



“Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements”

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Constructive Arrangements: Ogiek in the Conservation of the Mau forest and Indigenous Peoples in National REDD+ processes in Africa.

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The views expressed in this paper do not necessarily reflect those of the OHCHR.

United Nations Mandate Holders related to Indigenous Peoples: Coordination Meeting

Sunday 15 July 2012

Agenda

1. Updates on current activities
 - a. Review of 11th session of the Permanent Forum
 - b. Review of the 5th session of the Expert Mechanism (including the joint interactive dialogue, this year's proposed thematic study topic and the interactive dialogue for upcoming HRC session)
 - c. Review of Special Rapporteur's ongoing work
2. Thematic issues
 - a. Reports of the Permanent Forum on Indigenous Issues
 - b. Coordination on thematic studies related to extractive industries (consolidated report?)
3. Country engagement, including communications, visits and public statements
4. Outreach, information sharing and capacity building
 - a. Training
 - b. Pending publications
5. World Bank Safeguard Policy Review: joint contributions?
6. World Conference on Indigenous Peoples
 - a. Role of the mandates
 - b. Joint positions
 - c. Norway meeting
 - d. Participant Access
6. Response to the Secretary-General's report on participation

Constructive Arrangements: Ogiek in the Conservation of the Mau forest and Indigenous Peoples in National REDD+ processes in Africa.¹

Kanyinke Sena²

1.0 Introduction

Article 37 of the UN Declaration on the Rights of Indigenous Peoples (IPs) provides indigenous peoples with the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors. It also obliges States to honour and respect such treaties, agreements and other constructive arrangements.³

In the Africa context, treaties between states and indigenous peoples have always been aimed at facilitating colonization.⁴ But in the majority of cases, there have been no treaties, agreements or any constructive arrangements with IPs. This is grounded on the lack of recognition as distinct separate peoples with distinct rights, coupled with the notion of "nation building. The result has been the root cause of the socio-economic and political exclusion of IPs.

Hunter gatherers, for example, have historically been dispossessed of their lands and territories for timber extraction, expansion of agriculture, settlement of politically correct communities and also conservation purposes. Besides disrupting hunter gatherer cultures and livelihoods, these actions have often led to unintended loss of critical ecosystem services to the detriment of the economies that were meant to be developed!

However, there is growing realization in Africa that forests are critical vehicles in national development and that recognition and respect for the rights of hunter gatherer communities – the forest owners - is a critical part in conserving forests. This has seen an increase in constructive arrangements between states and indigenous peoples in the conservation arena in Africa.

This note attempts to showcase this reality in Africa. Part one will look at the constructive arrangements being undertaken by the government of Kenya to include the Ogiek in the restoration of the Mau forest complex, a critical water tower, and part two will briefly look at the steps being undertaken to include African IPs in the design and implementation of REDD+ programs. REDD+ is a climate change mitigation strategy within the UNFCCC Framework. The paper will briefly provide the historical context, the processes and key lessons.

Key Lessons

- High level political goodwill is critical for the development and implementation of constructive agreements
- Two streams of awareness creation and capacity building targeting governments and IPs is necessary.
- Partnerships between IPs, government, UN agencies, NGO's, etc speeds up processes
- Strong, credible dispute resolution mechanisms are crucial at the national and international levels.

¹ Paper presented at the OHCHR Seminar on Strengthening Partnership between Indigenous Peoples and States: treaties, agreements and other constructive arrangements; 16-17 July 2012, Geneva, Switzerland.

² Member, United Nations Permanent Forum on Indigenous Issues

³ Article 37, United Nations Declaration on the Rights of Indigenous Peoples

⁴ For example the Maasai Treaties with the British in 1904 and 1911, <http://www.masaikenya.org>

2.0 The Mau forest complex, Kenya



Figure 1: Source -Ogiek.com

The Mau Forest complex, found in the Rift Valley in Kenya, is the largest indigenous montane forest in East Africa. The complex has an area of 273,300 hectares (675,000 acres) and is the largest water catchment area in Kenya. It is the source of 15 major rivers that feed into Lake Victoria, Lake Nakuru and Lake Natron, supporting over 15 million people and Kenya's tourism industry as its water's drain into Lake Nakuru National park⁵ and the world famous Maaasai Mara National Reserve⁶ among others.

Since the colonial period, the forest has experienced alarming destruction primarily because of legal and illegal timber extraction, agricultural expansion and illegal settlements. This

destruction has threatened the very survival of millions of people in the Rift Valley and western Kenya, Kenya's tourism and agricultural sectors, and resulted in a water crisis of national and regional proportions. This has forced the government to team up with the United Nations Environmental Program (UNEP)⁷, to restore the Mau forest complex.

2.1 The Ogiek Peoples

The destruction of the Mau is closely linked with the dispossession of the historical custodian of the forest – the Ogiek community. The Ogiek are a hunter gatherer linguistic minority tribe found in the Mau forest complex and Mt. Elgon in Kenya. They number around 15000⁸. For hundreds of years, the Ogiek have been stereotyped by government and neighbouring communities as primitive, barbaric, poverty stricken wanderers. Consequently, the Ogiek became one of the most politically, economically and socially marginalized community in Kenya.

2.1.1 Historical dispossession of the Ogiek



Figure 2: Ogiek.com

The myopic view of the Ogiek fueled a history of land and resource dispossession that began during the colonial era in the early 1900's and remains unresolved to date. Between 1903 and 1918, for example, the British colonial government evicted Ogiek from Mau Forest to the more arid Narok district. East Mau was then gazetted in 1932 leading to another round of evictions for the Ogiek as no one was allowed to settle within a gazetted forest area.⁹ The Carter land commission (1933-1938)¹⁰ set up by the colonial government to examine the land question in Kenya ignored Ogiek identity as a distinct, separate tribe. Among the 42 tribes

⁵ Lake Nakuru is both a World Heritage and RAMSAR site

⁶ A World Heritage Site

⁷ <http://www.ens-newswire.com/ens/sep2009/2009-09-14-01.html>

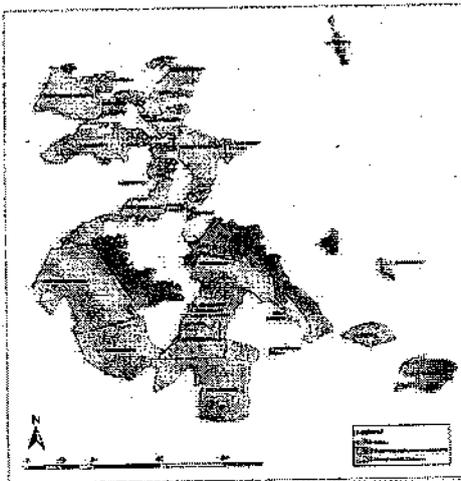
⁸ Estimate based on internal Ogiek census that is about to be launched.

⁹ www.Ogiek.com

¹⁰ <http://hansard.millbanksystems.com/lords/1932/may/04/kenya-land-commission>

that the commission differentiated, the Ogiek were not listed as to the commission, the Ogiek were "just a wondering people". The Commission consequently rejected Ogiek land claims and recommended that the Ogiek be assimilated into the neighbouring communities. The commission tried to evict the Ogiek from the remaining forests and to concentrate them either on European farms as squatters and labourers or similarly in Forestry Department labour camps. More displacement of the Ogiek took place in 1939 when Ogiek living in Olenguruone in Nakuru District were evicted and dispersed to different areas. By 1954 all the land in Mau Forest had been gazetted, effectively making the Ogiek a landless people.¹¹

Subsequent Forest and wildlife laws formally banned hunting thus criminalizing an Ogiek livelihood and cultural practice.



2.1.2 Ogiek in Post Independence Kenya (1963-1992)

Successive post independence governments continued with the policy of dispossessing and assimilating the Ogiek. Three years after independence, Ogiek living in Lake Nakuru settlement scheme were evicted. Ogiek's living in Keringet forests were evicted in 1977 and the last Ogiek's were evicted from Mariashoni and Nessuit in 1980. In 1988, all schools in Kiptunga, Baraget, Marioshoni, Kaprop and Dosua forest were closed down. All the houses in Mau East forest were torched by forest guards and Administration police following a government directive.¹²

But from 1989 the government took interest in addressing Ogiek issues by promising to settle them in Ndoinet forest. The government also promised in 1991 to settle the Ogiek in their ancestral territory. In June 1992, the government ordered all schools in the forest to be opened and in August, a group of Ogiek elders were invited to State House where they presented a memorandum to the then President Daniel arap Moi.¹³

The Ogiek instituted about 7 courts cases but none was ever concluded.

2.1.3 Ogiek and other Hunter Gatherers in Kenya's New Constitution

The post independence constitution of Kenya had huge gaps that facilitated the denial and abuse of human rights. The need to address these gaps resulted in increased, frequent agitation for a new constitution from the late 1980's. These agitations led the government to establish a constitution review process in the 1990's that lasted to 2010 when finally a new constitution was adopted in a referendum.

Participation by hunter gatherers in the constitution review process was critical for their rights to be actualized. Hunter gatherer activist mobilized to seek partnerships with other civil society groups so as

¹¹ www.ogiek.org

¹² <http://www.ogiek.org/report/ogiek-ch2.htm>

¹³ ditto

to enable their voices in the constitution review process. 5 representatives of hunter gatherer communities participated in the constitution review process. Of the five, two, an Ogiek and a Sengwer, were delegates while the rest, 2 Ogiek and a Sengwer, were observers. Delegates had the power to move motions for consideration by the rest of the delegates and the two were directly responsible for all language that touches on Indigenous issues in the new constitution. Hunter gatherers representative also presented memorandums and petitions for consideration. Hunter gatherer delegates to the constitutional review process moved a total of 26 motions.¹⁴

After almost 20 years of intense lobbying and consultation, that saw three drafts and two referendums, Kenyans adopted a new constitution in August 2010.¹⁵ The new constitution has several provisions that not only recognize hunter gatherer communities but also affirm and protect their rights. These include recognition, culture, bills of rights, political participation, devolved government and an equalization fund among others.¹⁶

2.1.4 Constructive arrangements for addressing Ogiek issues in the restoration of the Mau forest

In response to local and international pressure and also guided by the realization that the continued destruction of the Mau was having a negative effect on the economy, Kenya's Prime Minister constituted a multi stakeholder meeting in July, 2008 that recommended the establishment of a taskforce that will devise strategies for restoring the Mau forest.



The Prime Minister Task Force on the Conservation of the Mau forest comprised of 30 members representing various government ministries, NGO's, UNEP and local communities including 2 representatives from the Ogiek community. The taskforce report recommended the resettlement of Ogiek in their traditional lands within the Mau forest.¹⁷ Though the taskforce recommendations were adopted in 2009, they were subsequently discussed by the cabinet and later adopted by parliament, thereby making them an official government policy. The process of implementation of the recommendations has been eased by the provisions of the new constitution that recognize and safeguard the rights indigenous peoples and other marginalized groups.

¹⁴ Interview with Delegate Mr. Ezekiel Kesendany, and Observer Joseph Sang among others, Nakuru, June, 2012

¹⁵ Kenya Constitution 2010

¹⁶ <http://www.kenyalaw.org/Downloads/The%20Constitution%20of%20Kenya.pdf>

¹⁷ Report of the Prime Minister's Taskforce on the Conservation of the Mau Forest Complex; Nairobi, March, 2009; http://www.maurestoration.go.ke/index.php/downloads/doc_download/7-mau-task-force-report-16-mb&prev=/search%3Fq%3DMau%2BTaskforce%2Breport%26hl%3Dde%26biw%3D853%26bih%3D358%26prmd%3Dimvns&sa=X&ei=XcD9T ICEqj0mAXSv CrBQ&ved=0CFIQ7gEwAA

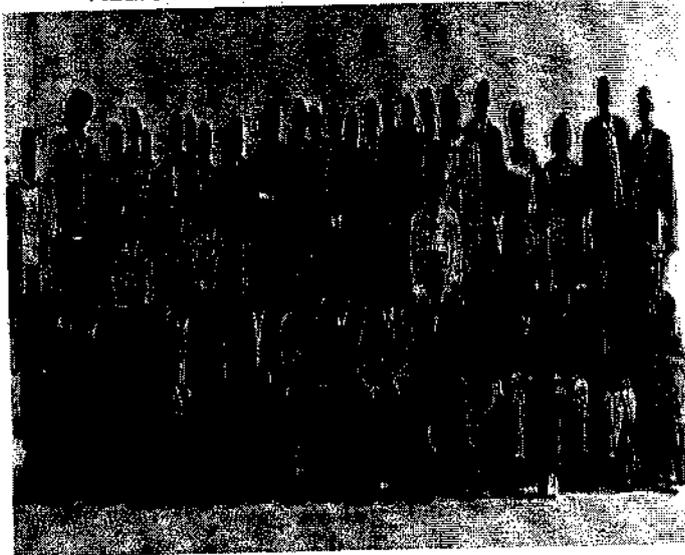
Interim Coordinating Secretariat¹⁸

An interim Coordinating secretariat (ICS) was then established by the government to implement the taskforce report. The ICS structure includes an inter- ministerial steering committee that includes the Prime Minister and 7 ministers from line ministries¹⁹ and four committees of which one is a Committee on Ogiek Matters.²⁰

The committee on Ogiek matters comprises of representatives from the Ogiek community. A constituent organ of the committee is the Ogiek council of elders.²¹ The council of elders was launched to address Ogiek community's concerns. The historic development marks the very first time the indigenous community with attachment to Mau Forests Complex has formed its own leadership structure representing various forest blocks to work directly with the Government through the Interim Coordinating Secretariat (ICS). This follows several months of extensive consultations and preparation with the Ogiek community, including two major workshops with Ogiek elders and elites in Nakuru and barazas with the Ogiek communities in all areas in the Mau where they are residing. The elders were democratically elected by Ogiek communities from the 22 forest blocks of Mau Forest Complex.

The agreed mandate of the Ogiek Council of Elders is to:

- Nominate members to represent the Council in the Committee on Ogiek Matters of the Interim Coordinating Secretariat;
- Address issues related to the membership of the Council, including filling up vacancies and receiving appeal to the selection of members;
 - Assist the Committee on Ogiek Matters in the establishment of an Ogiek Register based on lineages (family trees);
 - Coordinate the Ogiek community position on issues related to the Mau Forests Complex;
 - Assist the Committee on Ogiek Matters in the development of proposals for resettling the Ogiek Communities;
 - Develop proposals involving the Ogiek Community in the restoration of the Mau Forests Complex;
 - Develop proposals to support livelihood development in the Ogiek, as well as traditional Ogiek livelihood.



¹⁸ <http://www.maurestoration.go.ke/index.php/about-mau-restoration>

¹⁹ Besides the Prime Minister, the other ministers include the Ministers of ministers for Forestry and Wildlife, Environment and Mineral Resources, Water and Irrigation, Lands, Agriculture, Provincial Administration and Internal Security and Special Programmes.

²⁰ Besides the Committee on Ogiek matters, the others include a Committee on Communication and Outreach, Committee on Restoration and Rehabilitation, Committee of Legal Experts and Committee on Ogiek Matters.

²¹ <http://www.maurestoration.go.ke/index.php/achievements/118-ogiek-council-established>

Screening of Ogiek

The destruction of Mau forest was largely fueled by the high number legal and illegal immigrants who have moved to settle on the Mau. As a result of the PM Taskforce report on the Mau, the immigrants felt that only the Ogiek would be targeted to remain in the Mau while the rest would be evicted in efforts to restore the forest complex. Many of the immigrants therefore resorted to identifying themselves as Ogiek, complicating efforts to address Ogiek land matters.

To address this dilemma, the government agreed with the Ogiek council of elders to do a screening of the Ogiek's in the Mau forest complex with a view to establishing who they were and their numbers. The screening exercise followed a tree lineages and was undertaken by Ogiek representatives supported by the government. The screening exercise took almost a year and a half, and a register of Ogiek is about to be launched.

Settlement Action Plan

A settlement action plan for the Ogiek is currently under development. This will be guided by a safeguards policy framework whose objective is to secure biodiversity, ecologically fragile areas, threatened /endangered species, and rights and interests of marginalized groups within the Mau Forest Complex. Parties safeguards framework include the Inter-Ministerial Interim Coordinating Secretariat (ICS) representing Office of President, Ministry of Special Programmes, Ministry of Forest and Wildlife, Kenya Forest Service, Kenya Wildlife Service, Ministry of Lands, Ministry of Water, National Security Intelligence Service; the United National Environmental Programme (UNEP – represented by a policy advisor); and the Ogiek Marginalized Group – represented by a 7 Members Committee on Ogiek Matters democratically elected from and reporting to the Ogiek Council of Elders.

The policy framework shall be implemented within the provisions of Kenya Constitution 2010, other national laws and international legal instruments that include the UN Declaration on the Rights of Indigenous Peoples.

Dispute Settlement

There is presently a feeling among the Ogiek that the speed with which their rights are being addressed is pretty slow. Coupled with fears that a change of government²² might usher in a new political dispensation that may be against Ogiek rights as indigenous peoples in the Mau, the Ogiek are preparing to file a case at the Africa court. Key question that arises is whether a constructive agreement between the Ogiek and the government of Kenya can be a subject of an international court or can be decided solely by domestic courts.

²² Kenya will be undergoing elections in March, 2013

3.0 REDD+ and Indigenous Peoples

The Reduced Emissions from Deforestation and Degradation, Sustainable Forest Management and Carbon Enhancement (REDD+) program,²³ currently under development within the framework of the UNFCCC²⁴ as a climate change mitigation program, is emerging vehicle for constructive arrangements between indigenous peoples and governments in Africa.

Since inception of the REDD+ program at the UNFCCC COP 13²⁵, Indigenous peoples consistently expressed fears of possible evictions, denial of livelihoods, disruptions of cultural practices among other possible human rights violations.²⁶ Indigenous Peoples are not included in the negotiating table and programs. The UNFCCC lack a human rights-based approach to programming. Interestingly, parties to the UNFCCC have endorsed the United Nations Declaration on the Rights of Indigenous Peoples.

3.1 Constructive arrangements with IPs at the international level

3.1.1 Cancun Agreements

The Cancun Agreements agreed to at the COP 16 provides 7 environmental and social safeguards. The safeguards address more than 'no harm' and also address governance and promoting multiple-benefits. The inclusion of 'safeguards' has been motivated by the fears and concerns consistently raised by Indigenous Peoples, driving states state parties to the UNFCCC to develop safeguards language that include the UN Declaration on the Rights of Indigenous Peoples.²⁷ This is the first time that indigenous peoples have been recognized within the UNFCCC framework.

The Cancun safeguards provide a platform for constructive arrangements between states and indigenous peoples in REDD+. It will also develop relations that will be critical to make REDD+ work. Beyond defining what safeguards cover, progress is also being made on safeguards mechanisms; in the Cancun agreement countries are requested to develop information systems on how safeguards are addressed and respected.²⁸

3.1.2 UNREDD and Forest Carbon Partnership Facility

As negotiations under the UNFCCC framework progress, REDD+ readiness activities are being undertaken primarily through the UNREDD²⁹ and World Bank hosted Forest Carbon Partnership Facility Program (FCPF)³⁰. The REDD+ program is rolling out in over 50 developing countries across the globe.

²³ For more on REDD+, kindly visit <http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx>

²⁴ United Nations Framework Convention on Climate Change

²⁵ UNFCCC COP 13, Bali Indonesia, 2007.

²⁶

²⁷ Cancun Safeguards

²⁸ <http://www.forestsclimatechange.org/events/forest-day/forest-day-5/issues-marketplace/theme-7-social-safeguards-protecting-the-rights-and-interests-of-indigenous-peoples-and-forest-dependent-communities-in-redd-and-climate-change-adaptation-initiatives.html>

²⁹ <http://www.un-redd.org/AboutUNREDDProgramme>

³⁰ <http://www.forestcarbonpartnership.org/fcp>

The REDD+ program has two phases – a readiness phase and a carbon phase. In the design of readiness activities, countries develop national management arrangements and detailed multi-stakeholder consultation and participation plans. They also develop emissions reference levels, monitoring reporting and verification systems and benefit sharing schemes.



Under both the UNREDD and FCPF programs, there is realization that REDD+ will not be successful without the proper recognition and address of indigenous peoples rights and interests. To actualize this reality, both programs have developed systems for ensuring participation of indigenous peoples in the design of REDD+ at both the international and national levels.

At the international level, the arrangements include having Indigenous Peoples representative from all indigenous peoples geo-political regions as sit in the highest decision making organs³¹ of the two institutions, organizing global and regional consultations³² with Indigenous Peoples and a provisions for capacity building funds. The FCPF has

allocated US \$ 3 million for IPs capacity building for the period 2012-2014 and the UNREDD allocates \$ 30 000 annual for IPs regional focal points travel and engagement in the regions.

Both programs further actualize the Cancun agreements by insisting that Indigenous Peoples and local communities be included in REDD+ national management arrangement plans and in the consultation and participation processes. The UNREDD program for example, on the advice of member states and in consultation with Indigenous Peoples, has developed *Operational Guidance: Engagement of Indigenous Peoples and Other Forest Dependent communities*. This Guidance is being distributed to UN-REDD Programme staff, UN Country Team staff, and national government and civil society counterparts involved in any UN-REDD Programme activities that may impact upon the rights and livelihoods of Indigenous Peoples or other forest dependent communities.³³ The UNREDD program has further undertaken consultations with Indigenous Peoples on Free, Prior and Informed and is in the process of finalizing guidelines on FPIC. Both UNREDD and FCPF have developed draft Social and Environmental Principles and Criteria (SEPC) and Benefits and Risks Tool (BeRT) and Participatory Governance Assessment (PGA)³⁴ while the FCPF has is developing Strategic Environmental and Social Assessment (SESA) and Environmental and Social Management Framework (ESMF) to actualize the safeguards.³⁵

³¹ UNREDD Policy Board and FCPF participant committee. The UNPFII has a permanent seat at the UNREDD Policy board.

³² These have been undertaken in Africa, Latin America and Asia and a global consultation undertaken in Panama in 2011.

³³ <http://www.un-redd.org/Home/EngagementofIPs/tabid/1033/language/en-US/Default.aspx>

³⁴ http://www.un-redd.org/Multiple_Benefits/SEPC_BeRT/tabid/991/Default.aspx

³⁵

http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2010/2g_FCPF_FMT_Note_2010_16_SESA_Mainstreaming.pdf

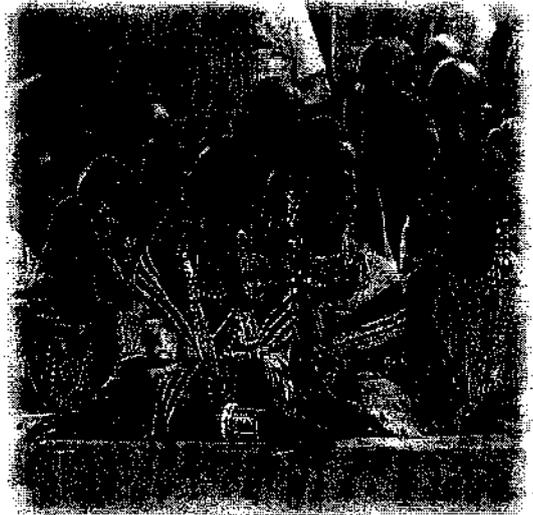
3.2 Constructive arrangements in REDD+ in select African Africa

The potential for REDD+ in Africa is enormous. The continent has 635 million hectares of forest – about 16% of the world's total – with the Congo Basin harbouring the world's second largest block of rainforest. Moreover, a recent paper has shown a considerable increase in carbon stocks (the total amount of carbon stored in the forest ecosystem), even in some Sahel countries, such as Senegal, Mali and Guinea Bissau. This raises the possibility that countries with largely dry forests might also be able to participate in and benefit from the REDD+ mechanism. Currently, though, it appears that this vast potential remains underexploited.³⁶

17 African countries are at various stages of developing their national REDD+ programs either through the World Bank hosted Forest Carbon Partnership Facility or the UNREDD Program. This include Cameroon, Central African Republic, Democratic Republic of Congo, Ethiopia, Equatorial Guinea, Gabon, Ghana, Kenya, Liberia, Madagascar, Mozambique, Nigeria, Republic of Congo, Sudan, Uganda, Tanzania, Zambia.

2.2.1 Consultation with Indigenous Peoples

Kenya - Kenya submitted its Readiness Plan Idea Note (RPIN)³⁷ in May 2009. The RPIN was approved in July, 2009 by the FCPF and Kenya formally joined REDD+. The RPIN outlined IPs groups that should be consulted in the design of the national REDD+ program within the broader National Climate Change Response Strategy. This was followed by the formulation of the Readiness Preparation Proposal (RPP)³⁸ through a multi stakeholder consultation process that included Indigenous Peoples. The consultation process was preceded by prior information sharing through a brochure distributed country wide including in IPs territories.³⁹ A **national validation workshop** of the RPP was done on 3rd May 2010, clearing the way for the Kenya to advance its REDD+ strategy further. The **national validation exercise essentially constituted a binding constructive arrangement**



with all the stakeholders involved including indigenous peoples. The next step would involve rolling out the consultation and participation plan⁴⁰ in the RPP. The plan has a component of consultations with indigenous peoples and currently, IPs groups are organizing a national structure for consultation. Close to US\$ 1 million has been earmarked for the consultation process. Uganda, Republic of Congo and Tanzania among others have followed similar processes.

³⁶ <http://www.za.boell.org/web/cop17-767.html>

³⁷ Intent to participate in REDD+

³⁸

<http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2010/Revised%20RPP%20for%20Kenya.pdf>

³⁹ http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Feb2010/Kenya_MAGAZINE_REDD%2B.pdf

⁴⁰ <http://www.kenyaforestservice.org/documents/redd/Consultation%20and%20Participation%20plan.pdf>

REDD+ developments undergo a technical review process, in which IPs are included, before being approved for funding under the readiness fund by both the FCPF and UNREDD programs.

2.2.2 National Management Arrangements

The Democratic Republic of Congo⁴¹ - A decree by the Prime Minister (N°09/41) was signed on November 26, outlines the institutional structure of REDD+ in DRC to be :-

- I. A national REDD committee, in charge of decisions and orientations, involving all stakeholders, particularly civil society, and representatives from indigenous and local communities;
- II. An Inter-ministerial committee, in charge of planning;
- III. National REDD coordination (already in operation) in charge of coordinating day-by-day activities, and particularly responsible for the implementation of UN-REDD and FCPF;
- IV. A scientific consultancy, technical committee of national and international experts, may be created to provide scientific and technical advice on the REDD process

Of importance to note is the level at which this DRC puts indigenous peoples.

2.2.3 Benefit sharing and monitoring reporting and verification

All the REDD+, after extensive dialogue with indigenous peoples, are now focusing on developing proper benefit sharing channels and support for local monitoring of REDD+ projects using local expertise including traditional knowledge systems.



2.2.4 Cross border REDD+

Two regional blocks, the Central African COMIFAC-member countries⁴² and the Southern Africa Development Cooperation (SADC)⁴³ are expressing the willingness to address REDD+ as a block. This clearly responds to the needs of indigenous peoples in the Congo Basin for example, whose lifestyles is trans-boundary. While REDD+ is being approached from the national context within the UNFCCC, this reality that constitutes part of hunter gatherer and pastoralists' communities cultures need to address within the context of safeguards provided by the Cancun Agreements. It is encouraging that the *Joint Declaration of Intent on REDD+ in the CONGO BASIN Between Central African and Donor Countries*,⁴⁴ has provisions for establishing mechanisms for the full and effective participation of stakeholders.

⁴¹

http://unfccc.int/files/methods_science/redd/country_specific_information/application/pdf/eng_rpp_drc_version_020310.pdf

⁴² <http://www.merid.org/~media/Files/Projects/Congo%20Basin%20Microsite/Congo%20Basin%20Joint%20Declaration.pdf>

⁴³ <http://www.sadc.int/REDD>

⁴⁴ [www.merid.org/~media/Files/Projects/Congo Basin Microsite/Congo Basin Joint Declaration.pdf](http://www.merid.org/~media/Files/Projects/Congo%20Basin%20Microsite/Congo%20Basin%20Joint%20Declaration.pdf)

2.2.5 Recourse Mechanisms of first and Second instance⁴⁵

In implementing constructive arrangements, disputes will definitely over the lack of, method or even delays in implementation. Local remedies like courts, tribunals and ADR's would obviously be the recourse mechanisms of the first choice. But where local remedies fail to provide redress, Indigenous Peoples from Africa propose that the ACHPR serves as a fall back for the search of justice.

Further, the regionalisation of REDD+ creates transboundary or even regional problems both for indigenous peoples and governments. Local remedies would not be feasible in such cases, thus the ACHPR would be the recourse mechanism of the first instance for both states and indigenous peoples.

This would be a crucial role that the ACHPR can play in REDD+ projects. Article 62 of the African Charter requires states to submit reports to the Commission every two years on the legislative or other measures they have taken to give effect to the rights and freedoms recognised in the Charter. This is in line with REDD+ demands for not only a 'system of reporting' but enabling verification within the ACHPR investigative mandate provided for in the Charter as well. The Commission would then make recommendations on how to address situations or request postponement of projects until such time that the risks have been addressed.

The ACHPR would also play a role in the amicable settling of disputes. In line with ACHPR processes, indigenous peoples and civil society would also be able to study government REDD+ reports, prepare counter-reports or recommend to the Commission questions that could be asked to states. This would ensure transparency, accountability and respect for rights – the basic pillars that will enable REDD+ programmes to achieve their objectives.

Pictures: Kanyinke Sena and Mau Taskforce Secretariat.



⁴⁵ <http://www.ipacc.org.za/uploads/docs/AIPREDDV2.pdf>