

Securing Community Rights in Climate and Forest Protection Programmes in the Central African Republic

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The Congo basin contains the second largest rainforest in the world and has become a target for a developing set of policies that seek to fight climate change by reducing deforestation and forest degradation, best known under its acronym 'REDD.' The basic idea of REDD is to compensate nations who manage forests well and protect their forests from degradation, with the goal of preserving the carbon stored within them. It is argued that this approach could be a relatively cost-effective way of tackling climate change,¹ and a number of REDD projects are being developed in the Central African Republic targeted particularly to the 3.8 million hectares of dense forest in the south-west region. These forests are home to many local and indigenous communities who rely upon forest hunting and gathering, agriculture, fishing and livestock raising. Forest hunting and gathering are the primary economic activities of indigenous BaAka communities whose customary territories overlap most of the remaining forest in the southern forest zone. Since 1988 an integrated conservation and development project has been operating in the south-west tip of the Central African Republic (CAR) called the Dzanga-Sangha Protected Area Complex (DPAC). New REDD pilot interventions linked to carbon trading have already been proposed by NGOs like WWF to help protect these forests.² Most local and indigenous people living in the Dzanga-Sangha Reserve remain unaware of these REDD proposals that will affect how their forests are managed in the future. There is a need to inform indigenous peoples and forest-dependent communities about REDD as soon as possible so that they can assert their rights in line with international standards. This briefing highlights some key issues that need to be addressed to ensure REDD planning is sustainable and is done in a way that respects human rights.

¹ A growing number of economists question the assertion that REDD is a cost-effective policy option, pointing out that the 'transaction costs' to set up REDD schemes may well be very high. Others argue that REDD compensation may not be high enough to persuade developers to stop forest destruction.

² See, for example, <http://www.worldwildlife.org/climate/sparetheforest.html>



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Dzanga-Sangha Protected Area Complex (DPAC) contains forests rich in biological and cultural diversity
(Photo: John Nelson)

There are four main aspects of REDD projects that specifically affect indigenous peoples: land tenure; free, prior and informed consent (FPIC); benefit sharing; and consultation.

Land tenure and FPIC

REDD policies essentially seek to link financial incentives to the conservation of carbon stocks contained in forests. Those who hold rights to these carbon stocks would then be financially rewarded for achieving REDD objectives. A question of fundamental importance then emerges: who are the legitimate owners of forests and the carbon stocks they contain? This is a complex issue where forest tenure is contested. In many Congo Basin countries national governments do not recognise customary rights claimed by local and indigenous peoples, even though most have occupied their lands for many generations, often predating the colonial period and the establishment of the modern State. Many indigenous communities, for example, are not officially recognised by the government, and are thus 'invisible' to its administration. Even where communities' customary rights are protected in law, in many Congo Basin countries they are not respected in practice, and multiple, overlapping claims to land are made by different interest groups. In these cases, weak actors such as indigenous communities generally lose out to more powerful groups like neighbouring farmers, loggers or conservation projects targeting the same areas of forest. In situations where these other stakeholders are active it is likely that indigenous communities will be marginalised from REDD discussions, resulting in REDD-supported activities that will undermine local land tenure and livelihoods.

Under current CAR law all land belongs to the State. Most indigenous communities, such as BaAka, are not recognised as holding rights to the land or the natural resources that they traditionally occupy and use. These community customary areas cover most of the remaining forest in south-west CAR.

In 2008 the CAR government signed a new forest code, which offers some protection for communities' customary rights. The new code recognises that forests contribute to the well-being of the population, particularly indigenous peoples whose customary use rights are recognised. This recognition, however, is limited to 'subsistence' use rights only, and does not cover any form of commercial exploitation. The concept of community forests is also introduced in the new law. Under this legislation community forests can be established on the basis of a management plan governing commercial exploitation that is agreed between officially recognised communities and the State, which has powers to specify exactly how those communities will commercially exploit their forest. Although the forest code states that indigenous peoples like BaAka cannot be expelled from their lands without their free, prior and informed consent, it also stipulates that customary rights can be suspended or removed by the government in the interest of 'public utility'. It is unclear what could be considered public utility, and in these cases only consultation with communities is required, rather than their free, prior and informed consent.

The CAR is in the process of drafting a law on human rights with a section specifically addressing indigenous peoples. At present, the draft contains no reference to the principle of free, prior and informed consent. In Article 31, for example, projects affecting indigenous peoples are only required to 'consult' with local communities 'in good faith' prior to their start. A number of international conventions ratified by CAR go much further in protecting customary land rights than CAR national law. In particular, International Labour Organization Convention 169 (ILO 169), which was ratified by CAR in early 2010, states that governments must recognise rights to land based on traditional occupancy. The CAR government has not yet strengthened its national laws on land tenure in line with ILO 169.

Benefit sharing

Related to land tenure is the question of how benefits from REDD should be distributed. Without clear recognition for community land tenure, most REDD-related income will likely accrue to the government, or to powerful outside groups, rather than local and especially indigenous peoples. In CAR a significant proportion of local forest communities' livelihoods are based upon forest exploitation, so they have the most to lose if REDD programmes are planned and implemented without proper protections for their rights. There is plenty of evidence to show that in the Congo Basin protected areas like parks and reserves generally undermine communities' customary forest rights, because they are prevented from using their traditional lands by imposed conservation rules enforced by paramilitary forest guards. As a result poor forest communities end up bearing the main costs of forest conservation, without any benefits, and this reduces their incentive to participate.³ Where new REDD programmes are being set up, mechanisms must be put in place to protect sustainable traditional practices, prevent unjust restrictions on resource use and ensure equitable benefit sharing with communities, including rewards for traditional stewardship roles and good forest management practices.

³ See, for example, Colchester, M, Ferrari M F, Nelson J, Kidd C, Zaninka P, Venant M, Regpala L, Balawag G T, Motin B, and Lasimbang B (2008) *Conservation and Indigenous Peoples: Assessing the Progress since Durban*. Interim Report, FPP, Moreton-in-Marsh; See also Nelson, J and Hossack, L (Eds) (2003) *From principles to practice: indigenous peoples and protected areas in Africa*, FPP, Moreton-in-Marsh



Communities discuss participation and benefit sharing issues in the DPAC conservation area that affects their customary lands and forests (Photo: John Nelson)



Women are generally marginalised from decisions about forest issues in CAR, even though they rely upon forest goods to maintain family welfare (Photo: John Nelson)

In the DPAC over the past two decades local and indigenous communities have received few benefits from conservation activities apart from a relatively small number of temporary jobs, and limited town-based investments in health and education. These rural communities have been completely marginalised from the management of conservation areas. In return, these poor communities have lost legal access to huge swathes of customary forests that traditionally underpinned their livelihoods, and this has increased their poverty and vulnerability. Meanwhile, the State and conservation bodies have secured many millions of dollars to pay the necessary salaries and infrastructure costs contingent with a world-class conservation project. The State also controls all tourist revenues, and communities have no practical influence over how they are used. Without significant legal, institutional and organisational change it is unlikely that new REDD projects for the DPAC will deviate from this exclusionary pattern, threatening further restrictions against local and indigenous communities to the access and use of forests, and further increases to their poverty. Significant reforms are needed in CAR if forest and climate protection schemes are going to protect the rights of forest communities and deliver worthwhile concrete benefits to them.

Consultation and participation

International human rights and environmental standards uphold the rights of local communities and indigenous peoples to be consulted about and to participate in the management of conservation and development projects that affect them. These standards establish the right of indigenous peoples to free, prior and informed consent (FPIC). These rights are recognised in the policies of some donor agencies and conservation NGOs.

For REDD projects to be effective, local and indigenous peoples should be involved in all aspects from the initial planning stages through to the delivery of conservation outcomes. Where local communities and indigenous peoples are meaningfully involved in managing natural resources, regulations are more likely to be supported and followed. A better understanding of the local issues is also more likely where local people are involved, allowing for more suitable policies and measures to be devised.

Ensuring meaningful prior consultation and respecting FPIC will need special mechanisms and procedures to be put in place (in consultation with rights holders). There are a number of ways to engage with local people, from citizen participation in local government to the transfer of power to non-governmental bodies such as representative NGOs and community-based organisations. Whichever mechanisms are chosen, establishing representative and accountable institutions to negotiate for local people presents an enormous challenge. This is of particular concern in central Africa, where indigenous communities are usually not represented in local or national government and have few or weak existing institutions to represent their interests.

In CAR both the new forest code and draft law on human rights emphasise the need to consult with local people prior to the approval of any project affecting them. The forest code stipulates that local people be involved in the participatory management of forests. A committee will supervise the management process and be composed of representatives from interested parties, including indigenous peoples. It remains to be seen how these laws will be put into practice. It will be of particular importance to ensure that historically marginalised hunter-gatherer communities are granted real decision-making power. In the DPAC communities are not generally consulted about changes to the management of their forests, so this must change under new REDD proposals. Local and indigenous peoples are still waiting to be consulted about them.

World Bank Forest Carbon Partnership Facility (FCPF)

In addition to local (sub-national) REDD projects already being promoted by conservation NGOs, the government in the CAR is seeking support for national REDD planning from the World Bank's Forest Carbon Partnership Facility (FCPF). The FCPF offers grants for countries to build capacity and get national policy and institutional frameworks 'ready' for future national REDD schemes.

CAR submitted a Readiness Plan Idea Note (R-PIN) to the FCPF in 2009, but this has not yet been approved.⁴ The concept note was criticised by the Bank's own panel of forestry experts on a number of points. In particular, the note was found wanting due to its weak plans for consultation with forest-dependent communities. The current status of national REDD readiness planning in CAR is unclear.

Incomplete treatment of land tenure

Land tenure is identified as a key problem for REDD projects in the draft R-PIN. Insecurity of land tenure is identified as a contributing factor in deforestation but the main focus is on agricultural practices. While forest conservation could be promoted through the recognition of the customary rights of hunter-gatherers, for example, through the creation of community forests, in most areas communities still do not have official recognition, so are not eligible. Although the need to strengthen land tenure is noted in the R-PIN, few details are provided on mechanisms to ensure that these issues are resolved prior to the implementation of any REDD project. These vital tenure and resource rights issues must be addressed before REDD proposals advance further, otherwise community land tenure will be further weakened and customary rights violated.

Weak benefit-sharing plans

The importance of sharing financial benefits from all forest-related activities with communities, including indigenous peoples, is stressed in the R-PIN. It also addresses the need for greater transparency and identifies weak governance and corruption as major impediments to REDD activities. As yet there is no mechanism identified for the redistribution of REDD financial benefits. Based upon historical evidence of the impacts of protected areas, it seems clear that without significant institutional changes forest communities will see few benefits from REDD funding, and community poverty is likely to increase as a result.

Lack of consultation

Local and indigenous communities were not consulted during the development of CAR's R-PIN. The R-PIN suggests that dialogue should be carried out through NGOs and other projects already working with BaAka and other groups. The importance of a strong consultation process for REDD is stressed, and a number of suggestions made, including the identification of local people to act as 'spokesmen'. Given the marginalisation of groups like BaAka from current conservation activities, more should be done to ensure that BaAka interests are represented in transparent, accountable ways. This is especially important because NGOs are likely to be used by government and outside agencies as representative of local people, as suggested in the R-PIN. There seems to be an assumption that the representation of BaAka by existing NGOs – who are mostly controlled by

⁴ http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/CAR_R-PIN_English_Revised_Feb_2009.pdf

other ethnic groups – is unproblematic. Experience shows that this is rarely the case – for example many funds targeting indigenous peoples in the Congo Basin are used and abused by outside intermediaries who have easier access to donors, so only small proportions actually reach the principle target group. It is important that indigenous peoples like BaAka are supported to develop their own institutions, according to their own governance system. In the DPAC, for example, indigenous communities are organised, but their representative institution, the Bayaka Community Union (UCB), has not yet been consulted about any REDD schemes. A similar situation applies to the other local and indigenous community groups based in Bayanga.



Leaders of the Bayaka Community Union (UCB) learn about Climate Change and REDD for the first time in a workshop organised with FPP support
(Photo: John Nelson)

Overall, the R-PIN contains useful information relating to the rights of indigenous and local peoples, but lacks solid proposals for the protection of these rights. Not enough emphasis is placed on the development of accountable institutions to represent vulnerable groups in negotiations over REDD projects. There is an over-reliance on existing policies and projects (such as the DPAC) to provide ready-made participatory channels that REDD projects could use. Many of these ‘participatory’ processes, however, fall far short of the standards that will be needed to make REDD a success in CAR. In the DPAC over the past two decades, for example, there has been no real transfer of power to local and indigenous peoples in terms of decision making regarding forest management.

Indigenous community representatives have only recently attended important workshops dealing with management-level issues concerning their customary forests, and the UCB, the representative NGO representing BaAka, has only just been engaged by protected area authorities following pressure from NGOs. In terms of land tenure, there must be a serious commitment by the government to address these problems in the design of readiness activities and *prior* to the implementation of REDD policies. This should include the consideration of restitution of land in cases where local and indigenous peoples’ customary rights to lands were historically not respected, as is the case in the DPAC.

Other REDD initiatives in the region include a project focusing on the Sangha Tri-national forest complex funded by the Congo Basin Forest Fund (CBFF), and a Global Environment Facility (GEF) regional project on Sustainable Forest Management in the Congo Basin, which aims to strengthen national institutional capacities. Local and indigenous communities have not been consulted in any meaningful way about any of these projects.

Recommendations

The above discussion highlights a number of recommendations related to all proposed REDD schemes to the government of the CAR and particularly managers of the DPAC, who should:

- Inform indigenous and local communities about all REDD proposals currently under preparation that will affect their forests, in line with the obligations of the CAR under human rights and environmental treaties it has ratified and in compliance with relevant international donor and conservation guidelines;
- Make sure that REDD readiness activities strengthen national laws and local DPAC regulations on land tenure in line with ILO 169, which was ratified by the CAR in 2010;
- Protect sustainable traditional and customary use practices and prohibit involuntary restrictions on land and resource use;
- Ensure mechanisms are in place to ensure broad and regular consultation with indigenous and local communities about changes to the management of the forests they traditionally use, and upon which their livelihoods rely;
- Establish transparent and accountable mechanisms for the equitable distribution of local benefits of REDD schemes;
- Ensure that communities are able to represent themselves through their own institutions such as the UCB, not via proxy groups made up of people from other interest groups;
- Ensure that local and indigenous peoples have a substantive role in management and decision-making affecting their customary lands.