



REDD+ IMPLEMENTATION: A MANUAL FOR NATIONAL LEGAL PRACTITIONERS



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For any questions please contact UNEP Division of Environmental Law and Conventions - DELC.

delc@unep.org

List of Acronyms

BeRT	Benefits and Risks Tool
CBD	Convention on Biological Diversity
CCBA	Climate, Community and Biodiversity Alliance
CITES	Convention on International Trade in Endangered Species of Wild Flora and Fauna
COMIFAC	Commission des Forêts d’Afrique Centrale
CSO	Civil Society Organization
ICA	Institutional Context Analysis
ESMF	Environmental and Social Management Framework
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FIP	Forest Investment Program
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, Prior and Informed Consent
GEF	Global Environment Facility
LULUCF	Land Use, Land-Use Change and Forestry
MRV	Measurement, Reporting, and Verification
NAMA	Nationally Appropriate Mitigation Actions
NAPA	National Adaptation Programmes of Action
NBSAP	National Biodiversity Strategy and Action Plan
NGO	Non-governmental Organization
NICFI	Norway International Climate and Forest Initiative
PGA	Participatory Governance Assessment
PLR	Policies, laws, and regulations
REDD+	Reducing Emissions from Deforestation and Forest Degradation, and the Conservation of Forest Carbon Stocks, Sustainable Management of Forests, and Enhancement of Forest Carbon Stocks
REDD+ SES	REDD+ Social and Environmental Standards

REL/RL	Reference Emission Levels/Reference Levels
SEPC	Social and Environmental Principles and Criteria
SESA	Strategic Environmental and Social Assessment
SIS	Safeguard Information System
UNCCD	United Nations Convention to Combat Desertification
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	The UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries

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Chapter 1

Introduction

Background and Context

Reducing Emissions from Deforestation and Forest Degradation, as well as promoting the Conservation, Sustainable Management of Forests, and Enhancement of Forest Carbon Stocks (REDD+) is a voluntary initiative established under the United Nations Framework Convention on Climate Change (UNFCCC) to create financial incentives for developing countries to reduce forest-related greenhouse gas emissions. REDD+ activities have the potential to deliver a wide range of benefits to the climate, to biodiversity, and to communities that depend on forests. By the same token, REDD+ poses risks of negative impacts, particularly if the rights of local communities are not respected, if a gender sensitive approach is not taken and if REDD+ activities are not embedded in the overall framework of environmental protection.

There is a large body of international laws and guidance that applies to countries undertaking REDD+. This includes both instruments and initiatives that specifically address REDD+ as well as those that address related issues such as forestry, land management and use, and tenure rights. Globally, REDD+ is supported by a number of initiatives such as the UN-REDD Programme, a United Nations (UN) effort to support nationally-led and stakeholder-driven REDD+ programmes

through the combined expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP), and the United Nations Environment Programme (UNEP); the World Bank's Forest Carbon Partnership Facility (FCPF); and the Forest Investment Program (FIP).

As a necessary part of preparing and scaling up for REDD+ activities, countries will need to assess the extent to which national legal frameworks are consistent with applicable international laws and guidance, and how they best support the successful implementation of REDD+. Indeed, implementing REDD+ effectively could well require changes to laws, regulations, policies and institutions in REDD+ implementing countries.

The purpose of this Manual is to provide legal practitioners in REDD+ countries, particularly partner countries of the UN-REDD Programme, with information on assessing national legal frameworks and associated gaps as well as suggestions on options to address key REDD+ legal issues. The intended audience includes national REDD+ programme coordinators, experts involved in REDD+ readiness legal and regulatory framework review and reform as well as forest, land and carbon use rights, amongst others.

Recognizing that legal responses will vary depending on national circumstances, the Manual provides examples of country responses. Furthermore, in view of the diversity in legal systems, the Manual defines national legal frameworks broadly to include laws, regulations, policies, and institutions at the national level. Thus, while the primary audience for the Manual is legal practitioners, the information provided will have significance for policy-makers and implementers as well.

Many countries who are eligible for REDD+ funding, including those participating in the UN-REDD Programme, the Forest Carbon Partnership Facility (FCPF) and bilateral REDD+ investments, are already in the process of assessing existing laws and, in some cases, developing new laws as part of REDD+ readiness and implementation. However, as the Country Needs Assessment undertaken jointly in 2012 by the UN-REDD Programme and the FCPF demonstrates, governments still require significant support for legal preparedness.¹ Countries highlighted the need for additional information and suggestions in addressing governance, which included institutional strengthening, legal frameworks, and benefit sharing.² Work on governance and legal frameworks to support the implementation of REDD+ and to resolve, “land tenure” and “carbon rights” issues in the REDD+ context are needed in virtually all existing and future REDD+ country strategies.³ Other related

gaps include: the identification of ways to strengthen and improve law enforcement capacities; the formal recognition and application of mechanisms for conflict resolution in REDD+; an assessment of how existing laws, policies, programmes, and practices incentivize deforestation and forest degradation; the identification of specific reforms in legislation and policies that can be addressed in the short term; and legally defined institutional arrangements with clarified competencies and technical capabilities.⁴

Importantly, a majority of countries across the geographic spectrum stated, in the country needs assessments, that they still require support for assessing existing laws and testing specific REDD+ strategy options, with African countries noting the greatest need for identifying legislative reforms.⁵ Countries asked the UN-REDD Programme and FCPF to build on existing work on legal preparedness and provide additional information and suggestions for legal preparedness, by assisting in the identification of gaps and inconsistencies that impede REDD+ implementation; proposing ways to integrate tenure and use rights (including carbon rights) into national legislation (including support to consultations and coordination on these matters); and, identifying specific legislative reforms that could be addressed in the short-term.⁶

Explanation of the Manual

The review of policies and practices and suggestions for assessing national legal frameworks broadly focus on two phases:

1 UN-REDD Programme and Forest Carbon Partnership Facility, Country Needs Assessment Report (2012), <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2012/Country%20Needs%20Assessment%20report%20UN-REDD%20Programme%20and%20FCPF%202012%20October%202012%20%281%29.pdf> [hereinafter CNA Report].

2 Id. at 15.

3 Id. at 16.

4 Id. at Chapter 4.

5 Id. at Chapter 4.

6 See UN-REDD Programme Response to Country Needs Assessment (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8376&Itemid=53

1) gathering information/inputs on laws, regulations, policies, institutions, and data related to forests and forest governance; and, 2) assessing whether the existing national legal framework is consistent with international law and best practice related to REDD+ readiness experiences thus far. Suggestions are based on decisions adopted by the Conference of the Parties to the UNFCCC, and guidance developed by the UN-REDD Programme's participating UN agencies; rather than being tailored to each country, they more broadly consider needs to ensure consistency between national legislation and international law.

Individual chapters provide suggestions on the steps that practitioners should consider in assessing national legal frameworks bearing in mind that the appropriate legal responses addressed in each chapter will vary depending on national circumstances and on the REDD+ technical issue being addressed. Each chapter also contains a "taking stock" box, which summarizes the key questions that practitioners should ask when gathering information or conducting assessments. Each chapter equally refers to other processes or tools that may assist in the application of the information gathered. Action steps are presented in a particular order in each chapter. However, depending on national circumstances and the stage of REDD+ readiness implementation, the sequencing of actions to be pursued in country may be different.

Overall, the chapters recommend the following steps for successful REDD+ implementation:

1. Identify and understand the body of international law and guidance that applies to a country

The Manual suggests that decisions by the Conference of the Parties to the UNFCCC on REDD+ should be the start-point of any legal review. It is further recommended that the rules and guidance from any international REDD+ initiative a country may be participating in – UN-REDD Programme, FCPF, FIP - are reviewed alongside UNFCCC decisions. In addition, it is important to identify all applicable international instruments and related obligations that are implicated by REDD+ activities. This is first discussed in Chapter 2, which provides the overview of instruments and initiatives, and explored further in Chapter 5.

2. Identify relevant REDD+ stakeholders

Stakeholder engagement during all phases of REDD+ is critical to its effectiveness. There is guidance at the international level for identifying and engaging stakeholders in REDD+, and it is useful to first understand the guidance that is available. National experiences in stakeholder engagement are an important consideration. Stakeholders will have their own important contributions to relevant international decisions as well as guidance on stakeholder engagement in REDD+ and should also be included in this process. Furthermore, many countries have already initiated stakeholder engagement processes in REDD+ related sectors such as forestry or may have laws and/or standards in place for the application of principles that are key to REDD+ implementation such as Free, Prior and Informed Consent (FPIC). This is addressed in Chapter 3.

3. Identify and assess the laws, regulations, policies, and institutions that are involved in forest governance and land-use planning at the national level

This step involves conducting a preliminary assessment or addressing recommendations from previous assessments of laws and regulations, including the analysis of possible gaps and overlaps in legal instruments at national and sub-national levels. Laws and regulations are the only elements with clear legal implications in the review of national legal frameworks. The assessment of policies and institutions pertaining to forest governance and land-use planning at the national level, on its turn, requires the analysis of governance aspects. Namely, data on forests and forest trends, including area and extent, use, and levels of production as well as threats, and pressures. The purpose of this assessment process is to inform the nature and extent of changes in national legal frameworks that may be needed. This is addressed in Chapter 4.

4. Assess the existing legal framework governing legally significant aspects of REDD+ implementation

This includes: applying safeguards (Chapter 5); addressing forest, land, and carbon tenure (Chapter 6); and ensuring delivery of multiple benefits and equitable benefit-sharing (Chapter 7) Consistency with relevant international obligations cuts across all these areas, and is a particularly important part of assessing whether safeguards and land-use tenure issues can be effectively addressed at the national level. Chapter 8 provides a summary of recommendations and guiding questions that will assist practitioners in assessing a national legal framework.

5. Identify the legal responses or legislative measures that are most appropriate in a country

There is no legislative formula that will fit the requirements of all countries. For instance, some countries could make use of existing laws to implement REDD+, while others may need to enact new legislation. Similarly, legal amendments may be necessary to provide institutions with the appropriate mandate to implement REDD+, whereas in other cases existing mandates may be sufficient. Rather than prescribing a single legal approach, the Development Law Service of the FAO⁷ highlights a number of critical areas for action in order to ensure well-designed laws and functioning legal institutions, including: providing legal advisory services to member countries; contributing to the development of international legal instruments; collecting and disseminating legal information; undertaking research and studies on important legal topics; and building capacity on legal matters. In brief, there are various legal approaches that may be suitable, including: implementing REDD+ through established legal frameworks; building on existing law and engaging in specific legislative reforms (both short-term and long-term) as necessary; enacting new legislation for REDD+; and/or where there are gaps in enforcement of existing law, strengthening institutional mandates and capacities.

It is worth noting that legal reforms and the adoption of new legislation are time-consuming processes, thus governments may wish to work with existing law whenever possible. However, REDD+ implementation is likely to span over many years, providing some

⁷ <http://www.fao.org/legal/development-law/en/>

space to undertake legislative reforms where existing laws are either inadequate or in conflict with REDD+ goals or requirements. Furthermore, processes for relevant legislative reform may already be underway as a result of commitments to other international processes (such as the work on incentive measures under the Conventions on Biological Diversity (CBD)) and on-going national reviews of laws or policies. Eventually, it will be

for each country to determine which aspects of national legal frameworks require change and how best to effect these changes. As noted above, examples from other countries and experiences from the FAO managed LEG-REDD+ project on legal preparedness for REDD+ may prove informative for legal practitioners in determining the best course of action for their countries.



Chapter 2

International REDD+ Frameworks and Initiatives

The purpose of this chapter is to provide a brief overview of the main international legally and non-legally binding instruments and initiatives that contain specific decisions or guidance on REDD+.⁸ Obligations under international instruments with relevance for REDD+ activities are also briefly addressed, but are discussed in more detail in Chapter 5. This is intended to help practitioners identify the body of international law and best practice related to REDD+ that should be considered when assessing a national legal framework.

REDD+ is a voluntary initiative established under the UNFCCC with a number of operationally significant but non-legally binding decisions adopted by the Conference of the Parties.⁹ There are also other relevant initiatives, such as the UN-REDD Programme, the Forest Carbon Partnership Facility (FCPF), and the Forest Investment Program (FIP), each with their own guidance and/or requirements. Currently, many REDD+ countries are pursuing multiple avenues for accessing REDD+ finance. While the guidance

in this document is based primarily on UNFCCC decisions and UN-REDD Programme guidance, when evaluating legal frameworks REDD+ practitioners may also wish to consider other relevant initiatives. Furthermore, legally-binding commitments under related international agreements should be considered as they can provide opportunities to strengthen synergies at the national level. Ensuring coherence between UNFCCC decisions, relevant international obligations, and REDD+ initiatives through national legal frameworks will amount to more durable and less burdensome REDD+ implementation processes in the long-term.

Appendix 2 contains a compilation of key resources associated with the instruments and initiatives that specifically address REDD+. Appendix 4 contains an indicative list of international and regional instruments relevant to REDD+ implementation.

1. United Nations Framework Convention on Climate Change

1.1 Basic operational elements of UNFCCC decisions

The UNFCCC provides the overall framework under which REDD+ should be implemented. Decisions made by the Conference of the Parties to the

⁸ For more details see Forest Carbon, Markets and Communities, REDD+ Social Standards and Safeguards Review (2012), http://www.fcmcglobal.org/documents/Safeguards_Paper.pdf [hereinafter FCMC Review].

⁹ See UN Framework Convention on Climate Change (UNFCCC), Art. 4.1(d). See also UNFCCC Decisions 1/CP.16, 2/CP.17, 12/CP.17, 2/CP.18.

UNFCCC are of a non-legally binding nature and focus on voluntary operational requirements for REDD+ implementation. UNFCCC decisions have therefore focused on the provision of guidance on scientific and technical matters rather than on building national legal frameworks for REDD+ implementation. Furthermore, many elements of UNFCCC decisions on REDD+ are still being negotiated. Existing UNFCCC decisions do, however, contain the basic responsibilities of all Parties who wish to participate in REDD+.¹⁰ The following activities constitute “REDD+ activities” for the purposes of the UNFCCC:¹¹

- Reducing emissions from deforestation;
- Reducing emissions from forest degradation;
- Conservation of forest carbon stocks;
- Sustainable management of forests; and
- Enhancement of forest carbon stocks.

Through the UNFCCC, Parties agreed that REDD+ should be implemented in three phases: starting with Phase I - a ‘readiness’ phase (designing national strategies, policies and measures, and capacity building),

followed by Phase II - an implementation phase (which includes demonstration activities), and evolving into Phase III – comprised by results-based actions that should be measured, reported, and verified (MRV).¹² Additionally, Parties agreed to promote and support a set of seven safeguards that should be addressed and respected in REDD+ activities (Cancun REDD+ Safeguards).¹³ In the UNFCCC context, safeguards are viewed as a means to not only avoid social and environmental risks but to further generate positive benefits through the implementation of REDD+ activities.

Box 1 contains key operational elements that REDD+ countries agreed to develop at the national level. In developing national REDD+ strategies or action plans, countries should address drivers of deforestation and forest degradation, forest governance issues, gender considerations, safeguards, and full and effective stakeholder participation (including indigenous peoples and local communities).¹⁴ Countries will also need to develop a system for MRV to assess the results of REDD+ activities.¹⁵ All of these requirements should be supported by adequate financing, technology transfer, and capacity building from developed countries.

Box 1 – Key Operational Elements:

- National REDD+ strategy or action plan
- National forest reference emission level and/or forest reference level (REL/RL)
- Robust and transparent national forest monitoring system for the monitoring and reporting of REDD+ activities (NFMS)
- System for providing information on safeguards (SIS)

UNFCCC Decision 1/CP.16, para. 71.

¹⁰ See UN Framework Convention on Climate Change (UNFCCC), Art. 4.1(d). See also UNFCCC Decisions 1/CP.16, 2/CP.17, 12/CP.17, 2/CP.18.

¹¹ UNFCCC Decision 1/CP.16, para. 70.

¹² UNFCCC Decision 1/CP.16, para. 70.

¹³ UNFCCC Decision 1/CP.16, para. 71(d) and Annex 1.

¹⁴ UNFCCC Decision 1/CP.16, para. 72.

¹⁵ See UNFCCC Decision 2/CP.17.

During the 19th Conference of the Parties (COP19) to the UNFCCC, which took place in Warsaw, in 2013, a set of nine decisions on institutional arrangements, methodological guidance and REDD+ finance have led to the conclusion of most of the work plan. Thus, enabling REDD+ implementation in developing countries subject to the availability of adequate finance and capacity-building. This set of decisions has come to be broadly referred to as the Warsaw Framework on REDD+.

Moving beyond specific REDD+ decisions, countries may wish to consider how REDD+ fits into broader mitigation actions and commitments under the UNFCCC. For instance, in Ecuador, REDD+ is expected to contribute to the fulfillment of broader national objectives set out in the Constitution, National Development Plan, and Environmental and Climate Change laws and policies.¹⁶

1.2 Synergies with other international legal instruments

Although the UNFCCC is the locus of international negotiations on REDD+, thus representing the main source of methodological guidance for its implementation, various social and environmental issues related to REDD+ such as respect for the rights of indigenous peoples, biodiversity protection, benefit-sharing regulation, and dispute settlement mechanisms are endorsed by a number of international legal instruments. These can be legally binding instruments with national legal obligations for ratifying party countries such as international conventions and treaties. For example, the International Convention on Indigenous and Tribal Peoples (No. 169), the Convention on Biological Diversity (CBD), the Convention on the Conservation of Migratory Species of Wild Animals (CMS), and the Convention on International Trade

Box 2 – Warsaw Framework on REDD+:

- Decision 9/CP.19 - Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70
- Decision 10/CP.19, Coordination of support for the implementation of activities in relation to mitigation actions in the forest sector by developing countries, including institutional arrangements
- Decision 11/CP.19, Modalities for national forest monitoring systems
- Decision 12/CP.19, The timing and the frequency of presentations of the summary of information on how all the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected
- Decision 13/CP.19, Guidelines and procedures for the technical assessment of submissions from Parties on proposed forest reference emission levels and/or forest reference levels
- Decision 14/CP.19, Modalities for measuring, reporting and verifying
- Decision 15/CP.19, Addressing the drivers of deforestation and forest degradation

¹⁶ UN-REDD Programme and Forest Carbon Partnership Facility, Country Needs Assessment Report (2012), 106 (2012).

in Endangered Species of Wild Fauna and Flora (CITES). Non-legally binding international legal instruments such as declarations are also relevant. For example, the UN Declaration on Human Rights, the Rio Declaration on Environment and Development, and the UN Declaration on the Rights of Indigenous Peoples.

In particular, explicit links have been established between REDD+ and soft law instruments under the Convention on Biological Diversity. In 2012, Parties to the CBD adopted non-legally binding guidance on applying UNFCCC REDD+ safeguards relevant to biodiversity.¹⁷ The decision acknowledges the large potential for synergies between REDD+ activities and ‘the implementation of the Strategic Plan for Biodiversity 2011–2020 and its Aichi Biodiversity Targets, (and) urges Parties, other Governments, and relevant organizations to fully implement the relevant provisions and decisions of the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change in a coherent and mutually supportive way’.¹⁸

While there is a risk that REDD+ can hinder the implementation of the Aichi Targets in specific circumstances,¹⁹ if UNFCCC safeguards are respected and addressed, REDD+ is likely to contribute towards the achievement of these targets.²⁰ The Secretariats of the CBD, the UN Convention to Combat Desertification

(UNCCD) and the UNFCCC have outlined key synergies between the UNFCCC Cancun Agreements on REDD+ and the five most relevant Aichi Biodiversity Targets as outlined in Table 1.

In a similar vein, Decision XI/19 (2012) equally notes that ‘the indicative list of indicators to assess progress towards the goals of the Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets, as contained in recommendation XV/1 of the Subsidiary Body on Scientific, Technical and Technological Advice, could be useful for assessing the contributions of (REDD+) (...) for achieving the objectives of the Convention on Biological Diversity’.²¹ Specifically, Parties to the CBD, other governments and relevant organizations are invited to build synergies between national REDD+ strategies or action plans and national biodiversity strategies and action plans (NBSAPs).²²

Besides, CBD Decision XI/19 encourages regular communication and exchange of information between Parties and relevant organizations in order to ensure that national experiences from the implementation of relevant CBD decisions can inform and support the implementation of REDD+ activities.²³ Both CBD Decision XI/19 and the UN-REDD Social and Environmental Principles and Criteria (SEPC - discussed below) provide methodological guidance that is particularly useful to the interpretation and implementation of the UNFCCC Cancun safeguards.

Importantly, CBD Decision XI/19 also refers to prior CBD guidance calling on Parties

17 CBD Decision XI/19 (2012).

18 CBD Decision XI/19 (2012), para. 6

19 For example, if REDD+ activities fail to prevent ‘leakage’ and pressure on forest land spills over other ecosystems, REDD+ may be detrimental to the achievement of the Aichi Targets.

20 UN-REDD Programme, REDD+ and the 2020 Aichi Biodiversity Targets Promoting synergies in international forest conservation efforts (2012), p.1.

21 CBD Decision XI/19, para. 5.

22 CBD Decision XI/19, para. 7(a).

23 CBD Decision XI/19, para. 13–15.

Table 1 – Key synergies between the Aichi Biodiversity Targets and the UNFCCC Cancun Agreements

Aichi Biodiversity Targets (CBD decision X/2)	REDD-plus elements (UNFCCC decision 1/CP.16)
5. By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced	<i>Reducing emissions from deforestation</i> Reducing emissions from forest degradation Conservation of forest carbon stocks
7. By 2020 areas under agriculture, aquaculture and forestry are managed sustainably, ensuring conservation of biodiversity	<i>Sustainable management of forests</i> Actions are to be consistent with conservation of natural forests and biological diversity and are to incentivize the protection and conservation of natural forests and their ecosystem services
11. By 2020, at least 17 per cent of terrestrial areas are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas	<i>Conservation of forest carbon stocks</i> REDD-plus activities should be consistent with the objective of environmental integrity and take into account the multiple functions of forests and other ecosystems
14. By 2020, ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being, are restored and safeguarded, taking into account the needs of women, indigenous and local communities, and the poor and vulnerable.	<i>Conservation of forest carbon stocks</i> Enhancement of forest carbon stocks REDD-plus activities should promote and support full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities
15. By 2020, ecosystem resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification.	<i>Reducing emissions from deforestation</i> Reducing emissions from forest degradation Conservation of forest carbon stocks Sustainable management of forests Enhancement of forest carbon stocks

* CBD, UNCCD & UNFCCC. *The Rio Conventions. Action on Forests. Montreal, Canada: Convention on Biological Diversity; Bonn, Germany: United Nations Convention to Combat Desertification; Bonn, Germany: United Nations Framework Convention on Climate Change, 2012, pp. 14* http://www.unccd.int/Lists/SiteDocumentLibrary/Publications/rio_20_forests_brochure.pdf

to implement ecosystem management activities as a contribution toward the objectives of the UNFCCC, CBD, the UN Convention to Combat Desertification (UNCCD), and the Ramsar Convention on Wetlands (Ramsar Convention).²⁴

There are also a number of other international instruments relevant to REDD+ implementation that may apply to a given country (see Appendix 4 for an indicative list). Parties to the Ramsar Convention, for example, have recognized

the importance of REDD+ in contributing to the objectives of the convention.²⁵ Therefore, at a national level, countries may wish to explore potential synergies between strategies or plans with respect to the UNCCD and Ramsar Convention as well.

Furthermore, international and regional rights instruments (such as human rights - including rights related to gender equity and equality and indigenous peoples' rights, and customary international law) contain fundamental rights of peoples and

²⁴ CBD Decision X/33, para. 8(n) (incorporated by reference to Decision XI/19).

²⁵ Ramsar COP Resolution XI:14.

communities that must be respected when implementing REDD+.²⁶

Global, regional and national anti-corruption conventions and agreements can equally provide a useful normative framework for fund management in the context of forest governance and REDD+. For example, anti-corruption has been included as a cross-cutting issue in the Indonesia Participatory Governance Assessment process while the Central African Forest Commission (COMIFAC) recognizes and addresses corruption as a significant obstacle to sustainable forest management in Central Africa.

International trade agreements and other multilateral environmental agreements may also contain provisions related to forest management such as the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

Identifying the full spectrum of international legal instruments that may be relevant and assessing how they fit in the national legal framework will help countries comply with REDD-related international obligations and will foster coherence at the national level. This is also an essential procedure for implementing the UNFCCC REDD+ safeguards, as discussed further in Chapter 5.

2. Multilateral Initiatives

2.1 The UN-REDD Programme

The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD) in developing countries. The Programme

was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP).

The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest-dependent communities, in national and international REDD+ implementation. This support is structured in two-ways: (i) direct support to the design and implementation of UN-REDD National Programmes; and (ii) complementary support to national REDD+ action through common approaches, analyses, methodologies, tools, data and best practices developed through the UN-REDD Global Programme. As of March 2014, the UN-REDD Programme supports 49 partner countries in Africa, Asia-Pacific, and Latin America, including 18 National Programme²⁷ countries.

The UN-REDD Programme has developed a number of guidelines and tools that are useful for implementing legal matters related to REDD+ and consistent with the UNFCCC and other relevant international agreements, including: the UN-REDD Social and Environmental Principles and Criteria (SEPC), and its Benefit and Risks Tool (BeRT, in draft form); the Participatory Governance Assessment (PGA); Joint Guidelines on Stakeholder Engagement in REDD+ Readiness (with FCPF); Guidelines on Free, Prior, and Informed Consent (FPIC Guidelines); Guidance

²⁶ See Appendices 3 and 4. Specific rights are also explored in Chapter 5.

²⁷ http://www.un-redd.org/Partner_Countries/tabid/102663/Default.aspx

on Conducting REDD+ Corruption Risk Assessments and Corruption Risk Mitigation measures; and Guidance Note on Gender Sensitive REDD+. A Guidance Note on National Grievance Mechanisms²⁸ is currently under development.²⁹ There are also numerous policy briefs and papers that countries may find informative for REDD+ readiness preparation including the ‘Legal Analysis of Cross-cutting Issues for REDD+ Implementation – Lessons Learned from Mexico, Viet Nam and Zambia’.³⁰

In addition, the UN-REDD Programme provides targeted support funding to partner countries that can support legal preparedness activities. Finally, the FAO’s Development Law Service manages the LEG-REDD+ Project aimed at providing recommendations for legal reforms supportive of REDD+ to countries that request support.

2.2 Forest Carbon Partnership Facility (FCPF)

The World Bank’s FCPF is a global partnership of stakeholders, including governments, business, civil society, and Indigenous Peoples focused on REDD+. It consists of two complementary funds: the Readiness Fund and the Carbon Fund.³¹ Overall, relevant World Bank safeguards apply to activities facilitated by both funds. Under the Readiness Fund, the World Bank and other delivery partners can channel

funds to qualifying countries consistent with the FCPF’s Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners.³² The Common Approach contains guidance for countries to conduct a “Strategic Environmental and Social Assessment” (SESA) and develop an “Environmental and Social Management Framework” (ESMF), both of which aim to integrate key environmental and social considerations at the earliest stage of decision-making. The FCPF is also preparing guidance for the Readiness Package, which is a self-assessment of a country’s state of readiness and a necessary step to access the Carbon Fund. The Carbon Fund will finance performance-based activities in five countries, and is currently finalizing a “methodological framework” to assess performance, including emission reductions and non-carbon benefits.

2.3 Forest Investment Program (FIP)

The FIP was established by the World Bank in 2009 as a targeted programme of the Strategic Climate Fund (SCF), which is one of the two funds under the Climate Investment Funds. Currently, eight pilot countries (Brazil, Burkina Faso, the Democratic Republic of Congo, Ghana, Indonesia, Lao People’s Democratic Republic, Mexico and Peru) receive FIP funds supportive of actions in line with REDD+ objectives.³³ FIP resources are channeled through multilateral

28 See UN-REDD Programme Website, www.un-redd.org/PublicationsResources/tabid/587/Default.aspx#foundation_docs

29 See: Draft UNDP WB Guidance on National Grievance Mechanisms: www.unredd.net/index.php?option=com_docman&task=doc_download&gid=10462&Itemid=53

30 UN-REDD Programme, *Legal Analysis of Cross-cutting Issues for REDD+ Implementation – Lessons Learned from Mexico, Viet Nam and Zambia* (2013)

31 See Forest Carbon Partnership Facility Website, <http://www.forestcarbonpartnership.org/fcpf>

32 FCPF, *Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners* (2011), http://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Nov2011/FCPF%20Readiness%20Fund%20Common%20Approach%20_Final_%202010-Aug-2011_Revised.pdf

33 See Forest Investment Program Website, <https://www.climateinvestmentfunds.org/cif/node/5>

development bank³⁴ as grants and near-zero interest credits and are meant to complement other REDD+ financing mechanisms, such as the FCPF, the Global Environment Facility (GEF - mentioned below), and the UN-REDD Programme. Within the FIP, there is a “Dedicated Grant Mechanism” for indigenous peoples and local communities aimed at ensuring their meaningful engagement in REDD+ and with resources additional to those allocated to the eight pilot countries. The FIP adheres to World Bank Operational Policies and Procedures, but applies separate safeguards. *Global Environment Facility (GEF)*.

The GEF is an independently operating financial organization that unites 183 countries and provides grants for projects related to climate change, biodiversity, and land degradation, among other global environmental topics. GEF projects are implemented through partnerships with international institutions, civil society organizations, and the private sector. All international institutions involved in the implementation of FCPF, FIP and UN-REDD Programme activities are also GEF implementing agencies. Besides, the GEF serves as a financial mechanism for a number of conventions, including the UNFCCC, UNCCD and CBD.³⁵ It has a financial incentive mechanism dedicated to forests called the “Sustainable Forest Management (SFM)/REDD+ program.”³⁶

This programme focuses on implementation at the national and sub-national levels,³⁷ and reflects guidance from the UNFCCC, UNCCD and CBD. It has increasingly supported pilot projects focusing on REDD+ that promote cross-sectoral cooperation and co-benefits from REDD+. Additionally, in 2011, the GEF adopted safeguard and gender-mainstreaming policies for all programming. The GEF has also adopted seven of the ten World Bank safeguard policies.³⁸

3. Bilateral Investments

Many individual governments finance REDD+ activities through bilateral arrangements with forest-rich developing countries. About 67% of donor funding for REDD+ is committed to bilateral activities.³⁹ Some donor countries have developed specific initiatives for channeling bilateral climate funds, such as Norway’s International Climate and Forest Initiative (NICFI), Australia’s International Forest Carbon Initiative, and Germany’s International Climate Initiative. Bilateral programs often do not have separate REDD+ safeguards, however they typically apply Official Development Assistance policies that can have comparable protections.⁴⁰ NICFI, in contrast, does have safeguards that it applies to its REDD+ funding programmes.⁴¹

34 The following multilateral development banks participate in the FIP: the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the International Finance Corporation, and the World Bank.

35 Global Environment Facility, <http://www.thegef.org/gef/whatisgef>

36 Global Environment Facility, The GEF Incentive Mechanism for Forests, <http://www.thegef.org/gef/sites/thegef.org/files/publication/REDDEnglish.pdf>

37 Global Environment Facility, Investment Guidelines (2010), http://www.thegef.org/gef/sites/thegef.org/files/documents/C.38.Inf_4.Rev_2%20-%20Investment%20Guidelines%20for%20Forest%20Management_0.pdf

38 FCMC Review, 38.

39 UK Government Website, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48074/1832-funding-for-forests-uk-government-support-for-red.pdf

40 See FCMC Review, 41-43.

41 Id. at 41.

Taking Stock: International REDD+ Frameworks and Initiatives

- What international legal instruments addressing REDD+ and international initiatives specific to REDD+ are applicable?
 - How do the operational elements of the UNFCCC and CBD decisions apply? The information is summarized above; however, please refer to UNFCCC decisions 1/CP.16, 2/CP.17, 12/CP.17, 2/CP.18, 9/CP.19, 10/CP.19, 11/CP.19, 12/CP.19, 13/CP.19, 14/CP.19, and CBD decision XI/19.
 - What is required in order to participate in REDD+ initiatives that apply to a country?
 - Can the requirements, safeguards, and standards be coordinated? What tools are used that may help with this (e.g. UN-REDD's SEPC, PGA, and BeRT; REDD+ SES; FCPF's SESA)?
 - What are the country's NAMAs and NAPAs?
 - Are there ways to coordinate national strategies or actions plans required by the agreements referenced above (e.g. NAMAs, NAPAs, and NBSAPs)?

Please refer to Appendix 2 for a compilation of key resources.

- Are there multiple funding sources for REDD+ in the country (e.g. bilateral donors)?
 - Do they have additional or different requirements?
 - Do they need to be integrated at the national level? If so, consider in what ways those requirements can be best integrated.
- Which related international legal instruments have the country signed, ratified, approved, or acceded to? What are the main obligations contained in those instruments? For more details, please refer to Chapter 5 and Appendix 4.



Chapter 3

Stakeholders of REDD+ Activities

This chapter provides a general summary of various stakeholder groups involved in REDD+ activities, noting that national and local circumstances will remain the primary determinant of which stakeholder groups should be engaged. The chapter also introduces some of the existing guidance work carried out on stakeholder engagement with a particular focus on legal aspects.

Multi-stakeholder involvement in all phases of REDD+ is essential for it to be effective. Such involvement may have implications for national legal frameworks, as discussed further below. Thus, it is important at the outset to understand who the stakeholders of REDD+ activities are. Stakeholders are broadly defined as, “those groups that have a stake/interest/right in the forest and those that will be affected either negatively or positively by REDD+ activities.”⁴² In many cases, stakeholders enjoy specific rights based on their particular situation or interests, and in such cases may be referred to as “rights holders.” The term “stakeholders” is used in this document to encompass rights holders as well as others who may have an interest in REDD+ activities. There are various REDD+ stakeholders, including:

- Indigenous Peoples, Forest-Dependent Communities, and Local Communities (ensuring gender equality)
- Government Institutions
- Environmental law enforcement agencies (national and international)
- Non-Governmental Organizations (NGOs) and Civil Society
- Private Sector
- Academia
- International Organizations

It is important to ensure that the process of identifying, selecting, and sharing information with stakeholders is transparent and inclusive. Involvement of each stakeholder at various stages of REDD+ planning and implementation minimizes potential conflicts and unintended negative consequences, while promoting trust. The UN-REDD Programme and the FCPF have developed joint ‘Guidelines on Stakeholder Engagement in REDD+ Readiness - With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities’⁴³ to provide concrete guidance for effective stakeholder engagement and consultation. The UN-REDD Programme has further developed Guidelines on Free, Prior and Informed Consent (FPIC) as well as a draft Guidance Note on Gender Sensitive REDD+.

⁴² FCPF and UN-REDD Programme, Guidelines on Stakeholder Engagement in REDD+ Readiness - With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities (2012), p.1, http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6862&Itemid=53

⁴³ *Id.*

Key legal aspects of stakeholder engagement outlined in the above guidelines focus on 1) meeting international obligations with regards to FPIC, gender equity, and human rights, 2) the importance of working within local and traditional legal and institutional frameworks, and 3) the need to address tenure issues (as discussed in Chapter 6).

It is also important to note that stakeholder engagement is included in reporting requirements under the UN-REDD Programme. The UN-REDD semi-annual narrative report template requires reporting on whether the Programme's guidelines for Stakeholder Engagement and Operational Guidance Engagement of Indigenous Peoples and Other Forest Dependent Communities have been applied.

1. Indigenous Peoples, Forest-Dependent Communities, and Local Communities

It is critical to recognize the role indigenous peoples⁴⁴ and local communities play in relying on and managing a substantial portion of global forests. Indigenous peoples and local communities are often “customary rights holders” whose livelihoods and cultural and spiritual well-being depend on the forest. Given the over one billion people living in poverty who depend on forests to sustain their livelihoods, the impacts of deforestation, forest degradation, and any REDD+ activities on those communities are often disproportionate.

⁴⁴ UN Development Group, Guidelines on Indigenous Peoples' Issues, <http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>

As such, it is essential to ensure the consent of indigenous peoples and local communities when developing REDD+ measures and activities that affect these groups and the land they inhabit. A key component of effective stakeholder engagement is free prior and informed consent (FPIC).⁴⁵ The UN-REDD Programme Guidelines on FPIC provide a normative, policy, and operational framework for countries to seek and obtain FPIC when appropriate. The Joint FCPF/ UN-REDD Guidelines on Stakeholder Engagement in REDD+ Readiness⁴⁶ also highlights the importance of indigenous peoples, calling on REDD+ activities to avoid potentially harmful impacts on indigenous peoples, and to minimize, mitigate or compensate them for any unavoidable negative impacts.

Indigenous peoples and local communities often play an important role in implementing REDD+ activities. Experiences thus far have demonstrated that failure to respect the rights of indigenous peoples and adequately consider their views through effective participation in decision-making processes can negatively impact REDD+ implementation at the national level.⁴⁷ Besides, indigenous peoples and forest-dependent communities can also play a vital function in accurate data collection given their traditional knowledge and relationship to the forest.

⁴⁵ UN-REDD Programme, Guidelines on Free, Prior and Informed Consent (2013), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53

⁴⁶ FCPF and UN-REDD Programme, Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6862&Itemid=53

⁴⁷ UN-REDD, Draft Report of the Independent Investigation and Evaluation (Panama) (2013)

Beyond FPIC, the engagement of indigenous peoples and local communities, and the effective participation of women are significant and essential elements to the success of REDD+ activities and the long-term sustainability and effectiveness of REDD+.⁴⁸ Therefore, it is essential that indigenous peoples and forest-dependent local communities, including women, minorities and youth, play an active role in all phases of REDD+, with the means to participate effectively, including in decision making.

2. Government Institutions and Parliaments

Governments may act as donors, implementers, and regulators in addition to playing a critical role as coordinators. Government institutions in REDD+ implementing countries may be involved in presenting mitigation commitments under the UNFCCC, preparing for REDD+, authorizing REDD+ activities, overseeing their effective and efficient management, investing in projects, establishing rules on stakeholder engagement with REDD+, verifying results (both carbon and non-carbon), receiving funds and distributing benefits. Governments are also responsible for enforcing the rights of affected communities and protecting biodiversity during all phases of REDD+. Furthermore, if implemented properly, REDD+ can deliver significant social and environmental benefits to stakeholders and many governments are exploring what arrangements best support such benefits.

Numerous government agencies such as those responsible for forests, environment, natural resources, agriculture, energy, transportation, finance and planning as

well as institutions with a specific REDD+ mandate may be relevant stakeholders in view of their role in implementing REDD+ and/ or the relationship between REDD+ and national development objectives and plans. Government agents responsible for human rights, parliamentary issues and environmental law may also be considered as important stakeholders regardless of the ministry or agency in which they are placed. However, there may be overlapping mandates between different ministries or agencies involved in land-use planning, including ministries of environment, forests, agriculture, energy, transportation, mining, finance and investment, and spatial planning. Thus, efforts to design institutional arrangements for REDD+ implementation should seek to ensure clear and complementary mandates between different government agencies at national, sub-national and local levels.

State, provincial, and local governments each provide important contributions in implementing REDD+. For example, different levels of government may have differing authorities and capacities to manage land-use, and those powers need to be clearly understood. State and local governments can also provide relevant data and information, such as the location of specific communities and natural resources, sectoral development plans and recognition of land ownership rights.

Furthermore, legislative bodies, such as national and sub-national parliaments may also be stakeholders of REDD+ activities. As countries advance with readiness and enter implementation phase the need to revise existing legislation or adopt new legal frameworks may become more relevant. Legal frameworks supportive of REDD+ may be necessary to define or clarify REDD+ terminology such

⁴⁸ UN-REDD Programme, *The Business case for Mainstreaming Gender in REDD+* (2011),

as deforestation, degradation or carbon rights; harmonize overlapping sectoral laws; establish clear institutional mandates; or ensure that social and environmental safeguards are addressed and respected. National and sub-national parliaments are responsible for enacting and amending legislation, providing budgetary oversight, and scrutinizing government actions. As a result, as the REDD+ regime evolves internationally and countries make progress with implementation, the role of parliamentarians as REDD+ stakeholders is likely to gain more relevance.

3. Non-Governmental Organizations and Civil Society

Non-Governmental Organizations (NGOs) and civil society organizations (CSOs) should be involved and engaged in REDD+ programme design, implementation, and monitoring to ensure public participation, the quality and credibility of reporting, as well as transparency and accountability. There are a number of different NGOs and CSOs to consider, including groups that represent specific stakeholder groups, such as women's groups as well as those active in REDD+ related sectors such as forestry, rural development and agriculture. Such organizations can be (and often already are) key partners in maintaining forests and reducing deforestation. Besides, they can contribute to the development and enforcement of standards and safeguards to ensure that stakeholder rights are upheld throughout REDD+ implementation. As such, NGOs and CSOs are not only stakeholders but may add value to REDD+ implementation by reducing administrative costs and providing early warning systems. In addition to helping implement REDD+ on the ground, NGOs and CSOs can strengthen partnerships

and help strengthen capacities to engage in REDD+; for example, by providing information to indigenous peoples and local communities and other potentially vulnerable stakeholders.

4. Private Sector

The private sector can play a number of different roles in REDD+.⁴⁹ Some companies may be involved in activities identified as contributing to deforestation. Others may function as investors, providing funding for specific programmes or projects. These payments may be upfront, or alternatively could involve purchasing emission reductions generated by REDD+ activities. The private sector may also act as implementers of REDD+ activities including MRV. Furthermore, the private sector may have rights or interests in land or development projects that may be impacted by REDD+ activities.

5. International and Regional Organizations

There are several multilateral REDD+ initiatives, such as the FCPF, the FIP, and the UN-REDD Programme that involve international institutions. These institutions include multilateral banks (e.g. World Bank, African Development Bank, Asian Development Bank, Inter-American Development Bank), UN organizations (e.g. FAO, UNDP, UNEP), and others. They can play multiple roles, including channeling funds, coordinating and implementing REDD+ activities, and advising and/or building in-country capacity on REDD+. There are also organizations that conduct important research on forests to inform planning and decision-making. Bilateral

⁴⁹ UN-REDD Programme, *The Role of the Private Sector in REDD+: the Case for Engagement and Options for Intervention* (2013).

donors also play an important role in REDD+ through international funding mechanisms, including, for example, the Government of Norway's International

Climate and Forest Initiative and the Government of Germany's International Climate Initiative, which supports REDD+ activities.

Taking Stock: Identifying Stakeholders

- Who are the relevant stakeholders of REDD+ in the country? Pay particular attention to indigenous peoples, forest-dependent communities, and other local communities.
- How have stakeholders been identified thus far? Please refer to the Joint FCPF/ UN-REDD Guidelines on Stakeholder Engagement in REDD+ Readiness, as well as the UN-REDD Programme Guidelines on FPIC.
- What are the existing national policies and legislation relating to consultation and participation?
- What tools are available to assist in stakeholder identification? This may include the Institutional Context Analysis (ICA) methodology, a gender analysis, and the Participatory Governance Assessment (PGA) approach, among others.



Chapter 4

Considerations for Assessing Existing National Legal Frameworks

The purpose of this chapter is to provide guidance on identifying and conducting systematic assessments of existing national legal frameworks relevant for REDD+ implementation. Countries may already have forest laws and regulations, forest policies (for instance National Forest Programmes), and institutions that deal with forests and land-use. When assessing whether a national legal framework is consistent with international law and guidance related to REDD+, it is useful to determine whether there are overlaps or gaps in relevant definitions, jurisdictions, law enforcement, and land-use plans at the national level. The Development Law Service of FAO also highlights the importance of accommodating relevant community based management and participatory approaches in forest-sector legislation, and building capacity for the development and implementation of forest-related laws.⁵⁰ This will essentially help scope the nature and extent of reforms that may be necessary in a given country.

In order to establish the nature of legal reforms supportive of REDD+, countries will need to explore the legal implications of addressing and respecting UNFCCC REDD+ safeguards, which can be

significant.⁵¹ The primary legal issues associated with safeguards implementation are addressed in Chapter 5.

The following recommendations focus on relevant considerations to the assessment of national legal frameworks. They are informed by cross-cutting legal, policy, and institutional reviews of Indonesia (Central Sulawesi), Mexico, Viet Nam, and Zambia.⁵² In sum, the major issues include:

- Defining forests and forest-related concepts, rights over land, forest carbon, and REDD+ terminology;
- Gathering baseline forest data and evaluating monitoring capacities;
- Identifying and addressing drivers of deforestation and forest degradation across multiple sectors;
- Evaluating the institutional architecture;

51 Leo Peskett and Kimberly Todd, Putting REDD+ Safeguards and Safeguards Information Systems Into Practice, UN-REDD Policy Brief 03 (2013), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=9167&Itemid=53 [hereinafter UN-REDD Safeguards and SIS Policy Brief].

52 UN-REDD Programme, Cross-Sectoral Analysis of Policy and Legislative Frameworks that are Relevant to REDD+ Implementation in Central Sulawesi, Indonesia (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8847&Itemid=53 [hereinafter Sulawesi Legal Review]; UN-REDD Programme, Legal Analysis of Cross-Cutting Issues for REDD+ Implementation: Lessons Learned from Mexico, Viet Nam and Zambia (2013) [hereinafter Cross-Cutting Legal Review].

50 http://www.fao.org/fileadmin/templates/legal/docs/factsheet_forestry.pdf

- Understanding the relationship between national and sub-national laws and policies and adopting decentralized mechanisms to support REDD+ implementation at local level;
- Formally recognizing customary and indigenous rights;
- Harmonizing legal inconsistencies across sectors;
- Implementing legal arrangements needed to strengthen REDD+ institutional coordination;
- Identifying and establishing public participation processes and FPIC mechanisms, including for the participation of women and minorities;
- Developing and regulating equitable benefit distribution mechanisms; and
- Reforming investment laws.

After examining such preliminary considerations, Further, securing equitable forest tenure arrangements has particular significance for national legal frameworks in many REDD+ countries, as do achieving multiple benefits and ensuring equitable benefit-sharing schemes. Thus, forest tenure and multiple benefits are addressed separately in Chapters 6 and 7.

1. Defining Forests and Forest-related Concepts

How forests are defined in national laws, regulations, and policies is central to the operation of effective REDD+ programmes. In many countries forest loss and conversion may not officially be considered deforestation,⁵³ thus countries should carefully examine the existing legal framework and determine if new definitions are needed or if existing definitions should be revised or harmonized. At present,

⁵³ Cross-Cutting Legal Review, 14.

UNFCCC decisions on REDD+ do not define forests or related concepts, such as forest degradation or deforestation. Additionally, while there are a number of definitions at the international level, including those proposed by the FAO, the Kyoto Protocol, and the CBD, they do not necessarily reflect national practice.⁵⁴ Furthermore, some definitions permit unreported and unaccounted large-scale conversion of forests in some developed countries, such as the definition contained in the current Kyoto Protocol.⁵⁵ It is possible this issue will surface in the context of the 2015 agreement, noting the potential interface between REDD+ (for developing countries) and Land Use, Land-Use Change and Forestry (LULUCF) (for developed countries) frameworks. Regardless, it is useful for governments in the readiness phase to have a workable definition of forests (including natural forests) and related concepts, as well as consistency in terminology throughout relevant legislation and existing forest policies and national forest programmes.

Any process of revising definitions and REDD+ planning should be undertaken with full and effective participation of stakeholders, and be consistent with REDD+ safeguards.

⁵⁴ See Appendix 3 for definitions.

⁵⁵ Cross-Cutting Legal Review, 14.; See also Sasaki & Putz, Critical Need for New Definitions for Forests and Forest Degradation in Global Climate Change Agreements, http://www.ciefap.org.ar/index.php?option=com_phocadownload&view=category&download=60:critical-need-for-new-definitions-of-forest-and-forest-degradation-in-global-climate-change-agreements&id=8:taller-sobre-bosque-degradado.

2. Addressing Drivers of Deforestation and Forest Degradation Across Multiple Sectors

Identifying drivers of deforestation and forest degradation in the forest and other relevant sectors will support coherent REDD+ planning and implementation, particularly where existing laws, regulations, or policies are contributing factors. Under the UNFCCC, Parties agreed to address drivers of deforestation when planning for and implementing REDD+.⁵⁶ Although negotiations are ongoing, this should not prevent countries from taking practical steps to deal with relevant legal issues at the national and sub-national levels. Illegal logging, vague forest and land rights, gaps in land-use planning, and fragmented laws can all contribute to deforestation and forest degradation in the forest sector as can agricultural laws or policies that result in perverse incentives with regards to sustainable land management. In fact, often times the main drivers of deforestation exist in the long-term development trends of other sectors (e.g. agriculture, mining, energy, transportation).⁵⁷ For instance, in a number of Asian countries, agricultural expansion is one of the primary drivers of deforestation.⁵⁸ In Central Sulawesi, Indonesia, a legal review demonstrates that “legislation and policy are not harmonized across sectors, and there is no strong framework for resolving potential land-use conflicts between forestry, agriculture, and mining.”⁵⁹ Therefore, countries should consider cross-sectoral legal solutions and

harmonize laws, in the context of low-carbon development strategies. In addition, countries could analyze underlying causes associated with international markets and trade policies to assess whether there are national legal options that may help address international drivers of deforestation.

3. Evaluating Institutional Architecture

Government institutions identified through the stakeholder engagement step discussed in section 3, will play an important role in preparing for and implementing REDD+. Because a number of ministries and agencies at all levels may be involved, it is useful to assess existing institutional mandates and how cross-cutting activities are coordinated, which institutions could be charged with responsibilities, whether additional capacities are needed, and what (if any) new institutions may be necessary. This assessment has legal significance because depending on the country context and the legal approach involved, a country may need legislative changes to provide the necessary legal endorsement and capacity to administer REDD+-related activities and funds. Additionally, because overlapping and unclear jurisdictions are an identified challenge within government institutions in this context, some form of revision or clarification of mandates may be necessary. Given the cross-sectoral nature of REDD+, countries could also establish inter-agency or national steering committees and ensure that, in the assessment of institutional capacities, existing or potential collaborative capacity is captured. The purpose of such collaborative efforts could focus on identifying common challenges, developing a common vision, and establishing a framework for the planning and implementation of joint activities. For example, Indonesia has instituted a REDD+ Task Force

56 UNFCCC Decision 1/CP.16, para. 72.

57 Kissinger et. al. (2012), Executive Summary.

58 Id. John Costenbader, REDD+ Benefit-Sharing: A Comparative Assessment of Three National Policy Approaches (2011), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=5577&Itemid=53.

59 See Sulawesi Legal Review.

through a Presidential Decree, which has supported wide consultation with relevant stakeholders and will continue to build cross-sectoral coordination. It is important that the responsibilities and decision-making powers of such bodies are clear at the outset. Finally, if it is not already provided for in existing law or institutional powers, relevant institutions must have the mandate necessary to conduct meaningful consultations consistent with REDD+ safeguards.

4. Understanding the Relationship Between National and Sub-national Legal Frameworks

REDD+ is already being implemented at multiple levels. Although the focus of legal preparedness tends to be at the national level, early demonstration activities show that sub-national frameworks can play a significant role in administering forests. It is important for countries to understand the relevant authorities and

capacities of government at the national, state, provincial, and local level during the planning stages of REDD+. Which levels of government have the capacity to effectively oversee REDD+ activities in different areas of a country is also a significant consideration. The policy and legislative framework analysis of Central Sulawesi, Indonesia highlighted that there are gaps and conflicts between national and sub-national frameworks. These gaps suggest that, at times, there is no mechanism for applying legislation practically.⁶⁰ Governments should examine the relationship between national and sub-national legal frameworks, and address gaps or conflicts if any. Also, if a country decides to develop sub-national approaches, it will need to determine how they relate to the national reference emission levels/reference levels (REL/RL). It is necessary to ensure that emission reduction approaches at a sub-national level are fully consistent with and integrated into a national inventory.

⁶⁰ *Id.* Executive Summary.

Taking Stock: Preliminary Assessment of National Policy, Institutional and Legal Framework

- What sectors are involved in forest management at the national level and what sectors could be contributing to deforestation and forest degradation?
- Which relevant existing laws, policies, regulations, and institutions are responsible for regulating both forests and those sectors associated with the drivers of deforestation?
 - How are forests defined? Are there competing definitions? If so, establish a process to define forests and related concepts.
 - What baseline data exists for forests? Legally, are there ways to improve data gathering or ongoing monitoring?
 - Are there inconsistencies between REDD+ objectives and development goals in other sectors? If so, what kind of process can be put in place to resolve them?
 - Are there gaps in institutional mandates? How does it contribute to lack of or weak enforcement? What new mandates or institutions may be needed to fill jurisdictional gaps?
 - Are there gaps or conflicts between national and sub-national frameworks?
- What kind of mapping tools are available? Can mapping help to facilitate cross-sectoral coordination?
- Based on a preliminary assessment, what appear to be the most appropriate approaches for addressing legal issues that surface (e.g. to reform existing laws or enact new laws)?
- When conducting REDD-relevant legal reforms, legal practitioners should always collaborate with technical experts at country level.



Chapter 5

Applying Safeguards at the National Level

In this chapter, information is provided on assessing whether the national legal framework currently supports the UNFCCC REDD+ safeguards. The chapter also presents information on the main components of a national safeguard system as well as suggestions on key legal issues concerning the development and implementation of such a system, including avoiding corruption; meeting rights obligations; and ensuring consistency with relevant international obligations.

It was agreed at the UNFCCC Conference in Cancun in 2010 (COP16) that a set of seven safeguards should be promoted and supported when undertaking REDD+ activities (see Box 2). The Cancun Agreements, and the subsequent Durban Agreement, also requested parties implementing REDD+ to provide information on how safeguards are being addressed and respected throughout the implementation of the REDD+ activities. Countries undertaking REDD+ activities therefore need to develop country-level approaches that enable them to respond to the safeguards outlined in the Cancun Agreements, which are intended to ensure social and environmental risks are minimized and benefits enhanced. Because the UNFCCC safeguards cover broad principles and are subject to continued development for national-level implementation, there is some degree of flexibility in translating

them into concrete laws and policies at the national level. Furthermore, national laws and policies may already exist that support or are consistent with UNFCCC safeguards, for example, national laws on environmental impact assessments. Additional guidance on national-level implementation is still being developed at the UNFCCC.

In addition to guidance under the UNFCCC, initiatives, such as the FCPF, the UN-REDD Programme, and REDD+ Social and Environmental Standards (REDD+ SES) contain information that can help countries understand and interpret the REDD+ safeguards.

The Social and Environmental Principles and Criteria (SEPC) is an overarching guiding framework that consists of broad principles, with more detailed criteria identifying the important issues to be considered in preparing for and implementing REDD+. The principles and criteria are coherent with and draw from the broad guidance provided by UNFCCC REDD+ safeguards, and emerge from the existing rich body of knowledge and literature on safeguards, standards and certification. The SEPC provide a guiding framework for the UN-REDD Programme to address two specific needs:

1. Addressing social and environmental issues in UN-REDD National

Box 3 - UNFCCC Safeguards and Safeguard Information Systems

When undertaking REDD+ activities, countries agreed that the following safeguards should be promoted and supported:

- a. Actions are consistent with and complement 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
- d. Full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities
- e. Actions are consistent with the conservation of natural forests and biological diversity, ensuring that REDD+ 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
- f. Actions to address the risks of reversals
- g. Actions to reduce displacement of emissions

Safeguards Information Systems (SIS): Decision 12/CP.17 of the UNFCCC Durban Outcome states that an SIS should provide information on how all Cancun safeguards are addressed and respected. SIS should be country-driven, implemented at a national level, and built on existing systems, as appropriate. It was also agreed that reporting of summary information on how safeguards are being addressed and respected would take place periodically in national communications to the UNFCCC. Parties to the UNFCCC further agreed that as SIS are developed, relevant international obligations and agreements should be recognized and gender considerations respected.

**Relevant UNFCCC Decisions: 1/CP.16; 12/CP.17. Drawn from the UN-REDD Policy Brief: Putting REDD+ Safeguards and Safeguard Information Systems into Practice.*

Programmes and other UN-REDD funded activities.

2. Supporting countries in developing national approaches to REDD+ safeguards in line with the UNFCCC.

information on how the those safeguards are being addressed and respected; and, demonstrating their achievements beyond carbon (e.g. with respect to poverty alleviation and biodiversity conservation).

To address the second need, the SEPC can, in combination with other tools and approaches, help countries to develop national approaches for: promoting, supporting and building on the UNFCCC REDD+ safeguards; providing

Furthermore, the REDD+ SES initiative supports REDD+ and the development of safeguards. It is a multi-stakeholder initiative facilitated by the Climate, Community and Biodiversity Alliance (CCBA) and CARE International that has

been developed to support the design and implementation of REDD+ programmes consistent with UNFCCC safeguards. The REDD+ SES focuses on ways to generate significant social and environmental benefits, and explicitly goes beyond laying out minimum safeguards.⁶¹ As the FCPF is a World Bank initiative, countries participating in the FCPF must complete a Strategic Environmental and Social Assessment to ensure coherence with the relevant World Bank safeguards.

Multiple sets of safeguards and standards can be challenging for governments to manage. It can be especially complicated when a country participates in a variety of initiatives and receives funding from multiple sources, which have somewhat different obligations and reporting requirements.

As suggested by the UN-REDD Programme, national safeguards approaches can be made up of two key components:⁶²

- Policies, laws and regulations (PLRs), and institutions to avoid harm and promote benefits to communities and ecosystems, including corresponding grievance mechanisms; and
- A safeguard information system (SIS) to provide information on how the safeguards are addressed and respected throughout REDD+ implementation, with indicators, methodologies for the collection of information, and a framework for the provision of information.

61 The REDD+ SES principles, criteria, and indicators were created through multi-stakeholder processes and are adapted through multi-stakeholder processes at the national level. It has been found that this process has enabled better consensus-building and has provided a framework for monitoring and reporting.

62 *Id.*

It is recommended that a safeguard approach includes a governance framework for implementation, a framework for providing information on both positive and negative impacts, and indicators to assess implementation of policies laws and regulations. A safeguard system should also demonstrate benefits (e.g. emissions reductions, poverty alleviation or, biodiversity conservation, etc.) and verify how negative impacts are being addressed or mitigated (e.g. availability of grievance mechanisms).

1. Development of National Safeguards

With regards to the development of national safeguards, it is suggested that a country should define the goals of the safeguard approach with regards to interpreting UNFCCC decisions within a national context and defining relevant risks. A more comprehensive system may require more initial effort to develop and consolidate among different national initiatives (e.g. forest monitoring, FCPF reporting, forest law enforcement, governance and trade (FLEGT), REDD+ SES, or, periodic reporting to international human rights bodies, etc.) but can also lead to more effective long-term results and help preserve the greatest suite of funding options for REDD+. Regardless of the approach, however, it is suggested that countries develop their respective national safeguards approaches with effective public participation, for instance through multi-stakeholder consultation processes and participatory governance assessments.

With regards to legal considerations, as recommended in the UN-REDD Safeguards Policy Brief, each country implementing REDD+ should conduct an assessment of existing PLRs, and institutions for compatibility with UNFCCC REDD+

safeguards.⁶³ Based on that safeguards assessment, countries will need to determine the best approach for addressing gaps or inconsistencies that are revealed through the revision of existing PLRs or development of new ones. For example, in Mexico, Congress provided a mandate to incorporate REDD+ safeguards principles into law through specific amendments to existing forest legislation. This is in contrast with Indonesia, where the REDD+ Task Force (empowered on a ministerial level) has developed a detailed set of safeguards and indicators called the PRISAI (SHIELD) to apply to REDD+. In addition to developing its own safeguards, Indonesia plans to reform some laws and regulations that are not specifically focused on forests, for instance to incorporate FPIC into natural resource management more broadly. Indonesia may also need to consider the development of specific laws and regulations for the implementation of aspects of the National REDD+ Strategy, including safeguards.

Beyond an assessment of national PLRs, UNFCCC safeguards require that REDD+ actions are consistent with relevant international agreements and conventions (UNFCCC safeguard a), as well as relevant international obligations relating to indigenous peoples and local communities (UNFCCC safeguards c & d). The UNFCCC currently leaves the interpretation of “relevant” to each country’s discretion, however, it is possible that future guidance may provide more clarity. Nevertheless, since any relevant obligations already apply to a given country, as discussed in Chapter 2, it may be prudent to interpret relevance

broadly when undertaking a survey of international obligations relevant to REDD+ activities. Examples of instruments containing potentially relevant obligations are presented in Appendices 4 and 5. Appendix 4 contains a non-exhaustive list of some of the most widely-referenced instruments containing obligations that countries may wish to consider in interpreting the UNFCCC safeguards. Appendix 5 contains a table that identifies which instruments apply to different REDD+ countries for a subset of rights-related instruments. Ensuring consistency with international obligations will also contribute to fulfilling other UNFCCC REDD+ safeguards. However, the extent to which that may fulfill other safeguards will depend on the international instruments a country may have signed, ratified, approved, or acceded to. Therefore, in addition to identifying relevant international obligations, countries may wish to use the interpretive guidance provided in the UN-REDD SEPC and the draft BeRT when conducting a safeguards assessment.

There are many cross-cutting issues that have particular legal significance at the national level with regards to safeguards which will be discussed more in-depth in this chapter:

- Rights;
- Biodiversity and Other Environmental Aspects;
- Corruption and Conflicts of Interest; and
- Comparability and Permanence of Emission Reductions

The final step in the development of national safeguards involves building a SIS however, as there are few legal considerations associated with SIS, this step is not discussed in detail in this publication.

63 The UN-REDD Programme’s ‘UN-REDD framework for supporting the development of country approaches to safeguards’, SEPC and BeRT, LEG-REDD+ approach, Participatory Governance Assessment (PGA) and the FAO Development Law Service are useful tools in this regard.

2. Rights

There are a number of human rights and related international norms relevant to REDD+ activities.⁶⁴ These include rights to: culture,⁶⁵ non-discrimination,⁶⁶ religion,⁶⁷ access to justice and effective remedies,⁶⁸ decision-making (including information,

participation, and consent),⁶⁹ self-determination,⁷⁰ and property (including lands, territories, and resources).⁷¹ In this section we focus on: rights to access to information, public participation, and access to justice; FPIC; and rights to land, territories, and resources (which is explored in detail in Chapter 6).

2.1 Access to information, public participation, and access to justice

The rights to access to information, full and effective participation in decision-making, and access to justice are crucial for the legitimacy and successful implementation of REDD+ activities. They are protected under international law. As part of readiness and implementation activities, countries are already starting to provide for better access to information and participation, and processes to address grievances. Much of this is occurring at institutional levels, using existing powers to incorporate best practice into REDD+ planning and early demonstration activities. It is important to note, however, that at present, there is still considerable room for improvement

64 For an indicative list key international treaties and other instruments relevant to REDD+ implementation, see Appendices 4 and 5; note also that there may also be relevant rights under customary international law—particularly as relates to lands, territories, and resources—beyond those obligation specified in treaty texts.

65 See generally International Convention on the Elimination of All Forms of Racial Discrimination and Convention on the Elimination of All Forms of Discrimination Against Women; see also Universal Declaration on Human Rights Art. 27(1); International Covenant on Economic, Social & Cultural Rights Art. 15; International Covenant on Civil and Political Rights Art. 27; Convention on Biological Diversity Arts. 8(j) & 10(c); ILO Convention 169 Arts. 2(2b), 4, 5, & 8; UN Declaration on the Rights of Indigenous Peoples Arts. 8, 11, 13, 15, 31, & 34; World Cultural and Natural Heritage Convention Arts. 4, 5, & 6; Convention on the Safeguarding of Intangible Cultural Heritage Arts. 11 & 13; Convention on the Protection and Promotion of Cultural Expressions Arts. 2, 5, & 8; and Convention on the Rights of the Child Art. 30.

66 See, e.g. Universal Declaration on Human Rights Arts. 1, 2, 7; International Covenant on Economic, Social & Cultural Rights Arts. 2(2) & 3; International Covenant on Civil and Political Rights Arts. 2, 3, & 26; International Convention on the Elimination of All Forms of Racial Discrimination Arts. 2-7; ILO Convention 169 Arts. 2(2a) & 3; UN Declaration on the Rights of Indigenous Peoples Art. 2; Convention on the Protection and Promotion of Cultural Expressions Art. 2(3); Convention on the Rights of the Child Arts. 2 & 30; and Convention on the Elimination on All Forms of Discrimination Against Women Art. 2.

67 See, e.g. Universal Declaration on Human Rights Art. 12; International Covenant on Civil and Political Rights Arts. 2, 4, 18, 20, 24, 26, & 27; ILO Convention 169 Arts. 5, 7, & 13; UN Declaration on the Rights of Indigenous Peoples preamble para 4, Arts. 12 & 25; World Cultural and Natural Heritage Convention Arts. 4, 5, & 6; Convention on the Safeguarding of Intangible Cultural Heritage Art. 13; and Convnetion on the Rights of the Child Art. 14.

68 See, e.g. Universal Declaration on Human Rights Arts. 6, 9 & 10; International Covenant on Civil and Political Rights Arts. 2, 9, 14, 15, & 16; ILO Convention 169 Arts. 12 & 18; UN Declaration on the Rights of Indigenous Peoples Arts. 11, 28, 32, & 40; Convention on the Rights of the Child Art. 12; and Convention on the Elimination of All Forms of Discrimination Against Women Art. 15.

69 See, e.g. Universal Declaration on Human Rights Arts. 19 & 21; International Covenant on Civil and Political Rights Arts. 19 & 25; ILO Convention 169 Arts. 6, 7, 15, 16(2), 17(2), and 33; UN Declaration on the Rights of Indigenous Peoples Arts. 5, 10, 11, 13, 18, 19, 23, 28, & 32(2); Convention on the Protection and Promotion of Cultural Expressions Arts. 9 & 11; Convention on the Rights of the Child Arts. 12 & 13; and Convention on the Elimination of All Forms of Discrimination Against Women Arts. 14(2)(1) & 14(2)(f).

70 See, e.g. International Covenant on Civil and Political Rights Art. 1; International Covenant on Economic, Social, and Cultural Rights Art. 1; ILO Convention 169 Art. 7; and UN Declaration on the Rights of Indigenous Peoples Art. 3.

71 See, e.g. Universal Declaration on Human Rights Arts. 12 and 17; Convention on Biological Diversity Article 8(j) and 10(c)-(e); ILO Convention 169 Arts. 8, 14, 15, 16, and 17; Universal Declaration on the Rights of Indigenous Peoples Arts. 8(2)(b), 10, 11, 25, 26, 28, and 29.1; World Cultural and Natural Heritage Convention Arts. 4, 5, and 6; and Convention on the Elimination of All Forms of Discrimination Against Women Art. 14.2(g).

particularly with respect to conducting meaningful and gender sensitive consultations with affected indigenous peoples and local communities, as well as procedures for FPIC. Country experiences, such as those in Panama are leading to the development of recommendations to address any such shortcomings, such as the need to convene national-level dialogues on carbon rights.⁷² There is also a risk that if these rights and related procedural requirements are not enshrined in national law (including legislative mandates to institutions), changes in government could lead to erosion of rights. Thus, countries should examine existing law to determine whether it provides the protection required by safeguards and relevant international law; this is especially important in situations where countries do not intend to adopt REDD+ legislation that specifically addresses safeguards. For the purposes of this section, we focus on legal issues relating to freedom of information and stakeholder participation.

2.1.1 Freedom of information laws⁷³

Access to information is essential for effective participation, as well as for promoting transparency and accountability more generally. Consequently, robust freedom of information laws are an important foundation on which to build.⁷⁴ Countries may also need institutional support, such as dedicated staff to handle requests and address translation, as well

as supervisory mechanisms to ensure that laws are enforced. Practically, there are a number of issues to consider, including the type of information, the potential recipients, ways to disseminate information in a culturally-appropriate and gender sensitive manner, and how to deal with diverse language needs. Almost half of the UN-REDD partner countries have freedom of information legislation, however there are vulnerabilities at all levels. Additionally, use of freedom of information laws in connection with REDD+ or the forestry sector is low. REDD+ countries should seriously consider either enacting freedom of information laws or providing the necessary institutional support for them. In this respect, it is worth highlighting that in light of the REDD+ planning process, Indonesia plans to reform its freedom of information law. The lessons learned from this process will be informative for other countries.

2.1.2 Stakeholder engagement

The precise nature and form of participatory processes will vary from context to context. Indeed, developing an effective consultation process will require input from relevant stakeholders and will need to be responsive to different cultural contexts. This is emphasized in publications such as the UN-REDD, FCPF Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,⁷⁵ which is elaborated on as part of the overall discussion on stakeholder participation is presented in Chapter 3. However when considering the specific issue of stakeholder participation in rights

72 UN-REDD, Draft Mid-term Evaluation Report – UN-REDD National Joint Programme in Panama (2013)

73 See UN-REDD Programme, Ensuring Inclusive, Transparent, and Accountable National REDD+ Systems: The Role of Freedom of Information for REDD+ (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=9154&Itemid=53.

74 Research shows that freedom of information laws tend to be more successful when they are accompanied by liberalizing the flow of information, for instance through increased freedom of media. Id.

75 UN-REDD, FCPF, Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities (2011)

and obligations, detailing in law (including legislative mandates for institutions) that robust consultation is a precondition for approval of REDD+ activities will help ensure that stakeholders have meaningful and effective opportunities to participate in decisions that affect their fundamental human rights. Key elements to address include:

- Rights of stakeholders, with a particular focus on women, indigenous peoples and forest-dependent communities;⁷⁶
- Free, prior, and informed consent (addressed below);
- Assignment of responsibilities to national or local entities with respect to ensuring effective participation;
- Provisions to ensure necessary capacity-building for stakeholders;
- Provisions to ensure that notice of consultations and related information are provided with sufficient time (taking into account geographic and cultural considerations);
- Provisions to ensure that consultations are conducted in culturally-appropriate and gender-sensitive ways; and
- Representation of stakeholders in national and regional planning or oversight bodies (which may not be appropriate to prescribe representation at the outset).

2.2 Free, Prior, and Informed Consent (FPIC)

Free, Prior and Informed consent is crucial for the effectiveness of REDD+. “The duty and obligation of States to consult

⁷⁶ Consistent with international law, such rights could include civil and political rights; economic, social, and cultural rights; rights to land and natural resources; participatory rights; and free, prior, and informed consent.

with indigenous peoples and forest-dependent communities with a view to agreement, the requirement to obtain the FPIC of indigenous peoples, and the growing call to secure consent from forest-dependent communities as well, is a corollary of a myriad of universally accepted human rights, including the right to self-determination, right to participation, right to property, right to cultural integrity and right to equality, that are contained in numerous international human rights instruments.”⁷⁷ Definitions for the components of FPIC and their legal basis can be found in the UN-REDD FPIC Guidelines and their associated Legal Companion and will not be addressed here. However, it is worth reiterating that meaningful consultation is a necessary but insufficient process for obtaining consent.

National legal frameworks play a crucial role in creating the enabling conditions for effective implementation of FPIC. A starting point is to explicitly recognize FPIC in national law because it provides direct legal authority to incorporate FPIC into all national-level policies and procedures. In this respect, law-makers will need to consider to whom FPIC applies and how national governments are meeting FPIC obligations under international law and agreements such as the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), the draft United Nations declaration on the rights of indigenous peoples and the CBD decisions of the Conference of the Parties among others. While it is clear that FPIC applies to indigenous peoples, international jurisprudence is still developing and recent case law shows that FPIC can apply to non-indigenous

⁷⁷ UN-REDD, FPIC Guidelines (2013)

communities as well.⁷⁸ REDD+ can often impact forest-dependent communities in similar ways to indigenous peoples, therefore it may be prudent to have a broader application of FPIC for REDD+ activities. Additionally, national law should specify that development plans and projects cannot be approved if FPIC procedures are not followed properly, and that emission reductions cannot be validated if agreements with affected communities are breached. Indeed any agreements between implementing bodies or partners and communities should be enforceable under national law.

2.3 Rights to lands, territories, resources, and carbon

A clear, secure, and equitable framework governing tenure and use rights to forests and any applicable/associated rights to carbon is key for effective REDD+ implementation. Statutory rights, or formal written laws implemented by governments and the judiciary and customary tenure and use rights, which are longstanding or traditional practices upheld by communities both form the basis of underlying tenure and use rights to forests. While specific arrangements vary among countries (and even within them), REDD+ safeguards and guidance under the UNFCCC, FCPE, FIP, UN Agencies such as UNDP and FAO, and other regimes all support consistency with national and international obligations related to tenure (including applicable statutory and customary tenure and use rights to lands,

territories, and resources).⁷⁹ Furthermore ongoing processes related to tenure in agricultural land, such as the work undertaken by the FAO Development Law Service may be directly relevant to REDD+ depending on the geographic location of REDD+ investments. These issues are explored in more detail in Chapters 6 and 7.

3. Biodiversity and Other Environmental Aspects

As discussed in Chapter 2, there are strong synergies between the CBD objectives and REDD+ activities. UNFCCC REDD+ safeguard “e” specifically mandates that natural forests are not converted and that biodiversity is protected. The safeguard also calls on countries to conserve natural forests and their ecosystem services and to enhance other social and environmental benefits. In the case of the CBD, the advice on REDD+ safeguards helps identify ways in which the safeguards can be interpreted such that they are consistent with CBD obligations. This CBD advice could be particularly useful for countries that are developing their own safeguards and building them into the national legal framework. Additionally, PLRs that enact relevant obligations could support integration of safeguards into the national legal framework.⁸⁰

⁷⁸ Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname (2007).

⁷⁹ See generally Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> [hereinafter Voluntary Guidelines on the Responsible Governance of Tenure]; see also Universal Declaration on Human Rights Arts. 12 and 17; Convention on Biological Diversity Article 8(j) and 10(c)-(e); ILO Convention 169 Arts. 8, 14, 15, 16, and 17; Universal Declaration on the Rights of Indigenous Peoples Arts. 8(2)(b), 10, 11, 25, 26, 28, and 29.1; World Cultural and Natural Heritage Convention Arts. 4, 5, and 6; and Convention on the Elimination of All Forms of Discrimination Against Women Art. 14.2(g).

⁸⁰ See e.g. CBD Decision XI/19, para. 12.

Countries are already building on synergies between REDD+ and the CBD. Viet Nam's National Action Plan for REDD+ (2011-2020) features as a component of its National Biodiversity Strategy and Action Plan (NBSAP).⁸¹ Also, in Nepal, REDD+ is incorporated as a component of the forthcoming National Forest Sector Strategy and the NBSAP.⁸² Depending on how such processes are set up internally, there may be legal, and institutional implications that a country will need to address.

While the CBD is a key source for biodiversity-related matters, there are also other environmental instruments, including the United Nations Convention to Combat Desertification (UNCCD) and the Ramsar Convention that are relevant when planning and implementing REDD+. As part of the safeguard development proves, when identifying relevant international obligations, countries could also identify relevant ongoing initiatives and synergies between international environmental instruments and consider ways to integrate them into the legal framework or land-use planning at the national and sub-national levels. For example, countries could have numerous commitments to conduct environmental and/or social impact assessments in connection with international obligations. REDD+ will clearly require strategic environmental and social assessments or variations thereof in order to meet safeguard requirements, while many national laws already exist with regards to the application of such assessments when implementing activities in forests. It may be beneficial, therefore,

when considering the development of new or application of existing PLRs dealing with environmental impact assessments to harmonize relevant requirements so that national assessments are streamlined and provide for more efficient and coherent planning for REDD+. Countries may also have obligations under trade agreements, such as the Convention on International Trade of Endangered Species (CITES) that should be taken into account when assessing national legal frameworks for REDD+.

4. Corruption and Conflicts of Interest

Even where national laws are strong, weak implementation can compromise the best designed framework. Conflicts of interest and instances of corruption can present challenges that need to be addressed for REDD+ to be effective. The promise of significant financial flows to governments and implementers of REDD+ activities can increase competition for resources, as well as the likelihood of situations involving conflicts of interest and corruption. In order to identify strengths and weaknesses in the national legal framework and related enforcement, countries should consider conducting a corruption risk assessment for REDD+. Such an assessment should examine if, when and how corruption is a driver of deforestation and forest degradation, and new risks brought about by REDD+, such as those associated with fund management or benefit distribution as well as risks of corruption in the acquisition of forests and the erosion of legitimate land and use tenure rights.⁸³ This includes considering situations

81 See Swiss-Philippine Initiative, Best Practices in Governance and Biodiversity Safeguards for REDD+ (2012).

82 *Id.*

83 See UN-REDD Programme, Guidance on Conducting REDD+ Corruption Risk Assessment (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8322.

where conflicts of interest may arise at critical decision points. An impartial and independent entity or a facilitated multi-stakeholder platform can be used to conduct assessments of this kind. Based on the findings of the assessment, countries should manage and mitigate the corruption risks in REDD+ processes.

The national legal framework should be compared against applicable international and regional instruments dealing with corruption, such as the UN Convention Against Corruption.⁸⁴ In terms of relevant national laws to assess, they could include: freedom of information laws; whistleblower legislation; anti-corruption legislation; campaign finance laws; and laws addressing competitive bidding in public procurement and concessions, among others.⁸⁵ Implementing these legislative measures requires working with and coordinating among different stakeholders including government departments, independent oversight agencies, legislative bodies, as well as non-state actors (civil society, NGOs and the private sector). It is particularly important to pay attention to anti-corruption agencies, which are often mandated to perform (or participate in) legislative drafting in areas linked to anti-corruption policies; in some cases, they are also tasked with anti-corruption screening of other legislation, for instance, for early detection of loopholes in draft legal acts that may create room for corruption, possibly as part of ex-ante regulatory impact assessment.

There are several aspects from planning to implementation that could present governance challenges, including:⁸⁶

- Changes to tenure and treatment of ownership, use, management, and carbon rights;
- Identifying and vetting project implementers, as well as negotiating contractual obligations and collusion in the bidding or approval of contracts;
- Management of funds, including for benefit-sharing mechanisms;
- Setting reference levels or reference emission levels and validation of emission reductions;
- Enforcement including monitoring of adherence to safeguards and standards;
- Bribery in issuing permits for land, agriculture, and forest uses (including REDD+); and
- Corruption in the judicial system when dealing with REDD+ related conflicts.

It is essential that countries build in or reinforce legal provisions to strengthen transparency, integrity and accountability, and prevent conflicts of interest as part of REDD+ preparation and policy implementation. It may also be useful to have modalities for relevant processes, such as vetting implementers, approving specific activities, verifying results (emission reductions or otherwise), and management of funds.

⁸⁴ It is important to note that a vast majority of REDD+ countries are already signatories of this global convention.

⁸⁵ Transparency International, *Keeping REDD+ Clean* (2012), http://www.transparency.org/whatwedo/pub/keeping_redd_clean.

⁸⁶ Many of these examples are drawn from country-driven REDD+ Corruption Risk Assessments supported by the UN-REDD Programme. Reports by the Kenya, Peru and the Philippines will soon be available at www.un-redd.org

5. Comparability and Permanence of Emission Reductions

Ultimately, if REDD+ activities are planned and implemented properly, they are expected to result in reduced emissions. Delivering “results” is at the heart of the final phase of REDD+. UNFCCC safeguards call for “actions to reduce risk of reversals” and “actions to reduce displacement of emissions.” These are commonly referred to as non-permanence (sequestered carbon is released at a later time) and leakage (sequestered carbon is released in another place).

Addressing drivers of deforestation, discussed in Chapter 4, also contributes to implementing emissions-related safeguards. Illegal logging can be a particular problem both for permanence and avoiding leakage. Also, if international

trade is implicated, countries may have obligations under relevant international agreements, such as CITES. In many countries the biggest issue is weak enforcement, however, improving enforcement alone will not necessarily address the safeguards. It is also important to address underlying social issues and the deeper political economy of forest governance that drive illegal logging, and this may involve legal solutions as well. Additionally, some countries may face systemic problems that prevent proper tracking of legally-harvested timber, such as gaps in data, laundering of permits, and a lack of consistent data requirements for tracking permits.⁸⁷ In such situations, it is nearly impossible to distinguish between legally-harvested and illegally-harvested timber. Dealing with systemic problems may require more significant legal or regulatory reform.

Taking Stock: Applying Safeguards

- What are relevant international instruments that apply to the country? Please refer to Appendices 4 and 5.
 - Are national laws, regulations, and policies consistent with those instruments? Note that this is a broad assessment and feeds into the cross cutting areas below.
- Are national laws and regulations consistent with international norms on ‘rights’?
 - What are the relevant international norms?
 - Does the legal framework provide for a transparent process?
- Are there freedom of information laws? Or equivalent legal means of getting information?
- Are institutions accessible, particularly for communities?
 - Are there protections to ensure full and effective participation, in a culturally-appropriate and gender-sensitive manner?
 - Does the legal framework provide for FPIC?
 - Does the law recognize rights to cultural integrity, non-discrimination, and self-determination?
 - How does the legal framework deal with rights to land, territories and resources (explored in Chapter 6)

⁸⁷ Environmental Investigation Agency, *The Laundering Machine* (2012), <http://www.eia-global.org/PDF/Report--Peru--Forest--May10--ENG.pdf>.

- Are national laws and regulations consistent with international norms on biodiversity and other environmental aspects?
 - Identify relevant environmental agreements
 - Does the legal framework address obligations under relevant agreements, such as the CBD, UNCCD, and the Ramsar Convention?
 - In particular, do current REDD+ plans take into account the CBD advice relating the REDD+ safeguards?
 - What laws, regulations, or policies that help implement other environmental agreements can be used to support the environmental safeguards?
 - Is there scope for harmonizing relevant laws, regulations, or policies to streamline impact assessments and monitoring?
 - Are there trade-related obligations that are relevant for forest governance, such as those contained in CITES?
- What mechanisms exist for dealing with instances of corruption and conflicts of interest?
 - Does the legal framework address anti-corruption obligations, such as those contained in UNCAC?
 - Is a corruption risk assessment needed?
- If conducted and risks are identified, how should these risks be addressed?
 - Are there related laws, regulations, or policies that should be amended, with special consideration for REDD+ activities?
 - What procedures should be in place for vetting implementing entities, validating emission reductions and so on?
 - What kind of transparency requirements exist in the current legal framework, and do they need to be adjusted to address any corruption risks?
- Do laws, regulations, and policies support credible emission reductions?
 - Can the legal framework effectively address drivers of deforestation, particularly illegal logging?



Chapter 6

Forest and Land Tenure

The purpose of this chapter is to provide guidance for countries in addressing legal issues related to forest and land tenure. Reducing emissions associated with forests requires reduced rates of deforestation and enhanced forest cover over a sustained period of time. In this context, it is helpful to understand the legal framework for who has the rights to own, manage, and use land, forest resources, and potentially carbon itself. The overall suite of these rights, both statutory and customary, is understood generally as a “bundle of rights”.⁸⁸ The “bundle of rights” is a broad concept that includes ownership, tenancy, and other arrangements for access, use, management and alienation of forests. Tenure determines who has rights to what resources, for how long, and under what conditions. This chapter explores how different tenure arrangements impact legal considerations for REDD+. It discusses legal dimensions of forest tenure, identification of various rights holders, roles of the State, and specific implementation considerations for REDD+. It is guided by international law (see Appendix 4) and guidance including, inter alia, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, REDD+ Social and Environmental Standards, UN-

REDD Programme Guidelines on FPIC, and UN Development Group Guidelines on Indigenous Peoples. For additional resources, please see the bibliography section.

The main objectives of addressing tenure ahead of REDD+ investments are: protecting existing legitimate tenure rights, minimizing tenure related risks, facilitating REDD+ incentives and effective benefit-sharing systems, and identifying and facilitating the engagement of legitimate stakeholders.

1. Consistency Between International Instruments and National Laws

A broad range of international instruments, both legally and non-legally binding in nature, carry relevant principles for forest and land tenure (see Appendix 5). As referenced extensively in the Voluntary Guidelines on the Responsible Governance of Tenure, non-discrimination, participation, access to justice and transparency are all addressed under a number of broadly applicable international laws such as human rights obligations.⁸⁹ International obligations will

88 Ribot JC, Peluso NL, A Theory of Access Rural Sociology 68(2) 153-181 (2003)

89 The Voluntary Guidelines on the Responsible Governance of Tenure cite the importance of respecting international obligations more than a dozen times. See, e.g., 2.2, 4.2, 3A, 4.8, 5.2, 6.2, 7.2, 7.6, 9.3, 12.7, and 25.2.

vary among countries based on the specific legally-binding international instruments to which they are party, including treaties and conventions. For forests in particular, the respect of indigenous rights as established in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples are key for tenure security and REDD+ implementation, particularly considering that UNFCCC REDD+ safeguards mandate respect for the rights of indigenous peoples and members of local communities in the undertaking of all REDD-related activities. The principle of gender is also paramount when addressing the linkages between tenure and legal frameworks supportive of REDD+ implementation. FAO has further published a technical guide on Governing Land for Women and Men, which can be an instrumental tool to this end.⁹⁰

The process of transposing provisions from international instruments such as human rights and environmental treaties may prove long and complex. For example, the recognition of customary tenure rights in formal legislation may be challenging. Nevertheless, ensuring consistency between relevant international instruments and national laws is key to address legal issues related to forest and land tenure and REDD+. In a number of countries, even where the State claims ownership of the land, communities have recognized rights to use and manage these resources. Brazil, for example, has established more than 650 Indigenous Protected Reserves comprising approximately 13% of the country's total area which is inhabited

by over 500,000 indigenous peoples.⁹¹ As another example, in Burkina Faso, while formal law provides that forests are owned by the State, communities still have the right to manage these lands, and natural resources are considered common property of the people.⁹² Recognizing that large-scale tenure reforms can be lengthy and challenging, it may be helpful to first assess the degree to which different systems lead to actual use conflicts (see earlier discussion about mapping forest users and uses).

2. Identifying Potential Rights Holders

It is critical that REDD+ implementation doesn't violate legitimate statutory and customary tenure and use rights. As such, it is helpful to first conduct a survey of the uses and users of forest resources (see box below), and then to assess national laws, institutions, and decision-making processes governing forest uses and ownership. The national survey could be carried out in conjunction with the stakeholder mapping tools suggested in Chapter 3. Combining geographically specific uses and users of forests with an analysis of land and forest tenure laws enables countries to identify opportunities and challenges in implementing REDD+. However, it should be noted that national surveys are often costly and the funding allocated to tenure in REDD+ readiness is often small. As such, smaller scale surveys may be required, addressing only the REDD+ investment area.

⁹⁰ FAO Governing Land for Women and Men (2013), available at <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>

⁹¹ See FUNAI and IBGE, *O Brasil Indígena* (2011), available at http://www.funai.gov.br/portal/projetos/Plano_editorial/Pdf/encarte_censo_indigena_01%20B.pdf; Fabiola Ortiz, "Creation of Indigenous Lands Slowed Under Lula," *The Guardian* (January 17, 2011).

⁹² Larson and Dahal, *Forest Tenure Reform: New Resource Rights for Forest-based Communities?* *Conservation and Society* 10(2): 77-90 (2012).

REDD+ requires mid to long-term decisions regarding the use of forest resources. In order to assess tenure for REDD+ implementation, it is important to understand who claims rights to own and use forest resources. Understanding tenure and use rights in agricultural areas may also be relevant as agricultural expansion is a major driver of deforestation in a number of countries. The assessment of tenure and use claims is most effective when it is gender sensitive and is undertaken with the participation of those who hold legitimate tenure rights to forests as well as forest users. For example, women are primary forest users, but are generally marginalized when it comes to formal land tenure rights. Legitimate holders of tenure rights may vary and include government, indigenous peoples, communities, individuals, and corporations depending on national circumstances. In fact, as outlined in the Voluntary Guidelines on the Responsible Governance of Tenure, the very definition of legitimate tenure rights is an important step that should be carried out by governments through the wide publication of the rules that categorize those rights that are considered legitimate, noting that all forms of tenure should provide some degree of security. Undertaking a survey of forest tenure claims can help to clarify the legitimate tenure right holders and their rights, and also identify which areas may have competing claims. For example, Indonesia is currently working from a single spatial map, which is helpful not only for identifying competing claims among stakeholders but also identifying where there may be overlapping administrative authority among different government agencies. There are separate processes to determine the legitimacy of claims and to resolve competing claims; this process is specifically intended to assess the level of clarity around forest uses and users.

The recognition and the respect of legitimate tenure rights depends on a number of factors, including who can make decisions about the use of forest lands, the degree to which forest use rights are compatible with formal ownership rights, the degree to which longstanding community users have statutory rights to a forest area, and how conflicts among competing forest users are addressed.

Additional legal issues concerning right holders and tenure identified through the UN-REDD Expert Meeting on Options for Addressing Tenure under REDD+ include:

- The need for effective and transparent systems of participation and negotiation processes, particularly of local stakeholders for sustainable REDD+ implementation, and in areas such as tenure reform and the legal empowerment of stakeholders;
- The development of a tool to map tenure rights and practices at the community level, as a first step towards increased recognition of customary tenure and as a way to implement REDD+ while legal reforms may be underway; and
- Multi-stakeholder engagement and collaboration in the areas of tenure administration, forest management and climate change mitigation.

3. Unpacking the Tenure Bundle

Recognizing that the scope of resource uses and users can be quite broad, tenure rights are often referred to as a “bundle” of rights. This “bundle” of rights includes access, withdrawal, management, exclusion and alienation rights. In some cases, a single user may command exclusive rights to access, own, manage, use, and transfer a forest resource. In other cases, different

Mapping it out: identifying current uses and users

Identifying existing uses and users of forests in a spatially defined area is an important step in understanding tenure arrangements for REDD+. A robust mapping process, conducted with the participation of local communities, enables identification of areas where there is clear tenure as well as areas with competing claims. This, in turn, enables identification of areas where further clarity may be necessary in order to enable effective decisions that yield lasting results for REDD+. The following considerations may be useful in undertaking such a mapping process however it should be noted that while some countries have robust cadastre systems that would facilitate such mapping, others may not have the infrastructure in place to facilitate a national level mapping process. In such cases, smaller scale mapping and tenure identification processes should be explored:

- Using a map of the country or of sub-national jurisdictions (e.g. district-level maps), identify where forests are found. It may be helpful to identify both existing forests and lands which have historically been forests.
- What forest lands and resources are claimed (recorded/titled and informal/customary claims) by:
 - Government (both national and sub-national)? It may be helpful to further specify institutions.
 - Indigenous peoples?
 - Communities? Consider further specifying indigenous, traditional, and local communities.
 - Companies?
 - Private individuals?
 - For the functioning of local societies or markets?

Note: it may be helpful to note any disputed claims which are not yet resolved.

- Is there any forest land and resources not claimed by anyone?
- What forest land and resources are claimed by different users? Note: it may be helpful to identify areas where different claims are compatible, where different claims are in direct conflict, and where the level of conflict is unknown but possible based on different users.

See Chapter 4 for additional information on mapping.

users may claim some subset of these rights associated with the same area of forest. For example, in many countries, the State claims ownership of forest lands, while at the same time a community may have the right to live in and use the same forest, perhaps even where the State has given permits to a private company for logging or other activities. Depending on the

degree to which the various forest uses are compatible among users, this arrangement may enable efficient use of resources or it may lead to conflicts that impede effective REDD+ implementation. In Brazil, the State creates protected reserves specifically allocated for the use of indigenous peoples, which has proven to be very

effective in reducing deforestation.⁹³ But in other countries, the State has granted timber or agricultural licenses to private companies in areas where communities have historically resided, which has resulted in difficult conflicts and increased deforestation. While noting that any effort to summarize the overall suite of rights in the tenure “bundle” will necessarily be imprecise, some key considerations with regards to the form under which such a “bundle” could exist of particular relevance to REDD+ include:

- *Ownership rights*, which are often exclusive (only one holder) and permanent (valid until the owner takes specific actions to extinguish), but also frequently encumbered (carrying additional rights or obligations that benefit another user, such as an easement or covenant) or may involve more complex governance arrangements such as in the case of the collective rights of a community. Ownership generally includes the right to make decisions, within the applicable law, over the use of specific land or resources. It also implies the right to benefit from resource uses and often (but not always, such as the case of *ejidos* in Mexico) includes the right to sell or lease forest resources (trees, etc.) to a different user.
- *Use, or usufruct rights*, tend to be more limited than ownership rights, and often pertain to a different actor than

the owner. These relate to the ability to make decisions regarding trees and other forest resources and frequently include the right to withdraw (harvest) a resource.

- *Individual and collective rights*, refers to whether a single user/owner or multiple users/owners can own, manage, or make decisions regarding forests. Both individual and collective rights can be effective in reducing deforestation, depending on the context.
- *Statutory rights* derive from written laws passed by a legislature or created via regulation by a government agency or executive decree. They are a formal part of a country’s legal system.
- *Customary rights* are based on longstanding practices that have become so established as to have the force of law. Even where these rights are informal and not explicitly recognized under national law, customary rights have attached to many of the world’s forests and countries have an obligation to respect them just as they would statutory rights.
- *Tangible and intangible rights*. Tangible rights pertain to physical land and resources (such as trees). Intangible rights refer to something which cannot be physically acquired (e.g. the air, carbon credits and the rights to ideas and creative works, also known as intellectual property).

4. Important Roles for the State

The State plays several key roles related to tenure and governance of forests, carbon, and land. First, governments can be forest owners. In Africa, for example, the State claims ownership of some 97% of forested

93 Nelson, A., & Chomitz, K. M., 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 (2011).
 Hayes, T. M, Parks, People, and Forest Protection: An Institutional Assessment of the Effectiveness of Protected Areas. *World Development*, Vol. 34(12):2064–2075 (2006).

land, although there is a far more diverse set of users who have some subset of rights in the tenure bundle under both national and international laws.⁹⁴ In many cases, the State may behave like other users who have a relatively complete bundle of rights, with the authority to manage lands and resources and directly make decisions regarding their use. In other cases, the government may act more like a trustee that makes, implements, and enforces laws and regulations that specify (statutorily) who has the rights to own, use, and manage forests. For example, even where the government owns the land, countries may still recognize communities' rights to access forest resources.⁹⁵ In this context, the State functions more like a landlord regulating other users, and has certain privileges and duties in the administration of forest lands.

Recent studies analyzing tenure and forests found that where an external actor such as a corporation coming from outside a community is driving deforestation, national laws, policies, and administrative actions can play an important role to help strengthen and protect the rights of communities to manage forests, and that strengthening management rights can help reduce deforestation rates.⁹⁶

In addition to making, administering, and enforcing national laws, countries also have a duty to respect, protect, and remedy violations of international obligations such

as those articulated under human rights law. This includes customary rights. To help countries in fulfilling this duty, the Voluntary Guidelines on the Responsible Governance of Tenure sets out a series of general principles on:

- Recognition of, and respect for, all legitimate tenure right holders and their rights.
- Safeguarding legitimate tenure rights against threats and infringements.
- Promotion and facilitation of the enjoyment of legitimate tenure rights.
- Provision of access to justice to deal with infringements of legitimate tenure rights.
- Prevention of tenure disputes, violent conflicts and corruption.

Even where other actors are owners and users, national laws, policies, and processes can create enabling environments for stakeholders to understand and exercise their rights and responsibilities. For example, involving national stakeholder committees in planning and decision-making, issuing and enforcing laws recognizing rights to non-discrimination, and including customary rights in land registries can help respect, protect, and remedy violations of rights relevant to REDD+.

It is not unforeseeable that in developing national legal frameworks for REDD+, some new laws may need to be implemented and existing laws may need to be reformed. It is well understood that the process of tenure reform is generally neither fast nor without conflict, and the emergence of new funds and carbon rights associated with REDD+ may serve to exacerbate conflicts. Early assessments of tenure serve to identify the extent of potential conflicts and evaluate the adequacy of options to resolve disputes. While every national situation is unique, a

⁹⁴ See Rights and Resources Initiative, *WHAT RIGHTS? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights*, 5 (2012).

⁹⁵ *Id.* at 28.

⁹⁶ See, e.g. Larson and Pulhin, *Enhancing Forest Tenure Reforms Through More Responsive Regulations*, *Conservation and Society* 10(2): 103-113 (2012); Persha, et al., *Social and Ecological Synergy: Local Rulemaking, Forest Livelihoods, and Biodiversity Conservation*, *Science*, 331(6024):1606-8 (2011).

robust tenure assessment is key to identifying and prioritizing near-term and longer-term changes that can enable successful long-term implementation of REDD+.

4.1 Understanding the relationship between customary and statutory rights

While some have suggested that the government has exclusive claim to State lands, in many cases those lands are held in public trust with institutions, such as a forest department tasked with regulating other actors who are the actual forest users under various tenure arrangements.⁹⁷ As noted by the FAO, “tenure reform efforts must take human rights and customary tenure seriously. This is a challenge, as tenure issues tend to be highly contested and involve competition over valuable resources among various stakeholders.”⁹⁸ The Voluntary Guidelines on the Responsible Governance of Tenure further stress the need for national laws and processes to protect communities with customary tenure systems from encroachment or displacement, to help communities document and publicize information about the forests and lands they control, and to register documented customary systems in order to help secure customary rights. Furthermore, the Development Law Service of FAO has produced guidance on the statutory recognition of customary land rights based on an analysis of cases in Africa.⁹⁹ The guidance highlights seven key steps:

- Ensuring flexibly to balance customs with basic human rights standards and national constitutions

- Creating local tenure structures that consider local and customary land management structures while also being low cost and easily accessible,
- Establishing administrative processes and dispute resolution mechanisms that are simple, clear, streamlined, local, and easy to use,
- Establishing appropriate checks and balances between customary/local leadership and state officials,
- Safeguarding against intra-community discrimination against women and other vulnerable groups,
- Protecting community land claims while allowing for responsible investment in rural areas,
- Ensuring enforcement of laws and setting up dispute resolution mechanisms.

There are many places where customary rights are explicitly recognized in national law. In countries where this is possible, it certainly helps to reduce tenure conflicts. For example, Vanuatu’s constitution explicitly provides that customary rules form the basis of land ownership and use for indigenous peoples.¹⁰⁰ In many countries, however, gaps between national laws and informal customary rights have resulted in conflicting or overlapping tenure claims (sometimes even within or between customary systems themselves), particularly in areas where communities depend on forest livelihood for support.¹⁰¹ This is particularly acute in the case of seasonal or pastoralist users.¹⁰²

97 FAO, Reforming forest tenure: Issues, principles and process, FAO forestry paper no. 165, 7 (2011) [hereinafter FAO, Reforming Forest Tenure].

98 *Id.* at 8.

99 FAO Development Law Service, Statutory recognition of customary land rights in Africa (2010)

100 Francesca Felicani-Robles, Forest Carbon Tenure in Asia-Pacific: A comparative analysis of legal trends to define carbon rights in Asia-Pacific. FAO Legal Papers Online No. 89, 13 (2012) [hereinafter Forest Carbon Tenure in Asia-Pacific].

101 FAO, Reforming Forest Tenure, 24, 25, 26.

102 *Id.* at 25.

As FAO has noted, while national laws in many cases may recognize customary rights, “indigenous peoples derive rights from custom and not from any act of the State.”¹⁰³ Indeed, conventional concepts of indigenous peoples suggest that their tenure rights were established even before the State came into existence. This concept is not without controversy, though international law (and REDD-specific guidance) is clear on the mandate to respect indigenous peoples’ rights to lands, territories and resources. Yet, even where national systems do not formally recognize customary rights such as these, countries can (and are generally obligated to) prevent forced relocation of communities, in accordance with internationally recognized rights.¹⁰⁴ Adopting a national policy recognizing FPIC of communities with legitimate customary rights can help avoid these types of violations and provide a means to address disputes on a case-by-case basis. The UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC) and the REDD+ Social Environmental Standards (SES) provide useful information for implementation in this context.¹⁰⁵

4.2 Tenure security

Tenure security is key to achieving long-term success in forest outcomes and improved livelihoods. Where tenure is secure, those managing the forest (regardless of gender)

are more likely to invest their time in improving management practices, and communities that are actively involved in decisions regarding forests tend to have better forest outcomes.¹⁰⁶ It has further been demonstrated that conservation outcomes have been significantly improved by giving women greater authority in managing forests.¹⁰⁷ Some of the key characteristics of secure forest tenure include defined, enforceable, and exclusive rights that cannot be taken away or changed unilaterally and unfairly.¹⁰⁸ There must also be certainty about the boundaries of the resources to which the rights apply and about who is entitled to claim membership in the group where community ownership is allowed. Security of such rights is enhanced if these are granted either in perpetuity or for a period that is clearly spelled out, which should normally be long enough for the participants to realize benefits in full.¹⁰⁹ In situations involving potentially lengthy reforms to underlying ownership rights, it may be that leaseholds or permits can serve as near-term options providing some degree of additional security over the five to thirty years sometimes referenced as the timeframe for REDD+ implementation.

Land tenure rights are implied under international human rights law on the right to adequate housing and the right to food.¹¹⁰ Governments also have an affirmative duty to ensure that people are not arbitrarily evicted or otherwise victims of discrimination.¹¹¹ This

103 *Id.* at 6.

104 International Law Association 2012 Sofia Conference on the Rights of Indigenous Peoples, Final Report, at 7; ILO Convention 169 Art. 16.2; United Nations Declaration on the Rights of Indigenous Peoples Arts. 10 & 28(1).

105 See UN-REDD FPIC Guidelines; REDD+ Social and Environmental Standards (Version 2) (2012). Examples of countries implementing the REDD+ SES include Mexico, Nepal, Tanzania, Ecuador, and Guatemala. See http://www.redd-standards.org/index.php?option=com_content&view=article&id=16&Itemid=3.

106 FAO, *Reforming Forest Tenure*, 41.

107 World Bank, *World Development Report 2012 Gender Equality and Development* (2012).

108 *Id.*

109 *Id.*

110 General Assembly of the United Nations, *Access to Land and the Right to Food*, Report presented by the Special Rapporteur on the Right to Food (A/65/281) (2010)

111 See, e.g. FAO Guidelines on Land Tenure, 4.5-4.6.

may require making special efforts to address customary users and historically marginalized groups, as well as to safeguard legitimate rights against threats and infringements. One key step in this process is the incorporation of all rights in a single land registry, which should take particular care to avoid infringing upon customary and other informal rights, and with any changes involving a participatory and gender-sensitive approach, which gives equal tenure rights to women.¹¹²

It is important to understand the potential positive and negative impacts from investments that involve large-scale transactions of tenure rights (such as may be the case for REDD+). While it is important to support land markets, care must be taken to ensure that markets are fair and transparent and supported by adequate institutional structures and recording mechanisms. Investments in land catalyzed by or carried out directly through REDD+ processes should be supported by clear and transparent rules and should avoid harm to legitimate tenure rights, human rights, livelihoods, food security and the environment.¹¹³

4.3 Enforcement and resolution of disputes

No tenure right is absolute. Even where rights are relatively clear and secure, competing claims can arise, and the incidence of competing claims can rise significantly when tenure rights are less secure. For example, in Indonesia, a “long-standing lack of clarity over ownership and rights...particularly the traditional rights of local communities over land and natural resources, has caused the escalation

of conflicts.”¹¹⁴ In order to reduce conflicts in the case of overlapping rights, it is helpful to ensure access to tenure dispute resolution services not only for title-holders and primary customary users, but also for those with easements and other primary use rights that may not be recognized as they are non-extractive, seasonal or are not reflected in markets such as those held by women and pastoralists.¹¹⁵ An inclusive approach that involves poor and marginalized groups in tenure reforms is key to achieving equitable outcomes.¹¹⁶ A discussion of conflict resolution as it applies to land and use tenure is presented in section 1.1.3 above.¹¹⁷

5. Regulating Use

Countries are increasingly diversifying forest tenure arrangements and revising forest policies and laws, often giving more decision-making responsibilities (with or without regulatory authority) to direct forest users, particularly on degraded lands. These evolving tenure arrangements are different between countries and can involve significant legal, regulatory, and institutional reforms that alter who have the formal right to own and use forest lands. Many countries have identified opportunities and challenges in integrating these reforms with REDD+ implementation. For example, if analysis of existing tenure arrangements has identified any conflicts between laws or implementing institutional regulations, it is important to consider whether any changes to existing laws are necessary in order to have more consistency between, for example, international and national obligations, or between different national

¹¹² *Id.* at 10.1.

¹¹³ Voluntary Guidelines on the Responsible Governance of Tenure, Section 11 and 12

¹¹⁴ FAO, *Reforming Forest Tenure*, 25.

¹¹⁵ *Id.* at 43.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 6.

tenure regimes. It is also important to note that many elements of tenure and use rights relevant for REDD+ may be inscribed in Constitutions, especially when considering the rights of indigenous peoples and local communities. This section offers considerations associated with potential forest tenure reforms that are particularly relevant for REDD+.

5.1 General scope of regulations and reforms

If tenure changes are needed, it is important to ensure that revisions to policies and laws increase coherence with customary, national, and international laws in an equitable manner (i.e. are gender-sensitive and non-discriminatory).¹¹⁸ With regards to national coherence, it may be important to consider REDD+ tenure within the framework of existing forest, land use and environmental related laws. The Voluntary Guidelines on the Responsible Governance of Tenure clearly recommend that where countries have the authority to control forest-related uses and decisions, they should consider the broader social, economic, and environmental objectives and ensure that all actions are consistent with existing obligations under both national and international law. The resulting recommendations may lead to potential changes in national tenure arrangements. As FAO has recognized, “[t]enure reform is linked to the decentralization and devolution of forest resource management. Community forestry programmes, forest restitution and privatization are essentially about passing responsibility and/or rights over forests or forest resources to a local community, individuals or the corporate sector.”¹¹⁹

118 See, e.g. Voluntary Guidelines on the Responsible Governance of Tenure, 4.4, 15.6, 15.10, 15.14.

119 FAO, Reforming Forest Tenure, 10.

Moreover, enhanced integration of these considerations can help lead to reduced deforestation and associated emissions reductions. In other words, not only is addressing tenure and respecting laws necessary for REDD+ implementation, but in appropriate cases, it may also be considered an independent mitigation strategy.

5.2 Tenure devolution as an emissions reduction strategy

As opposed to redistributing land (which is often a lengthy and conflict-filled process), forest tenure reforms often involve recognizing existing traditional or customary uses, giving more formal recognition to those who already live in and around forests.¹²⁰ Notably, recognizing enhanced rights of communities to forests may also be an effective emissions reduction strategy for REDD+.

There is a substantial body of literature that demonstrates many cases where emissions reductions and improved forest outcomes have occurred in places where communities (particularly indigenous peoples) have been given enhanced rights to manage forest resources.¹²¹ For example, one recent study found that indigenous managed lands were at least as effective as State-owned protected areas, and even within State-owned lands, those zoned for multiple uses had better forest outcomes than strict conservation areas.¹²² As such, governments

120 Larson and Dahal (2012), 77-90.

121 See, e.g. Pagdee, A., Kim, Y.-s., & Daugherty, P.J. What Makes Community Forest Management Successful: A Meta-Study from Community Forests Throughout the World. *Society & Natural Resources: An International Journal*, 19(1), 33 – 52 (2006); Nelson and Chomitz, Effectiveness of Strict vs. Multiple Use Protected Areas in Reducing Tropical Forest Fires: A Global Analysis Using Matching Methods (2011).

122 Nelson and Chomitz, Effectiveness of Strict vs. Multiple Use Protected Areas in Reducing Tropical Forest Fires: A Global Analysis Using Matching Methods, 2 (2011).

may wish to consider explicitly as part of an emissions reduction strategy, the need to devolve management rights to indigenous peoples and other communities. If the State decides to adopt this strategy, it may be

helpful to consider adapting policy, legal, and organizational frameworks in order to more fully recognize communities' own (i.e. customary) tenure systems, as has been the case in India and Viet Nam, for example.¹²³

Taking Stock: National Tenure Arrangements

Prior to developing new laws or undertaking reforms, it is important to first understand national tenure arrangements in the context of the legal frameworks governing forests, land, natural resources, and carbon. The list below includes key questions to ask that will help identify national tenure systems:

- What national laws apply to the use and users of forests?
- Under national law, who can own and use land?
 - At a national level, how much forest land is claimed by the State?
 - How much land is in protected areas?
 - What forest lands owned by the state correspond to areas where communities live?
 - Is the land tenure and resource use system equitable with regards to gender? Do women have the same legal rights to resources as men?
 - Does national law allow private ownership of forest lands or resources?
 - Can the owner of forest resources (such as trees) be different than the owner of land on which those resources are found?
 - Under national law, who has the right to use forest resources? How do use-rights differ from ownership rights?
 - Does national law allow collective rights to forest lands or resources?
- What international legal instruments is the country a party to?
 - What international obligations apply to the use of forest resources?
 - How consistent are national laws with international obligations?
 - Are customary rights explicitly recognized under national law?
 - How does national law recognize free, prior, and informed consent?
- What institutions are responsible for regulating forest use?
 - How are national and international obligations addressed at each institution?
- How is forest ownership and use registered and recorded?
 - How does national law treat customary uses which are not formally registered or recorded?
 - What additional tenure arrangements may impact forest ownership (subsurface, easements, permits, carbon rights, etc.)?
- What (if it exists) is the legal framework for carbon rights related to forest carbon?

¹²³ See, e.g. Voluntary Guidelines on the Responsible Governance of Tenure, 9.6; Larson and Dahal (2012), and FAO, Reforming Forest Tenure, 28.



Chapter 7

Multiple Benefits and Benefit-sharing

In this chapter, key legal considerations in delivering multiple benefits and ensuring equitable benefit-sharing are addressed. REDD+ has significant potential to deliver benefits beyond reduced carbon emissions. It can contribute to a range of policy goals, including biodiversity conservation, provision of ecosystem services, improved livelihoods, clarification of tenure, and stronger governance.¹²⁴ In addition, as noted in Chapter 6, countries will need to consider how benefits will be distributed and ensure that there is equitable benefit-sharing between the various stakeholders.

1. Enabling Conditions for Multiple Benefits

National laws and policies can play an important role in incentivizing REDD+ activities that promote multiple benefits. Relevant international obligations can also provide positive incentives in this context. For instance, achieving consistency with obligations under the CBD, UNCCD, the Ramsar Convention, and human rights agreements creates opportunities for more efficient and effective REDD+ planning.¹²⁵ Existing laws, regulations, and

policies that enact such obligations can be a starting point for legislators to identify if there is a sufficient basis for promoting multiple benefits. Thus, it is possible that the same considerations for implementing safeguards apply here in terms of providing the right enabling conditions in national legal frameworks.

Recognizing that the UNFCCC REDD+ safeguards promote multiple benefits and speak against adverse impacts on biodiversity, indigenous peoples and local communities, effective implementation of the safeguards will go a long way in realizing those benefits. However, as noted above, the safeguards are broad and do not prescribe how benefits beyond carbon could be addressed. UNFCCC negotiators are currently considering this issue in the context of results-based finance, and are exploring ways to incentivize “non-carbon benefits” and address methodological issues related to non-carbon benefits. Although “results” are not officially defined in the UNFCCC, securing benefits beyond carbon may be the key to the overall success of REDD+. As noted above, the SEPC and accompanying draft BeRT of the UN-REDD Programme support countries in enhancing the multiple benefits of REDD+. Furthermore, the UN-REDD Programme has developed a policy brief on multiple benefits outlining several analytical approaches to addressing

¹²⁴ Barney Dickson et al. REDD+ Beyond Carbon: Supporting Decisions on Safeguards and Multiple Benefits UN-REDD Programme Policy Brief 02 (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8533&Itemid=53 [hereinafter UN-REDD Multiple Benefits Policy Brief].

¹²⁵ See Appendices 4 & 5.

environmental risks and benefits.¹²⁶ There is already experience with activities that integrate a multiple benefits approach, both in the context of REDD+ and broader forest management policy.¹²⁷ Some countries are also developing integrated approaches as part of national REDD+ strategies.¹²⁸ These experiences can inform national practitioners as to how legal and policy approaches could support delivering multiple benefits when implementing REDD+.

Often, countries have several forest management policy approaches that could be combined in a REDD+ programme. Payment for ecosystem services (PES) and participatory forest management (PFM), which includes community forestry management, are examples of currently-practiced approaches. In Costa Rica, PES was formally adopted as part of the National REDD+ Strategy. Familiarity with existing approaches could make them easier to implement and therefore more efficient for REDD+ planning. Nevertheless, existing approaches are not without problems and experience shows that lack of effective community engagement and management leads to less successful outcomes.¹²⁹ When incorporating existing approaches, countries will need to carefully consider the role that forests play in the development of communities and ensure that their rights are fully respected. This reinforces the importance of implementing safeguards

and addressing gaps in law and policy with respect to the rights of indigenous peoples and forest-dependent communities.

The Philippines National REDD+ Strategy adopts a “triple bottom-line” approach, where carbon, community, and biodiversity are equally-valued benefits to REDD+ development and implementation.¹³⁰ This implicates REDD+ planning, implementation and monitoring. In essence, the Philippines defines results as broader than carbon, which promotes REDD+ activities that have the highest potential for delivering multiple benefits. Countries may wish to consider this type of approach in addition to integrating existing schemes. With respect to monitoring, it is important to consider the role that participatory monitoring can play in demonstrating multiple benefits. Twenty years of experience in community forestry in Nepal, for instance, shows the value of participatory and joint monitoring, and the importance of gender sensitive approaches for sustainable management of forests and improved conservation outcomes.¹³¹ Community Forest User Groups in Nepal have included provisions for community forest monitoring and compliance with local rules into their operational plans and constitutions.¹³² Noting variances in legal structures, particularly at a sub-national level, countries could incorporate similar provisions into monitoring regulations as a way to enhance monitoring of multiple benefits.

¹²⁶ See UN-REDD Multiple Benefits Policy Brief.

¹²⁷ See Swiss-Philippine Initiative, *Best Practices in Governance and Biodiversity Safeguards for REDD+* (2012).

¹²⁸ The DRC is developing an approach integrating considerations of multiple benefits, see UN-REDD Programme, *Mapping potential biodiversity benefits from REDD+*. The Democratic Republic of the Congo (July 2012).

¹²⁹ John Costenbader, *REDD+ benefit sharing: a comparative assessment of three national policy approaches*. FCPF/UN-REDD (2011).

¹³⁰ Swiss-Philippine Initiative, *Best Practices in Governance and Biodiversity Safeguards for REDD+* (2012).

¹³¹ World Bank, *World Development Report 2012 - Gender Equality and Development* (2012).

¹³² *Id.*

2. Benefit-sharing

Given the various types of actors who own and use forests, it is no surprise that benefit-sharing arrangements may vary as much as their underlying tenure systems. Ultimately, an effective benefit-sharing scheme can be critical to shifting behavior away from those activities driving deforestation and degradation. Costa Rica and Mexico already have systems to compensate different users for ecosystem services which may prove useful for REDD+. Other countries may have laws (or the possibility to adapt existing laws in other sectors) which require certain distributions from national income to communities based on their involvement in revenue-generating activities.

It is important to consider the role of tenure security when establishing benefit-sharing schemes. Insecure tenure, particularly for communities, may lead to elite capture of REDD+ benefits, which may ultimately compromise overall results. In these cases, particular care must be taken to involve marginalized and vulnerable groups who are key to helping reduce deforestation in the design and distribution of benefits. Yet, even where tenure is relatively straightforward, arrangements where primary forest users are unable to capture their “fair share” of benefits may ultimately fail to change rates of deforestation and its associated emissions.

Despite limited experiences in developing effective and equitable national benefit-sharing schemes for REDD+, there have been some important lessons learned in some countries. For example, while smallholder ownership has risen substantially in Viet Nam over the past two decades, benefits to local groups have been “insufficient” and inequitable benefit-sharing arrangements have been

implicated.¹³³ In Ghana, some authors have suggested that weak community tenure rights combined with governance constraints have limited benefit distribution, which may ultimately impair forest outcomes.¹³⁴

While there is no single recipe for equitable benefit-sharing structures, a transparent and participatory process that is based on legitimate tenure rights likely has the best chance of success, and is consistent with best practices such as those contained in the Voluntary Guidelines on the Responsible Governance of Tenure and the FAO technical guide to support the implementation of the Voluntary Guidelines, “Governing Land for Women and Men”.¹³⁵ ¹³⁶ For additional guidance on establishing benefit-sharing regimes, the CBD has experience related to genetic resources which may be useful to consider in the context of REDD+.¹³⁷ While benefit sharing in the context of genetic resources is not entirely analogous to REDD+, there are some potential parallels related to addressing contract and property rights, negotiating and documenting agreements related to implementation, creating equitable arrangements for payments,

133 Francesca Felicani-Robles, *Forest Carbon Tenure in Asia-Pacific*, 12.

134 Larson and Dahal (2012), 77-90.

135 See *Voluntary Guidelines on the Responsible Governance of Tenure*, at 8.6.

136 FAO *Governing Land for Women and Men* (2013), available at <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>

137 See *Convention on Biological Diversity Arts. 8(j) and 15; Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization and Related Developments*, available at <http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>. The CBD Secretariat maintains a portal for practitioners interested in more information on access and benefit sharing measures, see <http://www.cbd.int/abs/measures/> as well as an information toolkit and relevant factsheets and presentations which are available at <http://www.cbd.int/abs/information-kit-en/>.

ensuring effective mechanisms for dispute resolution associated with violation of contractual obligations, information sharing, and ownership considerations related to intangible rights. In addition to the Akwe Kon Guidelines to assess impacts and seek the FPIC of indigenous peoples and local communities on activities pertaining to their lands and sacred sites, legal practitioners may wish to review the Bonn Guidelines on benefit sharing. The Bonn Guidelines provide guidance on typical procedures and elements of developing mutually agreed terms for benefit-sharing arrangements, which may have some utility for negotiating and administering REDD+ benefit-sharing arrangements among different users.¹³⁸

In the context of the Nagoya Protocol, the CBD is in the process of developing a Global Multi-lateral Benefit Sharing Mechanism in accordance with Article 10 of the Nagoya Protocol, while at the national level, governments are developing clearinghouses for information related to access and benefit sharing.¹³⁹

138 See Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (developed in furtherance of Article 8(j) of the Convention on Biological Diversity), available at <http://www.cbd.int/traditional/guidelines.shtml>; CBD and UNEP, Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Benefit Sharing of the Benefits Arising out of their Utilization (2002).

139 More than a dozen countries have websites on this subject and the European Community offers a portal with regional policy and legislative measures, see <http://www.cbd.int/doc/meetings/abs/emabschm-01/official/emabschm-01-02-en.pdf> (referencing <http://www.cbd.int/abs/government-chm/> and <http://abs.eea.europa.eu/>)

Taking Stock: Multiple Benefits and Benefit-sharing

Securing multiple benefits is critical to the long-term success of REDD+. It is also essential that countries provide for equitable benefit-sharing schemes to distribute benefits.

- What existing laws might create enabling conditions for promoting multiple benefits?
- What existing policy approaches could be adapted to promote benefits in REDD+ activities?
- Does the REDD+ national strategy include incentives for multiple benefits? If not, what other policies or measures could be used to do so?
- Who are the different actors that own or use forests? Have you addressed underlying tenure issues?
- Are there current benefit-sharing schemes?
 - How well are they working? What are lessons learned?
 - How were they developed? Were communities involved in designing them? Are they actually benefiting from the scheme?
 - Do you need to adjust or create new schemes for sharing benefits from REDD+ activities?



Chapter 8

Key Recommendations and Questions for Practitioners

The following eight recommendations represent a consolidation of the key questions raised in the previous sections. They draw on the “Taking Stock” boxes found throughout the document. The recommendations and questions for assessing national legal frameworks broadly cover two phases:

Part One: gathering information/inputs on laws, regulations, policies, institutions, and data related to forests and forest governance; and

Part Two: assessing whether the existing national legal framework is consistent with international law and best practice related to REDD+.

Part One – Identifying Relevant Parts of The Legal Framework and Gathering Relevant Information

As discussed above, it is essential to have a good understanding of the international instruments a country is seeking consistency with, the existing national legal framework as it relates to forests, and baseline information on forests, forest users, and land-use plans.

Recommendation 1: Identify relevant components of the international legal and policy framework for national-level REDD+ implementation.

1. What are the applicable international agreements and initiatives that specifically address REDD+?
 - A. How do the operational elements of UNFCCC and CBD apply? Please refer to UNFCCC decisions 1/CP.16, 2/CP.17, 12/CP.17, 2/CP.18 and CBD decision XI/19.
 - B. Which initiative-specific guidelines and regulations for REDD+ are applicable to your country (e.g. those under the UN-REDD Programme, FCPF, FIP)? What are the legal requirements / obligations in order to participate in those initiatives?
 - C. Can the various safeguards, and standards be coordinated? What tools are you using that may help with this (e.g. UN-REDD’s SPEC, PGA, and BeRT (in draft form); REDD+ SES; FCPF’s SESA)?

Please refer to Chapter 2 for descriptions and Appendix 2 for a compilation of key resources.

2. Are there additional funding sources for REDD+ that may have additional or different requirements?
 - A. What are the additional or different requirements?
 - B. Do they need to be integrated at the national level? If so, consider in what ways those requirements can be best integrated.
3. What are the relevant international and regional instruments? Please see Appendix 4 for an indicative list.
 - A. How are they implemented at the national level?
 - B. How do they complement each other (re: objectives, and national actions and plans)?
 - C. Are there ways to integrate complementary objectives required by each international instrument into your respective national plans?

Recommendation 2: Identify relevant stakeholders using a transparent, gender sensitive and participatory process, and paying particular attention to indigenous peoples, forest-dependent communities, and local communities. (See Chapter 3)

1. Are relevant community members (indigenous groups, forest-dependent communities, and local communities) engaged?
2. Are pertinent government agencies engaged?
3. Are relevant private sector entities engaged?
4. Are relevant civil society members engaged?

5. Are there other stakeholders that should be engaged that may not currently be considered a stakeholder?

Recommendation 3: Gather baseline data and mapping information (See Chapters 4 and 6)

1. What baseline data on forests and forest trends is currently available?
 - A. Are there gaps in this information? If yes, identify how to obtain missing data.
 - B. Who are the different actors that use forests? What do they use them for?
 - C. What forest lands and resources are claimed (recorded/titled and informal/customary claims) by:
 - i. Government (both national and sub-national)? It may be helpful to further specify institutions.
 - ii. Indigenous peoples ?
 - iii. Communities? Consider further specifying indigenous, traditional, and local communities.
 - iv. Companies?
 - v. Private individuals?
2. What information from land-use planning in other sectors is available?
3. What maps are currently available and at what scale?
 - A. What is the scope of those current maps? Do they:
 - i. Provide baseline information on the distribution of natural forests (assuming there is a national definition)?
 - ii. Provide information on the status of biodiversity?

- iii. Provide data on tenure, and in particular customary owners/users?
 - iv. Incorporate current and future land-use plans?
- B. What is the process of updating and reconciling them? Note that a multi-stakeholder process could be more efficient.
- C. Have you considered integrative mapping? This could be particularly helpful to understand development trends in other sectors.

Recommendation 4: Identify relevant components of the national legal framework. (See Chapter 4)

1. What are the laws, regulations, policies, and institutions related to forests and forest users? This includes aspects of the legal framework that may address safeguards, tenure, multiple benefits and benefit sharing, and MRV and compliance.
2. How are forests and forest-related concepts defined?
3. What are the main drivers of deforestation in the country? Based on that, which laws and ministries/agencies related to other sectors and development plans could be relevant?
4. Which laws and institutions govern land-use planning? Consider this broadly to include institutions and ministries/agencies from multiple sectors.
5. In terms of land management and spatial planning, how do national laws, regulations, policies, and

institutions influence the sub national (e.g. provincial), local, and community levels?

Part Two – Assessment

Using the information collected above, practitioners should assess the extent to which the existing legal framework can be used to support REDD+ implementation. The following section provides guiding recommendations and questions in conducting such an assessment. It will be for practitioners to determine what changes may be needed and how best to achieve them.

Recommendation 5: Assess existing legal framework to identify any overlaps in definitions, land-use plans, law enforcement, and jurisdictions. (See Chapter 4)

1. Are there differing definitions of forests or a need to define forests in the law?
2. Are there overlapping land-use plans? Can they be addressed at an agency level or not?
3. Are there overlapping institutional jurisdictions that may require legal changes to address?
4. Are the relationships between powers of national, state, and local government with respect to land-use planning and law enforcement clear? If not, what kinds of changes may be necessary?
 - A. Consider the advantages and disadvantages of decentralized approaches vs. centralized approaches. It is possible that a hybrid approach is needed.

5. What is the status of rights protections in the country? Cross reference with recommendation 6. If changes are needed, do they require legislative, regulatory, or policy changes?

Recommendation 6: Assess whether the legal framework is consistent with international obligations regarding REDD+ implementation (See Chapters 5 and 6). Note that there are a broad range of relevant international instruments, and that this assessment will vary depending on those instruments. Use the instruments identified as part of Recommendation 1.

1. Is the national legal framework consistent with your countries' rights obligations?
 - A. Does the legal framework provide for a transparent process?
 - i. Are there freedom of information laws? Or equivalent legal means of getting information? Are institutions accessible, particularly for communities?
 - B. Are there protections to ensure full and effective participation for all stakeholders, in a culturally-appropriate and gender-sensitive manner?
 - C. Do stakeholders have access to justice?
 - i. Are there grievance mechanisms available to stakeholders? Are courts and administrative procedures able to address issues in a timely manner?
 - ii. What is the relationship between grievance mechanisms and judicial processes?
 - D. Does the legal framework provide for effective implementation of FPIC?
 - E. Does the legal framework recognize rights to cultural integrity, non-discrimination, and self-determination?
 - F. How does the legal framework deal with rights to land, territories and resources?
 - i. Having identified forest users and the national laws that apply to the use of forests, how does the law address ownership and use of land?
 - a. At a national level, how much forest land is claimed by the State? How much land is in protected areas?
 - b. What forest lands owned by the state correspond to areas where communities live?
 - ii. Does national law allow private ownership of forest lands or resources?
 - iii. Is the land tenure and forest resource use system equitable with regards to gender? Do women have the same legal rights to forest resources as men?
 - iv. Can the owner of forest resources (such as trees) be different than the owner of land on which those resources are found?
 - v. Under national law, who has the right to use forest resources? How do use-rights differ from ownership rights?
 - a. What institutions are responsible for regulating forest use? And how

- are relevant obligations addressed at each institution?
- vi. Does national law allow collective rights to forest lands or resources? Are customary rights explicitly recognized under national law? Cross reference with treatment of FPIC.
 - vi. How is forest ownership and use registered and recorded?
 - a. How does national law treat customary uses which are not formally registered or recorded?
 - b. What additional tenure arrangements may impact forest ownership (subsurface, easements, permits, carbon rights, etc.)?
- G. What (if it exists) is the legal framework for carbon rights related to forest carbon? Is it consistent with other rights that should be protected under law?
2. Are national laws and regulations consistent with biodiversity and other environmental obligations?
 - A. Do laws, regulations, and policies adequately address obligations under relevant agreements, such as the CBD, UNCCD, and the Ramsar Convention?
 - i. In particular, do current REDD+ plans take into account the CBD advice relating the REDD+ safeguards?
 - ii. What laws, regulations, or policies that help implement other environmental agreements can be used to support the environmental safeguards?
 - B. Is there scope for harmonizing relevant laws, regulations, or policies to streamline impact assessments and monitoring?
 - C. Are there trade-related obligations that are relevant for forest governance, such as those contained in CITES?
 3. Does the legal framework have ways of dealing with instances of corruption and conflicts of interest?
 - A. Does the legal framework address anti-corruption obligations, such as those contained in UNCAC?
 - B. Is a corruption risk assessment needed?
 - i. If risks are identified, how should these risks be addressed?
 - C. Do you have laws, regulations, or policies for dealing with conflicts of interest?
 - D. Are there related laws that should be amended, with special consideration for REDD+ activities?
 - E. What procedures should be in place for vetting implementing entities, validating emission reductions and so on?
 - F. What kind of transparency requirements exist in the current legal framework, and do they need to be adjusted to address any corruption risks?
 4. Do laws, regulations, and policies support credible emission reductions?
 - A. How does accounting for REDD+ fit in with accounting for mitigation actions more generally?

- B. Can the legal framework effectively address drivers of deforestation, particularly illegal logging?

Recommendation 7: Assess whether the legal framework supports delivery of multiple benefits and equitable benefit-sharing (See Chapter 7)

1. Do existing laws create enabling conditions for promoting multiple benefits and equitable benefit sharing?
 - A. Does national law recognize carbon rights and/or payments for environmental services?
 - B. Are they consistent with underlying tenure rights? See Recommendation 6
 - C. What laws or policies govern the transparency of funding streams?
2. Does the REDD+ national strategy include incentives for multiple benefits? If not, what other policies or measures could be used to do so?
 - A. To what extent can existing policy approaches be adapted to promote benefits in REDD+ activities?
3. Who are the different actors that own or use forests? Are any/all eligible for REDD+ benefits?

4. How well are any existing benefit-sharing schemes working?
 - A. What are lessons learned?
 - B. How were they developed? Were communities and other stakeholders involved in designing them? Are they actually benefiting from the scheme?
 - C. Do you need to adjust or create new schemes for sharing benefits from REDD+ activities?

As discussed above, there is no legislative formula that will fit the requirements of all developing countries. Broadly speaking, the legal approaches that may be suitable, include: implementing REDD+ through established legal frameworks, building on existing law and engaging in specific legislative reforms (both short-term and long-term) as necessary; enacting new legislation for REDD+; and/or, where there are gaps in enforcement of existing law, strengthening institutional mandates and capacities. Eventually, it will be for each country to then determine which aspects of their national legal frameworks require changes and how best to effect those changes.

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Appendix 1

Glossary of Terms

The key REDD+ related words and phrases are explained using the definitions and descriptions used within the UNFCCC negotiating process.¹⁴⁰

Adaptation

Adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities.

Additionality

Measurable, long-term greenhouse gas (GHG) emission reductions and/or removal enhancements that would not have occurred in the absence of a particular project, policy, or activity.

Annex I Parties

The developed countries listed in Annex I to the UNFCCC. The Annex I Parties are mostly identical to the countries listed in Annex B of the Kyoto Protocol which have accepted quantified emissions limitation and reduction targets for the period from 2008 to 2012 pursuant to Article 3 (1) of the Kyoto Protocol.

Business as Usual (BAU) Baselines

Baseline, in the context of REDD+ is the reference level against which climate benefits are measured and financial incentives rewarded. Business as Usual (BAU) baseline represents a projection of what would happen without an intervention, and in this instance serves as a benchmark to measure the impact of REDD actions.

Benefit sharing

Benefit sharing in the context of REDD+ is derived from the requirement in Paragraph 72 the Cancun Agreement which requires developing country Parties, when developing and implementing their national strategies or action plans for REDD+ to ensure the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities. The legal and institutional mechanisms for implementing REDD+ at national level should therefore include clear and transparent means for sharing fairly, equitably and effectively, the financial and other benefits that accrue from REDD+ among all relevant stakeholders, including, government at all levels, land owners, land users, and those depending on forests for their livelihood such as, local communities, forest dwellers and Indigenous Peoples.

¹⁴⁰ The Glossary of the UN REDD+ Programme has been used in the preparation of this chapter, supplemented where necessary, with material from other sources set out at the end of the chapter.

Carbon market

Any market that creates and transfers emission units or rights. A term for a trading system through which countries or private entities may buy or sell units of greenhouse-gas emissions in an effort to meet their assigned limits on emissions, either under the Kyoto Protocol or under other agreements, such as that established by the European Union. The latter, however only targets private operators, not states. . The term comes from the fact that carbon dioxide is the predominant greenhouse gas, and other gases are measured in units called “carbon-dioxide equivalents.”

Cap and trade

An emission trading system wherein an international or national regulator establishes an overall cap on emissions, issues emission units or rights, and allows the transfer and acquisition of such rights.

Carbon sequestration

Carbon sequestration is the general term used for the capture and long-term storage of carbon dioxide. Capture can occur at the point of emission (e.g. from power plants) or through natural processes (such as photosynthesis), which remove carbon dioxide from the earth’s atmosphere and which can be enhanced by appropriate management practices. Sequestration methods include enhancing the storage of carbon in soil, in forests and other vegetation, or in underground geological formations, in the oceans and subjecting carbon to chemical reactions to form inorganic carbonates. In the context of REDD+, the focus is on sequestration of carbon dioxide from the atmosphere through conservation and sustainable management of standing forests

Financial Mechanism of the UNFCCC

Most developed country Parties to the UNFCCC (Annex II Parties) are required to provide financial resources to assist developing country Parties implement the Convention. To facilitate this, the Convention established a financial mechanism to provide funds to developing country Parties. The Parties to the Convention assigned operation of the financial mechanism to the Global Environment Facility (GEF) on an on-going basis, subject to review every four years. The financial mechanism is accountable to the Conference of the Parties (COP). The Green Climate Fund established at the 16th session of the UNFCCC Conference of Parties was designated as an operating entity of the financial mechanism of the UNFCCC.

Fungibility (of REDD units)

The degree of exchangeability between REDD+ units and other units traded in carbon markets. When REDD+ units are fully fungible, they can be sold, banked, and used for compliance with greenhouse gas emission reduction objectives without restrictions.

Indigenous peoples

There is no universally agreed international definition of indigenous peoples, although the term has been defined in certain international legal instruments. According to the United Nations, the most useful approach is to identify, rather than define indigenous peoples. This is based on the fundamental criterion of self-identification as underlined in a number of human rights documents. ILO Convention 169 applies to “indigenous peoples in independent countries who are regarded as indigenous on account of their descent from the populations that inhabited the country, or a geographical region to which the

country belonged, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions.”

Appendix I to the Cancun Agreements specifically requires that REDD+ activities should respect 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 United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples and further requires the full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities.

Land use, land-use change, and forestry (LULUCF)

A greenhouse gas inventory sector that covers emissions and removals of greenhouse gases resulting from direct human-induced land use, land-use change and forestry activities. The term LULUCF is only used when referring to Annex I Parties to the UNFCCC.

Leakage (Displacement)

GHG emissions displacement that occurs when interventions to reduce emissions in one geographical area (sub-national or national) cause an increase in emissions in another area through the relocation of activities. Reverse leakage (or positive leakage) is a mitigation activity that results in emissions reduction in areas outside the original mitigation area.

Mitigation

In the context of climate change, a human intervention to reduce the sources or

enhance the sinks of greenhouse gases. Examples include reducing industrial emissions, using fossil fuels more efficiently, increased use of renewable energy and reducing GHG emissions from forests and enhancing carbon sequestration.

MRV (Measuring, Reporting and Verifying)

MRV is part of the monitoring and evaluation system for mitigation actions including, REDD+, which will be reported by the countries to UNFCCC. The objective is to ensure that data collection and reports submitted to UNFCCC should follow the standard science method. Paragraph 61 of the Cancun Agreements requires that internationally supported mitigation actions will be measured, reported and verified domestically and will be subject to international measurement, reporting and verification in accordance with guidelines to be developed under the Convention.

Multiple Benefits

When REDD+ prevents the loss or degradation of forest, this is expected result in multiple benefits in addition to protecting or enhancing carbon stocks. These include “ecosystem-based benefits” such as conservation of forest biodiversity, carbon storage and sequestration, avoidance of reservoir sedimentation, enhance hydropower production, facilitate crop pollination, commercial timber production, water regulation, purification and nutrient retention, mitigations of storm peak flows, enhance water irrigation for agriculture, recreation facilities and tourism expansion as well as strengthening and preserving cultural and aesthetic values. REDD+ can also lead to direct social benefits, such as jobs, livelihoods, tenure clarification, carbon payments, enhanced participation in decision-making and improved governance.

Net emissions

For REDD+, a method for estimating emissions from gross deforestation that considers both the carbon stocks of the forest being cleared and the carbon stock of the replacement land use.

Results-based finance

An incentive system wherein the international contribution to support REDD implementation is contingent on the recipient meeting pre-agreed benchmarks.

REDD+ (Reducing Emissions from Deforestation and Forest Degradation)+

Paragraph 70 of the Cancun Agreement sets out the activities of the REDD+ regime as follows:

- (a) Reducing emissions from deforestation;
- (b) Reducing emissions from forest degradation;
- (c) Conservation of forest carbon stocks;
- (d) Sustainable management of forest;
- (e) Enhancement of forest carbon stocks;

Reservoirs

A component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored. Trees are “reservoirs” for carbon dioxide.

Sink (or carbon sink)

A pool (reservoir) that absorbs or takes up carbon released from other components of the carbon cycle, with more carbon being absorbed than released. The UNFCCC defines “sink” as any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere. (Art. 1(8)).

Source

A pool (reservoir) that absorbs or takes up carbon released from other components of the carbon cycle, with more carbon being released than absorbed. The UNFCCC defines “source” as any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere (Art. 1 (9)).

Spill-over effect

Spillover effects, also referred to as “rebound effects” or “take-back effects”, are impacts in developing countries caused by actions taken by developed countries to cut greenhouse-gas emissions. For example, emissions reductions in developed countries could lower demand for oil and thus international oil prices, leading to more use of oil and greater emissions in developing nations, partially off-setting the original cuts.

Sustainable development

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Vulnerability

The degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including, climate variability and extremes. Vulnerability is a function of the character, magnitude, and rate of climate variation to which a system is exposed, its sensitivity, and its adaptive capacity.

Verification

Independent third-party assessment of the expected or actual emission reductions of a particular mitigation activity.

Verified Carbon Standards

Certification schemes for emission credits not regulated under the Kyoto Protocol.

Sources of Glossary

- COP 16 Decision 16/1- Agreement on REDD+- Official UNFCCC text- www.unfccc.com
- UN REDD+ Programme, Glossary- www.un-redd.org
- Reducing Emissions from Deforestation and Forest Degradation (REDD):An Options Assessment Report- Arid Angelsen et al. Meridian Institute
- REDD+- Social and Environmental Standards- <http://www.climate-standards.org/REDD+/>

Appendix 2

Relevant Decisions and Guidelines Referenced in Chapter 2

Below is a list of key resources from the international agreements specifically addressing REDD+ as well relevant guidelines from REDD+ initiatives.

Relevant UNFCCC decisions

COP19, Decisions 9-15/CP.19 (Warsaw, 2013)

http://unfccc.int/meetings/warsaw_nov_2013/session/7767/php/view/decisions.php

COP 18, Decision 2/CP.18 (Doha, 2012; see paragraphs 25-40): <http://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf#page=6>

COP 17, Decision 2/CP.17 (Durban, 2011); see paragraphs 63-73 on financing options for implementation of results-based actions: <http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf#page=14>; and Decision 12/CP.17 guidance on systems for providing information on how safeguards are addressed and respected; <http://unfccc.int/resource/docs/2011/cop17/eng/09a02.pdf#page=16>

COP 16, Decision 1/CP.16 (Cancun, 2010): LCA Decision, ANNEX I, Paragraph 2 [UNFCCC safeguards for REDD]; see paragraphs 68-79: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2>

COP 15 (Copenhagen, 2009; Guidance for implementing REDD activities): <http://unfccc.int/resource/docs/2009/cop15/eng/l07.pdf>

COP 13 (Bali, 2007; where discussions of developing an incentive mechanism for REDD): Bali Action Plan <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=8>

COP 11 (Montreal, 2005, where REDD was first introduced): http://unfccc.int/meetings/montreal_nov_2005/session/6269.php

CBD and Ramsar Decisions

CBD COP 11, Decision XI/19 (Hyderabad), <http://www.cbd.int/cop11/doc>

CBD COP 10, Decision X/33 (Nagoya), <https://www.cbd.int/decisions/cop/?m=cop-10>

Ramsar COP 11, Resolution XI:14 (Bucharest), http://www.ramsar.org/cda/en/ramsar-documents-cops-cop11-cop11-docs/main/ramsar/1-31-58-500%5E25689_4000_0__

UN-REDD Guidelines

UN-REDD Programme Social and Environmental Principles and Criteria (SEPC): <http://www.unredd.net/index>

http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6985&Itemid=53

Draft Social and Environmental Principles and Criteria- Benefit and Risks Tool (SEPC-BeRT): http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6380&Itemid=53

UN-REDD and FCPF Guidelines on Stakeholder Engagement in REDD+ Readiness with focus on the participation of Indigenous Peoples and Other Forest-Dependent Communities: <http://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/July2012/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20%28revision%20of%20March%2025th%20version%29%20%281%29.pdf>

UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53

UN-REDD Support to Effective and Inclusive National Governance Systems for REDD+:

www.un-redd.org/NewsCentre/Support_to_Effective_Governance/tabid/5543/Default.aspx

UN-REDD Guidance on Conducting REDD+ Corruption Risks Assessments (REDD+ CRA): UN-REDD Programme, Guidance on Conducting REDD+ Corruption Risk Assessment (2012), http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8322 Guidance Note on National Grievance Mechanisms and

a Guidance Note on Gender Sensitive REDD+ are currently under development.

There are also a number of policy briefs and guidance both within the UN-REDD system and generated by partner institutions. They are referenced in relevant sections of the Manual.

Forest Carbon Partnership Facility and the Forest Investment Program – World Bank

World Bank's Forest Carbon Partnership Facility: www.forestcarbonpartnership.org/

FCPF Readiness Fund: <http://www.forestcarbonpartnership.org/readiness-fund>

Common Approach Document, Guidelines and Generic Terms of Reference for Environmental and Social Management Framework, Guidelines on Stakeholder Engagement, Guidance on Information Disclosure, and Guidelines on National Grievance Mechanisms: <http://www.forestcarbonpartnership.org/common-approach-environmental-and-social-safeguards>

FCPF Carbon Fund: <http://www.forestcarbonpartnership.org/carbon-fund>

Selected World Bank Policies and Procedures (see <http://go.worldbank.org/3GLI3EECP0>)

Relevant policies include: 4.01 Environmental Assessment; 4.04 Natural Habitats; 4.12 Involuntary Resettlement; 4.15 Poverty Reduction; 4.20 Indigenous People; 4.36 Forests; 7.60 Projects in Disputed Areas; 11.03 Cultural Property; 13.05 Project Supervision; and Information Disclosure Policy.

The Climate Fund's Forest Investment Program (FIP): www.climateinvestmentfunds.org/cif/node/5

FIP Design Document: <https://www.climateinvestmentfunds.org/cif/keydocuments/FIP> (See paragraph 16.16(g) references natural forest safeguards.)

GEF

The Global Environment Facility: <http://www.thegef.org/gef/whatisgef>

Investment Guidelines for GEF's Sustainable Forest Management and REDD-Plus Program: http://www.thegef.org/gef/sites/thegef.org/files/documents/C.38.Inf_4.Rev_.2%20-%20Investment%20Guidelines%20for%20Forest%20Management_0.pdf

Policy on Agency Minimum Standards on Environmental and Social Safeguards: http://www.thegef.org/gef/sites/thegef.org/files/documents/document/PL.SD_.03.Policy_on_Environmental_and_Social_Safeguards.11202012.pdf

REDD+ SES

REDD+ Social & Environmental Standards: http://www.redd-standards.org/files/REDDSES_Version_2/REDDSES_Version_2_-_10_September_2012.pdf

Guidelines for using REDD+ SES at the country level: http://www.redd-standards.org/files/pdf/redd-docs/Standards/REDD_SES_Guidelines_Version_2_-_16_November_2012.pdf

Factsheet supporting countries to develop Safeguard Information Systems: http://www.redd-standards.org/files/pdf/redd-docs/Standards/REDD_SES_factsheet_November_2012.pdf

Appendix 3

Forest Definitions (Examples)

The following are different examples of how forests are defined internationally:

1. Food and Agriculture Organization Definition

“An area of land spanning more than 0.5 hectares with a canopy cover (or equivalent stocking level) of more than 10 percent with trees with the potential to reach a minimum height of 5 meters at maturity in situ. It does not include land that is predominantly under agricultural or urban land use.”¹⁴¹

2. Kyoto Protocol – Land Use, Land-Use Change and Forestry Definition

Note that these definitions do not apply to REDD+ unless countries decide to do so at the UNFCCC.

“Forest” is a minimum area of land of 0.05–1.0 hectare 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.”¹⁴²

“Deforestation” is the direct human-induced conversion of forested land to non-forested land”¹⁴³

3. Convention on Biological Diversity Definition

“A forest is a land area of more than 0.5 ha, with a tree canopy cover of more than 10%, which is not primarily under agricultural or other specific non-forest land use. In the case of young forests or regions where tree growth is climatically suppressed, the trees should be capable of reaching a height of 5m in *situ*, and of meeting the canopy cover requirement.”¹⁴⁴

¹⁴¹ FAO Forest Resource Assessment, <http://www.fao.org/docrep/013/i1757e/i1757e13.pdf>

¹⁴² Kyoto Protocol Decision, 16/CMP.1 Annex, para. 1(a).

¹⁴³ *Id.* at para. 1(d).

¹⁴⁴ CBD Official Site, Technical Expert Report, <http://www.cbd.int/forest/definitions.shtml>.

Appendix 4

Indicative List of Relevant International Agreements for UNFCCC REDD+ Safeguards

The following list was generated through research by the Center for International Environmental Law and adapted from the document “Lessons Learned from International and Regional Instruments” prepared by ClientEarth and the World Resources Institute.¹⁴⁵

1. International Instruments

- Agenda 21 (1992)
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)
- Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
- Convention on Biological Diversity (CBD) (1992)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
- Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) (1979)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
- Convention on the Rights of the Child (1989)
- Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1998)
- Declaration on the Right to Development (1986)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992)
- International Convention for the Protection of Birds (1950)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989)
- International Tropical Timber Agreement (ITTA) (1985/2006)
- Inter-American Convention on the Prevention, Punishment and

¹⁴⁵ ClientEarth and World Resources Institute, Lessons Learned from International and Regional Instruments (2011), <http://unfccc.int/resource/docs/2011/smsn/ngo/329.pdf>.

- Eradication of Violence Against Women (“Convention of Belem Do Para”) (1995)
 - OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
 - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) (1999)
 - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)
 - Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS) to the Convention on Biological Diversity (2010)
 - Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles) (1992)
 - Non-Legally Binding Instruments on All Types of Forests (NLBI on Forests) (2007)
 - Ramsar Convention on Wetlands of International Importance (Ramsar Convention) (1971)
 - Rio Declaration on Environment and Development (Rio Declaration) (1992)
 - UNEP draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (UNEP draft Principles) (1978)
 - UNESCO Universal Declaration on Cultural Diversity (2001)
 - UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
 - United Nations Convention Against Corruption (UNCAC)(2005)
 - United Nations Convention to Combat Desertification (UNCCD) (1994)
 - United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)
 - United Nations World Charter for Nature (1982)
 - Universal Declaration of Human Rights (UDHR) (1948)
 - WTO/GATT Agreements
- 2. Regional Instruments**
- American Convention on Human Rights “Pact of San Jose, Costa Rica” (ACHR) (1969)
 - Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988)
 - African Charter on Human and Peoples’ Rights (1981)
 - African Convention on the Conservation of Nature and Natural Resources (1968)
 - African Union Convention on Preventing and Combating Corruption (2006)
 - ASEAN Agreement on the Conservation of Nature and Natural Resources (1985)
 - Convention on Environmental Impact Assessment (EIA) in a Transboundary Context (1991)
 - Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940)
 - Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986)
 - Council of Europe Criminal Law Convention on Corruption (2002)
 - Inter-regional Framework Cooperation Agreement between the European Community and its Member States, on the one part, and the Southern Common Market and its Party States on the Other Part (1999)

- Kiev Protocol on Strategic Environmental Assessments
- Mercosur Framework Agreement on Environment (2004)
- North American Agreement on Environmental Cooperation (NAAEC) (1993)
- Regional Convention for the Management and Conservation of the Natural Forest Ecosystems and the Development of Forest Plantations (1993)

*Please note this is not an exhaustive list and its intention is to illustrate the numerous international instruments relevant to the REDD+ safeguards.

