



# **SUSTAINABLE DEVELOPMENT LAW ON CLIMATE CHANGE**

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## **11 THE FUTURE OF GLOBAL FORESTS AFTER THE CANCUN CLIMATE CHANGE CONFERENCE**

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# HOW CLIMATE CHANGE CAN CATALYZE THE SUSTAINABLE MANAGEMENT OF FORESTS

Frédéric Perron-Welch<sup>1</sup>

## 1. Introduction

Forests are essential for human survival and well-being. They account for 30 percent (3.2 billion hectares) of the earth's land area<sup>2</sup> and harbour two-thirds of all terrestrial animal and plant species.<sup>3</sup> Forests provide key ecosystem services such as food, fodder, water, shelter, decomposition, soil production, nutrient cycling, carbon sequestration, wildlife habitat, and also hold cultural and recreational value.<sup>4</sup> Many forests are located in the traditional territories of indigenous peoples who may possess customary or actual rights to land and resources, including communal ownership, and may manage their territories through their own institutions on the basis of customary laws.<sup>5</sup> The genetic diversity of forests is the basis for long-term forest health and stability and underlies the ecosystem services they provide, including carbon sequestration.<sup>6</sup>

The 16<sup>th</sup> United Nations Climate Change Conference (the Conference) was held from 29 November to 10 December 2010. It happened at the very end of the International Year of Biodiversity and just prior to the start of the International Year of Forests and produced outcomes on forests and land use that are relevant to the future of global forests and biodiversity. The Conference's timing and relevance will thus be highly relevant to international cooperation on the Aichi Biodiversity Targets<sup>7</sup> and Global Objectives on Forests.<sup>8</sup> Similarly, achieving those targets and objectives will feed into the Conference's decisions relating to forests.

The Conference hosted the 16<sup>th</sup> Conference of the Parties (COP 16) to the *United Nations Framework Convention on Climate Change*<sup>9</sup> (the Convention), the 6<sup>th</sup> Meeting of the Parties (MOP) to the *Kyoto Protocol to*

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<sup>2</sup> Marcus Colchester, "Beyond Tenure: Rights-based approaches to peoples and forests, some lessons from the Forest Peoples Programme" at 2.

<sup>3</sup> Secretariat of the Convention on Biological Diversity, *Sustainable Forest Management, Biodiversity and Livelihoods: A Good Practice Guide* (Montreal: Secretariat for the Convention on Biological Diversity, 2009) at 1.

<sup>4</sup> Joint Liaison Group of the Rio Conventions, "Forests: Climate Change, Biodiversity and Land Degradation" (Secretariats of the CBD, UNCCD and UNFCCC, 2008) at 1.

<sup>5</sup> *Report of the International Expert Group Meeting on Indigenous Peoples and Forests*, UN Doc. E/C.19/2011/5 at 3.

<sup>6</sup> *Sustainable Forest Management, Biodiversity and Livelihoods*, *supra* note 3.

<sup>7</sup> CBD COP 10, *Strategic Plan for Biodiversity 2011-2020*, UN Doc. UNEP/CBD/COP/10/27 at Annex to Decision X/2.

<sup>8</sup> *Non-legally Binding Instrument on All Types of Forests*, UN Doc. A/C.2/62/L.5.

<sup>9</sup> *United Nations Framework Convention on Climate Change* (1992), 1771 UNTS 107 (entered into force 21 March 1994). [Hereinafter "FCCC"]

*the United Nations Framework on Climate Change*<sup>10</sup> (the Protocol), the 33<sup>rd</sup> sessions of both the Subsidiary Body for Implementation (SBI) and Subsidiary Body for Scientific and Technological Advice (SBSTA), the 15<sup>th</sup> session of the Ad hoc Working Group of the Kyoto Protocol (AWG-KP), and the 13<sup>th</sup> session of the Ad hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA).<sup>11</sup>

One of the major decisions resulting from COP 16 is to reduce deforestation and forest degradation through the creation of financial incentives to fund the conservation, sustainable use and enhancement of forest carbon stocks (REDD+). This decision on a REDD+ framework could have positive and/or negative impacts depending its application *in situ*. There is broad consensus that REDD+ initiatives have the potential to conserve biodiversity and ecosystem services, improve local livelihoods, promote adaptation, and provide incentives to reform forest governance if well designed.<sup>12</sup>

There is also broad recognition of the negative impacts REDD+ implementation could bring. Deleterious consequences might include the infringement of indigenous rights; introduction of invasive tree species (i.e. eucalyptus) to 'grow' CO<sub>2</sub> credits; ongoing degradation of natural forests leading to loss of biodiversity, species extinction and ongoing CO<sub>2</sub> emissions; labour and human rights abuses; destruction of plants relied upon by local communities for medicine and nutrition; loss of customary access to forests; resulting decline in nutrition and human health of forest dependent communities; and the disruption of ecosystems and loss of ecosystem services.

The reality of REDD+ lies in the particularities of each project and whether that project adequately balances environmental, social and economic factors to achieve a sustainable solution supported and enforced by law or voluntary certification. In this vein, it is important to closely monitor the financial underpinnings of this incentive scheme to ensure equitable and ecological outcomes rather than those based on speculation and fraud and lead to ongoing forest death. Thus, good governance is one key to successful implementation at all levels. Best practices should be widely shared and adopted as a matter of course in the development of national, sub-national and local REDD schemes so that REDD fulfills its stated goal of conserving forests.

REDD+ implementation at the international and national levels will require navigating a warren of international rules and commitments on forests. The Convention on Climate Change is one of three so-called "Rio Conventions"; the other two being the *United Nations Convention on Biological Diversity*<sup>13</sup> (CBD) and the *United Nations Convention to Combat*

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<sup>10</sup> *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (1997), 2303 UNTS 148 (entered into force 16 February 2005).

<sup>11</sup> International Institute for Sustainable Development, "Summary of the Cancun Climate Change Conference", *Earth Negotiations Bulletin*, Vol. 12, No. 498 (13 December 2010).

<sup>12</sup> Center for International Forestry Research (CIFOR), "Cancun climate agreement is a win for the climate and world's forests" (14 December 2010).

<sup>13</sup> *Convention on Biological Diversity*, 5 June 1992, 31 I.L.M. 818 (entered into force 29 December 1993).

*Desertification*<sup>14</sup> (UNCCD). They are all intimately linked through to the 1992 United Nations Conference on Environment and Development (a.k.a. Rio Conference or Earth Summit), which also had other major outcomes like *Agenda 21: The United Nations Programme of Action from Rio*; the *Rio Declaration on Environment on Development*; and the *Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* (Rio Forest Principles).<sup>15</sup> Further negotiation on the Rio Forest Principles led to the development of the *Non-Legally Binding Instrument on All Types of Forests* with its four Global Objectives on Forests in 2007.<sup>16</sup>

REDD+ will necessarily be impacted by, and have an impact on, the way that these international rules and commitments play out. To achieve the goal of reducing emissions from deforestation and forest degradation, the international community will need understand the interplay between pre-existing rules and commitments on forests and those made at the Cancun Conference and how this interplay will impact national implementation. It will be a difficult mechanism to structure as it will apply to nearly 40 different countries, each of them with specific forest issues and governance structures, including those applicable to indigenous peoples' rights, land ownership and land use.<sup>17</sup>

## 2. Forest Outcomes of the Cancun Conference

The outcome of the AWG-LCA on REDD+ (Part III(C) Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries)<sup>18</sup> establishes a mechanism to encourage developing countries to contribute to mitigation actions in the forest sector including: reducing emissions from deforestation; reducing emissions from forest degradation; conservation of forest carbon stocks; sustainable management of forests; and enhancement of forest carbon stocks.<sup>19</sup>

Reductions are contingent on developed countries providing adequate and predictable support, including financial resources and technical and technological support to developing countries. In line with ongoing readiness activities, countries are encouraged to develop: (1) a national REDD+ strategy; (2) national and, if appropriate sub-national, reference (emission) levels; and, (3) a measurable, reportable, and verifiable (MRV)

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<sup>14</sup> *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, 17 June 1994, 33 I.L.M. 1328 (entered into force 26 December 1996).

<sup>15</sup> *Report of the United Nations Conference on Environment and Development*, UN Doc. A/CONF.151/26 (Vols. I-III).

<sup>16</sup> *Non-Legally Binding Instrument on All Types of Forests*, *supra* at note 8.

<sup>17</sup> Climatico, "Cancun De-briefing: An Analysis of the Cancun Agreements" (February 2011).

<sup>18</sup> FCCC COP 16 Decision 1, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, U.N. Doc. FCCC/CP/2010/7/Add.1 at p. 10.

<sup>19</sup> Climate Focus, "CP16/CMP 6: The Cancun Agreements: Summary and Analysis" (January 10, 2010) at 5.

system that is national and if appropriate sub-national, and (4) a system for providing information on how the safeguards referred to are being addressed and respected throughout the implementation of REDD+ activities.<sup>20</sup> Sub-national elements are an interim measure and include a comprehensive set of social, environmental and legal safeguards.<sup>21</sup>

The REDD+ decision will be implemented in a phased manner beginning with the development of national strategies or action plans, policies and measures, and capacity-building, followed by the implementation of national policies and measures and national strategies or action plans that could involve further capacity-building, technology development and transfer and results-based demonstration activities, and evolving into results-based actions that should be fully measured, reported and verified. The choice of the starting phase for each country will depend on national circumstances and available support.<sup>22</sup>

The potential failing of the decision is the lack to provide guaranteed ongoing funding from either the public or private sectors. The UN-REDD hopes that the COP16 agreement on REDD+ will "revitalize and increase funding flows to support REDD+ readiness and invigorate donor pledges for REDD+ for early actions until 2012"<sup>23</sup> but there is nothing substantive in the Cancun Agreements to support that outcome. The absence of a market mechanism is largely the result of Bolivia's position calling for market mechanisms to be explicitly excluded from REDD and vocal opposition throughout negotiations.<sup>24</sup> The operative portion of the Agreements is thus the AWG-LCA mandate to explore financing options for the full implementation of results-based actions in phase 3 of REDD implementation and develop a decision on market based mechanisms to be finalized at COP 17 in Durban, 2011.<sup>25</sup> However, because of ongoing dissent, Parties will also consider the establishment of one or more non-market-based mechanisms at COP 17 to promote and enhance cost-effectiveness mitigation actions.<sup>26</sup>

In deciding the future of the Kyoto Protocol, the MOP adopted a decision confirming the continued use of LULUCF principles and definitions made in the first commitment period. The MOP also created an annex to list reference levels for accounting emissions from forest management by developed country Parties in the second commitment period. As a compromise between developing and developed countries, the forest management reference levels do not yet constitute final values and will

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Guidance and safeguards for policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries*, Appendix I to *The Cancun Agreements*, *supra* note 18.

<sup>22</sup> Climate Focus, *supra* note 19.

<sup>23</sup> UN-REDD, "UN-REDD Programme Applauds the COP16 Agreement on REDD+ Reached in Cancun" (11 December 2010).

<sup>24</sup> Ecosystem Marketplace, "REDD+ Progresses, LULUCF Regresses in Cancun Agreements" (11 December 2010). Online at: <[http://www.ecosystemmarketplace.com/pages/dynamic/article.page.php?page\\_id=7896](http://www.ecosystemmarketplace.com/pages/dynamic/article.page.php?page_id=7896)>.

<sup>25</sup> Climate Focus, *supra* note 19.

<sup>26</sup> Norton Rose Group, "Blog: UN climate change negotiations, Cancun, December 2010 - Day 11: 13 December - Can-cun kind of can" (13 December 2010). Online at: <<http://www.nortonrose.com/knowledge/publications/2010/pub32534.aspx>>

undergo a review process leading up to the seventh MOP in Durban, South Africa in 2012. Agreement was not reached on accounting rules for force majeure events (i.e. fires and weather events) or accounting provisions for harvested wood products.<sup>27</sup>

### 3. Reactions to the Forest Outcomes of the Cancun Conference

Reactions to the results achieved by the Conference varied broadly. The Secretariat to the FCCC opined that the Conference delivered a balanced package of decisions, including one on boosting action to curb emissions from deforestation and forest degradation in developing countries with technological and financial support, thereby restoring faith in the multilateral process.<sup>28</sup> The Heads of the three UN agencies (FAO, UNDP and UNEP) involved in the UN-REDD Programme called the REDD+ agreement “a positive step forward in the conservation and sustainable management of the world’s forests.”<sup>29</sup> CIFOR stated that the agreement to move forward with REDD+ “is a boon for efforts to cut carbon emissions, slow the rate of deforestation, promote biodiversity and combat poverty... [and that REDD+] offers one of the cheapest options for cutting global greenhouse gases.”<sup>30</sup>

Ecosystem Marketplace recognized the decision as one of the significant successes of the Conference, one which found broad support among major international social and environmental NGOs.<sup>31</sup> The Nature Conservancy, for example, declared that the REDD+ decision is a “watershed for the world’s tropical forests [and] a strong signal by the international community that [actions to reduce deforestation and forest degradation] will be acknowledged and rewarded as climate change solutions.”<sup>32</sup> However, Ecosystem Marketplace also notes less positively that climate talks ended “with agreement on the need to incentivize REDD+ but ambivalence on how to do that... [and] backslid substantially on LULUCF.”<sup>33</sup> Friends of the Earth also glumly stated that “[t]he world needed strong and determined action to tackle climate change in Cancun - the outcome is a weak and ineffective agreement but at least it gives us a small and fragile lifeline.”<sup>34</sup>

Bolivia emerged as the most vocal critic during and after negotiations and voted against adopting the final decision on REDD+.<sup>35</sup> They voiced the opposition of a number of indigenous rights groups that the agreement would open the way for forest people to be exploited in the turning of

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<sup>27</sup> Climate Focus, *supra* note 19.

<sup>28</sup> FCCC Secretariat, “UN Climate Change Conference in Cancún delivers balanced package of decisions, restores faith in multilateral process” (11 December 2010) at 1-2.

<sup>29</sup> UN-REDD, *supra* note 23.

<sup>30</sup> CIFOR, *supra* note 12.

<sup>31</sup> CarbonPositive, “Analysis and reaction: REDD deal hailed for forests” (14 December 2010).

<sup>32</sup> Nature Conservancy, “Compromise and Clarity in Cancun: Trust regained in the UN process at COP 16” (11 December 2010).

<sup>33</sup> Ecosystem Marketplace, *supra* note 24.

<sup>34</sup> Friends of the Earth, “Cancun talks: Friends of the Earth analysis” (11 December 2010). Online at: <[http://www.foe.co.uk/news/cancun\\_final\\_analysis\\_26431.html](http://www.foe.co.uk/news/cancun_final_analysis_26431.html)>.

<sup>35</sup> International Institute for Sustainable Development, *supra* note 11 at 1.



forests into a financial-market commodity.<sup>36</sup> This sentiment was also voiced by the Indigenous Environmental Network (IEN), which stated that “as representatives of the indigenous peoples and communities that already suffer the immediate impacts of climate change, we express our indignation and disgust for the accords that emerged from the negotiations at COP 16.”<sup>37</sup>

The IEN’s prime concern was that the Cancun Agreements are not the result of an informed consultative process between all parties with something at stake. The voice of indigenous peoples was kept out of negotiations while that of business and industry was heard clearly. The Agreements lack substance and are not focused on reducing carbon emissions outright and thus fail to safeguard human and indigenous rights or recognize the burdens borne by women, youth and vulnerable communities because of climate change. The failures of COP 15 in Copenhagen were thereby compounded by Cancun for indigenous peoples due to an ongoing lack of full participatory rights.<sup>38</sup> Regardless of one’s perspective, it is clear that the opportunity given to indigenous peoples to participate in all aspects of climate negotiations does not meet with the high participatory standards established by the international community in the *Declaration on the Rights of Indigenous Peoples*.<sup>39</sup> This greatly increases the potential for REDD+ to have negative impacts on indigenous rights and forests and is in clear breach of the international community’s obligations toward the indigenous peoples of the world.

## 4. Conclusions

Recently, the UNEP Secretariat submitted its report to the twenty-sixth Session of the UNEP Governing Council/Global Ministerial Environment Forum in February, 2011. The report was called *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication*.<sup>40</sup> This report is useful in elaborating a few of the reasons why REDD+ is an important development for the future of global forests.

*Towards a Green Economy* makes a few key points relevant to this discussion on REDD+ and the future of forests. First, it argues that forests are a foundation of the green economy and sustain a wide range of sectors and livelihoods. Secondly, it argues that international and national negotiations of a REDD+ regime may be the best opportunity to both protect forests and ensure their contribution to a green economy. Thirdly, it argues that legal and governance changes are needed to tip the balance towards sustainable forestry (which is not yet at scale) and away from unsustainable practice (which is entrenched in both the forest sector and competing sectors).<sup>41</sup> These arguments are certainly supportive of

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<sup>36</sup> CarbonPositive, *supra* note 28.

<sup>37</sup> Indigenous Environmental Network (IEN), “Declaración de la Red Indígena Ambientalista - La Traición de Cancún: CMNUCC desenmascarada como la OMC del Cielo” (11 December 2010).

<sup>38</sup> *Ibid.*

<sup>39</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, September 13, 2007, UNGA Res. A/RES/61/295.

<sup>40</sup> UNEP, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (2011).

<sup>41</sup> *Ibid.* at 158 - 159.



the notion of quickly wrapping up negotiations under the Convention and scaling up the implementation of national strategies through the UN-REDD Programme as well as the further development of projects certified under voluntary standards while legal reform and governance changes take place.

The logic behind these arguments is that forests are a form of natural capital with great value as a global public good (GPG), but that no obvious and stable global regime exists to attract investment to assure sustainable, effective, efficient and equitable use. There is a recognized need for a global regime to tip the balance in finance and governance in favour of the long-term, sustainable management of forests. Managing forests for a broader range of values as opposed to wood production alone also opens up the prospect of new types of forest-related employment, livelihoods and revenues – including management partnerships with local communities. Thus, standards that support the co-production of local and global benefits are needed, as well as effective systems for local control of forests, to ensure the realization of livelihood benefits and equitable distribution of costs and benefits. With this in mind, payments for the climate regulation services of forests through the Clean Development Mechanism (CDM) and REDD+ mechanisms offer perhaps the greatest opportunity for countries and landholders to capture the value of their forest ecosystem services.<sup>42</sup>

Determining reference emission levels for REDD+ will be an intensely political process. The methodological guidance from COP 15 in Copenhagen was for reference levels based on historical rates adjusted for national circumstances. Reaching agreement on how these adjustments will be made requires both better understanding by forest countries of how different rules on adjustment will affect them, and a pragmatic approach that recognises existing efforts toward conservation and sustainable forest management.<sup>43</sup>

Safeguards are needed to protect the rights of forest-dependent people, particularly when based on customary rather than formal legal systems, to ensure that those who bear the costs (i.e. land and resource restrictions) of REDD+ schemes receive an appropriate share of the benefits. Specific models need to be developed for small-scale producers and local communities because long-term effectiveness and efficiency will depend on ensuring these benefits for local stakeholders. Some projects in the voluntary carbon market, or as part of 'readiness' activities and project design standards are showing how these equity issues can be addressed at the project level.<sup>44</sup>

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<sup>42</sup> *Ibid.* at 189.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.* See also Christoph Schwarte, *Social Safeguards in REDD: A Review of Possible Mechanisms to Protect the Rights and Interests of Indigenous and Forest-Dependent Communities in a Future System for Redd* (2010) 6(1) McGill International Journal of Sustainable Development Law and Policy 55 for potential solutions to this issue.

## ANNEX A

### REDD+ Implementation in Selected Countries

<b>Nigeria</b>
Officials from Nigeria's ministry of environment, Cross River state, and the UN have signed a declaration endorsing Nigeria's REDD+ Readiness Programme. The programme contains Nigeria's two-year roadmap to become REDD-ready, with initiatives on monitoring, reporting and verification, stakeholder engagement, awareness raising and co-benefits such as biodiversity. Cross River state was already a member of the Governors' Climate and Forest Taskforce (GCFT), a subnational collaboration between 16 states and provinces.
<b>Papua New Guinea</b>
The leader in calling for compensation for REDD, Papua New Guinea is suffering from severe implementation failures. Carbon-trading scandals have wracked its forest sector due to the absence of a national policy on climate change the lack of internationally accepted standards or mechanisms by which the private sector would abide. Under the UN-REDD Programme, its full National Programme funding allocation has been approved (US \$6.4M) with conditions that must be met prior to the release of funds. The National Programme's objective is to refine and implement a full roadmap to set up an operational monitoring system by the end of 2013.
<b>Mexico</b>
Mexico has gone forward with implementing REDD domestically without outside technical support from the UN-REDD Programme. Mexico's REDD+ website with detailed information on their implementation plans is available at <a href="http://www.reddmexico.org/">http://www.reddmexico.org/</a> . Like Cross River state in Nigeria, the State of Campeche on the Yucatan Peninsula is also a member of the Governors' Climate and Forest Taskforce (GCFT).
<b>Viet Nam</b>
Viet Nam's UN-REDD National Programme has been funded since March 2009. With the final National Programme document in September 2009, the country entered the implementation phase. The Viet Nam UN-REDD Programme was active in 2010 in completing strategic national level activities and undertaking pilot initiatives.
<b>Cambodia</b>
Cambodia began REDD+ pilot projects in 2008 and began partnering with the UN-REDD Programme in 2009. Cambodia subsequently developed a REDD+ Roadmap and, in September 2010, completed its National Programme to implement the Roadmap. They were allocated US \$3M for implementation in November 2010 by the UN-REDD Programme Policy Board.
<b>Indonesia</b>
In 2010 the Government of Indonesia announced that was placing a two-year moratorium on the granting of new concessions to clear natural forests and peatlands. The moratorium was a key element of the \$1 billion REDD agreement signed between the Governments of Indonesia and Norway. Troublingly, the forest moratorium was to begin 1 January 2011 and was not put into place. Indonesia also has an agreement with UN-REDD for a National Joint Programme, which is in the process of being implemented.

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