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REDD+ and human rights: addressing the urgent need for a full community-based human rights impact assessment

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This article makes the case for carrying out a series of community-based human rights impact assessments (HRIA) on the international mechanism, reducing emissions from deforestation and forest degradation plus conservation and sustainable development (REDD+). In outlining the *prima facie* case, this article discusses the key areas of concern surrounding REDD+ and the repercussions for the rights and interests of local forest and indigenous communities. Furthermore, in its discussion on why REDD+ necessitates a HRIA, the article explores the implications that a specific link between human rights and REDD+ would have on the promotion and protection of forest peoples and indigenous human rights. In the context of the climate change crisis, formulating a specific link between human rights and climate change mitigation strategies such as REDD+ is highly pertinent if they are to have a positive impact at a local level. Formulating this connection could potentially secure the protection of traditional knowledge, law, customs and lands of those communities in which it operates, ensuring that the most vulnerable and poorest members of society do not bare the negative costs of such policies.

Keywords: REDD+; climate change; human rights; impact assessments; environment; indigenous people

Introduction

Climate change is one of the defining challenges of the twenty-first century and is a considerable threat to both natural and human systems. The Fourth Assessment Report by the Intergovernmental Panel on Climate Change (IPCC) highlighted the forestry sector's contribution to global warming with deforestation, forest degradation, forest fires and slash and burn practices making up the majority of carbon dioxide emissions. The forestry sector is the second largest source of emissions after the energy sector, accounting for around 17% of global greenhouse gas emissions.¹ The Stern report, published in 2006, stressed the importance of reducing emissions from tropical forests and recommended that measures for avoiding deforestation be included in the post-2012 commitment period under the United Nations Framework Convention on Climate Change (UNFCCC). The report also convinced policymakers that eliminating most deforestation would not be expensive, costing on average US\$1–2 per tCO₂.² This widespread concern about climate-induced ecological collapse has led to a 'seismic shift' in the role

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of forests in socio-economic development³ and an increased interest in tackling the drivers of deforestation and degradation.⁴

In recent years, incentivising the reduction of emissions from deforestation, forest degradation and enhancing forest carbon stocks as well as sustainably managing forests has become a key pillar of the international climate change regime. Recognising the financial value of stored carbon, REDD+ (reducing emissions from deforestation and forest degradation plus conservation and sustainable development) is a broad framework that allows tropical countries to be rewarded for their efforts to mitigate climate change by reducing net emissions of greenhouse gases through enhanced forest management and improved forest carbon stocks. Put simply, REDD+ seeks to make trees more valuable standing than felled, by financially rewarding governments or forest owners in the south for protecting their forests through a variety of forest management options. Possible policies include governments strengthening law enforcement or changing the law to stop large-scale logging and forest conversion activities like establishing protected areas or increasing tree plantations. One such example is the Bolsa Floresta programme in Brazil, which rewards traditional communities for their commitment to stopping deforestation. In order to be eligible to receive the grants, families must attend a two-day training programme on environmental awareness, make a zero deforestation commitment and enroll their children in school.⁵

Although the final design of the international REDD+ mechanism is still under consideration by the UNFCCC, many tropical countries are already preparing national strategies to implement REDD+ activities. Opposition to REDD+ has been centred on concerns that it could have a negative impact on the protection of human rights. Particular concerns have been raised over the potential loss of forest people's territories to large-scale commercial forest operations, the restriction of access and use of natural resources by these communities, the lack of equitable benefit-sharing of REDD+ activities, exclusion of forest communities from the design and implementation of REDD+ policies and the increase in carbon piracy.⁶ Furthermore, there are fears that it could slow or reverse improvements to forest governance at a national level by creating incentives for governments and commercial interests to deny or ignore forest dwellers access and control over forest resources.⁷ Given the tradition of top-down governance regarding environmental issues, opponents fear that 'REDD+ will prioritise the global set of claims and values to the detriment of local actors'.⁸ Therefore, a key challenge for the international community will be to ensure that REDD+, in addition to delivering emissions reductions as well as the promised co-benefits, protects human rights and provides long-term pathways out of poverty for forest-based communities.

Carrying out a HRIA on REDD+, the subject of this article, would have a number of potential benefits. First, it would increase the attention focused on indigenous and forest-based communities who are connected to REDD+ activities. It could build political will to compel governments and the international community to implement appropriate procedural standards, including assessment, monitoring and verification mechanisms, into the rhetoric of REDD+. Second, it would provide a thorough understanding of the human-rights impact of activities connected to REDD+, the legal duties and safeguards placed on national and regional governments with regard to the scheme, also its potential human rights impacts on future generations. Third, it could act as an early warning system, providing policymakers and governments with valuable information, enabling them to take prompt action. Fourth, as Hunter posits, a 'rights-based perspective can inform a re-prioritisation of policy responses to climate change away from one focused solely on carbon accounting and toward one that considers more fully principles of

equity, fairness, and the impact on the most vulnerable'.⁹ In outlining the case for a HRIA, this article discusses the key areas of concern surrounding REDD+ and the repercussions for the rights and interests of local forest communities. Furthermore, in its discussion on why REDD+ necessitates a HRIA, the article explores the implications that a specific link between human rights and REDD+ would have on the promotion and protection of forest peoples and indigenous human rights. In the context of the climate change crisis, formulating a specific link between human rights and climate change mitigation strategies such as REDD+ is highly pertinent if they are to have a positive impact on a local level. Formulating this connection could potentially secure the protection of traditional knowledge, law, customs and lands of those communities in which it operates, ensuring that the most vulnerable and poorest members of society do not bare the negative costs of such policies.

History of REDD+

REDD+ was first discussed during COP11 in 2005 when the 'Coalition for Rainforest Nations', via the governments of Papua New Guinea and Costa Rica, called upon the UNFCCC and the Kyoto Protocol to: take note of present rates of deforestation within developing nations, acknowledge the resulting carbon emissions, and open up a dialogue to discuss options for reducing emissions from deforestation. Included as an official negotiation item in the Bali Action Plan, the principle of providing financial support for addressing reduced emissions from deforestation and forest degradation was formally introduced onto the international climate agenda in 2007.¹⁰

In 2010, at COP16 in Cancun, a final decision was made on REDD+, including the insertion of seven non-mandatory safeguards for REDD+ activities into Annex 1.¹¹ Despite the Cancun Agreement citing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and acknowledging the need to respect the knowledge, rights and participation of indigenous peoples and local communities,¹² concerns remain regarding the protection of indigenous rights. The agreement does not provide a specific legal mechanism through which to achieve these rights¹³ and there is still no agreement on the inclusion of free, prior and informed consent (FPIC) in REDD+. Increasingly recognised as a standard to be achieved by governments, establishing FPIC standards for REDD+ would ensure greater procedural rights for affected communities.¹⁴ Although the inclusion of safeguards is an important operational step, considerable work is needed to translate these non-binding principles into practice within individual countries.¹⁵ Additionally, as Brown, Seymour, and Peskett note, 'although REDD may also provide an opportunity for further progress in reformist legislation, special attention to safeguards is needed to ensure that the interests of national elites and international commercial interests do not override the rights of forest communities'.¹⁶

Underlying the REDD+ framework is the creation of a strong global partnership based on a commitment by developing countries to embark on low-carbon climate resilient development and on developed countries providing significant funding as an incentive for reduced forest-based carbon emissions.¹⁷ Funding for REDD+ payments can originate from either national funds set up by multilateral institutions, major bilateral donor countries or non-governmental organisations (NGOs), or from emerging global carbon credit markets.¹⁸ Working outside of the UNFCCC until discussions about appropriate methods for tracking and financing national mitigation actions are completed, new international programmes have been created among multilateral bodies. These include the World Bank's Forest Carbon Partnership Facility (FCPF), the UN-REDD Programme and the Forest Investment Programme (FIP) of the World Bank to provide technical assistance and

funding to partner countries for developing phases one and two.¹⁹ However, questions still remain regarding funding for phase three due to the lack of clarity on what a result-based approach could actually include. Countries that receive funds are obliged to implement policies and programmes which reduce the CO₂ emissions from deforestation and forest degradation.

REDD+ is implemented through three phases. The first phase, known commonly as the 'readiness phase', focuses on the development of national strategies or action plans, policies and measures, and capacity building. As part of phase one, countries, in addition to building up their capacity for the implementation of REDD+ activities, are required to produce a national strategy. This should include actions to be taken for addressing land tenure issues, the identification of drivers of deforestation and forest degradation, forest governance issues (including benefit sharing), gender considerations and safeguards that ensure the full and effective participation of indigenous peoples. Furthermore, countries should define national and where appropriate sub-national emission reference levels, establish a robust and transparent national forest monitoring system and a safeguards information system to inform how safeguards are addressed and respected in all REDD+ activities.²⁰

During phase two, also referred to as the implementation stage, countries are required to implement the national policies and strategies that they prepared during the readiness phase. The implementation of these measures could also involve more capacity building and the development or the transfer of technologies from other countries. Also, phase two will involve putting REDD+ into practice and running concrete pilot projects, known as 'result-based demonstration activities'. The projects should clearly show how much carbon has been sequestered or carbon emissions prevented and an MRV (measured, reported and verified) system established to measure the results. Phase three, the accounting phase, is when REDD is implemented fully. The MRV system tested during phase two must now be applied fully as these results will determine how much money will be paid as compensation for the REDD+ activities.²¹

REDD+ as an idea has proved to be highly successful, partly because the concept is sufficiently broad to accommodate different interests and groups, whose interests are not only linked to the economy and the environment, but also to human rights and social participation issues.²² REDD+ is seen as cost strategy²³ that has the potential to increase the value of forests and support the constitution of these territories, as political, social and economic entities whilst generating co-benefits such as poverty alleviation, biodiversity conservation, financial incentives, technical assistance and facilitated technology transfer.²⁴

A critique of REDD+

A key feature of REDD+ is the provision of incentives and compensation to reduce deforestation and forest degradation through payments for ecosystem services (PES) schemes.²⁵ Wunder defines PES as a voluntary transaction where a service buyer buys a well-defined environmental service from a service provider when and only when the service provider secures service provision.²⁶ According to Corbera, REDD+ has become the 'world's largest experiment in Payments for Ecosystem Services (PES)', designed to create a multi-level system that transfers economic resources from carbon offset buyers to sellers.²⁷ At the international level, payments by service buyers (e.g. generated by voluntary or compliance markets) to service providers (governments or subnational entities in developing countries) will be conditional on the adoption of sustainable land-use practices and the delivery of reduced emissions from deforestation and degradation in accordance with national or project-based baselines. However, direct payments from international to

subnational levels are only permitted when these transactions are approved by a national agency.²⁸ One key area of contention has been finance generation and the use of carbon markets as a way of creating incentives for private sector involvement to raise the substantial investments needed to maintain REDD+.

Following the pledge by the Copenhagen Accord and subsequent Cancun Agreement to establish a Green Climate Fund to support initiatives related to mitigation in developing countries, discussions surrounding the financing of REDD+ have moved toward a hybrid model that includes both market-based mechanisms as well as voluntary donations as potential sources of funding.²⁹ Regardless of the final design of REDD+, financing will need to be sustained in the future to consolidate carbon accounting and capacity building in developing countries.³⁰ Three main avenues are currently under discussion, these include: direct carbon market funding through the integration of REDD+ into a global compliance carbon market; market-linked funding through the allocation of auction proceeds and revenues from other fees (e.g. a levy on clean development mechanism projects); fines (e.g. non-compliance with the international climate regime), taxes (e.g. air traffic) and voluntary funding through development assistance.³¹ While the incorporation of REDD+ into a carbon markets-based mechanism would allow companies and national governments to use REDD certified emission reduction credits to meet emission reduction targets in their national cap-and-trade systems, it could also further exacerbate the impact of REDD+ on indigenous and forest people's human rights, further transferring forest resources out of the hands of these communities.³² Although many developing countries have opposed the adoption of market-based approaches, some parties such as Australia, the European Union and the United States have welcomed the use of markets in REDD+.³³

Critics argue that the climate change crisis has provided an opportunity for contemporary capitalism to incorporate nature through mainstream neoclassical economics into the global economy. As Lohmann has commented, 'today, the project of building a single, liquid global carbon market worth many trillions of dollars – backed by the UN, national governments, economists, environmentalists and many in the business sector – is the main official approach to the climate crisis worldwide'.³⁴ Following the tradition of mainstream economics, current mitigation responses to the climate change crisis are centred on the further commodification of nature by finding new innovative ways to 'turn natural resources into natural capital and to turn the climate into a market'.³⁵ The very nature of contemporary capitalism enables the production of fictitious forms of capital, like carbon, despite the fact that they have no material basis in commodities.³⁶ As Ervine remarked, 'carbon trading has become one component of a broad strategy on the part of various capital interests to transform nature and environmental crises into accumulation strategies'.³⁷ Moonla argues that politicians have favoured carbon because it 'replaces the irreducible complexity of global climate dynamics with a digestible concept, and by business because it allows the commodification essential to making climate tradable'.³⁸

By focusing on carbon reductionism, a complex set of issues surrounding the climate change crisis has been reduced to the single issue of net carbon dioxide emissions.³⁹ Consequently, 'what began as a straight forward debate about shifting away from fossil fuels and put it through a jargon generator so convoluted that the entire climate issue came to seem too complex and arcane for non experts to understand'.⁴⁰ The emergence of PES schemes such as REDD+, developed to promote economic growth alongside the protection of ecosystems, has faced increasing ideological opposition. Opponents argue that REDD+ has become embedded in the 'sweeping movement of commodification' and 'free market environmentalism', which has ultimately led to the standardisation and quantification of carbon.⁴¹ Moreover, it has become embroiled in the discussion on the conservation of

nature as a capitalist project, where nature is produced and transformed through its conservation.⁴² Somewhat ironically, this transformation ‘aims to leave nature (materially) unexploited and unused and is as such seen as diametrically opposed to, and – importantly – fit to offset “traditional” production processes that do (materially) exploit and use nature’.⁴³

The conservation of the world’s forests in the name of climate change mitigation have become a form of what Büscher terms ‘liquid nature’; ‘nature made fit to circulate in capitalist commodity markets’.⁴⁴ PES schemes such as REDD+ convert forest ecosystems into monetary terms and reduce carbon to measurable quantities ‘for the purpose of exchange between buyers and sellers’,⁴⁵ reaffirming again ‘the reduction of the environment to the status of a commodity and as a mere substrate for economic growth’.⁴⁶ Lohman argues that the climate change crisis has accumulated in the formation of a climate-mitigation industry that has created ‘an “abstract” climate commodity out of the quantities and movements of CO₂’ to maximise its profits.⁴⁷ There is a general consensus that deforestation must be addressed and greenhouse gas emissions are moving beyond the realm of dangerous.⁴⁸ Critics argue that world leaders have responded by pushing mitigation strategies that allow for the continuation of business-as-usual rather than treating greenhouses gases as ‘dangerous pollutants demanding clear, enforceable regulations that would restrict emissions and create the conditions for a full transition to renewables’.⁴⁹ Instead they are continuing the capitalist tradition of placing profit above the protection of nature and turning natural cycles into ‘broken linear processes geared to private accumulation’.⁵⁰

A report produced by Friends of the Earth, Greenpeace and the Forest Foundation UK (FERN) challenges the assumption that REDD+ is a useful method of climate change mitigation, concluding that REDD+ does not reduce emissions but rather merely moves them from one place to another. Allowing large polluters to purchase cheap REDD+ offsets would merely delay genuine long-term action on climate change. The report further argues that ‘if we accept that REDD+ as an offset does not reduce emissions, but that it can reduce the cost of emissions abatement (i.e. that reducing emissions from deforestation costs less than reducing industrial emissions), this raises the question of who is receiving the benefits and who is bearing the costs of this “cost-effectiveness”’.⁵¹ The development of REDD+ as a climate change mitigation strategy has raised grave concerns regarding the impact its activities will have at a local level. In particular, its impact on the protection and promotion of forest people’s human rights and its potential to act as form of neo-colonialism, further transferring forest resources out of the hands of forest communities. Wilkinson argues that REDD+ has a ‘conceptual apparatus of domination and exploitation, which subverts the extent to which they will be ever able to protect both vulnerable elements of forest ecosystems and marginalised communities’.⁵² Moreover, PES schemes assume the most practical and efficient means of preventing deforestation and forest degradation is through the incorporation of marginalised communities into the market economy and that the social benefits of these schemes can be measured in monetary terms.⁵³

In recent years REDD+ has faced increasing criticism from forest communities and indigenous groups who claim that it has ‘brought an onslaught of global and extractive economy measures directly to their doorstep, often resulting in ghastly negative environmental consequences for their territories and livelihoods’.⁵⁴ Some critics have even gone as far as to label REDD+ as ‘CO₂lonialism’, claiming that REDD+ benefits the north at the expense of the south.⁵⁵ Most recently, a report published at COP20 by the Brazilian Platform for Human, Economic, Social, Cultural and Environmental Rights found that REDD+ projects and similar PES schemes have affected communities’ ability to sustain their livelihoods, failed to resolve territorial conflicts and have violated numerous

international human rights conventions, such as Convention 169 of the International Labor Organization (ILO) as well as national policies such as Brazil's National Policy for the Sustainable Development of Traditional Peoples and Communities.⁵⁶

Many of the negative effects of REDD+ revolve around five key issues, each of which have a legal basis in human rights and would provide key indicator data if a HRIA was carried out. These are: land grabs, land conflicts and violation of customary land rights, exploitative carbon contracts and corruption, marginalisation of indigenous peoples' and forest dwellers, increased poverty and disruption of traditional forest-based lifestyles and social conflict, violence and persecution. In making a prima facie case for carrying out an impartial HRIA of REDD+ based on substantial empirical data, it is necessary to examine each of these topics in turn.

Land grabs, land conflicts and violation of customary land rights

Human rights concerns associated with REDD+ activities focus on the infringement of forest communities' substantive rights through the appropriation of lands and territories through dispossession, forced displacement, or the permanent leasing of land by indigenous communities. Central to achieving an effective and equitable REDD+ mechanism is the clarification and strengthening of land tenure rights. Unless land rights are secured, REDD+ activities could lead to the exclusion of forest dwellers from the planning and implementation of the scheme, prohibit their access to the forests, as well as act as an incentive for corruption and land grabbing either by national elites or so-called carbon pirates (unscrupulous foreign investors).⁵⁷ Part of the problem is that lands that will be the likely focus of REDD+ programmes are already the subject of bitter disputes between indigenous people, companies and governments. There is concern within indigenous groups that there has not been enough emphasis on resolving these disputes in the process of planning for REDD+. In 2012, Vía Campesina declared its opposition to REDD+ activities taking place in the Lacandón jungle in Chiapas, Mexico, on the grounds that it is leading to the appropriation, commodification and control of the natural resources on indigenous lands. Ana Valadez, a legal specialist on environmental issues at Vía Campesina maintains that the Chiapas government violated inhabitants' rights by signing an agreement with the California state government, led by Arnold Schwarzenegger, without providing prior information to the populace.⁵⁸

Strict rules on forest conservation are leading to large-scale evictions of indigenous and other communities from so-called 'carbon protected areas' and the permanent loss of their rights over their land and resources together with the right to practice their traditional livelihood. A report from Oxfam alleges that over 22,000 peasants with land titles were violently evicted from the Mubende and Kiboga districts in Uganda to make way for the United Kingdom-based New Forests Company (NFC) to plant trees, to earn carbon credits and, ultimately, to sell the timber. Labelled as 'illegal encroachers', local communities were cleared following the issuing of licences over the plantation areas to NFC in 2005 by the Ugandan National Forestry Authority. Affected communities claim that they were subjected to violence, their property, crops and livestock destroyed and were not properly consulted. Following the evictions, former residents have been offered no adequate compensation, and have received no alternative land.⁵⁹ A similar case was reported in Kenya in 2013 following a complaint made to the World Bank by the Sengwer who accused the Bank of failing to protect their rights. As a result of the Bank-funded Natural Resource Management Project, the border of the Cherangany forest reserves was moved, without their consultation, and many Sengwer families found themselves living inside the forest reserve, subject to

eviction. Thousands of homes belonging to hunter-gatherer Sengwer people were burned down by the Kenyan forest service guards in order to clear the area to make way for a carbon offset project to reduce emissions from deforestation.⁶⁰

Arguments have also been raised that REDD+ could slow or reverse improvements to forest governance at the national level by creating incentives for governments or commercial interests to deny or ignore forest dwellers access and control over forest resources and block their legal right to benefit financially from REDD+. With many tropical countries failing to recognise the collective customary rights of indigenous peoples over their ancestral forests, REDD+ compensation payments could discourage authorities to resolve any long-standing land disputes with forest-based communities.⁶¹ In the absence of a legal title, indigenous communities face an uphill struggle to assert FPIC and run the risk that land could be taken away from them by governments to capture REDD+ revenues.

Violation of indigenous customary land rights could result in a loss of access to forests for subsistence and income generation needs and land use conflicts. This in turn could lead to the disruption of traditional forest-based lifestyles and livelihoods as well as the right to self-determination, the securing of tenure rights and equitable access to land and resources.⁶² Ignoring the customary rights of indigenous peoples, new land use zoning exercises undertaken by the state to capitalise on forest carbon revenues are further marginalising forest-based communities and stalling or reversing the recent trends of decentralising forest ownership and management responsibilities to communities. In the department of San Martin in northern Peru, there are already reports that community land is being restricted. Indigenous people are now forced to hunt in allocated areas, prohibited from implementing their traditional system of rotational agriculture and from entering the forests without the permission of the regional government. Furthermore, land titles are only being given to the area around the community's homes.⁶³

Exploitative carbon contracts and corruption

Carbon ownership has become a key area of concern. The failure of REDD+ to clarify the nature of 'carbon rights' in legal terms has raised questions about who holds the rights to emissions reductions and the associated benefits. The links between stored carbon and the ownership or management of land and forests has raised the issue of whether carbon rights should be considered as a land interest separate from the land upon which the carbon is situated. This questions the established common-law presumption that the carbon contained within those trees is a natural part of the land and therefore belongs to the landowner.⁶⁴ It has also made REDD+ more susceptible to unfair practices, compounded by the fact that it operates in tropical forest areas where land tenure systems tend to be unclear, contested or poorly enforced. Currently, there are very few countries which have developed laws relating to carbon sequestration as an environmental service or as a resource produced by forests, one of the few exceptions being Australia.⁶⁵ Parties have entered and continue to enter into carbon rights agreements without a legal framework or independent support in place to safeguard against the exploitation of those parties involved.

The lack of national guidelines has resulted in an explosion of carbon piracy and the emergence of unregulated subnational projects in indigenous territories. As project developers rush to snap up the legal rights to trade carbon, indigenous communities are being convinced to sign away their rights to land and carbon under terms that are highly favourable to commercial interests. These terms offer little or no guarantee for the protection of indigenous peoples' and forest dwellers' rights, including their right to use and access natural resources and the principle of FPIC. Communities are unknowingly handing over

considerable control to project developers for financial and project administration and to intellectual property as well as accepting payments that undervalue the true opportunity costs of land use forgone and assuming liability of forest loss.⁶⁶ With incidents occurring such as the two recently documented cases of carbon piracy in the Loreto region of the Peruvian Amazon as well as cases reported in Papua New Guinea,⁶⁷ concern over how to reconcile forest carbon sequestration with the protection of forest people's rights is now dominating the discussion of REDD+ activities.⁶⁸ Organisations such as the Forest Peoples Programme have openly denounced the practice of carbon piracy, stating that no carbon contracts should be signed with communities until their fundamental rights are guaranteed and measures are in place at a national level to ensure that these rights are safeguarded.⁶⁹

Civil society organisations such as the No REDD in Africa Network and the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests have also reported incidents of 'carbon slavery' and 'servitude', whereby farmers are tied into long-term contracts and paid very little to plant and tend trees to offset pollution in Europe and the United States.⁷⁰ One such case was reported in Mozambique, where farmers, as part of the Envirotrade's N'hambita Community Carbon Project, receive an annual payment of as little as \$63 per family and are tied into a contract for 99 years. In the event that the farmer dies without completing the terms of their contract, the responsibility is passed from generation to generation until the time stipulated.⁷¹ According to REDD Monitor, the exploitative nature of these contracts should not come as a surprise given the unscrupulous nature of the businessmen behind these projects. In this case, one of the two founders of Envirotrade, was denounced by the South African Truth and Reconciliation Commission for arming and training paramilitary groups during South Africa's first democratic election, whilst the other bankrolled the Chilean dictator Augusto Pinochet's stay in the United Kingdom while he awaited extradition for charges of crimes against humanity. Nonetheless, the N'hambita Project has been hailed as a success by the international community and certified under the Climate, Community and Biodiversity Alliance Standard's Gold Level standard.⁷²

Marginalisation of indigenous peoples and forest dwellers

Opponents of REDD+ such as Friends of the Earth have criticised REDD+ for its failure to include and involve forest communities as well as its lack of transparency, reporting instances of closed meetings and the issuing of invitations so late that the relevant stakeholders have been unable to make travel arrangements in time.⁷³ Increasing evidence demonstrates the lack of effective actions to ensure the participation of indigenous peoples and local communities in the planning and implementation of REDD+ schemes, undermining their right to self-determination.⁷⁴ A study carried out by the Forest Peoples Programme in 2013 on the conditions of the implementation of the Takamanda National Park project in Cameroon, especially regarding FPIC, echoed these concerns. Findings from two enclave villages – Obonyi I and Obonyi III – showed that FPIC-based procedures required in REDD+ projects were being ignored. Regarding the implementation of REDD+ projects or related payments as a direct or indirect source of income, local representatives stated very clearly that they had neither been informed nor consulted on the issue. Moreover, villagers felt that they had been intimidated into signing the paperwork to create the national park by government and park officials who claimed that the land belonged to the government and that the communities had encroached onto the reserve. Participation by local people was found to be severely limited, with the

highest governance structure of the park, the Park Management Committee, having only two representatives from park villages and no clear selection process in place. Locals voiced concern that, without clear selection criteria, community representatives would be handpicked, motivated by per diems or sitting allowances, and not accountable to the communities.⁷⁵

Underlying the exclusion of these marginalised groups is the ‘interaction between socio-cultural inequalities, class and economic disempowerment’ that accompanies the neo-liberal order and capitalist model of production.⁷⁶ Forest dwellers are increasingly being sidelined in the process of negotiation as governments seek to push through their national REDD+ strategies. The inadequate involvement of those affected by REDD+ policies and practices in the decision-making process can lead to an infringement of procedural rights, including the right to public participation, access to justice and information as expressed in ILO Convention 169 and the UNDRIP declaration. Indeed the issue of participation and the exclusion of local communities in REDD+ has become a real bone of contention for indigenous and human rights organisations. In 2013, indigenous peoples’ organisations in Panama withdrew from the UN-REDD National Joint Programme (NJP) due to the inadequate attention to rights issues by the government and United Nations agencies and the lack of full and effective consultations with indigenous peoples during the various stages and implementation of the programme.⁷⁷

Increased poverty and disruption of traditional forest-based lifestyles

It is widely acknowledged by many observers that indigenous communities, in addition to contributing crucial expertise and traditional knowledge about the forests they inhabit, are also best placed to monitor and protect forests. As stewards of their lands, indigenous peoples must not only play an active role in developing and implementing REDD programmes, but must also receive the majority of benefits from these initiatives. However, there are fears that REDD+ could disrupt traditional forest-based lifestyles, threatening the enjoyment of their economic, social and cultural rights as well civil and political rights. Given that forest dwellers rely heavily on the forests for shelter, food and all other aspects of their livelihoods, they are particularly vulnerable to policies like REDD+. There are concerns that the scheme could lead to an increase in rural poverty and undermine some of the ecosystem services that local people depend on to survive, resulting in decreasing local food production and creating food security risks. Decreased food production through the large-scale implementation of REDD+ could also lead to higher food prices as farmers dedicate their time, labour and land to trees instead of farming and may also affect local commodity prices such as the price of land and the availability of non-timber products.

Without efficient and open forest governance and effective systems in place, benefits of REDD+ such as the payment of compensation will not reach the communities and will instead be captured by national elites or unscrupulous foreign investors, leaving local communities without a sustainable income.⁷⁸ Furthermore, under REDD+ programmes, traditional forms of land use practiced by indigenous people such as the collection of fuel wood, controlled burning of forests to improve habitat diversity and shifting cultivation (despite sustainable rotational agriculture and agroforestry systems being protected under international environmental and human rights laws) are now considered to be forms of ‘forest degradation’. The REDD+ mechanism fails to distinguish between permanent and temporary forest loss and fails to acknowledge that many of the traditional practices used by forest-based communities are often carbon neutral. The inclusion of these activities

as forms of forest degradation will have a severe impact on forest-based communities' way of life and their livelihoods. In Brazil, a local farmer was recently arrested at gunpoint and thrown in jail for 11 days by *Força Verde*, the armed guards of Chevron's REDD+ project in Brazil, for cutting down a tree to repair his mother's leaky roof.⁷⁹ Given the threat that REDD+ poses to those communities that live and depend on the forests, there is a real risk that prevented from carrying out their traditional productive activities, forest-based communities will be forced to migrate to cities.⁸⁰

Social conflict, violence and persecution

The increase in the value of forests, due to the expansion of REDD+ programmes, has led to an increase in the number of social conflicts, in particular disputes among communities, local landholders and forest owners over boundary demarcations. Moreover, there is a fear that once compensation payments under REDD+ start to be paid out, these social conflicts will increase unless measures are implemented to ensure that the different communities and households within these communities benefit equally from the financial payouts. Already in Tanzania there have been reports of increased social conflicts. The Tanzanian government was recently called on to resolve a land dispute between two villages in the Lindi Districts following the introduction of a project on forest conservation in the area by the Tanzania Community Forest Conservation Network (TCFCN). Following the announcement by the TCFCN that the amount of financial compensation awarded to the communities from REDD+ would be dependent on the area of forest protected, a dispute erupted over a land boundary of 50 hectares, with both villages keen to make claim to the land in order to receive more money.⁸¹

As opposition to REDD+ activities continues to grow, activists and communities opposed to the programme face increasing persecution, criminalisation and violence from pro-REDD advocates. The executive director of the Rainforest Resource and Development Centre (RRDC) in Cross River State, Nigeria, Odey Oyama, reported that he had been harassed and intimidated by state security agents and was forced to flee his home in 2013 for opposing REDD+ activities.⁸² Other communities in Africa, such as the two enclave villages of Obonyi I and Obonyi III located in the Takamanda National Park in Cameroon, suffered harassment from game guards while travelling between villages. Villagers reported that their bags were continuously searched for bush meat and their dane guns, used during traditional ceremonies and annual festivals, seized by authorities.⁸³

A need for human rights impact assessment

If designed and governed well, REDD+ has the potential to affect the livelihoods of forest dwellers, most notably by encouraging governments to secure and formalise land tenure, generate revenue that could be used by governments to provide social services in rural areas, create new income opportunities for forest dwellers and maintain forests.⁸⁴ Yet despite these potential benefits, scepticism remains around its ability to generate co-benefits as well as reduce emissions. Despite recognition that insufficient attention has been paid to the impacts of REDD+ on forest-based communities' rights and acknowledgement that the UNFCCC has so far failed to establish intergovernmental commitments on rights and equity issues as part of the ongoing climate change policy negotiations, a HRIA of REDD+ has not yet been carried out.⁸⁵ Although academic papers on REDD+ have covered a wide range of topics from local perspectives towards REDD+,⁸⁶ to the cost effectiveness of REDD+,⁸⁷ implementing, governing and monitoring REDD+ initiatives,⁸⁸ operationalising social

safeguards in REDD+,⁸⁹ land tenure rights,⁹⁰ carbon rights⁹¹ and indigenous rights and engagement,⁹² concerns over the social impact of REDD+ highlight the need to embrace a rights-based approach. Adopting a rights-based approach can potentially ‘provide useful guidance to inform and strengthen international and national law and policy making on REDD+’.⁹³ As Hunter notes, ‘the rights-based approach brings perspective and expertise that holds the promise of setting adaptation priorities in a way that meets the twin goals of reducing climate change impacts while progressively fulfilling economic, social, and cultural rights’.⁹⁴ Given that it is the world’s poorest people and nations that disproportionately bear the social costs of these socio-economic disparities, ‘including the toxic social and environmental fallouts now manifesting as climate crisis, human rights must play a critical role in any response to the climate change crisis’.⁹⁵ Taking a human rights approach to climate change mitigation can also help change perceptions that it is solely a scientific problem and improve our understanding of its impact on individuals’ human rights and interests.⁹⁶

A rights-based analysis is particularly useful as leverage to build more effective political coalitions and pressure for action, especially for marginalised groups such as indigenous people and forest communities who are increasingly looking to both international human rights and international environmental law for protection. With many environmentally destructive development practices taking place on traditional lands and severely impacting on native and indigenous communities’ cultures, the struggle to conserve the environment is very often intertwined with their struggle for protection. Factors like their geographical location, natural-resource dependency, historical marginalisation from decision-making and public policies, insecurity of rights to lands, territories and resources, low income, and institutions and customary laws that are not respected by dominant governance systems, make indigenous people and forest communities highly vulnerable to climate change mitigation strategies such as REDD+. As the most universally accepted ethics system in the world, a human rights approach helps focus attention on these situations as well as increasingly detailed legal obligations.⁹⁷ Moreover, the inclusion of explicit human rights language in current and future climate change policy would serve as a ‘bridge’ between the climate change regime and international human rights law, prompting states to consider their human rights commitments when implementing relevant mitigation and adaptation policies.⁹⁸

The last ten years has seen a growth in HRIAs as a policy tool and they have been developed by a variety of actors as an extension of, or improvement on, social impact assessments (SIAs) and health impact assessments (HIAs). Increasingly, HRIAs are being applied to areas of environmental concern such as the production of shale gas, coal-bed methane (CBM), and ‘tight oil’, known colloquially as ‘fracking’. A recent article called for a HRIA to be carried out into fracking activities as a matter of urgency, arguing that there is significant evidence to show that ‘fracking’ development poses a significant risk to a range of key human rights.⁹⁹ In discussing the value of carrying out HRIAs, Short et al. note that while studies tend to highlight the relevant priorities and possible weaknesses of the topic in question ‘they do not utilise an interdisciplinary approach that would engage with scientific findings that speak to an empirical reality beyond individuals’ “perceptions”, nor do they systematically interrogate how individual perceptions and behaviours are affected by wider social structures and institutionalised power’.¹⁰⁰ The human rights framework offers not just an important means of analysing REDD+ and its impact on forest-based communities but also provides the tools for acting on that analysis. As Harrison notes, ‘HRIAs are inherently valuable processes because of the human rights values and ethos that underpin them’.¹⁰¹

The international legal framework of human rights, given that it has become increasingly embedded within states' practices and adopted into national and international constitutions and agreements, provides a useful avenue to analyse REDD+. However, having said this, there is still a big gap between human rights in theory and in practice. Human rights have been criticised for being individualistic and liberal, concerned primarily with entitlements rather than duties. Practitioners and policymakers need more than ever to understand the impact of what they advocate and do and a HRIA would permit the gap between the commitments made by a state and the actual ability of individuals, groups and communities to enjoy these rights to be measured. Also, given that REDD+ involves some of the world's most marginalised and disadvantaged communities, it is essential that they understand and exercise their rights if REDD+ is to generate and deliver co-benefits.

With a lack of legislation and clarity surrounding REDD+ and carbon sequestration, forest groups have increasingly begun to look to third-generation human rights, as a means of highlighting the negative impacts of REDD+ on their communities and bringing about environmental and social justice. Commonly described as group and collective rights, third-generation rights go beyond civil and social rights by including the right to self-determination, economic and social development, cultural heritage, natural resources and a satisfactory environment.¹⁰² The increasing focus on the human rights implications of REDD+ has provided forest communities with an important opportunity to campaign for wider rights and entitlements, a more participatory policy-making process as well as secure land tenure. Furthermore, since the Convention on Biological Diversity came into force in 1993 and later UNDRIP in 2007, indigenous and minority groups have begun to make the critical link between the right to self-determination and environmental conservation, demanding legal recognition of their role as guardians of the earth's ecosystems and the rights to ecological stewardship. Biodiversity conservation is increasingly being linked to securing indigenous and forest people's bio-cultural rights and the protection of their way of life, culture and customary manner of decision-making.¹⁰³

HRIAs involve the assessment of 'activities which directly and intentionally aim at changing a human rights situation (such as the activities of a human rights NGO) or activities which may have unintended human rights consequences (such as the activities of a multinational company)'.¹⁰⁴ By calling on the participation of all stakeholders involved in REDD+, the assessment seeks to identify the rights that are not respected, or indications that they might not be respected in the future, so that satisfactory solutions can be found whilst assisting forest-based communities to document the human rights impacts of REDD+ activities as they are experienced. Moreover, HRIAs provide people with an opportunity to contribute to their own development and strengthen direct democracy by giving those affected a platform to express their concerns regarding policies that affect them.

A human rights framework is based on a number of principles; First, individuals have the right to participate in the planning and implementation of decisions that affect their human rights and have access to the information they need to participate in the process. Second, governments are accountable for implementation of their human rights commitments and citizens must have access to effective remedies in the event their human rights are violated. Third, a commitment to the belief that all human beings are equal and no person should be subjected to discrimination, and lastly, an understanding that all human rights – social, economic, cultural, civil and political – are indivisible, interrelated and interdependent.¹⁰⁵

The HRIA approach provides a conceptual framework that is normatively based on international human rights standards and operationally engaged in promoting and protecting human rights.¹⁰⁶ This normative framework is built on the Universal Declaration of

Human Rights, the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights. In terms of its methodological focus, HRIA is an evidence-based evaluation of international human rights norms which according to Harrison can be carried out in eight steps: screening, scoping, evidence gathering, consultation, analysis, conclusions and recommendations, publications and lastly monitor and review.¹⁰⁷ Importantly, HRIAs can occur before an activity has taken place (*ex ante*) or after (*ex post*).¹⁰⁸

Stages one and two – screening and scoping – frame the assessment by identifying the legal, political and cultural context of REDD+, as well as affected populations, enabling the identification of possible human rights impacts. Preliminary indications of those rights include: procedural rights, substantive rights, right to self-determination and tenure and resource rights. Stages three and four focus on evidence gathering and consultation. For the study to yield sufficient quality data, significant community-based research should take place in countries where REDD+ activities are taking place in indigenous or forest peoples' territories.¹⁰⁹ Furthermore, HRIAs should be carried out at a number of different sites per country given that the impacts of REDD+ activities will vary among the different communities and indigenous territories. It is also important that HRIAs are not solely aimed at indigenous communities but instead at forest-based communities, given that there are many members of forest-dependent communities that are not technically considered to be indigenous. Stage five involves analysis and assessment of human rights impacts. A key strength of utilising a human rights lens as an analytical tool for impact assessment is that impacts are evaluated against codified legal standards, international norms and governmental obligations.¹¹⁰ Stage six involves the development of clear conclusions and recommendations and, where necessary, a series of policy alternatives. The aim of carrying out a HRIA on REDD+ is to have an effect on actual policy and practice by formulating conclusions and recommendations that decision-makers can act upon.¹¹¹ Stages seven and eight of a HRIA involve publishing the results and monitoring. This is a critical part of the impact assessment process as it ensures that those undertaking the assessment can be held to account by rights-holders and other interested parties. HRIAs should not be a one-off event but rather an ongoing process that documents human rights progress over time.

Conducting a HRIA would make a number of potentially important contributions to promoting and protecting the human rights of forest-based communities. First, the HRIA methodology is particularly useful as it uses a set of norms and standards that are based on shared values and, therefore, represent a solid normative foundation on which to base an impact assessment.¹¹² Since the adoption of the Universal Declaration of Human Rights in 1948, the United Nations has constantly reaffirmed the importance of human rights and it has become the most universally accepted ethical system in the world due to its ability to continually adapt to new circumstances without compromising its principles.¹¹³ Recent United Nations-based developments regarding the human rights of indigenous and tribal peoples such as UNDRIP and ILO Convention No. 169 (ILO 169), as well as other international human rights instruments such as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights are particularly relevant to REDD+. For example both ILO 169 and UNDRIP provide a strong framework for indigenous people to assert their rights regarding activity on their customary lands. In particular, the right to exercise control over their own economic, social and cultural development by giving their FPIC for any activities on, or their resettlement from, their lands and their right legally titled land. While both ILO 169 and UNDRIP impose significant obligations on states, 'it cannot be read as requiring them to obtain the consent of indigenous peoples before implementing development projects affecting their

lands'.¹¹⁴ Unlike the Rio Declaration and the Biodiversity Convention that suggest that development projects which do not have the support of the indigenous peoples concerned should not be allowed, ILO 169 takes a more pragmatic approach, 'seeking to empower indigenous peoples without, however, going as far as granting them a veto power'.¹¹⁵ Nonetheless, the authoritativeness and legitimacy that accompanies these human rights instruments has guaranteed their prominence.¹¹⁶ Second, given that many human rights norms are incorporated into states' legal obligations, HRIAs may compel duty-bearers to act to protect the rights of rights-holders.¹¹⁷ The legal codification of human rights has led to an increasingly large and detailed body of jurisprudence that outlines human rights obligations and also allows courts and other institutions to these norms access to a wide range of issues.¹¹⁸ As Knox notes, 'through the two International Covenants and many other agreements at the global and regional level, as well as through national laws, the international community has created a body of human rights law that sets out obligations in much more detail'.¹¹⁹ Significantly, almost every state belongs to at least one human rights treaty whilst more than 160 states belong to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹²⁰ Third, HRIAs require a disaggregation of impacts to ensure that the effects on vulnerable groups, such as indigenous peoples, are identified. Lastly, the human rights approach encourages respect for stakeholder rights to information, participation, transparency and accountability as well as a firm commitment to the improvement of lives and a desire to influence policy and practice.¹²¹

Carrying out an evidence-led HRIA on REDD+ would therefore allow for¹²²:

- a clear scientific examination of human rights-impacting activities connected to REDD+;
- an in-depth analysis of the legal duties and safeguards placed on national and regional governments with regard to REDD+;
- a thorough and thoughtful human-rights based assessment of the balance of public interest with regard to the uncertain economic benefits of REDD+ and the potential risk of serious and irreversible human and environmental damage;
- a thorough analysis of the potential human rights impacts of REDD+ on future generations.

The outcomes of the HRIA can potentially make an important contribution to the debates surrounding REDD+. The final report and recommendations will provide those stakeholders involved with the opportunity to engage in a dialogue with various people, agencies and organisations involved in REDD+ both during and after the assessment has been completed. HRIA has the potential to shape how REDD+ safeguards should be measured, reported and verified and help mitigate against the negative impacts of REDD+ on forest-based communities. Furthermore, it can help increase the attention focused on indigenous and forest-based communities who are connected to REDD+ activities and build political will to compel governments and the international community to implement appropriate procedural standards, including assessment, monitoring and verification mechanisms, into the rhetoric of REDD+. Importantly, the published results can act as an early warning system and provide policymakers and governments with valuable information, enabling them to take prompt action. HRIAs could potentially be used as a tool for strengthening human rights in the countries REDD+ operates in by imposing obligations upon states and incorporating them into its design criteria. One such requirement should be that before participating in any REDD+ activities, HRIAs should be carried out at a number

of sites within the proposed country by academics or independent think tanks in order to assess the potential impacts of such activities on local communities. An explicit link between human rights and the REDD+ mechanism would allow forest-based communities to rely on the law and guidance developed by human rights bodies as well as provide a legal avenue for action against any violations. It would also enable state parties to identify the relevant measures in the domestic legal order and to build appropriate links between the two. Finally, an explicit reference to human rights would enable parties to rely on relevant capacity for monitoring and evaluating REDD+.¹²³

Conclusion

Rising concerns regarding the impact of REDD+ on indigenous and forest-based communities interests, rights and traditional knowledge presents an urgent need to carry out an impartial interdisciplinary community-based human rights assessment of the effects, impacts and changes brought about by REDD+ activities on those communities involved with the scheme. As REDD+ proposals and projects continue to gather momentum there is general consensus among observers that its success will depend on whether these groups' interests are integrated into policy deliberations and decision-making processes and if their rights, including the principle of FPIC and respect for customary land rights, are recognised. Given the evidence that is emerging from those countries already undertaking REDD+ activities such as Peru and Mexico, it is clear that further academic research is needed into the impact of REDD+ policies on local communities. If REDD+ is incorporated into carbon markets in the future, those concerns raised, as demonstrated in this article, will be amplified and there would be a considerable risk that forest dwellers would be further excluded from directly participating in the design and implementation of REDD+ activities as well as receiving their share of the benefits.

As human rights moves into new areas such as the environment and development, the human rights discourse must move beyond identifying the problem and make a greater contribution to the solution.¹²⁴ In addition to measuring human rights standards and the gap between those standards and the reality on the ground, HRIAs can make 'new and potentially transformative interventions' into key policy debates such as REDD+ 'where other interests prevail and human rights concerns are traditionally marginalised'.¹²⁵ Adopting a rights-based approach, 'either explicitly, by referencing rights; or implicitly, by referencing principles or adopting policies that have a normative basis in human rights law'¹²⁶ can help reduce the risks associated with REDD+ and help ensure that forest dwellers benefit from the scheme by ensuring that their procedural and substantive rights in particular are respected. As noted, currently absent from both academia and public policy-making is an impartial interdisciplinary community-based HRIA. As Short et al. observe in their discussion on fracking,¹²⁷ in order to fully comprehend the range and extent of the impact of REDD+ as well as the potential human rights impact for future generations, it is vital that research includes data collected from sites at different stages of the REDD+ process. For example, data should be collected from countries advanced in REDD+ activities such as Peru and the Republic of Congo, which have carbon funds and are currently FCPF and readiness grant holders, and also from countries such as Papua New Guinea and Ecuador that are currently undertaking the UN-REDD+ readiness process.¹²⁸ It is imperative that research begins immediately given that many countries will complete phases one and two of the REDD+ process in the coming years, moving into the final phase. HRIAs should be carried out at a number of different sites per country given that the impacts of REDD+ activities will vary among the different communities and indigenous

territories. It is also important that HRIAs are not solely aimed at indigenous communities but instead at forest-based communities given that there are many members of forest-dependent communities that are not technically considered to be indigenous.

REDD+ is continuing to develop at pace despite the lack of research into its social and human rights impacts. With its architecture still yet to be finalised, the next few years represent a critical period for the development of REDD+ policies and measures. Whether the results of REDD+ are positive or negative will largely depend on incorporation of a rights-based approach into the scheme, carrying a community-based HRIA can greatly aid this cause by facilitating the participation of all stakeholders such as local communities and civil society organisations and encouraging them to meaningfully engage with those proposing REDD+ activities. Understanding the human-rights impact of activities connected to REDD+, the current legal duties and safeguards placed on national and regional governments with regard to the scheme and its potential human rights impacts on future generations, is crucial to developing appropriate safeguards and incorporating procedural standards into its rhetoric in the future. Furthermore, the process of identifying and documenting human rights violations brings with it the possibility of holding those who violate indigenous and forest peoples' rights responsible and accountable.

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