

# REDD+ and Agenda 2030 in Africa: A Green Criminology and Rights-Based Perspective



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## Abbreviations

AFOLU	Agriculture forestry and other land use sector
Agenda 2030	2030 Agenda for Sustainable Development
FPIC	Free Prior Informed Consent
HRBA	Human Rights-based Approach
ILO Convention No. 169	Indigenous and Tribal Peoples Convention
MRV	Monitoring, Reporting and Verification
NCCSC	National Climate Change Steering Committee
NCCTC	National Climate Change Technical Committee
NRTF	National REDD Task Force
SDGs	Sustainable Development Goals
SMP	Simple management plan
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework for Climate Change
WWF	World Wide Fund for Nature

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## 1 Introduction

With around 23% of total net anthropogenic emissions of greenhouse gases deriving from activities in the agriculture, forestry, and other land use sector (AFOLU),<sup>1</sup> increasing emphasis has been placed on land-related climate change mitigation, particularly improved stewardship of forests through reduction or avoidance of deforestation and forest degradation, and the enhancement of forest carbon stocks. Africa is home to some of the world's most important forests, with forests covering 43.6% of land area in Central Africa, 31% in Southern Africa, 20.8% in East Africa, 14.3% in West Africa and 7.2% in North Africa.<sup>2</sup> However, as Moon and Solomon argue, 'the combination of unsustainable management and uncoordinated externally driven resource extractive with the additional influence of foreign direct investment and infrastructures are influencing the forest cover'.<sup>3</sup> As a consequence of the aforementioned, Africa is losing more than 4 million hectares of forest every year.<sup>4</sup> The World Wide Fund for Nature (WWF) have identified eight deforestation fronts, or places at imminent risk of largescale deforestation on the continent of Africa. These consist of the West Africa front (Liberia, the Ivory Coast, and Ghana), four Central African Fronts (Cameroon/Gabon, the Republic of Congo and Cameroon/the Democratic Republic of Congo and the Central Africa Republic/Angola) and three East African fronts (Zambia/Mozambique/Madagascar).<sup>5</sup> Throughout the eight deforestation fronts in Africa, small-scale agriculture remains the main driver of deforestation. In Zambia, Mozambique and Angola, large-scale agriculture is playing an increasingly significant role in the deforestation of the Miombo forests and is also growing in the Congo Basin.<sup>6</sup> While fuelwood and charcoal can also be considered key drivers due to expanding urban markets, they mainly cause degradation rather than complete forest loss.<sup>7</sup> Furthermore, logging is a problem across all eight fronts but considerably worse in Cameroon and Angola, however, small-scale logging and chainsaw milling remains a problem throughout the Central African countries.<sup>8</sup> Although transport infrastructure is currently not considered to be a driver of deforestation on the continent, it is expected to become a more significant cause in the future due to rapidly developing economies.<sup>9</sup>

Since the mechanism Reducing Emissions from Deforestation and Forest Degradation plus Conservation and Sustainable Development (REDD+) emerged as a key pillar of the international climate change regime and a potentially effective

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<sup>1</sup> IPCC (2020).

<sup>2</sup> Moon and Solomon (2008), p. 16357.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> WWF (2021), p. 11.

<sup>6</sup> Ibid., p. 9.

<sup>7</sup> Ibid., p. 30.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

pathway for sustainable development, it has been increasingly recognised by policy makers, civil society groups and scholars that for REDD+ to be implemented successfully and deliver its objectives it must adopt a rights-based approach.<sup>10</sup> This position has further been cemented by the global acceptance and adoption of the United Nations 2030 Agenda for Sustainable Development as a normative framework, actualised through the Sustainable Development Goals (SDGs).<sup>11</sup> Adopting a green criminological perspective which allows scholars to analyse discourses related to environmental harm, laws and regulations within a model of environmental justice that places human beings and their well-being at the centre,<sup>12</sup> this chapter examines the linkages and synergies between REDD+ and the SDG and discusses the opportunities and challenges African states face in advancing a rights-based approach to REDD+ alongside the 2030 Agenda and fulfilling their human rights obligations.

## 2 Green Criminology and Human Rights

Despite the fact that there are a wide variety of environmental harms associated with climate change which impinge on humans, non-human species and the natural environment, criminology's traditional concern with crime per se meant that discussions on environmental crimes, laws and harms were largely absent until the relatively recent development of 'green criminology'.<sup>13</sup> Furthermore, as Borrás argues 'traditionally, legal systems have considered nature as "property" and have promoted laws to guarantee the property rights of individuals, corporations and other legal entities. Therefore, environmental laws and regulations, despite their preventive approach, have developed so as to legalise and legitimate environmental harm'.<sup>14</sup> Green criminology, developed by Lynch in 1990, recognises the plundering of the earth's resources and the degradation of the environment as 'activities that might be considered criminal or at least seriously harmful with intergenerational consequences and transnational impacts'.<sup>15</sup> Considered to be 'the most pressing and important international issue facing humanity today',<sup>16</sup> White argues that the issue of climate change has raised a number of existing and potential problems that need to be considered from a green criminological perspective including conflicts over environmental resources, conflicts linked to global warming, conflicts over differential exploitation of resources, conflicts over transference of harm and the

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<sup>10</sup>Raftopoulos (2016), p. 509; Raftopoulos and Short (2017).

<sup>11</sup>United Nations (n.d.).

<sup>12</sup>Hall et al. (2017); Lynch and Stretsky (2003), p. 238.

<sup>13</sup>O'Brien and Yar (2003).

<sup>14</sup>Borrás (2016), pp. 113–114.

<sup>15</sup>Higgins et al. (2016), p. 255.

<sup>16</sup>White (2010), p. 11.

criminalisation and regulation of activities relating to carbon emissions.<sup>17</sup> Although climate change is a transnational problem, there is a general consensus that its harmful effects will be unevenly distributed and exacerbate social inequality and environmental injustice in the coming years particularly in the global South.<sup>18</sup> However, the climate change crisis has also provided an opportunity for contemporary capitalism to incorporate nature through mainstream neoclassical economics into the global economy by focusing on carbon reductionism and the further commodification of nature through payments for ecosystem services schemes such as REDD+.<sup>19</sup> The schemes focus on the standardisation and quantification of carbon rather than the human and environmental rights implications.<sup>20</sup> Furthermore, despite the clear links between human rights and environmental issues, 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’.<sup>21</sup>

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.<sup>22</sup> Moreover, other observers have highlighted REDD+ poor track record, with rising deforestation rates in REDD+ model countries such as Brazil and Indonesia, and its failure to address the root causes of deforestation as well as its poor implementation at the national level.<sup>23</sup> Therefore, incorporating human rights institutions, practices and discourses into debates on environmental harm, laws and regulations is essential to ensure that the most vulnerable members of society do not bare the negative costs of REDD+.<sup>24</sup>

The development of a green perspective in criminology has played a critical role in rethinking human legal systems and developing alternative ‘benchmarks’ to legal definitions of crime, including, human rights abuses and social harm as advocated by Potter.<sup>25</sup> As Potter further points out, ‘some have argued that we should think of crime differently – in terms of human rights abuses or in terms of social harm [...] Green criminologists make the point that most, if not all, environmental harms incorporate harms to individuals and social groups and that many entail human rights abuses.’<sup>26</sup> Taking Potter’s observation further, Raftopoulos and Short have

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<sup>17</sup> *Ibid.*, pp. 12–13.

<sup>18</sup> Brisman (2015), p. 178.

<sup>19</sup> Raftopoulos (2016).

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

<sup>21</sup> Wilkinson (2014), p. 171.

<sup>22</sup> Raftopoulos (2016).

<sup>23</sup> Hein et al. (2018), p. 7.

<sup>24</sup> Raftopoulos and Short (2017).

<sup>25</sup> Potter (2016), p. 8.

<sup>26</sup> Potter (2016), p. 11.

argued for multi-disciplinary approaches to the study of environmental harm and the incorporation of a variety of rights-based analytical and methodological tools such as the Human Rights Impact Assessment as ‘a useful benchmark sitting somewhere between legally codified, national and internationally defined “crime” and the much more nebulous notion of “harm”’.<sup>27</sup>

Despite these emerging critical perspectives in criminology over recent years, traditional legal understandings of ‘crime’ and ‘just’ responses still dominate criminological research. Taking the latter insight as a core ontological assumption, green and critical criminologists argue that ‘many conventional, and legal, forms of human production and interaction do far worse things to the natural environment than those activities which are deemed illegal’.<sup>28</sup> Consequently, social and/or ecological harm is worthy of criminological research and analysis even if the state does not acknowledge the phenomenon as illegal, while some would argue that such analysis is needed *precisely* because of that fact.<sup>29</sup> Furthermore, the development of the 2030 Agenda, which provides a universal normative framework for the realisation of economic, social and environmental sustainability across a range of issues, provides an important lens for green criminologists to critique discourses related to environmental harm, laws and regulation within a model of human rights and sustainable development. As Blaustein et al. argue, there are two principal ways that criminologists can support the 2030 Agenda. First, they can play a supportive role by actively ‘contributing to the the design, implementation and evaluation of projects that support safe, just and environmentally sustainable societies’.<sup>30</sup> Second, they can assume a critical role by ‘helping development actors and their intended beneficiaries including domestic policy makers, criminal justice practitioners and citizens of the Global South identify and resist attempts by international organizations, sovereign donors, national governments and other empowered stakeholders to politicize criminological elements of this agenda for self-interested strategic and political purposes’.<sup>31</sup> With environmental sustainability at the core of the SDG’s and the increasingly apparent implications of climate change, it is critical to consider the impact of mitigation policies and mechanisms such as REDD+ within the global framework of sustainable development to place human-beings and their well-being at the centre of analysis. A green criminology and rights-based perspective provides a useful lens to understand and respond to REDD+ within a model of environmental justice that places human beings and their well-being at the centre both in terms of human rights abuses and social harm.

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<sup>27</sup> Raftopoulos and Short (2017), p. 166.

<sup>28</sup> White (2013), p. 12.

<sup>29</sup> Opsal and Shelley (2014), p. 561.

<sup>30</sup> Blaustein (2018), p. 768.

<sup>31</sup> Ibid.

### 3 The 2030 Agenda for Sustainable Development and REDD+

In 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development (Agenda 2030). At its core are 17 Goals and 169 related targets that capture a range of economic, social, and environmental issues. Widely accepted as the current global development agenda by governments, the normative framework addresses ending poverty and hunger, promising to leave no one behind. Moreover, recognising planetary boundaries and explicitly incorporating the commitments expressed in the Paris Climate Agreement, Agenda 30 aims to protect the planet from degradation through the promotion of sustainable consumption and production practices, the sustainable management of natural resources and climate change measures.<sup>32</sup> Explicitly grounded in and underpinned by human rights norms and standards, more than 92% of SDG targets are linked to specific provisions of international human rights instruments.<sup>33</sup> Furthermore, the four basic objectives of a good society—economic prosperity, social inclusion and cohesion, environmental sustainability and good governance—which are promoted alongside Agenda 2030 are centred on Human Rights-based Approach (HRBA) and encompass the principles of universality, inalienability, indivisibility, inter-dependence, inter-relatedness, equality and non-discrimination and also participation and inclusion.

Since its conception, REDD+ has become an important policy tool for mainstreaming international agreements, conventions, and strategic action plans—including Agenda 30, the Paris Agreement, and the Aichi Biodiversity Targets—providing a practical means of adapting international mechanisms to national contexts and into national development plans and planning processes through both vertical and horizontal policy coherence. The alignment of the vision and strategic goals of REDD+ plays a critical role in enhancing and accelerating progress towards the SDGs targets and supporting trans-boundary actions in climate change mitigation and adaptation efforts, the sustainable use of ecosystems and management and maintenance of biodiversity. This is particularly relevant in Africa, which despite serving as a major carbon sink, biodiversity continues to decline, with ongoing losses of species and habitats, and deforestation and forest degradation continues to increase, threatening the flow of environment goods and services.<sup>34</sup> While most African countries involved with REDD+ programmes are in the readiness and implementation stage, in 2020, Uganda became the first African country to submit results for REDD+. Seen as a significant development on REDD+ for Africa, the results produced by the National Forest Authority showed that deforestation had reduced to 28,095 hectares (ha) per year over a 2-year result period (2015–2017) from a 50,147 ha per year average over a 15-year reference period (2000–2015),

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<sup>32</sup>Raftopoulos and Morley (2020), p. 1616.

<sup>33</sup>Danish Institute for Human Rights, 'A Human Rights Based Approach to the Means of Implementation of the Sustainable Development Goals' (Danish Institute for Human Rights 2020), p. 11.

<sup>34</sup>United Nation Environmental Programme (2016).

leading to a 44% reduction in the country's rate of deforestation annually between 2015 and 2017.<sup>35</sup>

REDD+ is increasingly recognised as an instrument to help achieve the objectives of Agenda 30, the SDGs which through their mutually supportive linkages, provide further institutional incentives for effective implementation, cross-sectoral coordination, coherent and inclusive outcomes of REDD+ activities.<sup>36</sup> However, as Milbank et al. contend, 'both REDD+ and the SDGs represent aspirational ambitions for the global community, but much of their potential depends on the ways in which these goals are translated into meaningful (and verifiable) local actions'.<sup>37</sup> Although REDD+ is most closely related to SDG 13 (take urgent action to combat climate change and its impacts) and SDG 15 (protect, restore and promote sustainable use of terrestrial ecosystems), as Table 1 shows, there are significant synergies between REDD+ objectives and the SDGs.

#### **4 Advancing a Rights-Based Approach Within a Green Criminology Framework**

To deliver meaningful environmental and social benefits, REDD+ initiatives must consider the environmental and social harms connected to the programme and manage the risks by considering the wider socio, political, economic and legal context attributed to the harms including regulations and mechanism as well as the limits of the law as discussed below. With many environmentally destructive development practices taking place on traditional lands and severely impacting on native and indigenous communities', the struggle to conserve the environment is very often intertwined with social and ecological justice, including the protection and promotion of both human and environmental rights. Factors such as 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 mitigation strategies like REDD+. If designed and governed well, REDD+ has the potential to positively affect the livelihoods of forest dwellers as well as preserve or enhance their fundamental rights. However, its success will largely rely on (1) the acknowledgment of the connected social and environmental harms and (2) the incorporation of a HRBA and the alignment with the SDGs into the design and implementation scheme to act as an alternative benchmark to legal definitions of crime in counteracting these harms. As Hunter notes, 'the rights-based approach brings perspective and expertise that holds the promise of setting

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<sup>35</sup>Pandey (2020).

<sup>36</sup>Milbank et al. (2018), p. 589.

<sup>37</sup>Ibid.

**Table 1** Significant synergies between REDD+ objectives and the SDGs

Relevant SDGs goals and targets	Synergies with REDD+
Goal 1: End poverty in all its forms everywhere	<p>1.1: Eradicate extreme poverty            1.2: Reduce at least by half the proportion living in poverty            1.4. Ensure all men and women have equal rights to economic resources, access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services</p>
Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture	<p>2.1 End hunger and ensure access to safe, nutritious, and sufficient food            2.4: Ensure sustainable food production systems and implement resilient agricultural practices</p>
Goal 5: Achieve gender equality and empower all women and girls	<p>5.a: Give women equal rights to economic resources, access to ownership, control over land and other forms of property, financial services, inheritance, and natural resources in accordance with national laws</p>
Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work	<p>8.1: Sustain per capita economic growth in accordance with national circumstances            8.4: Improve global resource efficiency in consumption and</p>

(continued)



**Table 1** (continued)

Relevant SDGs goals and targets		Synergies with REDD+
	production and decouple economic growth from environmental degradation	multiple benefits from forests, including economic development, was agreed in the Cancun Agreements and the Convention on Biological Diversity. REDD+ activities can help sustain economic growth through its support of small and medium enterprises by revitalising forest industries, improving the output of cultivated land, and developing new 'green industries'
Goal 10: Reduced inequalities	<p>10.1: Progressively achieve and sustain income growth of the bottom 40% of the population at a rate higher than the national average</p> <p>10.2: Empower and promote the social, economic, and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status</p> <p>10.3: Ensure equal opportunity and reduce inequalities of outcome</p>	Land tenure is a central feature of REDD+ readiness. REDD+ activities involve large areas of land often in countries where the statutory laws and customary norms that define rights are often poorly defined or weakly enforced. The Cancun Agreements request developing country parties to address land-tenure issues and adopt equitable land-tenure policy when developing and implementing their national strategies. The clarification and provision of equitable tenure rights can provide motivation and incentives to sustainably manage forest resources, strengthen accountability and contribute to empowerment and promotion of the social inclusion of vulnerable people, local communities, and Indigenous Peoples
Goal 12: Ensure sustainable consumption and production patterns	<p>12.2: Achieve the sustainable management and efficient use of natural resources</p> <p>12.a: Support developing countries to strengthen their scientific and technological capacity to move towards more sustainable patterns of consumption and production</p>	The importance of promoting maintenance and restoration of forest biodiversity is set out in Convention on Biological Diversity. REDD+ can play an important role towards responsible consumption and production by educating local communities on environmental conservation practices,

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**Table 1** (continued)

Relevant SDGs goals and targets		Synergies with REDD+
		provide training on improved production practices that prevent the destruction of natural resources, support communities to adopt viable alternatives to improve and diversify income and enhance access to technologies that can help reduce community impact on the environment. Furthermore, REDD+ can significantly increase the area of sustainably managed forests and support sustainable management and efficient use of natural resources
Goal 13: Take urgent action to combat climate change and its impacts	<p>13.1: Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters</p> <p>13.2: Integrate climate change measures into national policies, strategies, and planning</p> <p>13.3: Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning</p> <p>13.a: Implement UNFCCC commitments to mobilise finance for mitigation in developing countries</p> <p>13.b: Promote mechanisms for raising capacities for effective climate change-related planning and management</p>	REDD+ is recognised the Paris Agreement as a climate change mitigation action and the activity with the largest potential for reducing AFOLU emissions. REDD+ activities have become integral to countries National Determined Contributions and are increasingly promoted in national climate change policies and strategies. REDD+ involves the development of national strategies, mitigation actions, capacity building, and the establishment of national forest monitoring systems. Furthermore, international funding mechanisms have been established to help countries prepare for and implement REDD+
Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss	<p>15.1: Ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services</p> <p>15.2: Promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally</p>	A key aspect of REDD+ is the sustainable management of forests and the halting of deforestation. The Cancun Agreements consider broader environmental impacts and concerns and encourage countries to integrate forest-related activities that can contribute to mitigation into national and local planning and poverty reduction

(continued)

**Table 1** (continued)

Relevant SDGs goals and targets		Synergies with REDD+
	<p>15.4: Ensure the conservation of mountain ecosystems, including their biodiversity, to enhance their capacity to provide benefits that are essential for sustainable development</p> <p>15.5: Reduce the degradation of natural habitats</p> <p>15.9: Integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts</p> <p>15.a: Mobilise and significantly increase financial resources from all sources to conserve and sustainably use biodiversity and ecosystems</p> <p>15.b: Mobilise significant resources from all sources and at all levels to finance sustainable forest management and provide adequate incentives to developing countries to advance such management</p>	<p>strategies. REDD+ activities can contribute to the conservation and sustainable use of terrestrial and inland freshwater ecosystems, reduce habitat degradation and tackle biodiversity loss by prioritising areas for sustainable forest management interventions. Furthermore, international funding mechanisms have been established to help countries prepare for and implement REDD+. Results-based payments are meant to provide financial incentives to developing countries to reduce deforestation rates and adopt good forest stewardship by making forest conservation profitable for forest-dependent communities</p>
<p>Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice or all and build effective, accountable and inclusive institutions at all levels</p>	<p>16.6: Develop effective, accountable, and transparent institutions at all levels</p> <p>16.7: Ensure responsive, inclusive, participatory, and representative decision-making at all levels</p> <p>16.b: Promote and enforce non-discriminatory laws and policies for sustainable development</p>	<p>REDD+ policy interventions such as the development and adoption of equitable land-tenure policy can help ensure participatory and representative decision-making at all levels and encourage community-led groups to coordinate REDD+ activities. Furthermore, through its emphasis on institutional building (National Forest Monitoring Systems, Safeguard Information Systems, Monitoring, Reporting and Verification (MRV) etc.) REDD+ has the potential to reduce corruption and develop effective, accountable, and transparent institutions at all levels</p>
<p>Goal 17: Strengthen the means of implementation and</p>	<p>17.3: Mobilise additional financial resources for developing countries from multiple</p>	<p>Global partnerships and multi-stakeholder participation are a critical aspect of</p>

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**Table 1** (continued)

Relevant SDGs goals and targets		Synergies with REDD+
revitalize the global partnership for sustainable development	sources 17.16: Enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilise and share knowledge, expertise, technology, and financial resources, to support the achievement of the sustainable development goals in all countries, particularly developing countries	REDD+ both in terms of financial resources, technical assistance, capacity building and governance. REDD+ implementation and projects involve a wide range of stakeholders, including multilateral agencies, donors, governments, communities, the private sector, Indigenous Peoples and civil society. Acknowledging the importance of partnerships, the Interim REDD+ Partnership was set up in 2010 to share information and experiences, and to develop tools to ensure coherence and effectiveness

adaptation priorities in a way that meets the twin goals of reducing climate change impacts while progressively fulfilling economic, social, and cultural rights'.<sup>38</sup> To date, few African countries, the exceptions being Cote d'Ivoire, DRC, Ethiopia, Ghana, Republic of Congo, Tanzania, Uganda, and Zambia, have anchored their REDD+ strategies on a rights-based approach. To follow and incorporate a HRBA into REDD+ alongside Agenda 2030, REDD+ needs to address several critical challenges.

#### ***4.1 Political and Institutional Challenges***

Although REDD+ presents an opportunity to clarify and strengthen individual and communal land rights, tenure security and forest user rights as well as address inequality in land ownership in Africa, the protection of forest communities and Indigenous Peoples' substantive rights remains one of the biggest challenges for the programme. REDD+ risks exacerbating issues related to unsecured rights and pre-existing conflicts such as the dispossession of marginalised people, exclusion of forest dwellers from the planning and implementation, as well as corruption and land grabbing either by national elites or foreign investors.<sup>39</sup> To secure substantive rights, effective and equitable local property rights are needed as well as a review of current land tenure reforms in order for local communities to claim property or

<sup>38</sup>Hunter (2009), p. 33.

<sup>39</sup>NoREDDinAfricaNetwork (2015); Chomba (2016), p. 202.

collective tenure rights on the forest land and its resources. However, within the context of REDD+ in Africa, this is particularly difficult given that prevailing land tenure is characterised by various overlapping forms which simultaneously allocates various levels of legal land titles to the state, community, and the individual, making it incompatible with the conventional concept property rights. Furthermore, many African states have built political systems in which politics and land are heavily intertwined. Therefore, many governments are likely to find land reform an 'unacceptable trade-off between their political interests in land and the benefits of REDD+ for local communities'.<sup>40</sup> Although land remains the most important resource for development on the continent, with sub-Saharan Africa home to over 202 million hectares or around half the world's total holdings of useable uncultivated fertile land, only 10% of Africa's rural land is registered, with the remaining 90% undocumented and informally administered.<sup>41</sup> As Gizachew et al. note, 'in most African countries, the state claims legal title over land, especially forested-land, but often appears to have weak control over the forests themselves. On the other hand, a great majority of the rural population, including both individuals and communities, depends on forests that they do not legally own'.<sup>42</sup>

While African countries such as Tanzania have undertaken policy reforms to improve land governance and forest management practices over the last two decades,<sup>43</sup> landownership inequalities and land tenure security remain an issue. Although provisions for tenure rights remain vague, Cameroon, which has been engaged in developing REDD+ since 2005, has explicitly included community forestry, adopted as part of its 1994 decentralised forestry law 94/01, as one of its strategies in its REDD+ readiness preparations.<sup>44</sup> This involves 'reserving a community forest area, allocating the forest to the local community after the preparation of a simple management plan (SMP), and sustainably exploiting the forest resources for the benefit of the community on the basis of a management agreement'.<sup>45</sup> While community forestry has gone some way to addressing forest user rights, covering around 1364.203 ha or 9% of the national forest estate,<sup>46</sup> securing and enforcing nondiscretionary forest tenure rights remains an issue in Cameroon.<sup>47</sup> Moving away from top-down approaches by strengthening national and sub-national institutional capacity and performance as well as implementing a cross-sectoral and inter-ministerial approach to REDD+ through the coordination and cooperation among multiple government agencies is critical to developing truly inclusive forest management programmes and to enforcing forest laws. However, among African

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<sup>40</sup>Gizachew et al. (2017), p. 98.

<sup>41</sup>Byamugisha (2013), p. xv.

<sup>42</sup>Gizachew et al. (2017), p. 96.

<sup>43</sup>Jodoin (2017).

<sup>44</sup>Berhard and Minang (2019), p. 14.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

<sup>47</sup>Ibid.

countries, REDD+ planning and decision-making processes tend to be highly centralised and the capacity of different stakeholder groups to engage in governance processes is limited. In Kenya, preparation of national REDD+ strategies were coordinated by the Kenyan forestry sector.<sup>48</sup> The lack of consultation with other key sectors such as land and agriculture as well as sectoral competition for climate finance led to a negative vertical policy interplay which impeded the implementation of policies and participatory forest management.<sup>49</sup> Tanzania on the other hand has adopted a multilevel governance approach. To facilitate multilevel and multi-sector REDD+ processes, the National REDD Task Force (NRTF) was set up to oversee the implementation of technical and operational issues in relation to REDD+ readiness in 2009. This was later replaced by the National Climate Change Technical Committee (NCCTC) and National Climate Change Steering Committee (NCCSC).<sup>50</sup> Despite opening up, new opportunities for civil society to participate and influence the national REDD+ strategy, the process was still largely dominated by government representatives.<sup>51</sup>

## 4.2 *Social and Economic Challenges*

As REDD+ projects continue to gather momentum across Africa its success will largely depend on whether Indigenous Peoples and local communities' interests are integrated into policy deliberations and decision-making processes and if their participatory rights, including their right to give or withhold Free Prior Informed Consent (FPIC) as well as respect for customary land rights, are respected. Although the legal status of FPIC has been strengthened through the adoption of the UNDRIP in 2007 and the ILO Convention No. 169, its application has proved to be extremely difficult. Currently, only the Central African Republic (2010) has ratified ILO 169, however, only three of the 53 African states abstained from the UNDRIP vote, despite being under substantial pressure from the United States and Canada to join the anti-UNDRIP vote.<sup>52</sup> Furthermore, in 2009, the African Commission adopted a Resolution on Climate Change and Indigenous Peoples which called upon African states to pay particular attention to the vulnerability of indigenous communities to climate change. While some countries such as the Republic of Congo, the Central African Republic, and Cameroon have begun to introduce legal or policy frameworks dealing specifically with Indigenous Peoples and engage in dialogue over indigenous issues, Indigenous Peoples are still yet to be recognised in many African states and are often referred to as forest dependent, forest adjacent people or

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<sup>48</sup> Atela et al. (2019), p. 37.

<sup>49</sup> Ibid.

<sup>50</sup> Kijazi et al. (2017).

<sup>51</sup> Jodoin (2017).

<sup>52</sup> Crawhall (2011), p. 12.

marginalised groups. Although the implementation of FPIC remains a key challenge,<sup>53</sup> it is also an opportunity to enhance support for the recognition and compliance of indigenous rights and their incorporation into legal norms within Africa.

In the context of REDD+, FPIC is addressed indirectly though the text on safeguards in Annex 1 of the Cancun Agreements which notes that the General Assembly has adopted UNDRIP and requires REDD+ partner countries to promote and support ‘the knowledge and rights of Indigenous Peoples and members of local communities’ and ensure ‘the full and effective participation of relevant stakeholders, inter alia, Indigenous Peoples and local communities’.<sup>54</sup> In the absence of a legal land title, indigenous communities face an uphill struggle to assert FPIC and the run the risk that land could be taken away from them by governments to capture REDD+ revenues. Indigenous Peoples and local communities in Africa, regardless of gender, age or standing, must be informed, consulted and able participate in decision-making at all levels and phases of the REDD+ process free from coercion, bias, conditions, bribery, or rewards. However, increasing evidence demonstrates the lack of effective actions to ensure the rights of Indigenous Peoples in the planning and implementation of REDD+ projects as well as access to information and transparency about the processes and outcomes of REDD+.<sup>55</sup>

In their study of the TFCG/Mjumba REDD+ project in Lindi, Tanzania, Schebaa and Rakotonarivo reported that REDD+ project staff had used the issue of rainwater, whereby it was ‘emphasised to villagers that protecting trees could “drag and pull in clouds” and therefore attract rain’ to create a sense of urgency for farmers who were reliant on rain-fed agriculture to sell the project. Furthermore, false expectations over future carbon income and other development benefits such as tenure security, agricultural improvements and increased production were raised among the villagers and played a substantial role in incentivising the community to approve the project.<sup>56</sup> In instances when consultations have taken place, communities have complained that the consultation periods were too short, lasting as little as one hour as in the case of the Amerindian community of Chenapou in Guyana and preventing residents from actively participating and having their opinions heard.<sup>57</sup>

Although REDD+ can potentially provide new opportunities for generating income and enhance resilience of vulnerable livelihoods, ensuring equitable benefits and shared growth alongside reducing deforestation and degradation remains a key challenge. Despite recognition that it is important to include local communities and customary practices and values in efforts to sustainably manage forests, decentralise forest management rights and responsibilities and align the SDGs with the interests of local groups, the increase in the value of forests due to REDD+ has led to an increase in the number and size of forest reserves and national parks by

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<sup>53</sup> Raftopoulos (2016).

<sup>54</sup> UN-REDD (2012).

<sup>55</sup> NoREDDinAfricaNetwork (2015).

<sup>56</sup> Schebaa and Rakotonarivo (2016), p. 629.

<sup>57</sup> Airey and Krause (2017), p. 51.

governments.<sup>58</sup> This has caused a growing number of conflicts between conservation policies and communities' rights and concerns have been raised over equitable access to forests and how different communities and households can benefit equally from the financial payouts.<sup>59</sup> As the case of Kenya demonstrates, although the design of projects may be attentive to equity concerns, REDD+ can reinforce inequality because of existing land tenure regimes. Consequently, benefits tend to be concentrated in the hands of a few, namely ranch owners and private companies, while local people only benefit from the revenue allocated to their community and are negatively impacted by the restrictions imposed on access to land for cultivation, hunting, charcoal production, and firewood collection.<sup>60</sup>

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, whether carbon rights should be considered as a land interest separate from the land upon which the carbon is situated and how rights should be assigned in countries that allow private and community forest ownership as well as state ownership of forest resources. The issue of carbon rights 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.<sup>61</sup> 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.<sup>62</sup> Furthermore, only a few cap-and-trade systems cover the land sector with New Zealand's emission trading system being one.<sup>63</sup> Although the establishment of carbon rights is requirement to access results-based finance, few African states have yet addressed the controversial issue of carbon rights and there is little guidance on benefit sharing. In Kenya for example, carbon rights are linked to ownership of land.<sup>64</sup> While in the DRC, following the passing of a Homologation Decree in 2018, the national government has the primary right to all carbon units although rights can be transferred to private project developers through a Homologation Certificate. Mozambique has followed a similar approach to the DRC while Madagascar has gone further by proposing in a draft REDD+ decree that the government hold all the rights to the emission reductions and the right to commercialise such rights.<sup>65</sup> The lack of clarity on carbon rights has made REDD+ more susceptible to unfair practices such as carbon piracy, which has been compounded by the fact that land tenure systems tend to be unclear, contested or poorly enforced. Parties have entered and continue to enter into carbon rights agreements without a

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<sup>58</sup> Adrien et al. (2018), p. 251.

<sup>59</sup> Ibid.

<sup>60</sup> Chomba et al. (2016), p. 41.

<sup>61</sup> Karsenty et al. (2014), p. 20.

<sup>62</sup> Karsenty et al. (2014), p. 20.

<sup>63</sup> Streck (2020), p. 959.

<sup>64</sup> Chomba et al. (2016), p. 41.

<sup>65</sup> Streck (2020), p. 959.



legal framework or independent support in place to safeguard against the exploitation of those parties involved. Therefore, to ensure equitable and transparent sharing of benefits and prevent carbon contracts from being signed without guaranteeing and safeguarding fundamental rights, forest communities need to be established as legal owners of carbon credits generated from within their lands.

## 5 Conclusion

This chapter has highlighted concerns over the harmful impacts of REDD+ activities at a local level on the protection and promotion of indigenous and forest peoples' rights and welfare whose livelihoods, culture and way of life rely on forests. The insights of green criminology can be invaluable in framing such assessments and addressing the environmental and social harms connected to REDD+, the current legal duties and safeguards placed on African states and developing appropriate safeguards and incorporating procedural standards into the rhetoric of REDD+ in the future. To deal successfully with existing and emerging social and environmental harms related to REDD+, a regulatory approach that recognises all stakeholders and is intertwined with social and environmental justice and operationally engaged in the promotion of human and environmental rights is critical. Concerns about the social impact of REDD+ demonstrate the urgent need to incorporate HRBA into its design and implementation and strengthen the programmes alignment with the SDGs with which it shares clear synergies. While human rights are socially constructed, they are codified legal norms and relatively universal in acceptance and widely endorsed. Therefore, when thinking of environmental harm, human rights can act as an alternative benchmark to legal definitions of crime, offering both an important means for analysing REDD+ and tools for acting on that analysis. As human rights move 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. Therefore, adopting such an approach is critical to identifying the harms of REDD+ and developing effective policies and measures to prevent such harms, measuring human rights standards and the gap between those standards and the reality on the ground for REDD+ to contribute to achieving the SDGs and fulfilling human rights, ensuring the participation of marginalised groups, fostering strategies that empower rights-holders as well as holding systems and duty-bearers accountable.

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