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Chapter

# Indigenous Autonomy and Self-Determination in International Forest Financing Strategy: A Case Study from the Indigenous Bribri People of Costa Rica

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## Abstract

The efforts to protect the global environment, in principle, reflect Indigenous priorities through an appropriate cosmological perspective. However, international forest financing strategies through the United Nations Framework Convention on Climate Change are solely negotiated and agreed upon through state powers and governments, with nothing more than a symbolic gesture toward the essentiality of the Traditional Ecological Knowledge of Indigenous Peoples. The autonomy of Indigenous Peoples to negotiate their own financing models and forest conservation strategies are neglected in these international conventions, and are consequently relegated to the impulse of national governments. Despite Costa Rica's adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the ratification of the International Labor Organization's Convention 169, and the passing of the 1977 Indigenous Law legally demarcating Indigenous territories in Costa Rica, the failure to recognize Indigenous autonomy and self-determination is a blight on Costa Rica's record. My research in one of the Indigenous Bribri territories in Costa Rica demonstrates that while international forest financing strategies are a contemporary hot topic and pertinent issue of international diplomacy, it is essential that Costa Rica and other nations codify Indigenous autonomy and self-determination within these strategy developments for climate change mitigation.

**Keywords:** the right to self-determination, indigenous autonomy, international Forest financing strategy, consultation, UNFCCC, Costa Rica, REDD+

## 1. Introduction

Costa Rica has been lauded globally as an example in environmental sustainability and regionally as a leader in the recognition of the rights of Indigenous Peoples.

However, a fragile legal framework around the rights of Indigenous Peoples has led to neocolonial manipulation and government impunity in several essential areas, including the rights to autonomy and self-determination.

While autonomy is not specifically defined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), self-determination is specifically outlined in Article 3, stating that “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” [1]. However, the UNDRIP is not a legally binding convention that holds Costa Rica accountable to these rights. Subsequently, as Costa Rica negotiates international forest financing strategy, it is defaulting to lower standards of consultation and consent, which Costa Rica is legally required to uphold through the International Labor Organization (ILO) Indigenous and Tribal Peoples Convention 169 [2]. Conversely, Indigenous People throughout the Americas are demanding higher standards of full autonomy for their Peoples.

My research for my 2020 dissertation took place in close collaboration with an Indigenous Bribri community with whom I have sustained a very close relationship of trust for more than a decade. Developing mutuality, reciprocity, and connecting to place are essential in Indigenous research methodologies and were the foundations for my research [3, 4]. Throughout my writing, I will refer to Juanita Sánchez, an Indigenous elder and my main Indigenous research collaborator, but more importantly, someone with whom I have developed a familial relationship of trust. All interviews in the communities were done in collaboration with Juanita to maintain the essential foundation of relationships of trust in Indigenous research methodology.

Combining Indigenous research methodology with scientific method in environmental conservation and international climate change mitigation policies is difficult work, because non-scientific knowledge is often not recognized as robust data and is therefore marginalized or excluded. One of my objectives in my research was to standardize the recognition of alternative Indigenous epistemological approaches in order to decolonize the sphere of international environmental policies. This in itself is an exercise of recognizing Indigenous autonomy within environmental negotiations.

## **2. Case study context**

The United Nations adopted the Universal Declaration of Human Rights in 1948, but specific rights of Indigenous Peoples were not discussed until the 1970s and the UNDRIP was not adopted by the United Nations assembly until 2007. However, despite the progress achieved with the UNDRIP to facilitate Costa Rican recognition of Indigenous rights, the impact of the declaration is still undermined by colonial powers as “the declaration recognises Indigenous Peoples’ inherent sovereign rights to their lands but such rights cannot be exercised if they infringe on the rights of the nation state” [5]. In other words, the manifestation of true Indigenous self-determination is undermined in a thinly disguised colonial rule. And the UNDRIP does not serve as a legally binding document, so accountability to its articles holds no legal consequences for the government of Costa Rica. Costa Rica did, however, ratify the International Labor Organization’s Convention 169, the Indigenous and Tribal Peoples Convention, in 1993 [2], which is a legally binding agreement. This provides some legal accountability to Free, Prior, and Informed Consent (FPIC) of Indigenous Peoples in Article 16 [2], but not to full autonomy.

The Indigenous territories of Costa Rica were legally established by the Indigenous Law in 1977 [6]. The Secretariat of the Convention on Biological Diversity outlines 3344 square kilometers, made up of 24 Indigenous territories (5.9% of the country), with 8 different Indigenous groups present [7]. The largest of these are the Bribri and Cabécar groups [8]. It is of note, however, that in the 2000 census, only 1 out of every 10 hectares in Indigenous territories was in conformity with the law, with Costa Rica's Office of the Ombudsman noting 5 years later that no steps had been taken to recover Indigenous lands. The Ombudsman stated once again in June 2015 that the government had still not recovered any of the land in the 24 Indigenous territories [9]. Indigenous People have not historically been respected by or represented by the Costa Rican government. The Indigenous People did not even gain the right to vote in Costa Rica until 1994, after they received their national IDs in 1992 [10]. Additionally, the government-instituted Integral Development Associations (ADIs) that are the officially recognized authorities of each territory are also perceived by many as being neocolonial impositions that are not appropriate in the Indigenous communities [9].

It is often the state powers charged with legally guaranteeing Indigenous rights that systematically violate the same rights. The largest and most significant Indigenous contribution to the construction of Indigenous rights in Costa Rica has been the proposition of the Bill for Autonomous Development of Indigenous Peoples [11]. It is very telling, however, that even 20 years after the Bill was originally introduced in Congress, there has been no movement towards constitutional recognition of Indigenous rights [9]. Despite Costa Rica's theoretical commitment to the rights of Indigenous People, United Nations Secretary General Ban Ki-Moon met with 36 Indigenous leaders in Costa Rica to discuss the state's failure to enforce laws to protect them and the Inter-American Court of Human Rights (IACHR) had to intervene in Costa Rica in 2015 due to violence against the territories [12, 13].

The National Institute of Statistics and Censuses 2011 census estimates an Indigenous population of 48,500 in Costa Rica. There are 8 Indigenous groups in Costa Rica, including the Bribri People, and 24 Indigenous territories, including 4 Bribri territories [14]. Although territories are legally outlined by the Indigenous Law of 1977 [6], an alarming 43% of the territorial lands are in the hands of non-Indigenous People [15]. My research was done in one of the four Bribri territories, the KéköLdi Territory, where non-Indigenous People make up 70.3% of the population of the KéköLdi territory [16]. This is the highest rate of land usurpation of any Indigenous territory in Costa Rica. This governmental impunity and disorder plague the territory in several ways, including in cultural identity, self-determination, and autonomy.

### **3. REDD+**

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an international forest financing strategy currently in development in the United Nations Framework Convention on Climate Change (UNFCCC) through the yearly Conference of the Parties (COP) meetings. In REDD+, countries and private companies pay to conserve forest in their name, as a type of payment for environmental services approach. This method was first proposed by Costa Rica in the COP-11 meeting in 2005 and with the creation of UNDRIP in 2007, discussions of protecting the rights of Indigenous Peoples in this strategy were first considered in the COP-13 in 2007 [17].

The Forest Carbon Partnership Facility was created in 2008 to help develop policies to implement REDD+, including a grant for the Readiness Preparation Proposal (R-PP) to show that a country is ready to implement REDD+, with the consent and participation of all stakeholders, including Indigenous People.

Concerns of abuses of the rights of Indigenous Peoples, as well as aspirations to codify Indigenous Rights in legally binding contracts through REDD+, have been under constant negotiation since then, both on the national and international levels. Social safeguards and guidelines were created in 2010, swiftly followed by the denunciation of REDD+ as “the biggest land grab of all time” in 2011 [18]. The Indigenous advocacy group, Guardians of the Forest, helped to achieve the creation of the Local Communities and Indigenous Peoples platform in 2017 to advocate for Indigenous rights in the UNFCCC. The regional program of REDD/CCAD/GIZ was created to help improve the participation of Indigenous stakeholders by facilitating intersectional dialog [19]. The Central American Commission on Environment and Development (CCAD) and the German Technical Cooperation (GIZ in its German acronym) helped to link important actors in developing the National Strategy for REDD+ in Costa Rica. The Indigenous Peoples’ demands for “legal recognition of their property rights over the land, the recognition of the rights to self-determination and autonomy, and the right to FPIC” are highlighted as concerns [19].

In Costa Rica, specifically, several institutions joined together to create the consultation mechanism with Indigenous cultural mediators [20, 21] to satisfy the R-PP [22]. The protection of Indigenous stakeholders in REDD+ through the safeguards of transparency, respect to traditional Indigenous knowledges, and participation was highlighted as a success by the 2015 report by the Costa Rican National Forestry Financing Fund (FONAFIFO) and Ministry of Environment and Energy (MINA E) [23]. This, however, is contested with the declaration by the Bribri people banning REDD+ from their territories and will be discussed in the next section.

The final stages of negotiating the National REDD+ Strategy continued in July 2017, with Edgar Gutiérrez of MINAE celebrating the success of the design and endorsement by Indigenous leaders. The Indigenous Chapter of the National Strategy addresses five Special Indigenous Themes [24], however the application of Indigenous Traditional Ecological Knowledge towards decolonization of REDD+ is still greatly lacking. While the government celebrates a successful REDD+ negotiation process respecting the Rights of Indigenous Peoples, many Indigenous People decry the neocolonial manipulation in settling on consultation, rather than true autonomy and self-determination [25]. Dine’/Dakota Indigenous leader Tom Goldtooth says that this same logic dominates the notion of carbon trading and REDD+ to justify this “new wave of colonialization and privatization of nature” [26].

#### **4. Indigenous consultation mechanism**

The “Consulta Indígena” is a consultation mechanism developed in Costa Rica to fulfill the requirement of FPIC, as outlined in Article 10 of the UNDRIP [1] and Article 6 Convention 169 [2]. Through a series of local, regional, and national meetings, the official Indigenous Consultation Mechanism was created and eventually signed in March, 2018 [27]. This is a legal framework for officially seeking consent for any public or private projects that would affect Indigenous territories.

My personal observations of the Indigenous Consultation Mechanism in Costa Rica illustrate an inefficient satisfaction of the right to FPIC. While participating

in the consultation mechanism, I have observed clear power differences among the Costa Rican State and Indigenous People. In September, 2017, I had the opportunity to participate in and observe the Consulta Indígena in the KéköLdi territory. The 45 attendees (out of the approximately 300 residents of the territory) were unexpectedly summoned to make a vote for the delegates that would represent the territory at the national meeting in the month to follow. Once the meeting had ended and we had returned to the house, Juanita and I critically discussed the nature of the Consulta Indígena as a mechanism creating the façade of order and due process where in actuality the execution is much more haphazard and destructive.

However, with these consultation workshop meetings instigated in the communities throughout the process of codifying the Executive Order N° 40,932-MP-MJP in 2018 [27], Indigenous Peoples in the territories began to engage the legal system in ways they had never before. To take control and practice their right to self-determination within the sphere of environmental policies, Indigenous Peoples from multiple territories came together to develop their own Indigenous forest financing proposal. Through the over 150 workshops put on by FONAFIFO and MINAE, better organizational understanding was made between the participating groups and many ideas and proposals were shared [28]. This workshop mechanism utilized with FONAFIFO similarly functions as a sort of precursor for the cultural mediators program to be utilized with the REDD+ negotiations (discussed in the next section). This is also a demonstration of an attempt to achieve FPIC through a method of consultation, which also serves as a precursor to the Indigenous Consultation Mechanism, discussed in the next section.

## **5. Cultural mediators program**

Despite significant progress in Costa Rica with developing a national Indigenous Consultation Mechanism, the global concerns over violations of the rights of Indigenous Peoples in the implementation of the REDD+ strategy (outlined in Section 3) led the National REDD+ Strategy in Costa Rica to partner with FONAFIFO to develop its own, more robust, consultation strategy for REDD+ implementation, utilizing a cultural mediators approach [20]. The Cultural Mediators Program (CMP) was developed and piloted by the Tropical Agricultural Research and Higher Education Center and the Bribri-Cabécar Indigenous Network in the Talamanca region in 2012 and later scaled-up to function on a national level [20]. The standards set in the CMP exceed the eventual Executive Order passed in 2018 [27], with Indigenous leaders in each territory familiar with cultural values, cosmovision, and language as well as scientific understanding of the forest financing strategy in climate change mitigation [29]. These cultural mediators helped members of the communities engage in the policy negotiations in several workshops. In my research, I was able to sit in on these workshops and observe the process of translating not only the language of the REDD+ strategy to Indigenous languages but also applying the Indigenous cosmovision to conceptualize the efforts of this strategy. Participants in the workshops gave feedback and contributed to the development of an entirely separate chapter within the National REDD+ Strategy specifically for Indigenous Peoples.

Through the CMP, Costa Rica eventually arrived at a final draft of an Indigenous Chapter for the National REDD+ Strategy. This chapter highlights the important Special Indigenous Themes of 1. land tenure/healing, 2. Indigenous payments for environmental services, 3. protected areas/Indigenous territories, 4. integration of Indigenous cosmovision, and 5. participatory monitoring [24]. The Costa Rican

government has repeatedly hailed the CMP as a resounding success in The Framework for Environmental and Social Management [30], on a global stage at the Pre-COP side event on October 9, 2019, and finally the presentation of the report Results of the Consultation Process: Systematization of Completion of FPIC [31]. The principal achievements of the CMP being celebrated include the observance of the principles of free, prior and informed consent and self-determination [31].

The CMP was created to comply with the ILO Convention 169 by “respecting the special importance that the culture and spiritual values of the Indigenous People have in relation to their land and territories” and “respecting Indigenous cosmovision” [30]. However, mention of culture and spiritual values and Indigenous cosmovision are notably absent in the above successes of the CMP listed in the Framework for Environmental and Social Management [30] and the Results of the Consultation Process: Systematization of Completion of FPIC [31]. In fact, many Bribri People are still very alarmed at the potential implementation of REDD+ in the territories, despite the public narrative of informed consent through the cultural mediators process.

On July 1st, 2016, the Bribri Indigenous People submitted to their local government a declaration with more than 300 signatures of Bribri people in 15 communities rejecting REDD+ [25]. This is a clear contradiction to the consent that the government claims to be receiving from the Indigenous People, further emphasizing the need to distinguish between consent, consultation, and autonomy. The issues raised in the declaration is that the Bribri People had not been consulted appropriately and that the restrictions placed on forest use through REDD+ would prohibit traditional customary usage of the forest for food, medicine, and other resources. Declaring that the Indigenous Peoples had not been consulted anytime within the 8 years since the beginning of the REDD+ proposal is very problematic if the government touts the success of their innovative consultation mechanism exercised for REDD+ in 2014. It is clear that the Cultural Mediators Program implemented in Costa Rica to develop the Indigenous chapter of the National REDD+ Strategy is not fully successful in achieving consent, much less recognition of Indigenous autonomy and self-determination.

## **6. Indigenous autonomy and self-determination**

I have outlined Costa Rica's relatively robust legal framework in regards to the rights of Indigenous Peoples, including the Executive Order for an Indigenous Consultation Mechanism and the Cultural Mediators Program for the development of the REDD+ forest financing strategy. However, failure to uphold these legal standards and rampant government impunity are great cause for concern, causing the IACHR to denounce the situation in Costa Rica in 2015. The Costa Rican government holds longstanding debts to the eight Indigenous People groups of Costa Rica. Having passed the Indigenous law of 1977, signed the rights frameworks of the UNDRIP [1], ratified the Convention 169 [2], and passed an official consultation mechanism to respect the Indigenous right of free, prior, and informed consent in 2018 [27], Costa Rica appears to set an exceptional example of respecting Indigenous rights and identity. However, the lived experience of the Indigenous People, as told to me by Bribri research participants, shines a light on the vast impunity and incompleteness of the aforementioned policies.

Even the consultation mechanisms designed to protect Indigenous rights have been critiqued as mechanisms of manipulation masquerading as Indigenous consent [20]. My conversations in the territory, and with other Indigenous People outside of the territory, held countless denunciations of the Costa Rican institutions to fulfill

their promises. Even institutions created specifically to protect or advocate for the Indigenous People appear to be ineffective in my observations, including the National Commission of Indigenous Affairs (CONAI), the Public Prosecutor for Indigenous Issues, the Rural Development Institute, and in some cases the local ADIs under the National Directorate of Community Development [32, 33]. These legal apparatuses to achieve FPIC from the Indigenous territories to engage in international REDD+ negotiations have been denounced by Indigenous leaders as facades of consultation, rather than true Indigenous autonomy and self-determination.

The systemic lack of accountability of the institutions mentioned above towards the Indigenous populations in Costa Rica represent egregious injustices in their own right, but it is even more concerning for conservationists when we consider the impact these impunities have on the forests that become unprotected when the law is not applied. It has been shown that land tenure rights for Indigenous People support conservation, prevent deforestation, and protect biodiversity [34, 35]. If the goal of REDD+ is to reduce emissions from deforestation, it would appear that Indigenous land tenure rights should be a top priority within the policy. However, REDD+ does not demonstrate any increased institutional accountability to fulfill governmental responsibilities towards Indigenous territories. In fact, the income gained through REDD+ payments are intended to replace the governments' accountability to indemnify land occupied by non-Indigenous People, as the minister of the Environmental Carlos Manuel Rodrigues told me at the Pre-COP 25 [36].

Scholars who seek to contribute to the decolonization of environmental policies typically work through this Western rights framework, and lack a decolonization of their own rights conceptualizations. Many marginalized groups come to the UNFCCC in search of greater equality and representation of their rights in development and self-determination, however, as many scholars note, these rights are often unrecognized [15, 37]. The necessity to decolonize rights conversations as a prerequisite to decolonization of environmental policy becomes evident. Furthermore, it is essential that Costa Rica and other nations respect Indigenous autonomy and self-determination in the development of climate change-mitigation strategies such as REDD+.

## **7. Conclusions**

Without a legally binding commitment to autonomy and self-determination, as with the Bill for Autonomous Development of Indigenous Peoples [11], other consultation mechanisms serve as tokenism or a façade of autonomy while working within a neocolonial framework. Diversity of opinions on whether the government should intervene more on behalf of the well-being of the community or withhold intervention in recognition of Indigenous autonomy is up to the Indigenous Peoples themselves to determine, precisely in recognition of their own self-determination. International forest financing strategies such as REDD+ have the potential to contribute to the legal codification of Indigenous Autonomy and Self-Determination, but as it stands currently in Costa Rica, the REDD+ strategy fails to do so.

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### **Conflict of interests**

There were no financial or non-financial interests directly or indirectly related to this research.

### **Statements/declarations**

I upheld the ethics standards of the University for Peace, National Costa Rican protocols, the Indigenous Ethics Review Board of the KéköLdi territory (ADI), and the traditional customs of Indigenous participants. If and when discrepancies arose, I defaulted to the guidance of my Indigenous family as to what is truly appropriate in protecting the well-being of the Indigenous Peoples. I maintained ongoing informed consent with all research participants and collaborators.


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