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SALVAGING THE UNITED NATIONS REDD PROGRAM AGAINST THE BACKDROP OF INTERNATIONAL HUMAN RIGHTS VIOLATIONS

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The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) is an intergovernmental framework designed "to reduce forest emissions and enhance carbon stocks in forests while contributing to national sustainable development."[1] Deforestation—the permanent removal of forest cover—contributes significantly to global carbon dioxide emissions.[2] This, in turn, contributes to global climate change which adversely affects the livelihood of indigenous peoples and forest-dependent communities. REDD allows for nations and private stakeholders to offset their own carbon emissions by purchasing carbon stock stored inside forests, and, in effect, keep them standing.

However, nearly ten years after its launch, critics have scrutinized REDD for its impracticality. Additionally, many critics have recently shifted their critiques towards the program's unintended consequences. This sector of critics argues that, despite its many potential environmental benefits, REDD effectively permits violations of the international human rights of many indigenous peoples and forest-dependent communities worldwide.[3] Herein lies the conundrum, illuminated by a particularly bizarre tension in which the program's widespread benefits also impose significant, countervailing costs.

Ultimately, the United Nations (UN) must prioritize safeguarding the international human rights of indigenous peoples while simultaneously striking a balance between REDD's program efficiency and transparency. In the face of financial adversity, socio-cultural confusion, and lower political bargaining power status, indigenous peoples and forest-dependent communities must proactively assert their political voices. This must occur first locally and regionally as an entryway to national and international negotiations. Indigenous peoples and forest-dependent communities must first identify what they perceive as negative

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1. 15th Conference of the Parties to the United Nations Framework Convention on Climate Change, Copenhagen, Den., Dec. 7-18, 2009, Copenhagen Accord, P 6 U.N. Doc. FCCC/CP/2009/L.7 (Dec. 18. 2009) [hereinafter Copenhagen Accord].

2. Jeri Curley, *How Deforestation Affect the Air?*, SCIENCING (Apr. 25, 2017), http://sciencing.com/deforestation-affect-air-10632.html.

3. Victoria Arthaud, *Environmental Destruction in the Amazon: Can U.S. Courts Provide a Forum for the Claims of Indigenous Peoples?*, 7 GEO. INT'L ENVTL. L. REV. 195, 196 (1994).

inflictions on their rights and sovereignties at a grassroots level. This Article posits that indigenous peoples and forest-dependent communities can garner international attention, funding, and support by cooperating closely with public and private entities that have mutually invested interests in REDD. Together, these forces can direct their efforts towards targeted application of local, national, and international legal frameworks that provide clarity, uniformity and a more likely avenue for change and enforcement.[4]

Part I of this Article traces the origin and purpose of REDD. Part I also examines the program's significant role in implicating political and socio-cultural issues and its effects on indigenous peoples and forest-dependent communities. Part II addresses international laws and regulations that seek to protect the international human rights of indigenous peoples. Part III analyzes the strengths and weaknesses of Brazil's national mitigation strategies, which are unassociated with the UN and REDD altogether. This section also compares Ecuador's REDD-stamped national strategy to that of Brazil's, and lends particular focus to the widespread neglect of international human rights effectuated by emissions reduction plans in both of these Amazon countries.

Part IV of this Article offers suggestions that can not only enhance the existing REDD framework, but can also provide an avenue by which the voices and demands of indigenous peoples and forest-dependent communities are not stifled. Finally, Part V of this Article concludes by reframing the juxtaposition between REDD and the international human rights of indigenous peoples in order to demonstrate how the two are intertwined.

I. THE UN REDD PROGRAM AND REDD+

The United Nations Framework Convention on Climate Change (UNFCCC) tasks itself "to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[5] REDD+, borne in 2010 out of the UNFCCC's mission, supports national mitigation strategies and promotes "the informed and meaningful involvement of all stakeholders, including indigenous peoples and other forest-dependent communities."[6] Accordingly, the UN REDD program supports the nationally enforced REDD+ frameworks by offering results-based payments to incentivize developing countries to reduce or remove forest carbon emissions.

REDD currently serves sixty-four nations from Africa, Asia-Pacific, Latin America, and the Caribbean.[7] The program provides a range of funding mechanisms such as support to the design and implementation of national REDD+

4. Stephanie Baez, *The "Right" REDD Framework: National Laws that Best Protect a REDD Regime*, 80 FORDHAM L. REV. 821 (2011).

5. Greenhouse Gas Inventory Data, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, http://unfccc.int/ghg_data/items/3800.php.

6. Nicholas Anderson, *REDDy or Not? The Effects on Indigenous Peoples in Brazil of a Global Mechanism for Reducing Emissions from Deforestation and Degradation*, 2 J. SUSTAINABLE DEV. 18 (2009).

7. Partner Countries, UN-REDD PROGRAMME, http://www.un-redd.org/partner-countries.

programs, tailored support to national actions, and technical capacity building support through the sharing of expertise, common approaches, best practices, and facilitated knowledge sharing.

These funding mechanisms support five REDD initiatives: reducing emissions from deforestation; reducing emissions from forest degradation; conservation of forest carbon stocks; sustainable management of forests; and the enhancement of forest carbon stocks. The five REDD initiatives can be practicably implemented at different phases to achieve results-based actions such as the effectuation of comprehensive national strategies, sustainable development plans, and capacity building measures. It is important to recognize that the capacities and circumstances of participating countries can vary immensely. As a result, the magnitude and pace at which countries are able to provide oversight and decision-making fluctuate.

A. The Copenhagen Accord Fails to Capture a REDD Framework

In November of 2009, the 15th Conference of the Parties (COP) of the UNFCCC (COP-15) gathered in Copenhagen with the hopes of securing a binding post-Kyoto Protocol agreement. Unfortunately, the Copenhagen Accord was deemed a failure for its inability to legally bind the 193 ratifying Parties or manifest into anything of significance.[8] Notwithstanding this grave impasse, the COP-15 did ensure the continued importance of forest emissions reduction strategies in shaping future legislation and agreed that an incentive-based emissions reductions credit would be one of the centerfold selling points of any binding multi-national agreement.[9] Still, the Copenhagen Accord only provided vague guidelines for explaining the scope of REDD and did not construct concrete plans to pursue specific initiatives.

B. Cancun: From REDD to REDD+

In December of 2010, following the disappointing and unfulfilling Copenhagen Accord results, the 16th Conference of the Parties (COP-16) gathered in Cancun to discuss the possibility of formulating a binding successor agreement to the Kyoto Protocol.[10] The Cancun Adaptation Framework (CAF) marked the international community's shift in thinking. Rather than focusing solely on binding constituents to a specific agreement, the COP-16 enhanced the access and implementation of mitigation strategies vis-à-vis capacity-building mechanisms. The rationale was that, by creating a foundation for the good faith exchange and sharing of information, those countries initially opposed to the Kyoto Protocol will be more likely to bind themselves by signing onto a mandatory, international REDD instrument. Although the attempt to effectuate a binding post-Kyoto

8. Maron Greenleaf, *Using Carbon Rights to Curb Deforestation and Empower Forest Communities*, 18 N.Y.U. ENVTL. L.J. 507, 527 (2011).

9. Copenhagen Accord, *supra* note 1.

10. KATERYNA HOLZER, CARBON-RELATED BORDER ADJUSTMENT AND WTO LAW 14 (Edward Elgar Publishing, 2014).

Protocol agreement failed, Parties to the COP-15 considered the worldwide reduction of forest carbon emissions worldwide to be of paramount importance. The COP-15 negotiations vowed to bring the rising temperature of the Earth below 1.5 degrees Celsius above pre-industrial levels.

Accordingly, the COP-16 assigned their steadfast commitments to REDD+ within the CAF. For example, evidence compiled in 2006 by the UN Intergovernmental Panel on Climate Change (IPCC) substantiated the COP-16 decision calling for immediate intervention.[11] The IPCC report found that the "forestry sector is responsible for 17.4 percent of global [greenhouse gas (GHG)] emissions, placing it above the transportation and industry sectors, which account for 14 percent of global emissions each."[12] The IPCC report also signifies the harmful and compounding effects of forest destruction.[13] The consequences of prolific and unrestricted forest destruction are two-fold in that "not only is the carbon sequestered in each tree released into the atmosphere, but also the remaining forest's capacity to absorb carbon from the atmosphere is diminished."[14]

The CAF requires that ratifying Parties to the Kyoto Protocol who choose to implement the REDD program and REDD+ initiatives must satisfy several program requirements, such as: a nationally appropriate mitigation actions (NAMAs); national forest reference emission levels; robust and transparent national forest monitoring systems and; systems for providing information on how REDD+ safeguards are being addressed and respected throughout the implementation of REDD+, while simultaneously respecting sovereignty.[15]

II. INTERNATIONAL HUMAN RIGHTS

The 1948 Universal Declaration of Human Rights (UDHR), although not binding, is considered the foundation of international human rights law. Despite this seminal mandate, international laws and regulations can be vague and circumstantial. For example, Article I of the UDHR states that all human beings are "endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[16] Nevertheless, the UDHR has inspired subsequent legislation that "represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone."[17]

A. Laws Impacting Indigenous Peoples and Forest-Dependent Communities

In 1976, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

11. Baez, *supra* note 4, at 827.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at 831.
16. G.A. Res. 217 (III)A, Universal Declaration of Human Rights art. 1, (Dec. 10, 1948) [hereinafter UDHR].
17. *Id.* art. 17.

emerged from the UDHR.[18] These two covenants proposed core principles underlying the defense of human rights, such as the right to life, equality before the law, and freedom of expression.[19] This trifecta, consisting of two covenants along with the cornerstone UDHR, forms the International Bill of Human Rights (IBHR).

In September of 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).[20] Although UNDRIP is not legally binding, it creates a set of standards and legal norms governing the treatment of indigenous peoples with the intention to eliminate discrimination and human rights violations. UNDRIP is a decades-long culmination of generational efforts aimed to shed light on how global climate mitigation strategies infringe upon human rights. These infringements, in turn, inherently affect mitigation strategies due to disrupting civil peace, disturbing infrastructures and natural mechanisms within local and state government, and, in some instances, negligently harming the environment or ecosystem.[21] Currently, states that are members to the U.N. have "ratified at least one of the nine core international human rights treaties, and 80 percent have ratified four or more, giving concrete expression to the universality of the UDHR and international human rights."[22]

Notwithstanding the protections afforded to indigenous peoples in the litany of international human rights standards and laws, scholars and experts have begun to examine the inadvertent consequences of actions taken to combat climate change. University of Sydney legal scholars Lee Godden and Maureen Tehan suggest that a future climate change justice framework should explore more critically the unintended consequences that climate change policies place upon indigenous and local communities, specifically with respect to REDD and REDD+.[23] Their research demonstrates that there are 1.5 billion people "who live in forested areas or who are closely dependent on forests and associated areas such as savannah, including many indigenous communities."[24] Therefore, REDD+ affects roughly 20% of the world population.[25]

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18. ICCPR, OHCHR.ORG, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (last visited May 17, 2017).

19. ICESCR, OHCHR.ORG, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (last visited May 17, 2017).

20. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc A/RES/61/295 (Sept. 13, 2007) [hereinafter UNDRIP].

21. Maxi Lyons, *A Case Study in Multinational Corporate Accountability: Ecuador's Indigenous Peoples Struggle for Redress*, 32 DENV. J. INT'L L. & POL'Y 701 (2004).

22. The Foundation of International Human Rights Law, UNITED NATIONS, http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html (last visited May 17, 2017).

23. Lee Godden & Maureen Tehan, *REDD+: Climate Justice and Indigenous and Local Community Rights in an Era of Climate Disruption*, 34 J. ENERGY & NAT. RESOURCES L. 95 (2016).

24. *Id.* at 99.

25. 2017 World Population Data Sheet With A Special Focus on Youth (Population Reference Bureau, 2017), http://www.prb.org/pdf17/2017_World_Population.pdf (stating the world populations is 7.5 billion).

B. *Implications and Lack of Legal Clarity*

The U.N. REDD program is capable of equipping nations, private companies, and especially local communities with the essential tools, technology, and funding to mitigate the effects of forest degradation, deforestation, and the sinking levels of forest carbon stocks. Indeed, one of the program's foremost strengths is its heavy orientation towards a capacity building approach. This requires that nations implement NAMAs and follow requirements to file recorded data and procedures implemented. However, conflicts between national and state laws, such as the recognition of land carbon ownership in Brazil, remain unresolved. For example, the Brazilian national government does not specifically address "the legal nature and ownership of carbon credits or rights to greenhouse gas (GHG) emission reductions and/or removals."[26] However, some legislation at the state level "refers to rights derived from measures that reduce or remove GHG emissions, but [still] stops short of clearly stating how these rights to emission reductions are to be treated outside the governmental programs they create."[27] This clouds the assumption that nations should not only protect the rights of their citizens, but they should also provide their citizens with a means of identifying those rights. To establish a cohesive regulatory strategy, nations like Brazil are beginning to promote a policy that rewards REDD+ actions at all levels.[28]

Realistically, the respect that is afforded to human rights protections varies from nation to nation, and each nation interprets those safeguards in starkly different ways. Moreover, the potential number of different interpretations that could result serves to convolute the underlying intent of the UN's human rights doctrine. For example, REDD+ initiatives currently in existence "differ on everything from their definitions of 'forest' to their methods of financing...causing scholars to note that the only shared attribute in REDD programs is a lack of clarity."[29] Thus, the lack of clarity makes it difficult for nations to uniformly implement the laws.

Without clarity there cannot be an international consensus on REDD as a program, nor can there be universal understanding as to the proper functioning of REDD+ initiatives. Any legal system without clarity and consistency in terminology is likely to fail. More importantly, a legal framework absent any clear understanding, be it maybe ambiguous or pathological, is unlikely to deter acts that violate international human rights.

III. CASE STUDIES IN THE AMAZON RIVER BASIN

The implementation of Brazil's plans for reduced forest emissions exemplifies how a national mitigation program akin to REDD could breed success. However, a case study on Brazil's voluntary reduced emissions plan also shows

26. World Bank, *Carbon rights in Brazil*, FOREST CARBON PORTAL, http://www.forestcarbonportal.com/resource/carbon-rights-brazil.

27. *Id.*

28. *Id.*

29. Baez, *supra* note 4, at 832.

how the program can operate with complete ineffectiveness due to conflicts between federal and state laws. By comparison, investigating the relative successes of the Ecuadorian REDD plan reveals how other nations and private companies can begin to consider a range of alternatives that may fit their specialized needs without experiencing significant drawbacks and international human rights violations.

A. Brazil

Brazil has the largest area of tropical forest and the highest rate of deforestation globally.[30] However, in an interesting twist of logic, Brazil is not a member to the UN's REDD program, nor is it a participant of the Forest Carbon Partnership Facility (FCPC). FCPC is a "global partnership of governments, businesses, civil society, and indigenous people focused on reducing emissions from deforestation and forest degradation."[31] Instead, Brazil implements and subsequently funds its own NAMA-type initiatives.[32] Brazil's decision to opt out of REDD and the FCPC was tactically measured. If Brazil was a member of these two programs, it would be obligated to assist in funding the program's operations, thereby diverting financial support to other countries instead of wholly investing in itself. Therefore, Brazil's national action plan is an entirely voluntary mechanism to implement initiatives akin to REDD+ activities currently in existence. This strategy is likely motivated by the fact that Brazil perennially experiences the highest deforestation rates in the world.[33] Despite its distance from REDD, Brazil was "approved to become a pilot country under the Forest Investment Programme (FIP) of the World Bank."[34]

One initiative under this separate arrangement is Brazil's creation of the Amazon Fund in 2008, which "received a grant of USD 1 billion from Norway, to be paid over seven years and, more recently, the German government donated USD 29 million to the Fund."[35] Brazil's deforestation rates have dropped from 0.46% per year in 2005 to 0.15% per year in 2010, which leads one to believe that its national strategy will continue to produce encouraging results.

Brazil set a benchmark for a nationwide emissions reduction of "36.1% to 38.9% below 2005 levels by 2020," but it does not yet have a national framework that officially regulates and enforces this initiative or others created in the REDD spirit.[36]

Despite its recent initiatives to cut carbon emissions, Brazil's twentieth

30. Forests of Brazil, INFORMATION FOR ACTION, http://www.informaction.org/mp3/index.php?main=forbra_intro&subject=Forests/Brazil.

31. About FCPF, FOREST CARBON PARTNERSHIP FACILITY, https://www.forestcarbonpartnership.org/about-fcpf-0 (last visited May 17, 2017).

32. Brazil. An Overview from the REDD Countries Database, REDD DESK, http://theredddesk.org/resources/brazil-overview-redd-countries-database (last visited May 17, 2017).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

century history is entrenched in rampant deforestation that has effect to this day. Beginning in the 1940s, Brazil began to develop the Amazon Basin as part of a national program. Because of this process, scientists estimate that "[17] percent of the Amazon has already been lost and some scientists predict that 55 percent will be destroyed by 2030."[37] Additionally, it is likely that Brazil will continue to experience difficulties aligning national interests because of the interplay between federal and state laws. In particular, the conflict of laws pertaining to forest governance makes it difficult to "navigate a complex system of land rights that uses both customary and statutory law."[38]

Although the rapidly growing forest carbon market has popularized the REDD program's positive goals, many indigenous groups and forest-dependent communities in Brazil harbor negative expectations for mitigation activities. These groups believe that there is corrupt management running unchecked in pilot projects that will ultimately harm the Amazon Basin, its forests, and those who depend upon them.[39] According to legal scholar Stephanie Baez, "forest-dwelling indigenous communities worry that REDD will destroy their livelihoods."[40] Since national laws govern the implementation of emissions reduction initiatives, a revamped legal framework, built on a national level, will be instrumental for actively and effectively addressing the concerns of indigenous peoples and forest-dependent communities.

The absence of real enforcement, however, has made the indigenous and forest-dependent communities weary. The government and private investors who profess to enact emission reductions measures in Brazil's Amazon basin continuously fail to enforce them at the direct disadvantage of indigenous and forest-dependent communities. This failure cyclically instills in indigenous peoples and forest-dependent communities' feelings of fear, danger, and distrust towards both the measures and those purporting to implement them. This fear is not misguided or cynical. In a number of unfortunate cases, poorly regulated emissions reduction pilot programs have directly led to the destruction of natural habitats and national infrastructures.[41]

B. Ecuador

Ecuador is a geographically diverse nation with the majority of its forest biomass located in the Amazon region.[42] In 2009, Ecuador implemented its national development plan aimed at reducing its emissions from deforestation by 30% from 2009 to 2013. Due to its effective system of governing REDD+ initiatives at the national level, Ecuador has experienced enormous success in achieving this reduction goal. According to Ecuador's Ministry of Environment,

37. *Id.*
38. *Id.*
39. Baez, *supra* note 4, at 823.
40. *Id.* at 821.
41. Arthaud, *supra* note 3, at 197.
42. REDD in Ecuador, REDD DESK, http://theredddesk.org/countries/ecuador.

the country continues to experience significant reductions in its annual deforestation rate.[43] For example, in 2000, an "estimated 198,000 hectares (ha) of forest were being lost every year, equivalent to an annual deforestation rate of 1.5%."[44] The Ministry of Environment recently released data indicating that the national deforestation rate is astoundingly lower than it was in 2000, the deforestation rate is nearing that of 0.6%.[45]

Ecuador conceived the Socio Bosque Program (SBP), an incentive-based policy for forest conservation to combat deforestation and cut its emission rate.[46] SBP is an Ecuadorian program totally separate from other U.N. REDD initiatives. Through national and self-governed REDD activities such as SBP, Ecuador has managed to provide financial incentives to private companies, indigenous peoples, and forest communities to conserve forest carbon stocks.[47] Additionally, Ecuador implemented a system of equal communication, representation, and protection to better effectuate the slowing in deforestation.[48] According to data collected by The Redd Desk, a collaborative resource for REDD information sharing and preparation, the "SBP has achieved conservation agreements with private individuals and indigenous community partners to conserve a total of 883,223 ha of native forests with estimated benefits for more than 70,000 people."[49]

Critics of REDD might suggest that Ecuador does not actually protect the international human rights of indigenous peoples and that the SBP conservation agreements do not accurately depict the current, hostile environment that indigenous peoples and forest-dependent communities face in Ecuador. For example, critics might point to the early 1960s when the oil conglomerate Texaco (now Chevron Corp.) "extracted oil and dumped toxic waste in [the] Amazon rainforest using methods and technology that were obsolete and non-environmentally friendly" and adverse to the human rights of indigenous peoples.[50] As a result of Texaco's skirting the American Petroleum Institute's minimum standards for oil exploitation for nearly twenty-five years, the greater part of Ecuador's infrastructure was left dilapidated.[51]

However, proponents of REDD-type initiatives would argue that, since the ousting of Texaco from the Ecuadorian economy, the nation has experienced a rejuvenated commitment to protecting the environment and human rights of indigenous people. For instance, in 2008, Ecuador "ratified the first national constitution in the world to enshrine the Rights of Nature," which acknowledges

43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. REDD in Ecuador, *supra* note 42.
49. *Id.*
50. Nathalie Cely, *Balancing Profit and Environmental Sustainability in Ecuador: Lessons Learned from the Chevron Case*, 24 DUKE ENVTL. L. & POL'Y F. 353 (2014).
51. *Id.* at 355–56.

that nature has the right to exist just as all other life forms.[52] This unprecedented step constitutionalized the rights of nature while also protecting the rights of indigenous peoples and forest-dependent communities. Rather than treating nature as property under the law, as is common in other nations, Ecuador's new constitution allows "any person, community, village, or nationality to require the public authority to enforce the rights of nature."[53] Thus, in the wake of Texaco's dealings in Ecuador, indigenous peoples and forest-dependent communities have forged a more amicable relationship with the national government. These peoples can more easily raise grievances to an inclusive national body that values and respects indigenous peoples' roles in protecting the rights of nature. The Ecuador case study shows that the REDD program can be constructive and used to improve international human rights protections and practices.

IV. RECOMMENDATIONS

An interplay between private and public entities mutually invested in the REDD program may lead towards a path of beneficial action, development, and understanding. Integration of private and public initiatives, such as in funding and developing initiatives like the Governor's Climate and Forest Task Force (GCF), could provide a successful and different approach. GCF provides support to regional and provincial programs by advancing subnational policies, stimulating collaboration with public and private sector stakeholders at multiple levels, and channeling financial support to develop more effective approaches to REDD+. By merging these often competing entities under the common goal of unifying their interests and protecting the human rights of indigenous peoples, the viability is far greater than it would be if they acted separately. For example, the GCF emerged as a subnational coalition between thirty-seven states—including provinces from Brazil, the United States, and five other nations—focused on supporting jurisdictional programs designed to reduce emissions from forest degradation by linking compliance to a pay-for-performance regime.[54] A system incentivizing the cooperation of the private and public sectors in promoting international human rights is not only harmoniously collaborative, it is also practicable.

Alternatively, nations contracting with private companies and non-governmental organizations should be able to penalize un-abiding contractors, directly, through financial penalties, and indirectly, through global shaming. This could manifest through nations boycotting businesses that do not comport with their rules and regulations, just as Ecuador did in expelling Texaco from its oil and labor markets. In the event of a direct penalty, all REDD+ Parties should follow the example set by Ecuador. In this instance, by nationalizing a NAMA, and imposing sanctions upon noncompliant actors. In the most ideal scenario, nations should constitutionalize the Rights of Nature, as Ecuador did, mandating that the

52. *Id.* at 353.

53. CONSTITUTION OF THE REPUBLIC OF ECUADOR Oct. 20, 2008, art. 71.

54. About, GOVERNORS' CLIMATE & FORESTS TASK FORCE, http://www.gcftaskforce.org/about (last visited May 17, 2017).

treatment of environmental rights and the rights of indigenous peoples be one in the same.

Some challenges that might thwart constructive collaboration between nations and private investors are regulatory enforcement and funding. Certainly, Ecuador took an extreme measure in expelling Texaco, but it resolutely followed through with that measure by indoctrinating environmental rights and indigenous peoples' rights in its constitution. This has been difficult and costly for Ecuador and is a highly controversial matter. Brazil also faces serious obstacles that "undermine [the] application of Brazilian constitutional and legal precepts regarding indigenous lands."[55] Dinah Shelton, Professor of International Law at George Washington University, points to three specific schemes that usurp the lands and possessions of indigenous peoples in Brazil: i) the creation of new municipalities within indigenous lands divides the local indigenous peoples physically and politically; ii) local power relations tend to favor the settlement of nonindigenous peoples and has resulted in the facilitated migration of squatters into most of the indigenous areas; and iii) the passage of major roadways in indigenous areas, paired with forced evictions, brings disease into the region, which renders indigenous areas vulnerable to exploitation.[56] If, at the outset of their business operations, private companies can establish symbiotic business relationships with the nations in which they are dealing, they will be able to comply with environmental regulations while safeguarding international human rights. In such event, drastic measures against noncompliant actors, such as those taken in the Ecuador-Texaco ordeal, can be avoided.

V. CONCLUSION

In conclusion, the UN must recognize that its current safeguards purporting to protect the human rights of indigenous peoples and forest-dependent communities, codified in REDD+, are not functioning properly. This hearkens back to the fact that REDD was not intended to protect the human rights of indigenous peoples; rather, those safeguards were of secondary and tertiary concern. It is critical that the COP, and specifically the REDD+ Parties, re-conceptualize international human rights and its intersection with REDD through this lens. The UN cannot escape the inexorable truth that its REDD program subjugates the rights and quells the voices of indigenous peoples and forest-dependent communities. Particularly in Brazil, local and national authorities pose numerous threats to protecting the rights of indigenous peoples. By mustering civil unrest, excising indigenous peoples' governments from local and national processes, and deliberately intruding into indigenous areas to displace weakened communities and expropriate their resources, authorities seek to attack the integrity of indigenous land rights. Despite compliance with REDD programs, private entities continue to perpetrate great harms on indigenous and forest-dependent communities in the Amazon basin,

55. Dina Shelton, *Environmental Rights and Brazil's Obligations in the Inter-American Human Rights System*, 40 GEO. WASH. INT'L L. REV. 733, 757 (2009).
56. *Id.*

evident by the commandeering of land, shedding of violence in their communities, and the de-legitimization of the sovereignty, land tenure, and human rights of indigenous peoples. This Article offers a riposte to the obstacles that indigenous peoples and forest-dependent communities continue to encounter. Indigenous peoples and forest-dependent communities must seek to garner international attention, funding, and support from the concerted efforts by public and private actors. If these forces integrate, a targeted application to uniformly define human rights legal frameworks can provide clarity and perpetuate positive change.