



May 1, 2013

To: REDD Offsets Working Group

Re: Recommendations of the REDD Offsets Working Group for Subnational REDD crediting in California's Cap-and-Trade Program

Friends of the Earth-US welcomes the opportunity to provide comments regarding the REDD Offsets Working Group "Recommendations to Conserve Tropical Rainforests, Protect Local Communities and Reduce State-Wide Greenhouse Gas Emissions," whose goal is to develop protocols to guide subnational REDD crediting in California's cap-and-trade program. Policies that will impact international forest governance are a primary concern to us and to our allied organizations; of particular concern is upholding environmental integrity and social equity in such policies. As an organization based in California and in Washington, D.C., and as a member of an international network with sister organizations in California's proposed partner jurisdictions, we are compelled to register our serious doubts about California's proposed REDD initiative.

We strongly support the broad objectives of AB32, California's Global Warming Solutions Act, as well as the goals of reducing deforestation and forging a just transition to a low emissions development path. However, we believe that allowing for jurisdictional REDD offset credits to meet California's emissions reduction targets within the cap-and-trade program will have the perverse effect of weakening both AB32 in California and the efforts of partner jurisdictions to protect their forests in ways that meet current best practices. **Subnational REDD initiatives, especially when financed primarily or wholly through offsets, will be inefficient, ineffective, and will lead to perverse outcomes.¹**

I. INTRODUCTION

We note that AB 32 was intended to both reduce emissions and foster the policy environment necessary to achieve significant innovation and investment toward the objective of low-emissions development in California. Our concerns about the REDD crediting mechanism, however, begins with our concerns regarding offsets generally. The offset limit established under the cap-and-trade program undermines the effectiveness of the program by diminishing

¹ See generally The Munden Project, "REDD and Forest Carbon: Market-based Critique and Recommendations." 2011; Karsenty and Ogolo, "Can 'fragile states' decide to reduce their deforestation? The inappropriate use of the theory of incentives with respect to the REDD mechanism," Forest Policy and Economics.2011; Karsenty, Alain, "What the (Carbon) Market Cannot Do", Perspective: Forests and Climate Change.CIRAD.2009

opportunities for job creation and co-pollutant reductions in the state's most heavily-polluted areas, and transfers what should be public wealth in the form of allowance revenue to private, and potentially international offset developers.

The quantitative limit on the use of offsets is 8% of the total credits required to be held by each emitter, or 8% of their total emissions. This usage limit equals over half of the total reductions required in California between 2013 and 2020, assuming compliance reserve credits remain unused, and is 20% more than the total reductions expected to directly result from the cap-and-trade program through 2020, assuming the complementary measures achieve the reductions expected.²

The REDD+ provisions, if adopted, would represent one quarter (first compliance period) to one half (second and third compliance periods) of total compliance obligations under the cap-and-trade program. This figure represents a very significant portion of offsets that may be made available within the cap-and-trade program. It is therefore imperative that any reductions made outside of the capped sectors be real, additional, and verifiable; furthermore, they must “do no harm” environmentally and socially, and be made with full and enforceable guarantees for the rights of indigenous peoples and forest-dwelling communities within the partner jurisdictions. Entrusting the financing of such a complex and sensitive set of ecological and social dynamics to the volatile and poorly regulated carbon market³ is inherently problematic.⁴ While we appreciate the Air Resources Board's recognition of the importance of protecting tropical forests and reducing emissions from deforestation, we believe that the ARB's consideration of including international forest offsets in AB32 falls short of a resilient, effective and equitable policy mechanism.

As the State of California and the California Air Resources Board attempt to design policies to address emissions from deforestation and degradation, it bears reflecting on the most prominent of the challenges that beset REDD programs generally to help inform and shape appropriate tropical forest-related policy interventions under consideration by the State of California. Following a review of key principles, we offer specific policy recommendations on the proposed “Recommendations to Conserve Tropical Rainforests, Protect Local Communities and Reduce State-Wide Greenhouse Gas Emissions”. We believe that the challenges associated with subnational-based REDD credits are incapable of meeting the environmental integrity demanded by AB 32, and they should be excluded from any cap-and-trade regulations promulgated by ARB.

² CARB rules mandate that “covered entities may use offset credits for up to 8 percent of their total compliance obligation for each compliance period.” (<http://www.arb.ca.gov/cc/capandtrade/offsets/chapter6.pdf>). There has been a lot of confusion about what the 8% limit on the use of offsets under California's cap-and-trade program means, with some entities suggesting that 8% is a ‘tiny slice’ of AB32's mandated emissions reductions (<http://www.edf.org/sites/default/files/OffsetsPercentagesFAQFinal%20041612.pdf>). But the limit is 8% of *total emissions*, not 8% of *mandated emissions reductions*. For a short set of slides that visually explains California's offsets limit, see: <http://bhaya.berkeley.edu/>

³ For the most recent evidence, see coverage in Bloomberg, Reuters Point Carbon, Financial Times, and Environmental Finance for the last two years during which the EU ETS has been a “dead man walking”, and especially for the last few months; e.g., Joshua Chaffin and Pilita Clark, “Europe's Carbon Market Left in Disarray”; “EU Carbon Vote Dooms Plan for Market Fix”, *Financial Times*, 16 April 2013; Izabella Kaminska, “EU Carbon Allowances as the New Bitcoin”, *FT Alphaville*, 16 April 2013; Ewa Krukowska, “EU Carbon Permits ‘Worthless’ Without Change of Rules, UBS Says”, Bloomberg, 21 January 2013; Thomas K. Grose, “The European Union's Eight-Year-Old Emissions Trading System (ETS), the World's Largest Cap-and-Trade Carbon Market, is Broken”, *National Geographic News*, 18 April 2013; “CDM Projects Face Rising Risk of Default”, Caixin, 28 February 2013; “Failure to Fix EU Scheme may Hit other CO2 Markets: S. Korea”, *Point Carbon*, 11 April 2013; etc.

⁴ Larry Lohmann, “Uncertainty Markets and Carbon Markets: Variations on Polanyian Themes”, *New Political Economy*, Vol. 15, No. 2, 2010, pp. 225-254; “Neoliberalism and the Calculable World: The Rise of Carbon Trading”, in Kean Birch, Vlad Mykhnenko and Katherine Trebeck (eds.), *The Rise and Fall of Neoliberalism: The Collapse of an Economic Order?*, London, Zed Books, 2010.

II. A REVIEW of KEY PRINCIPLES

Since REDD was formally included in the UNFCCC negotiations in December, 2007, policy-makers and global civil society have dedicated significant intellectual and financial resources to thinking through the considerable policy design challenges associated with achieving REDD outcomes.

A certain amount of attention has focused on learning from prior, failed global forest policy initiatives in the hope that a REDD mechanism would avoid the mistakes of the past and build a robust, equitable and effective policy framework to halt deforestation – though key contributions to this discussion, such as those made by indigenous peoples’ organizations themselves, have been largely ignored.⁵ Nevertheless, REDD+ initiatives as they have unfolded in practice have revealed many of the persistent failures of previous global efforts to protect forests: failure to appropriately engage stakeholders; failure to develop incentives adequate to meet the needs and capacities of forest-dependent people; and failure to address the underlying drivers of deforestation.

The concept behind REDD crediting mechanisms posits that by putting a price on the carbon stored in trees, the current economic incentives to deforest could be reversed. However, as many have noted, **payments for forest carbon at the national or local level do not adequately incentivize – and in some cases may hinder – the suite of policy changes and new incentives that are required to address deforestation and change forest management behavior.**⁶

The dynamics of deforestation and forest degradation are multiple and highly complex. These “drivers” operate at a number of levels, influenced by the global economy, regional trade, national politics and economy, as well as local land markets, power dynamics, subsistence forest dependencies, population and poverty.⁷ Addressing these drivers appropriately and at scale requires a broad and integrated approach that includes reducing demand for wood and agricultural commodities, reducing demand for land, supporting cultural values, indigenous territories, and community conserved areas, redirecting financial flows, addressing lack of political will and capacity, and integrating forest governance and poverty reduction strategies.⁸

Typical symptoms of weak forest governance – such as corruption, illegal and unplanned forest conversion, and conflicts over access to land and resources – are critical drivers of deforestation in many countries.⁹ The capacity and political will, or lack thereof, to effectively govern forest resources represent significant challenges to achieving desired outcomes. Importantly, the lack of

⁵ See for example, the Indigenous Peoples’ Climate Change Assessment Initiative, “Analytical Background Paper on REDD+” (2011): <http://www.scribd.com/doc/76400442/IPCCA-Analytical-Background-Paper-on-REDD>

⁶ Jade Saunders & Rosalind Reeve “Monitoring Governance Safeguards in REDD+” (paper presented at Expert workshop on Monitoring Governance Safeguards in REDD+ Expert Workshop, May 24-25, 2010, London, England).; Hans Gregersen, Hosny El Lakany, Alain Karsenty, Andy White “Does the Opportunity Cost Approach Indicate the Real Cost of REDD+: Rights and Realities of Paying for REDD+” Rights and Resources Initiative, CIRAD, June 2010; Meridian Institute. 2009. “Reducing Emissions from Deforestation and Forest Degradation (REDD): An Options Assessment Report.” Prepared for the Government of Norway, by Arild Angelsen, Sandra Brown, Cyril Loisel, Leo Peskett, Charlotte Streck, and Daniel Zarin. Available at: <http://www.REDD-OAR.org>.

⁷ Poffenberger, Mark, Ph.D. Forests and Climate Change: Mitigating Drivers of Deforestation. 2009 http://www.communityforestryinternational.org/publications/working_papers/Drivers_of_Deforestation.pdf

⁸ Global Forest Coalition. “Getting to the Roots: Underlying Causes of Deforestation and Forest Degradation, and Drivers of Forest Restoration.”. 2012

⁹ Gabrielle Kissinger et al, Drivers of Deforestation and Forest Degradation: A synthesis Report for REDD+ Policymakers. Lexeme Consulting, Vancouver Canada, August 2012.

state capacity to create coherent, enabling policy environments, be accountable to local stakeholders and rights holders, as well as to enforce the rule of law are both major drivers of deforestation in and of themselves and key barriers to effective action to successfully engage in REDD policies and programs.¹⁰

Further, numerous studies have shown that Payment for Environmental Service schemes such as REDD produce marginal benefits, if any, while drawing producers away from core livelihood activities.¹¹

As financial and derivatives experts at the Munden Project¹² have stated, “The problem for REDD is that the commodity-based approach is at loggerheads with the development benefits REDD is expected to generate. Experience within numerous commodities markets shows a generalized pattern whereby commodity producers receive an extremely limited percentage of the final commodity cost.”¹³ The Munden Project further states that **“REDD is unlikely to generate expected impact at the producer level. That is, the bulk of benefits from forest carbon will not go to REDD projects, the communities that live within them or the countries where they are located, and those projects that are able to operate will come under intense pressure to cut costs due to monopsony buying power.”**¹⁴

In many countries a significant proportion of deforestation has been, and remains to this day, illegal and uncontrolled. Policy makers are also increasingly mindful that prior international interventions have had limited effect on deforestation and degradation rates, often due to the fact that there has been inadequate effort to recognize human rights, clarify property, access and use rights, enable local enterprise development, and encourage the transparency and accountability necessary for equitable markets and governance to develop.¹⁵ Lastly, while it is hoped that REDD will provide significant climate, biodiversity and livelihood benefits, there is also a real risk that REDD will exacerbate existing inequities. Indeed, numerous early efforts to establish REDD programs without full recognition of and participation by rights holders, have already been shown to do so.¹⁶

Similarly, significant technical and methodological constraints have prevented avoided deforestation credits from qualifying in all existing compliance-based emissions trading frameworks, including the European Union’s Emissions Trading Scheme and the UNFCCC’s Kyoto Protocol. Key challenges include additionality, the impermanence of forest carbon sequestration (alternately stated, the possibility for reversals of carbon stored in trees and soil) as well as international and intra-national emissions leakage. While these are not the only such constraints, they are potentially the most damaging to environmental integrity, which is

¹⁰ Jade Saunders & Rosalind Reeve “Monitoring Governance Safeguards in REDD+” (paper presented at Expert workshop on Monitoring Governance Safeguards in REDD+ Expert Workshop, May 24-25, 2010, London, England).

¹¹ See Osborne T. Carbon Forestry and agrarian change: access and land control in a Mexican rainforest. *Journal of Peasant Studies* Volume 38, Issue 4 (2011); McAfee, Kathleen and Shapiro, Elizabeth. “PES in Mexico: Nature, Neoliberalism, Social Movements, and the State.” *Annals of the Association of American Geographers*. 100 (3). 2010. 579-599; Corbera, Esteve, Brown, Katrina, and Adger, W. Neil. “The Equity and Legitimacy of Markets for Ecosystem Services.” *Development and Change*. 38 (4). 2007. 587-613; Corbera, Esteve and Brown, Katrina.

“Building Institutions to Trade Ecosystem Services: Marketing Forest Carbon in Mexico.” *World Development*. 36(10). 2008. 1956-1979.

¹² The Munden Project. “REDD and Forest Carbon: Market-Based Critique and Recommendations”. 2011

¹³ The Munden Project. 2011.OpCit.7

¹⁴ The Munden Project. 2011.OpCit.10

¹⁵ Rights and Resources Initiative. “Seeing People Through The Trees: Scaling Up Efforts to Advance Rights and Address Poverty, Conflict and Climate Change.” 2008. Washington DC:RRI. Available at: http://www.rightsandresources.org/documents/files/doc_737.pdf

¹⁶ CECCAM. “REDD+ y los territorios indígenas y campesinos.” 2012. Mexico. <http://ceccam.org/sites/default/files/AAA-REDD%2BWeb.pdf>

paramount if REDD activities are to be used as compliance instruments. We are concerned that in its efforts to quickly establish a REDD program, California is glossing over the significant political and technical challenges that have thus far prevented other compliance markets from accepting REDD credits. By doing so, California risks encouraging other compliance frameworks to weaken their standards. Worse, California risks committing precisely the errors that previous compliance-based emissions trading frameworks have sought to avoid.

Some of these challenges may be reparable, while others ultimately may be insurmountable. But even among policy makers in favor of REDD there is a majority consensus¹⁷ that **if REDD programs are to be credible, they cannot be rushed.**

We are concerned that the general approach currently under consideration fails to acknowledge the deep institutional and governance capacity that needs to be built in order to ensure reliable, equitable, and rights-based implementation, and ultimately may undermine the environmental integrity required by AB 32. To ensure environmental integrity and sustainable development benefits, REDD policies and programs would have to consider the following key principles:

1. Address the key drivers of deforestation at local, regional and national levels, including the social, economic, environmental, and political drivers generated outside the forest sector;
2. Transparent financing that is additional, new, adequate, predictable, aligned with best practices in climate adaptation and mitigation, and responsive to the needs of communities;
3. National implementation with broad country participation;
4. Clear, coherent policies, laws, and regulations as well as effective implementation and enforcement of, and compliance with, those policies, laws and regulations;
5. Transparent and accountable decision-making and institutional participation;
6. Undertake both project design and implementation with full and effective participation of indigenous peoples and local communities, and in full recognition of the rights of indigenous peoples as stated in the United Nations Declaration on the Rights of Indigenous Peoples;
7. Inclusion of strict safeguards for biodiversity, especially to avoid adverse consequences for threatened and sensitive wildlife.

Early action, demonstration policies and programs can help generate momentum in support of a credible mechanism to address the drivers of deforestation and degradation and stimulate low-carbon rural development, and will certainly engender learning opportunities for the jurisdictions, agencies, and institutions involved; **however, due to the aforementioned concerns about impermanence, the need for rigorous verification, and the lack of institutional capacity to engage all stakeholders according to best-practice principles, early action demonstration policies must not be used to generate credits for compliance, as appears to be the objective proposed by the current ROW recommendations.** It would be particularly perverse if, in its intention to serve as a proof of concept for REDD activities, CARB

¹⁷ UNFCCC Ad-hoc Working Group on Long-Term Cooperative Action. "Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention on its eighth session, held in Copenhagen from 7 to 15 December 2009." FCCC/AWGLCA/2010/7; "Report Of The Informal Working Group On Interim Finance For Redd+ (Iwg-Ifr)" October, 2009 Available at: http://princes.3cdn.net/8fe32b29f9fd7c36_u2m6iypad.pdf.

undermined long-term emissions reduction efforts by failing to address the full suite of issues identified by the international community in protecting tropical forests and addressing land use change.

Further, CARB would have to consider the significant additional costs incurred in creating the necessary enabling policy frameworks to address deforestation, and in developing the institutional capacity to measure, report and verify carbon emissions with an accuracy adequate for trading in a carbon market. The former—expenditures for improved forest governance and land tenure reform—are essential to generating a credible mechanism to reduce deforestation, and should be covered by developed countries in line with their international legal obligations to meet the full, incremental cost of mitigation and adaptation activities. The latter—forest carbon accounting geared towards putting forests into carbon markets—is beyond the scope of valid climate finance, and should not be covered either under developed country climate finance obligations or through subnational agreements.

ROW recommends that partner jurisdictions “should be responsible for designing and establishing their own carbon accounting and registry systems,”¹⁸ should “develop and adopt mechanisms for managing performance reversal risk,”¹⁹ should “ensure rigorous measuring and monitoring,”²⁰ and should “demonstrate strong social and environmental safeguards that meet best-practice global standards.”²¹ While these recommendations appropriately place responsibility with crediting jurisdictions, they conversely indicate an unwillingness and inability on the part of California to provide technological and financial support to enable the necessary institutional and technical foundations to meet compliance demand. We therefore believe that using REDD credits for compliance would lead to inequitable and onerous burdens placed on developing countries, whose primary impacts could be displaced onto the most poor and vulnerable populations in those countries.²²

Lastly, **implementing many of the key, as yet unresolved, features of a durable REDD regime are not well suited to the regulatory authority of the state of California**, including improved forest governance, the development of relevant legal frameworks, the rights of indigenous peoples and local communities (including their full, effective participation and free, prior, informed consent as mandated by the UN Declaration on the Rights of Indigenous Peoples²³).

For all the above reasons, among others, we believe that project- and subnational-based REDD credits should be excluded from any cap-and-trade regulations promulgated by ARB.

III. POLICY RECOMMENDATIONS

¹⁸ ROW, Summary for Policymakers.5

¹⁹ Ibid.6

²⁰ Ibid.6

²¹ Ibid.7

²² See among other sources. Hall, A. Forests and Climate Change – The Social Dimensions of REDD in Latin America, p. 79; CIFOR (2005). Carbon forestry: Who will benefit? p. 42; Brown K & Cobera E (2003). Exploring equity and sustainable development in the new carbon economy. Climate Policy 3S1 S54; Greenpeace International, “Outsourcing Hot Air: The push for sub-national REDD offsets in California’s carbon market from Mexico and beyond”.2012; Conant J (2011). Do trees Grow on Money? Earth Island Journal http://www.earthisland.org/journal/index.php/eij/article/do_trees_grow_on_money

²³ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Policy recommendations: Scope of REDD+, accounting for carbon emissions and forest definitions

The scope, definitions and accounting modalities of REDD policy implementation will have significant implications for the environmental integrity of AB32. In this regard, we recommend that ARB note the potential of REDD-type projects to create perverse incentives that allow for conversion of forests to plantations. The definition adopted by the Marrakesh accords of the UNFCCC²⁴ is particularly damaging in this regard. The old UNFCCC definition states: “Forest” is a minimum area of land of 0.05-1.0 hectares with tree crown cover (or equivalent stocking level) of more than 10-30 per cent with trees with the potential to reach a minimum height of 2-5 metres at maturity in situ. A forest may consist either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest. Young natural stands and all plantations which have yet to reach a crown density of 10-30 per cent or tree height of 2-5 metres are included under forest, as are areas normally forming part of the forest area which are temporarily unstocked as a result of human intervention such as harvesting or natural causes but which are expected to revert to forest.”

By allowing plantations and what is referred to as “temporarily destocked” land to count as forests, this definition will incentivize activities that harm both native ecosystems and biological diversity. Biome-specific definitions in place of the current definitions used at the UNFCCC are superior in this regard.

Both the definition of forests and the definition of degradation have received a great deal of attention in international policy making bodies. To help define degradation and its potential implications, Mackey et. al., note that: “forest degradation needs to be defined to include the impact of all human land-use activity that reduces the current carbon stock in a natural forest compared with its natural carbon carrying capacity. The impact of commercial logging on natural forests must therefore also be considered when accounting for forest degradation.” Commercially logged forests have substantially lower carbon stocks and reduced biodiversity than intact natural forests, and studies have shown carbon stocks to be 40 to 60 per cent lower depending on the intensity of logging (Brown et al. 1997; Dean et al. 2003; Roxburgh et al. 2006). In the Brazilian Amazon, the area of natural forest that is logged commercially resulting in degraded carbon stocks is equivalent to that subject to deforestation and represents approximately 0.1 Gt of green carbon emissions to the atmosphere (Asner et al. 2005).²⁵

Further, it will be essential to establish a list of forest degrading activities for which emissions have been quantitatively established, rather than to rely on claims that certain activities have negligible, temporary and naturally reversible impacts on carbon stocks and the carbon carrying capacity of the forests. The use of both field plots and remote sensing data are critical in establishing these data at appropriate scales. As Macauley et al note, “the uncertainty of final forest carbon measures is an aggregate of the uncertainties of each component of the measures,” so “it is critically important that inputs be accurate and precise.”²⁶ Currently, the science of

²⁴ <http://unfccc.int/resource/docs/cop7/13a01.pdf>

²⁵ Mackey et al. “Green Carbon: The role of natural forests in carbon storage. Part 1. A green carbon account of Australia’s south-eastern Eucalypt forests, and policy implications.” Australian National University Press, Canberra; p. 36.

²⁶ Macauley et al, “Forest Measurement and Monitoring: Technical Capacity and ‘How Good is Good Enough?’.” Resources for the Future Ibid.19

measuring carbon stocks and fluxes from landbased emissions is far from exact and the use of default values in offset project calculations is widespread.²⁷ While advances in LIDAR technology are increasing the accuracy of remote sensing, the technology is expensive,²⁸ raising concern that costs will be prohibitive.

It is also critical that baselines employ “gross” not “net” deforestation accounting to prevent additional uncertainties, intentional manipulation of data, and conversion of native forests to silvicultural or agricultural plantations. Using net accounting significantly increases the likelihood of “hot air,” undermining the integrity of credits generated with such accounting.

In addition to these measures, conservation of biodiversity must be a guiding principle for any forest conservation strategy. Beyond noting that “REDD+ programs should establish and implement social and environmental safeguards in a manner that...does not damage ecological systems,”²⁹ recognition of biodiversity conservation as central to forest conservation is distinctly absent from the ROW recommendations. A carbon-only approach that reduces forests to “carbon stocks” could trigger huge, deleterious effects on biodiversity. In order to be minimally effective, forest conservation policies and incentives must be consistent with international conventions, including the UN Convention on Biological Diversity.

Measuring, reporting and verifying deforestation and degradation requires monitoring of two components: (1) changes in forest area by forest type and (2) average carbon stocks per unit area and forest type.³⁰ The IPCC also provides three tiers for estimating emissions, with increasing levels of data requirements and analytical complexity and therefore increasing accuracy:³¹

- Tier 1 uses default emission factors (indirect estimation of the emissions based on canopy cover reduction) for forest activities (“activity data”) that are collected nationally or globally.
- Tier 2 applies emission factors and activity data from country-specific data.
- Tier 3 uses methods, models and inventory measurement systems that are repeated over time, driven by high-resolution activity data and disaggregated sub-nationally at a finer scale.

The use of default values can cause significant error ranges in carbon estimates, as much as +/-70 per cent using IPCC Tier 1 default values.³² Tier 3 reporting for estimating emissions is superior. We note that even at this finer resolution and combined with regular and high-density ground-

²⁷ As noted by Greenpeace (Op Cit. 2012), “One recent study found that assessing forest carbon stocks in a developing country resulted in uncertainty in excess of 40%, while another showed that even in the EU the average uncertainty range when measuring land-use change emissions was 30-40%.” See Pelletier J et al (2011). Diagnosing the uncertainty and detectability of emission reductions for REDD+ under current capabilities: an example for Panama. *Environmental Resources Letters* 6: 7; European Commission, Directorate-General Climate Action, Summary Report on the work carried out by European Climate Change Programme group on Climate Policy for Land Use, Land Use Change and Forestry Draft 3, September 2010; Bucki M et al (2012). Assessing REDD+ performance of countries with low monitoring capacities: the matrix approach. *Environ. Res. Let.* 7, pp. 1-3; See generally Lang C (2012). Only 10% of global carbon emissions come from tropical deforestation <http://www.redd-monitor.org/2012/06/27/only-10-of-global-carbon-emissions-come-from-tropical-deforestation> (accessed 17 August 2012) (noting drastically different estimations of global deforestation emissions).

²⁸ Macauley et al, “Forest Measurement and Monitoring: Technical Capacity and ‘How Good is Good Enough?’.” *Resources for the Future*

²⁹ ROW, Summary for Policymakers.7

³⁰ Daniel Murdiyarso et. al. “Measuring and monitoring forest degradation for REDD Implications of country circumstances” CIFOR Info Brief No. 16 Available at: http://www.cifor.cgiar.org/publications/pdf_files/Infobrief/016-infobrief.pdf

³¹ Ibid.

³² Global Witness. “Principles for Independent Monitoring of REDD (Im-REDD)” 2010. Policy Brief.

truthing, the emissions data are still only estimates and therefore are prone to inaccuracies and gaming, and pose risks for the integrity of California's cap-and-trade system.

Finally, ROW recommends that California should "be ready to include carbon stock enhancement as Partner Jurisdictions develop robust monitoring."³³ The inclusion of "carbon stock enhancement" might lead to strong incentives for industrial monoculture tree plantations to the detriment of all other ecosystem benefits. Carbon stock enhancement projects have been shown to produce perverse effects including social conflict and erosion of biodiversity.³⁴ An extensive literature demonstrates the multiple deficiencies of plantations and other approaches that privilege carbon sequestration above the other social and ecological function of forests. Among many others, Hall et al have argued that "an increase in forest area does not necessarily imply an increased provision of ecosystem services when landscapes are reforesting with monoculture plantations of exotic tree species. Changes in the support of native biodiversity and the carbon stored in pulp rotation plantations, along with other ecosystem services, should be fully considered before implementing reforestation projects."³⁵

No policy supported by California should encourage or incentivize monoculture tree plantations under the guise of carbon-stock enhancement.

Policy Recommendations: Baselines, reference levels and additionality

Notwithstanding our previously noted concerns about offsets undermining the integrity of the cap-and-trade program in AB32, in order to be credible as an offset, the emissions reduced, avoided, or sequestered must be additional to business-as-usual. This concept is often called "additionality." The Congressional Research Service has found that "Additionality is at the crux of an offset's integrity. . . . [I]t may be impossible to accurately determine what 'would have happened anyway' for some projects."³⁶ This is particularly true in the land use and forestry sector. The complex suite of socio-economic and political forces affecting decisions about land use and land use change make it very difficult to ascertain what would be additional and therefore extremely difficult to establish sound baselines. For example, in Costa Rica, where many have argued that national REDD-type payment for ecosystem services (PES) schemes, have had a modest effect, others have noted that the impact is negligible. A large number of studies agree that many landowners would have protected their forests anyway and that decline in deforestation in Costa Rica cannot be attributed to the payments.³⁷

McKinsey also acknowledged that additionality is a significant issue, affecting the cost of forest mitigation: "A payment for ecosystem services approach...could have very high inefficiency, i.e,

³³ ROW Report: Summary for Policymakers.4

³⁴ Among other sources, see Patricia Granda, "Carbon Sink Plantations in the Ecuadorian Andes. Impacts of the Dutch FACE-PROFAFOR monoculture tree plantations project on indigenous and peasant communities". 2005. Acción Ecológica and World Rainforest Movement. <http://www.wrm.org.uy/countries/Ecuador/face.pdf>. Last accessed, 4.15.13, and Chris Lang and Timothy Byakola. "A funny place to store carbon": UWA-FACE Foundation's tree planting project in Mount Elgon National Park, Uganda. 2006. http://www.wrm.org.uy/countries/Uganda/Place_Store_Carbon.pdf Last accessed, 4.15.13

³⁵ Jaclyn M. Hall, et al Eric F. "Trade-offs Between Tree-Cover, Carbon Storage, and Floristic Biodiversity in Reforesting Landscapes:"2011. *Landscape Ecol* (2012) 27:1135–1147 <http://woods.stanford.edu/sites/default/files/files/tradeoffs%20between%20tree%20cover.pdf>; last accessed, 4.15.13

³⁶ Ross W. Gorte and Jonathan L. Ramseur, "Report for Congress, Forest Carbon Markets: Potential and Drawbacks" 2008, Washington DC, Congr. Research Serv.18. Available at: <http://ncseonline.org/NLE/CRSreports/08Aug/RL34560.pdf>.

³⁷ Hans Gregersen, Hosny El Lakany, Alain Karsenty, Andy White "Does the Opportunity Cost Approach Indicate the Real Cost of REDD+: Rights and Realities of Paying for REDD+" Rights and Resources Initiative, CIRAD, June 2010

compensation is likely to go to some who would have not deforested in any case, increasing payment by a factor of between 2 times and 100 times.”³⁸

The US General Accounting Office³⁹ has warned that “several factors contribute to challenges in understanding the [carbon] market,” principle among these challenges being the question of additionality. “First, although most markets involve tangible goods or services, the carbon market involves a product that represents the absence of something—in this case, an offset equals the absence of one ton of carbon dioxide emissions. Second, ensuring the credibility of carbon offsets poses challenges because of the inherent uncertainty in measuring emissions reductions or sequestration relative to a projected business-as-usual scenario. Any measurement involving projections is inherently uncertain.”

In crediting schemes, baselines refers to the emissions scenario below which credits can be generated. How these baselines are established is a key determinant of the environmental integrity.⁴⁰ In many cases, establishing credible baselines for REDD mechanisms is difficult because of poor monitoring and data in many nations. In addition, baselines may be exaggerated for political purposes to maximize potential revenue, thus generating shoddy credits, or “hot air” This is a particularly difficult issue for REDD crediting schemes to accommodate, adding to the risk of international leakage.

It has been argued that, at a minimum, conservative baselines should be based on average national historic deforestation rates and that national deforestation reduction goals tied to baselines should be established to progressively move future emissions lower and achieve zero gross deforestation, as required to achieve the permanent emissions reductions required to address climate change.

However, even historic deforestation rates do not provide an appropriate baseline from which to generate carbon credits. Faced with domestic stakeholder concerns about the negative social and environmental impact of deforestation, some developing countries with forest resources are voluntarily taking on targets to reduce deforestation. The “business-as-usual” scenario would then still significantly reduce emissions below average historic deforestation rates. However it would not be additional and therefore should not be eligible to receive carbon credits.⁴¹ Similarly, illegal logging and other illegal activities are pervasive in most tropical forest countries. Effective implementation as well as enforcement of, and compliance with, relevant policies, laws and regulations will contribute significantly to reducing emissions from deforestation and degradation. **However, it is wholly inappropriate for compliance entities in California to use carbon credits generated from other countries simply complying with their own laws.**

³⁸ Originally cited in: Hans Gregersen, Hosny El Lakany, Alain Karsenty, Andy White “Does the Opportunity Cost Approach Indicate the Real Cost of REDD+: Rights and Realities of Paying for REDD+” Rights and Resources Initiative, CIRAD, June 2010

³⁹ GAO (Government Accountability Office). 2008. Carbon Offsets: The U.S. Voluntary Market’s Growing, but Quality Assurance Poses Challenges for Market Participants. GAO-08-1048. Washington, DC: GAO.

⁴⁰ Scholz, Imme & Lars Schmidt “Reducing emissions from deforestation and forest degradation in developing countries: meeting the main challenges ahead” 2008, Bonn: Deutsches Institut für Entwicklungspolitik / German Development Institute (Briefing Paper 6/2008)

⁴¹ As stated above, we are strongly of the view that developing countries should be provided new, additional finance and technological resources to implement climate mitigation and adaptation activities. However, these payments should be based on costs of implementing actual policies and measures.

It is noteworthy that both partner jurisdictions have legally mandated emissions reduction targets in their national legislation;⁴² in addition, Acre has a law of Incentives for Environmental Services⁴³, while Chiapas has a state law for mitigation and adaptation to climate change.⁴⁴ With mandated emissions reductions enshrined in national legislation and state policy, the question of additionality becomes muddled to the point of indefiniteness.

Further, how baselines are established will have profound implications for both program participation as well as distribution of benefits and costs.⁴⁵ Angelsen notes that “To illustrate the magnitude of money flows involved, consider the scenarios run by Strassburg et al. (2008) with a carbon price of USD 5.63/tCO₂, and reduced deforestation cost curves along the lines presented in the Stern-report. Depending on how the baseline is set (global or national historical deforestation, or some combination of these), annual transfers to Indonesia will vary between zero (no participation) to more than USD 3 billion.”⁴⁶

Finally, where the ROW recommendations suggest that “under certain circumstances, the reference level may be adjusted from the historical average to account for rigorously-justified state-specific circumstances”⁴⁷, the recommendations lack specificity regarding what these circumstances may be and how they will be justified, leading to concern that flexible reference levels will undermine the legal and institutional clarity required to reach a zero deforestation horizon.

Because of the extraordinary complexity in defining a “business-as-usual” scenario, and the inherent uncertainty of determining additionality we recommend that ARB not accept international land use and forest offsets for use in the California compliance system.

Policy Recommendations: Crediting Pathways and Nested Crediting

CARB has asserted that “by focusing at the sectoral-level, rather than on individual projects, these mechanisms also will better ensure additionality and reduce emissions leakage between facilities in a way that the CDM cannot.”⁴⁸ However, sub-national accounting, at either the state or province level, is prone to both international and intra-national emissions leakage. Leakage comes in two main forms: “activity-shifting leakage,” when forest carbon activities directly cause carbon-emitting activities to be shifted to another location outside of the project boundaries (or outside the country, at the national scale); and “market leakage,” when a project or policy changes the supply-and-demand equilibrium, causing market actors to shift their activities. **There is simply no way to robustly quantify all potential emissions displacement, and California’s proposed nested sub-national crediting system potentially represents the “worst of all worlds”.**

⁴² <http://climateactiontracker.org/countries/brazil.html>; <http://climateactiontracker.org/countries/mexico.html>

⁴³ http://www.gcftaskforce.org/documents/Acre_brochure_cop17.pdf

⁴⁴ http://www.gcftaskforce.org/meeting/documents/Chiapas_Annual_Meeting_2011.pdf

⁴⁵ A. Angelsen “REDD Models And Baselines” International Forestry Review Vol.10(3), 2008 465. Center For International Forestry Research (Cifor), Bogor, Indonesia.

⁴⁶ Ibid., p. 471

⁴⁷ ROW report, Summary for Policymakers.4

⁴⁸ Air Resources Board. “Preliminary Draft Regulation for a California Cap and Trade Program” November 24, 2009. Last accessed August 20, 2010 <http://www.arb.ca.gov/cc/capandtrade/meetings/121409/pdr.pdf>

It is widely recognized that requiring carbon accounting at the national scale with broad country participation in REDD programs is a better way to address leakage. The UNFCCC has eschewed a sub-national approach. Similarly, the Council of the European Union has noted that, “Nationwide implementation involving the entire forestry sector would be required so as to minimize the risk of in-country leakage.”⁴⁹ Likewise, the Informal Working Group on Interim Finance for REDD (IWG-IFR), composed of nearly all REDD relevant countries, has noted that, “To be effective, the incentive structure must meet two criteria: (i) it must have close to global coverage – an incentive that is attractive for one country but not others is likely to lead to international leakage (simply displacing emitting activities to another country) and hence represent an ineffective use of scarce finances; (ii) the frameworks to address deforestation and degradation in developing forest countries must be nationally coherent – finance that is made available primarily on a project basis may cause domestic leakage and similarly lead to ineffective use of public and private capital.”⁵⁰ Even with national accounting, which theoretically, though not always in practice, should account for intra-national leakage, international leakage effects could be in excess of 50 percent.⁵¹ This potentially significant emissions displacement wholly undermines the ARB’s mandate to ensure environmental integrity.

The potential for emissions leakage at the project level is even more egregious. Often heralded as the poster child for sub-national REDD projects, the Noel Kempff Climate Action Project (NKCAP) has failed to protect against leakage despite promises by the NKCAP sponsors. Project sponsors avoided rigorous, expensive monitoring of leakage, favoring elaborate models which depended on significant guesswork. A report released in 2009 shows leakage from the project as high as 42-60 per cent.⁵² Further, Murray et. al. point out that: “It is commonly argued that small projects will have negligible effects on the affected markets and therefore generate little leakage. Our results suggest otherwise. For small projects, leakage may be small in absolute terms but it tends to be larger in proportion to the direct project benefit than a larger program. Thus leakage outside the boundaries of even small projects should not be ignored.”⁵³ The built-in incentives to cut costs and maximize carbon credits encourages REDD project developers and managers to cut corners when accounting for, and managing leakage. Even if economic barriers were not a factor, leakage remains an unsolvable problem for REDD projects.

This is one of numerous examples demonstrating how crediting individual projects preserves the long standing technical constraints that prevented avoided deforestation credits from being included in Kyoto Protocol. As previously mentioned, even within a jurisdiction-wide accounting system, the potential for emissions leakage is significant. Reconciling project-based accounting within jurisdiction-wide accounting is sure to involve unacceptably high levels of guesswork and significant margins of error. More fundamentally, in order to ensure minimal

⁴⁹ European Council. “Council Conclusions on addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss” (Conclusion of the 2912th Environment Council meeting, Brussels, 4 December 2009). P.5

⁵⁰ Meridian Institute. 2009. “Reducing Emissions from Deforestation and Forest Degradation (REDD): An Options Assessment Report.” Prepared for the Government of Norway, by Arild Angelsen, Sandra Brown, Cyril Loisel, Leo Peskeett, Charlotte Streck, and Daniel Zarin. P. 10

⁵¹ Brian C. Murray, Ph.D. “Seeing REDD: Addressing Additionality, Leakage, and Permanence with a National Approach” (powerpoint presented at Forest Day, UN Framework Convention on Climate Change COP Meeting. Bali, Indonesia, December 8, 2007).

⁵² Ariana Densham, et. al. “Carbon Scam: Noel Kempff Climate Action Project and the Push for Sub-national Forest Offsets.” 2009. Amsterdam, Greenpeace International.

⁵³ Brian C. Murray, et. al. “Estimating Leakage from Forest Carbon Sequestration Programs” *Land Economics* 80(1):109-124 (2004)

environmental integrity, a jurisdictional REDD program with nested sectoral crediting would demand precise monitoring and precise calculation of leakage itself.

Finally, ROW recommends that credits be issued not by California authorities, but by partner jurisdictions or approved third-party programs that meet California's requirements.⁵⁴ While this proposal reduces the burden on the program administrator in California, it places the burden on partner jurisdictions in a way that will incur significant financial and administrative costs not covered by the program; while the hope is that credits issued by partner jurisdictions would be subject to rigorous verification, the accompanying concern is that financial pressure on the partner jurisdiction to verify credits may lead to issuance of shoddy credits. **Whether or not these credits ultimately enter the California market, the partner jurisdictions, beyond the scrutiny of California regulators, may engage in practices that undermine the best intent of the program.** If the market were to actually bear the full due diligence and liability required to ensure environmental integrity of REDD credits, the uncertainties and risks would be so high that buyers would resort to other offsets which reduce emissions with more confidence.

Policy Recommendations: Reversals, liability and double-counting

Addressing both human and non-human induced reversals of sequestration (or more simply land use and land use change emissions) will be necessary as forests are affected both by human-induced activity (e.g., logging), natural disturbances (e.g., forests fires), unpredictable changes in carbon cycles of tropical forests resulting from climate change, as well as shifts in broader socio-economic policies (e.g., commodity price fluctuations). Regardless of its cause, a REDD mechanism would have to ensure that any emissions seen by the atmosphere are properly accounted for; compliance entities should therefore be fully responsible for any reversals, intentional or not, that may occur over a time period that is equivalent to the period of time the additional greenhouse gas emissions will affect atmospheric greenhouse gas concentrations (i.e. 99 years).

While ROW recommends that “partner jurisdictions should develop and adopt mechanisms for robustly and fairly managing performance reversal risk,” the constitution of such mechanisms remains unclear, and the ability of the jurisdictions to institute them, and to do so in a way that ensures transparency and enforceability, remains strongly in doubt. ROW acknowledges that managing reversal risks “will require policy reform, law enforcement, and changes in the rural development model that address the underlying causes of both deforestation and degradation (incl. logging and fire).”⁵⁵ **CARB should indeed seek assurances that such policy reform has been duly implemented across each jurisdiction before any agreement is finalized. However, given the political desire on the part of all GCF parties to create a timely supply of REDD credits, it is doubtful that such reforms will be completed.** Further, we would amend the causes of deforestation and degradation to include the expansion of industrial agriculture (including monoculture tree plantations), open-pit and subsurface mining, expansion of transportation infrastructure, and other developments that are likely to occur within the framework of “business-as-usual”.

⁵⁴ ROW report, Summary for Policymakers.5

⁵⁵ ROW Report, Summary for Policymakers.6

Regarding insurance that emissions reductions are not double counted in multiple compliance schemes: even if a project-nested sectoral REDD credit could resolutely be proven to be real, additional, permanent, and verifiable, which, as we argue above, it cannot be, the regulatory authority must also ensure that these credits are not counted twice. ROW recommends that partner jurisdictions “clarify through laws or regulations which entities may legally claim ownership of REDD+ emissions reductions and work closely with national government agencies to ensure that their programs are properly integrated with national efforts.”⁵⁶ Here we reiterate our concern that **conflicting interests among and within state and federal authorities; pressure on developing countries to explore multiple financing options; changes in political administrations; and the high requirements for institutional oversight all raise the risk of multiple-counting to an unacceptably problematic degree.**

For example, through an agreement with the Government of Norway, federal authorities in Brazil receive a payment of \$5/ton of CO₂ reduced from deforestation in the Amazon biome. The funds are channeled through the Brazilian Development Bank (in Portuguese: Banco Nacional de Desenvolvimento Economico e Social, abbreviated: BNDES) administered Amazon Fund to support projects that contribute to reducing deforestation on local, state and federal level.⁵⁷ It is not clear how double-counting of emission reductions in the Brazilian Amazon between the federal Amazon Fund and state or project-level REDD initiatives is to be avoided.

Lastly, no REDD crediting mechanisms will be permanent, if the surging demand for wood and agricultural products is not reduced. Developed countries can helpfully contribute to efforts to reduce emissions from deforestation and degradation by addressing their role in driving demand for the forest and agricultural products that provide the profit motives to clear and degrade forests. **If reducing deforestation in developing countries is a primary objective for California authorities, then ARB should consider undertaking a study to assess how the state’s current consumption and trade policies impact tropical forests, and contemplate how it could itself reduce its role in driving demand for activities that cause deforestation and degradation.**

Policy Recommendations: Credit issuing body, enforcement and independent monitoring

As we have repeatedly stated throughout those comments, international forests cannot and should not be used as an offset option within California’s cap-and-trade scheme. While stopping catastrophic climate change and using REDD as an offset are at odds in general, this is particularly true for a project- and subnational-based crediting approach

Experience has demonstrated that conflicts of interest prevent credit issuing bodies, monitors, verifiers and other parties from ensuring offset quality. Further, a clear conflict of interest exists if governments monitor their own performance. As has been stated before, poor forest governance is endemic in tropical forest countries, and while REDD policies and programs hope to facilitate marked improvements, clear conflicts of interests will arise if additional payments are provided based on the performance the credit generating entity itself is monitoring. Because of the unique features of REDD policies and programs, including the emphasis on improved

⁵⁶ Ibid.6

⁵⁷ Norwegian Ministry of Foreign Affairs & BNDES “Donation Agreement” Signed September 16, 2008. Accessible at: http://www.regjeringen.no/upload/MD/Vedlegg/Klima/klima_skogprosjektet/donation_agreement_bndes.25.03.09.p

governance, independent monitoring of governance and social safeguards would have to be used to complement independent verification of carbon-related metrics. Global Witness notes that independent monitoring “entails the use of an independent third party that, by agreement with state authorities, provides an assessment of legal compliance, and observation of and guidance on official law enforcement systems”.⁵⁸ Global Witness further notes that independent monitoring is distinctive from an audit “which verifies against a set checklist of criteria and can therefore give a conclusive, yes/no, “pass” or “fail” but can only operate within a clearly bounded system.”⁵⁹ Independent monitoring is mandated “to look outside the audit checklist, but still retains a focus on the forest sector. It monitors system governance, identifying systemic weaknesses and failures through case studies, and reports publicly.”⁶⁰ Participatory independent monitoring, involving local civil society organizations is therefore an essential foundation for effective, transparent REDD policies and programs.⁶¹

However, current monitoring and certification programs do not fulfill these requirements. A recent report from the Swedish Society for Nature Conservation⁶² examines two standards used in verifying REDD projects and issuing credits: the Climate, Community and Biodiversity (CCB) and the Verified Carbon Standard (VCS), as applied to project-level REDD schemes in Cambodia, Indonesia, Kenya, and Uganda. Both standards are examined in light of several issues that are key to REDD: land tenure; free, prior and informed consent; benefit sharing; biodiversity; and carbon. The study finds numerous problems with both certification schemes, concluding that “CCB certification does not provide a guarantee that certified projects are benefiting either communities or biodiversity,”⁶³ and that “CCB certification can thus not be seen as assurance that communities benefit from the projects, tenure rights are respected, or that FPIC has been ensured. CCB requirements on biodiversity are also of little relevance for REDD type projects.”⁶⁴ The report further notes a conflict of interest in that VCS methodologies “have been developed by the project proponents themselves.”⁶⁵ These weaknesses may apply to the REDD+ Social & Environmental Standards as well, raising concerns that even the certification schemes that ROW deems appropriate cannot overcome the lack of environmental and social integrity inherent to the use of REDD as an offset.

Where ROW recommends that “States should define their own benchmarks and performance indicators for implementing the REDD+ SES—including a transparent, public process for developing REDD+ policy measures”⁶⁶ we have concerns, referred to at greater length in the section on human rights and good governance below, that in the absence of strict and binding international monitoring and grievance procedures, there is no guarantee that states will undertake these processes in good faith or in a manner that is sufficiently robust. Indeed, where

⁵⁸ Global Witness “Principles for Independent Monitoring Of Redd (Im-Redd)” 2010. Policy Brief

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Swedish Society for Nature Conservation. “REDD Plus of REDD ‘Light’? – Biodiversity, communities and forest carbon certification. 2013.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ ROW Report Summary for Policymakers.7

communities have exhibited clear and sustained opposition to REDD+ implementation in both Acre and Chiapas, their concerns have remained unrecognized.⁶⁷

In light of these concerns, we find it particularly troubling that the organizations responsible for developing and applying the CCB and SES standards receive financial support from a broad list of corporate entities, including BP and Weyerhaeuser,⁶⁸ which stand to benefit from reputational ‘green-washing’, on the one hand, and whose business interests are not aligned with the pressing needs, identified throughout these comments, to guarantee rights to land tenure, territory, consultation and participation of indigenous peoples and local communities, and their meaningful and effective in project design and implementation.

We find it additionally troubling that institutions participating in the development of CCB and SES standards play multiple and conflicting roles within the development of REDD protocols and practices, acting as formal or informal consultants to government entities, intermediaries in the development of REDD projects, certifiers of REDD projects, and developers of Social and Environmental Safeguards,⁶⁹ while partnering with major emitters such as Chevron,⁷⁰ Shell,⁷¹ BP,⁷² and others. **While it is necessary, and indeed, crucial, that major emitters improve their practices through adherence to strict sustainability standards, human rights norms, and principles of corporate social responsibility, when the institutions developing certification standards for forest conservation receive significant financial and in-kind contributions from these emitters, this represents a dangerous conflict of interest that undermines the credibility and validity of the program.**

Policy recommendations: Ensuring the full protection of human rights and good governance.

Strengthening forest governance will be an essential activity for countries seeking to achieve significant and lasting emission reductions; essential to this is increasing local participation in and control over forest governance. Indeed, there is growing recognition that giving indigenous peoples and rural communities greater control in the way they manage their forests is in and of itself an effective climate change mitigation strategy. In many places, effective community control over forest resources has been shown to be an effective barrier to deforestation and degradation.⁷³

⁶⁷ <http://www.redd-monitor.org/2013/04/29/letter-from-brazil-opposing-redd-in-californias-global-warming-solutions-act-ab32/>; <http://www.redd-monitor.org/2012/09/28/protests-in-chiapas-against-redd-stop-the-land-grabs/>; [http://www.redd-monitor.org/2013/04/30/we-reject-redd-in-all-its-versions-letter-from-chiapas-mexico-opposing-redd-in-californias-global-warming-solutions-act-ab-32/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Redd-monitor+\(REDD-Monitor\)](http://www.redd-monitor.org/2013/04/30/we-reject-redd-in-all-its-versions-letter-from-chiapas-mexico-opposing-redd-in-californias-global-warming-solutions-act-ab-32/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Redd-monitor+(REDD-Monitor))

⁶⁸ <http://www.climate-standards.org/about-ccb/>

⁶⁹ <http://www.redd-standards.org/>

⁷⁰ <http://www.conservation.org/how/partnership/corporate/Pages/chevron.aspx>

⁷¹ http://www.tfgoperations.com/TFG_Documents/Operations/GreatLakes/News/Blue%20Source%20Bishop%20Shell%20Press%20Release.pdf

⁷² The Nature Conservancy, for example, which serves on the REDD Offsets Working Group and is one of the key members of the CCB Alliance, has given BP a seat on its International Leadership Council and, according to public sources, has accepted nearly \$10 million in cash and land contributions from BP and affiliated corporations over the years (<http://www.washingtonpost.com/wp-dyn/content/article/2010/05/23/AR2010052302164.html>).

⁷³ See generally, Bray, D. B., E. Duran, V. H. Ramos, J.-F. Mas, A. Velazquez, R. B. McNab, D. Barry, and J. Radachowsky. 2008. Tropical deforestation, community forests, and protected areas in the Maya Forest. *Ecology and Society* 13(2): 56. [online] URL: <http://www.ecologyandsociety.org/vol13/iss2/art56/>; Nelson A, Chomitz KM (2011) Effectiveness of Strict vs. Multiple Use Protected Areas in Reducing Tropical Forest Fires: A Global Analysis Using Matching Methods. PLoS ONE 6(8): e22722. doi:10.1371/journal.pone.0022722

Promoting robust foundations of good governance can also help safeguard against the potential for perverse social and environmental impacts of forest policies, while advancing broader sustainable development goals. Strengthening institutional capacity and coordination and ensuring transparent and inclusive decision-making processes can help bolster these foundations. We strongly support all of these objectives, and would applaud efforts by the State of California to support them; but we do not see REDD, and particularly an offsets-based REDD, as offering a positive contribution to such efforts.

To achieve “good governance” in institutional terms, a country will need to demonstrate at minimum:

- Clear, coherent policy laws and regulations and effective implementation and enforcement of, and compliance with, those policies, laws and regulations;
- Transparent and accountable decision-making and institutions;
- Recognition and respect for the rights of indigenous peoples and local communities, including their rights to lands, territories and resources, to full and effective participation and free, prior informed consent.⁷⁴

The REDD Offsets Working states that “while the primary goal of jurisdictional REDD+ programs is to achieve real reductions in greenhouse gas emissions from the forest sector, well-designed REDD+ programs with appropriate safeguards can generate additional social and environmental benefits and provide a viable pathway to sustainable, equitable low-carbon rural development.”⁷⁵ This indicates a dangerous tendency to treat safeguards merely as an added co-benefit rather than a necessary precondition.

In order to faithfully comply with the commitment to generate additional social and environmental benefits, REDD jurisdictions would need to demonstrate capacity to effectively measure, report, and verify social and environmental impacts, including gender-disaggregated impacts, and to mitigate these impacts and institute countervailing benefits. This requires significantly scaled institutional and technical capacity. While sub-national governments often helpfully participate in implementing elements of good governance, they must be couched within coherent national processes, with support from credible international agencies.

Similarly, while REDD is presented as an opportunity, it is also a risk for people who depend on forests for their livelihoods. Indigenous peoples and local communities, in the struggle for recognition of their basic human rights have made significant progress through international instruments such as the adoption of ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Core to these instruments is the principle of free, prior, informed consent (FPIC). The principle of FPIC recognizes indigenous peoples’ inherent and prior rights to their lands, territories and resources, respects their legitimate authority and requires processes that allow and support meaningful choices by indigenous peoples about their development path.⁷⁶ Further, the principle of FPIC is central to indigenous peoples’ exercise of

⁷⁴ Global Witness “Principles For Independent Monitoring of REDD (Im-REDD)” 2010. Policy Brief

⁷⁵ ROW Recommendations, p. 45

⁷⁶ Tamang, Parshuram “An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices” AUIndigLawRpr 36; (2005) 9(2) Australian Indigenous Law Reporter 111 (2005). Available at: <http://www.austlii.edu.au/au/journals/AILR/2005/36.html>

their right to self-determination with respect to developments affecting them and participation of indigenous peoples is key to the design, decision implementation and evaluation of any activity in providing FPIC.

These international legal obligations form a crucial foundation for effective forest governance regimes, however are not yet fully realized. Several hundred million indigenous people rely on customary or informal rights to land. In Latin America and Asia, around 25 percent of forests are owned or managed by indigenous communities.⁷⁷ **In a number of key tropical-forest areas, including the Lacandon jungle of Chiapas⁷⁸ tenure rights are contested and conflicts regularly arise over rights to access and exploit land and the trees on it. In many cases, unless these can be equitably resolved, it is not possible to introduce better control over resources.**⁷⁹

We appreciate the recommendation that “California should condition acceptance of REDD+ credits and any linkage arrangement on sufficient demonstration by a partner Jurisdiction that the safeguards provisions” be “consistent with emerging global best practices”⁸⁰ “including application of the principles of free, prior, and informed consent.”⁸¹ We appreciate, too, the recommendation that “linkage arrangements should contain a suspension provision to deal with cases of serious non-compliance.”⁸²

However, we consider these measures insufficient to ensure the minimum conditions for the protection of collective rights. While safeguards can be seen as an attempt to protect communities from the vagaries of the market, in the context of a mechanism whose primary objective is the satisfaction of market demand for carbon offset credits, they are likely to be highly insufficient.

Studies into the Fondo Bioclimatico and Scolel Te projects in Chiapas have shown how market dynamics have changed the nature of projects in ways that are not beneficial for forests or the indigenous peoples and local communities who depend on them. Projects which initially had a development-oriented focus became consumed by a much narrower carbon-only focus once they start engaging with the carbon market.⁸³ Specifically, projects have taken decision-making powers away from local communities and at times replaced their traditional, diverse, and

⁷⁷ 5 Jose Roberto (Beto) Borges, “Strengthening Indigenous Rights & Climate Change Mitigation The REDD+ Opportunity” (powerpoint presented at Fifth RRI Dialogue on Forests, Governance & Climate Change June 22, 2010, Washington DC) Available at: http://www.rightsandresources.org/documents/files/doc_1563.pdf

⁷⁸ See: Centro de Derechos Humanos Fray Bartolome de las Casas, Chiapas, Mx. (2012). “Entre la política sistémica y las alternativas de vida : Informe sobre la situación de los derechos humanos en Chiapas durante los gobiernos federal y estatal 2006-2012 Available at: http://www.frayba.org.mx/archivo/informes/130212_informe_frayba_prov.pdf; Enlace (2009), Violación del derecho a la tierra y el territorio: desalojos forzados de las comunidades indígenas asentadas en los Montes Azules, Chiapas; Ervine, K., “Conservation and conflict: the intensification of property rights disputes under market-based conservation in Chiapas, México”. Journal of Political Ecology.2009.Available at: http://jpe.library.arizona.edu/volume_18/Ervine.pdf; Procuraduría Agraria de Mexico, “Conflictos y violencia agraria en Chiapas”.2004.Available at:http://www.pa.gob.mx/publica/rev_29/maria.pdf

⁷⁹ Jade Saunders & Ruth Nussbaum “Forest Governance and Reduced Emissions for Deforestation and Degradation (REDD)” Chatham House Briefing Paper, Energy, Environment And Development Programme EEDPLog BP 07/03.

⁸⁰ Ibid, 51

⁸¹ Ibid, 51

⁸² Ibid, 50

⁸³ As cited in Greenpeace, 2011, Op Cit: Paladino S (2011). Tracking the fault lines of pro-poor carbon forestry. Culture, Agriculture, Food and Environment (2011): 128; Osborne T (2011). Carbon forestry and agrarian change: access and land control in a Mexican rainforest. Journal of Peasant Studies Volume 38, Issue 4.

subsistence farming methods with “carbon farming” processes,⁸⁴ leaving them more vulnerable to external market forces. For instance, Scolel Te’s focus on afforestation and reforestation activities led some local community members to change their land use patterns from 5 to 7-year shifting cultivation cycles (which provided them security and subsistence) to four 25-year rotations of commercial tree plantations (which were speculative and at the mercy of market forces).⁸⁵ In addition to potentially worsening people’s social circumstances, one analysis showed that the carbon benefits in forest carbon project areas may be negative when compared to fallow areas in traditional community managed forests.

Adding to the direct impacts, attempts by the government of Chiapas under former Governor Juan Sabines to establish a REDD+ pilot project⁸⁶ have led to an intensification of local conflicts over land. The establishment of “environmental police” – meant to enforce conservation efforts in the project area – has created fears within bordering communities that they will be driven off their land because they lack official land titles.⁸⁷ Although the government claims that the communities wishing to stay will be allowed to do so, Governor Sabines stated in 2011 that: “Of 179 ‘irregular’ settlements within the jungle’s protected area, most have been removed and only 11 remain.”⁸⁸ Indeed, the state government of Chiapas has long justified the expulsion of indigenous communities from forested areas as state policy.⁸⁹ (See Annex: “The State of ‘Irregular’ Indigenous Communities in the Lacandon”.)

Needless to say, social conflict in Chiapas has a long history independent of California’s involvement; but sufficient evidence exists that the 2010 MOU between Chiapas and California, and the subsequent “*Pacto para el Respeto y Conservacion de la Madre Tierra*”⁹⁰ have exacerbated longstanding tension, that we believe it has established a precedent for ongoing conflict, which the state of Chiapas has demonstrated neither the will nor the capacity to resolve. While social safeguards may be established to deter abusive socio-environmental management, practices such as those that characterize the Chiapas state government’s management of conflict in rural Chiapas are ultimately about enforcement and the prejudicial attitudes of the agencies and leaders involved as much as they are about official policy. “Safeguards” will not resolve such concerns; indeed, they will merely serve as cover for underlying political conflicts that are in grave need of resolution.

⁸⁴ Nelson K & De Jong B (2003). Making global initiatives local realities: carbon mitigation projects in Chiapas, Mexico. *Global Environmental Change* 13, p. 20; Sabelli A (2011). A New Solution to a Persistent Problem: Addressing Tropical Deforestation with Carbon Forestry Offset Projects. *Journal of Latin American Geography* Volume 10, Number 1: 113.

⁸⁵ Osborne T (2011) op cit

⁸⁶ EPRI (2012). Overview of Subnational Programs to Reduce Emissions from Deforestation and Forest Degradation (REDD) as Part of the Governors’ Climate and Forests Taskforce. 2012.

⁸⁷ See video testimonial: <http://www.youtube.com/watch?v=v6DAb6Y0Ji0>; <http://www.redd-monitor.org/2011/04/07/redd-alert-in-chiapas-mexico/>; <http://www.redd-monitor.org/2011/09/07/statement-from-chiapas-mexico-redd-project-is-a-climate-mask-to-cover-up-the-dispossession-of-the-biodiversity-of-the-peoples/>

⁸⁸ Conant J (2011). Do Trees Grow on Money? *Earth Island Journal* http://www.earthisland.org/journal/index.php/eij/article/do_trees_grow_on_money

⁸⁹ See: <http://escrutiniopublico.blogspot.com/2010/01/gobierno-estatal-y-federal-podrian.html>; FRAYBA; “Informe de seguimiento al caso de desalojo forzado y desplazamiento de las comunidades Buen Samaritano y San Manuel, en Montes Azules.” October 10 2007. Available at: <http://zapateando.wordpress.com/2007/10/12/informe-de-seguimiento-al-caso-de-desalojo-forzado-y-desplazamiento-de-las-comunidades-buen-samaritano-y-san-manuel-en-montes-azules/>; Maderas del Pueblo del Sureste. Comunicado Publico; “Desalojos en Montes Azules: Recursos Estrategicos; Soberania Nacional y Derechos Indigenas en Juego,” August 26, 2007; ARIC-Union de Uniones-Independiente y Democratico. “Comunicado: Ante la preocupante situacion de desalojo” August 20 2007; CONANP. Boletin de Prensa. August 19 2007, as well as several documents, annexed to this submission.

⁹⁰ <http://www.oem.com.mx/oem/notas/n1900122.htm>; http://www.cambioclimaticochiapas.org/portal/index.php/noticias/ver_noticia/32

It is in this regard that economic interests and political expediency will always undermine promised community benefits⁹¹ and the implementation of social and environmental safeguards. Further, in the absence of binding international grievance resolution procedures, there are serious concerns as to whether the jurisdictions can responsibly implement, monitor and enforce social safeguards.

Best practices that are being developed emphasize that collective rights holders, such as *ejidatarios* in Mexico and indigenous peoples in Brazil, must themselves be allowed to define a process of obtaining their free, prior, and informed consent; that free, prior, and informed consent from local communities should be obtained through mutually agreed procedures; and that affected communities must have access to independent information and legal advice, and relevant capacity to properly assess proposals and alternatives.

At a minimum, a determination of a country's readiness must ensure the following principles related to social and environmental safeguards are met (negotiators in Copenhagen agreed that these principles should be promoted and supported), including:⁹²

- a) Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- d) Full and effective participation of relevant stakeholders, including, in particular, indigenous peoples and local communities;
- e) Actions that are consistent with the conservation of natural forests and biological diversity, ensuring that actions are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;

While the ROW report echoes international consensus that indigenous peoples and local communities are entitled to an equitable share of the benefits of REDD,⁹³ implementing this in practice is considerably more difficult. At a basic level, unclear land rights and uncertainty over land title can negatively impact indigenous peoples and local communities' ability to benefit from REDD implementation.⁹⁴ Disempowered communities may suffer from loss of access to forest resources, the unequal imposition of the costs of forest protection, and lack of eligibility

⁹¹ See: The Munden Project.2011. Op Cit: "Forest carbon is likely to behave as any commodities market would, which implies that producers will derive only marginal benefits from the market as a whole. Moreover, the unique logistical challenges posed by counting carbon to IPCC-like standards imply a very limited population of providers willing to do this for projects. The resulting consolidation risks leading to a monopsonistic market structure, which will result in dramatically lower capital flows to forests."

⁹² UNFCCC Ad-hoc Working Group on Long-Term Cooperative Action. "Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention on its eighth session, held in Copenhagen from 7 to 15 December 2009." FCCC/AWGLCA/2010/7

⁹³ ROW Report. Summary for Policymakers.7

⁹⁴ UN-REDD. "Design of a REDD Compliant Benefit Distribution System for Viet Nam" January 2010

for benefits if they do not enjoy formal title, and forced resettlement from REDD project areas, as has already been evidenced in the Lacandon region of Chiapas.⁹⁵

While ROW recommends, rightly, that efforts to clarify land tenure be undertaken “with extreme care,” evidence shows that, rather than implementing the most minimal requirements of land tenure reform, the administration of the state of Chiapas has engaged in ongoing resettlement of communities deemed “irregular” under existing tenure agreements, as evidenced by the resettlement of communities, including Rancheria Corozal, Nuevo Salvador Allende, and San Gregorio⁹⁶ against the will of community members and in violation of international norms guiding processes of displacement and resettlement.⁹⁷

Similarly, the process of participation leading to the implementation of the law of Incentives for Environmental Services in the state of Acre has been deemed by the Union of Rural Workers of Xapuri, to have been “top-down and authoritarian”⁹⁸, and the consultations “insufficient and questionable”⁹⁹. The organization, a key constituency in the State of Acre, further argues that:

“In order for forest peoples to maintain their ways of life and protect natural resources, they must have sovereignty over their territory. This means not only physical land demarcation or ownership titles, but includes the right of these peoples to manage their resources without interference. Contracts for the provision of environmental services interfere with territorial and environmental management and may also facilitate acts of biopiracy, allowing unauthorized access to genetic resources and associated traditional knowledge.”¹⁰⁰

Sufficient evidence exists of violations of international norms accompanying the implementation of REDD projects in numerous country contexts that we contest that such violations are in the structural nature of such projects, as demonstrated by a brief review:

In a review of existing projects, The Nature Conservancy, World Conservation Society and Conservation International found that the Noel Kempff Climate Action Project failed to ensure equitable benefit sharing and, perversely, contributed to decreased livelihoods following project implementation. A community development action program was developed, which requires “establishment of a conditioned benefit sharing mechanism based on a participative approach” that would help **“to raise the standard of living at a**

⁹⁵ FRAYBA; “Informe de seguimiento al caso de desalojo forzado y desplazamiento de las comunidades Buen Samaritano y San Manuel, en Montes Azules.” October 10 2007. Available at: <http://zapateando.wordpress.com/2007/10/12/informe-de-seguimiento-al-caso-de-desalojo-forzado-y-desplazamiento-de-las-comunidades-buen-samaritano-y-san-manuel-en-montes-azules/>; Maderas del Pueblo del Sureste. Comunicado Publico; “Desalojos en Montes Azules: Recursos Estrategicos; Soberania Nacional y Derechos Indigenas en Juego,” August 26, 2007; ARIC-Union de Uniones-Independiente y Democratico. “Comunicado: Ante la preocupante situacion de desalojo” August 20 2007; CONANP. Boletin de Prensa. August 19 2007, as well as several documents, annexed to this submission.

⁹⁶ Semarnat, CONANP. Asentamientos Irregulares en la reserva de la biosfera Montes Azules, in annex; see also: <http://justiciaparasanjosedelprogreso.org/2012/11/22/el-informe-preliminar-de-la-mision-de-observacion/>

⁹⁷ See annexed letter from said communities to Sr. Javier Hernandez Valencia, Representative of the High Commission for Human Rights in Mexico, dated 8 March, 2012

⁹⁸ <http://www.redd-monitor.org/2012/11/01/problems-with-redd-and-payments-for-environment-services-in-acre-brazil/>

⁹⁹ Ibid.

¹⁰⁰ Ibid.

minimum up to the level that the communities experienced before the commencement of the project” [emphasis added].”¹⁰¹

The report went on to say: “As of this writing, key milestones in the community development action program have not been reached. The program called for the Government of Bolivia to establish the necessary legal instruments to commercialize their share of the carbon credits and to assign carbon credit revenue according to the earmarks set out in the Noel Kempff Comprehensive Agreement.”¹⁰²

Similar problems have been documented in Mount Elgon National Park in Uganda, the Ecuadorian Andes,¹⁰³ and elsewhere. Indeed, in numerous places in the world, REDD+ projects and policies have been implemented in clear violation of the principle of free, prior and informed consent. In Ecuador, the government continues to develop a REDD+ program despite the fact that the most representative organization of Indigenous Peoples, the Confederation of Indigenous Nationalities of Ecuador, (CONAIE), has explicitly rejected REDD+ policies in the country.¹⁰⁴

As Kenya’s Mau Forest is made “ready” for a UNEP-funded REDD+ project, members of the Ogiek People continue to suffer evictions, and Ogiek activists are attacked for protesting land grabs.¹⁰⁵

In Indonesia, the Mantir Adat (traditional authorities) of Kadamangan Mantangai, district of Kapuas in the province of Central Kalimantan, “reject REDD projects because it is a threat to the rights and the livelihoods of the Dayak community in the REDD project area”, and have called for the cancellation of a project that has “violated our rights and threatened the basis of survival for the Dayak community.”¹⁰⁶

Numerous recent cases beyond the jurisdictions in question reveal similar concerns, with accompanying grievances raised by coordinating bodies of indigenous peoples’ organizations:

- The Inter-Ethnic Association for the Development of the Peruvian Amazon (AIDESEP) has said that “REDD will lead to an increase in emissions in Peru”¹⁰⁷ and has suggested that they will only consider it after the full legal recognition of indigenous territories in Peru, with the attendant stoppage of oil and mining concessions in that territory.¹⁰⁸
- In March, 2013, Panama’s Indigenous Peoples Coordinating Body, COONAPIP, withdrew from the UN-REDD program, saying that UN-REDD “does not currently offer guarantees for respecting indigenous rights” or “the full and effective participation of the

¹⁰¹ Nicole R. Virgilio, et. al., “Reducing Emissions from Deforestation and Degradation (REDD): A Case-book of On The-Ground Experience,” The Nature Conservancy, Conservation International, World Conservation Society.

June 2010, p. 41

¹⁰² Ibid, p. 41

¹⁰³ Lang and Byakola (2006) “A funny place to store carbon”: UWA-FACE Foundation’s tree planting project in Mount Elgon National Park, Uganda; <http://wrn.org.uy/> Accessed April 23, 2013; Carbon Sink Plantations in the Andes, Accion Ecologica, WRM, 2005. Accessed April 13, 2013.

¹⁰⁴ http://www.movimientos.org/enlacei/show_text.php3?key=19549

¹⁰⁵ See: International Working Group on Indigenous Affairs (2011), Kenya’s ‘Forest People’ in Bitter Fight for their Ancestral Homes, April 15 2011 http://www.iwgia.org/news/searchnews?news_id=277; Minority Rights Group International (2011), Minority Rights Group Condemns Targeted Attacks on Ogiek Activists, March 7, 2011, www.newsfromafrica.org/newsfromafrica/articles/art_12373.html

¹⁰⁶ REDD-Monitor (2011), Stop the Indonesia- Australia REDD+ Project In the Customary Area of the Dayak People in Central Kalimantan, www.redd-monitor.org/2011/06/15/stop-theindonesia-australia-redd-projectindigenouspeoples-opposition-to-the-kalimantan-forestsand-climate-partnership/#more-8887

¹⁰⁷ <http://www.forestpeoples.org/sites/fpp/files/news/2013/02/AIDESEP%20Letter%20to%20FIP%20Feb%202013%20English.pdf>

¹⁰⁸ Op cit

Indigenous Peoples of Panama”.¹⁰⁹ The Central American Indigenous Council followed suit, raising concerns of “racial intolerance and discrimination.”¹¹⁰

Both UNREDD projects cited above presumably follow best practices regarding consultation and participation, and both are based on the highest standards and transparent funding from the UNREDD program, independent of fluctuating value of carbon-market finance. Simply stated, what can we then expect from a sub-national project whose primary objective is to provide carbon credits to the California market?

Benefit sharing for indigenous peoples and local communities in a REDD context includes both the equitable sharing of financial benefits and the benefits of securing equitable land tenure and human rights. **The case studies highlighted above illustrate the critical importance of national governments providing robust, equitable institutions and legal frameworks at the national level for both land tenure reform and forest governance reform as a fundamental prerequisite for any REDD initiative.**

In many cases, such as the TNC –AEP – Chevron - GM Guaraquecaba forest offset project,¹¹¹ disputes arise between powerful, vested interests and marginalized social groups. **Dispute resolution mechanisms must be made available for affected communities and individuals to seek redress when their rights have been violated, and these mechanisms must be adequately enforced and financed.**

Where ROW recommends “a grievance and redress mechanism for stakeholders as well as system for monitoring and reporting on safeguards implementation,”¹¹² and incorporation of “a monitoring and reporting mechanism to transparently provide information, updated on a regular basis, to all relevant stakeholders” our concern is that such mechanisms are both beyond the capacity of the partner jurisdictions to appropriately implement, and beyond the capacity of California to enforce.

California has no enforcement mechanisms, and past practices have revealed that the partner jurisdictions, particularly Chiapas, have no demonstrable political will to institute the minimum requirements necessary for free, prior and informed consent. In the absence of an international, binding dispute mechanism that can address cases of violations of indigenous peoples or collective and customary community rights over land, consistent with the rights articulated in UN-DRIP, the FAO guidelines on land tenure and food security¹¹³, and other international norms, rights-holders in the participating jurisdictions will have no adequate recourse to address and remedy rights violations.

Proper establishment of human rights and land tenure regimes are fundamental to forest governance, and are beyond the scope of California authorities to implement or oversee. Further, the financing required to establish institutional capacity in this regard would offset any economic benefits that REDD+ credits would provide within AB32, and would thus undermine the effectiveness of the program to meet its stated objectives.

¹⁰⁹ <http://www.redd-monitor.org/2013/03/06/coonapip-panamas-indigenous-peoples-coordinating-body-withdraws-from-un-redd/>

¹¹⁰ <http://www.redd-monitor.org/wordpress/wp-content/uploads/2013/03/CartaCICA-CCONAPIP-UNREDD.pdf>

¹¹¹ PBS Frontline. “The Carbon Hunters: On the trail of the climate’s hottest commodity” Original air date May11, 2010. Available at: <http://www.pbs.org/frontlineworld/stories/carbonwatch/2010/05/the-carbon-hunters.html>

¹¹² Ibid, 47

¹¹³ <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

IV. CONCLUSIONS

While it is often argued that creating and distributing new financial incentives to developing countries in the form of tradable carbon credits will facilitate significant reductions in deforestation and degradation,¹¹⁴ policymakers have become increasingly mindful that carbon credits alone will not be sufficient to incentivize the meaningful change in forest resource management that is necessary, and may in fact perversely incentivize increased deforestation and degradation in tropical forest countries. For years major emissions trading schemes such as the EU have explicitly banned forest offsets from becoming a compliance option. The REDD Offsets Working Group wants California to set a precedent, but provides no credible explanation as to how it seeks to overcome the inherent social and environmental issues that have led others to ban REDD as an offset option.

ARB has noted that even offsets credits generation within California involves “complex legal, enforcement and administrative issues.”¹¹⁵ Generating credits from forests in developing countries will be exponentially more challenging and costly. A Governor’s Climate and Forest Taskforce prepared Options paper from 2010 considers the challenge to be: “how to operationalize particular substantive goals in to regulatory language without imposing prohibitive transactions costs.”¹¹⁶ However, ARB’s mandate is to “ensure that any offsets credit used for compliance purposes must represent a reduction or avoidance of GHG emissions, or GHG sequestration that is real, additional, quantifiable, permanent and enforceable.”¹¹⁷

These principles are of primary importance to ensure that any offsets allowed contribute to ARB’s mandate to meet greenhouse gas emissions reductions requirements in the state of California. These principles cannot be weakened or compromised to reduce transaction costs for emissions reductions activities in developing countries. **Because REDD offset credits cannot meet this critical test of being real, additional, quantifiable, permanent and enforceable, and because they represent inherent and well-documented threats to the rights and livelihoods of indigenous peoples and local communities, we strongly recommend that they be excluded from AB 32 rulemaking.**

In closing, we argue that, if the objective is to reduce emissions from and ultimately halt deforestation, policies and practices must address the underlying drivers of deforestation, including poor governance and surging consumption of wood and agricultural products. To truly address tropical deforestation at its root, California policymakers should consider examining how the state’s existing policies, including those related to procurement, public investment, fuels, and other issues, may enable rainforest destruction through contributing to demand for petroleum, timber, soy, paper, palm oil, and other commodities. Such an approach would align with the true causes of both deforestation and the climate crisis itself, which we identify as the over-consumption of resources and the over-exploitation of atmospheric space by industrialized nations.

¹¹⁴ 52 M. Grieg-Gran. “The cost of avoiding deforestation” Report prepared for the Stern Review of the Economics of Climate Change: IIED, London, UK. 2008

¹¹⁵ 53 Air Resources Board. “Preliminary Draft Regulation for a California Cap and Trade Program” November 24, 2009. Last accessed August 20, 2010 <http://www.arb.ca.gov/cc/capandtrade/meetings/121409/pdr.pdf>

¹¹⁶ William Boyd. “Options Paper: Regulatory Design Options for Subnational REDD Mechanisms” (paper prepared for ARB Expert Meeting Sacramento, CA February 18- 19, 2010). p., 3 Available at: <http://www.gcftaskforce.org/documents/Workshop%20Options%20Paper%20-%20REDD%20Reg%20Design.pdf>

¹¹⁷ Air Resources Board. “Preliminary Draft Regulation for a California Cap and Trade Program” November 24, 2009. Last accessed August 20, 2010 <http://www.arb.ca.gov/cc/capandtrade/meetings/121409/pdr.pdf>

Thank you in for your consideration.

Sincerely,
Jeff Conant
International Forests Campaigner
Friends of the Earth

Tom B.K. Goldtooth
Executive Director
Indigenous Environmental Network

In annex, please find several supporting documents concerning land tenure disputes and displacements in the Lacandon region of Chiapas.

The State of ‘Irregular’ Indigenous Communities in the Lacandon Jungle of Chiapasⁱ

The social and political landscape of the Lacandon region of Chiapas is extremely complex and marked by a long history of conflict.ⁱⁱ In the 1960’s the Mexican government encouraged landless farmers to colonize the Lacandon.ⁱⁱⁱ Colonization offered a momentary path-of-least-resistance that preserved large-landholding estates in other parts of Chiapas. However, authorities provided almost no resources or guidance to the primarily indigenous colonists, and the process resulted in abundant tenure ambiguity and conflict.^{iv} Government efforts to rationalize land tenure and use regulations have dragged on for over 40 years and proceeded piecemeal according to clientistic relationships between officials and individual communities.^v

The 1994 indigenous Zapatista uprising can be traced directly to this troubled history^{vi}, and resulted in an escalation of conflict in the region that has proven resistant to government attempts at resolution, whether, military, economic, or political.^{vii} This phase of the land conflict in Chiapas also brought an influx of new and varied actors into the Lacandon region: international development initiatives, anti-globalization solidarity groups, an enormous number of national and international NGO’s, and government social development programs deployed with the intention of luring residents away from the Zapatista resistance.^{viii} To this day, an array of competing interests vie for productive resources amidst social fragmentation and scarcity of services such as schools, healthcare, and access to markets.^{ix}

Through a series of government decrees beginning in 1978, seven Natural Protected Areas were established to protect the areas of the Lacandon that hold the greatest biodiversity in Mesoamerica.^x These protected areas were declared with almost no consultation with affected indigenous residents and served to deepen existing land tenure and access conflicts.^{xi} In 2000, at the urging of national and international conservation organizations state and federal government initiated an explicit policy of removing communities without formal land title.^{xii} Deemed irregular or illegal, indigenous communities were removed from land on protected areas that they had inhabited often for generations; government relocation policy provoked widespread resentment and the interpretation that environmental actors are collaborating with military counter-insurgency efforts.^{xiii}

Former UN Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, visited the “irregular” communities in Montes Azules during his 2003 visit to Mexico. In testimony before the UN High Commission for Human Rights he advocated explicitly for the rights of Montes Azules communities to stay where they are.^{xiv} In a follow-up 2007 report Stavenhagen criticized the Mexican agrarian and environmental judiciary calling them “obsolete,” and “incapable of recognizing and integrating indigenous rights.”^{xv}

The chart below, drawn from official Chiapas and federal government documents, details the communities targeted for eviction in 2009 and illustrates the logic behind government eviction policy.^{xvi}

<i>Village Name</i>	<i>Affiliation</i>	<i># of Resident Families</i>	<i>Size of Territorial Claim (hectares)</i>	<i>Government Action Plan</i>	<i>Current Status</i>
Nuevo	Zapatista/	10	150	Negotiated Exit, Requires Strengthening	No Change from 2009

Agua Dulce	EZLN			Negotiation Channels	
Nuevo Limar	Zapatista/ EZLN	48	450	Negotiated Exit, Requires Strengthening Negotiation Channels	No Change from 2009
Nuevo San Gregorio	ARIC-ID	23	1,977	Requires Renewed Attempt at Negotiation, Foresee Criminal Action	Threatened with Immediate Forced Eviction March 2012
Nuevo Villaflores	None	12	235	Negotiated Exit, Must Attend to Community's Existing Proposal and Incorporate it into Gov't Plan	Accepted Indemnification, Awaiting Payment
Ojo de Agua la Pimienta	ARIC-ID	20	50	Negotiated Exit, Requires Strengthening Negotiation Channels	No Change from 2009
Ranchería Corozal	ARIC-ID	13	515	Requires Renewed Attempt at Negotiation, Foresee Criminal Action	Threatened with Immediate Forced Eviction March 2012
Salvador Allende	ARIC-ID	23	800	Case in Process	Threatened with Immediate Forced Eviction March 2012
El Innominado ó San Pedro	Zapatista/ EZLN	3	150	Case in Process, Foresee Criminal Action against 3 families who refuse to leave	Forcibly Evicted Feb 2010
Nuevo Altamirano	Zapatista/ EZLN	25	1,647	Negotiated Exit, Must Attend to Community's Existing Proposal and Incorporate it into Gov't Plan	No Change from 2009

Benito Juárez Miramar	ARIC-ID	40	4,553	Regularize Land Title, Attend to Proposal and required paperwork	No Change from 2009
Seis de Octubre	Zapatista/ EZLN	50	1,016	Negotiated Exit, Requires Strengthening Negotiation Channels	No Change from 2009
Chumcerro la Laguna	ARIC-ID	15	1,750	Regularize Land Title, Attend to Proposal and required paperwork	No Change from 2009
TOTAL		282	13,293		
		Families	Hectares		



AT'N Jefe de Información y/o Reportero de la Fuente

Comunicado de Prensa

México, D. F., 28 de febrero de 2012.

ASENTAMIENTOS IRREGULARES EN LA RESERVA DE LA BIOSFERA MONTES AZULES

Ante la solicitud de representantes de los Bienes Comunales de la Zona Lacandona hecha a la Comisión Nacional de Áreas Naturales Protegidas (CONANP), de regularizar tres asentamientos humanos irregulares ubicados en la Reserva de la Biosfera de los Montes Azules en la zona conocida como la Cuenca del Río Negro (Ranchería Corozal, Nuevo Salvador Allende y San Gregorio), la CONANP informa que, después de haber dialogado con sus representantes a través de una Mesa de Atención a la Zona Lacandona, niega categóricamente la regularización de esos asentamientos.

La invasión de dicha zona contraviene del Decreto Presidencial publicado en el Diario Oficial de la Federación el 12 de enero de 1978, mediante el cual se declaró el establecimiento de la Reserva de la Biosfera Montes Azules, y se determina que las únicas actividades permitidas en esa Reserva de la Biosfera son el turismo, investigación científica y tecnológica y de aprovechamiento controlado en las que, sin proceder al desmonte, se aprovechen la selva y sus recursos naturales.

De igual forma, la zona es considerada una de las reservas con una generación de riqueza biológica y recursos hídricos más importantes del país, es Patrimonio Natural de la Humanidad y está reconocida dentro del Programa del Hombre y la Biosfera por la UNESCO.

La zona también se destaca por mantener los ciclos y la recarga hidrológica de los cuerpos de agua, los recursos bióticos de la zona, que aún preservan una de las áreas de mayor biodiversidad en el país y en el estado, son de especial importancia para su conservación y la preeminencia de la zona como prestadora de servicios ambientales.

Otro aspecto relevante lo constituyen las características del suelo de la zona, al ser considerada de alto riesgo para asentamientos humanos ante los fenómenos meteorológicos.

Finalmente, y como parte de la mesa de diálogo, la CONANP ha brindado apoyo para la reubicación de los tres grupos involucrados en dichos asentamientos, la Secretaría de la Reforma Agraria y el Gobierno del Estado participa en proporcionarles opciones de reubicación a estos grupos.

Para mayor información: CONANP / DCCC / Subdirección de Información Tels. 54497000 exts. 17144 o 17220

gabriel.manzanilla@conanp.gob.mx o subd.informacion@conanp.gob.mx

Ocosingo Chiapas, Méx, 8 de marzo de 2012

Sr. Javier Hernández Valencia

Representante de la Oficina de la Alta Comisionada para los Derechos Humanos en México.

Alejandro Dumas No 165 Col. Polanco.

Del. Miguel Hidalgo, C.P 11560,

México D.F.

PRESENTE

Los Bienes Comunales Zona Lacandona y la Asociación Rural de Interés Colectivo Unión de Uniones Independiente y Democrática A.C., como organizaciones sociales indígenas de ciudadanas y ciudadanos y **promoviendo** en representación los habitantes de los Poblados San Gregorio, Ranchería Corozal y Salvador Allende, todos y todas ellos pertenecientes a los Pueblos originarios Tzotzil y Tzeltal, del municipio de Ocosingo Chiapas, autorizando para oír y recibir toda clase de notificaciones y acuerdos a los Abogados Javier Balderas Castillo, de la ARIC UU. ID. y a Natalie Long¹ de la Asociación Servicios de Apoyo Intercultural, A.C, señalando como domicilio para tales efectos: 1ª Norte No 65 Barrio del Centro Ocosingo Chiapas, México, 29950, ante usted respetuosamente comparecemos y exponemos:

Los Bienes Comunales Zona Lacandona (BCZL, en adelante) y la Asociación Rural de Interés Colectivo Unión de Uniones Independiente y Democrática A.C, (ARIC UU. ID. en adelante), conjuntamente con los Poblados San Gregorio, Ranchería Corozal y Salvador Allende todos del Municipio de Ocosingo, Chiapas, suscribimos la PETICIÓN en contra del Estado Mexicano.

Por lo anterior, suscribimos la PETICIÓN por el incumplimiento del Convenio 169 de la OIT para Pueblos Indígenas y Tribales en Países Independientes, del Pacto Internacional de Derechos Económicos, Sociales, y Culturales; la Convención Americana sobre Derechos Humanos; la Carta de la Organización de los Estados Americanos, reformada por el Protocolo de Buenos Aires; y la Declaración Universal de Derechos Humanos, por parte del gobierno mexicano y que se anexa a la presente.

PETICIÓN

REFERENCIAS

Los Bienes Comunales Zona Lacandona y la Asociación Rural de Interés Colectivo Unión de Uniones Independiente y Democrática A.C., manifiesta a la Organización de Naciones Unidas y al Alto Comisionado para los Derechos Humanos su profunda preocupación por incumplimiento por parte del Estado Mexicano (a través de sus instancias de gobierno federal) a diversos puntos del Convenio 169 de la OIT, del Pacto Internacional de Derechos Económicos, Sociales, y Culturales; la Convención sobre los Derechos del Niño; la Convención Americana sobre Derechos Humanos; la Carta de la Organización de los Estados Americanos, reformada por el Protocolo de Buenos Aires y la Declaración Universal de Derechos Humanos. La interlocución habida con el Estado mexicano, nos demuestra palpablemente que los esfuerzos realizados por las instancias de gobierno federal, para poner en práctica los compromisos adquiridos a favor de los habitantes de los tres poblados, han sido nulos.

Los BCZL y la ARIC. UU.ID y los habitantes de los tres poblados, elevamos atenta y urgente PETICIÓN a la OACNUDH en contra del gobierno mexicano, por lo que instamos a esa Oficina del Alto Comisionado para los Derechos Humanos que le den curso, de acuerdo a sus procedimientos.

Por lo anterior, suscribimos la PETICIÓN que conjuntamente con los habitantes de los tres poblados, hacemos por el incumplimiento a la Carta Internacional de Derechos Humanos y concretamente al Convenio 169 de la OIT sobre Pueblos Indígenas, por parte del gobierno mexicano y que se anexa a la presente,

PRESTACIONES DE DERECHO

PRIMERA.- El derecho en los Estados Unidos Mexicanos a todas las personas para gozar los derechos humanos reconocidos en la Constitución y en los tratados internacionales, como está establecido en el artículo 1º de la Constitución Política de los Estados Unidos Mexicanos. Además, el reconocimiento por el artículo 133 de la Constitución Política de México de que cuando México ratifica un tratado o convenio, este tratado o convenio se convierte en parte de la Ley Suprema de México.

SEGUNDA.- El Estado deberá garantizar a los Pueblos Indígenas, el goce pleno de los derechos humanos y libertades fundamentales, sin obstáculos ni discriminación, establecido en el párrafo 1 del Artículo 3 del Convenio 169 de la OIT, al mismo tiempo, no deberá emplearse ninguna forma de fuerza o de coerción que viole los derechos humanos y las libertades fundamentales de los pueblos interesados, punto 2 del Artículo 3 del Convenio 169 de la OIT

TERCERA. Garantizar la plena efectividad de los derechos sociales, económicos y culturales de esos pueblos, respetando su identidad social y cultural, sus costumbres y tradiciones, y sus instituciones; establecidos en la letra (b) del párrafo 2 del Artículo 2 del Convenio 169 de la OIT

CUARTA. La responsabilidad de desarrollar acciones coordinada y sistemática con miras a proteger los derechos de esos pueblos y a garantizar el respeto de su integridad, establecidos en el párrafo 1 del Artículo 2 del Convenio 169 de la OIT

QUINTA. Deberá reconocerse a los pueblos interesados el derecho de propiedad y de posesión sobre las tierras que tradicionalmente ocupan, establecidos en el párrafo 1 del artículo 14 del Convenio 169 de la OIT.

SEXTA.- El derecho a procedimientos adecuados en el marco del sistema jurídico nacional para solucionar las reivindicaciones de tierras formuladas por los pueblos interesados, establecido en el párrafo 3 del Artículo 14 del Convenio 169 de la OIT

SEPTIMA. Consultar a los pueblos interesados, mediante procedimientos apropiados y en particular a través de sus instituciones representativas, cada vez que se prevean medidas legislativas o administrativas susceptibles de afectarles directamente; establecido en el párrafo 1 apartado (a) del Artículo 6 del Convenio 169 de la OIT

OCTAVA. Los pueblos interesados deberán tener el derecho de decidir sus propias prioridades en lo que atañe el proceso de desarrollo, en la medida en que éste afecte a sus vidas, creencias, instituciones y bienestar espiritual y a las tierras que ocupan o utilizan de alguna manera, y de controlar, en la medida de lo posible, su propio desarrollo económico, social y cultural, establecido en el Artículo 7 del Convenio 169 de la OIT

NOVENA. Los derechos de los pueblos interesados a los recursos naturales existentes en sus tierras deberán protegerse especialmente. Estos derechos comprenden el derecho de

esos pueblos a participar en la utilización, administración y conservación de dichos recursos, establecido en el párrafo 1 del Artículo 5 del Convenio 169 de la OIT.

DÉCIMA. . Al aplicar las disposiciones de esta parte del Convenio, los gobiernos deberán respetar la importancia especial que para las culturas y valores espirituales de los pueblos interesados reviste su relación con las tierras o territorios, o con ambos, según los casos que ocupan o utilizan de alguna otra manera y en particular los aspectos colectivos de esa relación, establecido en el párrafo 1 del Artículo 13 del Convenio 169 de la OIT y en el párrafo 2 del mismo Artículo 13 establece; La utilización del término “tierras” en los artículos 15 y 16 deberá incluir el concepto de territorios, lo que cubre la totalidad del hábitat de las regiones que los pueblos interesados ocupan o utilizan de alguna otra manera.

DECIMA PRIMERA. Todos los pueblos tienen el derecho de libre determinación. En virtud de este derecho establecen libremente su condición política y proveen asimismo a su desarrollo económico, social y cultural, establecido en el párrafo 1 del Artículo 1 del Pacto de Derechos Económicos, Sociales y Culturales, y en el párrafo 2 del Artículo 1 del PIDESC, establece: Para el logro de sus fines, todos los pueblos pueden disponer libremente de sus riquezas y recursos naturales, sin perjuicio de las obligaciones que derivan de la cooperación económica internacional basada en el principio de beneficio recíproco, así como del derecho internacional. En ningún caso podrá privarse a un pueblo de sus propios medios de subsistencia.

DECIMA SEGUNDA. Los Estados Partes en el presente Pacto se comprometen a asegurar a los hombres y a las mujeres igual título a gozar de todos los derechos económicos, sociales y culturales enunciados en el presente Pacto, establecido en el Artículo 3 del PIDESC. .- El derecho a un nivel de vida adecuado, para toda persona y su familia incluso su alimentación, vestido y vivienda, consagrado en el artículo 11 del Pacto Internacional de Derechos Económicos, Sociales y Culturales y el artículo 25 de la Declaración Universal de Derechos Humanos

Las obligaciones señaladas arribas no se cumplen por el Estado Mexicano y particularmente por el gobiernos Federal, como lo mostraremos en los HECHOS de la presente PETICIÓN.

ANTECEDENTES

Los Bienes Comunales de la Zona Lacandona y la Asociación Rural de Interés Colectivo Unión de Uniones Independiente y Democrática A.C. y conforme los tres poblados, San Gregorio, Ranchería Corozal y Salvador Allende, para representarlos en la presente PETICIÓN contra el Estado Mexicano por su negativa a REGULARIZAR CONFORME AL DERECHOS AGRARIO a los tres poblados, asentados en las tierras de uso común de los Bienes Comunales de la Zona Lacandona (BCZL), en el municipio de Ocosingo, Chiapas. El Estado Mexicano ha realizado una serie de acciones que afectan los derechos humanos de los Pueblos Indígenas, tal y como se señala en la parte de PRESTACIONES de DERECHOS de esta PETICIÓN consagrados en el sistema internacional y americano de derechos humanos, y que probamos con los siguientes

HECHOS

Información sobre los que hacen la PETICIÓN

1.- Los poblados San Gregorio, Ranchería Corozal y Salvador Allende, se encuentran

en posesión de fracciones de tierra dentro de la Selva Lacandona, pertenecientes a los BCZL en el Municipio de Ocosingo en el Estado de Chiapas, México. Los tres poblados son miembros de la ARIC. UU.ID.

2.-+ La Selva Lacandona comprende un territorio de 1, 818,054 hectáreas ubicadas en el extremo sureste de México (Muench, 2008) y por la biodiversidad presente es considerada una de las regiones más importantes de México y una de las principales zonas prioritarias para la conservación (CONANP).

En su interior contiene una vasta extensión de Selva Tropical Húmeda (Bosque Tropical Perennifolio, Rzedowski, 1978), uno de los ecosistemas más diversos del mundo, así mismo constituye la mayor parte de la cuenca media y alta del río Usumacinta (aproximadamente el 75%) y proporciona servicios ecosistémicos como la regulación hidrológica y control de erosión, captura de dióxido de carbono y mantenimiento de la humedad del suelo, entre otros. Una particularidad de esta región es que hay muchas especies de plantas y animales (reptiles, aves y mamíferos) cuyo origen se remite a la selva del amazonas en Sudamérica y su distribución más norteña la constituye la selva lacandona en el territorio mexicano (Medellín, 2007). De igual forma en esta región se desarrolló la cultura Maya, una de las más conocidas a nivel mundial por lo que se encuentran un sin número de vestigios arqueológicos, incluyendo grandes ciudades como Palenque, Toniná, Bonampak y Yaxchilán, estas ciudades constituían importantes centros de comercio y religiosos.

3. La situación agraria en la región históricamente ha sido complicada debido a diversos procesos de colonización y asignación de tierras que prevalece actualmente.

Las primeras compras de predios y concesiones gubernamentales de tierra en la Selva Lacandona se realizaron a inicio del siglo XX otorgadas a empresas principalmente de capital extranjero de países como Alemania, Francia, Bélgica, Inglaterra y Estados Unidos, dedicadas a la explotación de la riqueza forestal presente en la zona. En esa misma época se realiza migración de indígenas provenientes de los Altos y fincas ubicadas en Ocosingo poblando la región conocida como Las Cañadas. Para la década de los 50's la mayor cantidad del territorio era propiedad de compañías madereras y habitadas únicamente por Lacandones, trabajadores de estas empresas y migrantes de los Altos y Ocosingo.

En los años de 1959, 1960 y 1967 se expropiaron como terrenos nacionales las propiedades designadas para la explotación forestal sentando las bases para su poblamiento cuando se reparten 128,486.91 hectáreas en 92 resoluciones presidenciales. En los años 60's se emiten 205 resoluciones agrarias dotando de 402,920.87 hectáreas. En los años 70's se entregan 599,936.74 hectáreas en 63 resoluciones y es cuando el Estado reparte tierras de la zona de Marqués de Comillas y Ribera del Rio Lacantún a solicitantes de diversas partes del país (Durango, Chihuahua, Sonora, Zacatecas, Puebla, Veracruz, Oaxaca, Michoacán y Guerrero) y a afectados por la construcción de presas Hidroeléctricas en el centro de Chiapas. En la década de los 80's se emiten 233 dotaciones agrarias con 353,561.1 hectáreas, así mismo se integran pobladores afectados por la erupción del volcán Chichón. Ya en la década de los 90's se concluye el reparte agrario y únicamente se emiten 12 resoluciones presidenciales con una superficie de 9,691.11 (Muench, 2008).

4. Conformación de Bienes Comunes Zona Lacandona. El 11 de abril de 1970 un grupo de 66 jefes de familia de la etnia Lacandón de los poblados de Metzabok, Naha, Zapote Caribal y Lacanjá Chansayab solicitan el reconocimiento de 10,000 hectáreas, por lo que el 26 de noviembre de 1971 el entonces Presidente de la Republica

Lic. Luis Echeverría Álvarez otorga el Reconocimiento y Titulación de los Bienes Comunales Zona Lacandona (BCZL) con una superficie de 614,321 hectáreas (DOF, 1972). Este decreto excluye a 56 asentamientos humanos y 15 pequeñas propiedades, la mayoría con antecedente de gestión agraria o áreas dotadas. Por lo anterior entre los años de 1974 a 1976 se inician la agrupación de poblados negándose 34 asentamientos a concentrarse en un solo poblado (San Quintín); en tanto que 22 poblados Tzeltales y Choles conformaron la comunidad Tzeltal de Velasco Suarez con 14 barrios (Nueva Palestina) y la comunidad Chol Frontera Luis Echeverría con 8 barrios (Frontera Corozal), reconociendo el derecho de 1678 comuneros el 18 de Diciembre de 1978 y publicado en el Diario Oficial de la Federación del 8 de marzo de 1979, creando así lo que se conoce como Bienes Comunales Zona Lacandona comprendido por seis subcomunidades (Lacanjá Chansayab, Nahá, Metzabok, Ojo de Agua Chankin, Nueva Palestina y Frontera Corozal) (DOF 1972; Muench, 2008).

En el año de 1982 se realiza la segunda ejecución y se formula el plano de los terrenos de BCZL aprobado por la Comisión Agraria, donde reducen a 584,037 hectáreas los terrenos comunales, debido a que existían 22 dotaciones ejidales con resoluciones presidenciales anteriores a los Bienes Comunales Zona Lacandona. Posteriormente en el año 1988, la Secretaria de la Reforma Agraria ejecuta por tercera ocasión la Resolución Presidencial de los Bienes Comunales Zona Lacandona e integró una Acta de Posesión y Deslinde de 501,104 ha con su respectivo Plano Definitivo. En 1989 se reconocen los terrenos ocupados por 26 núcleos agrarios asentados en la zona de Las Cañadas mediante resoluciones presidenciales otorgándoles una superficie de 47,627 hectáreas.

5. Áreas Naturales Protegidas. Una de las principales estrategias de conservación en México es la creación de Áreas Naturales Protegidas (ANP's), por lo que debido a la riqueza y biodiversidad presente en la Selva Lacandona se han decretado siete reservas con diferentes categorías y superficies.

En el año de 1978 se decreta la primera Reserva de Biosfera en México, denominada Reserva de la Biosfera Montes Azules (REBIMA), la cual establece una superficie de 331,200 hectáreas de las cuales el 70% se encuentran dentro de los terrenos de BCZL. En el año de 1992 se publican en el Diario Oficial de la Federación los decretos de 4 Áreas Naturales: Reserva de la Biosfera Lacantún (61,874 ha), Área de Protección de Flora y Fauna Chan Kín (12,185 ha), ambas reservas en terrenos de los BCZL y colindantes con la REBIMA, Monumentos Naturales Bonampak (4,357 ha) y Yaxchilán (2,621 ha). Finalmente en el año de 1998 se decretan las Áreas de Protección de Flora y Fauna Nahá (3,847 ha) y Metzabok (3,368 ha).

Asimismo, una década después y por acuerdo comunal se establece la Reserva Comunal Sierra La Cojolita (42 ha), la cual no tiene decreto gubernamental y es vigilada por los miembros de las subcomunidades de Lacanjá Chansayab, Nueva Palestina y Frontera Corozal. Esta última establece por acuerdo de la subcomunidad, tres reservas y un área de conservación de dos kilómetros alrededor de Frontera Corozal.

6. Programa de Atención Integral a la Comunidad Zona Lacandona y Reserva de la Biosfera Montes Azules. En el año 2003 los Gobiernos Federal y Estatal de Chiapas ejecutan el Programa de Atención Integral a la Comunidad Zona Lacandona y Reserva de la Biosfera Montes Azules buscando resolver la problemática agraria. En este programa se elabora un diagnostico que determina 22 núcleos agrarios con dotaciones ejidales anteriores a los decretos de BCZL y REBIMA; 47

con resoluciones presidenciales posteriores, 71 poblados con sentencia negativa del Tribunal Superior Agrario o sin ninguna gestión agraria instaurada y pequeñas propiedades en terrenos nacionales cuyos poseedores solicitaron su adjudicación. El programa comprendió la indemnización económica a la Comunidad Lacandona por terrenos expropiados para la regularización, reubicación y construcción de poblados asentados en terrenos de BCZL y REBIMA, aplicando una inversión aproximada de 500 millones de pesos. Dentro de las negociaciones, la comunidad Lacandona reconoce el deslinde realizado en 1988 aceptando el Plano Definitivo de 501 104 ha. Del año 2003 al año 2007 se regularizaron 39 poblados que comprenden 43,000 hectáreas, quedando pendientes 25 poblados entre los cuales seis están ubicados en la zona núcleo de la REBIMA.

De 1971 a la fecha se han creado 105 núcleos de población que comprende 157,000 hectáreas aproximadamente, actualmente se encuentran en el proceso de amojonamiento de los terrenos de BCLZ, considerando que el territorio será de una extensión de 457,000 hectáreas. (Informe técnico ambiental sobre los 3 poblados por la SEMAHN, del Gobierno de Chiapas. Noviembre 2011)

7. Procesos de posesión de los tres poblados. Los integrantes de Salvador

Allende, pertenecientes al pueblo tzeltal, eran peones acasillados, quienes inician ante el gobierno del estado de Chiapas solicitud de dotación de tierras en 1973, y posesionándose de cerca de 800 hectáreas en ese año, con mandato gubernamental. Los integrantes de San Gregorio, integrantes de los pueblos Tzeltal y Tzotzil, trabajadores muchos de ellos de las fincas cafetaleras, deciden posesionarse en el año 1979, de 1,200 hectáreas. Los integrantes de Ranchería Corozal, miembros del pueblo Tzeltal, se posesionan en cerca de 300 hectáreas, los tres poblados en la denominada Cuenca del Río Negro. A más de cuatro décadas de posesión, los tres poblados han demostrado que si es posible la armonía con otros seres vivientes en medio de la selva. La depredación no es una práctica en los tres poblados, diversos organismos tanto gubernamentales como no gubernamentales, han dado cuenta de las prácticas agroecológicas para satisfacer su derecho a la alimentación.

8. Tras diversas formas, el gobierno federal, ha intentado desalojar a los tres pueblos, pero la solidaridad nacional e internacional ha evitado que se den las graves violaciones.

9. Se parte que desde el mes de diciembre del año 2010, se profundizó el acercamiento entre la representación de la comunidad Lacandona, a través de su Comisariado de Bienes Comunales y su Consejo de Vigilancia, quienes externaron los acuerdos de sus Asamblea General, de solucionar la conflictividad agraria de los tres poblados asentados en las tierras comunales Zona Lacandona. Entre los meses de enero a mayo de 2011, ambas partes ARIC, UU. ID, junto con los representantes de los Poblados Nuevo San Gregorio, Salvador Allende y Ranchería Corozal, por una parte y los Bienes Comunales de la Zona Lacandona (BCZL), por otra, analizaron la mejor salida legal a la regularización de la posesión de hecho de los tres poblados.

La propuesta de EXPROPIACIÓN de tierras, por parte de la Secretaría de la Reforma Agraria de los BCZL, para entregárselas a los tres poblados, fue consensada y aprobada por ambas partes, y fue la que unifico y con la cual acordaron caminar conjuntamente, ante las autoridades federales y estatales. Otro elemento importante en esta fase de conciliación,

fue el hecho de reconocer los BCZL, la posesión y el derecho a la tierra de los tres poblados al ser también indígenas.

En el marco de las negociaciones, se instaló la Mesa Interinstitucional Palenque, integrada por el sector agrario y ambiental del gobierno federal, así como el sector ambiental del gobierno del estado de Chiapas, quien la ha conducido. Dicha Mesa, sesiona en la Ciudad de Palenque, Chis. Hasta allí, en el mes de julio, la ARIC. UU. ID y los BCZL, llegaron con los acuerdos arriba señalados.

10. La reacción del Gobierno federal, a la propuesta de regularización de los tres poblados, vía la expropiación de los BCZL, como han sido las más de 100 regularizaciones de igual número de poblados, fue de calificarla de improcedente, sin analizarla desde todos los ángulos, pero la intervención del gobierno del estado a través de la SEMAHN, propuso que se realizara un análisis in situ de las condiciones en las que se encuentran los tres poblados, comprometiéndose la SEMAHN, a entregar un estudio técnico, cartográfico y ambiental, para lo cual sus propias brigadas realizarían dicho estudio. Es así que en el mes de octubre inician dichos trabajos en los tres poblados sin ningún incidente y es hasta el mes de enero del año 2012, que en sesión de la Mesa Inter institucional Palenque, la Secretaria de Medio Ambiente, entrega a todas las partes involucradas el Informe Técnico, y se acordó que se abriera un compa de espera, para que las instituciones del sector ambiental y agrario del gobierno federal emitieran ahora sí con fundamento su opinión. Acordando dar un mes de plazo a dichas dependencias, para verter sus opiniones.

11. En el inter de esta espera, las representaciones de la ARIC y BCZL, diseñaron un plan de acción tendiente a por una parte solicitar audiencias con los titulares de la SECRETARIA DE MEDIO AMBIENTE Y RECURSOS NATURALES y de la SECRETARIA DE LA REFORMA AGRARIA, y por la otra, dar a conocer a la opinión pública nacional, la propuesta de solución a los más de 35 años de conflictividad, así como involucrar a otros actores (Cámara de diputados, Cámara de Senadores y a la Sociedad Civil Organizada), a fin de que intervinieran ante las autoridades gubernamentales del poder ejecutivo y fuera aprobada la propuesta de regularización de los tres poblados.

12. No obstante de solicitar con suficiente anticipación las audiencias con los titulares, no solo por parte de la ARIC UU ID y de los BCZL, sino también por ciudadanos diputados federales, nunca fuimos recibidos por dichos servidores públicos. Solo el Subsecretario de Ordenamiento de la Propiedad Rural de la SRA, nos recibió, quien nos argumento que desconocía por completo el caso ya que la representante de la SRA ante la Mesa Palenque, quien es la Directora del FIFONAFE, NO LE HABÍA INFORMADO ABSOLUTAMENTE NADA, comprometiéndose a enviar a un representante de esa Subsecretaria a la sesión de la Mesa Palenque el día 28 de febrero en la Ciudad de Palenque Chiapas y presentar su opinión.

13. El día 28 de febrero del corriente, se instaló en la Ciudad de Palenque, la ansiada sesión, contando con la presencia de los CC. Delegados federales en el estado de Chiapas, del sector ambiental, SEMARNAT, PROFEPA, CONANP, del sector agrario SRA y RAN. Por el gobierno del estado la titular de la SEMAHN, el Sub Secretario de Gobierno, zona Selva, y de nuestra parte el todos los integrantes propietarios y suplentes del Comisariado y Consejo de Vigilancia de los BCZL, por la ARIC UU ID, toda la Mesa Directiva, al igual estando presentes los representantes de los tres poblados y por último los representantes de la sociedad civil organizada, quienes han sido desde un inicio

de este proceso, invitados a fungir como testigos de honor, Servicios para la Paz (SERAPAZ), Comité de Derechos Humanos Fray Lorenzo de La Nada, A.C. Enlace Comunicación y Capacitación A.C. y la Parroquia de San Jacinto de Ocosingo Chiapas.

14. El 28 de febrero da inicio la sesión con la presentación de todas y todos las y los asistentes, al terminar la presentación y sin preámbulos el Delegado Regional de la CONANP, hace entrega exclusivamente al C. Comisariado de los BCZL del documento, firmando de recibido, procediendo el mismo funcionario a dar lectura al documento en dónde con los mismos argumentos de siempre consideran que no es viable la “creación de nuevos centros de población en la reserva de montes azules”. Los BCZL, la ARIC UU ID y los Representantes de los tres poblados, al ver que no había en el documento nada nuevo, así como tampoco una argumentación desde el Derechos agrario, decidimos levantarnos de la sesión y abandonar la sala.

15. Es de notarse la ausencia el 28 de febrero, tanto en el documento presentado como en lo físico, la presencia del sector agrario, quien por escrito se había comprometido el Subsecretario de Ordenamiento de la Propiedad Rural MVZ, Jaime Tomás Ríos Bernal, de mandar personal de su adscripción a dicha sesión, así como dar una respuesta desde el derechos agrarios a la solicitud de EXPROPIACIÓN a favor los tres poblados.

16. Por último queremos resaltar que aunado a toda esta conflictividad, el Estado Mexicano a través de sus instituciones, del sector ambiental y agrario, han creado una grave situación con los Bienes Comunales de la Zona Lacandona, ya que el Estado, pretenden despojar de más de 10, mil hectáreas a los BCZL, dentro del Programa PROCEDE, al mover los puntos de referencia, o llamados mojones, que delimitan la propiedad de los BCZL, en el ya muy conocido **vértice 16**. Esperamos, que esta grave violación, no tenga que ver con el no reconocimiento de los derechos humanos y particularmente agrarios de los tres poblados. Este asunto del intento de despojo, Sr, Representante en México de la Oficina de la Alta Comisionada de Derechos Humanos de la Organización de Naciones Unidas, será abordado ante usted de manera separada.

ALEGATOS

I. Las Leyes Nacionales del Estado Mexicano establecen como Ley Suprema los Derechos Humanos Reconocidos en los Tratados y Convenios Internacionales, pero los mecanismo y procedimientos son dilatados o nulos.

La obligación del Estado Mexicano para respetar los derechos humanos reconocidos en tratados y convenios internacionales, está contenido en dos artículos. Primero, y el más importante, es el del Artículo 1º de la Constitución Política, en donde se afirma que en los Estados Unidos Mexicanos, todas personas tienen derecho para gozar de los derechos humanos reconocidos en la Constitución y los tratados internacionales. Eso quiere decir, que si un derecho humano está reconocido por un instrumento legal que el Estado Mexicano ha ratificado y firmado, el Estado Mexicano tiene la obligación de respetar y proteger con acciones concretas y contundentes este derecho humano.

Esta obligación de respetar los derechos humanos establecidos en los tratados y convenios internacionales, también señalado en el Artículo 133 de la Constitución Política de México,

que establece que cuando México ratifica un tratado o convenio, este instrumento se convierte en parte de la Ley Suprema de México.

Por estos dos artículos de la Constitución, el Estado Mexicano a través del gobierno federal y los de las entidades federativas, están obligados a reconocer y proteger los derechos humanos establecidos en los siguientes instrumentos: (a) el Pacto Internacional de Derechos Humanos, ratificado el 23 de Marzo de 1981; (b) la Convención Americana sobre Derechos Humanos, ratificado el 3 de Febrero de 1981; (c) la Carta de la Organización de los Estados Americanos, reformada por el Protocolo de Buenos Aires, ratificado el 23 de Noviembre de 1948; y (d) la Declaración Universal de los Derechos Humanos, adoptado por la Asamblea General de la ONU el 10 de Diciembre de 1948. El Convenio 169 de la OIT, adoptado el 27 de junio de 1989 Firmado y Ratificado por el Estado Mexicano el 13 de agosto de 1990. Pese a lo anterior y por lo expuesto en el capítulo de HECHOS de esta PETICIÓN, consideramos y probamos que el Estado Mexicano, sus gobiernos, instituciones y funcionarios, son responsables por acto y omisiones. Esto, dado a que no obstante el Estado Mexicano tiene la obligación de proteger los derechos humanos establecidos en estos instrumentos, ha hecho lo opuesto, es decir, en vez de proteger a vulnerado esos derechos humanos elementales, por consiguiente ha puesto en peligro la vida e integridad de las personas, de los tres poblados, al intentar en varias ocasiones desalojarlos, amenazarlos y no contemplar la solución de regularización vía la expropiación, como ha sucedido con cientos de poblados en las mismas circunstancias y que ahora ya vive en plena armonía con los BCZL.

Esto ha sido expuesto y probado en el capítulo de HECHOS y las pruebas relacionadas a los mismos. Véase los hechos numero 3, 4, 6, 7, 8, 9 y 10, y la pruebas relacionadas a los mismos

II. El Estado Mexicano tiene la obligación de asegurar a todos los integrantes de los Pueblos Indígenas, la protección que sean necesarios para su bienestar.

Estas obligaciones están establecidas en el Artículo 19 de la Convención Americana sobre Derechos Humanos. También tiene el Estado Mexicano la obligación para reconocer y el Artículo 4 de la Convención Americana sobre Derechos Humanos. El Gobierno Mexicano actualmente está violando este derecho por su OMISIÓN como se ha expuesto en los hechos 9, 10, 11, 12, 13, 14 y 15, y las pruebas relacionadas a los mismos.

III. La población de los tres poblados, tiene el derecho a un nivel de vida adecuado, incluyendo su alimentación, vestido y vivienda.

Este es un derecho consagrado en el Artículo 11 del Pacto Internacional de Derechos Económicos, Sociales y Culturales y en el Artículo 25 de la Declaración Universal de Derechos Humanos; también este derecho incluye condiciones que hagan posible una vida sana, productiva y digna, como está establecido en el Artículo 31, letras (k) y (l) de la Carta de la Organización de los Estados Americanos. Este derecho, como ha sido expuesto y fundado, es actualmente vulnerado por el Gobierno Mexicano, como se ha expuesto en los hechos 7 y las pruebas relacionadas a los mismos.

IV. Los tres poblados, ha agotado todos los recursos internos disponibles.

Contrario al derecho a la justicia pronta y expedita, el Estado Mexicano ha mostrado que el marco jurídico mexicano y sus instancias, no quieren iniciar los procedimientos y normas jurídicas eficaces, que protegen de manera inmediata los derechos humanos elementales

de las personas, como queda mostrado en los hechos 8, 10, 12 y 14, y las pruebas relacionadas en ellos. Por ello, el caso que se presenta es de ALTA GRAVEDAD Y URGENCIA, ya que implica una violación inminente a la vida y seguridad de las personas por parte del Estado mexicano, concretamente del Poder Ejecutivo Federal y el Poder Ejecutivo del Estado de Chiapas, sus instancias y funcionarios.

V. El Estado Mexicano viola su obligación a desarrollar las posibilidades de recurso judicial.

Estos derechos están establecidos en el artículo 25 de la Convención Americana sobre Derechos Humanos, y se viola por el Estado Mexicano como se señala en los hechos: 8, 10, 12 y 14, y las pruebas relacionadas con ellos. Concretamente por la SEMARNAT y CONANP cuando declara el asunto IMPROCEDENTE. La SRA, por tardarse TREINTA años entre la primera solicitud de los pueblos y una respuesta, tal cual, las autoridades no están cumpliendo con sus obligaciones de atender este asunto, mucho menos existe la posibilidad de agotar un recurso jurisdiccional que restituya de manera factible en sus derechos a los tres poblados.

PUNTOS PETITORIOS

Por lo antes expuesto y jurídicamente fundado, a ustedes Sr. Representante de la OACNUDH y Sra. Representante de UNICEF solicitamos atentamente elevar a las instancias internacionales encargadas de verificar el cumplimiento de los Acuerdos, Tratados y Pactos de Derechos Humanos, nuestra PETICIÓN, para:

1.- Que ustedes intervengan para lograr que el Estado Mexicano, concretamente la Secretaria de la Reforma Agraria y DECRETEN LA EXPROPIACIÓN de las tierras de los BCZL y se les entregue conforme a derechos a los tres poblado.

2.- Que ustedes intervenga ante el Estado Mexicano, y éste adopte las medidas cautelares inmediatas y urgentes para evitar sean desalojados los integrantes de los tres poblados.

3.- Se establezcan mecanismos, medidas y acciones por parte del Estado mexicano, concretamente del gobierno del estado y las instancias mencionadas para que garanticen los derechos humanos afectados.

4.- Que de parte de ustedes como representantes de la ONU y por el principio de justicia, haya una respuesta pronta y expedita, dado que la situación de la población de los tres poblados es bastante grave, vulnerada, por las acciones y omisiones de las propias autoridades mexicanas dilatando la justicia del Estado, con lo cual, han alargado la inestabilidad en la zona.

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