples' lands must be founded upon transparent and objective criteria.¹¹ Schemes affecting the customary lands of indigenous peoples must be subject to the free, prior and informed consent (FPIC) standard.

Methods must be participatory and include provision for third-party peer review of national and local land tenure studies to ensure that only complete, accurate and objective information is used for the development of forest and climate change mitigation plans (third-party procedures and verification are needed because governments may have a perverse incentive to deny tenure problems).

V. Need for a sustainable agreement on forests and climate:

There is currently considerable pressure on governments to reach an agreement on forests and climate change mitigation in Copenhagen at UNFCCC COP 15. However, it would be a serious mistake to adopt a hasty and flawed agreement that fails to uphold human rights and that neglects critical issues like land tenure and forest governance. In other words, no agreement is preferable to a seriously flawed international mitigation instrument that could do more harm than good.

It is therefore essential that adequate time is given to reaching a useful intergovernmental agreement with robust methods, which must include appropriate rules and standards to uphold peoples' rights, reward community forest stewardship and incorporate methods to promote positive tenure, governance and equity reforms. If such methodologies are developed in an inclusive manner and in agreement with forest peoples, then global climate change mitigation and adaptation instruments (outside flawed offset 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.

¹ Colchester, M (2003) *Salvaging Nature: indigenous peoples, protected areas and biodiversity conservation* WRM and FPP, Montevideo and Moreton-in-Marsh

² Larson, A M and Ribot, J C (2007) 'The poverty of forestry policy: double standards on an uneven playing field', *Sustainability Science* 2 (2)189–204

³ Dooley, K, Griffiths, T, Leake, H and Ozinga, S (2008) *Cutting Corners: World Banks forest and carbon fund fails forests and peoples* FPP-FERN briefing, November 2008

⁴ *Ibid.*

⁵ 'Indigenous communities need to diversify their economies – Jagdeo' *Kaieteur News, Tuesday 10 February 2009* <http://www.kaieteurnews.com/2009/02/10/indigenous-communities-need-to-diversify-their-economies-jagdeo/>

⁶ Aliansi Masyarakat Adat Nusantara, Sawit Watch and Forest Peoples Programme (2008) Request for consideration of the situation of indigenous peoples in the Republic of Indonesia under the follow up and early warning and urgent action procedures (Seventy forth session of the Committee on the Elimination of Racial Discrimination) http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_follow_up_feb09_eng.pdf

⁷ Griffiths, T (2008) *Seeing REDD: forests, climate change mitigation and the rights of indigenous peoples and local communities – update for Poznan* FPP Briefing, December 2008

⁸ DFID (2000) *Realising Human Rights for Poor People*, International Development Target Strategy Paper, DFID, London

⁹ Anaya, S J (2008) *The Human Rights of Indigenous Peoples, in Light of the New Declaration, and the Challenge of Making Them Operative* Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, August 5, 2008 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1242451

¹⁰ See especially - Akwé: *Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities* www.cbd.int/doc/publications/akwe-brochure-en.pdf

¹¹ See, among others, Judgment of the Inter-American Court of Human Rights in the case of The Mayagna (Sumo) Indigenous Community of Awas Tingni v. the Republic of Nicaragua, 31 August 2001, *Inter-Am. Court on Human Rights, Series C, No. 79* (2001), at para. 149, 151; Inter-American Commission on Human Rights, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, at para. 131; and *Report No. 40/04*, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), 12 October 2004, at para. 117