The state of Orissa is one of the most resource-rich states in Eastern India, with diverse ecosystems that boast a wide variety of flora and fauna. In a way, Orissa symbolizes the contradictions in modern India between very high ecological and social diversity and extreme poverty and destructive processes of industrialization. Efforts by Government agencies to conserve wildlife in strictly protected national parks and sanctuaries often create conflicts with local communities who reside in and around these areas, because the physical presence of humans is considered to be harmful. This exclusionary approach to protected areas not only inhibits the fair and equitable sharing of benefits of conservation with local communities, but also disproportionally imposes the costs of conservation upon them. Lack of recognition of or respect for their fundamental rights contributes to hostility towards Government conservation initiatives, which reduces the overall efficacy of conservation efforts and, ironically, further exacerbates degradation and local poverty.

Despite these complex challenges, local communities are driving their own initiatives to conserve wildlife and biodiversity in general and to generate sustained livelihoods (see Box 1). Across community-owned lands, government-owned lands, and lands whose ownership is disputed, these initiatives are helping conserve a variety of ecosystems and habitats of wild flora and fauna through a wide range of institutional mechanisms, rules, and regulations. Even though these Community Conservation Initiatives (CCIs) are much older than the Government-managed protected areas, they remain unrecognized in federal and state law. While they have been functioning effectively without legal recognition, there are arguably some instances in which recognition of CCIs would further enable them to support biodiversity conservation and sustainable livelihoods.

**The Social and Ecological Context of the Mouth of the Devi River**

The mouth of the Devi River, located about 60 kilometers from Bhubaneswar, the capital city of Orissa, has great ecological, historical, and economic significance. The Devi River mouth is one of the three mass nesting sites of the Olive Ridley turtle in Orissa. It also provides habitat for the Indo-pacific humpback dolphin (*Orcinus brevirostris*), the finless porpoise (*Neophocaena phocaenoides*), and the smooth-coated otter (*Lutra perspicillata*), as well as many species of residential and migratory birds. The surrounding forest area is also home to many wild animals such as chital, hyena, and jackal. This rich diversity in flora and fauna adds immeasurable value to local communities’ livelihoods and well-being.

Around 15 000 traditional fisher-folk from 36 fishing villages are directly dependent on the river mouth for their daily livelihoods. The traditional fisher-folks live in small *tandas* (hamlets) adjoining the main revenue village. They collect fishes and crabs from the river mouth and fish within 5-10 kilometers from the shore, using fibre boats or motorized

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2 Three mass nesting (*arribada*) sites in Orissa are the Gahirmatha sanctuary, Rushikulya, and Devi River mouth.
3 The smooth-coated otter is listed in Schedule II, Part II, of the Indian Wildlife (Protection) Act, 1972, Appendix II of CITES, and as Vulnerable (VU A2cd) in the IUCN Red List.
boats (kattamarams) and large meshed nets to avoid strangling the turtles. On average, a traditional fisher-folk can earn around 10 000-12 000 Indian Rupees per month from the fishing activities. In addition to the fisher-folks living in the tandas, the villages located along the mouth of the Devi River are dependent on fishing and agriculture for their livelihoods. The average household landholding in the area is about 1 acre. Floods in 2003 and 2009 in the Kadua and Devi Rivers have seriously affected several hundreds of acres of crop in Gundalba and other neighbouring villages. Fisher-folks and other farmers have not received any compensation for their losses and many of their lands still lie inundated with water. Those who do not practice fishing or agriculture work as migrant wage labourers, often outside the state.

Exemplifying the type of conflict that arises between Government conservation priorities and community livelihoods in this area, during the six-month turtle breeding season from November 1-May 31, the Orissa State Government imposes a ban on fishing. Out of 240 fishing days in a year, the restriction of these 180 fishing days for turtle conservation greatly affects the traditional fisher-folks, who have no alternate sources of livelihoods during this period. The total amount of loss incurred by the marginalized communities in each year is around 403.7 million Rupees.

Apart from being a mass nesting site for Olive Ridley turtles, the area has a good mangrove forest cover. The many species of mangrove vegetation play a vital role in the coastal ecosystem, including in the mitigation of coastal erosion, as nurseries for variety of fish and prawns, and as natural barriers to tidal and storm surges associated with tropical cyclones, which cause considerable damage to the ecosystem and communities’ livelihoods. Good mangrove cover thus increases the resilience of the surrounding and constituent social and ecological systems.

However, the situation was much different a mere ten years ago. In 1985, mangrove cover in the Devi estuary was 2.58 square kilometers (km$^2$). In 1997, the mangrove forest cover was reduced to less than 2 km$^2$ by one cyclone; a super cyclone in 1999 hardly left any trace of mangroves or coastal casuarinas in the area, leading to high soil salinity (up to 15 parts per million) and reduced agricultural productivity. Villagers who were previously not very conscious of the need to protect the surrounding forests were driven to do so in order to prevent high salinity, minimize the intensity of future natural disasters, and ensure the ability to meet their daily livelihood requirements. The female residents of seven villages in particular

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5 Gundalba is one of the villages located along the Devi river mouth. The community conservation of casuarinas forest was initiated by Gundalba.
6 Since NREGA (National Rural Employment Generation Act, 2005) is not being properly implemented in their areas, they have to go to far-away areas for labour work. Earlier NREGS programmes were only implemented in certain districts (mostly tribal) in Orissa, but have been extended to the entire state two years ago. However, the activities have yet to start in these areas.
7 Examples include Avicennia officinalis, Avicennia alba, Aegiceras corniculatum, Ceriops decandra, Acanthus ilicifolius, Bruguiera gymnorrhiza, and Excoecaria agallocha.
10 The villages include Daluakani, Anakana, Gundalba, Aisinia, Siddikeswar, Sohana, and Sribantapur.
have emerged resolutely from the destruction and have successfully managed to protect and conserve around 15 km² of casuarina forest and 5 km² of mangrove forest in and around the mouth of the Devi River.

**THE DEVELOPMENT OF WOMEN’S COMMITTEES FOR ECOSYSTEM CONSERVATION**

In the face of these multiple challenges, women’s groups from these seven villages have driven successful initiatives to conserve the forest and coastal biodiversity. This social revolution started in 2000, with many of the women coming forward and resolving to conserve the adjoining forest areas and other natural resources, including casuarina forest. Today, the positive impacts of the CCIs on the protection and conservation of the rich biodiversity of the area are quite evident. For example, the women of each village have formed Community Forest Protection Groups or Committees and have adopted the practice of *thengapalli* or regular patrolling to protect the nearby Astarange Forest. They have successfully protected and regenerated around 15 km² of casuarina forest, which also help provide a barrier against the saline wind and sand particles that enter the village from the beach.

The women of the village of Gundalba have pioneered CCIs in the area by forming the *Pir Jahania Jungle Surakhya* (Pir Jahania Forest Protection) Women’s Committee in 2000. The village has 60 households and one woman from each household is part of the *Pir Jahania* Women’s Committee. With this strong foundation of 60 members, the Committee adopted the practice of rotational patrolling of two to four women at a time to protect the forest within their traditionally identified boundary. The extent of the forest boundary has been demarcated mutually between the villages and the boundaries are identified by physical landmarks.

At their monthly meetings, the Committee formulated and passed resolutions for a set of regulations for the management of the forest. With the meetings presided over by the President or Secretary of the Women’s Committee and attended by the local forest officers as special invitees, the resolutions were passed only when the decision was accepted by two-thirds of the Committee members. Once a resolution is passed, it is then shared with the rest of the villagers in a *palli sabha* (village meeting). For example, the Women’s Committee has fixed one day each month during which all 60 households in the village are allowed to collect fuel wood from the forest. Similarly, a different day (usually after three or four days after the villagers of Gundalba have collected) has been fixed when the neighbouring villages dependent on the same patch of forest resources can collect fuel wood from the forest. There is no conflict between these villages over the shared resources, as the boundaries and forest protection rules and regulations have been defined by mutual agreement of all seven neighbouring villages, many of which also have women’s committees. Those from outside Gundalba have been given this privilege on the premise that they refrain from cutting or chopping any trees, which they used to do prior to the women-initiated forest protection system. During the remaining days in the month, the Women’s Committee patrols the forest and nobody is allowed to collect additional firewood. The regulations established by the Committee are strictly adhered to and respected by the villagers. The Committee has also fixed different levels of fines, as a sort of localized compliance mechanism. For example, if a member of the Committee does not fulfill her patrolling duty, then she must be a fine of 50 Rupees. If anyone is found to be chopping trees or collecting firewood on any day other than the fixed one, the guilty party faces a fine of 200 Rupees. For minor offences, the defaulters are given a strict warning to

The strong commitment of the community members has yielded rapid and positive results, both ecological and social.

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11 These areas are classified as forestland and owned by the Forest Department. There are also some patches of privately owned land, where people have cultivated the casuarinas plantations.
The strong commitment of the community members has yielded rapid and positive ecological results. Since the widespread destruction in 1999 spurred their initiatives, newly regenerated mangrove vegetation and the forest cover (especially of mangroves) has gone up 63% from 2.58 km² in 1985 to 4.21 km² in 2004, even after the super cyclone decimated nearly all mangrove cover[12]. This is due to natural regeneration within newly formed mudflats and the concerted efforts of the local communities to restore the forest. The mangrove vegetation has attracted a lot of residential and migratory birds, which are also a tourist attraction. Furthermore, the mangrove forest serves as a coastal buffer against natural disasters. Buoyed by these results, the Women’s Committee plans to expand the mangrove cover in their area even further.

In addition to the effects of this well-organized social institution on the regeneration of the forest, the initiatives of the Women’s Committee have also influenced the local youth and children of their village and adjoining villages. The local youth have formed groups to help protect the Olive Ridley turtles (a Scheduled I species under the 1972 Wildlife Protection Act[13]) during their breeding season[14]. The Women’s Committee has constructed an interpretation and learning centre and aims to earn some income through regulated tourism during the breeding season. The youth are also engaged in maintaining an eco-friendly ambience for the tourists[15] and suitable habitat for the local wildlife by collecting garbage and segregating the degradable and non-degradable waste. The degradable waste is converted into organic manure and used in the agricultural fields, but due lack of technical knowledge and support, the non-degradable waste is left as such. The villagers not only protect the turtles during the breeding season, but also have special fishing norms during the mating and nesting times to avoid contributing to sea turtles’ already high mortality rates.

The youth groups and Women’s Committee, in addition to elders and others from the community, have recently started thinking beyond environmental protection and have plans for the sustainable development of their village and conservation of the whole coastal ecosystem. They have come together to develop a People’s Biodiversity Register[16] of their area and have started devising their own community management plans. All of the abovementioned activities demonstrates the social resilience of the villagers around the mouth of the Devi River and the mobilizing effect that CCIs can have within and among villages towards collective aims of biodiversity conservation.

**Lack of Legal Security Threatens to Undermine Community Conservation Initiatives**

Government initiatives for the regeneration and restoration of mangroves along the entire coastline of India tend to involve huge financial investments and are arguably not sufficiently adapted to unique local contexts[17]. In addition, the

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12 Ravishankar et al., 2004.
13 Taxa listed under the Schedule I category of the 1972 Wildlife Protection Act are highly endangered and are provided the highest level of legal protection.
14 The breeding season occurs from November to March, when the turtles are nesting and eggs are hatching.
15 During winter (December to March), around 200-300 tourists visit the local area per day. Sea Turtle Action Programme, 2005.
16 The 2002 Biological Diversity Act provides for the establishment of Biodiversity Management Committees in all local bodies, whether Panchayats or Municipalities, throughout the country. It stipulates that the main function of the Biodiversity Management Committee is “to prepare People’s Biodiversity Registers in consultation with local people. The Registers shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.”
17 For example, in May, 2010, World Bank-supported “Integrated Coastal Zone Management Project” has been approved for implementation in
The communities are demanding legal recognition of their self-driven conservation initiatives.

Existing conservation efforts of communities such as the ones described above are unrecognized and may be undermined by large-scale Government initiatives. The coastal communities around the mouth of the Devi River rightly claim that they had carried out the conservation activities on their own accord after surviving the 1999 super cyclone disaster, without any assistance from the government. After years of concerted efforts, the mangroves and casuarina have regenerated, but the communities now feel betrayed when the Forest Department claims it as Government property and restricts the communities’ mobility and access to the resources.

The Joint Forest Management Policy was passed in 1990, which provides for participatory management of the Forest by communities and the Forest Department. However, in practice, it has been found that Joint Forest Management has turned out to be a failure as it has very limited space for the local people to exercise their rights and they have virtually no role to play in the decision-making process.

Since the land is legally classified as forestland, it is officially under the jurisdiction of the Forest Department, but it is the communities who are protecting it. After the super cyclone of 1999, the Forest Department had allocated a 15 km² stretch for a casuarina plantation. At that time, realizing the need of casuarinas forest in their area, the people had suo motu also contributed some portions of their private land to the plantation. As described above, after ten years of vigilant protection under the Women’s Committees, the forests had regenerated significantly. However, Forest Department claims the area as their forest and does not recognize the conservation initiative of the communities.

In July, 2010, the Forest Department leased part of the area to the Orissa Forest Development Corporation to fell casuarinas trees. The women’s groups who have been protecting the forest vehemently opposed this, snatching the axes away and embracing the trees to prevent the Forest Department from chopping the trees that they considered priceless for their livelihoods, as well as a strong protection barrier against natural hazards. The Forest Department tried to bribe the villagers by saying that they would get 50% of the share from the lease, as they were registered as a Van Suraksha Samiti (Forest Protection Committee) in 2007 under the Government’s Joint Forest Management policy. However, the villagers said that they had no knowledge of being registered as a Van Suraksha Samiti and to date have not received any records to prove otherwise. In spite of fierce opposition from the villagers, the tree-felling operation has gone ahead and the communities have not received 50% of their share, which is their legal right if the Forest Department’s claim is correct. This is occurring at a time when the coast is most vulnerable to cyclones and other natural disasters (July-August) and only 8-10 lines of casuarinas plantation is left; the communities feel that this will no longer protect their villages from the saline ingress or cyclonic storms. The villagers also doubt that this plantation would survive strong winds or cyclonic storms, as they would be uprooted without a protective barrier in front of them.

Furthermore, the Forest Department has undertaken a plantation on around 20 acres of land within 50 metres of the coast of the village of Daluakani. This area is the mass nesting site of Olive Ridley turtles, which travel around 200 metres inland to lay their eggs. The overlap of these plantations with the nesting sites will undoubtedly cause destruction for the turtles, which, as a Schedule I species, are afforded the highest legal protection.

Some provisions under Indian law and policy actually contravene communities’ rights enshrined in other instruments.

Orissa for two coastal stretches (from Gopalpur to Chilika and from Paradeep to Dhamra). The project budget is 2.2763 billion Rupees. The basic objective of the project is to promote sustainable management of coastal area on a long-term basis to balance environmental, economic, social, cultural, and livelihoods issues of local communities. However, similar to most Government programmes, the mangroves and casuarina have regenerated, but the communities now feel betrayed when the Forest Department claims it as Government property and restricts the communities’ mobility and access to the resources.

Frustrated with the latest actions (or lack thereof) of the Forest Department, these communities are now demanding legal recognition of their self-driven conservation initiatives. They have started applying for community rights under the recently enacted Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (commonly known as the Forest Rights Act) over the forestland and the forest resources over, which they have depended on for generations. They are also demanding recognition of their rights to “protect, conserve and manage their own community forest resources which they have been traditionally protecting and conserving for sustainable use”

18 The Joint Forest Management Policy was passed in 1990, which provides for participatory management of the Forest by communities and the Forest Department. However, in practice, it has been found that Joint Forest Management has turned out to be a failure as it has very limited space for the local people to exercise their rights and they have virtually no role to play in the decision-making process.

19 The Preamble of the 2006 Forest Rights Act clearly says that “whereas the recognized rights of the Scheduled Tribes and other traditional forest dwellers include the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Schedule Tribes and other traditional forest dwellers.”

147 Policy Matters 17, 2010
In addition, there is no law or policy in India that recognizes the customary rights of traditional fisher-folks and other coastal communities that depend upon the coastal land and water for their livelihoods and well-being. The communities demand that the Coastal Regulation Zone Notification 1991 should be amended accordingly. To date, there are no guidelines indicated in the Coastal Regulation Zone notification for the preparation of Coastal Zone Management Plans. The communities demand that Coastal Zone Management Plans should be prepared by the government in consultation and repeated discussions with the local communities that depend upon the coastal waters. The management plans prepared thereafter by the Government should be passed by the Gram Sabhas (village councils) so the communities’ plans are duly reflected in the national- or state-level management plans. Importantly, the communities also call for the enactment of a separate Act in line with the Forest Rights Act, which arguably set a legal precedent for the recognition of the customary rights of tribal and other traditional forest dwellers over their forest resources. There are other existing provisions in Indian law and policy that indicate a trend towards recognition of CCLs, but they arguably have limited scope in and of themselves. A separate (but mutually reinforcing) Act that explicitly recognizes the CCLs of traditional fisher-folks and coastal communities would grant them the right to continue their livelihoods that contribute to the conservation and sustainable use of biodiversity. This would also assist India in fulfilling its obligations under the United Nations Convention on Biological Diversity, particularly Articles 8(f) and 10(c), which call on Parties to protect and support Indigenous peoples’ and local communities’ traditional knowledge and customary ways of life. To implement such an Act, village councils (Gram Sabhas) should be given the authority to develop, implement, monitor, and evaluate their own coastal management plans, and the local authorities (Panchayats) should be given the power to take punitive action against activities deemed illegal by federal and state law and by the local management plan.

THE NEED FOR APPROPRIATE RECOGNITION AND SUPPORT

The conservation and sustainable use of biodiversity requires the full and effective participation of local communities whose livelihoods depend directly on these resources in decision-making and governance processes. The above example of

20 Keeping in view the importance of the coastal environment and the need to protect the coastal ecosystems from the pressures of developmental activities, the Ministry of Environment and Forests had issued the Coastal Regulation Zone (CRZ) Notification 1991 under the Environment (Protection) Act 1986. This notification, which is still in force, seeks to protect and regulate the use of the land within 300 metres of the coast and 100 metres along the tidal-influenced water bodies. All developmental activities proposed to be located in this zone are regulated under the Notification. It classifies the coastal stretch of the country into CRZ-I (ecologically sensitive areas), CRZ-II (built-up municipal areas), CRZ-III (rural areas), and CRZ-IV (Islands of Lakshadweep, Andaman, and Nicobar).

21 The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act was notified in 2006. This Act recognizes and vests the forest rights and occupation in forest land of forest-dwelling Scheduled Tribes and other traditional forest dwellers, who have been residing in such forests for generations, but whose rights could not be recorded; it also provides a framework for recording these forest rights and the nature of evidence required.

22 The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 is considered to be one of the most revolutionary acts in the legislative history of India. This Act is intended to redress historical injustice faced by forest dwellers. In addition to the right of communities over land and forest produces, under Section 3(1)(k), communities have the right to access biodiversity and the right over related traditional knowledge and intellectual property rights. For the first time in the legal history of India, the traditional rights of forest dwellers to conserve and nurture their forest resources are recognized.

23 Driven by thousands of self-initiated forest-protecting groups in Orissa, the State Government passed a resolution regarding the involvement of communities in forest protection in 1988. National guidelines followed under the National Forest Policy 1998 through Joint Forest Management resolutions, which came into practice in 1990. The National Forest Policy is the first national scheme wherein villagers are involved in the protection of protected forests and forest reserves. Now thousands of Vana Samrakshan Samitis (Village Forest Protection Committees) operating in Orissa enjoy recognition of their usufruct rights and share in the benefits of conservation, including through funds to support their efforts.

24 Under Section 36 of the Wildlife (Protection) Amendment Act 2002, Conservation Reserves — Government-owned, biodiversity-rich areas (particularly areas important as corridors) — are recognized as protected areas. However, this contains no recognition of community rights or conservation initiatives. The Government owns most of the common lands in which CCLs are found. If these lands are declared as Conservation Reserves, their control and management are handed to the Forest Department, which then has the jurisdiction to enforce strict protected area measures. Thus, the declaration of Conservation Reserves has the potential to infringe upon rather than support communities’ rights. Section 36 also contains a provision to recognize private and community-owned areas imbued with conservation values or voluntarily conserved as Community Reserves, their control and management are handed to the Forest Department, which then has the jurisdiction to enforce strict protected area measures. Thus, the declaration of Conservation Reserves has the potential to infringe upon rather than support communities’ rights. The Ministry of Environment and Forest has yet to draft guidelines for the implementation and recognition of Community Reserves, which would indicate the potential usefulness of the stated provisions. Although this provision calls for forms of participatory management, it provides limited (if any) explicit recognition of community rights. It is extremely difficult to accommodate diverse, situation-specific institutional arrangements in a uniform configuration such as Community Reserves, which is what the forthcoming guidelines will likely attempt to do.

25 United Nations Convention on Biological Diversity (CBD), opened for signature June 5, 1992, 1760 UNTS 79 (entered into force December 29, 1993). The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources, appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and appropriate funding.
the initiatives of the Women’s Committee near the Devi River mouth illustrates the need for appropriate legal recognition and support of CCIs. In order to do so, the following points need to be addressed:

- CCIs must be legally recognized through elaboration and further amendments of existing laws, including recognition and support of local governing institutions and rights of the local communities over the resources upon which their livelihoods depend;
- Local communities should devise clear guidelines for external agencies who want to support and engage with them to ensure that any interactions are according to locally defined values and priorities;
- Technical and financial support must be provided to local communities contributing to the conservation and sustainable use of biodiversity, including through promotion of sustainable livelihood options (such as value addition and marketing of non-timber forest products and community based ecotourism), scientific monitoring and research, and capacity building to help local communities understand and engage with relevant laws and policies; and
- A holistic approach to development is required in order to take into consideration communities’ rights over resources that they have been conserving for generations. Transparent and participatory planning processes would also enable communities to prevent and mitigate activities that are detrimental to their livelihoods and surrounding biodiversity.

Community conservation initiatives at the mouth of the Devi River and elsewhere in Orissa illustrate clearly that traditional systems of resource management have conservation values and principles ingrained within them that officially recognized or managed areas often lack. Rather than imposing alternate models on the local communities and undermining their conservation efforts, it is critical to better understand the values of these initiatives and provide locally appropriate legal recognition and support at the national and international levels rather than.

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**INDIGENOUS PEOPLES’ RIGHTS IN INDONESIA: CUSTOMARY RIGHTS AND REDD**

*Naomi Johnstone*

**Abstract**

The emerging global and national policy and legal framework for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) has elicited concern from Indigenous peoples, particularly in relation to how their customary forest and land rights are affected and recognized. Tracing legislation and policy relating to customary land and forest rights in Indonesia shows a historical pattern of exclusion of Indigenous peoples. As current negotiations stand, the emerging REDD policy and legal framework promises to write yet another story in the overall narrative of exclusion of Indigenous peoples from Indonesia’s forests.
The emerging global and national policy and legal framework for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) is of concern to many Indigenous peoples the world over. One of these concerns relates to how their customary forest and land rights will be secured, affected, or recognized. An analysis at this stage of the situation in Indonesia – the country that is the furthest along in its legal preparation for REDD and that has numerous REDD voluntary projects already established – will prove valuable not only for policy- and law-makers, but also for Indigenous peoples in other countries struggling with similar issues. In order to fully understand the implications of the present REDD-related policy and law in Indonesia, this article first briefly traces the development of forest-related law and customary rights. It then examines the newly enacted REDD Regulation and explores examples of grassroots Indigenous resistance to existing REDD-related law and policy.

**Colonial Legal Legacies and Independence**

Indonesia has a legacy of colonial legal doctrines and policy that have served to exclude Indigenous peoples from their customary land and forest resources. An example of this is the Dutch legal principle of *Domein Verklaring*, which means that land that was not private property (as recognized by Dutch law) was deemed to be owned by the state. Dutch law did not even make provision for communal rights to be converted into individualized title; in 1808, all forests in Java were declared to be the domain of the state by the Dutch Governor-General. A state forest service was established at the same time, as was the first law punishing all uses of the forest not authorized by the state, effectively criminalizing customary use of the forest and instigating a legal legacy of exclusion.

The reach of this principle was extended beyond Java through the 1870 Agrarian Acts, also known as the Domain Declarations, which declared that all so-called wastelands in Indonesia belonged to the state. Tens of millions of hectares of land and forest were appropriated from local communities through these Acts. Commercial concessions for long-term leases could then be obtained from the state for plantations on these lands, serving as an early example of state appropriation of forests in favour of commercial exploitation, with the resultant exclusion of Indigenous peoples.

In the colonial period, the term *adat* became commonly used to describe the myriad of customary systems throughout

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2. This was the process that occurred in a number of other colonized countries in which indigenous law recognized communal ownership and colonial law did not. See, for example, in the case of New Zealand, Williams, D. V., “Te Kooti Tango Whenua”: The Native Land Court 1864-1909, Huia Publishers, 1999.
Indonesia and is a term still used by Indigenous peoples and the government today. Though *adat* recognizes a variety of individual rights in areas of Indonesia, community control over individual and collective rights is traditionally known by Indonesian lawyers as *hak ulayat*. While *adat* rights were recognized to an extent in Indonesia’s 1945 Constitution, they were appropriated through a twisting of the concept of *hak ulayat* from the local community level to the national state level. The elevation of national countries. However, it is most often translated into English as ‘Law’ hence, the ‘Basic Agrarian Law’. Also, whether an it only applies “as long as it [customary law] exists and its existence is recognized and not contradicting national interests.” Relevant post-independence legislation continued this pattern and the colonial legacy of denying Indigenous peoples’ customary forest rights.

**POST-SUHARTO REFORMASI**

The promise of change appeared in the late 1990s, when internal pressure from Indigenous peoples and international recognition of Indigenous rights, combined with considerable pressure from numerous other spheres, led to the fall of President Suharto’s controversial 32-year reign and administration, known as the New Order Regime. Drafted under intense pressure and with little consultation in the wake of Suharto’s demise, the Forestry Act 1999 effectively contradicts two decentralization laws enacted in the same year. The Forestry Act clearly continues colonial and post-independence legal notions by holding the same fundamental assumption that all forests are controlled by the state and retaining the same commercial production and conservation categories and earlier forestry legislation. Article 1 echoes its predecessors such as the Raffles Declaration, the 1967 Basic Forestry Law, and Article 33(3) of the Constitution, maintaining that “all forests within the territory of the Republic of Indonesia including all the richness contained therein are under the state’s control for people’s maximum welfare.”

It does contain, however, some minor changes with respect to the recognition of *adat* rights. Although the potential existence of *adat* forest (*hutan adat*) is acknowledged for the first time, it is only recognized as part of the state forest. Further, in Article 5(2), state forest is defined as “a forest located on lands bearing no ownership rights”, which continues the 1967 Basic Law on Forestry’s denial of *adat* communities’ ownership rights to *adat* forest by providing only a “management” right. Also, whether an *adat* forest “exists in reality” depends on whether or not it is recognized by the state. If the state finds that the customary community is no longer in existence (though no criteria are given to determine this), the management rights are “returned to the government.” At first glance, the mandated respect that state forestry services must have for customary law shows great progress for *adat* forestry rights; however, this is heavily limited by the caveat that it only applies “as long as it [customary law] exists and its existence is recognized and not contradicting national interests.” In this way, the national interest principle that was so narrowly interpreted in the post-independence period was retained. Further, the designation as state forest over areas of forest in which *adat* rights to the forest are asserted authorizes the state to convert the forest to other uses, such as issuing them to concessionaires.

Many local communities and Indigenous groups did not accept the Forestry Act. For example, the Alliance of Indigenous Peoples of the Archipelago rejected it because “it does not in any way acknowledge or give legal protection to Indigenous

10 As noted by Daniel Fitzpatrick and others, the term originates from the Mingakabau region of West Sumatra; other terms are used in different parts of Indonesia. The parity among all the terms cannot be taken for granted. Fitzpatrick, D., 1997. “Disputes and pluralism in modern Indonesian law”. *Yale Journal of International Law*, 22(1): 171-212.
12 UU 41/1999. In brief, ‘UU’ is an abbreviation for the Indonesian word ‘undang-undang’, which is the equivalent to an Act in Commonwealth countries. However, it is most often translated into English as ‘Law’ hence, the ‘Basic Agrarian Law’.
13 These Acts are the Law on Regional Government (UU 22/1999) and the Law on the Balance of Funds (UU 25/1999).
15 UU 41/1999, Article 4, Section 1.
16 UU 41/1999, Article 5, Section 2.
17 UU 41/1999, Article 5, Section 3, Paragraph 2. See Keputusan Menteri Kehutanan, No. 47/Kpts-II/1998, Ministerial Decree 1998, Article 1, Paragraph 2, which states that the existence of *adat* rights and legal systems are to be determined only by a governor’s proclamation.
18 UU 41/1999, Article 5, Section 4.
19 UU 41/1999, Article 4, Section 3.
peoples’ rights over forests which are part of their customary land.”21 The very fact that this group was formed (in 1999) and felt free to make such a forceful objection shows that in the years since Suharto’s fall, there has been increased space for the voice of Indigenous peoples in Indonesia. The voice of the Alliance of Indigenous Peoples of the Archipelago has often been heard in alliance with international non-governmental organizations (NGOs), international Indigenous networks, and sometimes aid and United Nations (UN) agencies, and has most often been used to try to reassert customary regimes. The strongest and most contested area has been claims to natural resource rights at the village level and, in particular, forest resources.

**REDD Developments from 2007-2010**

REDD was formally recognized as a strong contender for inclusion in a post-Kyoto agreement on climate change at the 13th Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) in December, 2007, in Bali, Indonesia.22 In the Copenhagen Accord that was drafted in December, 2009, at the UNFCCC’s 15th COP, three of the twelve paragraphs included REDD measures.23 In the meantime, voluntary projects have already commenced throughout Indonesia, often with international private investment actors in conjunction with NGOs.24

Indonesia is responsible for almost a third of global carbon emissions from deforestation and forest degradation.25 As such, it is a prime candidate for REDD schemes and in May, 2009, Indonesia became the first country in the world to enact national REDD regulations.26 The REDD Regulation does not elicit much hope for the rights of Indigenous peoples in Indonesia, especially in relation to recognition of their customary land and forest rights.

Article 1 of this Regulation echoes previous forestry legislation, recognizing Indigenous forest only as “state forest in an area of customary law” and claiming that it is not burdened by proprietary rights. However, a new forest category known as village forest is added.27 This is still defined as a state forest, but one that is “managed by the village and used for welfare of the villager and not yet burdened by permits/rights.”28 National entity implementers of REDD programmes include customary forest managers and village forest managers,29 which appears to include local adat forest-dwelling or -dependent communities as eligible to benefit from Indonesia’s involvement in REDD. However, Article 8 provides that a manager must have a copy of a Ministerial Decree to say that he or she is the manager of customary or village forest and, along with other requirements, must submit an application to the Minister of Forestry, who then assigns the REDD Commission to conduct an assessment.30 In a move that ignores decentralization reforms and retains centralized and authoritarian Ministry

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24 One example is the Ulu Masen project in Aceh run by Carbon Conservation. It is the world’s first independently validated REDD project and covers 750,000 ha (1.87 million acres).
27 REDD Regulation, Article 1, Paragraphs 4 and 5.
28 REDD Regulation, Article 1, Paragraph 6.
29 REDD Regulation, Article 4, Paragraph 2.
30 REDD Regulation, Article 12, Paragraphs 1 and 2. This would arguably rarely, if ever, happen due to practical, administrative, and financial constraints.
of Forestry control, the Minister then may approve or reject the application, but there is no mention of the criteria he or she may or should take into consideration when making this decision.\textsuperscript{31}

Nowhere in the Regulation is there any mention of obligations to uphold the rights of local communities, forest-dependent peoples, or Indigenous peoples, or regarding tenure security or benefits that will flow to these communities, who have often been maintaining the forest and the now valuable carbon stored within for centuries. According to a group of local and international NGOs and Indonesian Indigenous peoples, “In effect, Indonesia’s REDD Regulation and Law on Forestry allows the state to create a massive system of publicly- and privately-held forestry concessions and ‘carbon sinks’ in the forests traditionally owned by Indigenous peoples without any regard for their rights or existence.”\textsuperscript{32}

Thus, the REDD Regulation is arguably inadequate, especially given Indonesia’s support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the UN General Assembly in 2007.\textsuperscript{33} Article 26 is the most relevant in this context, stating that Indigenous peoples have “the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”\textsuperscript{34} It also provides that “States shall give legal recognition and protection to these lands, territories and resources”, in a way that respects the traditions and land tenure systems of the Indigenous peoples concerned.\textsuperscript{35} Article 29 also provides that “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.” The UN-REDD Joint Programme in which Indonesia is participating has incorporated it into its operational policy instruments.\textsuperscript{36} However, the lucrative World Bank REDD scheme to which Indonesia has recently applied, known as the Forest Carbon Partnership Facility, neither recognizes nor incorporates the United Nations Declaration on the Rights of Indigenous Peoples. Thus, there would be no obligation for Indonesia to recognize Indigenous rights to the forest in relation to any projects they implemented with funds from this Facility.

The emerging REDD legal framework in Indonesia appears to continue a familiar theme of colonial provenance of exclusion of Indigenous peoples from their customary forest domains. The colonial government in Indonesia ignored Indigenous forest rights wherever they interfered with the government’s desire to exploit resources for commercial gain or appealed to colonial ideologies of conservation. Similarly, the post-colonial government (and arguably to an even greater extent) has ignored Indigenous rights in favour of generating revenue for the elite. The current REDD frameworks, both national and international, are arguably not shaping up to be any different for Indigenous peoples in Indonesia.

Resistance and Innovation by Indigenous Peoples

In the current era of globalization, local actors that are increasingly connected digitally and internationally have had opportunities to take advantage of the various resources and opportunities available through engagement with international legal fora. For example, local actors, in collaboration with international environmental networks and a Western NGO, attempted to gain leverage against the government of Indonesia through the urgent action and early warning procedures of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) committee.\textsuperscript{37} These procedures
The emerging REDD framework in Indonesia continues a familiar theme of colonial exclusion of Indigenous peoples from their customary forests. The Committee, in response to the request and as part of its consideration of the report submitted by the Indonesian state, made concluding observations at its seventy-first session and requested the Indonesian state to provide information on how it followed up on the Committee’s recommendations within a year. In February, 2009, more than a year and a half later and with still no response from the Indonesian government, the same NGOs made another ‘Request for Consideration of the Situation of Indigenous Peoples in Indonesia’ to the CERD committee that focuses on the discriminatory effect of the REDD Regulation.

The creative appropriation of Western law and the hybrid incorporation of Indigenous norms contained in these submissions represent a truly pluralistic form of resistance to hegemonic legal conceptions. It shows that from the perspective of local actors, rather than a Western conception of universal and homogeneous human rights, “rights are cultural resources deployed in specific cultural contexts by local agents operating within legally and culturally plural frameworks.” This arguably demonstrates the space that has opened within international fora to “new discourses and subjectivities not recognised in national cultures or laws” such as, in this case, racial discrimination against Indigenous peoples, the collective rights of Indigenous peoples, self-identification rights, new interpretations of public interest, alternative interpretations of national interest, and Indigenous propriety rights to forest. This rich new world of interpretations of national interest, and Indigenous peoples’ rights to land and resources.

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38 A/48/18, Annex III, Paragraph 8(a).
39 A/48/18, Annex III, Paragraph 9(b)(ii) and (vi). These procedures have been utilized by Indigenous peoples before, including in New Zealand in relation to the Foreshore and Seabed Act 2004. In this case, rather than writing a letter, CERD sent a special rapporteur and made a decision on the issue.
42 This is citing the Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans (Suriname), 2006. See Committee on the Elimination of Racial Discrimination, 2007.
43 Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia. CERD/C/IDN/CO/3, 2007. The Committee noted its appreciation of the contribution of many Indonesian NGOs, which it felt “enhanced the quality of the dialogue with the State party.”
46 Merry, 1997.
concepts, rules, and resources provided by the global legal order opens up new space for the use of law as a form of resistance by local actors.\(^47\)

In another grassroots example, Indonesia’s Consortium for the Support of Community Based Forest Management issued a ‘Forests for People’ petition at UNFCCC’s 14\(^{th}\) COP in 2008 that was signed by 22 groups, most of which were local Indonesian communities. They argued that REDD negotiations neglect the rights of local people to community-based land use and tenure and noted that over 80 million Indonesians still depend on forests and forest resources.\(^48\) Their petition includes the call for local traditional communities to be given priority and sovereignty over forest management in Indonesia, for REDD schemes to include legal recognition of land use and ownership rights over forests by local traditional communities, and for some degree of local communities’ control over the implementation of national and international initiatives for climate change mitigation.\(^49\)

A final example took place in June, 2009, when Indonesian NGOs Sawitwatch and the Alliance of Indigenous Peoples in Indonesia wrote a letter to the Indonesian Minister of Forestry regarding REDD-related policy and legal proposals, drawing on a number of national and international legal and policy sources and appealing for increased recognition of the rights of Indigenous peoples in Indonesia. Together these examples illustrate an emerging grassroots movement made up of numerous local NGOs with international links and in different alliances that seeks to resist the hegemonic ideology of exclusion of Indigenous peoples that is arguably perpetuated by emerging REDD policy.

**CONCLUSION**

In colonial times, forests were classified and exploited for the benefit of imperial powers, ignoring the collective customary rights of Indigenous peoples. The post-colonial government in Indonesia adopted these ideologies, expanding them through wide-reaching laws and using them for the benefit of the elite to the exclusion and detriment of Indigenous peoples and did so, for the most part, with the support of the international legal system. Today, the emerging REDD frameworks at the national and international levels seek to secure forests for the financial benefit of the post-colonial state, once again ignoring the customary rights of Indigenous peoples. In spite of these structural challenges, there have been spaces of resistance to this situation by Indigenous peoples and grassroots community groups who are making the most of the opportunities presented by globalization and increased accessibility of legal fora. However, it remains to be seen how effective these efforts will be in securing recognition for local Indigenous rights when the REDD national and international framework is eventually finalized.

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\(^{47}\) Merry, 1997.


Since the colonial period, Cameroonian forest governance has been characterized by a system of public domain forests, which includes, among others, forests under exclusive ownership of the State. Classified mainly between 1930 and 1950, the State forest reserves form an integral part of the system from a legal standpoint, as they are registered in the name of the state. State forest reserves, which cover a total area of 920,000 hectares, include reforestation areas, protected forests, ecological reserves, recreational forests, and research forests.

In Cameroon, public domain forests serve as an important source of state revenue. As Mbile et al. point out, during the last decade and a half, the exploitation of Cameroon’s timber resources has markedly contributed to state revenues. In 1993/94, concession timber made up 34 percent of total exports—compared to 27 percent in 1992/93 and 23 percent in 1991/92. Prior to the very recent, yet unevaluated emergence of solid mineral, the forestry sector ranked second only to petroleum in contributions to State revenue and represents a potential force for economic transformation and growth especially in forest zones.

In addition to creating revenue, forests are rich ecosystems marked for conservation. These forests are also home to Indigenous peoples and local communities, whose systems of resource management and land use predate the colonial era. Forests play a dual role as both a public good and a local site of great economic and social significance to communities. As such, the public forests of Cameroon are also subject to a dual set of tenure laws, each based in their own logic and each with different implications according to various actors. The Cameroonian experience with dualism can be simply summarized as follows:

- **Dualism between legitimacy and legality: the overlap and coexistence of modern tenure regimes with customary tenure regimes.** This dualism is legal because each regime is founded in legitimate, legal frameworks. The interface between customary tenure (in essence, communities’ historic claims to ownership based on their status as first inhabitants) and modern tenure (in essence, rights based on written laws recognized by the State) is
clouded by misunderstandings and conflict over rights and types of rights.

- **Dualism between types of rights: exclusive in the eyes of the state, inclusive in the eyes of local communities.** Rights have different meanings to different stakeholders. Whereas local communities consider both their and the State’s rights to be property rights, the State views its rights alone as property rights and relegates community rights, which are customary, to usufruct rights. The main policy implication for this distribution is that while the existing dualism is recognized by both the State and communities, it is understood in very different terms by both parties. Given the current state of dualism, the policy movement toward supporting community rights has been fraught with challenges and has much more to achieve before fulfilling its stated goal of empowering socioeconomically disadvantaged groups.

- **Conflict around tenure systems: local systems’ rationale for occupying spaces in juxtaposition with a conflicting administrative and technical rationale.** Although several laws and regulations clearly identify various rights, the stronger recognition of which could spur socioeconomic improvements for local communities, a review of these laws reveals several major inadequacies. Cameroon lacks a clear policy for recognizing or promoting local communities’ rights, which is arguably needed for implementing the stated goals of sectoral reform. This lack of an overarching vision or strategy regarding customary rights is compounded by a fragmentation among the legal instruments for recognizing community rights. In lands designated by the State as “forest lands”, there is fragmentation between sectors regarding individual rights within a community to agricultural lands, regarding settlement rights of local communities, and regarding resource use and commercialization rights, including hunting and gathering.

Additional conflict has surrounded the reorganization of the state forest designation system. The dissolution of the National Office for Forest Development in 1990 left certain forest massifs (Kienké-Sud and Loungahé/Mangombé, for example) open for reclassification into Forest Management Units and intended for industrial exploitation. Since this time, communities’ claims have shifted from hopes for declassification of agroforestry enclaves and buffer zones to petitions for total declassification of the reserves to be registered to the communities. As communities have long considered the reserves as their “clan territories” and demarcated these lands prior to the zoning of reserves, it is critical that the new forest administration, the Ministry of Forests and Wildlife, identify the areas of contestation and overlap between statutory claims to public domain and customary claims to clan territories.

The interface between customary and modern tenure is clouded by conflict over types of rights.

Maintaining the status quo can lead to serious unrest and conflict. If ignored by the state, communities’ contestations will likely intensify and social movements radicalize and the state, citing security risks, could resort to asymmetric violence to suppress communities’ claims. Further alienated and still denied legal access to resources they need, communities are likely to invade and further increase pressure on neighbouring and ecologically fragile forest reserves. The state could respond in turn by punishing the communities in a vicious cycle to the detriment of conservation, commercial enterprise, and community livelihoods and well-being.

7 Some key collective rights recognized in Cameroonian law including the following: right to clean environment; right to information; right to participation in protecting the environment; right to justice; right to appropriation of land and natural resources; right to access/use land and natural resources; right to share revenue from land and natural resources; right to indemnity; right to exercise customary practices in environmental management; and Indigenous peoples’ right to protection. See Assembe-Mvondo, S., and R. Djeukam, 2009. État des lieux des droits collectifs reconnus aux communautés locales au Cameroun, unpublished policy brief, page 2.

8 Following the 1992 Rio Summit, Cameroon began pursuing public policy reforms to improve local communities’ rights in relation to biodiversity, with the aim of facilitating socioeconomic development. See Assembe-Mvondo and Djeukam, 2009, page 1.


11 The trend toward open rebellion (in essence, invasions into reserves and confrontations with forest agents), as well as destruction of plant life, has been documented in the Bambuko, Mbalmayo, Ottotomo, and Deng-Deng forest massifs by Oyono, 2009, and others (see Oyono, 2009, page 14). The Kienké-Sud and Loungahé/Mangombé reserves have also been subject to environmental crime such as illegal logging and agricultural encroachment. See Oyono, P. R., M. Biyong, I. F. Bayang, and C. Sahmo, 2009. The State, Local Communities and the Change in the Status of Forests. Exclusive Legal Dualism on the Cameroonian Coast: Strategy Note. Cameroon Ecology and RRI: Washington, D.C., page 2.

Figure 2. Community map of Loungahé/Mangombé Forest Management Unit (mapped in 2009). © Cameroon Ecology/RRI

Figure 3. Community map of Kienké Sud Forest Management Unit (mapped in 2009). © Cameroon Ecology/RRI

Figure 4. Ministry of Forests and Wildlife map of Campo Ma’an National Park, Cameroon. © Solange Bandiaky

Figure 5. Participatory maps show that Indigenous Bagyeli communities reside in and around Campo Ma’an National Park (mapped in 2007). © Centre for Environment and Development/Forest Peoples Programme
Participatory Mapping as Rights Contestation

Participatory mapping\(^\text{13}\) can serve as an important tool for illustrating overlapping rights claims. Although techniques used for developing maps range from ephemeral mapping (drawing maps on the ground with raw materials) to sophisticated Geographic Information System-generated maps, all participatory mapping is completed through extensive consultations with communities and captures important local knowledge, perspectives, and claims regarding communities’ land and resource use.\(^\text{14}\) As Mbile notes, since the 1990s, “participatory mapping has spread widely with many variants and applications, encompassing natural resources management in its broad sense to include land use, resource planning and conservation; rights-based approaches to development; identifying tenure rights; negotiating boundaries; resolving conflicts; and participatory monitoring and evaluation.”\(^\text{15}\)

Recent community rights mapping of the Loungahé/Mangombé Forest Management Unit and Kienké Sud Forest Management Unit illustrates the extent of overlapping areas of claims in southern Cameroon forest reserves (see Figures 2 and 3).\(^\text{16}\) These maps show clearly that human settlements and agroforest areas are found within the forest reserves, despite the fact that the State classifies these types of land allocation and use as illegal in these reserves. Communities, however, trace their territorial claims and systems of land use and allocations in these areas to the pre-colonial period.\(^\text{17}\) This situation captures dualism’s potential for conflict: the State’s legal rights and communities’ legitimate rights are in direct competition where these particular lands and resources are concerned.

A similar illustration of this conflict is observed in the Campo Ma’an National Park. The map on the sign posted in the park (see Figure 4) lists the many prohibitions against settlements and mining, agricultural, and forest exploitation activities within the park. Conversely, the map in Figure 5 shows that settlements and multiple use sites\(^\text{18}\) do exist within the park. Participatory community mapping therefore has the potential to reveal information that official sources may not have or be willing to recognize.

Recently, participatory mapping has documented more than 60,000 inhabitants inside the Campo Ma’an National Park, 24,000 within leased agro-industrial plantation areas, and 120 villages and 25 Indigenous peoples’ forest encampments. Studies document limited consultation with the many remote villages regarding the delimitation of the reserve and the imposition of numerous restrictions on peoples’ forest uses, with limited consultation with the majority; this is still the case even after a phased program to raise awareness among non-governmental organizations about the need for consultations with remote villages was carried out from 2000 to 2005.\(^\text{19}\) It is worth noting that this phenomenon is not limited to Campo Ma’an, Kienké-Sud, and Loungahé/Mangombé: there is also contestation over land in a number of extensive protected areas in Cameroon.\(^\text{20}\)

Conclusion

The situation in these examples is one of dual legality: customary rights are upheld in contradiction to statutory ownership.

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\(^{13}\) According to the Global Diversity Fund’s definition, “participatory maps are those created by local or indigenous groups, usually for the purposes of defining and defending land or resource rights. They may also be used for conservation planning or ethnobiological research on land and resource use (though this latter application seems uncommon).” The Global Diversity Fund, 2007. “Biocultural Diversity Learning Network”. Last accessed August 24, 2010, at: http://www.globaldiversityfund.net/glossary/1/letterp.

\(^{14}\) “Depending on the objectives of the community mapping exercises; such as for local planning, staking claims, contesting rights, demanding space or simply indicating use, different approaches are used to represent customary access, use and or domination. Depending on the perception of the power relationship between the communities and their neighbours, adversary, competitor or authority, a claim to space or a contestation is represented”. Mbile, P., 2008. Community Mapping in Forest Zones of Cameroon. World Agroforestry Center: Cameroon, unpublished report, page 2.


\(^{16}\) Original maps produced by Cameroon Ecology for the Rights and Resources Initiative, 2009.

\(^{17}\) Oyono et al., 2009.

\(^{18}\) Multiple-use sites demonstrate that the area in question is being exploited by people in some way (for example, forest product collection, hunting and foraging, burial sites, or cultural/ritual sites).


\(^{20}\) Other protected areas that have seen community rights contestation through mapping include the Djä Faunal Reserve, Nki National Park, and Boumba Bek National Park in southeastern Cameroon.
and zoning of uses by the State without reconciling either legality and without balancing livelihoods, conservation, and commercial activity. In the face of these contradictions and negative pressures on customary systems to allow outsiders to determine land use, there are strong pressures for customary institutions to crumble and be replaced by individualistic local governance systems, which the statutory system more clearly recognizes, thereby losing the important social capital that was once the foundation for defending the rights and interests of constituent ethnic groups. Even where these institutions persist, the checks and balances that kept their leadership accountable have been eroded by the State. Their representativeness, social legitimacy, and connection to the community’s identity have eroded to the point where community members no longer recognize themselves in these institutions.

Mapping of this dual legality, including customary governance underlying resource tenure and use, has become an important means for communities to both regain their rights and re-establish the accountability of local customary institutions for the future. In the Kienké Sud and Loungahé/Mangombe Forest Management Units and the Campo Ma’an National Park, strong proposals have emerged to renegotiate boundaries and customary rights of access and use in order to balance commercial, livelihood, and conservation goals and engender effective conservation of forest lands based on rights.

Overall, mapping has been a critical tool for communities to fulfill their responsibility to assert and substantiate their rights. However, the State has been able to claim forest assets without providing evidence to substantiate its own claims. If Cameroon is to successfully resolve the dualism and conflict of rights and tenure systems, it will need to seriously rethink its forest zoning policy. Any zoning should be informed by participatory community mapping, which must be undertaken prior to the zoning or gazetting of forest lands.

The social capital of customary institutions are the foundation for defending communities’ rights and interests.

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21 Mbile et al., 2009.
22 The above maps of Kienké-Sud and Loungahé/Mangombé have been presented to officials in order to support the renegotiation of state forest-use allocation with the government and private sector.
EXPLORING THE BOTTOM-UP GENERATION OF REDD+ POLICY BY FOREST-DEPENDENT PEOPLES

Rubens Gomes, Sonia Bone, Manoel Cunha, André Costa Nabur, Paula Franco Moreira, Luis C. L. Meneses-Filho, Maurício Vovidic, Talia Bonfante, and Paulo Moutinho

Abstract

Several Reducing Emissions from Deforestation and Forest Degradation (REDD+) projects are currently being planned and implemented in the Brazilian Amazon forest. Representatives of Brazilian Indigenous peoples and local communities recognize potential benefits of REDD+ mechanisms to the people that live in and depend on the forest. However, they are also discussing and expressing their concerns about how they should participate in the development of policies and standards for REDD+ and about possible risks associated with REDD+ projects and programmes that could disrespect traditional collective rights and generate social conflicts. As a consequence, the Amazon Working Group, the National Council of Rubber Tappers, and the Coordination of the Indigenous Organizations of the Brazilian Amazon organized an open and public consultation process with the participation of representatives of Indigenous peoples and local communities, small land-holders, environmentalists, and researchers. The consultation process enabled them to express their concerns and define essential safeguards and minimum requirements that REDD+ initiatives in Brazil should comply with. This article aims to demonstrate the methodology that local grassroots organizations used for the public consultations in order to generate bottom-up recommendations for social and environmental safeguards for REDD+ activities that affect and involve forest-dependent peoples.

Deforestation accounts for an estimated 10-35% of global greenhouse gas emissions. Initiatives for Reducing Emissions from Deforestation and Forest Degradation (REDD+) have become a necessary component of any strategy to avoid catastrophic climate change, as well as to provide many other important ecosystem services to society such as food, water, and conservation of cultural and aesthetic values. REDD+ creates the opportunity to provide positive incentives for forest conservation in tropical countries for forest conservation, making standing forests more attractive than agricultural and timber products by valuing the carbon in forests for its climate regulating benefits.

The areas in which Indigenous peoples and local communities live represent approximately 35% of the Brazilian Amazon, which means that they play a major role in reducing deforestation and conserving the biome (see Figure 1). Furthermore, Indigenous peoples and local communities are being approached by private companies with proposals offering cash and contracts to have the right to trade carbon credits derived from the carbon stocked in their traditional forested territories. Although they may feel attracted to these new business prospects, which can be seen as an opportunity for alternative livelihoods, the carbon credits contracts have significant potential to be unjust. The contracts may be developed and signed without the communities’ full understanding of the clauses, length of term, or potential consequences such as transfer of ownership over or access to traditional territories and disruption of their customary livelihoods.

1 The authors would like to thank the Packard Foundation for supporting this initiative.
3 Reduction of emissions from deforestation and forest degradation (REDD), combined with conservation, forest management actions, and enhancement of carbon stocks is known as REDD+. Throughout the development of the safeguards, the term “REDD+ actions” was adopted to refer to these various initiatives.
7 Contracts, for example, may span long periods such as 50 years, which would compromise several generations’ livelihoods, without any clear determination of the mechanism scope and area in the contracts or in the projects.
Indigenous peoples’ and local communities’ territories cover 35% of the Brazilian Amazon and play a major role in conserving biodiversity and reducing deforestation.

In this context, social forest movements in Brazil are expressing many concerns about the potential threats of REDD+ initiatives. As a result, several Brazilian civil society organizations, including non-governmental organizations (NGOs), small land-holders, and other social movements, decided to initiate a process to develop social and environmental safeguards for REDD+ actions in Brazil. The process underpinning the development of the safeguards was very transparent and involved multiple stakeholders and sectors affected by REDD+ initiatives. The social movements from the Amazon committed to carrying out consultation processes in their own constituencies and communities as well. The involved stakeholders felt that this consultation process was the best and most feasible way to elaborate a document of national scope that could be recognized as essential safeguards by the wider Brazilian society.

The main objectives of the development of safeguards for REDD+ were to strengthen forest governance and management of natural resources by Indigenous peoples and local communities, encourage public participation in the policy-making process, coordinate action among all stakeholders involved, increase information transparency, and above all, generate respect for and awareness and recognition of the rights of Indigenous peoples and local communities for their territories, lands, natural resources, and traditional livelihoods and cultures. As a result, the improvement of the level of governance in REDD+ initiatives shall be dependent upon the application of the safeguards that were developed through this consultant process and are described in this article.

The Brazilian social and environmental safeguards for REDD+ are made and expected to be applied as minimum requirements for any REDD+ or REDD initiative in the Brazilian Amazon that is developed, financed, and implemented by any combination of governments, private entities (including carbon market-based mechanisms), and civil society organizations. The Brazilian safeguards can be applied to national and sub-national government-led programmes as well as projects at the site level. This contrasts with two existing initiatives related to the development of social and environmental safeguards for REDD+, namely, the Climate, Community and Biodiversity Alliance Project Design Standards focused on projects at the site level and the REDD+ Social & Environmental Standards developed by the Climate, Community and Biodiversity Alliance and CARE International for application only to government-

Figure 1. Spatial distribution of deforestation and Indigenous peoples’ and local communities’ territories according to categories of land types and uses in the Brazilian Amazon. © Amazon Environmental Research Institute

8 Concerns include privatization of rights to negotiate environmental services of a collective territory and changes to the traditional ways of life of forest-dependent peoples.


10 The voluntary Climate, Community and Biodiversity Alliance Project Design Standards are oriented to help design and identify land management activities that simultaneously minimize climate change, support sustainable development, and conserve biodiversity for REDD projects developed within a limited geographical area. These standards are currently being applied to certify REDD+ projects with outstanding attributes regarding social and environmental issues and are comprised of fourteen required criteria and three optional “Gold Level” criteria. Only projects that use best practices and deliver significant climate, community and biodiversity benefits will receive the Climate, Community and Biodiversity Alliance approval. See Conservation International, 2010. “The Climate, Community and Biodiversity Alliance”. Last accessed August 30, 2010, at: http://www.climate-standards.org.

11 The REDD+ Social & Environmental Standards developed by the Climate, Community and Biodiversity Alliance and CARE International are designed to be applied to the new global REDD+ regime expected to emerge from the ongoing negotiations of the United Nations Framework Convention on Climate Change (UNFCCC), to all subsequent government-led programmes implemented at the national, state, provincial, or regional level, and to all forms of fund-based or market-based financing for REDD+ initiatives. There are many similarities and differences between the Brazilian REDD+ Social and Environmental Safeguards and the international REDD+ Social and Environmental Standards developed by the Climate, Community and Biodiversity Alliance and CARE International that make them complementary, not competitive. Both documents establish
Figure 2. A group of Indigenous peoples participating in the principles and criteria consultation process. © André Nahur

Methodology

After identifying the urgent need to develop social and environmental safeguards12, a broad and open development process was launched based on the following steps:

1. A multi-stakeholder committee was created to develop and review the social and environmental safeguards for REDD+, with one organization responsible for receiving, elaborating upon, and systematizing submitted comments13;
2. The first version of the safeguards was developed by the organization and reviewed by the committee;
3. The first version was submitted to a public consultation process that was open to all sectors of society involved with REDD+ for a period of 150 days;
4. Four regional workshops were held with Indigenous peoples, local communities (including nut gatherers, rubber tappers, fishermen, and hunters known as extractive populations14), and representatives of small land-holders from the nine Brazilian Amazon States. The workshops were structured to present the draft safeguards and register the participants’ contributions. Prior to that, a capacity building process for the participants was also carried out in order to help them fully understand the document and its implications and discuss the potential role of the development of the safeguards in the national policy context15;
5. Meetings were held with private sector groups interested and involved in REDD issues in Brazil to present the document and register their contributions;
6. The final version of the safeguards was developed in May, 2010, by the multi-sector committee, addressing all comments received during the public consultation process;
7. The Social and Environmental Safeguards for REDD+ were presented in a public workshop in August, 2010.

In this context, safeguards for REDD+ that are developed through bottom-up processes, not restricted to a sector or social group, need to influence and feed into national and sub-national policy instruments currently under development in Brazil, as well as the current and future certification standards that will regulate carbon markets for REDD+ carbon credits. This methodology can serve as an example for related initiatives in other regions of the world and for the international post-2012 climate policy development that will include REDD+ mechanisms.

minimum guidelines or standards for governments, NGOs, financing agencies, and other stakeholders to design and implement REDD, REDD+, and other forest carbon programmes that respect the rights of Indigenous peoples and local communities.

12 A meeting was held in Katoomba, Cuiabá, in April, 2009. It was attended by NGOs, social movements, and rural producers who decided to initiate a process of developing socio-environmental safeguards for REDD+ projects. See Katoomba Group (no date). Last accessed August 30, 2010, at: www.katoombagroup.org.

13 The Institute for Agricultural and Forest Management and Certification was appointed by the Amazon Working Group, the National Council of Extractivist Populations, and the Coordination of the Indigenous Organizations of the Brazilian Amazon to develop the methodology and lead the consultation process.

14 Traditional people and communities are culturally differentiated groups who recognize themselves as such, have their own forms of social organization, and occupy and use territories and natural resources in order to ensure their cultural, social, religious, ancestral, and economic reproduction, using knowledge, innovation, and practices generated and transmitted by tradition. See Brazil, 2007. Sustainable Development of the Traditional Peoples and Communities National Policy, Decree 6040.

15 The Amazon Environmental Research Institute was appointed by the Amazon Working Group, the National Council of Extractivist Populations, and the Coordination of the Indigenous Organizations of the Brazilian Amazon to prepare and build the capacity of these participants for the public consultation process.
The workshops were held for a total of 136 participants in the following places: Manaus (35 participants from Indigenous peoples and local communities), Porto Velho (37 participants from Indigenous peoples and local communities), Belém (42 participants from Indigenous peoples and local communities), and Lucas do Rio Verde (22 small land-holders). The 3-day workshops were structured in 2 parts. The first part (1.5 days), led by the Amazon Working Group and the Amazon Environmental Research Institute, was dedicated to capacity building, information sharing, and knowledge levelling for the representatives regarding climate change, payments for environmental services, REDD+ concepts and definitions, REDD+ financing, and risks and opportunities for REDD+ actions. The second part (1.5 days) of the workshop concentrated on consultation regarding the REDD+ Social and Environmental Safeguards. The Institute for Agricultural and Forest Management and Certification explained and led the latter process with assistance from the Amazon Environmental Research Institute and the Amazon Working Group. The consultation process was structured in a way to increase the input of the participants. As such, it was arranged in consideration of their identity/grouping (Indigenous, extractive populations, small land-holders, and technical group with representatives from NGOs and others) and to enable participants to discuss and give their contributions to the safeguards through a rotating process.

**Outcomes of the Public Consultations: Social and Environmental Safeguards for REDD+**

The feedback from the public consultations was structured into the following eight principles and accompanying criteria: legal compliance; recognition and guarantee of Indigenous peoples’ and local communities’ rights; benefit sharing; economic sustainability and poverty reduction; environmental conservation and recovery; stakeholder participation; transparency; and governance (see Table 1).

Table 1. The Social and Environmental Safeguards for REDD+ that were developed through the consultation process.

<table>
<thead>
<tr>
<th>Principles</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Legal compliance</td>
<td>1. REDD+ actions shall respect the Brazilian labor legislation, including requirements on health and safety and repression of any form of slave and child labor, while respecting the distinctiveness of the organization of labor of Indigenous Populations, small landowners and local communities.</td>
</tr>
<tr>
<td></td>
<td>1.2. REDD+ actions shall respect the Brazilian environmental legislation.</td>
</tr>
<tr>
<td></td>
<td>1.3. REDD+ actions shall respect all international social, environmental, cultural, labor and commercial agreements ratified by Brazil.</td>
</tr>
<tr>
<td>2. Rights recognition and guarantee</td>
<td>2.1. There shall be the recognition and respect of the constitutional, statutory and customary rights associated with land ownership, the official designation of occupied lands, and the use of natural resources of Indigenous Peoples, small landowners, including complete respect to the UN Declaration on the Rights of Indigenous Peoples, to the FAO Treaty on Agriculture and Food, and to the ILO Convention 169.</td>
</tr>
<tr>
<td></td>
<td>2.2. REDD+ actions shall recognize and value the socio-cultural systems and traditional knowledge of Indigenous Peoples, small landowners and local communities.</td>
</tr>
<tr>
<td></td>
<td>2.3. REDD+ actions shall respect the rights to self-determination of the Indigenous Peoples and local communities.</td>
</tr>
<tr>
<td></td>
<td>2.4. In the areas where REDD+ actions are implemented, lawful ownership and possession rights shall be respected, as well as those rights associated with the use of land and natural resources.</td>
</tr>
<tr>
<td></td>
<td>2.5. There shall be formal mechanisms for conflict resolution associated with REDD+ actions, through dialogs that include the effective participation of all involved stakeholders.</td>
</tr>
</tbody>
</table>

16 Editor’s note: The authors wished to retain the text of the original English translation of this table. The original Portuguese version is available online. “Princípios e Critérios Socioambientais de REDD+”. Last accessed August 19, 2010, at: http://www.reddsocioambiental.org.br/PC%20Socioambientais%20de%20REDD+_versao%20FINAL_Julho%202010.pdf. Also, for the purposes of this article, the expression “forest restoration” does not include any type of homogenous forest plantation.
3. Benefit sharing

3.1. Benefits generated by REDD+ actions shall be accessed in a fair, transparent and equitable form by those who hold the rights to the use of land and/or natural resources and promote activities related to conservation, sustainable use and forest restoration.

4. Economic sustainability, improvement in quality of life and poverty alleviation

4.1. REDD+ actions shall promote economic alternatives based on standing forest valorization and on the sustainable use of natural resources and deforested areas.

4.2. REDD+ actions shall contribute to poverty alleviation, social inclusion and improvement of livelihoods for people who live in REDD+ implementation areas and in areas affected by it.

4.3. REDD+ actions shall contribute to the empowerment and autonomy of populations involved, based on participatory planning and local development tools.

4.4. REDD+ actions shall consider adaptation measures to minimize the negative impact of climate change on Indigenous Peoples, small landowners and local communities.

5. Environmental conservation and recovery

5.1. REDD+ actions shall contribute to the conservation and recovery of natural ecosystems and avoid causing significant negative impacts to biodiversity and ecosystem services.

5.2. Species or ecosystems that are rare, endemic or threatened with extinction, as well as any other high conservation value attribute, shall be previously identified, protected and monitored.

5.3. In case of restoration activities in degraded areas, REDD+ actions shall use native species.

6. Participation

6.1. Conditions for the participation of the beneficiaries shall be ensured in all phases of REDD+ actions and in the decision making processes, including the identification, negotiation and distribution of benefits.

6.2. Decision making processes relating to REDD+ actions shall effectively ensure the right to free, previous and informed consent, considering local representations and respecting the traditional forms of electing representatives by Indigenous Peoples, small landowners and local communities.

6.3. Populations living in areas affected by REDD+ actions shall be informed about them.

7. Monitoring and transparency

7.1. Beneficiaries shall have free access to information relating to REDD+ actions, in simple language, so they can participate in the decision making process in a previously informed and responsible manner.

7.2. Transparency of information about REDD+ actions shall be guaranteed, including at least those related to the methodology, location and size of the area, definition and participation of involved and affected stakeholders, activities to be executed, time length of the project and conflict resolution mechanisms.

7.3. In public lands, protected areas and in other areas that involve Indigenous Peoples, small landowners and local communities, or in REDD+ actions supported by public funds, there shall be ensured transparency of information regarding the raise, use and distribution of benefits generated by REDD+, as well as periodic financial reporting.

7.4. There shall be periodic monitoring of the socio-environmental, economic and climate related impacts and benefits of REDD+ actions, while respecting the traditional way of life and practices of Indigenous Peoples, small landowners and local communities, and results of this monitoring shall be made publicly available.

8. Governance

8.1. REDD+ actions shall be coordinated and be consistent with national, state, regional and municipal policies and programme on climate change, conservation, sustainable development and deforestation prevention.

8.2. REDD+ actions shall meet the requirements of state or national REDD+ policies.

8.3. Emissions reduction and carbon sequestration generated by REDD+ actions shall be quantified and registered in a way to avoid double counting.

8.4. REDD+ government actions shall contribute to strengthen public instruments and processes for forestry and territory management.
The first principle of legal compliance concerns the legal enforcement of national and international laws related to labour, environmental, property, and human and minority rights. The main comments on this subject that were raised during the public consultations focused on the need to address land tenure settlement and highlighted that the beneficiaries of REDD+ should be the rights-holders, guardians, and users of the forest, rather than the official holders of land title in the Brazilian Amazon. In fact, land tenure rights should not be a condition for REDD+ mechanisms, as most Indigenous peoples and local communities do not hold land property titles. The committee decided to remove the criteria related to compliance with property rights legislation, on the basis that the issue is addressed in Principle 2 (recognition and guarantee of rights).

The issue related to recognition and respect of rights to lands, territories, and natural resources, addressed in Principle 2, is a major debate in the Amazon Basin, especially regarding public lands, Indigenous territories, protected areas, and private lands. The participants from Indigenous peoples and local communities highlighted the importance of fully respecting not only the Brazilian law, but also the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the 1989 International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169), the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture, and the United Nations Development Programme Guidelines. Furthermore, in areas where REDD+ actions are implemented, property rights shall be respected, as well as user rights associated with the territories and natural resources, particularly Indigenous peoples’ and local communities’ rights to maintain their own traditions.

Regarding benefit sharing (Principle 3), the consultation process highlighted that REDD+ projects must – in a just, equitable, and high-priority way – benefit the stakeholders that are directly responsible for the sustainable use and conservation of the forest through their traditional ways of life. That means that the benefit sharing should first and foremost target the Indigenous peoples and local communities who are responsible for providing the environmental services derived from the stocked carbon, rather than compensating those who have historically deforested and degraded biodiversity.

**Figure 3.** Illustration of the number of contributions collected from participants of the consultation process regarding the 8 principles (P1, P2, etc.) and 26 criteria (1.1, 1.2, etc.). These contributions were collected under the first version of the REDD+ Social and Environmental Standards.

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17 Indigenous peoples and local communities in the Brazilian Amazon mainly live in public areas. Besides Indigenous lands (FC 1988 and Law 6.001/73), extractivists live in Extractivist Reserves (National System of Natural Protect Area - Law nº 9.985, July 18th, 2000). Another example is the “coconut breakers”, who, under the Free Babaçu Law (Law 231/2007), have the right to enter private lands to access the babaçu palms to maintain their way of life. Although such Indigenous peoples and local communities didn't have the land tenure right they are the real responsible for the conservation of the natural resources in those lands.

18 The Brazilian Federal Constitution (1988) and the Brazilian Statute of the Indian (Law 6.001/73) guarantee permanent possession and exclusive use of traditional lands to Indigenous peoples, including natural resources necessary for their well-being and cultural survival. The constitution recognizes the right of Indigenous peoples to benefit from natural resource activities on their lands while also protecting those lands from alienation. It further provides that Indigenous peoples be allowed to develop according to their own usages, customs, and beliefs. However, the Brazilian government still has the title to the land.


22 Indigenous peoples have the right to self-determination and autonomy in issues regarding their traditional culture and territory (FC 1988, Articles 231, 232; ILO 169, Articles 8, 13, 14, 15, and 17; UNDRIP, Articles 3 and 4).
Concerning economic sustainability and poverty reduction (Principle 4), the participants highlighted that the creation of economic alternatives to enhance the quality of life of Indigenous peoples and local communities is not sufficient. They recommended that REDD+ should focus on supporting sustainable forest-based livelihoods by channelling resources in a way that begins to address the infrastructural and systemic limitations of forest-based livelihoods. For example, REDD+ actions must support communities’ capacity building, technical support, and local value-added processes to empower and give autonomy to communities for the management of their lands and resources. Participants also noted that REDD+ actions should support communities’ existing processes and priorities for health, education, safety, communication, information, and capacity building, rather than just provide cash payments that can, in many cases, trigger community conflict.

Principle 5 states that REDD+ must contribute to environmental conservation and recovery of natural biodiversity ecosystems and environmental services. Participants noted that REDD+ mechanisms should identify, protect, and monitor species or ecosystems valuable for their daily use, particularly those that are rare, endemic, or threatened with extinction, as well as any others with high conservation value.

Stakeholder participation (Principle 6) during decision-making processes and in the development and implementation of REDD+ actions is vital. The participants suggested that the actors that are directly involved in forest use and conservation shall be informed and consulted and free to fully participate in all steps of REDD+ actions and participate in the related decision-making processes about definition, negotiation, and distribution of benefits generated.

During the discussion about transparency (Principle 7), the participants stated that the communities responsible for the REDD+ projects must have full and prior access to all relevant information in order to empower them to effectively participate in decision-making processes.

Governance (Principle 8) was noted as essential to the coordination and alignment between national, sub-national, and local policies and guidelines. In this context, REDD+ actions should be coordinated and coherent with national, state, and regional policies and should result in effective reduction of deforestation and forest degradation that can be quantified and integrated with REDD accounting systems at the state and national levels.

The four workshops have generated a total of 379 comments on the 8 principles and 27 criteria. In total, the consultation process has triggered a total of 559 considerations, comments, and suggestions gathered during workshops and meetings, all of which are posted online. The principles that generated the most contributions were stakeholder participation (Principle 6) and economic sustainability and poverty reduction (Principle 4) (see Figure 2).

**Final Assessments and Next Steps**

“For the first time, those who are responsible for protecting the forests, the forest-dependent communities, are having the chance to participate in the development of a set of social and environmental safeguards that will define how we will benefit from REDD+ and how to avoid the potential negative social impacts that may exist.” ~ Manoel Cunha (National Council of Extractivist Populations)

The process described above has a significant value in terms of developing social and environmental safeguards for the effective engagement of Indigenous peoples and local communities in REDD+ initiatives. As mentioned above, REDD+ actions can present opportunities for improved livelihoods, but can also generate threats and negative consequences for

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Internationally, since the 13th Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) in 2007, various representatives of Indigenous peoples and local communities and supporting NGOs have started to intensively demand for participation and recognition of and respect for Indigenous peoples’ and local communities’ rights in any REDD+ activity, project, programme, or policy (otherwise referred to as “actions”), particularly under the future international REDD+ post-2012 climate policy. These movements and the discussion on the potential negative impacts of REDD+ on Indigenous peoples and local communities increased tremendously throughout the world, triggering significant information sharing workshops and wider engagement. As a result of these strong worldwide movements, at the 15th Conference of the Parties of the UNFCCC in 2009, the approved draft of the REDD+ post-2012 climate text for the first time took UNDRIP into consideration as a reference for REDD+ activities and recognized the importance of the role and contribution of Indigenous peoples’ and local communities’ knowledge to REDD+ monitoring.

In Brazil, the discourse on REDD+ is increasing awareness of issues that Indigenous peoples and local communities face. In the Amazon region, they are greatly responsible for the remaining amount of the forested areas. The challenge still remains to empower Indigenous peoples and local communities to a position from which they can make critical decisions on any carbon project within their forested territories in order to prevent companies or state interests from taking advantage of them, buying carbon credits through unjust purchase contracts, and disrespecting their rights. Certainly, a programme of social control of REDD+ projects through the use of social and environmental safeguards has the power to halt such potential rights violations and abuses.

If participation is assured, REDD+ can in fact turn into a tool to fulfill Indigenous peoples’ and local communities’ rights. To make this a reality, the bottom-up social and environmental safeguards developed here must leverage the above-mentioned REDD+ public policies currently being developed at several levels in Brazil. If the bottom-up public consultation approach is adopted for the development of safeguards for REDD+ in different realities and at different levels in the world, REDD+ policies will be developed with greater governance and social and environmental justice.

Rubens Gomes is a musician, a representative of the social movements on the Forest National Commission and Public Forest Management Commission in Brazil, and president of the Amazon Working Group. Sonia Bone is an Indigenous Guajajara leader from the state of Maranhão. She is the Vice Coordinator of the Coordination of the Indigenous Organizations of the Brazilian Amazon.
Manoel Cunha, currently the president of the National Council of Extractivist Populations, has worked as a rubber tapper and community leader in the National Council since 1988, participating in the establishment of associations and cooperatives that resulted in the creation of Extractive Reserves in the Amazon. André Costa Nahur (andrenahur@ipam.org.br), MSc, is a biologist and researcher at the Climate and Forest programme of the Amazon Environmental Research Institute. Paula Franco Moreira (paulamoreira@ipam.org.br), MSc, is a lawyer, researcher at the Climate and Forest programme of the Amazon Environmental Research Institute, and member of the UN-REDD Policy Board, representing Civil Society from Latin America and Caribbean. Luis C. L. Meneses-Filho is an Agronomy Engineer, specializing in agroforestry systems, and has worked in the Amazon since 1994 and on REDD issues for the past 3 years. Mauricio Voivodic is a forester, MSc candidate, and coordinator of the Climate Initiative at IMAFLORA, with experience in social and environmental certification. Tália Bonfante is a biologist and Master's candidate in Business and works at IMAFLORA.
Paulo Moutinho, PhD, is a biologist and the Executive Director of the Amazon Environmental Research Institute.

Additional resources:
• www.gta.org.br
• www.coiab.com.br
• www.extrativismo.org.br
• www.ipam.org.br
• www.imaflora.org.br

This is known as the Long-term Cooperative Action text.
Chapter VI, Section 2: “Further affirms that when undertaking activities referred to in paragraph 3 below, the following safeguards should be promoted and supported: …(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly has adopted the UNDRIP”. Provisional agenda of the 10th session of the Ad Hoc Working Group on Long-term Cooperative Action, June 1-11, 2010. FCCC/AWGLCA/2010/6. Last accessed August 20, 2010, at: http://unfccc.int/resource/docs/2010/awglca10/eng/06.pdf.
The members of the multi-stakeholder committee that developed and reviewed the Social and Environmental Safeguards for REDD+ have recently created the “REDD+ Observatory” in Brazil, which aims to give social control over REDD projects being planned in the Brazilian Amazon through the use of the Social and Environmental Safeguards.
ACCESS AND BENEFIT SHARING AND THE IN SITU PROTECTION OF TRADITIONAL KNOWLEDGE

M. N. B. Nair and G. Hariramamurthy

The need to “protect” traditional knowledge is receiving regulatory attention at the international level, including under the auspices of the Convention on Biological Diversity (CBD), the United Nations Educational, Scientific and Cultural Organization, and the World Intellectual Property Organization. Under the CBD, for example, states are called on to support communities whose knowledge, innovations, and practices contribute to the conservation and sustainable use of biodiversity. These rights at the international level are being implemented in a variety of ways at the national and sub-national level. This article focuses on three ways in which traditional knowledge is being protected in India: through access and benefit sharing (ABS) law and policy; by documenting traditional knowledge; and by working with communities to support its in situ conservation. The first two approaches are arguably valuable but limited measures. There is thus a need to support communities to protect, use, and share knowledge relating to the uses of medicinal plants to ensure its in situ conservation.

Box 1. A brief case study of the Kani ABS deal.

A state government institution, the Tropical Botanical Gardens and Research Institute, tried to use the ABS framework to reward Kani tribes for the traditional knowledge, innovations, and practices they provided about Arogya Pacha. The Institute used this knowledge to develop it into a tonic and sold the manufacturing license rights to an industry. The Institute tried to share half the license fee with Kani tribes from the hamlet that provided traditional knowledge in good faith.

Soon, many neighbouring Kani hamlets opposed this transfer and claimed to possess similar knowledge and that benefits should not be earned just by a single group. Absence of prior documentation made it difficult to ascertain claims of uniqueness of holders of traditional knowledge, innovations, and practices and thus, beneficiaries. The plant is confined only to the Agasthyamala hills, covering less than 2,000 square kilometers of forests, and is being threatened with extinction due to over-harvesting and habitat destruction. It cannot be cultivated easily, so wild harvest is the only option. The Forest Department thus did not permit its extraction by the Kanis for industrial supply as monitoring sustainable harvest levels was not feasible; the Forest Department did, however, allow cultivation of this plant. There is a thriving illegal trade in the plant, threatening it further.

ACCESS AND BENEFIT SHARING

The Biological Diversity Act of 2002, in its efforts to fulfill India’s commitments under the CBD, provides for the conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of such biological diversity and associated traditional knowledge. While the Biological Diversity Act sets up the National Biodiversity Authority, the Biological Diversity Rules of 2004 list the functions of the Authority as including regulating access to biological resources and associated traditional knowledge for commercial and research purposes. The National Biodiversity Authority is also empowered to advise the central government on any matters relating to ABS.

ABS operates on the assumption that monetary incentives will motivate communities to conserve their biological diversity and associated traditional knowledge and practices. Yet India’s most famous ABS case relating to the commercialization of the Kani tribe’s ethnobotanical knowledge of Arogya Pacha (Trichopus zeylanicus) (see Box 1) highlights three particular challenges with ABS. First, even when a benefit sharing agreement is entered into, the actual

6 The Kani Tribe lives in the Agasthyamala hills of the Western Ghats, Kerala, India.
payment of the financial benefits is not guaranteed. Second, ABS deals can cause intra- or inter-community conflict. Third, ABS deals can actually exacerbate negative impacts on plant species. Fourth, ABS focuses on traditional knowledge without also valuing the culture and spirituality of the communities that are inextricably linked to the knowledge. These shortcomings illustrate that ABS is a potentially useful regulatory regime for ensuring against biopiracy, yet remains a challenging framework for companies and communities to interact within.

**ABS is unable to address the complex and systemic root causes of the loss of traditional knowledge.** At a more fundamental level, the root causes of the loss of traditional knowledge relate to, among other things, the loss of traditions, urban migration, and mainstream privileging of allopathic forms of medicine over traditional forms. ABS is arguably unable to address these complex and systemic factors. Moreover, ABS brings communally owned traditional knowledge into an intellectual property rights system that only recognizes private ownership. Extending intellectual property rights over traditional knowledge may further damage collective notions of traditional knowledge at the village level. Therefore, this incompatibility may actually contribute to the further decline of traditional knowledge and associated biodiversity. In order to protect and conserve traditional knowledge in India, the Indian Government should act at the national and international levels to protect the political rights and geographical terrain of the Indigenous and tribal communities that collectively hold and share that knowledge.

### Documenting Traditional Knowledge

In the last few years, India has engaged with the documentation of traditional knowledge as a means to protect it against biopiracy and for future generations. The Traditional Knowledge Digital Library constitutes a compilation of much of the classical published knowledge and complements the National Register of Innovations and Unique Traditional Knowledge, which covers oral knowledge not included in the Traditional Knowledge Digital Library and the Documentation and Assessment of Local Health Traditions database, among others.

These databases are an important part of the ABS framework. They can be used to defeat biopiracy by evidencing prior knowledge of a particular use of a medicinal plant. However, the value of commercial benefits generated from a single product based on traditional knowledge and protected by intellectual property rights would be too small to be distributed across the numerous communities recorded in the literature as heralding similar traditional knowledge. In addition, it is highly likely that not all communities were involved in the transfer of biological resources and traditional knowledge according to their right to grant prior and informed consent and that not all communities who are holders of the knowledge were included in the research that comprises the databases. In India, it has been proposed that all benefits of products developed from traditional knowledge that was shared with prior informed consent shall be pooled into the National Biodiversity Fund. Databases also assist in the disbursement of benefits by identifying communities utilizing their traditional knowledge for conservation, cultural assessment, and sustainable use of biodiversity who should receive support from the National Biodiversity Fund.

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Despite its intention to document traditional knowledge, this process has been undertaken in an unsystematic manner and has been characterized by overlap and duplication.

In Situ Conservation of Traditional Knowledge

Traditional knowledge is held by communities living in marginal or relatively isolated environments. The oral folk traditions are extremely diverse because they are closely associated to the localities’ endemic biodiversity. Any activities that affect a community’s resources, natural resource management techniques, culture, and spirituality, among other things, can have a negative impact on the community’s traditional knowledge. Fundamental to protecting communities’ traditional knowledge, therefore, is support for local approaches to revitalizing their interest in traditional knowledge and resilience to external pressures.

For the purpose of restoring local faith in traditional knowledge, the Foundation for the Revitalisation of Local Health Traditions has initiated a programme of documentation by developing community health knowledge registers. More than 500 community health knowledge registers were prepared with the help of local non-governmental organizations; some of them are deposited in the local administration (Panchayat) and the rest are with the respective community leaders. Local health traditions are documented to combat erosion of oral traditions. Rapid assessment of the documented local health traditions is undertaken for identifying effective remedies for primary health care. This involves integrating local and clinical experience with reference to the classical literatures of Indian systems of medicine and pharmacological findings. The research supports the promotion of home herbal gardens, which are a people-centered model of protecting traditional knowledge through which families grow between 7 to 21 medicinal plants species at home to meet the primary health care needs of themselves and their livestock. An intervention feedback study showed that after three years, families saved an average of 309 Indian Rupees per quarter.

Home herbal gardens are a local approach to enhancing the self-reliance of rural and urban communities to meet their primary health care needs and to simultaneously encourage the use of traditional knowledge, innovations, and practices.

Other work by the Foundation for the Revitalisation of Local Health Traditions on community-based enterprises

11 Revenue generated from ABS agreements that are approved by the National Biodiversity Authority are directed into the National Biodiversity Fund.
for sustainable collection, cultivation, value addition, and marketing of medicinal plants and products\textsuperscript{15} illustrates that local commercialization of traditional knowledge is a viable alternative to ABS. It highlights the importance of cross-cultural assessment of local traditions and their promotion through formal and informal training and increased self-use. Furthermore, unlike intellectual property rights regimes, local enterprises promote unique knowledge, social assessment, recognition, value addition, and publicity. As a policy recommendation, ABS frameworks should support and promote community-based micro-enterprises. Also, rules being drafted under Indian legislation pertaining to ABS must include cultural and economic considerations in prior and informed consent procedures between the National Biodiversity Authority and the accessing agency. Such considerations must also be taken into account in relation to the transfer of funds generated by commercial users and paid to the state biodiversity boards and local biodiversity management committees under the Indian Biological Diversity Act (2002) and the Plant Variety Protection and Farmer’s Rights Act (2001).\textsuperscript{16}

**CONCLUSION**

ABS and documenting traditional knowledge are important approaches to protecting against biopiracy and to ensure that traditional knowledge is not lost. However, their focus on traditional knowledge as a commodity or as static data limits their potential to address the underlying causes of the loss of traditional knowledge. Through its disuse, the loss of traditional knowledge has to be countered by making traditional knowledge relevant to rural and urban populations. Programmes such as home herbal gardens are useful models for ensuring the *in situ* use, conservation, and protection of traditional knowledge and associated biodiversity.

\textit{ABS frameworks should support community-based micro-enterprises to enable the local protection of traditional knowledge.}

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\textsuperscript{15} Raneesh et al., 2008.