

Agency in international climate negotiations: the case of indigenous peoples and avoided deforestation

Heike Schroeder

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Abstract This article examines the agency of indigenous peoples in designing a mechanism for reducing emissions from deforestation and forest degradation (REDD) under the emerging post-2012 agreement to the United Nations Framework Convention on Climate Change. It investigates whether indigenous peoples have agency in international negotiations and specifically the REDD design process and if so, how they have obtained it. Agency refers to the ability of actors to prescribe behaviour and to substantively participate in and/or set their own rules related to the interactions between humans and their natural environment. The aim of this study is to gain understanding of what role non-nation state actors, particularly indigenous peoples, play in shaping the REDD design process under the climate convention and what is shaping their agency. A special emphasis is placed on indigenous peoples as they may be highly vulnerable to the impacts from both climate change and certain policy responses. The article finds that, through REDD, indigenous peoples and forest community alliances are emerging in the climate regime but their agency in designing a mechanism on forest protection in a post-2012 climate regime remains indirect and weak. They are being consulted and invited to provide input, but they are not able to directly participate and ensure that their views and concerns are reflected in the outcome on REDD.

Keywords Agency · Avoided deforestation · Earth system governance · Indigenous peoples · REDD · United Nations Framework Convention on Climate Change (UNFCCC)

Abbreviations

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| CDM | Clean development mechanism |
| LULUCF | Land use, land use change and forestry |
| NGO | Non-governmental organization |
| REDD | Reducing emissions from deforestation and forest degradation |

H. Schroeder (✉)

Oxford Centre for Tropical Forests and Tyndall Centre for Climate Change Research Oxford,
Environmental Change Institute, School of Geography and the Environment, University of Oxford,
South Parks Road, Oxford OX1 3QY, UK
e-mail: heike.schroeder@ouce.ox.ac.uk

1 Introduction

Avoiding deforestation has become recognized as an important keystone of a post-2012 climate agreement given that deforestation accounts for around 12% (Van der Werf et al. 2009) to 17% (Eliasch 2008) of global greenhouse gas emissions. This measure received attention in international climate policy circles in response to the 2006 Stern Review, which stressed the cost-effectiveness of reducing emissions from avoided deforestation (Stern 2006). The approach which has emerged over the past few years is referred to as Reducing Emissions from Deforestation and Forest Degradation (REDD). It has come to not only recognize forest carbon stocks but aims at incentivizing the roles of conservation, sustainable forest management and enhancement of carbon stocks (REDD+).¹ The emerging approach to REDD is that tropical forest nations are to be financially compensated for voluntarily keeping their forests intact. In this way, their lost revenue from not developing the land would be offset. To what extent this would occur through funding or through markets remains an open question for now.

A major complication with REDD is that forests are not uninhabited; some estimates suggest that between 350 million (World Resources Institute 2002) and 1.2 billion (World Wide Fund for Nature 2002, 2) people live in forests. These forest communities and indigenous peoples are generally either economically poor or live outside the reach of global financial and market structures (Okereke and Dooley 2010). They are now heavily implicated in REDD; but they have to date not been involved much in the climate convention either directly or indirectly through domestic participatory processes.

It should be noted here that there is no uniform definition of what constitutes indigenous peoples, especially because any tribe can self-identify as indigenous (United Nations 2004). By and large, indigenous peoples have “a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories”. Moreover, they “are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system” (United Nations 2004).

While focusing on the more ‘privileged’ category of indigenous peoples given their special status under international law, this may exclude a plethora of minorities and poor people living off forest products and services who are just as vulnerable to the effects of climate change as they are to certain policy responses. For example, informal or customary systems of forest tenure lend themselves to be overlooked as other entities lay claim to the forest land to receive payments for forest protection under REDD (Cotula and Mayers 2009; Hatcher and Bailey 2009; Fitzpatrick 2005).

The unresolved governance and methodological issues—leakage, permanence, baseline setting and additionality—were the reason why the Kyoto Protocol recognized only afforestation and reforestation activities as part of the Clean Development Mechanism (CDM) that was finalized with the adoption of the Marrakech Accords in 2001. Because the certification procedures under the CDM are complex and transaction costs are high, projects with relatively low profit returns and high uncertainty are often unfeasible (Seymour 2008). As a result, only eight of over 2000 registered CDM projects as of 1 October 2009 were afforestation or reforestation projects (IGES 2009). This makes it quite clear that the forestry sector has so far only marginally been integrated into the international climate change

¹ For simplicity, REDD and REDD+ are used interchangeably.

regime and that a market-based approach to avoiding deforestation may in the end not be economically feasible given the high level of uncertainty.

A major difficulty in addressing deforestation is that the drivers of deforestation vary widely across countries, regions and localities. The economic importance of activities leading to deforestation varies as well between the local, regional and national levels.

The drivers of deforestation also involve and impact many different actors (for instance international agencies and NGOs, national governments, timber consumers and local communities) and sectors (for instance forestry, agriculture, energy and transport), all operating at different levels of governance (local, regional, national and international). The forest products and services are multiple and varied. For example, the products and services which indigenous communities derive from forests include food, medicine and fuel wood; forests provide a natural insurance to the poor and enhance their resilience to the effects from climate change. Deforestation endangers their reliance on forests as safety nets. This is a compelling reason why designing REDD should not just be a top-down endeavour with limited involvement of local stakeholders such as forest and indigenous communities (Skutsch and Van Laake 2008).

The aim of this article is to examine the agency of indigenous peoples in designing the REDD mechanism under the emerging post-2012 agreement under the climate convention. Do indigenous peoples have agency in international negotiations and specifically the REDD design process and if so, how have they obtained it? The article is organized as follows: It begins by outlining the concept of agency as defined by the Earth System Governance Project and how it relates to structure, state and non-state actors and multilevel governance (Biermann et al. 2009; Biermann et al. 2010) as the theoretical framework of this study, drawing up a typology of different degrees of influence. After examining the link between REDD and indigenous peoples, the article discusses the participation, status and impact of indigenous peoples in the climate convention with reference to agency, structure, non-state actors and multilevel governance. It ends by drawing some conclusions on the nature of agency of indigenous peoples in the context of REDD.

2 Situating the concept of agency

It is well documented that the transboundary nature of global environmental change challenges the capacity of conventional state structures to mitigate and adapt to these changes (this section draws on, and further develops, the Agency chapter in Biermann et al. 2009; see also for earlier work Wapner 1995; Lipschutz and Conca 1993; Rosenau and Czempiel 1992). Whether nation states can fulfil their core functions under the pressures of earth system transformation and to what extent non-state actors are responding to new governance demands remain open questions (Biermann and Dingwerth 2004; Biermann 2007; Marauhn 2007).

The activities of non-nation-state actors in earth system governance are not limited to participation in decision-making by building coalitions and constituencies, disseminating their positions, lobbying or advising national governments in the creation and implementation of rules. Rather, these actors actively shape policy outcomes and/or set their own rules related to the interactions between humans and their natural environment. As a result, a reconfiguration of authority in the realm of earth system governance is taking shape, making it necessary to distinguish between actors and agents. Here, actors refer to the individuals, organizations and networks that participate in decision-making related to the earth system, but without directly shaping outcomes. An agent of earth system governance,

on the other hand, is an actor who possesses the ability to prescribe behaviour and to obtain the consent of the governed; an agent is an authoritative actor. Authority here is understood as the legitimacy and capacity to exercise power. Legitimacy is conferred through social consent, given formally or informally. Agents may contribute to the purposeful steering of constituents either indirectly (by influencing the decisions of other actors) or directly (by making steering decisions). They are thus a constituent part of the cumulative steering effort towards preventing, mitigating or adapting to earth system transformation (Biermann et al. 2009, 2010).

By what means then do actors become authoritative? What is the basis of authority, especially when it occurs outside the public realm (authority does not have to be based solely on the apparatus of the state)? How can we differentiate different types of agency or authority? Much of the social science literature on the question of authority emphasizes the relational nature of authority in that an actor is given authority to act on behalf of another. Authority is also derived through social interactions in which the fundamental understanding of what it means to be an agent is constructed and subject to change over time and across contexts (Bourdieu 1977; Fearon and Wendt 2002).

2.1 Structure and agency

Social scientists have long debated whether social outcomes are primarily a product of individual actions by agents or broader institutional structures (Archer 2003; Dessler 1989; Giddens 1984; Wendt 1999). For many scholars, structure and agency are interdependent as agents both constitute and are constituted by structure. The norms of participation, participatory processes of decision-making and stakeholder participation practices that are prevalent in a specific context will, as the structure, frame the ability of the various actors to exercise agency. For example, the specific norms prevalent in a specific context would give certain actors authority that they would not have in their absence.

This is also evident in the case of indigenous peoples in multilateral environmental agreements. The prevailing norms and practices of participation for indigenous peoples vary across multilateral environmental agreements, shaping the varied channels of influence at their disposal. For example, the Convention on Biological Diversity and the UN Convention to Combat Desertification allow indigenous peoples (and other 'major groups' as identified in Agenda 21) comment on, to draft text in negotiations and to participate in contact group meetings and friends of the chair meetings at the discretion of the chair when issues relating to them are discussed, while this is not currently the case in the climate convention (Griffiths and Martone 2009, 9). Countries that have signed the Rio Declaration with its Principle 10 on public participation or ratified the Aarhus Convention have committed themselves to enabling public participation and transparency in environmental policy-making, but not all countries under the climate convention have. The human rights of indigenous peoples are recognized by the United Nations Declaration on the Rights of Indigenous Peoples, particularly their right to free, prior and informed consent (Lightfoot 2008), which has implications for their participatory rights under the climate convention and REDD. Section 4 below will explore in more detail what the implications of these norms and principles are for indigenous peoples' involvement in the REDD design process.

2.2 State and non-state agents in earth system governance

What are the roles of state and non-state agents in earth system governance and how are they shaped by the continual reconfiguration of authority (Pierre and Peters 2000;

Sassen 1996; Sending and Neumann 2006; Marauhn 2007)? Some scholars argue that the state remains a central, if not the central, actor (for instance Biermann and Dingwerth 2004; Barry and Eckersley 2005; Raustiala 1997), characterizing the response from states to the challenge of earth system transformation as ‘greening of sovereignty’ (Litfin 1994) and ‘post-sovereign’ environmental governance where states are ‘first among equals’ among state and non-state actors (Karkainen 2004). The increased participation of non-state actors in earth system governance has led others to question the centrality of the state (for instance Mathews 1997). Prominent examples of private governance are the Forest Stewardship Council and the Marine Stewardship Council, both created by major corporations and environmental advocacy groups. They have negotiated their own standards without any direct involvement of governments (Cashore 2002; Cashore et al. 2007; Pattberg 2005). A third body of literature notes a move away from a paradigm of competition between state and non-state agents to a new understanding of the relationship between them. This new relationship is based on an understanding of power not as zero-sum but as multiple and relational, and the state as not being unitary but consisting of multiple centres of political activity (Okereke et al. 2009; Lipschutz 2005; Jagers and Striiple 2003; Risse 2002). Here private actors collaborate with governments to establish norms, for example as quasi-implementing agencies, for development assistance programmes administered by the World Bank, bilateral agencies or national governments (Biermann and Pattberg 2008).

The relationship of states with their indigenous peoples in the REDD design negotiations exemplifies the continuing dominance of the state. While it may be difficult for national governments to engage with remote communities in domestic decision-making, indigenous peoples are marginalized. The exclusion of indigenous peoples from domestic and international decision-making processes has driven their engagement through transnational advocacy coalitions (Dombrowski 2010); such as on persistent organic pollutants in the 1990s (Koivurova and Heinämäki 2005). Indigenous peoples’ representatives have had more success organizing themselves transnationally and speaking to international and civil society audiences than lobbying their national governments. Section 4 below will explore this more fully.

2.3 Agency and scale in the multilevel governance context

Agency in the realm of earth system governance can only be fully considered in a multilevel governance context, given that global environmental problems do not occur primarily in national spaces. When a problem is global, it will manifest nationally, regionally and locally. Engagement at the local level is exemplified by the plethora of parallel initiatives, transnational networks and private–public partnerships that have emerged, many of which are governing earth system transformation in their own right (Bulkeley et al. 2009; Betsill and Bulkeley 2006; Selin and VanDeveer 2005; Biermann et al. 2009). Moreover, at the international level, nation states and non-state actors are working side by side in many international negotiating processes (Betsill and Corell 2008; Carpenter 2001). Policy response to global environmental problems is therefore most effective if coordinated across levels of governance, making multilevel governance a central concern when focusing on the human–environment interface (Hooghe and Marks 2003; Betsill and Bulkeley 2006; Adger 2006; Cash et al. 2006; Conca 2005).

Scaling a problem up or down the governance scale is a critical instrument for framing environmental problems as it places them in a specific institutional and socio-economic context. The agency of actors is often bound to a specific context and not necessarily

transferable across levels of governance. For example, transnational actors are not accountable to any party at the international level (Gupta 2008, 251), nor do they possess authority in decision-making under the climate convention. The politics of scale or forum shopping—choosing the most beneficial level of governance and sector—is a way in which agents maximize power and influence (Gupta 2008; Soyez 2000; Schroeder et al. 2008).

This is very much the case for transnational indigenous peoples' networks, which have gained international recognition through organizing transnationally. However, the framework within which deforestation will be governed globally is negotiated in a forum that does not give agency to actors other than national governments. Section 4 will pick up on this tension in detail. Beforehand, a typology of agency is introduced below.

2.4 Typology of agency

As highlighted before, agency may arise from the purposeful steering by constituents either directly by making steering decisions or indirectly by influencing the decisions of other actors. Constituents can be involved in policy-making by (1) being informed of facts and outcomes; (2) being consulted and invited to provide input or feedback; (3) being involved as a junior partner and ensured that views and concerns are reflected in the outcomes; (4) being invited to collaborate on equal footing; and (5) being empowered and conferred decision-making authority.² Agency here is lacking in type 1, weak and indirect in type 2, strong but indirect in type 3, weak but direct in type 4 and strong and direct in type 5.

Next, Section 3 examines the nature of potential implications of REDD for indigenous and other forest communities, before turning to an analysis of agency of indigenous peoples in the REDD design process.

3 The link between REDD and indigenous peoples

Because of the multilevel governance nature of REDD and the nature of relationship between state and non-state actors in tropical forest nations, REDD comes with potential threats and opportunities. This is especially the case if REDD is broadened from focusing narrowly on carbon stocks to including conservation, forest management and enhancement of forest carbon stock activities, which is very likely at this stage.

The risks from REDD for indigenous peoples that are most often pointed out are basically experiences from early avoided deforestation and REDD pilot projects, most notably the pilot project on avoided deforestation in the Noel Kempff National Park in Bolivia launched in 1997. What has been learned from these early experiences is that payments for ecosystem services reinforce state and private sector control over forests as benefits are captured largely by state agencies, local governments and international conservation NGOs and not indigenous and forest communities. Design and implementation of such projects are top-down, limit stakeholder participation and exclude indigenous peoples from the benefits arising from such projects (Griffiths 2008). Policies impose restrictions on them on their hunting, fishing and shifting cultivation practices—on which they depend—in protected forest areas (Griffiths 2008; Asquith et al. 2002; Boyd 2002). They become locked into unfavourable legal obligations to carbon finance or forestry companies. In the worst case, they are expelled from their traditional lands (Barnsley 2009).

² Developed from http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf.

While there are serious risks from repeating such experiences at large scale, there may also be potential benefits from REDD for indigenous peoples and forest communities if these pitfalls are avoided. If community participation and the provision of local benefits for indigenous and forest communities are generally adopted as standard practice and implemented by REDD intermediaries such as the World Bank and the United Nations REDD Programme, then forest peoples' rights would be formally safeguarded beyond current levels. In addition, their traditional knowledge and practices around living sustainably in the forest could provide valuable models for sustainable forest practice elsewhere where forests are unsustainably managed (Seymour 2008).

Safeguards in the REDD mechanism therefore play a crucial role. They include democratic, decentralized and transparent forest governance structures and support mechanisms, rights and participation of indigenous peoples and local communities in REDD implementation and conservation of biological diversity and enhancement of ecosystem services. It is also proposed that indigenous and local communities could be compensated not only through financial payments for their conservation efforts but receive legal access rights to information, participation in decision-making and justice (Seymour 2008; Okereke and Dooley 2010).

Indigenous peoples are also advocating that their traditional knowledge could be of immense use to developing effective adaptation and mitigation strategies for climate change. In the words of Patricia Cochran of the Inuit Circumpolar Council (cited in Mihlar 2008, 4):

'We have the knowledge and experience to survive in any kind of experience and that is the kind of knowledge that it is our responsibility to bring to the rest of the world. Indigenous people must have a place at the table where decisions are being taken, where policies that severely and critically impact our people, are being made. It is not enough to have an advisory group; we need to be part of the decision making process, part of an agreement that allows indigenous representation in that decision making'.

The next section examines the role of indigenous peoples in the climate convention process, the structure of the negotiations, the state–indigenous peoples relationship and their role in the multilevel REDD context. It does so by means of analysing climate convention documents, NGO reports and other Internet material. The material presented is exemplary and indicative, rather than being conclusive of the exact role of indigenous peoples in designing REDD, and presents a snapshot in a highly dynamic process and ever-changing landscape of actor influence.

4 The role of indigenous peoples in the climate convention and REDD design process

In the climate convention, as well as other international environmental negotiations, states are the authoritative actors, acting on behalf of their domestic constituents. It is only indirectly that these constituents are represented internationally. Depending on the level of inclusiveness and transparency of the political system, a country's negotiating position will reflect narrower or broader interests of the multitude of domestic stakeholders. Negotiators have a strong interest in defending the national negotiating position because the international agreement has to be ratified domestically; international negotiations are a 'two-level game' (Putnam 1988; see also Schroeder 2001). In practice, domestic stakeholders tend to

have unequal influence in the national position forming process, depending to some extent on their agency at the national level. For example, large business lobbies tend to have more agency than indigenous communities do.

It is up to the national government to decide who is included in the national delegation. While mostly consisting of civil servants, in theory other stakeholders can be members of the national delegation as well. There are also no rules regarding the size of the delegation, which tends to be determined by the economic wealth of the country, the level of importance it gives the issue of climate change and the geographical location of the conference. Countries with larger delegations have disproportionately more negotiating power as they are able to cover more of the negotiations and proceedings taking place simultaneously. They are also able to avoid negotiation fatigue by replacing negotiators during sessions running into the night as is typical for the final negotiating stages in the climate convention process. Below, I examine the participation, status and impact of indigenous peoples as non-state actors in the climate convention to determine their level of agency in this process.

4.1 Participation in the climate convention

The engagement of non-state actors in the development of the climate regime, and other multilateral environmental regimes, is growing although non-state actors have limited or no formal role in the negotiations (Chagos 2009; Lovell 2007; Paoletto and Schroeder 1997). The participation structure is as follows. Under the climate convention and other multilateral environmental agreements, non-state actors can apply for 'observer status', allowing them to participate in a limited form in the climate convention process. Over the years, civil society representatives dramatically increased in numbers, oftentimes outnumbering national delegates (Schroeder and Lovell 2009). Civil society delegates are generally allowed into formal sessions of the conference of the parties to the climate convention and its subsidiary bodies, but are excluded from making interventions other than when specifically invited to do so, as well as from contact group meetings, closed meetings and press briefings (other than their own) (Schroeder and Lovell 2009).

One important way of engaging in the climate convention process is through so-called constituencies. Constituencies are loose groups of like-minded organizations, somewhat similar in nature to the negotiating coalitions that have been formed by countries (Depledge 2005, 214–216). The secretariat interacts with constituency chairs or focal points. In 2001, at the seventh conference of the parties, indigenous peoples' organizations formed their own constituency, the Indigenous Peoples Organization. Other constituencies include the Business and Industry Non-governmental Organizations, the Environmental Non-governmental Organizations, both formed in 1992, the Local Government and Municipal Authorities formed in 1995, the Research and Independent Non-governmental Organizations formed in 2003 and the Trade Union Non-governmental Organizations formed in 2008. The constituency focal points facilitate the exchange of information between the secretariat and the admitted observer organizations. Some organizations such as faith groups and parliamentarians are currently not organized into constituencies. Participation in a particular constituency is unofficial and voluntary.³ Constituencies may hold their own meetings, in which they exchange views and information or develop strategies for exerting influence. Each constituency is allocated time to make formal

³ http://unfccc.int/files/parties_and_observers/ngo/application/pdf/const.pdf (accessed September 2009).

interventions and statements in the plenaries of the various climate convention bodies. Finally, they can provide formal input into the negotiating process through formal submission of their positions to the secretariat.⁴ For example, formal input was sought by the climate convention in early 2009 regarding “Views on issues relating to indigenous people and local communities for the development and application of methodologies”.

Observer organizations can also hold side events, which are a fertile ground for new ideas and approaches to emerge and diffuse into the formal process. Organized by the climate convention secretariat, this side activity has become increasingly popular with significant numbers of side events taking place alongside the official sessions and participation in parallel events. Side events are covered daily, as are the official sessions, by the Earth Negotiations Bulletin, a service provided by the International Institute of Sustainable Development. A survey on side events at the thirteenth and fourteenth conferences of the parties (Hjerpe et al. 2008; Hjerpe and Linnér 2010) finds that about a quarter of side event attendees are negotiators or government representatives, many of them being from the Group of 77/China. This gives some indication that the side events are not just a parallel world with little interaction between it and the formal sessions but that they have an important capacity-building function as well. To give an indication of the topicality of indigenous peoples, for the fourteenth (Poznan) and fifteenth (Copenhagen) conferences of the parties, of 200 scheduled side events at the fifteenth conference of the parties, six dealt with indigenous peoples, while, in comparison, 17 and eight dealt with business/industry and cities/municipalities, respectively. For the fourteenth conference of the parties, the numbers were four for indigenous, 15 for business/industry and two for cities and municipalities out of 181 side events.⁵

In addition to side events, so-called parallel events are now taking place outside the official conference venue, which require registration with the event organizers, but not accreditation with the climate convention. Individuals who are not part of official or observer delegations may sign up individually for these parallel events. An Indigenous Peoples Day was held at the fifteenth conference of the parties in Copenhagen. Presenters and panellists discussed human rights and the climate convention, tensions between traditional knowledge and Western science, and local adaptation and mitigation strategies.⁶ Other parallel events include Forest Day, Development and Climate Days, Business Day, Local Government Sessions and Oceans Day.

There are also informal ways of influencing the process. They include lobbying delegates, disseminating information material and talking to the media. Another way a non-state actor may influence the process is, of course, by being on a national delegation. A search of the provisional list of participants in the fifteenth conference of the parties revealed one entry of an indigenous peoples’ representative for Guyana and one from the Tebtebba Foundation, an indigenous peoples’ alliance for advocacy, policy research and education, for the Philippines (UNFCCC 2009a).

4.2 Status of indigenous peoples under the United Nations

Those especially living in the tropics, the Arctic and other fragile ecosystems are exposed to a high level of vulnerability resulting from climate change, given their close connection

⁴ See: http://unfccc.int/parties_observers/ngo/submissions/items/3689.php (accessed September 2009) for examples of recent submissions.

⁵ <http://regserver.unfccc.int/seors/reports/archive.html> (accessed May 2010).

⁶ <http://www.iwgia.org/sw39137.asp> (accessed April 2010).

with nature. Their situation is aggravated by their marginalization and the lack of recognition they receive domestically in many (but not all) countries as being particularly vulnerable, not only to the effects of climate change, but also to international policy responses that disregard their vulnerability. While small-island states received mention in the climate convention for their vulnerability to sea-level rise, Inuit people, for example, did not. The state-centric, top-down architecture of the climate regime is more responsive to the vulnerability of entire states than to particular groups within states. Consequently, indigenous peoples are not mentioned anywhere in the climate convention or in its Kyoto Protocol.

While states such as the Maldives and Tuvalu can formally represent their interests in the negotiations, indigenous and local communities cannot. They need to be represented through their country delegations, and if they are not, their only way to influence the negotiations directly, or public opinion indirectly, is through informal channels. As mentioned earlier, this might be through the Indigenous Peoples constituency, through submission of their position to the climate convention secretariat, through dissemination of written material or through influential international NGOs lobbying on their behalf.

By comparison, the Convention on Biological Diversity specifically calls on states to “respect, preserve and maintain traditional knowledge and practices on indigenous and local communities” (Article 8(j)). The conference of the parties to the biodiversity convention has also set up a working group to implement this article, through which representatives of indigenous peoples have a significant role in most meetings under the biodiversity convention. Under Article 8(j), they can co-chair sessions and propose text if at least one party endorses it. There is also a voluntary fund that has been set up by the conference of the parties to the biodiversity convention to help finance indigenous peoples’ participation in the convention (Mihlar 2008). At the International Day of the World’s Indigenous Peoples, the climate convention secretariat has highlighted the emerging relationship between indigenous peoples’ issues and various UN processes (UNFCCC 2004, Barnsley 2009); such as that “indigenous peoples have an important role to play in creating a better understanding of the complex issues relating to climate change and helping to identify global priorities” (UNFCCC 2006). However, this has not directly translated into any stronger input from indigenous peoples into the climate convention.

While the REDD design process has not changed the marginalization of indigenous peoples internationally or domestically in many countries, they have benefitted from the formation of a network of transnational advocacy coalitions in the 1980s and 1990s, such as the Amazon Alliance and Coordinating Body of Indigenous Organizations of the Amazon Basin, and recognition within the United Nations by formation of the United Nations Working Group on Indigenous Populations. The transnational movement emerged from the symbolic and cultural power of the indigenous way of life and the sympathy and support of international audiences and NGOs to their cause in view of the destructive effects on them from globalization (Pieck 2006; Morgan 2007). These groups are now actively engaging in the REDD process in ways outlined previously. Whilst not affecting state policy in their own right, their organization in larger transnational alliances is giving them greater leverage internationally and on their national governments from outside, which Keck and Sikkink (1999) have termed the ‘boomerang pattern’. Local actors acquire national agency by way of acquiring international agency.

4.3 Impact by indigenous peoples’ activism

Current discussions about REDD are placing a greater focus on indigenous peoples’ rights than other climate mitigation options have done in the past, such as the CDM negotiations

on including land use, land use change and forestry (LULUCF) activities up until 2001 (Fogel 2004, 103). Indigenous peoples “have indeed scored some achievements in garnering a broad support from various constituencies, from government to civil society organizations and social movements” (Martone 2010). To this end, the decision on REDD adopted at the thirteenth conference of the parties in Bali (Decision 2/CP.13) recognizes in the preamble that “the needs of local and indigenous communities should be addressed when action is taken” on REDD. This, albeit non-binding statement, is an example of how the evolving REDD process is building recognition of indigenous peoples’ rights and needs (Barnsley 2009).

There is no mention of indigenous peoples’ rights and safeguards on REDD in the 2009 Copenhagen Accord. The Accord supports financial contributions to REDD projects, but it remains uncertain where the money would come from. It is also unclear at this stage what language would be included in a new international agreement post-2012. The draft conclusions on REDD by the Subsidiary Working Group on Scientific and Technical Advice (UNFCCC 2009b) recognize “the need for full and effective engagement of indigenous peoples and local communities in, and the potential contribution of their knowledge to, monitoring and reporting of activities” and “encourage[s], as appropriate, the development of guidance for effective engagement of indigenous peoples and local communities in monitoring and reporting”. At one stage in the negotiations at the fifteenth conference of the parties (before it was taken out again), the draft REDD text included the following reference: “respect for the knowledge and rights of indigenous peoples and members of the local communities, noting the General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples and taking into account relevant international obligations, national circumstances and legislation” (Mother Earth Journal 2009; Martone 2010).

Following the fourteenth conference of the parties, the climate convention secretariat requested parties and observers to submit their views on how to address issues relating to indigenous people and local communities for the development and application of methodologies in a post-2012 agreement. The climate convention received five submissions, from the European Union, Ecuador, Guatemala, Panama and Panama and Costa Rica. The European Union’s submission noted that “the effective implementation of the provisions on REDD in a future climate agreement will depend on the involvement and cooperation of local communities and indigenous peoples” (UNFCCC 2009, cited in Lawlor and Huberman 2009, 278). Others expressed similar sentiment around the need to take into account in the discussions of any topic regarding REDD the rights, visions and experiences of indigenous peoples and local communities.

The plural ‘s’ in indigenous peoples has been subject to debate after it was dropped in a Subsidiary Working Group on Scientific and Technical Advice document relating to REDD (UNFCCC 2008) at the fourteenth conference of the parties. After an outcry of indigenous peoples’ representatives and international environmental NGOs in response, it made its way back into the negotiating document by the fifteenth conference of the parties, albeit in brackets meaning that these references are text options for now (UNFCCC 2009c). The significance of the plural ‘s’ is that it acknowledges indigenous peoples’ status as peoples who share collective rights and responsibilities under the United Nations General Assembly resolution on the United Nations Declaration on the Rights of Indigenous Peoples. These collective rights are legally and normatively distinct from individual rights as they reflect different social, custodial and kinship obligations of indigenous peoples (FOE 2009). The declaration was adopted in 2007 with 147 votes in favour and 4 against—Canada, New Zealand, Australia and the United States. (Canada, New Zealand and

Australia reversed their position and signed it in 2009.) The declaration recognizes the right of indigenous peoples to free, prior and informed consent, meaning that indigenous peoples should give their consent to any development projects that affect their traditional lands, that consent should be freely given prior to implementation of projects and that they should be fully informed of the effects on people and their lands (Humphreys 2008, 440). It specifically emphasizes the requirement that parties grant legal title to indigenous peoples' customary lands and that "indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation" (Article (10)) (Lawlor and Huberman 2009; see also Colchester and Ferrari 2007). According to Humphreys (2008, 440), "the tension between the concept of national sovereignty, which privileges the state, and free, prior and informed consent, which favours indigenous peoples and local communities, is based on two different although not necessarily irreconcilable, proprietorial claims and is one of the key political conflict lines that will inform AD [avoided deforestation] projects and the distribution of benefits from them".

Building on these steps towards recognition of their rights, indigenous peoples, in statements to the climate convention and elsewhere, are calling for mechanisms to enable them to effectively participate in the negotiations to ensure that their rights and priorities are addressed. They are requesting access to the Adaptation Fund under the climate convention to help them cope with the impacts from climate change (Griffiths 2008). They are calling for the creation of an Expert Group on Indigenous Peoples and Climate Change under the conference of the parties with indigenous expert members and the full and effective participation of indigenous peoples. They are also asking for the creation of a voluntary fund for enabling indigenous peoples to participate in climate convention negotiations. Generally, they are seeking the recognition and action by the conference of the parties to reduce adverse impacts on them from climate change and that decision-makers exercise mindfulness regarding adverse effects from mitigation and adaptation actions (such as carbon trading, agro fuels and REDD) on their livelihoods (IFIPCC 2007; Mihlar 2008). In sum, indigenous peoples have indirect and weak agency and fit into type 2, being consulted and invited to provide input or feedback, but are seeking direct, if weak, agency through being involved as a junior partner and having their views and concerns reflected in the outcome on REDD (type 3).

5 Conclusion

The climate convention process is shifting towards greater stakeholder participation at the conferences of the parties, not through their participation in the formal negotiations, but through increased engagement of constituencies, informal interaction among observer and party delegates, dissemination of information in exhibits and trade fairs and exchange of ideas and experiences in side events and parallel events. Observer organizations also now submit proposals and positions, such as on questions related to indigenous peoples and REDD.

Indigenous peoples have been moderately active in these venues relative to business, NGO or local government constituencies. Their participation is constrained by a weaker legal standing, lack of support for their participation by their national governments and lack of resources and capacity of engagement in these types of events. Intergovernmental negotiations are also a more profoundly different social space for indigenous peoples than

they are for industrial lobbies. Yet, indigenous peoples have raised attention for their cause at the international climate negotiations, particularly on the issue of REDD. The transnational advocacy coalitions, formed in the 1980s and 1990s in response to other environmental concerns, are now engaging on the issue of REDD in the climate convention process. They have also benefited from support by international NGOs and participated in transnational stakeholder dialogues on REDD.

Although national governments in theory represent indigenous peoples as their constituents, this has not often been the case in practice. The interests of the powerful elite (for instance industry) are generally favoured over those of the poor (indigenous peoples in this case). It is also difficult for national leaders to communicate and engage with geographically remote communities. Because indigenous peoples are often marginalized domestically, they have cultivated practices of bypassing their national government, building advocacy and demanding participation to ensure their rights are safeguarded. This raises an important question of authority of the state in that some constituencies do not see themselves represented by their national government and therefore do not legitimate them to 'act on their behalf'. Rather, they organize transnationally and seek to derive their agency in the process in indirect ways.

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