



UN Special Rapporteur on human rights and the environment

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Contributions for the upcoming thematic report on biodiversity and human rights

Rainforest Foundation Norway has for the past 27 years supported indigenous and other forest communities in the world's rainforest regions to secure their rights to land and livelihood, in order to protect forests. Our experience shows us that that the peoples who over generations have developed their cultures and societies in interaction with the highly complex yet vulnerable rainforest ecosystems, are best placed to protect the forests. But when conflicts arise over the use (or protection) of the rainforest's resources, the rights of forest dependent communities are often not respected.

1. Please provide good practices in the adoption of biodiversity-related legislation, policies and programmes that incorporate human rights obligations.

Brazil has several relevant national laws and regulations that both promote biodiversity and human rights. One example is the framework regarding management of indigenous territories, the so-called PNGATI policy¹, which has as its objective to guarantee and promote the protection, recuperation, conservation and sustainable use of the natural resources in indigenous territories, securing the integrity of the indigenous patrimony, bettering quality of life and the conditions for physical and cultural reproduction of indigenous peoples, while respecting their sociocultural autonomy.

The principal actions under the PNGATI are the development and implementation of land- and environmental management-plans, (PGTAs). These are instruments providing planning for management of indigenous territories; promoting indigenous participation in the socioenvironmental public policies; articulating with different government levels to ensure good management of indigenous territories in the interface of other forms of protected areas. Such plans are now under development in many indigenous territories. The implementation of these will be monitored on a national level by a technical committee.

¹ PNGATI: Política Nacional de Gestão Territorial e Ambiental de Terras Indígenas. Institutionalized by decree number 7.747, from 5th of June 2012. Read more (Portuguese) at <http://www.funai.gov.br/index.php/nossas-aco-es/gestao-ambiental> or http://www.funai.gov.br/arquivos/conteudo/cogedi/pdf/Outras_Publicacoes/Entendendo%20a%20PNGATI/Entendendo_a_PNGATI.pdf

Another example is the National Policy for Peoples and Communities² whose objectives are, among others, to guarantee traditional communities' territories and access to natural resources, and to recognize and respect their traditional knowledge and resource use. The major instrument to implement this policy is the so called "sustainable development plan" (plano de desenvolvimento sustentável de povos e comunidades tradicionais) where sustainable use of environmental resources are central. These plans are developed through participation by both the government and the traditional communities.

Also, Brazil's national system for conservation units³ creates opportunities for traditional communities' resource use and biodiversity management. Communities can approach the government to suggest an area for a conservation unit. If/when a unit is established, the communities gain some territorial and user rights for environmental resources, and often also more easily obtain access to public services, such as health, education or poverty reduction programs (such as for instance the social benefit program 'Bolsa família'). While access to such services might better fulfill their rights to education and health, it also has some downsides because of the way the services are set up. The people have to travel out of the conservation units/territories to access these services which can result in the change of both life style and resource use. When required to live away from their natural habitats, this may change people from more traditional, natural resource based lifestyles towards more "urban" lifestyles, perhaps on a long term distancing the people from the knowledge and management of the biodiversity in the conservation units.

Another positive development recently was seen in the **Democratic Republic of Congo** (DRC). A provincial decree⁴ was passed in South Kivu in June 2016, redrawing the boundaries of the Itombwe nature reserve after several years of dialogue between local communities, national conservation authorities and international conservation organizations. This is, as far as we know, the first example in the DRC where local communities actually have participated in defining the borders of a nature reserve, and comes 10 years after the park was initially established (with different borders) to the surprise and protest of the people living there. Next now is a process of zoning and developing management plans for the reserve, and this is to be conducted with the communities to define where conservation, sustainable use and human development will take place within the reserve.

2. Please provide specific examples of good practices in the implementation of human rights obligations in biodiversity-related matters.

In **Brazil**, again, there are examples of good community participation both in processes leading to creation of territories, but perhaps more importantly, in cases of territorial management. Participation in decision making has led to policies like for instance the purchasing policy in the national program for meals in school⁵, demanding that at least 30% of the food for this program should be purchased from "family farming", including from local indigenous and former African slaves communities (quilombolas). This policy values the agro-biodiversity and the cultural and traditional knowledge of the local peoples. It creates a local market for sustainable harvested

² Política Nacional de Povos e Comunidades, decree number 6040/2007

³ sistema nacional de unidades de conservação (SNUC), law number 9985/2000

⁴ http://d2ouvy59p0dg6k.cloudfront.net/downloads/arrete_provincial_delimitation_mi_160629.pdf

⁵ Política de aquisição de produtos da agricultura familiar para o Programa Nacional de Alimentação Escolar (PNAE), law number 1947/2009.

local produce and gives the school children access to fresh, diversified and culturally appropriate food, rather than canned goods produced in a factory far away.

Another federal policy in Brazil is seeking to promote the sustainable use of biodiversity and at the same time income generation for local communities. This is the “national plan for the promotion of socio-biodiverse products”⁶. Under this plan local communities get access to credit, technical assistance/extension services and markets/marketing. They are also granted a minimum price⁷. The plan identifies specific products per territory where it is applied and is still in the process of expanding both into new areas and products.

3. Please specify, where relevant, specific examples of challenges and obstacles to the integration and protection of human rights in biodiversity-related matters.

Documentation shows that in rainforest areas where indigenous communities are given control over their traditional territories, the forest and biodiversity in the area is protected in a much larger degree than the areas around, which are often highly devastated⁸. Furthermore, for indigenous peoples, the fulfilment of their human rights is closely connected to the fulfilment of their right to land. Taking this as a starting point we would argue that ensuring formalization of territorial processes would imply the protection of both rights and biodiversity.

Historically, there has been a conflict between the establishment of natural protected areas for the conservation of biodiversity and indigenous and traditional peoples’ rights to land. This conflict still prevails in many countries, although in different ways. In some parts of the world, like Central Africa, indigenous peoples can still experience being expelled from their traditional land due to the establishment of protected reserves on their land⁹. However, indigenous peoples have proven to be exceptionally good stewards of biodiversity and indigenous peoples’ territories are often better preserved than state-run natural reserves.

In the **Peruvian** Amazon, for example, weak territorial legislation for indigenous peoples has an explicit negative effect on the forest and on biodiversity. The national legislation in Peru is not in line with international human rights treaties of which Peru is a signatory country, like the ILO convention 169, as well as the Inter-American human rights system. In stead of recognising indigenous peoples territorial rights as peoples and to the entire area of traditional use (as formulated in article 14 in the ILO-convention 169), national legislation - which has not changed since 1978 and corresponds badly with many human rights standards that have evolved over the last 40 years - only allows for the recognition of relatively small patches of land surrounding individual community settlements. This leaves the traditional territory of indigenous peoples fragmented into islands of community-based lands recognised by the state, while the space in-between the different communities are open for other land tenure categories and uses. Due to

⁶ Plano Nacional para a Promoção dos Produtos da Sociobiodiversidade (PNBSB)

⁷ Portaria Interministerial MDA/MDS/MMA nº 239/2009

⁸ See for example Kalifi Ferretti-Gallon and Jonah Busch, “What Drives Deforestation and What Stops It? A Meta-Analysis of Spatially Explicit Econometric Studies,” CGD Working Paper 361 (Washington: Center for Global Development, 2014).. <http://www.cgdev.org/publication/what-drives-deforestation-and-what-stops-it-meta-analysis-spatially-explicit-econometric>

⁹ See for example Dowie, M. (2009) *Conservation Refugees: The Hundred-Year Conflict Between Global Conservation and Native Peoples*

this, indigenous peoples lose control and access to large parts of their traditional lands and biodiversity loses the protection titled indigenous land is known to provide.

In addition, with less land available for livelihood, indigenous peoples may be forced to change the way they use the forest resources, which in turn can increase pressure on biodiversity within the smaller “islands” of land recognised by the state.

In the **Brazilian** Amazon, ensuring collective land rights for indigenous peoples has contributed to long lasting protection of vast areas of land. 1 117 624 km² has formal status as indigenous land as of 2015. Documentation¹⁰ shows that deforestation rates are lower, or as low, in indigenous territories as in other protected areas in the Amazon. However, there are several law-proposals in Brazil that will, if passed, weaken the degree of protection of the indigenous territories. Examples are proposals that could open for revision and annulation of recognized territories (PDC 47/2007, PDC 712/2012, PDC 713/2012, PDC 62/2011), proposals that carry the ambition of opening indigenous territories for mining activities (PL 1610/1996, o PL 5265/2009, o PL 7099/2006 e o PL 7301/2006), and proposals delivered intending to legalize the use for third-parties natural resources, as well as opening up the areas for construction of hydro electric dams. Also, there are in progress law proposals that would paralyze demarcation processes and undermine the legal basic framework in the constitution by transferring decision-making from the executive to the legislative level, such as the suggestion for constitutional amendment (Proposta de Emenda à Constituição, PEC), number 215. The capacity for implementing the national policy on management of indigenous territories (PNGATI, 2012) is also at risk, due to the fact that the responsible government entity has suffered budget cuts and is severely understaffed. There are no designated budgets for the actual follow-up of the PNGATI policy.

Additional challenges worth mentioning in Brazil are identified in the special rapporteur for indigenous peoples’ rights report delivered to the Human Rights council in September 2016¹¹. The challenges relate both to demarcation processes, but also to the capacity of implementing legislation and ensuring that indigenous territories are managed in accordance with plans being developed. Adding to this, that Brazil does not comply with the ILO-convention 169 obligation to consult indigenous and tribal peoples in meaningful ways to ensure free, prior and informed consent in relevant cases, as in the examples presented by the special rapporteur (the Belo Monte Dam and others). The report also highlights that decisions in the Brazilian Supreme Court seem to have established exceptions for activities that should be objects of consultation and that this further weakens the protection of both human rights and biodiversity.

A final obstacle in Brazil is in regard to a processual instrument¹² used by the government to suspend decisions saying that indigenous peoples should be consulted in cases where they are impacted by for instance construction work. Several examples show that in cases where environmental licensing is put on hold awaiting consultation processes, these processes are overruled using the instrument and in fact giving priority to public economic interests. This has been the case in the examples of Belo Monte, Teles Pires and São Manuel dams as well as the recent decision in the Manaus-Boa Vista energy line construction project.

¹⁰ See https://raisg.socioambiental.org/system/files/mapa_ingles_2015.pdf

¹¹ See *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil* from September 2016 (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/174/05/PDF/G1617405.pdf?OpenElement>)

¹² Suspensão de Liminar e Antecipação (SLAT), Federal law number 8.437/92, art.4. Medida Provisória n.º 2180-35/2001

4. Please give examples of how the rights of those who may be particularly vulnerable to the loss of biodiversity, including but not limited to indigenous peoples, are (or are not) provided with heightened protection.

In the **Amazon** rainforest there are many groups of indigenous peoples that live with little or no contact at all with the surrounding human societies of the modern world. The United Nations Office of the High Commissioner for Human Rights has developed a directory for Amazon states on how to protect the rights of these so called **indigenous peoples in voluntary isolation**. These are probably the most vulnerable groups of people in the world to the loss of biodiversity, as they rely almost exclusively on hunting and gathering of a diversity of wild plants and animals. This way of life can easily sustain the human population with relatively low efforts in forests that are undisturbed by the modern world. However, even minor alteration of the forest ecosystem can seriously disrupt that harmony, and reduce their access to food, water and health.

Another threat to these indigenous peoples is the foreign diseases against which their immune systems lack natural protection mechanisms. This means a simple flu contamination from contact with other human societies can decimate entire populations within months. There are already far too many examples of this happening in the past.

National governments in Amazon countries have over the last 20-30 years increasingly recognised the existences of indigenous peoples in voluntary isolation and the need to implement special protection to secure their right to food, housing, life, health and culture. Moreover, it is acknowledged that the best way of securing such basic rights for these human populations is to respect their decision of not interacting with the outside world. This is done by demarcating the territory used by the isolated indigenous populations and to prevent any third party incursion on these territories. This way, securing basic human rights becomes the strictest form of forest and biodiversity conservation. How well the legal and political framework for the protection of isolated indigenous peoples is defined and implemented in practice varies between the countries, with Brazil being in the lead. However, the current political and economical situation in Brazil, including severe reduction of budgets of the national indigenous foundation/directorate (FUNAI) puts the implementation of these frameworks at stake.

5. Please give examples of good practices in the protection of environmental human rights defenders working on biodiversity and conservation issues, including any efforts by Governments or others to create a safe and enabling environment for them to freely exercise their rights without fear.

The examples of *lacking* protection of environmental human rights defenders are unfortunately a lot easier to find than the opposite. However, we were delighted to read the ruling from the **Peruvian** Supreme Court of the Amazon last week, acquitting 52 indigenous representatives of the charges of causing the death of 12 policemen during a demonstration in Bagua in June, 2009. The court states that the indigenous peoples of Awajún and Wampis had a legal right to organize a peaceful protest to defend their territories and natural resources against destruction, referencing their constitutional right to territorial management and organization.