The Little Book of Legal Frameworks for REDD+

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How policy and legislation can create an enabling environment for REDD+

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The Global Canopy Programme is a tropical forest think tank working to demonstrate the scientific, political and business case for safeguarding forests as natural capital that underpins water, food, energy, health and climate security for all.

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We are continually aiming to improve the Little Book of Legal Frameworks for REDD+ and your feedback is welcome.

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MINISTER OF STATE FOR ENVIRONMENT, PERU

It is undisputed the important role that forests play in our everyday life, providing us with essential ecosystem services, supporting the livelihoods of indigenous peoples and local communities, among others. Even more, forests are playing a key role in reducing the effects of climate change.

Forests in developing countries amount to important percentages of total territory, and in many countries, such as Peru, their deforestation and conversion to other uses, such as grasslands, become the main source of GHG emissions in the country.

Under the UNFCCC, during the last eight years, countries have agreed on thirteen decisions related to reducing emissions on deforestation and forest degradation. The last seven of these decisions constitute the Warsaw REDD+ Framework. All of these decisions grant the opportunity to interested developing countries to establish policy approaches and positive incentives on issues related to reducing emissions from deforestation and forest degradation; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

With this international guidance, countries have started implementing their approaches towards these decisions. These have to consider national circumstances which must include their legal frameworks, which span across diverse sectors. The assessment of such legal frameworks constitutes probably one of the main bases that will support the design of national REDD+ strategies or action plans, as well as other elements that have to be designed and implemented to reach results based payments.

COP20 represents an opportunity to consolidate this process and bring to the forefront advances made in this topic. In this sense Peru is taking immediate action to protect the forests and promote REDD projects. I am sure COP20 in Lima will help to boost different initiatives towards supporting forests and the livelihoods of indigenous peoples.

This publication presents the challenges and different approaches that can be taken for legal frameworks for REDD+. It represents an invaluable opportunity to understand experiences and how countries could focus their legal frameworks, including the possibility of working on new legal frameworks for REDD+ or working with existing ones. Reading this publication is a unique opportunity to start discussions on legal matters related to REDD+ in our countries

HERU PRASETYO

HEAD, NATIONAL REDD+ AGENCY, REPUBLIC OF INDONESIA

REDD+ has seen a considerable evolution over the last few years. This evolution has been particularly evident in a conceptual sense: since its emergence in international climate negotiations as a financial compensation mechanism for reduced emissions from deforestation, REDD+ has evolved to become something far more expansive in vision. Indonesia's approach to REDD+ as 'Beyond Carbon, More than Forests' illustrates how the concept can be positioned as a central driver of a country's transition to equitable low-carbon growth.

But however appealing a vision may be, it cannot by itself lead to transformation. This is especially the case when referring to deforestation, forest degradation and other elements of land-use change. Such processes are deeply rooted in economic and political institutions, in complex architectures of vested interests, financial incentives and path-dependency.

Transformation depends upon a conducive institutional framework, at whose core is legal frameworks. Indonesia's efforts to lay the legal and institutional groundwork for REDD+ illustrate that this process is far from easy, and requires a degree of collaboration and long-term vision that is often unfamiliar within government. However, our efforts to induce the requisite shifts in legal frameworks and paradigms- through the Forest Moratorium and the forest fire prevention compliance audit, for instance - are now beginning to bear fruit. Their implications will affect not only greenhouse gas emissions but the entire governance foundations upon which sustainable growth with equity will be built.

The topic of this book is therefore highly relevant to governments designing REDD+ programmes, and its launch at UNFCCC COP 20 is extremely timely. Behind us lies the completion of the REDD+ rulebook and, with that, the green light for countries to go ahead with national REDD+ programmes. Ahead of us lies COP 21 in Paris, by which time we must have gathered enough momentum to deliver a truly historical agreement.

I would like to thank the Global Canopy Programme for producing this valuable addition to the knowledge base on REDD+. I look forward to its translation into Bahasa Indonesia by UNORCID - which will carry forward this knowledge to the people upon whom the fate of Indonesia's forests, and its future prosperity as a nation, depends.

TONY LA VIÑA

DEAN OF THE ATENEO SCHOOL OF GOVERNMENT, ATENEO DE MANILA UNIVERSITY, AND FACILIATOR, REDD+ NEGOTIATIONS IN 2009 AND 2011 UNFCCC NEGOTIATIONS

Policies, laws and regulations constitute the building blocks that determine how REDD+ will be designed, managed and implemented. Many countries, including the Philippines are making progress in preparing their legal frameworks for REDD+, making the policy and regulatory choices that are most appropriate to their legal systems, policy priorities and other national circumstances. However, information on country experiences, while available, requires significant research to obtain. Experiences in ensuring that existing laws, policies and regulations do not hinder the development of REDD+ need to be shared, as do experiences in building upon existing legal frameworks to develop the policies, laws and regulations which are needed to facilitate the implementation of REDD+.

As lead climate change negotiator for the Philippines, I welcome this book, which facilitates learning and exchange, by building on case studies from around the world to provide a clear and concise overview of the main issues linked to legal frameworks for REDD+. In light of the recent Warsaw Framework for REDD+, it gives a timely and practical perspective for UNFCCC negotiators, in-country law makers and other stakeholders on the different approaches to developing or reforming legal frameworks that comply with international requirements, for the reduction of deforestation and forest degradation in developing countries. Thanks to its clear analytical framework, this book provides decision-makers with a useful tool to understand the international requirements to qualify for results-based payments under the UNFCCC as well as the role of the legal framework in meeting these requirements.

Considering that legal frameworks for REDD+ interact with sectors beyond forestry, the value of this book also lies in its recognition of the various overlaps and interactions between these areas of law and policy. Increasing understanding of how to ensure coherence and integration between policies, laws and institutions within and beyond the forest sector is essential for the development and implementation of land-use strategies which will support sustainable development in developing countries.

ANDREW W. MITCHELL
FOUNDER AND EXECUTIVE DIRECTOR, GLOBAL CANOPY PROGRAMME

For developing countries to implement REDD+ and disseminate both national and international funding for that purpose, clear and enforceable domestic legal frameworks are essential.

At COP 19 in December 2013, the Warsaw Framework set out the international "rules of the game". These require developing country Parties to the Convention to ensure that their national systems are set up to effectively coordinate REDD+, measure and report their progress, and manage the benefits they might receive. In many cases, this will mean adapting or reforming their existing legal frameworks - not just to mitigate climate change, but also to protect communities from the social and environmental risks that could be created by REDD+.

This Little Book, the sixth in our popular series, designed to assist governments engaging in the UNFCCC, aims to offer insight into what legal frameworks need to do for REDD+, what approaches are available, and how various countries are responding.

At the heart of the problem lies the need for both vertical and horizontal integration among ministries that often have competing claims over the use of the same hectare of land. This requires novel thinking and government agencies with mandates that incentivise co-operation. Meanwhile, community rights over those spatial areas need to be defined through legislation, as do rights to new products such as carbon or ecosystem services. Countries also need systems, formalised through laws and policies, that define how they will use monitoring and reporting systems to demonstrate whether they are successfully reducing forest emissions while protecting people and the environment, and whether they can qualify for REDD+ payments.

Some governments are early movers in this space. Mexico's 2003 General Law on Sustainable Development recognises carbon capture as an environmental service. In 2007, Amazonas State in Brazil introduced its State Policy on Climate Change (PEMC). Indonesia was the first country to introduce a domestic REDD+ legal framework in 2009 and has since then continued to develop this framework at a high political level, coordinated through its National REDD+ Agency; and in 2013 Indonesia adopted a law recognising the rights of indigenous peoples to their forests. In the same year, Guatemala implemented a climate change framework law recognising carbon rights. These are vital steps on the road to making REDD+ a reality. They are also evidence of the growing recognition of the vital role nature plays in the global economy, which increasingly needs to become enshrined in standards and laws.

This book aims to provide useful guidance for countries looking to use their legal frameworks to meet the requirements of major public sector funding sources associated with the UNFCCC and the World Bank's Forest Carbon Partnership Facility. But many of its insights will also be useful for governments hoping to stimulate finance from private sector actors – who will ultimately need many of the same enabling conditions, such as low levels of corruption and high levels of transparency. This is important because total demand for REDD+ emission reductions units is currently around 97% lower than where it needs to be to halve deforestation emissions by 2020, and this gap is unlikely to be plugged by public sector sources alone.

The Paris COP, in December 2015, is perhaps a last chance for the global community to affirm that REDD+ can be significantly fundable. All Parties to the UNFCCC have important roles to play in making this happen, and for their part, developing countries' efforts to build effective domestic legal frameworks will help pave the way.

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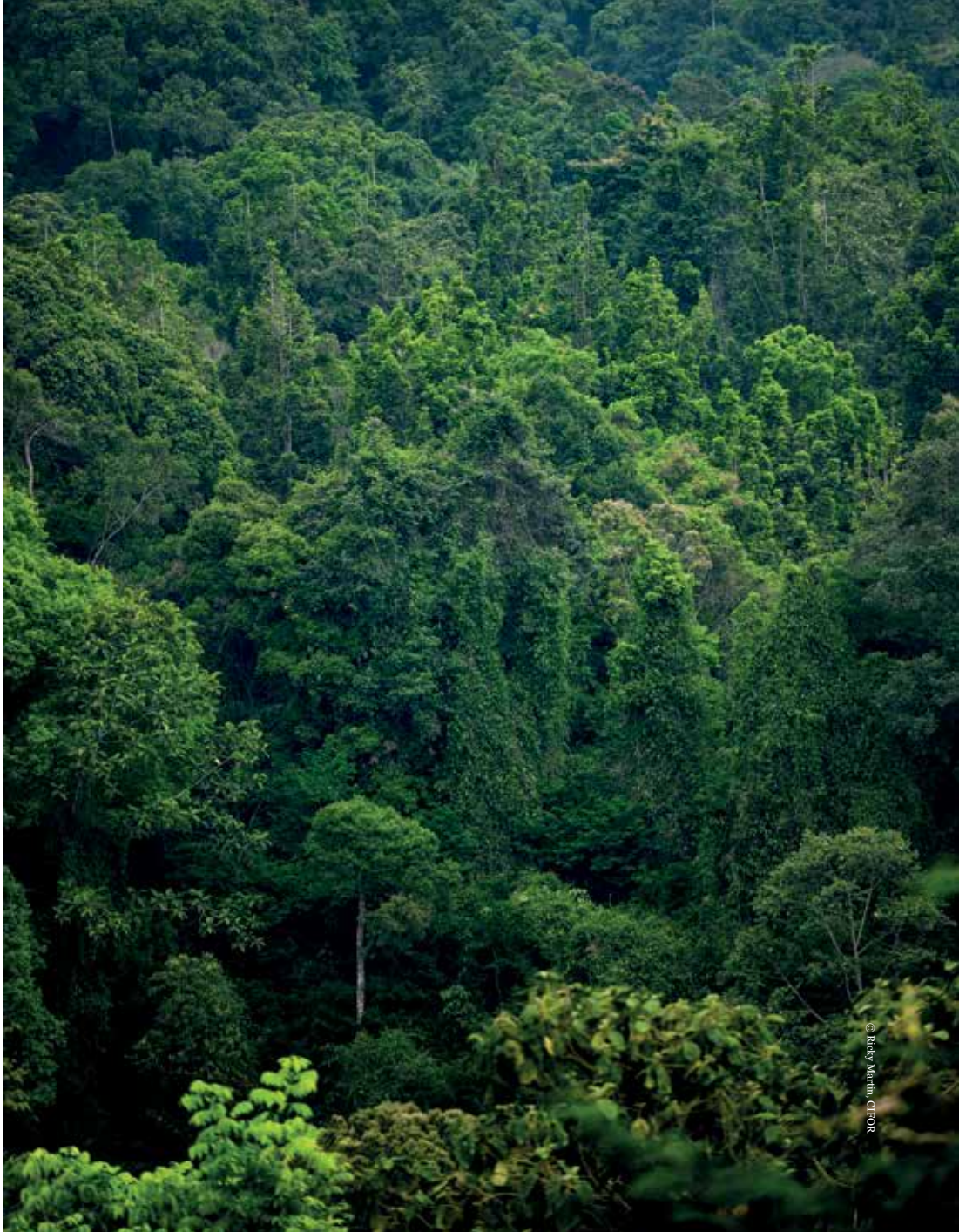


HOW THIS BOOK CAN HELP

Land-use change, including deforestation, is currently estimated to generate about 3.3 billion tonnes of tonnes of carbon emissions per year – approximately 10% of all human emissions[1] (see page 18). REDD+ has emerged in response to this, as an international initiative that aims to provide financial incentives to developing countries for 'reducing emissions from deforestation and forest degradation'. This initiative could soon be included as a key climate change mitigation mechanism within a new global climate change agreement, to be negotiated by 2015 under the United Nations Framework Convention on Climate Change (UNFCCC).

For forest countries preparing to implement REDD+ and receive results-based payments, a clear domestic legal framework of enabling policies and legislation is needed to ensure that national systems not only deliver permanent emission reductions, but can also guard against the social and environmental risks created by REDD+, while also delivering co-benefits.

A variety of international requirements and guidance exist for forest countries looking to participate in REDD+, including those adopted by Parties to the UNFCCC, as well as those defined by a number of multilateral and bilateral REDD+ initiatives, which are already delivering finance for 'REDD+ readiness'. Recognising the diversity of country circumstances, this book describes the ways in which forest countries can use their domestic legal frameworks to meet the key requirements of the UNFCCC and those of the World Bank Forest Carbon Partnership Facility.

Furthermore, it explains how domestic legal frameworks can be used to address a number of broader governance issues which are also critical for achieving effective, efficient and equitable REDD+. These include reducing corruption, and ensuring rights of access to information and public participation.

Finally, for decision makers wishing to pursue a more integrated approach to land-use management – i.e. a 'landscapes approach' – the analysis presented here may offer useful guidance for achieving greater cohesiveness and coordination across the different land-use sectors.

This book does not present a one-size-fits-all approach, but a range of potential solutions, which are flexible and can be adapted to individual countries as they work towards reducing forest emissions in the ways best suited to their unique circumstances.

INTRODUCTION TO LEGAL FRAMEWORKS AND REDD+

THE IMPORTANCE OF EFFECTIVE LEGAL FRAMEWORKS FOR REDD+

Domestic legal frameworks set the 'rules of the game' for REDD+, the international policy initiative to incentivise the reduction of emissions from deforestation and forest degradation[i] (see pages 24-25). Their design can therefore have a significant impact on the effectiveness, efficiency, and equity of REDD+ implementation[ii].

The legal framework outlines a country's goals and objectives through strategies and policies; creates the mandates and powers of institutions through laws; sets specific targets through plans and programmes; and defines the spectrum of acceptable behaviour.

In the context of REDD+, the legal framework will be the vehicle through which many of the international requirements for REDD+ will be translated by forest countries into tangible and specific national requirements, according to their unique circumstances. In this way, the legal framework can help countries qualify for results-based payments under REDD+.

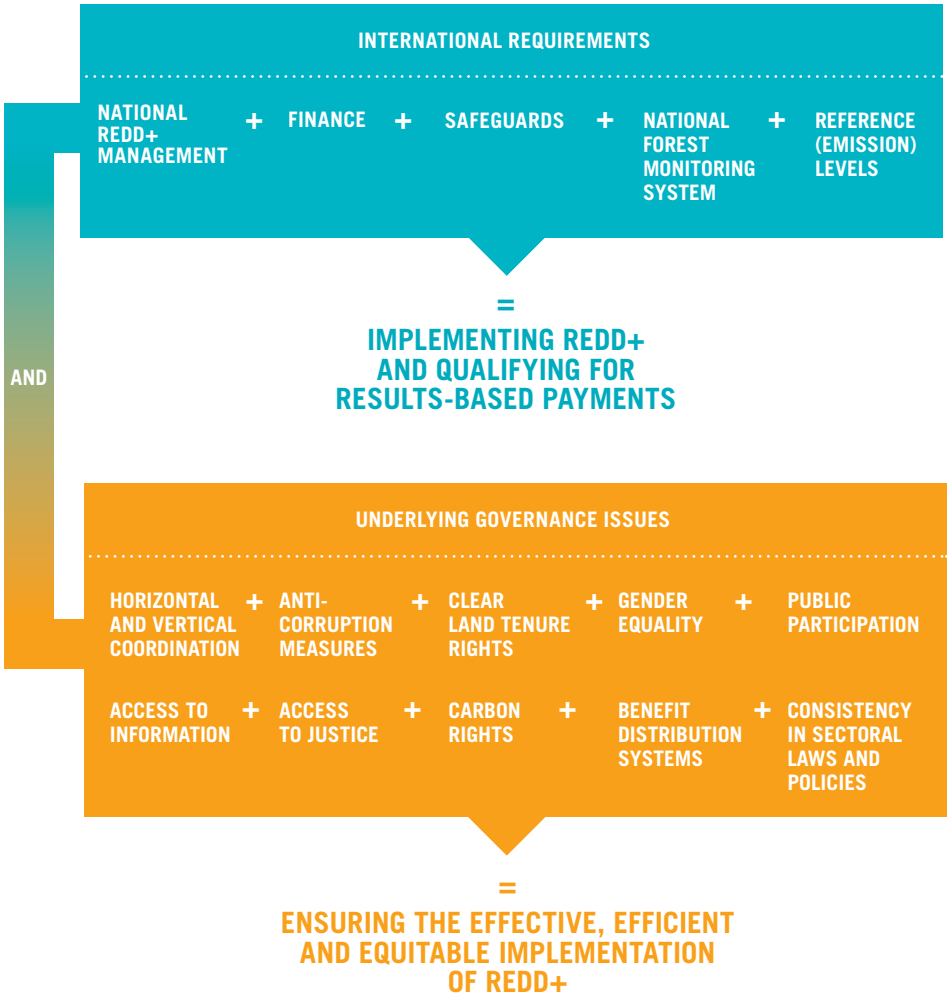
However, while the success of REDD+ will be in part dependent on the design of REDD+ specific laws and policies, it also relies on the existence of a legal framework which addresses broader governance challenges. For example, this could include addressing corruption and recognising the right of access to information. In the absence of this, REDD+ implementation could have significant negative social, economic and environmental consequences. In addition, governments looking to engage with the private sector in light of the current REDD+ financing gap (see page 26) could see addressing these governance shortcomings as a way of reducing uncertainty and risk for potential REDD+ investors.

It is important to note that well-designed legal frameworks for REDD+ can not only facilitate the effective development of REDD+ nationally, but can also have wide-reaching impacts across sectors beyond forests, such as agriculture and water, while also requiring greater integration of policy planning and implementation among these sectors. There are clear synergies between these characteristics and current discourse on integrated land-use, known as the 'landscapes approach' (see page 28).

i. REDD+ stands for reducing emissions from deforestation and forest degradation, the conservation and enhancement of forest carbon stocks, and the sustainable management of forests.

ii. The effectiveness of REDD+ implementation refers to the extent of emission reductions it can achieve; efficiency refers to its cost-effectiveness; and equity refers to the extent to which undesired social and ecological trade-offs created by REDD+ actions are avoided or reduced.

KEY ELEMENTS TO BE ADDRESSED FOR REDD+ THROUGH DOMESTIC LEGAL FRAMEWORKS



THE DRIVERS OF DEFORESTATION AND FOREST EMISSIONS

Tropical forests cover only around 7% of global land area, but provide habitat for at least half of the earth's terrestrial biodiversity[2]. They are also invaluable to humanity in that they provide economic goods (such as food, timber and fuel wood), and ecosystem services at local, regional and global scales.

Tropical deforestation and forest degradation are a major anthropogenic source of atmospheric carbon dioxide and a key driver of climate change. According to the latest report of the Intergovernmental Panel on Climate Change (IPCC), net carbon emissions from land-use change during the past decade are estimated to be 3.3 billion tonnes of CO2 equivalent (CO2e) annually - around 10% of all human emissions[3,i]. Even though deforestation rates have dropped significantly in countries that have implemented strong conservation policies, forest loss in other countries continues unabated or is predicted to increase in the future[4,5,6,7].

A key driver of deforestation has been the conversion of forested land to other land uses, primarily to meet the growing global demand for commodities from forest regions, such as timber and paper, minerals, oil and gas, food and biofuels[8]. Underlying these primary drivers are a series of complex and indirect economic, demographic, and institutional factors which contribute to deforestation. These can include, amongst many others, weak forest governance and lack of law enforcement, unclear land tenure arrangements and allocation of rights, and rural poverty[9,10].

i. The IPCC report additionally mentions that the agriculture, forestry and other land-use (AFOLU) sector accounts for about a quarter of net anthropogenic greenhouse gas emissions, mainly from deforestation, agricultural emissions from soil and nutrient management and livestock.

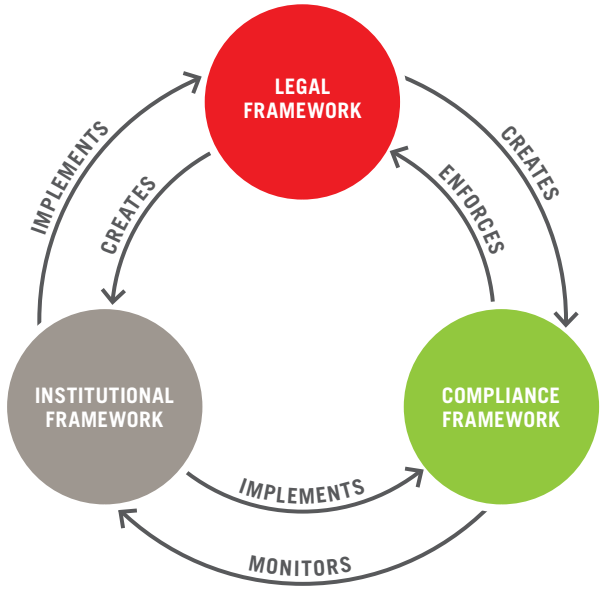
UNDERSTANDING LEGAL FRAMEWORKS

Within this book, we define a domestic legal framework as comprising a country's **strategies, policies, plans, programmes, laws** and **regulations** (see page 20).

The legal framework of a country forms a core part of its governance system. A governance system comprises three main components: the legal framework, the institutional framework, and the compliance framework (see the figure below and pages 22-23). The role of the legal framework is to create the institutional and compliance frameworks as well as to establish the rules according to which they operate.

THE THREE COMPONENTS OF A GOVERNANCE SYSTEM

The figure below is a simplified illustration of the different components of the governance system. In practice, the separation between these components is not as clear cut. For example, the compliance framework is not separable from the institutional framework but is a function of the latter.



DEFINITIONS OF KEY ELEMENTS OF THE LEGAL FRAMEWORK

The key elements of the legal framework are described below. The first three elements (strategy, policy, plans and programmes) represent non-binding policy instruments. The following two elements (statutory law and regulations) are legally binding instruments. The legal status of customary law is less clear, as it is not established or defined by the state and it is not generally enforceable in national courts.

POLICY INSTRUMENTS

STRATEGY

A strategy can be understood as a broad policy document designed to achieve a long-term aim related to one or more policy areas. It will identify the challenges facing one or more sectors and enable the government to establish a position.

POLICY

A policy aims to respond to challenges identified within a strategy, and is often implemented over a long period of time. It is more specific than a strategy and provides political direction for the adoption, implementation and interpretation of laws. It can be national or sub-national[11].

PLANS AND PROGRAMMES

Plans generally build on policies and provide more detailed quantitative targets and qualitative principles. Programmes are spatially, temporally and technically explicit about the actions or activities and resources needed to achieve a plan's objectives. Plans and programmes can be national or sub-national.

LEGISLATIVE INSTRUMENTS

STATUTORY LAW

Statutory laws, also known as primary legislation, are passed by a national parliament. They constitute the system of rules that a country recognises as regulating the actions of its citizens. Laws operationalise policies, define acceptable and unacceptable behaviour, and enable enforcement through the imposition of penalties for non-compliance[12]. Laws can also be referred to differently in different countries – for example, they are called proclamations in Ethiopia.

REGULATIONS

Regulations, also known as secondary legislation, are made by a government department (also called an executive body) under powers given to them by primary legislation (i.e. statutory laws) in order to effectively implement and administer its requirements. Types of regulations include presidential decrees, for example in Indonesia[13].

CUSTOMARY LAW

Customary laws embody rights which have developed by custom, are followed in a particular locality and are accepted as part of the law of that locality. To be recognised as customary law, these rights must be reasonable in nature, benefit from widespread acceptance and have been followed continuously as if it were a right since the beginning of legal memory[14]. The recognition of customary law and rights varies from country to country.

OTHER COMPONENTS OF THE GOVERNANCE SYSTEM

THE INSTITUTIONAL FRAMEWORK

The institutional framework is primarily composed of public administrative bodies. Its mandates and powers are established by the legal framework.

The role of the institutional framework is twofold:

- the implementation at national and sub-national levels of the strategies, policies, programmes, plans and legislation, which constitute the legal framework. This can include implementing mechanisms for stakeholder consultation, and ensuring participation in planning and implementation; and
- the implementation of the compliance framework.

In the context of REDD+, the institutional framework includes the institutions or agencies responsible for delivering REDD+[15]. Collectively, they form the vehicle through which REDD+ will be achieved, and are needed to establish:

- REDD+ strategies and action plans[16];
- national or subnational reference levels (see pages 110-116)[17];
- a robust and transparent system to measure, report and verify (MRV) forest change (see pages 92-107)[18];
- a system to provide information on how safeguards are being addressed and respected (see pages 52-65)[19,20]; and
- a system for the receipt, management and disbursal of REDD+ finance (see pages 68-89)

THE COMPLIANCE FRAMEWORK

The role of the compliance framework is to ensure that actions comply with the rules set out by the legal framework and to address any grievances that may arise. This framework is created by the legal framework and implemented by the institutional framework.

The compliance framework is not separate from the legal and institutional frameworks *per se*, but is a function of the two, i.e. the legal framework includes compliance provisions in its laws and policies, and the institutional framework performs compliance functions (e.g. law enforcement). It is separated here conceptually for ease of understanding.

The compliance framework is made up of monitoring, enforcement (or 'non-compliance'), and dispute resolution functions. Monitoring is carried out to keep track of the performance of implementing entities in accordance with the rules established in the legal framework. Enforcement measures are triggered when non-compliance occurs. These could be administrative or judicial in nature, and should aim to provide a legal avenue for redress.

As part of its compliance framework, the governance system will need to ensure that actors who might be affected by the implementation of an activity can make use of strong mechanisms for addressing grievances. For example, the introduction of REDD+ in developing countries and the implementation of REDD+ activities has the potential to have an impact on, and sometimes create conflicts relating to, forest resources, and land, oil, gas, minerals and other valuable resources in forested areas[21]. Grievance or dispute resolution mechanisms can include negotiation, mediation or arbitration, and can take place through judicial or administrative systems[22].

THE DEVELOPMENT OF REDD+ UNDER THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

REDD, or 'Reducing Emissions from Deforestation and Forest Degradation in Developing Countries', has emerged as an international initiative to help address the problem of forest loss. The principle underpinning REDD is that developing countries that avoid emissions by protecting and conserving forests should be rewarded monetarily from international financial sources.

The concept of REDD developed from a proposal presented by the Coalition for Rainforest Nations to the Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC COP) in 2005[i]. Led by Costa Rica and Papua New Guinea, the proposal called upon the Parties to the UNFCCC and to the Kyoto Protocol to "take note of present rates of deforestation within developing nations, acknowledge the resulting carbon emissions, and consequently open dialogue to develop scientific, technical, policy and capacity responses to address such emissions resulting from tropical deforestation".

REDD gained traction in 2007 at the 13th session of the UNFCCC Conference of the Parties (COP 13) in Bali and was a key element of the Bali Road Map, which set out the work that needed to be done under various UNFCCC negotiating tracks in order to reach a secure climate future.

In 2009, at UNFCCC COP 15 in Copenhagen, the scope of REDD was expanded to include the role of conservation and enhancement of existing forest carbon stocks and the sustainable management of forests. This became known as REDD+ ('REDD plus'). This expansion aimed to prevent the development of a mechanism that would only reward countries with historically high deforestation/degradation rates (by quantifying the emissions they avoided), in favour of a mechanism that would also incentivise countries with historically low deforestation rates to continue their forest protection or sustainable management. The 'plus' also enhanced the potential for REDD+ to achieve co-benefits such as poverty alleviation, improved governance, biodiversity conservation, and protection of ecosystem services.

REDD+ activities include[ii]:

(a) Reducing emissions from deforestation;

(b) Reducing emissions from forest degradation;

(c) Conservation of forest carbon stocks;

(d) Sustainable management of forests; and

(e) Enhancement of forest carbon stocks.

At COP 16, in 2010, REDD+ became an important part of the Cancun Agreements, which crystallised the framework under which the international community agreed to address the challenges posed by climate change[23]. The Cancun Agreements[v] also decided on a phased approach to REDD+ implementation with the following steps[iii]: i) the development of national strategies or action plans, policies and measures, and capacity building; ii) the implementation of national policies, measures, strategies or action plans for further capacity building, technology development and transfer, and results-based demonstration activities, evolving into; iii) results-based actions to be fully measured, reported and verified.

In 2011, COP 17 established guidelines for the setting of forest reference emissions levels and forest reference levels[iv] (the performance benchmarks against which current and future emissions reductions can be measured) (see pages 110-116). The COP also clarified that all REDD+ activities should be consistent with the Cancun Safeguards, a set of principles within the Cancun Agreements which aim to ensure that REDD+ not only does no harm, but also delivers multiple social and environmental benefits. It also provided initial guidance on the characteristics of national systems for providing information to show whether the Cancun Safeguards are being addressed and respected, known as safeguards information systems (SIS) (see pages 52-65).

COP 19 in Warsaw, in 2013, saw the emergence of the 'Warsaw Framework' for REDD+, also referred to as the 'REDD+ rulebook' – a series of decisions laying out the requirements that developing countries are expected to meet in order to participate in a future international REDD+ mechanism under the UNFCCC and receive results-based payments. The core elements of this framework include include finance, institutional arrangements, safeguards, national forest monitoring systems (including measurement, reporting and verification), and reference emission levels or reference levels.

i. UNFCCC Decision 2/CP.13

ii. UNFCCC Decision 1/CP.16 paragraph 70

iii. UNFCCC Decision 1/CP.16, paragraph 73

iv. Forest reference emission levels (RELs) refer to the gross emissions from a geographical area during a set period of time, while forest reference levels (RLs) refer to the emissions and removals (i.e. the removal of greenhouse gas emissions from the atmosphere, for example by trees during photosynthesis) from a geographical area during a set period of time. The former is used as a baseline to demonstrate emission reductions from avoided deforestation and forest degradation, while the latter is used to demonstrate emission reductions from conservation, sustainable forest management and enhancement of forest carbon stocks.

PROVIDING GUIDANCE IN LIGHT OF THE CURRENT FINANCING GAP FOR REDD+

As an incentive mechanism, REDD+ will only work if sufficient financial resources are put forward to compensate for the reduction of emissions from deforestation and forest degradation in developing countries[i]. Current finance for REDD+ comes from both public and private sources: public finance in the form of readiness funding (and soon results-based payments) from developed country governments, and private finance largely in the form of payments from the voluntary carbon market. However, there is a significant gap between demand for and projected supply of emission reduction units or credits. Estimates show that, between 2015 and 2020, the necessary supply of emission reductions from REDD+ and other forest and land-based activities is likely to be between 13 and 39 times larger than total potential demand[24]. The anticipated adoption of the new climate change agreement in 2015 (due to come into force in 2020), which will include binding emission reduction targets, will likely play a key role in stimulating demand and mobilising additional finance for REDD+ from both the public and private sectors.

The UNFCCC has recognised that the Green Climate Fund (GCF) will be the operating entity of the financial mechanism of the Convention, thus serving as the primary channel for public sector finance for REDD+. Given that the GCF is accountable to, and functions under the guidance of, the COP[ii], once the GCF begins to distribute REDD+ results-based payments it is likely that it will do so in accordance with the requirements and guidance contained in UNFCCC COP decisions on REDD+[iii]. The analysis and guidance contained in this book will therefore continue to be relevant once the GCF is operational.

In the meantime, until 2020, market mechanisms could contribute to bridging the gap and the private sector will have an essential role to play in this. For governments looking to engage with the private sector for this purpose, the broader governance improvements suggested in this book, in addition to contributing to the efficiency, effectiveness and equity of REDD+ in general, could also be seen as a way of reducing uncertainty and risk for potential REDD+ investors.

i. And the conservation and enhancement of forest carbon stocks, and the sustainable management of forests.

ii. UNFCCC decision 5/CP.19 Annex paragraph 1

iii. UNFCCC decision 9/CP.19 encourages the entities (including the GCF) financing the activities referred to in decision 1/CP.16, paragraph 70 (REDD+ activities), when providing results-based finance, to apply the methodological guidance consistent with decisions 4/CP.15, 1/CP.16, 2/CP.17, 12/CP.17 and 11/CP.19 to 15/CP.19

CASE STUDY

THE LEGAL FRAMEWORK FOR FOREST MANAGEMENT AND PROTECTION IN ETHIOPIA

Ethiopia's legal framework is comprised of strategies, policies and laws (known as 'proclamations'). The Constitution of Ethiopia[i] contains broad provisions[ii] which recognise the importance of the environment and the need for its proper protection and management. These provisions provide the legal mandate and foundation for the development of policies and legislation on forest management within the wider context of environmental protection[iii].

STRATEGY

Under this broad mandate, the Conservation Strategy of Ethiopia (1989) aims to provide an umbrella strategic framework detailing principles and guidelines for the effective management of the environment, and to identify Ethiopia's key natural resources, environmental imperatives and development demands[25]. Critically, it aims to integrate existing and future federal and regional government planning in all sectors that affect the environment, including agriculture, forestry, wildlife, fisheries, soils, water, minerals, energy, urban planning and cultural heritage conservation[26].

POLICY

The Environmental Policy of Ethiopia (EPE) (1997) aims to respond to the objectives identified in the Strategy above. It contains ten sectoral and ten cross-sectoral policy areas, including one on forest, woodland and tree resources, which mentions the management and protection of forest resources[iv]. This policy area outlines general principles and objectives for forest management in Ethiopia, including that it should be participatory, environmentally sustainable, as well as socially and economically viable. Specific policy goals also include reducing the pressure on forest resources through a cross-sectoral approach to natural resource management. The EPE was to be operationalised through the development of proclamations (laws) and regulations[v].

LAW

The Federal Forest Development, Conservation and Utilisation Proclamation[vi], and the Federal Rural Land Administration and Land Use Proclamation[vii], are the main federal laws that govern the management and protection of forests in Ethiopia[27]. The former provides the underlying regulations for forest areas and for the public administration of land, including the categorisation of forests, different types of forest ownership, and the respective powers and obligations of federal and regional administrative bodies in relation to forest management and conservation. Meanwhile, the latter outlines the Ethiopian system for land ownership and land use. Regional proclamations such as the Oromia Forestry Proclamation[viii] also exist to implement federal laws and to tailor their application to the sub-national context.

i. Ethiopia Proclamation No.1/1995

ii. Ethiopia Proclamation No.1/1995, Articles 44 and 92

iii. General Provisions of Ethiopia's 1995 Constitution, see http://www.ethiopia.gov.et/en_GB/general-provision-of-the-constitution

iv. The Environmental Policy of Ethiopia, 1997, Available at http://www.mfa.gov.et/docs/ENVIRONMENT%20POLICY%20OF%20ETHIOPIA.pdf

v. Although the Ethiopian government developed a Forest Management, Development and Utilisation Policy in 2007, there is currently no implementing legislation for this policy.

vi. Ethiopia Proclamation No. 542/2007

vii. Ethiopia Proclamation No. 456/2005

viii. Ethiopia Proclamation No.72/2003

SYNERGIES BETWEEN REDD+ LEGAL FRAMEWORKS AND THE 'LANDSCAPES APPROACH'

The increase in global population and expansion of economic activity in the tropics are placing ever increasing pressure on land and resources, and creating conflicts between different demands. Many of these conflicts originate at the farm-forest frontier, where agricultural expansion is pushing back the area covered by standing forests, while degraded land that could be restored to agricultural use remains unused. Others take place in mosaic landscapes where a variety of land uses need to be balanced over large areas.

Addressing these conflicts will be essential in order for developing countries to meet their national targets on sustainability and food security, and their international commitments on climate change. There is increasing awareness that this requires comprehensive engagement with land-use sectors beyond forestry, such as agriculture, mining, energy and water, to identify competing demands and trade-offs as well as potential synergies. This discourse is emerging under the broad concept of the 'landscapes approach'.

If policy and legislation for REDD+ are designed in a way that addresses overlap and conflicts between the activities and jurisdictions of different land-use sectors and promotes coordination between them, as advocated in this book, not only can this help ensure the permanence of REDD+, it can also support the development of a landscapes approach. This may be of particular relevance in countries where resources to develop legal frameworks for a landscapes approach are lacking, but financial incentives for REDD+ readiness are available.

REDD+ and the landscapes approach are both large-scale land-use initiatives, with major potential social and environmental impacts other than those intended. In REDD+ discussions under the UNFCCC (see page 24), for example, it has been recognised that REDD+ implementation could not only support emission reductions, but also secure the provision of other ecosystem services (such as water regulation) and clarify land tenure[28]. At the same time it is also accepted that, if poorly designed or delivered, REDD+ could lead to significant negative environmental and social impacts, such as the conversion of areas with high biodiversity into plantations with low biodiversity, or the (further) marginalisation of indigenous communities through their exclusion from the REDD+ planning process[29]. Addressing these potential benefits and impacts through REDD+ legal frameworks will be equally relevant to the landscapes agenda.

SCOPE

INTERNATIONAL REQUIREMENTS

The following chapter will examine the main international requirements of the UNFCCC and key contractual requirements of the FCPF, which forest country governments will need to fulfil in order to qualify for future results-based payments from REDD+ from those sources. Possible approaches are then presented as to how a country's domestic legal framework can be used to meet relevant requirements.

This page explains why these international requirements were chosen as the focus of this book.

The decisions of the UNFCCC's annual Conference of the Parties (COP) provide rules and guidance for countries looking to implement their commitments under the UNFCCC. Although these are not officially recognised as legally enforceable international law[30], they form part of the international legal framework for REDD+, outlining, among other things, the *de facto* requirements that Parties to the Convention must meet in order to qualify for future results-based payments from REDD+[31].

One of the most important outcomes of the UNFCCC negotiations on REDD+ was the adoption of the Warsaw Framework for REDD+ at COP 19 in 2013. This framework builds on relevant decisions adopted at previous COPs and lays out the requirements for countries seeking to implement REDD+ under the UNFCCC, and access results-based payments. These relate to five key areas: **institutional arrangements, safeguards, finance, national forest monitoring systems (including measurement, reporting and verification, or MRV, of emission reductions),** and **reference emission levels and reference levels**. These areas provide the structure for the analysis in the next chapter[i].

In parallel to developments under the UNFCCC, a number of other multilateral[ii], bilateral[iii] and voluntary initiatives are currently engaged in the financial support of REDD+ implementation. Although it is not yet operational, the UNFCCC also recognises that the Green Climate Fund is likely to have a key role in channelling financial resources for addressing climate change, including for REDD+ activities[iv]. COP 19 in Warsaw encouraged all these entities[v] to apply the guidance contained in relevant COP decisions when providing results-based finance for the implementation of REDD+ activities[vi]. For countries that have signed up to such initiatives, the requirements related to the provision of results-based finance should therefore not be seen as replacing UNFCCC requirements, but as complementing them[vii].

The FCPF, a global partnership fund designed to help countries get ready for REDD+[32], is currently an important source of REDD+ finance. FCPF requirements are contractual in nature, and constitute legal obligations for countries currently receiving funding from the World Bank. The FCFP is composed of two separate funds: the Readiness Fund[33] and the Carbon Fund[34], each with their own technical and substantive requirements and guidance. Under the FCPF Readiness Fund, all countries seeking funding must prepare a Readiness Preparation Proposal (R-PP), which lays out a 'roadmap' of REDD+ preparation activities and indicates how the work will be organised and managed in the country[35,36]. Countries that have prepared an R-PP and made progress towards REDD+ readiness may then apply to the Carbon Fund by submitting an Emission Reductions Program Idea Note (ER-PIN)[37]. Successful ER-PINs must be consistent with the Carbon Fund's Methodological Framework, which comprises a set of criteria and indicators that must be met by Emission Reductions Programmes, including provisions on safeguards[38].

FCPF requirements only apply to those countries with contractual relationships with the Fund, not all countries engaging in REDD+. However, most forest countries wanting to engage in REDD+ are applying or have applied for funding through the FCPF, and its requirements apply consistently to all its contractual partners, rather than being tailored to their specific circumstances[viii]. Therefore, its requirements will be presented and analysed in this book, insofar as they complement those of the UNFCCC.

In contrast to the FCPF, the requirements of bilateral agreements, multilateral funds, and other initiatives tend to be specific to individual countries. For example, the Forest Investment Programme responds directly to priorities identified by countries in their national REDD+ strategies and action plans, and establishes requirements on a case-by-case basis. The authors therefore do not attempt to provide overarching guidance applicable to all of these initiatives, and invite the reader to refer

i. Although the content of the next chapter is organised according to the elements of the Warsaw Framework, the first section of the next chapter is referred to as 'national REDD+ management' instead of 'institutional arrangements'. This is because this book looks at the institutional arrangements for national REDD+ management separately to other institutional arrangements, e.g. for REDD+ finance, which are covered in relevant sections.

ii. Multilateral initiatives include the World Bank's Forest Carbon Partnership Fund, (FCPF) and the Forest Investment Programme, (FIP).

iii. Bilateral initiatives include the 2009 Guyana-Norway Memorandum of Understanding regarding Cooperation on Issues related to the Fight against Climate Change, the Protection of Biodiversity and the Enhancement of Sustainable Development.

iv. UNFCCC decision 9/CP.19 preamble

v. UNFCCC Decision 9/CP.19 paragraph 1 as referred to in decision 2/CP.17 paragraph 65 provides that results-based finance for the implementation of REDD+ activities as defined under the UNFCCC "may come from a variety of sources, public and private, bilateral and multilateral, including alternative sources".

vi. UNFCCC decision 9/CP.19 paragraphs 6 and 7

vii. UNFCCC Decision 2/CP.17

viii. There are currently 44 REDD+ Participant Countries that have applied to the FCPF's Readiness Fund. Brazil is one of the few notable exceptions.

to the specific agreements to understand their possible additional requirements. Furthermore, support from UN-REDD, a collaborative programme set up to support the development and implementation of REDD+ at country level, is accompanied by voluntary guidance for countries. Although referred to in this book, these are not considered to be requirements for REDD+ and will therefore not be examined here.

The international requirements for REDD+ considered in this book are varied in nature and include many technical elements. Rather than examine all of the UNFCCC and FCPF requirements for REDD+ *per se*, we instead focus on those elements that could or should be met by a country's domestic legal framework.

BROADER GOVERNANCE ISSUES

The international requirements and guidance for REDD+ under the UNFCCC (see pages 24-25) are specific to REDD+[i]. However, implementing REDD+ successfully at the national level will also depend on addressing the governance challenges which underlie deforestation through a number of broader, cross-cutting measures that are at the foundation of good governance.

For example, one of the most problematic cross-cutting issues for the effectiveness of REDD+ is the lack of clarity and security surrounding land tenure (see pages 134-136). Without clear and stable land rights it is difficult to allocate REDD+ payments equitably, and without REDD+ payments to stakeholders, there will be less incentive to preserve forests for their carbon stocks, given the opportunity cost compared with other land uses. The legal framework can support the clarification of customary and statutory tenure rights through the development and implementation of a policy or programme, the results of which can be enshrined in law.

The last chapter of this book aims to provide examples of how legal frameworks can improve governance, and the impact this can have on the success of REDD+. The enabling conditions in this chapter have been recognised as priorities in the majority of country R-PPs prepared for the FCPF[39], or are considered in the current literature as crucial for the success of REDD+[ii]. These enabling conditions consist of a number of rights and responsibilities of REDD+ stakeholders, such as the right of access to information (see pages 121-123) and other issues related to processes for good governance, such as the need for horizontal and vertical coordination in decision-making (see pages 142-145).

These underlying enabling conditions constitute the fundamental building blocks for equitable, permanent and environmentally sound REDD+ implementation. They can also contribute to ensuring that the development of laws and policies for REDD+ serves the objectives of other national policies and sustainable development strategies, and can become a vehicle for improving national governance.

This chapter is divided into the following sections, which address the underlying governance issues that should be addressed to guarantee the success of REDD+: **access to information;**

i. For example, the Cancun safeguards referred to in Appendix I of Decision 1/CP.16 only apply to REDD+ activities as defined in Decision 1/CP.16 paragraph 70.

ii. The 'enabling' conditions in this book do not constitute an exhaustive list.

public participation; access to justice; clear land tenure rights; carbon rights; gender equality; benefit distribution; anti-corruption; consistency between sectoral laws and policies; and horizontal and vertical coordination.

This book focuses on the legal framework 'on paper', and the approaches that guide its formulation, rather than an explanation of how the legal framework can be implemented in practice.

The aim of the analysis presented in the following chapters is not to present an exhaustive list of all possible legal approaches available to forest countries to develop REDD+. Institutional set-ups vary significantly between countries, and the nature of how legal frameworks can be used to address international requirements for REDD+ is therefore distinct to a particular country. The purpose is rather to describe emerging thinking in this area and the legal approaches which are currently being explored by forest countries to enable REDD+ implementation, in order to improve clarity and facilitate action among decision makers.

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RESPONDING TO INTERNATIONAL REQUIREMENTS

NATIONAL REDD+ MANAGEMENT

The successful development and implementation of REDD+ at the country level requires clear institutional arrangements[i]. Recent studies have found that the key functions that need to be performed in country by a range of institutions include: management and oversight; financial functions (receiving, managing and distributing finance); technical functions (monitoring bodies); implementation; registry and certification; safeguards and accountability; and capacity building[40]. The distribution of these functions between actors varies according to the institutional set-up in each country.

This section focuses on the institutional arrangements for the management and coordination of REDD+. This will require designating or creating a lead entity which has a clear mandate, adequate powers and defined responsibilities.

The implementation of REDD+ may also have an impact on the activities and jurisdictions of administrative bodies involved in other land uses, such as mining, energy and agriculture. Lack of clear institutional arrangements for the management of REDD+ may result in overlapping jurisdictions and powers, which can cause conflicts and rivalry between ministries working on environmental, agricultural or forestry issues. It is therefore important to ensure a degree of cross-sectoral coordination.

In addition, it is important that there is a clear distribution of powers and responsibilities between this management entity and the different implementing entities at other levels of government (e.g. sub-national and local levels) (see pages 142-145).

The institutional arrangements for REDD+ management should also be participatory (see pages 126-128).

i. The Warsaw Framework for REDD+ refers broadly to 'institutional arrangements', including institutional arrangements for finance. However, this section focuses on the design of REDD+ institutional arrangements for the management of REDD+ to meet the requirements of the UNFCCC and FCPF. Institutional arrangements for other elements (e.g. finance, safeguards) will be dealt with under relevant sections (see pages 52 and 68).

REQUIREMENTS AND GUIDANCE RELATING TO NATIONAL REDD+ MANAGEMENT

INTERNATIONAL GUIDANCE AND REQUIREMENTS OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Warsaw Framework for REDD+ identifies the minimum necessary institutional arrangements for REDD+ management and leaves the details of how to design these largely to the discretion of countries[i].

Countries are encouraged to set up a national REDD+ entity or designate a focal point to liaise with the Secretariat and the relevant bodies under the UNFCCC for REDD+ related matters[ii]. This entity or focal point can nominate other entities to obtain and receive results-based payments for REDD+, provided that these entities comply with the requirements of those providing the payments[iii] (see also page 69).

CONTRACTUAL REQUIREMENTS OF THE WORLD BANK FOREST CARBON PARTNERSHIP FACILITY

While the UNFCCC focuses primarily on general requirements for countries to engage in the international REDD+ framework, the FCPF requirements and guidance relate more to the coordination and implementation of REDD+ at the national level.

According to the Readiness Preparation Proposal (R-PP) template (see page 33), the institutional arrangements for REDD+ readiness, and ultimately implementation, must:

- clarify their intended "readiness management arrangements"[iv]. This means explaining how REDD+ activities will be coordinated and how implementation will be managed, including how disputes are resolved, how inclusiveness is ensured, and how social and environmental impacts of implementation will be assessed and addressed[v];
- be inclusive of key stakeholders[vi]; and
- clearly define the mandates, roles and responsibilities of all agencies and working groups involved, to facilitate cross-sectoral coordination[vii]. These are likely to include different government agencies such as those dealing with forests, environment, agriculture, transportation, planning, finance, and the prime minister or president's office.

i. UNFCCC Decision 10/CP.19

ii. UNFCCC Decision 10/CP.19 paragraph 1

iii. UNFCCC Decision 10/CP.19 paragraph 2

iv. FCPF UN-REDD R-PP Template component 1a

v. Ibid

vi. Ibid

vii. FCPF UN-REDD R-PP Template

According to the R-PP template, these requirements can be achieved by establishing a new body to manage REDD+, and/or by strengthening existing coordinating bodies and mechanisms[viii].

Although the exact method of establishing the institutional arrangement – through a law, policy and/or strategy – is not specified, the FCPF recommends as good practice that countries "identify policies and laws that need to be reviewed or reformed to allow for successful collaboration"[ix].

The FCPF Carbon Fund's Methodological Framework does not provide requirements or guidance related to institutional arrangements for REDD+ management that are additional to those identified above.

viii. Ibid

ix. FCPF UN-REDD R-PP Template component 1a

ROLE OF THE LEGAL FRAMEWORK IN CLARIFYING THE INSTITUTIONAL ARRANGEMENTS FOR REDD+ MANAGEMENT

The design and regulation of a country's institutional arrangements for REDD+ management is a task for its domestic legal framework. Depending on the country context and existing institutional set-up, a government may need to make changes to its legal framework to provide the necessary legal mandates and powers for institutions to manage REDD+ implementation and financing[41]. By establishing the mandates and clarifying the different roles and responsibilities of the institutions involved in REDD+, the legal framework shapes and sets the boundaries for action. Issues linked to the performance of the institutional arrangements, such as lack of capacity within institutions, and how this may contribute to a lack of, or weak enforcement, will not be covered here, as they are not part of the legal framework *per se* but relate to its implementation.

The domestic legal framework can be used to establish institutional arrangements for the management of REDD+ that meet UNFCCC and FCPF requirements. Two possible approaches are presented in this section: either creating a new institution to lead the REDD+ process, or tasking an existing institution with the coordination of REDD+. These differ in terms of cost, ease of implementation, and the level of political capital needed, depending on each country's specific circumstances.

WHAT COUNTRIES CAN DO

CREATE A NEW ENTITY TO LEAD THE REDD+ PROCESS

Countries may decide to set up a new entity (an institution, body or agency) focused on the management of REDD+, to act, amongst other things, as the liaison with the Secretariat and the relevant bodies under the UNFCCC.

The creation of such an entity could be detailed within the country's national REDD+ strategy, if one exists, and its mandate would need to be established through a legal instrument e.g. an act of parliament (law) or an executive regulation (e.g. a decree or a presidential regulation). Clarification would be needed of its composition, mandate, powers (including whether it has the power to compel other ministries to take particular actions) and budget.

Most countries have set up their REDD+ management entities under secondary legislation such as presidential or ministerial decrees. There are some risks to using secondary legislation for this purpose: it can be repealed more easily than primary legislation (statutory laws), and there may be a risk of lack of adequate enforcement and compliance powers for the new institution. However, this may be the most practical option given individual country circumstances and their chosen approach to REDD+.

CASE STUDY

INSTITUTIONAL ARRANGEMENTS FOR THE MANAGEMENT OF REDD+ IN INDONESIA: THE INDONESIAN REDD+ AGENCY

Indonesia has set an ambitious climate goal to reduce emissions by 26% by 2020, and by 41% with additional international assistance. 87% of this emissions reduction requirement will need to be met from curbs in land use sourced emissions, most of which are related to deforestation. As one response to this, Indonesia's National REDD+ Agency was created by Presidential Decree[i] 62/2013, to coordinate, plan, synchronise, facilitate, manage, monitor, oversee and control REDD+ in Indonesia, on behalf of the President[ii]. Presidential Decree 62/2013 also gave the REDD+ Agency a mandate to develop, amongst other things, a National REDD+ Strategy[iii] for the country.

As opposed to ministries, which are created by primary legislation, the REDD+ Agency was created by presidential decree. A weakness of this is that it can potentially be adjusted or rescinded at any time by a new President. This is particularly relevant as Indonesia has recently undergone presidential and legislative elections, which could theoretically lead to changes to existing decrees and regulations. However, any weakening of the REDD+ Agency could seriously affect the implementation of REDD+ in Indonesia given its central leadership role and capacity as a facilitator.

The REDD+ Agency has been set up to coordinate approaches across the nation and among ministries in a country where the combined challenges of geography, governance and commercial incentives to deforest are considerable. Unlike other institutions that are not line ministries in the country, the Agency has a direct reporting line to the President. Still, however, some commentators have argued that, given the central role of the REDD+ agency, its ability to implement REDD+ could be enhanced through more powers, e.g. to review laws and regulations that work against REDD+ and ensure that its strategic policy decisions on REDD+ are properly implemeted by relevant government agencies.

Nevertheless, since its creation, the Agency has had substantial influence in the country through its facilitative and management role, and has also undertaken various initiatives to further more cohesive REDD+ governance (such as the One Map Initiative and its involvement in the establishment of the Indonesian REDD+ trust fund (FREDDI)). Another example is that the Agency has already signed Memoranda of Understanding with sub-national governments to start REDD+ programmes at the regional level.

In addition, it is important to bear in mind that, in any country, whatever might be possible on a purely legal basis has to work within the political context, which may or may not be conducive towards REDD+. The REDD+ Agency has worked to create new political momentum around halting deforestation in the country, in conjunction with development partners. This can also be seen in its support of major private sector actors, such as Unilever and Wilmar, to make their supply chains deforestation-free by 2020.

i. Presidential Decrees are also referred to as Presidential Regulations or 'Perpres' in Bahasa

ii. Article 4 of Presidential Decree 62/2013 states that the "REDD+ Managing Agency is tasked to help the President in coordinating, synchronising, planning, facilitating, managing, monitoring, overseeing and controlling REDD+ in Indonesia".

iii. Satuan Tugas Persiapan Kelembagaan REDD+ Indonesia, "Strategi Nasional REDD+," September 2012

TASK AN EXISTING INSTITUTION WITH THE COORDINATION OF REDD+

A national REDD+ entity or focal point could also be established by reforming the mandate of an existing institution, so as to add this new responsibility to its existing functions.

For example, the responsibility of national REDD+ management could be nested within the country's Ministry of Forests (or equivalent). This would involve modifying its composition, powers and budget, in addition to its mandate. This could result in the establishment of a working group, housed within the Ministry, responsible for coordinating the various aspects of national REDD+ implementation (such as MRV, setting reference levels, distribution and management of REDD+ finance, and establishing a safeguards approach). The decision to build on existing institutions could be described within the country's national REDD+ strategy before any legal reform to the ministry's mandate takes place.

EXAMPLES OF COUNTRY APPROACHES TO ESTABLISHING A NATIONAL REDD+ FOCAL POINT

CREATING A NEW ENTITY TO LEAD THE REDD+ PROCESS

INDONESIA

The National REDD+ Strategy and Presidential Decree 62/2013 established the National REDD+ Agency (see page 47).

The Strategy states that the Agency was created to coordinate all REDD+ activities in Indonesia; oversee and accelerate improvements in forest/peatlands governance; and ensure effective funding services and fair distribution of benefits to REDD+ stakeholders[42].

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

The Ministry of Environment, Nature Conservation and Tourism (MECNT) passed Ministerial Decree 09/40 of 26 November 2009 on the establishment, composition and organisation of the structures for the implementation of REDD[43]. It also established the National REDD+ Committee (the decision-making body), the inter-ministerial committee (the body responsible for the implementation of the REDD+ Strategy), the REDD National Coordination (responsible for the daily management of REDD+), and a scientific committee.

TASK AN EXISTING INSTITUTION(S) WITH THE COORDINATION OF REDD+

COLOMBIA

The Ministry of Environment (MADS)'s Forests, Biodiversity and Ecosystem Services Office works with the Ministry's Climate Change Office and its International Affairs Office to lead on REDD+. MADS was created by Law 99 of 1993 and reformed by Decree 2370 of 2011, which sets out its latest functions.

MADS will chair the planned REDD+ inter-disciplinary working group (REDD+ IWG), which will be set up as part of an Intersectorial Commission on Climate Change (COMICC). The REDD+ IWG will include one representative from each of the National Planning Department, the Ministry of Agriculture and Rural Development, the private sector, indigenous people, Afro-Colombian communities, peasants and settlers, academia, NGOs and two representatives from the Regional Climate Change Nodes[44]. The REDD+ IWG has been created within a policy document (CONPES 3700) but is yet to be established through Government decree.

MEXICO

A Presidential Decree on 25 April 2005, which was later superseded by the 2012 General Law on Climate Change LGCC), created the Inter-Ministerial Climate Change Commission (CICC), an inter-ministerial body responsible for coordinating the formulation of policies on climate action presided over by the Ministry of Environment and NaturalResources (SEMARNAT).

In 2009, a REDD+ Working Group (GT-REDD+) was established within the CICC. The following year, a multistakeholder Technical Advisory Committee for REDD+ (CTC-REDD+) was created and appointed as advisory body for the GT-REDD+. The GT-REDD+ coordinates REDD+ related issues between ministries within the CICC and the Consultative Council on Climate Change (C4) – comprised of scientists and representatives from civil society and the private sector.

The CICC authorised the National Forestry Commission (CONAFOR), an agency within SEMARNAT, to develop the National REDD+ Strategy in close collaboration with GTREDD+ and CTC-REDD+. CONAFOR co-chairs GT-REDD+ and has an internal REDD+ working group. It is therefore the REDD+ focal point for many REDD+ initiatives.

SAFEGUARDS

There is no formally agreed definition of 'safeguards'. The term has been used by multilateral financial institutions such as the World Bank to refer to measures or policies that guard against undue harm from investment or development activities – known as a 'risk-based approach'. In contrast, safeguards related to REDD+ within UNFCCC COP decisions aim to prevent REDD+ activities[45] from causing harm to biodiversity and people, and also help REDD+ realise multiple benefits, beyond simply emission reductions. This appears to follow a 'rights-based approach' to safeguards, prioritising the protection of the individual rights of those potentially affected by a REDD+ initiative[46].

For example, safeguards that require respecting land tenure rights of local communities will not only improve the success of REDD+ implementation, but could also deliver significant economic benefits. Tenure security could help to engage and include communities in the design, implementation and monitoring of REDD+ projects, minimising the risk of future land disputes and reducing the risk to investors engaging in REDD+ initiatives (see pages 134-136). Adequate safeguards could ensure that the implementation of REDD+ can contribute to other national priorities such as poverty reduction and sustainable development.

The following section will analyse how countries can use their domestic legal frameworks to meet UNFCCC requirements related to safeguards. In order to qualify for results-based payments for REDD+, countries first need to take steps to ensure safeguards are addressed and respected when implementing REDD+ activities. Second, they must take steps to provide information on how this has been done.

REQUIREMENTS FOR SAFEGUARDS FOR REDD+

INTERNATIONAL GUIDANCE AND REQUIREMENTS OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Cancun Agreements[i], as well as subsequent UNFCCC decisions, make it clear that safeguards are a central part of the REDD+ mechanism. There are three requirements related to safeguards that must be met in order to access results-based finance:

Operationalisation of the 'Cancun safeguards': The Cancun safeguards, adopted at COP 16 in 2010, cover a number of substantive objectives, such as the conservation of biodiversity and respect for indigenous peoples' rights. Countries must ensure the implementation of REDD+ activities is consistent with these safeguards, regardless of the source and type of funding for REDD+ activities, if they want to qualify for future results-based payments[ii]. They can interpret and apply the safeguards in accordance with their own contexts and differing circumstances[47]. However, to ensure that this interpretation and application is carried out to an acceptable, international standard, the safeguards include multiple and explicit references to international law[48] (see pages 56-57).

Establishment of a system for providing information on safeguards: countries must put in place a system to provide information on how the Cancun safeguards are addressed and respected (a 'Safeguards Information System' or 'SIS')[iii]. The UNFCCC provides some initial guidance on the characteristics of such a system, including that it should[iv]:

- provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis;
- be transparent and flexible, to allow for improvements over time;
- be country-driven and implemented at the national level; and
- build upon existing systems, as appropriate

Provide a summary of information: countries must provide a summary of information on how the Cancun safeguards are addressed and respected throughout the implementation of their

i. UNFCCC Decision 1/CP.16

ii. UNFCCC Decision 2/CP.17 paragraph 63, and Decision 1/CP.16, appendix I, paragraph 2

iii. UNFCCC Decision 1/CP.16 paragraph 71(d), Decision 9/CP.19 paragraph 3

iv. UNFCCC Decision 12/CP.17 paragraph 2

REDD+ activities. To access results-based finance they must submit their most recent summary of information to the UNFCCC[v]. The UNFCCC does not however, specify what type of information is to be included in these summaries, leaving up to countries to decide what is to be included to demonstrate how safeguards are addressed and respected.

v. UNFCCC Decision 9/CP.19 paragraph 4

THE CANCUN SAFEGUARDS

The UNFCCC text on the Cancun safeguards[i] states that when undertaking REDD+ activities (i.e. those activities referred to in Paragraph 70, Decision 1/CP.16), the following safeguards should be promoted and supported:

(a) Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;

(b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of [Decision 1/CP.16];

(e) Actions are consistent with the conservation of natural forest and biological diversity, ensuring that action referred to in paragraph 70 of this decision 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. (Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.)

(f) Actions to address the risks of reversals; and

(g) Actions to reduce displacement of emissions.

i. UNFCCC Decision 1/CP.16 Appendix, paragraph 2

INDICATIVE BREAKDOWN OF SELECTED CANCUN SAFEGUARDS BASED ON RELEVANT INTERNATIONAL LAW

It has been argued that the Cancun safeguards do not create new obligations, but instead reflect existing commitments and language contained in numerous international conventions and agreements that are applicable to many REDD+ countries[49]. Ensuring that REDD+ activities are implemented in accordance with the Cancun safeguards could therefore serve as a way for countries to implement existing commitments which they have already made.

Below is an indicative breakdown of Cancun safeguards (b) and (e) based on relevant international law. For details on the laws examined for this analysis see Rey et al. (2013)[50].

CANCUN SAFEGUARD (B)

Safeguard (b) requires, inter alia, countries to ensure the "transparency" and "effectiveness" of national forest governance structures. According to relevant instruments under international law[i], a transparent governance structure should:

- provide a right of access to information, and ensure access to and proactive dissemination of information to members of the public on pertinent matters;
- promote public awareness of the right of access to information, and the ability to exercise that right; and
- ensure accountability and prevent corruption.

Characteristics of effective forest governance structures generally include[ii]:

- clear and well formulated laws and regulations relating to forest governance and management, which aim to ensure the sustainable use of forests;
- adequate enforcement of those laws;
- ensuring public participation in decision making and related processes;
- ensuring the clear distribution of land ownership and use (land tenure) including for traditional and customary ownership;
- ensuring the existence of fair and equitable benefit sharing arrangements.
- having an adequate institutional framework in place to ensure effective implementation of laws and policies; and
- ensuring access to judicial or administrative procedures that can provide effective remedy for infringements of rights, and to resolve disputes.

CANCUN SAFEGUARD (E)

The objective of Safeguard (e) is that REDD+ actions must be "consistent with the conservation of natural forests and biological diversity"[iii]. Furthermore, REDD+ should be used to incentivise the protection of natural forests and their ecosystem services. This means taking specific actions that contribute to the conservation of natural forest and biological diversity, such as:

- ensuring that the implementation of REDD+ does not result in the conversion of natural forests (which has particular implications for efforts to enhance forest carbon stocks through the use of plantations);
- identifying, mapping and monitoring natural forests and biodiversity;
- ensuring support for conservation research;
- awareness raising;
- integrating biodiversity concerns into policy decisions; and
- ensuring that REDD+ activities also promote the enhancement of environmental and social benefits, such as environmental services and livelihoods.

i. This breakdown is based on references to 'transparency' in international law, including in the United Nations Rio Declaration on Environment and Development, (Rio de Janeiro, 13 June 1992), 31 I.L.M. 874 (1992), Principles 10, 17, 20, 22; and the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] (13 September 2007) G.A Res 61/295 A, Articles 10, 16.

ii. This breakdown is based on references to 'effective governance' in international law, including in the Convention on International Trade in Endangered Species [CITES] (Washington DC., 3 March 1973) 993 U.N.T.S. 243 entered into force 1 July 1975, amended at Bonn, 22 June 1979, Article 9 and the United Nations Convention Against Corruption (Vienna, 31 October 2003) 2349 U.N.T.S. 41, G.A Res A/RES/58/4 entered into force 14 December 2005, Articles 7, 36

iii. This breakdown is based on references to the 'conservation of biodiversity' in international law, including in the Convention on Biological Diversity, (Rio de Janeiro, 5 June 1992), 1760 U.N.T.S 79, entered into force 29 December 1993, Articles 6, 10(b) and the Convention on the Conservation of Migratory Species of Wild Animals [Bonn Convention] (Bonn, 23 June 1979) 1651 U.N.T.S. 333 entered into force 1 November 1983 Articles 2, 3(a)

CONTRACTUAL REQUIREMENTS OF THE WORLD BANK FOREST CARBON PARTNERSHIP FACILITY

The FCPF seeks to ensure consistency with the UNFCCC Cancun safeguards[i] and promotes their implementation in countries it supports financially. However, countries supported by the FCPF are also expected to comply with the World Bank's Operational Policies and Procedures when implementing REDD+[51,ii].

In order to comply with both the Cancun safeguards and World Bank's Operational Policies and Procedures, countries are required by the FCPF to carry out a Strategic Environmental and Social Assessment (SESA). This should result in the production of an Environmental and Social Management Framework (ESMF), which is intended to set out "the principles, rules, guidelines, and procedures to assess potential environmental and social impacts and risks, and contain measures to reduce, mitigate, and/or offset adverse environmental and social impacts and enhance positive impacts and opportunities of [REDD+] projects, activities, or policies/regulations".

In addition, according to the Methodological Framework of the FCPF's Carbon Fund, countries looking to receive results-based finance from the Fund will also need to ensure that their Emission Reduction Programmes[52] comply with the World Bank Operational Policies and Procedures and "[p]romote and support" the Cancun Safeguards[iii]. The Methodological Framework also requires REDD+ countries to ensure that their Emission Reduction Programme provides information on how it addresses both the World Bank and Cancun safeguards during its implementation[iv]. Countries can do this by preparing "appropriate monitoring arrangements" which must be included in their Safeguards Plan[v] and ensuring that their interim progress reports and Emission Reduction monitoring reports include information on the implementation of the Safeguards Plan[vi].

i. FCPF Charter, Chapter II, Article 3, Section 3.1(c)

ii. FCPF Charter, Chapter II, Article 3, Section 3.1(d)

iii. FCPF Carbon Fund Methodological Framework Criterion 24 p. 18

iv. FCPF Carbon Fund Methodological Framework Criterion 25

v. FCPF Carbon Fund Methodological Framework Indicator 25.1

vi. FCPF Carbon Fund Methodological Framework Indicator 25.2

ROLE OF THE DOMESTIC LEGAL FRAMEWORK

A country's domestic legal framework will determine in part how safeguards are to be operationalised when implementing REDD+ activities, and how information is to be provided on how the safeguards are being addressed and respected.

In many cases, a country's existing policies, laws and regulations (i.e. its legal framework) already regulate how the objectives embodied in the Cancun safeguards, such as the protection of indigenous peoples' rights, are to be promoted and protected. These could therefore be used to determine how the safeguards adopted by the country are to be adhered to (including the Cancun safeguards and any others, for example from bilateral REDD+ funding sources). The table below shows examples of legislation that could be used to address Cancun safeguards (b) and (e).

Ways to address Cancun safeguards (b) and (e) through legislation

CANCUN SAFEGUARD	EXAMPLES OF LAWS
(b) Transparent and effective governance structures	A law on access to information could contribute to the implementation of this safeguard as it regulates in which cases the right of access to information is to be protected and how this is to be done.
(e) Conservation of natural forests and biological diversity	A forest law could contribute to the implementation of this safeguard as it regulates how natural forests are to be protected.

Additionally, policies, laws and regulations can establish and regulate information systems (including monitoring and reporting systems) to provide information about how policies, laws and regulations are being implemented (e.g. how the rights or obligations they protect or promote are being upheld). Existing and new information systems relevant to the safeguards (and created through policies, laws and regulations) should be used to gather information and build a safeguard information system. The table below illustrates examples of how legislation could create information systems which could be used to provide information on Cancun safeguards (b) and (e).

Ways to develop information systems for Cancun safeguards (b) and (e) through legislation

CANCUN SAFEGUARD	EXAMPLES OF LAWS
(b) Transparent and effective governance structures	A law on access to information could create an information or reporting system that is to be used to gather information on how the rights and obligations set out by this law are being implemented.
(e) Conservation of natural forests and biological diversity	A forest law could create an information or reporting system that is to used to gather information on how the rights and obligations set out by this law are being implemented (e.g. forest cover).

Although the domestic legal framework plays a key role in meeting UNFCCC safeguard requirements, countries also need to consider other elements of their own governance system (i.e. institutional and compliance frameworks, see pages 22-23) in order to guarantee the implementation of their legal framework. Such an approach is referred to as an integrated Country Safeguard Approach (CSA).

WHAT COUNTRIES CAN DO

DEVELOP AN INTEGRATED COUNTRY SAFEGUARD APPROACH

In addition to UNFCCC and FCPF requirements (see pages 32-34), other multilateral initiatives, and many bilateral REDD+ funding sources (e.g. Norway, Australia and Germany) have applied or developed their own safeguard requirements or frameworks for REDD+ implementation. It is also likely that other proposed multilateral funding sources such as the Green Climate Fund will establish their own safeguard mechanisms and procedures. This complex situation may lead to overlapping activities and increased transaction costs, hindering countries' efforts to ensure compliance with these multiple safeguard frameworks, and ultimately their ability to achieve effective, efficient and equitable REDD+.

One way of addressing these multiple requirements in an integrated manner could be through the development of a Country Safeguard Approach (CSA)[53]. This does not require the creation of an entirely new system but allows countries to build on their existing legal, institutional and compliance frameworks. There is a range of tools that countries could use while developing this approach, such as UN-REDD's Social and Environmental Principles and Criteria (SEPC)[54], its Benefits and Risks Tool (BeRT)[55], or its Country Approaches to Safeguards Tool (CAST)[56].

The legal framework is the foundation of the CSA as it serves not only to determine how safeguards are to be implemented, but also who will be responsible for their implementation (the institutional framework) and how safeguards are to be guaranteed (the compliance framework).

The following section outlines the stages of the CSA, highlighting the role of the legal framework in its design.

ESTABLISH A MULTI-STAKEHOLDER SAFEGUARDS BODY

It is key to ensure that the CSA is developed in a participatory manner. It is therefore important to establish a multi-stakeholder technical body to help design, coordinate and implement it.

The domestic legal framework can serve to determine the composition of this body, as well as clarify its role, legal mandate and powers.

The body could be established through an existing REDD+ national strategy, or through the creation of a specific safeguards policy or plan. Both of these options would require legislation (e.g. act of parliament or decrees/presidential regulations) to give the body its powers and mandate.

Alternatively, the mandate of an existing safeguards body could be expanded to help design, coordinate and implement the CSA. This would require an amendment to the existing law and/or policy that created the original body.

SET THE GOALS AND SCOPE OF THE COUNTRY SAFEGUARD APPROACH

Countries must define national safeguard goals taking into account the specific context of the country – for example, the degree of recognition of indigenous people's rights. In the context of a CSA this requires countries to choose their level of ambition, in terms of determining the scope of the Cancun safeguards (e.g. interpretation of the Cancun safeguards objectives based on the national context), and deciding whether to aim to meet only the Cancun safeguards (see page 55) or to go beyond this to cover additional safeguards.

These goals and scope could be defined within an existing national REDD+ strategy, or accounted for within a newly created, specific safeguards policy or plan. This would guide the actions of the multi-stakeholder body tasked with developing the national approach to safeguards.

Alternatively, the goals and scope could be determined through the amendment of existing laws. For example, in 2012, Mexico reformed its Law on Sustainable Forest Development (LGDFS)[57], establishing that the Cancun safeguards and a set of additional safeguards would be applied to policies and activities related to environmental services (including REDD+).

CONDUCT AN ASSESSMENT OF THE EXISTING GOVERNANCE FRAMEWORK

In designing a CSA, countries need to conduct an assessment of their existing and relevant governance framework. This assessment should identify the elements of the country's legal, institutional and compliance frameworks (i.e. its governance system) that could be used to implement and provide information on the safeguards, as well as identify gaps in the current frameworks which could prevent the country from achieving its safeguard goals.

In undertaking this assessment countries should consider identifying and assessing:

1. how the relevant aspects of the legal framework will be utilised to operationalise the safeguards;
2. how the relevant aspects of the institutional framework will be utilised to supervise the implementation of the safeguards;
3. how existing information systems (including systems for monitoring and reporting) will be used to gather information on safeguards implementation;
4. how existing grievance redress mechanisms will be used to deal with grievances associated with safeguards implementation (or lack thereof); and
5. how existing non-compliance mechanisms will be used to deal with any failure to address and respect the safeguards.

Based on the results of this gap analysis, countries will need to formulate recommendations for addressing any gaps either by strengthening and/or modifying existing aspects of each framework (e.g. by strengthening the mandate of an existing institution or reforming an existing law), or by assessing if new elements need to be created.

In crafting the above recommendations, countries should consider what is politically and temporally feasible. For example, in certain cases reforming existing laws or the mandates of existing institutions to cover safeguards may be feasible, but in other cases it might be easier to create a new specific institution or law.

ASSESSMENT OF THE LEGAL FRAMEWORK IN VIETNAM

In 2013, seeking to implement a country-led approach to safeguards, the Vietnam REDD+ Office (VRO) with technical assistance from SNV's Multiple Benefits REDD+ (MB-REDD) project undertook a detailed and comprehensive legal gap analysis[58].

The objective of the legal gap analysis was to identify which aspects of the country's legal framework could be used to operationalise the Cancun safeguards, and which gaps would need to be addressed. The legal gap analysis demonstrated that Vietnam's existing legal framework robustly covers the Cancun safeguards and could be used to support their effective implementation. In addition, the legal gap analysis identified and provided recommendations for addressing gaps in the legal framework, including reforming certain existing policies, laws and regulations.

SET UP A SAFEGUARDS INFORMATION SYSTEM

As discussed previously, in order to comply with UNFCCC requirements, countries need to establish a system to provide information on how the Cancun safeguards are being addressed and respected[59]. This Safeguard Information System (SIS) should be "country driven and implemented at the national level"[60] and should "build upon existing systems"[61] (see page 53).

Although the UNFCCC text does not stipulate that countries should develop their safeguards framework prior to establishing a system for reporting on safeguards, it is essential that the formulation and implementation of safeguards should precede the development of an SIS. However, current country experiences point to a lack of understanding of the relationship between the implementation of, and reporting on, safeguards and there is often a lack of coherence in the order in which these are done.

The role of the domestic legal framework in relation to the establishment and functioning of the SIS will largely relate to:

1. setting-up an information platform: this platform determines what existing or newly created information systems (including monitoring and reporting systems) are to be used to gather information on safeguards implementation.
2. setting-up an institutional structure to be in charge of the SIS: this structure will be responsible for the aggregation, evaluation and packaging of the information to meet the different reporting commitments of the country (e.g. for the UNFCCC or donors).

The SIS can be established through the legal framework either as part of the national REDD+ strategy, or through the creation of a specific policy or law that describes the institutional structure in charge of the SIS and the establishment of the information platform.

FINANCE

The term 'REDD+ finance' refers to payments in support of REDD+ initiatives and activities. There are three principal sources of REDD+ finance: payments from international compliance or voluntary markets (e.g. California's carbon market, or a future UNFCCC market) in exchange for emissions reductions; payments from donors directly to forest countries or through multilateral or bilateral funds (e.g. Norway – Indonesia); and payments generated from forest country budgets.

There are typically a number of stages in the flow of REDD+ finance from source to final recipient. In the case of an international REDD+ fund model these stages can include the initial capitalisation of the fund (for example, through the UNFCCC's Green Climate Fund), the commitment and disbursal of those funds from the international level to forest countries, the management of the funds at the national level (e.g. through a body such as the Amazon Fund – see pages 76-77), and finally the disbursal of the funds within forest countries, through benefit-sharing mechanisms.

Adequate, predictable and sustainable finance is fundamental for REDD+ success. Without REDD+ finance many forest countries have few other available incentive schemes and limited means to preserve forest carbon stocks at scale. Depending on the governance system in place (comprising the legal, institutional and compliance frameworks) financing for REDD+ can also support the development of institutional frameworks that have cross-sectoral applicability and impact (e.g. a fund which includes payments for agriculture as well as forestry). These reforms can therefore help to promote more integrated land use and sustainable development models. However, ensuring that the institutional arrangements for REDD+ finance are efficient and have a high degree of fiduciary integrity and accountability is difficult in many forest country contexts[62]. Successful financial flows require strong legal and governance frameworks to be in place.

The following section will focus on how domestic legal frameworks can facilitate the design of appropriate institutional arrangements which enable countries to receive, manage and disburse REDD+ finance in a transparent, equitable and accountable manner, at project, sub-national and national scales.

REQUIREMENTS IN RELATION TO FINANCE FOR REDD+

INTERNATIONAL GUIDANCE AND REQUIREMENTS OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

Discussions under the UNFCCC in relation to finance focus predominantly on how countries can qualify for results-based payments from REDD+, and how a future international REDD+ mechanism will be funded. At the time of writing, guidance for qualifying for results-based payments exists under the UNFCCC's Warsaw Framework (see pages 24-25). However, discussions on the sources of funding for the overall REDD+ mechanism remain inconclusive. COP 19 in Warsaw reaffirmed "the need to scale up and improve the effectiveness of finance for REDD+ activities," and that this results-based finance "that that is new, additional and predictable may come from a variety of sources, public and private, bilateral and multilateral, including alternative sources". The UNFCCC also recognises the key role that the Green Climate Fund will play in channelling financial resources to developing countries and catalysing climate finance[i].

As mentioned previously, the Warsaw Framework states that in order to qualify for results-based payments developing countries must consider taking action under a number of core elements of REDD+ (e.g. national forest monitoring systems[ii]; safeguards and safeguard information systems[iii]). However, it does not provide guidance on what type of institutional arrangements are needed for the receipt, management and disbursal of funds in order to qualify for REDD+ finance. It only mentions that a country's national REDD+ entity or focal point can nominate entities to obtain and receive results-based payments for REDD+, provided that these entities comply with the requirements of those providing the payments[iv].

CONTRACTUAL REQUIREMENTS OF THE WORLD BANK FOREST CARBON PARTNERSHIP FACILITY

Under the FCPF's Readiness Fund, countries are required, as part of their Readiness Preparation Proposal (R-PP), to consider how they would design financing mechanisms for REDD+ activities and transactions, including[v]:

- who is authorised to participate in domestic and/or international transactions for REDD+;

i. UNFCCC Decision 9/CP.19, preamble

ii. Decision 9/CP.19 paragraph 3

iii. Decision 9/CP.19 paragraph 4

iv. Decision 10/CP.19 paragraph 2

v. FCPF UN-REDD R-PP Template version 6 component 2c p.41

- what the role of national government would be in relation to these transactions;
- whether the respective roles of government, landowners and other participants in potential REDD+ transactions are currently spelled out in regulations or law; and
- how REDD+ revenues generated by these transactions would be assigned and/or distributed.

The FCPF Carbon Fund has some additional requirements related to finance for REDD+ in its Methodological Framework:

- The country's Emission Reductions Programme Entity should have the authority to enter into an Emissions Reduction Payment Agreement (ERPA) with the Carbon Fund, the basis of which rests in a country's domestic legal framework[vi].
- The member country must decide whether to maintain its own national transaction registry or to rely on a third party to ensure that emission reductions are not sold more than once[vii] (either choice will need to be clarified in the legal framework).

A number of countries accessing the FCPF Carbon Fund are also applying the Jurisdictional and Nested REDD+ framework of the Verified Carbon Standard (VCS), which provides more detailed accounting guidance, given that it is based on project level accounting, and can ensure countries are designing programs that can access a wider variety of financing options (see pages 86-87).

OTHER REQUIREMENTS

It is important to note that the majority of funding for REDD+ is currently flowing through bilateral financing agreements (e.g. Norway to Indonesia; Norway and Germany to Peru) and donors also impose a range of conditions upon the provision of this financing. Under each of these financial arrangements, recipients are often required to implement a range of specific regulatory and institutional reforms which are also expected to meet international fiduciary, governance, social and environmental standards in order to access payments. Legal and institutional reforms undertaken to meet these bilateral requirements should be complementary to, and reinforcing of, those set by the UNFCCC, and possibly the FCPF.

vi. FCPF Carbon Fund Methodological Framework Criterion 36, Indicator 36.1 p.25

vii. FCPF Carbon Fund Methodological Framework Criterion 38 p. 27

ROLE OF THE LEGAL FRAMEWORK

Domestic legal frameworks for REDD+ finance set out the rules on how money is transferred from its source (usually at the international level), through intermediaries and management agencies (at the national and/or sub-national level) to the actors or entities responsible for delivering REDD+ results. The type and number of institutions involved in the flow of REDD+ finance, and the relationship between them, depends on the country's legal framework, and which stage of 'REDD+ Readiness' the country is in[63].

Legal frameworks should therefore establish which actors or organisations are eligible to receive and/or transfer monetary benefits for different types of activities, and how REDD+ funds are distributed to ensure the correct individuals or communities receive payments[64]. For example, a government department that receives REDD+ finance from the international level may then re-distribute the monies received to another government department or body (e.g. a REDD+ agency) for the management and ultimate disbursal to the project level. Alternatively, the institution or agency that receives the money from the international level could also act as the management and national disbursal mechanism for REDD+ finance. The legal framework can also be used to increase transparency on REDD+ finance flows through reporting and accounting systems, and combat corruption (see pages 148-151).

The design of the institutional arrangements for REDD+ finance may be influenced by benefit-sharing, reporting and fiduciary systems already in use in other sectors (e.g. mining)[65], which may also provide valuable examples of 'what not to do' for the development of REDD+. For example, the Canon Minero law[66] in Peru, which requires the redistribution of mining profits to the jurisdictions where the minerals were exploited, provides lessons for revenue transfer systems between national and subnational government that are relevant for REDD+.

While the legal provisions behind the Canon Minero are quite innovative, revenue transfers to sub-national governments have been poorly handled as a result of weak public financial management capacity, and a lack of clarity of administrative responsibilities. This has resulted in minimal improvements in

living conditions for local communities, despite the substantial increase in public funding available[67]. This emphasises that although the legal framework is essential for the design of institutional arrangements for REDD+ finance, a functioning governance system is also required (e.g. with adequate institutional capacity to implement the legal framework and an effective compliance framework to monitor and enforce its implementation).

WHAT COUNTRIES CAN DO

CLARIFYING INSTITUTIONAL ARRANGEMENTS FOR REDD+ FINANCE

In the absence of detailed guidance from the UNFCCC on how countries should receive, manage and distribute REDD+ finance (see pages 69-70) it is important to assess how developing countries are currently preparing or using their legal frameworks for this purpose. The case studies in this section can provide guidance for countries at different stages of readiness who are exploring how their legal frameworks could facilitate access to funds for an international REDD+ mechanism.

The starting point for the receipt, management and distribution of REDD+ finance is typically the establishment of a REDD+ 'fund'. A fund is a pool of finance managed by an entity or entities that are legally independent from the institutions from which finance is generated. It should be transparent, equitable and accountable. Funds can be established and governed independently from government, semi-independent, or fully under government administration. Domestic legal frameworks may be used to determine how the fund is capitalised (i.e. the amount and sources of finance), how stakeholders are engaged, whether activities are implemented directly or delegated to implementing partners, and the eligibility criteria to receive funding[68].

Funds can be created either by:

- building on existing funds and their underlying legal frameworks, to broaden their mandates to include management and distribution of REDD+ finance;
- creating a new institution(s) - fund bodies - which have this responsibility; or
- using a combination of both approaches.

If a fund which is to receive REDD+ financing is to be fully independent from the government (e.g. through an existing conservation trust fund) it may be established in the form of a trust - a legal arrangement whereby a trustee legally owns and manages financial resources or property that have been donated exclusively for a designated charitable purpose[69]. Where fund structures are semi-independent, or fully within government, the establishment or reform of funds would usually require new or

amended decrees or regulations (secondary legislation). These would create or appoint the body and set out its powers and functions.

An assessment of existing laws should first be undertaken to examine possible avenues for the creation of a REDD+ financing mechanism and to evaluate whether it is more appropriate to reform existing legislation or to create a standalone law. For example, in Cambodia, the incorporation of REDD+ within the scope of the existing Protected Areas Fund would require an amendment to the Protected Areas Law, to broaden its scope to cover REDD+ activities. However, the Protected Areas Law applies only to protected areas under the Ministry of Environment (MoE) and not to protected forests under the Forestry Administration, which is part of the Ministry of Agriculture, Forestry and Fisheries (MAFF). Including REDD+ activities would then likely lead to a conflict between the mandates of the MAFF and the MoE. Analysis therefore suggests that the development of a new law to create a national REDD+ fund in Cambodia could provide a more politically feasible option than legal reform[70].

Three examples of national institutional arrangements to receive, manage and distribute REDD+ finance, and how the domestic legal framework supports these arrangements, are outlined in the following pages. These are:

- the Amazon Fund – see pages 76-77
- Guyana's REDD+ Investment Fund (GRIF) – see pages 78-79
- the Environmental Service Incentives System (SISA) in Acre State, Brazil – see page 84

CASE STUDY

THE AMAZON FUND – BRAZIL

The Amazon Fund was established in August 2008[71] to raise funds to reduce deforestation, and for the preservation and sustainable use of forests in the Amazon biome. The Fund has become a key instrument to support Brazil in achieving the voluntary emissions reductions commitments laid out under its National Policy for Climate Change (PNMC), which became law in 2009[72], the majority of which are expected to be fulfilled through an 80% reduction in deforestation in the Amazon biome.

The Amazon Fund can be characterised as a semi-autonomous fund within the government administration[73]. The Fund is managed by the Brazilian Development Bank BNDES together with a Multi-stakeholder Guidance Committee (COFA) that includes representatives from local government, national ministries, indigenous peoples, civil society, NGOs, industry and farmers[74]. The Fund does not use a typical market-based approach. Under the establishing decree, BNDES is authorised to receive "donations" (contributions from foreign governments and the private sector) for investment in efforts to "prevent, monitor, and combat deforestation and to foster conservation and sustainable use in the Amazon"[75]. Donors are issued certificates by BNDES recognising their contribution to the Fund[76], which identify the donor, the amount contributed and the value in tons of carbon reduced[77]. These are "nominal, non-transferable and do not generate rights or credit of any nature"[78]. The avoided emissions are calculated by the Ministry of the Environment and verified by the Technical Committee of the Amazon Fund[79], based on the deforestation rates calculated by the National Institute for Spatial Research. No formal "registry" is currently in place, but certificates issued by BNDES must be made publicly available on the internet[80].

As of 2013, US$1.03 billion had been pledged to the fund, predominantly from Norway[81]. Ongoing capitalisation of the Fund is contingent on annual performance against a rolling average historical deforestation rate and reference emission level for the Amazon biome. This baseline is fixed for 15 years between 2006 and 2020. If the deforestation rate for a given year is higher than the reference emission level, the Fund will not receive finance that year and is required to compensate for those emissions the following year[82]. The COFA is charged with establishing the guidelines and the resource allocation criteria of the Fund as well as approving biannual information on the allocation of resources and the Amazon Fund's annual report[83]. Applications for funding are invited from all projects aligned with its objectives, and are typically submitted by states, municipalities and non-governmental organisations[84]. Funds are disbursed to activities throughout the country, including to those beyond the Amazon biome. The establishing decree requires BNDES to annually contract external auditing services to verify the correct allocation of the Fund's resources[85].

Funds which share this kind of semi-autonomous structure (e.g. the Indonesia Reforestation Fund) tend to have high political legitimacy through the maintenance of strong national control. Through their relative independence they are also often able to better coordinate across different government sectors, while leveraging lower transaction costs through their connections with state institutions and state powers.

However, where state institutions are weak or prone to corruption, there may be a risk of REDD+ finance either being co-opted for other purposes, or not being equitably or efficiently distributed to the rightful recipients. For example, a recent study on Brazil's other forest and environmental funds highlighted that almost $9 million USD had been diverted from the Mato Grosso fund (FEMAM) to the State Treasury to cover expenses such as government payroll[86]. This risk can be offset by a well-balanced independent board and legal provisions that ensure transparency. Semi-autonomous structures such as the Amazon Fund may therefore offer a potential transitional option for countries seeking to exploit REDD+ financing in the absence of an international market for REDD+.

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CASE STUDY

THE GUYANA REDD-PLUS INVESTMENT FUND (GRIF)

The Guyana REDD-Plus Investment Fund (GRIF) was established in 2010 to finance activities identified under the Government of Guyana's Low Carbon Development Strategy (LCDS), and to build national capacity to improve overall REDD+ and LCDS efforts[87]. The GRIF was established in October 2010 through an Administrative Agreement (AA) between Norway and the World Bank International Development Association (IDA); having been proposed and contemplated in a Memorandum of Understanding signed by the Government of Guyana and Norway in 2009.

The fund was initially capitalised by the Government of Norway, which pledged up to US$250 million in the period 2010-2015, based on an independent verification of Guyana's deforestation and forest degradation rates and progress on REDD+ enabling activities. In essence, the GRIF is designed to act as the primary "financial intermediary mechanism for the performance-based payments from contributors to Guyana", receiving payments for forest climate services provided by Guyana; and transferring these payments and any investment income earned on these payments to projects and activities that support the implementation of Guyana's LCDS.

Central to the structure of the GRIF is the Steering Committee (SC), chaired by the government of Guyana, which includes donors to the fund and invited observers, including partner entities, trustees, civil society organisations and private sector entities. The SC serves as the oversight and decision making body for the fund. The fund trustee is the IDA, who is responsible for providing financial intermediary services to the GRIF (i.e. receiving finance from donors, managing this money within a trust fund, and distributing resources in amounts approved by the SC to Partner Entities). Partner Entities, which include the Inter-American Development Bank (IDB), the World Bank and any agency of the United Nations, are required to provide operational services for approved projects. This responsibility extends to ensuring that proposed projects are compatible with the aims of the LCDS, that fiduciary safeguards and operational policies and procedures are followed, and that results are achieved. Partner Entities then enter into agreements with Implementing Entities, which are then responsible for the implementation of the relevant project or activity (implementing entities are generally agencies and ministries of the Government of Guyana).

The organisational structure of the GRIF is similar in some regards to a semi-autonomous fund within the government administration (e.g. the Amazon Fund see page 50). However, although the benefits and drawbacks of such a structure are similar to those outlined for the Amazon Fund the lack of supporting legislation to ensure the security and longevity of the fund leaves it at risk of shifting political priorities at the donor and national level. This is particularly true when the fund is capitalised by a single major donor, as is the case with the GRIF. Numerous additional criticisms have also been levelled at the GRIF for the very slow disbursement of funds. This has been primarily due to the time required to comply with the complexity of Partner Entities (World Bank etc.) procedures, including safeguard compliance, but also due to delays within the Government of Guyana and the limited national capacity to develop projects[88]. Political opposition within Guyana to certain projects that were earmarked for GRIF funding has created additional delays[89].

These drawbacks notwithstanding, the structure of the GRIF still offers one potential interim model for countries seeking to create a new institutional fund to receive, manage and distribute interim REDD+ finance in the absence of an international market-based mechanism.

USING LEGAL FRAMEWORKS TO STIMULATE REDD+ FINANCE

Domestic legal frameworks can stimulate the flow of REDD+ finance through the creation of specific fiscal incentives, and by reducing investment risk by creating a stronger enabling environment for projects and programmes which reduce deforestation or forest degradation.

Examples of ways in which governments can develop fiscal incentives include: establishing tax incentives for REDD+ project development; signing forward contracts for forest carbon credits; guaranteeing credit or low interest loans for certain project types; and providing public co-investment, all of which may be supported by underlying domestic legislation[90]. For example in 2014, the Democratic Republic of Congo enacted a Public-Private Partnership Law[91] aimed at raising funds to support major natural resource based projects, including mining, water and forestry. The law creates a special legal environment and tax system applicable to these public-private partnerships, and exempts companies in the partnerships from certain direct or indirect import or export duties, rates, taxes, customs duties, and royalties.

Alternatively, certain forms of legislation can both catalyse the national uptake of REDD+ projects, and attract increased financial support for them. Perhaps the best examples of this come from the development of 'payments for ecosystem services' (PES) legislation. For example, in Costa Rica, Forest Law No. 7575 (1996) established a PES system for the services of carbon mitigation, hydrological services, biodiversity and natural beauty. The law also established a fund, the Fondo Nacional de Financiamento Forestal (FONAFIFO), in order to distribute payments and incentives. The FCPF has signed a Letter of Intent with FONAFIFO to buy emission reductions generated through this programme[92]. Similarly, recent landmark legislation in Peru created a legislative framework for Payments for Ecosystems Services (PES) projects, including greenhouse gas emission reductions, biodiversity conservation and watershed services (see pages 82-83). It is highly conceivable that these kinds of domestic laws could be adapted and harnessed to incentivise and support the flow of finance for the development of REDD+ projects on a large scale.


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CASE STUDY

PERU'S ECOSYSTEM SERVICES LAW

Six years in the making, Peru's new Ecosystem Services Law (Ley de Mecanismos de Retribución por Servicios Ecosistémicos[93]) passed through the National Congress on 5 June 2014, providing a comprehensive legal framework for the payments for ecosystem services. It is considered one of the most advanced pieces of legislation of its type. The Law provides a statutory framework for conservation efforts that harness private capital to support a diverse range of ecosystem services, including greenhouse gas emissions reductions, biodiversity conservation and watershed services. Under the law, PES programmes remain voluntary[94], but the law provides greater clarity and regulatory certainty to these arrangements. In this respect, the PES Law recognises contractual freedom for the "contributors" and "beneficiaries" to voluntarily agree on the PES scheme to be implemented, subject to assessment and approval from the Ministry of the Environment.

Ecosystem services are defined as "Patrimony of the Nation" (hence state-owned)[95]. However, the PES Law aims to compensate those who contribute to preserve, recover and sustainably use ecosystem services, which may be private parties[96]. "Contributors" may be (i) owners, possessors or titleholders of lands; (ii) those to whom the Peruvian Government has granted a title to use renewable natural resources; (iii) the NGOs holding Management Agreements over Natural Protected Areas; and (iv) others recognised by the Ministry of the Environment[97]. For example, titleholders of forest concessons (timber, non-timber forest products, etc.) may benefit from PES schemes. Payment to contributors of ecosystem services is conditional on the performance of actions aiming to preserve, recover and sustainably use ecosystem services[98]. "Beneficiaries" for the provision of ecosystem services are the private or public, natural or legal persons that, obtaining a social, ecosystem or economic benefit, compensate the contributors for the ecosystem services they provide[99].

Parties are free to agree on the mechanisms to be implemented and activities, social, environmental and economic benefits, the ways of compensation, and financing structures related to PES schemes. The PES Law does not expressly refer to "carbon credits" or "carbon certificates," these may fall under general provision of "compensation schemes or financing strategies" that are to be included in the design of PES schemes.

Under the PES Law, the Ministry of the Environment is the national authority in charge of the management of the Registry of PES schemes[100], which has the purpose of validating the PES scheme agreed by both the contributor and the beneficiary, as well as to regulate and supervise its implementation. Monitoring for compliance and effectiveness will vary by programme. For REDD (reducing emissions from deforestation and forest degradation), which is already well-developed internationally, the law incorporates existing certification procedures and standards.

Under the PES Law, subnational governments shall promote the implementation of PES schemes, pursuant to the decentralisation process framework[101]. For that purpose, these governments shall consider in their budgets the funding of activities for the conservation, restoration and sustainable use of the sources of ecosystem services[102]. Public entities may raise economic funds and transfer them to the contributors of ecosystem services, in order for them to destine such funds to the fostering of PES schemes[103].

Many issues may need be resolved in future regulations under the PES Law, or through guidelines or directives issued by the Peruvian Ministry of Environment. For instance, the PES Law has not established tax provisions or other incentives to foster PES projects, and does not solve existing overlapping rights in the Peruvian Amazon (forest areas, community property, timber concession, protected areas, mining concessions, among other kinds of tenure rights), nor does it explicitly refer to the distribution of the benefits and co-benefits obtained from PES schemes.

Martijn Wilder and Ilona Millar
Baker & McKenzie

CASE STUDY

THE ACRE STATE SYSTEM OF INCENTIVES FOR ENVIRONMENTAL SERVICES (SISA), BRAZIL

In October 2010 the Brazilian state of Acre passed a law which created a 'System of Incentives for Environmental Services' (SISA)[104]. This law allows the state to enable economic incentives for the valuation of a variety of ecosystem services in the State of Acre, including forest carbon, water resources, scenic beauty, climate regulation, and others. The SISA legislation draws upon the policies and mandates established in Brazil's 2009 Federal Law that established the National Policy on Climate Change, Acre's 2007 State Law on Ecological-Economic Zoning, and the directives of the Acre State Policy on Valuation of Forest and Environmental Activities. The SISA legislation was also designed in such a way to support linkages with future systems of incentives for environmental services on a national, sub-national, and international level[105].

The SISA legislation created a number of designated institutions and arrangements for the implementation of the system. These include:

- An institute for Regulation, Control and Registry, responsible for guaranteeing the technical and scientific integrity of the system through government regulation;
- A state commission for Validation and Monitoring, composed of government and civil society representatives;
- An agency for the development of environmental services – a public private partnership that incorporates market based incentives and is responsible for ensuring the economic viability of socially and environmentally motivated projects;
- A scientific committee – composed of recognised experts from relevant fields;
- An Ombudsman's office to receive and address reports of misconduct.

The SISA legislation was originally developed in order to allow Acre to monetise and sell their emissions reductions to the emerging carbon market in California, and others globally. However, these expected sources of demand for REDD+ credits have yet to materialise. Despite this, the SISA is exploring funding from the voluntary market and it uses a core accounting mechanism based on the methodologies developed under the Verified Carbon Standard (VCS) jurisdictional and nested REDD+ programme – see pages 86-87. It has also gained access to REDD+ financing from the German REDD Early Movers Programme (REM)[106]. At the end of 2012, SISA had secured approximately R$107.7m in financing (approximately US$46m) – a proportion of these funds were provided by the REM, which in 2012 compensated and retired emission reductions from avoided deforestation generated by the State of Acre/Brazil.

A key challenge for SISA is ensuring that it remains coherent with Brazil's evolving national REDD+ strategy. For example, questions remain over the state's authority over the emission reductions achieved in its territory, whether ownership over carbon credits can be traded and transferred, and the prospects of adjusting the methodology currently used by the federal government to define baselines during 2006-2020[107]. These are critical considerations in order to ensure the compatibility of REDD+ mechanisms at different scales. Experiences with developing Acre's SISA therefore offer important lessons and considerable value for the development of similar REDD+ financing mechanisms in other forest countries.

CASE STUDY

VCS JURISDICTIONAL AND NESTED REDD+

The Verified Carbon Standard (VCS) Jurisdictional and Nested REDD+ (JNR) framework is a comprehensive global standard for accounting and crediting national and state or provincial level REDD+ programs and nested projects in a credible and transparent manner. The framework also provides the standard for monitoring and quantifying REDD+ activities across various scales, incentivising GHG emission reductions and removals by different actors while maintaining consistency and environmental integrity.

The framework and broader VCS Program provide the key elements to support robust REDD+ accounting, including: setting baselines (reference levels); measuring, reporting and verifying emission reductions; as well as addressing potential leakage and reversal risks. Furthermore, the framework is customisable and enables governments to apply approaches tailored to the circumstances and needs of each jurisdiction, and supports the nesting of smaller jurisdictions and projects within larger REDD+ programs.

JNR creates the opportunity for jurisdictions to generate high-quality and fungible emission reductions, enabling them to attract diverse funding for REDD+ activities from performance-based public financing, the carbon market, or both. The establishment of a clear pathway for verifying forest-related emission reductions at the jurisdictional scale (including policies, programs and nested projects) can increase the confidence of policymakers, donors and investors in REDD+, and drive additional finance to support the sector.

VCS is collaborating with governments, NGOs and multilaterals to support the implementation of JNR pilot programs across the world, particularly in Latin America, Africa and Asia. These piloting activities will enhance understanding of, and help lead to solutions for, a variety of challenges associated with accounting for emission reductions at multiple scales, generating valuable lessons for domestic and international policymakers as well as emerging voluntary and compliance markets.

JNR is being used at the national level in Costa Rica, Chile and Ecuador and at the subnational level within Brazil (Acre), the Democratic Republic of the Congo (Mai Ndombe), Peru and Guatemala. An additional dozen governments worldwide are actively piloting or intending to apply the JNR framework.

DRIVING DEMAND AND FINANCE FOR JURISDICTIONAL REDD+

While there is growing awareness of the power and viability of REDD+ at the jurisdictional scale to help achieve national and global emission reduction targets, new sources of finance are necessary for results-based payments and specifically for verified emission reductions. JNR can help unlock this finance by providing a robust and internationally-recognized accounting and verification framework that meets the needs of a diversity of market and fund-based mechanisms, potentially including performance-based donor systems, private-sector funds, international voluntary markets, and emerging compliance markets (eg, California, South Africa, Japan, Chile, and Rio de Janeiro state), while ensuring programs can transition effectively to the eventual UNFCCC mechanism.

Because the JNR framework is compatible with existing funds, donors and markets, such as REDD Early Movers and the FCPF, it can be used as the core carbon accounting and verification platform for REDD+ programs, ensuring they have one consistent accounting system that meets the needs of a wide range of finance options. This reduces cost and removes the need for duplicative efforts. JNR provides a solution for governments seeking to demonstrate early leadership and be recognized for the emission reductions generated by their REDD+ programs, while keeping future financing options open.

Toby Janson-Smith and Naomi Swickard
Verified Carbon Standard

EXAMPLES OF COUNTRIES' LEGAL AND INSTITUTIONAL FRAMEWORKS FOR REDD+ FINANCE

INSTITUTIONAL ARRANGEMENTS FOR RECEIVING, MANAGING, AND DISTRIBUTING REDD+ FINANCE

INDONESIA

Indonesia's National REDD+ Strategy sets out the aims and mandate of a funding instrument to manage REDD+ finance – the Fund for REDD+ in Indonesia, or "FREDDI"[108]. FREDDI has been described as a 'fund of funds'. The funds underneath FREDDI can be special purpose vehicle companies, fund managers or collective investment agreements. These subsidiary funds can form joint ventures with other funds/companies to act as disbursement vehicles, and to leverage additional finance. So, in addition to accepting and disbursing public grants from traditional donors for readiness and capacity building activities, FREDDI could also purchase credits certified to voluntary standards from private projects, and make investments in project development, once sufficient MRV capacity and readiness indicators are in place[109].

MEXICO

The Mexico Forest Fund (FFM) is expected to be the principal vehicle for REDD+ finance. Provided for in the 2003 General Law on Sustainable Forest Development[110], the FFM was formally established by way of a 10 year power of attorney (Mandatario).

The FFM is the main financial instrument of CONAFOR's (Comisión Nacional Forestal)[111], which has the objective of developing, supporting, and encouraging productive activities related to conservation and forest restoration. The FFM facilitates access to financial services, develops mechanisms for payment of environmental services, promotes conservation bonds, and also channels direct subsidy payments to communities. The FFM has annual transactions in excess of US$ 600m.

The Climate Change Fund was created under the 2012 General Climate Change Law to channel funding for climate change mitigation and adaptation projects. However, the fund is not currently operational. At its creation, it was expected that this fund would be responsible to channel and administer REDD+ funding.

LAO PDR

Currently there are three major national State Funds related to forest resource management: the Poverty Reduction Fund (PRF[112]); the Environmental Protection Fund (EPF[113]); and the Forest Resource Development Fund (FRDF[114]). Article 17(4) of the Prime Ministerial Decree establishing the Environmental Protection Fund prohibits the creation of any new funds that deal with environmental protection or natural resources management. Therefore, amendments to the existing Decrees supporting the EPF, or other funds, in order to incorporate REDD+ finance are likely to be needed. While the FRDF has the most relevant mandate (enabling payments for forest protection), the structure of the PRF may provide the most transferable model for REDD+ financing. PRF has established management structures from national to village levels, and has shown that its existing procedures and capacity can meet the financial requirements of international donors[115].

VIETNAM

A 2012 decision of the Prime Minister[116] provides for establishing a REDD+ Fund under the Vietnam Forest Protection and Development Fund (VNFF). The Vietnam Forestry Administration

(VNFOREST) has directed relevant agencies to prepare a proposal for such a fund for submission to the Government. This proposal is still in development.

FISCAL OR LEGISLATIVE INCENTIVES BEING UTILISED OR EXPLORED FOR REDD+ FINANCE

INDONESIA

The innovative structure of FREDDI, with allowances for the purchase of credits from private REDD+ projects, and a possible window to act as an investment vehicle, could act as a significant incentive for REDD+ finance from multiple sources once operational.

MEXICO

In light of Mexico's changing circumstances and needs, in 2011 CONAFOR and the World Bank proposed to redesign the Forest Fund. This process is underway, and may provide new incentives for REDD+ finance.

The 2012 General Climate Change Law mandates the creation of economic incentives, including fiscal incentives, to promote mitigation and adaptation activities (articles 91-95).

LAO PDR

Fund structures for REDD+ remain unclear. However, if administrative costs of a standalone REDD+ fund (or its vehicle in an existing fund) are borne by the Lao government, and not covered by REDD+ revenue, this may provide an incentive for wider investment in REDD+ projects.

VIETNAM

Vietnam currently provides incentives for projects through its Investment Law and Law on Forest Protection and Development. The types of incentives offered include preferred interest loans for planting particular species, exemptions from, and reductions in land taxes or land-use rental costs[117].

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NATIONAL FOREST MONITORING SYSTEMS

INTRODUCTION

One of the biggest challenges in designing policies and measures to address the drivers of deforestation and forest degradation is the lack of accurate and current data on forests[118]. The National Forest Monitoring System (NFMS) is the tool that countries are requested to develop by the UNFCCC for gathering greenhouse gas emissions and removals data that will be measured, reported and verified as a pre-requisite for receiving results-based payments. It is also the physical and technical system that is relied upon to detect and quantify forest cover and changes in forest cover over time, (data collected could include above- and below-ground biomass, forest type, canopy density)[119]. The NFMS can be considered to be made up of a monitoring function, and a Measuring, Reporting and Verifying (MRV) function[120].

Monitoring refers to the process of gathering feedback on the outcomes of the implementation of REDD+ activities. The information collected will enable countries to monitor the outcomes of the policies and measures designed and deployed to support the implementation of REDD+.

Regular and comprehensive national forest monitoring could prevent leakage by tracking land use changes and the implementation of REDD+ activities across a whole national territory (wall-to-wall). It can also help decision-makers identify if and where interventions are needed, for example stronger law enforcement in one particular area which is threatened by illegal logging.

Monitoring for REDD+ is not limited to carbon. For example, the data collected can be related to biodiversity or be used to evaluate the effectiveness of legal frameworks for forest protection. It can also be relevant for other requirements under the UNFCCC, e.g. for information on how safeguards are being addressed and respected (see pages 53-54), or for reporting requirements under other conventions, such as biodiversity related data needed under the National Biodiversity Strategies and Action Plans of the Convention on Biological Diversity. Forest related data gathered for REDD+ can also be valuable for countries for managing their productive forests and designing and implementing their development strategies.

MRV refers to the **Measurement, Reporting and Verification**[121] of greenhouse gas emissions by sources and removals by sinks. Under the UNFCCC, MRV systems are used to measure greenhouse gas emissions reductions and removals by sinks, including those resulting from the implementation of Nationally Appropriate Mitigation Actions (NAMAs), which includes carbon accounting from any mitigation sector[122], and REDD+, which focuses only on mitigation in the forestry sector. In this chapter, MRV is taken to refer to MRV for REDD+.

Measurement is the process of estimating anthropogenic forest-related emissions by sources and removals by sinks; forest carbon stocks; and changes in forest carbon stocks and forest area resulting from the implementation of REDD+ activities, following guidance and guidelines from the Intergovernmental Panel on Climate Change (IPCC). Under the UNFCCC, countries are expected to **report** these estimates to the UNFCCC Secretariat through an annex to their Biennial Update Reports (BURs) in a transparent and timely manner. The UNFCCC Secretariat then coordinates a process of **verification** of the estimates by a team of independent technical experts in Land Use, Land-Use Change and Forestry (LULUCF).

As well as being tools for tracking the mitigation outcomes of REDD+, MRV systems can also serve to ensure the environmental integrity of any mitigation action. To ensure internationally standardised transparency, accuracy, completeness, consistency and comparability of reports, the UNFCCC requests countries follow IPCC guidance and guidelines for national greenhouse gas inventories[123,124]. MRV systems are key to ensuring that results-based payments from REDD+ reflect national progress in climate change mitigation.

A country's legal framework can provide the basis for the establishment, transparency, accountability and effective functioning of its NFMS, although the development and success of these systems are predominantly dependent on technical capacity (e.g. the availability of remote sensing data and the ability to analyse them).

There is no one-size-fits-all approach to developing legal frameworks for an NFMS, as its structure and function will

depend largely on a country's political context, economy, culture, development goals, and capacity. For example, the scope of the MRV system varies from country to country. While some have developed integrated nation-wide MRV systems that cover multiple reporting needs including NAMAs, others have developed MRV systems for a specific activity, e.g. REDD+[125].

This section will outline UNFCCC and FCPF requirements and guidance for the NFMS before focusing on how the legal framework underpins its effective functioning. The legal framework can be used to establish appropriate, transparent and accountable institutional arrangements for monitoring and for MRV (see pages 101-103), define what is understood as 'forests' and as 'deforestation and forest degradation' within a country (see pages 114-115), and create links with other REDD+ components in a country, such as the Safeguard Information System (SIS) (see page 104)[126].

REQUIREMENTS FOR NATIONAL FOREST MONITORING SYSTEMS

INTERNATIONAL GUIDANCE AND REQUIREMENTS OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

National Forest Monitoring Systems (NFMS)

According to the Warsaw Framework for REDD+, developing country Parties should develop a "robust"[i] National Forest Monitoring System[ii] whose purpose is to estimate "anthropogenic forest-related emissions by sources and removals by sinks, forest carbon stocks, and forest carbon stock and forest-area changes"[iii]. Countries should ensure that their NFMS provides data and information that are transparent, consistent over time and are suitable for measuring, reporting and verifying REDD+ activities[iv].

General characteristics of the NFMS are that it should:

- build upon existing systems[v];
- enable the assessment of different types of forest in the country, including natural forest, as defined by the country[vi];
- be flexible and allow for improvement[vii]; and
- reflect, as appropriate, the phased approach to REDD+[viii] i.e. subnational monitoring systems could be developed to monitor demonstration activities in the interim, while transitioning to a national system.

Additional guidance on NFMS recommends that developing country Parties:

- monitor and report on emissions displacement at the national level[ix];
- utilise the most recent IPCC guidance and guidelines as a basis for estimating forest related emissions, removals, forest carbon stocks and forest area changes[x].

The UNFCCC also acknowledges that the NFMS can provide information for the systems designed to demonstrate how safeguards are being addressed and respected (the Safeguard Information System, SIS)xi.

i. UNFCCC Decision 11/CP.19 paragraph 3

ii. Sub-national monitoring and reporting is also recognised by the UNFCCC as an interim measure (UNFCCC Decision 1/CP.16 paragraph 71(c)) in the development of a robust and transparent national forest monitoring system

iii. UNFCCC Decision 11/CP.19 paragraph 2

iv. UNFCCC Decision 11/CP.19 paragraph 3

v. UNFCCC Decision 11/CP.19 paragraph 4(a)

vi. UNFCCC Decision 11/CP.19 paragraph 4(b)

vii. UNFCCC Decision 11/CP.19 paragraph 4(c)

viii. UNFCCC Decision 11/CP.19 paragraph 4(d)

ix. UNFCCC Decision 1/CP.16 paragraph 71(c)

x. UNFCCC Decision 11/CP.19 paragraph 2

xi. UNFCCC Decision 11/CP.19 paragraph 5

Measurement

According to the Warsaw Framework for REDD+, in order for developing countries to obtain results-based funding for REDD+, the "anthropogenic forest-related emissions by sources and removals by sinks, forest carbon stocks, and forest carbon stock and forest-area changes" resulting from the implementation of REDD+ activities must be fully measured, reported and verified[xii].

In order to achieve this, developing countries are expected to:

- combine remote sensing and ground-based forest carbon inventory approaches for estimating, as appropriate, anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks, forest carbon stocks and forest area changes[xiii];
- provide estimates that are transparent, consistent, as far as possible accurate, and that reduce uncertainties, taking into account national capabilities[xiv];
- make certain the system results are available and suitable for review, as agreed by the Conference of the Parties[xv];
- use data that are transparent and consistent over time and consistent with the established forest reference emission level and/or reference levels (REL/RL)[xvi] to estimate emissions, removals and forest-area change in relation to REDD+ activities.
- express the results of the implementation of REDD+ activities (as measured against the forest REL/RL) in tonnes of carbon dioxide equivalent per year[xvii].
- ensure consistency of data with established or updated forest REL/RL[xviii].
- ensure that data produced for MRV of REDD+ activities is consistent with guidance developed for the MRV of nationally appropriate mitigation actions (NAMAs)[xix].

Additional guidance from previous COP decisions recommends that developing country Parties use the most recent IPCC guidance and guidelines as a basis for estimating forest related emissions, removals, forest carbon stocks and forest area changes[xx].

xii. UNFCCC Decision 2/CP.17 paragraph 64 and UNFCCC Decision 9/CP.19 paragraph 3

xiii. UNFCCC Decision 4/CP.15 1.(d)(i)

xiv. UNFCCC Decision 4/CP.15

xv. UNFCCC Decision 4/CP.15

xvi. UNFCCC Decision 14/CP.19 paragraph 3

xvii. UNFCCC Decision 14/CP.19 paragraph 4

xviii. UNFCCC Decision 14/CP.19 paragraph 5

xix. UNFCCC Decision 11/CP.19 paragraph 3

xx. UNFCCC Decision 11/CP.19 paragraph 2

Reporting

According to the Warsaw Framework for REDD+, Parties should provide data and information through a technical annex to their Biennial Update Reports to the UNFCCC Secretariat (taking into account the additional flexibility given to least developed countries and Small Island Developing States who may submit Biennial Update Reports at their discretion rather than by December 2014 and every two years after that)[xxi], on a voluntary basis[xxii], consistent with guidance contained in previous decisions[xxiii].

Verification

The Warsaw Framework for REDD+ states that the data submitted by developing country Parties will be verified by a team of technical experts, for the purpose of results-based payments, through a process known as international consultation and analysis (ICA). This team must include two Land Use, Land-Use Change and Forestry (LULUCF) experts, one each from a developing country and a developed country Party[xxiv].

The technical experts will assess[xxv]:

- the accuracy of the results;
- the consistency in methodologies, definitions, comprehensiveness, and information between the assessed reference level and the results of the implementation of REDD+ activities;
- the consistency of the data and information provided in the technical annex with the guidelines provided by UNFCCC; and
- the extent to which this information is transparent, consistent, complete and accurate.

xxi. UNFCCC Decision 14/CP.19 paragraph 6

xxii. UNFCCC Decision 14/CP.19 paragraph 7

xxiii. Guidance is contained in Decision 4/CP.15 and 2/CP.17 Annex III

xxiv. UNFCCC Decision 14/CP.19 paragraph 10

xxv. UNFCCC Decision 14/CP.19 paragraph 11

GUIDANCE FROM THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC)

When using IPCC methodologies, the simplest way to measure data is to look at the rate of change of forest areas and forest type, i.e. information on the extent of human activities (activity data), and combine it with average emissions or removals by activity, i.e. the emissions related to the change in forest areas and type (emissions factors). The IPCC proposes three different approaches to gathering activity data, and three approaches to calculating emissions factors, which countries can choose from depending on their capacities, national circumstances, preferences and data availability.

When REDD+ MRV systems become operational at the national level (normally in Phase III of REDD+, see pages 24-25), the activity data can be collected and assessed by a Satellite Land Monitoring System, and the emissions factors derived from National Forest Inventory data, both components of a country's NFMS[127]. Activity data and emissions factors will be used to compile the Land Use, Land-Use Change and Forestry (LULUCF) section of the national greenhouse gas inventory, which will be reported in national communications and Biennial Update Reports to the UNFCCC Secretariat. These reports, communications and inventories will be carried out by a network of institutions with varying roles and responsibilities depending on the country and the legal framework in place.

CONTRACTUAL REQUIREMENTS OF THE WORLD BANK'S FOREST CARBON PARTNERSHIP FUND

The FCPF Readiness Fund requires participating countries to develop an NFMS whose ultimate goal is "to estimate emissions and removals from the forest sector, as well as to obtain more information on the spatial distribution and rate of change of drivers of deforestation and degradation"[xxvi].

Guidance provided by the FCPF can assist countries in identifying elements and characteristics of their NFMS that can be addressed through the legal framework, such as[xxvii]:

- clarifying the objectives of the NFMS, i.e. indicating what it is designed for, including monitoring deforestation and forest degradation, and the implementation of REDD+ activities, as well as defining these terms;
- ensuring that the design of the monitoring system is linked to and capable of monitoring change in the land-use activities proposed by the REDD+ strategy and the policies that implement it;
- clarifying the frequency of the various activities under the NFMS (e.g. carrying out forest inventories);
- defining the criteria and processes to be used for designing the NFMS;
- ensuring the participatory nature of the NFMS (encouraging stakeholder participation in implementing the monitoring system and the verification process); and
- clarifying how the NFMS design can be integrated with other processes such as: assessment of drivers of deforestation, the development of reference levels and national GHG inventory and reporting process.

The R-PP template suggests that the above can be done through countries' national REDD+ strategies and/or additional implementing policies[xxviii]. Additionally, the R-PP template suggests that, for the development of their NFMS, countries could "[a]ssess systems/structures required for monitoring and review, transparency, accessibility and sharing of data both nationally and internationally"[xxix]. The FCPF Readiness Fund's R-PP

xxvi. R-PP Template Component 4a

xxvii. Ibid

xxviii. Ibid

xxix. Ibid

Template does not cover MRV, instead deferring to UNFCCC guidance on matters of reporting and verification[xxx].

The Carbon Fund's Methodological Framework requires countries to ensure that their Forest Monitoring System (as designed under FCPF) fits within the NFMS (as required by the UNFCCC)[xxxi]. In terms of MRV more specifically, the FCPF Carbon Fund Methodological Framework does not include much in terms of additional requirements to those of the UNFCCC. It does however require countries to ensure that:

- methods used for MRV are the same as those used for setting the Reference Level or are "demonstrably equivalent"[xxxii]; and
- their Emission Reduction Programme "has explored opportunities" for community participation in monitoring and reporting[xxxiii].

xxx. Ibid

xxxi. FCPF Carbon Fund Methodological Framework Criterion 15 Indicator 15.1

xxxii. FCPF Carbon Fund Methodological Framework Criterion 14 Indicator 14.3

xxxiii. FCPF Carbon Fund Methodological Framework Criterion 16 Indicator 16.1

WHAT CAN COUNTRIES DO?

ESTABLISHING INSTITUTIONAL ARRANGEMENTS FOR NFMS

To create a "robust and transparent" national forest monitoring system, new institutional arrangements may be needed which "build upon existing systems"[128] and which can work together across local, regional and national levels in a coordinated manner. Many countries do in fact already have NFMSs as part of their forest management frameworks, as well as the institutions or components of those institutions which have a role to play in the MRV system for REDD+ e.g. for carrying out national forest inventories[129]. However, in the context of REDD+, which focuses on carbon, countries might need to expand the scope of their NFMS to gather the necessary data. Countries can therefore either adapt existing institutions to fulfil requirements related to REDD+, or create new arrangements exclusively for that purpose[130].

The NFMS can be composed of a network of institutions, each with roles and responsibilities to be determined by a country's legal framework. For example, establishing an MRV system involves designating the agencies and institutions that will be responsible for overseeing, approving and coordinating MRV at local, sub-national and national levels. The UNFCCC does not prescribe a specific type of institutional set-up for MRV, however countries will have to determine which institution will lead the process and how roles and responsibilities will be distributed among MRV operating agencies. Some countries have set up, or plan to set up, a central agency to lead the MRV process, which in some cases may have already been established for the MRV of nationally appropriate mitigation actions (NAMAs). Other countries have included an 'MRV component' (e.g. a working group, task force or committee) within their central REDD+ agency. For example, Cameroon has set up an MRV unit within its REDD+ Technical Secretariat, the operational body in charge of REDD+ implementation, which is part of the Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED)[131].

In responding to UNFCCC requirements related to reporting, countries might decide that it is the lead entity for MRV that will have to submit National Communications and Biennial Update Reports, possibly including a technical annex, to the UNFCCC[132].

However, in Indonesia for example, although the National REDD+ Agency provides guidelines for the monitoring and reporting of REDD+ actions, and facilitates national communication to the UNFCCC, the National Council on Climate Change is responsible for submitting the National Communications and Biennial Update Reports to the UNFCCC.

In addition to establishing or designating the lead MRV body, the legal framework can be used to establish which institution will record REDD+ mitigation actions within an inventory, where one exists. In Mexico, the Climate Change law empowers the Secretary of Environment and Natural Resources (SEMARNAT) to set up a national greenhouse gas emissions register[133]. The legal framework can also clarify the institution in charge of quality control and assurance of information on emissions reductions, and, in line with UNFCCC requirements related to verification, the institution which should be involved in the independent verification process at the international level[134].

Countries can decide to use their NFMS to gather the data necessary to respond to UNFCCC safeguard related requirements, i.e. to contribute to information on how the safeguards are being "addressed and respected" during the implementation of REDD+ activities (e.g. regarding preserving biodiversity and respecting the rights of indigenous peoples and local communities), in order to provide a summary to the UNFCCC Secretariat. Depending on national circumstances, this could mean involving communities in the process of gathering and providing information. If countries decide to recognise community monitoring as a valid source of information, local institutions could be put in charge of communicating this information to a national body. As part of its memorandum of understanding with Norway, Guyana engages in community monitoring.

The success of the NFMS and of its monitoring and measuring and reporting functions will require the realisation of certain 'enabling conditions' which are covered in the next chapter (see page 119), such as accountability, transparency, clear communication and exchange of information between different agencies at local, regional and national levels relating to the data that they may collect[135]. Countries are encouraged to build on existing systems however this may require significant action to address fundamental weaknesses in governance.

Approaches to setting up institutional arrangements for NFMS through the legal framework

Countries could use their legal frameworks to clarify the roles and responsibilities of the institutions involved in the monitoring of REDD+ policies and in the MRV of emission reductions within a policy document, such as their national REDD+ strategy (e.g. Indonesia mandates the creation of an MRV Institution in its National REDD+ Strategy). Some countries might decide to start by establishing a mandate to carry out a gap analysis of existing relevant institutions in a policy document (e.g. in a national REDD+ strategy, if appropriate). Based on the results of such a gap analysis, a country could choose to clarify the functions of these institutions and the distribution of roles within a policy document. The policy document could also establish clear processes for coordination between institutions.

However, in order to ensure that the powers and mandates of institutions involved in the monitoring and MRV of REDD+ activities are robust, countries should aim to establish such powers and mandates through legal instruments, rather than just through policy. For example, the lead MRV institution could be created through legislation. Such legislation will need to include clear powers for the agency to enforce its mandate, such as, for example, being able to compel other government bodies to provide information. Alternatively, if there are already suitable institutions in place, a country can decide to reform the laws establishing those institutions, to expand their mandates and powers to cover MRV of REDD+ activities. For example, this might be appropriate if there are already institutions set up for the MRV of NAMAs.

Finally, coordination agreements between institutions might be necessary to clarify roles and responsibilities, for example between key data providers and the lead institution in charge of monitoring[136].

CREATE LINKS WITH OTHER REDD+ RELATED COMPONENTS

The NFMS may provide data and information that is relevant for other components of the REDD+ information system, such as the Safeguards Information System (SIS)[137]. It is therefore important to ensure that links are created between the different information gathering and reporting processes for REDD+. There are potentially multiple synergies and linkages that could be created between NFMS and SIS, for example on data sharing or data collection and processing. Creating synergies may help both systems to become more efficient and robust, and be more cost effective. This may, in turn, lead to higher quality data as well as more coherence and consistency in reporting.

The SIS for example, might require information on tree cover or tenure right holders in order to track the impact of REDD+ activities on biodiversity or permanence. This data might also be collected by an NFMS. Synergies and linkages between an NFMS and the SIS might also relate to the processes for collecting new data. For example, communities might be compiling information on tree cover or species information as part of monitoring efforts within an NFMS, and may be well positioned to gather biodiversity data for the SIS.

Linkages between these systems can be made in part through the legal framework by acknowledging these areas of overlap, and creating a mandate for coordination between the different processes, within the national REDD+ strategy or in a separate policy document. As a first step for example, the Indonesian National REDD+ Strategy states that the MRV system should be synchronised with the SIS[138].

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EXAMPLES OF HOW COUNTRIES ARE USING THEIR LEGAL FRAMEWORK TO ESTABLISH INSTITUTIONAL ARRANGEMENTS FOR NFMS

INDONESIA

In its 2012 National REDD+ Strategy, Indonesia has planned for the establishment of a 'REDD+ MRV Institution'.

Presidential Decrees numbers 19/2010 and 25/2011 mandated the REDD+ Task Force (now REDD+ Agency) to create an MRV Institution and formulate a system for MRV. The REDD+ Agency has overall authority for its actions and policies.

The MRV Institution is mandated by the REDD+ Strategy to support several activities of the National Action Plan for the Reduction of Greenhouse Gases (established by Presidential Decree 61/2011) including the implementation of a GHG Inventory (Presidential Decree 71/2011). The REDD+ Strategy also mandates the MRV Institution to integrate activities of the Forest Resource Monitoring System – including forest management units, remote sensing etc.

MEXICO

The Ministry of Environment and Natural Resources (SEMARNAT) was established by Presidential Decree in November 2000 with one of its duties being to 'assess the quality of the environment and to establish and promote the Environmental Information System,… monitoring systems… and inventories of natural resources' (article 14). An agency of SEMARNAT, the National Forestry Commission (CONAFOR) was established by Presidential Decree in April 2001 (DOF 21/04/2001) to design, implement and monitor sustainable forestry activities.

CONAFOR is supported by the National Forestry Council (CONAF) an advisory body which was established as part of the 2003 General Law on Sustainable Forest Development (article 155). This law also creates institutions which help SEMARNAT implement its REDD+ MRV activities including National System of Forestry Information and the National Forestry and Soils Inventory (INFyS). The law was reformed by decree in June 2012, and the amendment mandates the Federal Government to establish the MRV system up to three years after the entry into force of the decree.

Other institutions were created by the 2012 General Law on Climate Change to help SEMARNAT implement its REDD+ MRV activities, including a national emission registry (Art. 87) which will be created and operated by CONAFOR. The LGCC also establishes the Evaluation Coordination under the National Institute of Ecology and Climate Change (INECC) that will use the results from the MRV process to evaluate the effectiveness of REDD+ policies (article 13).

In May 2010 Mexico signed an MOU with Norway to strengthen its MRV activities (US$15 million agreement to build resources and capacity) implemented by CONAFOR with technical and administrative support from UN-REDD, FAO and UNDP (also seeking to build capacity in the rest of the region, encouraging Mexico to share its experiences of MRV with other REDD+ countries).

LAO PDR

The 2010 R-PP intended to establish Technical Working Groups, including one specifically to oversee MRV, as part of the REDD+ Office set up in the Department of Forestry (within the Ministry of Agriculture and Forestry) to support the REDD+ Task Force.

Since the elaboration of the R-PP, a new Ministry of Natural Resources and Environment (MoNRE) was established in 2011 with overall responsibility for the development and implementation of REDD+ and for overseeing management of the forestry sector in Lao PDR (transferred from the Ministry of Agriculture and Forestry). The Department of Forest Resource Management within MoNRE houses a REDD+ Division, which has the official mandate for managing REDD+ and is the lead for establishing Technical Working Groups. None to date have been established.

The revised duties and responsibilities of the Department of Forestry within the Ministry of Agriculture and Forestry were established by Prime Ministerial Decree no.262 on June 2012[139].

Taking into account the 2007 Forestry Law and the 2012 Prime Ministerial Decree concerning the organisation and operation of the Ministry of Agriculture and Forestry (amongst others), Ministerial Decision 1887/AF (August 2012) establishes the mandate of the Department of Forestry. The responsibilities of the Department include implementing the forestry laws; 'acting as the core agency to carry out the survey, monitoring on change in forest as well as management of information on forest resource cover' (article 3.5); monitoring and managing forest ecosystems, acting 'as the core agency for coordination of REDD for the Ministry of Agriculture and Forestry' (article 3.17); and 'develop[ing], manag[ing], improve[ing] and expand[ing] the forestry statistics and information systems that are under its responsibility' (article 3.19).

Uncertainty remains over the roles and responsibilities of the Department of Forestry and the Department of Forest Resources Management when it comes to MRV. While DOF has the obvious responsibility to monitor forest cover change at a national level, it is DFRM who has overall REDD+ management responsibilities. To date, no formalised procedure to share data or REDD+ management responsibilities has been made public.

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

The Ministry of Environment, Conservation of Nature and Tourism (MECNT) was created and given its duties by Decree 75/231 in July 1975, updated in December 2008 by order no.74/08. The ministry has the responsibility for both developing and monitoring and evaluating policies in ecosystem management and sustainable development. MECNT is the lead body within DRC's National REDD+ Committee. The National REDD+ Committee was created to lead DRC's efforts on REDD+ (decree 9/40 November 2009).

The National REDD+ Strategy mandated the responsibility to implement MRV activities to the Department of Forest Inventory and Management (DIAF) which is part of the MECNT.

FOREST REFERENCE EMISSION LEVELS AND REFERENCE LEVELS

Forest Reference Emission Levels and Forest Reference Levels (RELs/RLs) are performance benchmarks against which emission reductions and removals will be measured, reported and verified (MRV)[140]. They are required to assess the performance of REDD+ activities in mitigating climate change. They should be established taking into account historical data and national circumstances[141], and should aim to depict what emissions and removals would occur in the absence of REDD+ implementation[142].

Though never defined by the UNFCCC, forest reference emission levels (RELs) can be taken to refer to the gross emissions from a geographical area during a set period of time, while forest reference levels (RLs) can refer to the net emissions *and removals* from a geographical area during a set period of time[143]. The former is used as a baseline to demonstrate reductions in emissions from deforestation and forest degradation, while the latter is used to demonstrate emission reductions and carbon stock enhancements from conservation, sustainable forest management and enhancement of forest carbon stocks.

The development of RELs/RLs should be carried out in a way that is consistent with a country's National Forest Monitoring System (NFMS) (see pages 92-107)[144], i.e. ensuring that methodologies and data used for them are consistent with the methodologies and data used for the country's MRV system, in order to effectively measure emission reductions[145,146]. For example, according to the UNFCCC, the definition of 'forest' used in calculating the REL/RL should be aligned with the definition of 'forest' used in a country's greenhouse gas inventory, which is a part of its NFMS[147].

Robust and transparent RELs/RLs are essential to calculate whether a country has achieved real emission reductions, and to assess the performance of REDD+ activities and actions. They are therefore a prerequisite for countries to receive results-based finance for REDD+[148].

The process of establishing RELs/RLs requires, amongst other things: a clear and consistent definition of forests; clarification of which activities, forest carbon pools and greenhouse gases are to be included in the REL/RL; a description of the methods used to estimate carbon stocks of forests and non-forests; clarity on the time period over which historic emissions are being estimated; determination of trends in forest conversion; an estimation of the area of deforestation and forest degradation, and a description of the methods used to estimate emission factors for degradation[149,150].

The development of RELs/RLs is predominantly dependent on technical capacity. Many issues relating to them could be determined outside of the legal framework, such as the approach for their establishment (e.g. whether they will be national or sub-national) or guidance on methodologies to be used for their development. However, countries could decide to clarify the approach taken within the legal framework (e.g. in a national REDD+ strategy or a standalone policy or plan on RELs/RLs) for more coherence and clarity on the way to proceed.

This section outlines the UNFCCC and FCPF requirements relating to RELs/RLs, and will then focus on the aspects of these requirements that can be addressed through the legal framework.

REQUIREMENTS FOR FOREST REFERENCE EMISSION LEVELS AND REFERENCE LEVELS

INTERNATIONAL GUIDANCE AND REQUIREMENTS OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Warsaw Framework for REDD+ recalls and builds upon several decisions that set the context for, and provide guidance on, RELs/RLs:

- It confirms that RELs/RLs serve as benchmarks for assessing each country's performance in implementing REDD+ activities[i]
- It clarifies that developing country Parties aiming to undertake REDD+ activities need to develop a national forest REL/RL as a pre-cursor to obtaining results-based payments[ii]
- Countries can develop sub-national forest RELs/RLs as an interim measure[iii]. Many countries are developing, or have already developed (e.g. Brazil[151]), sub-national reference levels. In Indonesia, draft RELs/RLs have been developed for eleven provinces by the REDD+ Agency[152]
- Developing country Parties are invited to submit proposed forest RELs/RLs on a voluntary basis[iv], as well as information and rationales on the development of their forest RELs/RLs, and to provide details of national circumstances and how these were considered[v].
- The information provided should follow the most recent IPCC guidance and the guidelines adopted by COP 17 on the submission of information on reference levels[vi].

Additional guidance from previous COP decisions also provides the following:

- National forest RELs/RLs need to be established in a manner that is consistent with the anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks contained in each country's greenhouse gas inventories[vii].
- National forest RELs/RLs should be established "transparently", "taking into account historic data", and "adjusted for national circumstances"[viii], and should be updated periodically[ix].

i. UNFCCC Decision 13/CP.19 recalling Decision 12/CP.17 paragraph 7

ii. UNFCCC Decision 13/CP.19 recalling Decision 1/CP.16 paragraph 71(b)

iii. UNFCCC Decision 13/CP.19 recalling Decision 12/CP.17 paragraph 11

iv. UNFCCC Decision 13/CP.19 paragraph 2 recalling Decision 12/CP.17 paragraph 13

v. UNFCCC Decision 12/CP.17 paragraph 9

vi. UNFCCC Decision 13/CP.19 paragraph 2 recalling Decision 12/CP.17 and its Annex

vii. UNFCCC Decision 12/CP.17 paragraph 8

viii. UNFCCC Decision 4/CP.15 paragraph 7

ix. UNFCCC Decision 12/CP.17 paragraph 12

CONTRACTUAL REQUIREMENTS OF THE WORLD BANK FOREST CARBON PARTNERSHIP FACILITY

Some of the guidance and requirements provided by the FCPF referring to REL/RLs which could be addressed in the legal framework, include:

- defining the time period used in calculating the REL/RL, and agreeing on the definition of 'forest'[x];
- clarifying what government bodies or other institutions will be involved in the calculation of the REL/RL[xi];
- outlining a work plan, which identifies the major steps and studies required to develop the REL/RL (including a process for determining which approach and methods to use)[xii]; and
- integrating/coordinating the development of RELs/RLs with the NFMS[xiii] and with the national greenhouse gas inventory reporting process[xiv].

Additional requirements from the Carbon Fund Methodological Framework that countries should be aware of include that:

- the development of the reference level should be "informed by" the development of the forest REL/RL for the UNFCCC (although these do not have to be the same)[xv];
- the forest definition used for the country's Emission Reduction Programme should follow available guidance from UNFCCC 12/CP.17[xvi]; and
- the methods used for MRV (for emission factors or the methods to determine them) should be the same as the ones for setting the Reference Level and for Monitoring, or be "demonstrably equivalent"[xvii].

x. R-PP Template Component 3

xi. R-PP Template Component 3

xii. Ibid

xiii. Because progress on REDD-plus activity performance would need to be compared against the REL/RL as measured and monitored by the national forest monitoring system, R-PP Template Component 3

xiv. Ibid

xv. FCPF Carbon Fund Methodological Framework Criterion 10

xvi. Which states if there is a difference between the definition of forest used in the national GHG inventory or in reporting to other international organisations and the definition used in the construction of the RL, then the ER Programme should explain how and why the forest definition used in the RL was chosen. FCPF Carbon Fund Methodological Framework Criterion 12 Indicator 12.1

xvii. FCPF Carbon Fund Methodological Framework Criterion 14 Indicator 14.3

WHAT COUNTRIES CAN DO

CLARIFY DEFINITIONS

Currently under the UNFCCC, Parties are left to define 'forests' domestically[153]. This definition will affect the scope of REDD+ implementation, and the data used (e.g. in terms of forest cover and deforestation rates) in calculating historical trends, in monitoring, and in calculating potential credits[154]. Forest definitions also have an impact beyond REDD+, and are therefore an important enough issue that they should be dealt with through legislation, either through a new law or by reforming existing legislation.

For more consistency and clarity across a country's legal framework, a country may also decide to ensure there is consensus on the definition of deforestation, and forest degradation, and define what characterises a REDD+ activity – i.e. a) reducing emissions from deforestation; b) reducing emissions from forest degradation; c) the sustainable management of forests; d) the enhancement of forest carbon stocks; and e) conservation of carbon stocks (as defined under the UNFCCC).

FOREST DEFINITIONS IN MEXICO, COSTA RICA AND LAO PDR

The **Mexican** legal framework lacks an overarching definition of the term 'forest'. The regulatory decree of the General Law for Sustainable Forest Development (GLSFD) provides separate definitions for 'temperate forest' and 'rainforest', which relate to the climatic region of such ecosystems (temperate or tropical). Additionally, various other forest definitions are found in some State laws (e.g. those of Veracruz and Chiapas). Finally, 'commercial forestry plantations' are not considered as forests, thus excluding them from being subsidised by a REDD+ mechanism.

The multiplicity of forest definitions has been identified as a possible obstacle to clarifying the forest types covered by REDD+ activities and therefore to defining the eligibility of land for such activities[155].

According to **Costa Rica's** Emissions Reduction Project Idea Note (ER-PIN) for designing its National Forest Inventory and MRV system for REDD+, Costa Rica has used the definition of forest that it uses for Clean Development Mechanism (CDM) projects: "Forest is an area of land with a minimum size of 1.0 ha, with a canopy cover over 30%, and presenting trees with the potential to reach a minimum height of 5 meters at maturity in situ. A forest may consist of tight formations where trees of various strata and undergrowth cover a high proportion of the ground, or open formations with canopy cover over 30%. Young natural stands and all plantations that have not yet reached a canopy cover of 30%, or a height of 5 meters are not considered forest"[156].

Lao PDR has not included a technical definition of 'forest' within its legislation. 'Forestland' is defined broadly in its Forestry Law to include any land, whether forested or not, which is determined by the state as forestland[157]. The law classifies forests in Lao PDR into three categories for the purpose of preservation and development: Protection Forests, Conservation Forests and Production Forests. These forest areas include dense forest, degraded land, bare forestland, and village use forest. Protection Forests are further divided into either total protection zones or controlled-use zones, whereas Conservation Forests are further divided into total protection, controlled-use, corridor and buffer zones. Each of these sub-categories denotes a specific form of management that contains different prohibited and permitted uses. The country has submitted a working definition of 'forest' to the UNFCCC that requires a minimum area of 0.5 hectares with 5 metre trees and 20% canopy cover to be considered forest. It excludes areas predominantly coved by palm trees and bamboo. Reports have indicated that the government intends to include plantations as part of the forest definition; however, no final decision has been made[158].

SPECIFY THE METHODOLOGIES FOR DEVELOPING REFERENCE EMISSION LEVELS AND REFERENCE LEVELS

According to the UNFCCC, REL/RLs should be flexible[159], developed in a transparent manner, take into account historic data, and can be subject to adjustments based on the circumstances of the country[160]. They should be based on IPCC guidance and be "consistent with the anthropogenic forest-related greenhouse gas emissions by sources and removals by sinks contained in each country's greenhouse gas inventories"[161]. According to the FCPF, the methods used for MRV (for setting emission factors – see page 98) should be the same as those used for setting the REL/RL or "demonstrably equivalent"[162].

The methodologies for developing and calculating RELs/RLs could be agreed outside the legal framework by an MRV agency, without an explicit plan or policy. Currently, the only obligation under the UNFCCC is for countries to include the methodology used to calculate the REL/RL when submitting it to the Secretariat. The first country to have submitted a forest reference emission level for technical review to the UNFCCC Secretariat was Brazil (June 2014). Its REL relates to deforestation in the Amazonian biome[163]. Although not an obligation, countries could nevertheless choose to clarify their methodologies within their national REDD+ strategy or a policy or plan. The main issue for the legal framework is ensuring that there is a clear process and adequate coordination amongst the institutions responsible for establishing a country's methodology for RELs/RLs, and that there are frameworks in place, which ensure the accountability and transparency of the processes for data collection, analysis, sharing and reporting.

ADDRESSING BROADER GOVERNANCE ISSUES

UNDERSTANDING RIGHTS FOR REDD+

There are a number of different types of rights and responsibilities which are relevant to forest conservation efforts including REDD+. These stem from obligations contained in numerous international treaties, customary international law, national legislation and jurisprudence[i], and customary law[164].

Human rights are internationally recognised minimum standards that are understood as being universal, interdependent, indivisible, and guaranteed to all persons equally, without discrimination[165]. International law sets out human rights which can be either substantive or procedural, both of which are important for REDD+.

Substantive rights cover basic aspects of human well-being and dignity such as the right to life, non-discrimination and equal protection of the law, the right to health, and cultural rights[ii].

Procedural rights are necessary to support the implementation of, and compliance with, substantive rights. They include the right to access information (see pages 121-123), the right of access to justice (see pages 129-131) and the right to participate in decision-making (see pages 126-128). Procedural rights are guaranteed in a series of international treaties[iii]. The realisation of procedural rights promotes democratic values and respect of the rule of law for improved governance[166].

Internationally recognised human rights may also be guaranteed (i.e. rendered enforceable) in a country's domestic legal framework, such as in national or state constitutions, the highest law in a country or state. Statutory laws can add further protection to constitutionally recognised rights. According to international human rights principles, the State, multilateral agencies, businesses, and individuals are considered to be duty-bearer as they have the obligation to respect, protect, remedy, and promote these rights[167]. Customary rights are rights acquired by custom and may include, for example, traditional rights of indigenous peoples over land and resources. These customary rights will only become enforceable rights in national courts (as opposed to traditional courts) if they are recognised by statutory laws[168].

Rights are therefore realised through the design of laws and policies and their efficient, effective and equitable enforcement. The enforcement of these rights depends, in large part, on the quality of compliance and dispute resolution procedures, the capacity and independence of the judiciary, and implementation of the rule of law.

i. In common law countries, the rules of law are developed through 1) statute (i.e. legislation); 2) by the courts through interpretation of laws (i.e. jurisprudence).

ii. For example, substantive rights are recognised in the International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966); the United Nations Declaration on the Rights of Indigenous Peoples (New York, 13 September 2007); the American Convention on Human Rights (San Jose, 22 November 1969); and the International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries, (ILO Convention No.169) 1989.

iii. For example, procedural rights are recognised in the regional Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus, 25 June 1998); and in the International Covenant on Civil and Political Rights (New York, 16 December 1966), e.g. see article 14 on access to justice.

ACCESS TO INFORMATION

WHAT IS ACCESS TO INFORMATION?

Access to information is crucial for the success of REDD+. The UNFCCC has recognised its importance and it is included as one of the elements of the Cancun safeguards[i].

The right of access to information is a fundamental, universal human right[169]. It is a procedural right, which facilitates individual's and communities' access to information held by public authorities, whose duties require ensuring both passive and active access to information[170].

The right of access to information is explicitly and implicitly referenced in a range of legal instruments, including global[171] and regional treaties[172], declarations[173] and decisions[174], as well as in many environmental agreements[175], and national legislation and constitutions. In many of these sources of law, the right to information is set forth along with other rights discussed in this section, which are important for REDD+. For example, access to information enables full and effective participation and supports transparency and governance. It is critical in situations where the government has to ensure that individuals and communities can access, understand and interpret information. It is therefore closely linked with the right to public participation (see pages 126-128). Additionally, governments should provide the public with information about the rights they possess and the judicial resources available to protect them. Access to information is therefore linked with the right of access to justice in environmental matters (see pages 129-131)[176]. Effective remedies should be available to the public if access to information is denied.

The right of access to information is therefore not only important in and of itself, but also for the fulfilment of other rights, and as an underpinning of democracy. It is a key component of transparent and accountable governance. Having access to information is also essential for ensuring the accountability of governments and for combatting corruption (see pages 148-150)[177]. Access to information has different dimensions and can refer to freedom of information, education and training. The right to information is also a manifestation of the right to freedom of expression[178].

i. UNFCCC Safeguard (b) refers to transparent forest governance structures.

THE IMPORTANCE OF ACCESS TO INFORMATION FOR REDD+

For REDD+ to successfully mitigate climate change, as well as to provide other environmental, social and governance benefits, a diverse group of REDD+ stakeholders, such as indigenous peoples and local community members, need to have access to information. This can allow them to identify if any risks, opportunities or challenges may be created due to the implementation of REDD+ activities. In particular, considering that more than 1.2 billion people depend on forests for their livelihoods, and one eighth of the world's forests are community forests with which Indigenous Peoples and local communities have historical and cultural connections[179], providing information about REDD+ to these constituents is vital for their full and effective participation, including engagement with actors such as the government and the private sector[180]. Without this, the legitimacy of the process is compromised and the chance of reversals increases due to the lack of perceived ownership of local REDD+ activities.

Governments or REDD+ implementers should actively provide information, education and training related to REDD+ activities to build capacity and enable inclusive decision-making. In addition to this, they should ensure transparency in the information provided, included in contracts, agreements and other information that may affect a community.

APPROACHES FOR ENSURING ACCESS TO INFORMATION THROUGH THE LEGAL FRAMEWORK

A country's legal framework provides the direction, rules and boundaries within which its governance system operates (see page 19). Governments can take certain steps to ensure that the right of access to information is recognised within their legal frameworks, facilitating its implementation both in the context of REDD+ and beyond. It is worth noting that while not the focus of this book, effectively ensuring the right of access to information will also require action that goes beyond the legal framework (e.g. building the capacities of public authorities on how to provide access to information).

There are a number of steps that countries can take to ensure that the right of access to information is integrated within the legal framework. These include *inter alia:*

- adopting legislative and regulatory measures to allow for the enforcement of the right of access to information (e.g. recognising the right of access to information in the constitution or in a standalone law). The law(s) should specify what sort of information should be made available. Without this, there is a risk for relevant government bodies to inadequately respond to requests for information, hindering efforts to address issues such as illegal logging and insecure tenure[181];
- establishing and/or reforming appropriate national institutions mandated with the provision of information, to ensure that the provision of information is both active and passive;
- instituting a process for addressing grievances linked to the non-disclosure of information. This procedure could be included as a provision of a law on access to information or it could be included in the mandate of an institution;
- developing a policy and/or strategy to inform the general public about the existence of the right of access to information and ways of exercising that right;
- developing policies and/or strategies to ensure the timely and culturally appropriate dissemination of environmental information (e.g. by developing a policy to translate technical documentation into more culturally appropriate and accessible formats, to ensure that information is available to those who may lack the financial or technical capacity to obtain it online, or to ensure that there is sufficient time to share information with others in a community or coalition).

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PUBLIC PARTICIPATION

WHAT IS PUBLIC PARTICIPATION?

Public participation is essential to enable successful REDD+ implementation. Its importance has been recognised in numerous international instruments, both in relation to environmental decision-making and in general[i].

The term 'public participation' covers a wide range of interactions between government and civil society[182], including 1) information sharing, as a one-way flow of information from the government to civil society; 2) consultation, which represents a two-way flow of information and exchange of views; 3) collaboration, involving joint activities, where the initiator (usually the government) retains decision making authority; 4) joint decision-making, a collaboration with shared control over a decision made; and 5) empowerment, where control over decision-making, resources and activities are transferred from the initiator to other stakeholders[183]. In practice, the closer governments can get to empowering relevant stakeholders, the more effective the participation of these stakeholders will be, and therefore the higher the chance that proposed measures will be seen as legitimate and accepted by the population.

In addition to this, studies have suggested that: access to information (see pages 121-123); the existence of adequate mechanisms or fora for participation; appropriate conflict resolution mechanisms; and additional provisions to ensure the participation of vulnerable stakeholders (such as indigenous peoples and forest-dependent local communities) represent essential elements that must exist in order to ensure public participation[184].

WHY IS PUBLIC PARTICIPATION IMPORTANT FOR REDD+?

Given the fact that so many people depend on forests resources for their livelihoods, and the risks of negative consequences for forest-dependent populations resulting from REDD+ implementation (e.g. land grabs, evictions, and misappropriation of funds, see pages 148-150), it is imperative that those who stand to be affected by REDD+ projects or policies are included in REDD+ decision-making and implementation processes.

Ensuring the participation of relevant stakeholders can contribute to raising awareness about REDD+ among forest-dependent communities. In this sense, it can also build capacity, give people the opportunity to voice concerns, and contribute to ensuring that benefits are shared equitably[185].

In turn, the participation of local community representatives in the design and implementation of a REDD+ project can help to ensure that project developers are aware of the issues which might affect that community. Developing participatory mechanisms can also help ensure the successful implementation and permanence of REDD+ projects through a greater sense of local ownership and involvement.

Public participation has been recognised at the UNFCCC level and enshrined as one of the Cancun Safeguards (see page 55)[186]. It is also recognised by other major REDD+ funding initiatives, such as the FCPF and UN-REDD[187], although the degree of participation required by each initiative varies[188].

APPROACHES FOR ENSURING PUBLIC PARTICIPATION THROUGH THE LEGAL FRAMEWORK

Domestic legal frameworks are responsible for the legal recognition of the right of public participation, while institutional frameworks are responsible for its implementation. In order to ensure the full realisation of all the dimensions of public participation, the legal framework needs to recognise a number of key additional procedural rights, which are also essential enabling conditions for REDD+, such as access to information (see pages 121-123) and access to justice (see pages 129-131)[189].

Specific necessary characteristics of a legal framework to enable public participation include:

- official recognition, through law, of the right to public participation. The content of such a law should provide for the identification of national and local authorities responsible for facilitating public participation in the case of a specific policy, measure or project[190];
- recognition of the international best practices for ensuring public participation and/or provisions for the development of

i. Universal Declaration on Human Rights; Rio Declaration on Environment and Development, Principles 10, 17, 20, 22; International Covenant on Civil and Political Rights, Article 19; International Covenant on Economic, Social and Cultural Rights, Article 13; UNDRIP, Articles 5, 10, 18, 19; Convention for the Elimination of All Forms of Discrimination Against Women, Article 7; ILO Convention No. 169, Articles 2, 6, 7, 15, 16, 20, 22, 23, 25, 27, 33; UN Convention to Combat Desertification, Articles 3(a), 5(d), 10(2)(f), Annex I Article 6(2), 8(2)(c), 9(a), (c), Annex II Article 4(b), (d), Annex III Article 3(2), 5(b), (d); Convention on Biological Diversity, Article 14; UN Framework Convention on Climate Change, Article 6; Aarhus Convention, Articles 1, 3, 7, 8.

domestic guidelines on the steps that need to be followed to ensure effective participation. This could be done in a policy, and implemented by a programme;

- recognition that additional steps are needed to ensure the participation of particularly vulnerable sections of society, such as indigenous peoples or women (see pages 152-154). This can be done through law (including recognising the right to Free, Prior and Informed Consent), with the addition of policies, plans or programmes. These could include identification of specific vulnerable groups, design of awareness-raising campaigns and capacity building programmes, as well as creation of specific participatory mechanisms;
- establishment of grievance and redress mechanisms linked to participation. This could be done through laws, regulations and/or policies.

ACCESS TO JUSTICE

WHAT IS ACCESS TO JUSTICE?

Access to justice is a critical building block of effective and equitable REDD+ implementation. It forms an integral part of a country's governance system and can be understood as the availability of recourses that citizens can make use of in the event of violations of their substantive and procedural rights (see page 120)[191,192].

Under international law[i], governments have a number of duties and obligations to ensure adequate access to justice, including ensuring the three essential components of access to justice, namely: 1) access to *effective judicial proceedings*[193], or the absence of economic obstacles preventing citizens from accessing the courts. This can include free legal services and the strengthening of targeted community support programmes to ensure that disadvantaged or marginalised groups that would generally be excluded from accessing the courts, due to lack of technical or financial means, are able to benefit from the protection of judicial bodies[194]. Governments should also provide the public with information about the rights they possess, and the judicial resources available to protect them (see pages 121-123)[195]; 2) *the right to a fair trial,* which includes the right to legal assistance; the right of defence; and the right to reasonable time for the preparation and formalisation of arguments. Prior notification of charges is also a core component of this right[196]; 3) *the right to an effective remedy,* which should be "simple, urgent, informal, accessible, and processed by independent bodies"[197]. Remedies can only be considered effective if provisions are made for their implementation[198].

THE IMPORTANCE OF ACCESS TO JUSTICE FOR REDD+

People who are wronged or mistreated in the context of REDD+ planning, or in the implementation of REDD+ activities, must have some form of recourse to protect and enforce their rights. This is essential, both in the interest of upholding the rule of law and the rights of the persons affected, but also in the interests of the successful realisation of the objectives of REDD+. If individual or collective rights are breached as a consequence of REDD+ implementation without the possibility of access to

i. Reference to the right of access to justice under international law includes: Principle 10 of the Rio Declaration on Environment and Development; Articles 2, 9, 14, 26 and 50 of the International Covenant on Civil and Political Rights and its First Protocol; Articles 8 and 25 of the American Convention on Human Rights; Articles 8, 11, 13, 20, 28, 32 and 40 of the UN Declaration on the Rights of Indigenous Peoples; Article 15 of the Convention for the Elimination of All Forms of Discrimination Against Women; Articles 9,12 and 14 of the ILO Convention No. 169; Articles 7, 8 and 10 of the Universal Declaration of Human Rights.

justice, the legitimacy of such a project is likely to be undermined, greatly increasing the odds of reversals of emission reductions.

Possible instances where the implementation of REDD+ could result in a breach of individual or collective rights include the forced relocation of forest-dependent people and/or communities due to a lack of recognition of their customary tenure rights (see pages 134-136); the exclusion of locals from the decision-making process concerning a REDD+ project on their land or areas of residence; or the misappropriation of results-based payments destined to forest-dwelling communities or indigenous peoples (see pages 148-150).

APPROACHES FOR ENSURING ACCESS TO JUSTICE THROUGH THE LEGAL FRAMEWORK

As the role of the legal framework is to set the parameters for action within the governance system, certain steps can be taken to ensure that the legal framework guarantees and facilitates access to justice, both in the context of REDD+ and beyond. However, it should be noted that guaranteeing access to justice requires action that goes beyond the legal framework (e.g. by raising awareness or implementing a legal aid programme).

A certain number of measures can be taken by governments to ensure that their legal frameworks support and enable access to justice. These include *inter alia*:

- enshrining the right of access to judicial proceedings (i.e. access to the courts) in the constitution, and ensuring that it is applicable to all segments of the population;
- the existence of rules to enable citizens as well as communities to initiate litigation or be parties to a dispute (i.e. legal standing)[199];
- ensuring that the recognition of the right to judicial review of executive actions is enshrined in the constitution;
- ensuring that the right to appeal to a higher court is enshrined in the constitution[200];
- developing policies or programmes to raise awareness among the population of their right to access the courts and of any initiatives that can facilitate this access[201];
- providing legal aid, i.e. legal support and services for vulnerable and marginalised persons, which could include measures to reduce the costs of accessing the judicial system or the provision of judicial proceedings in local languages. Although the implementation of such measures will require involvement beyond the legal framework, they can be initiated through the development and implementation of appropriate laws, policies and programmes[202];
- enshrining the right to a fair trial (i.e. fair and impartial tribunals) in the constitution; and
- ensuring that tribunals do not have any substantial interest in the outcome of the matter they are presiding over[203]. This can be done through laws against corruption (see pages 148-150).

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CLEAR LAND TENURE RIGHTS

WHAT ARE LAND TENURE RIGHTS?

Land tenure rights are a set of overlapping and multi-faceted rights which include ownership rights, as well as access, use, management, exclusion, transfer, and alienation rights. Several rights-holders may share the same land tenure rights or may have different rights over the same resource. For example, the State could own the land, while others manage or utilise its resources. Land tenure rights may be individual or collective in nature. In addition, there may be a separation between the rights over the land (tenure rights) and the rights over its resources such as timber or carbon (see pages 137-139)[204].

The sources of tenure rights within a country's legal framework are varied. They may be statutory (i.e. recognised in the Constitution, laws and/or regulations) or enforced through common law by the courts. They may also originate from customary law, which may or may not be recognised by the State, but which is recognised in many international agreements and declarations (e.g. the International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries No.169, 1989 and the United Nations Declaration on the Rights of Indigenous Peoples, 2007)[205].

IMPORTANCE OF CLARIFYING LAND TENURE RIGHTS FOR REDD+

Clarifying tenure rights is central to an effective and equitable REDD+ mechanism as it can help identify who the key REDD+ stakeholders are, who should participate in decision-making processes as well as who should obtain benefits[206]. In turn, developing REDD+ can provide an opportunity to recognise customary rights and to empower local rights-holders. For example, the participation of communities within a REDD+ Safeguards Information System (see pages 52-65) might enable those communities to report on the boundaries of their territories as established under customary law[207].

However, while clarifying tenure is crucial to REDD+'s success, it is also a challenging undertaking in countries where rights are often unclear, weakly enforced or in conflict with one another. Conflicting customary and statutory claims over forest land are common, with often a lack of clarity as to the status of customary claims in relation to statutory rights. Limiting the clarification of tenure to an examination of statutory rights could exclude individuals or communities whose tenure rights are only customary in nature. To avoid this situation, and despite a longstanding government practice of giving businesses access to land at the expense of local communities[208], countries should first recognise and secure the rights of those who use and manage forest and land resources[209].

Lack of clarity on the identity of rights-holders and/or a lack of recognition of customary rights over land may lead to the exclusion of certain stakeholders from REDD+ planning and implementation. This carries the risk that REDD+ payments may not be allocated equitably. There is also a risk that unclear land tenure rights could incentivise corruption (see pages 148-150). Indeed, a lack of clear, recognised ownership could lead to land grabbing, either by national elites, or unscrupulous foreign investors (such as so-called 'carbon cowboys'), leading to the displacement of communities.

These factors all increase the risk of reversals or leakage of emissions and ultimately create an insecure environment for investors in REDD+. This can undermine the success of any national REDD+ scheme or payments for emission reductions.

APPROACHES FOR ADDRESSING INSECURE LAND TENURE USING LEGAL FRAMEWORKS

Countries could start by reviewing and reforming their current land law. It is important to ensure that the law clearly states the different types of rights applicable to a single piece of land (i.e. ownership, usufruct[i] access rights). This could involve defining what resources are included or excluded from each type of right, e.g. usufruct rights could include timber but not minerals which generally belong to the State.

Second, addressing unclear land tenure involves clarifying the status of customary rights versus statutory rights. For example, this could mean legally recognising customary land rights as equivalent to statutory rights. A constitutional amendment might be necessary in order to do this, however many countries are wary of revisiting constitutions due to other long-standing issues

i. Usufruct is the right to use, enjoy and derive profit from another's property.

that could be opened for debate (presidential term limits, or regional autonomy or sovereignty for instance). Other legal instruments, such as land laws or forest laws, can also be used to do this, which require less political capital and mobilisation than constitutional amendments.

Addressing lack of clarity in land tenure also means clarifying who is eligible to manage, own and use land (e.g. associations, companies, communities, and individuals); ensuring a clear process for the registration of rights; and creating clear and accessible processes for resolving conflicts relating to land. This could involve recognising the authority of traditional courts to adjudicate on customary tenure rights.

A country could also develop a policy or programme to assess and map current tenure arrangements, i.e. to see who owns what, and identify any areas under dispute. Based on the findings, a strategy could be developed to adjudicate competing land claims and/or undertake land allocation.

Another approach is to consider developing an integrated spatial planning and zoning policy or programme as the lack of coordination between sectors can lead to conflicting land rights being allocated by different entities over the same areas (e.g. an area could be allocated both as a timber concession and a protected area)[210] (see pages 142-145).

CARBON RIGHTS

WHAT ARE CARBON RIGHTS?

A complex issue that countries need to deal with in the context of REDD+ is determining who explicitly holds the right to enjoy the benefits (monetary and non-monetary) linked to greenhouse gas emission reductions and removals achieved through the implementation of REDD+ activities. There has been much discussion about the concept of carbon rights and their role in this process, and whether the implementation of REDD+ in a country can function without it.

Carbon rights are broadly understood as "the right to benefit from sequestered carbon and/or reduced greenhouse gas emissions"[211]. They create rights over an 'intangible asset' and introduce carbon as a new form of property, separate from the trees/biomass in which it resides, and which may be transferred or purchased separately[212,213]. This means that the owner of trees, forest, or an area of land will not necessarily be the owner of the sequestered carbon[214].

Because carbon rights may create a new asset (sequestered carbon), separable from the carbon sink (i.e. the reservoir in which the carbon is contained)[215], some civil society groups see this issue as impinging upon existing statutory and customary tenure rights[216]. For example, the land tenure rights (e.g. use or extraction rights) of a community may conflict with the rights over this new asset belonging to other individuals or the State, e.g. requiring the land to remain forested to ensure the continued existence of the sequestered carbon (permanence of emission reductions) in a particular area. In this type of situation it often remains unclear whose interests will prevail.

Some also argue that there is a need to focus on land tenure reform as a priority rather than defining a new right which, if not linked to land tenure rights, could be detrimental to local communities[217].

Carbon rights legislation around the world is practically non-existent; there is a general absence of a legal definition for carbon rights as well as confusion as to who owns carbon and how to regulate its trade. Mexico and Guatemala recently passed climate change legislation and are the first countries worldwide to define tenure rights over carbon[218]. Both have taken a similar approach, focusing on the ownership of carbon rights rather than on the content of the rights themselves.

CAN REDD+ FUNCTION WITHOUT CARBON RIGHTS?

It has been argued that if a country aims to adopt a project-based approach involving direct crediting (i.e. carbon markets) and engage in future REDD+ markets, it may be necessary to clarify forest carbon rights (i.e the right to generate, own and trade carbon credits, and the associated responsibilities in doing this). However, in a country where REDD+ is planned and implemented in a centralised manner at the national level (with national accounting and MRV, and no project-based REDD+), results-based payments from REDD+ can be allocated and distributed through nationally determined benefit-sharing arrangements, where the ownership of carbon is not used as the basis for deciding who will receive benefits[219].

The aim of this book is to assist with the design of effective legal frameworks that will allow countries to meet the requirements of a future REDD+ mechanism under the UNFCCC, also taking into account FCPF requirements for countries having entered a contract with the World Bank. Although the UNFCCC does not mention the need to clarify carbon rights, and in the absence of an international regulatory mechanism, carbon rights have become relevant because of the interest in the trading of carbon as a commodity and the current prevalence of the voluntary carbon market as a means of attracting finance. In addition to this, the World Bank Carbon Fund requires that "the status of rights to carbon and relevant lands should be assessed to establish a basis for successful implementation of the emissions reduction programme"[220]. Although the Carbon Fund does not constitute a carbon market per se, its objective is to pave the way towards a global carbon market, thus justifying its focus on carbon rights[221]. Carbon rights are therefore discussed here as an issue to be considered in the design of national legal frameworks for REDD+.

WHAT ARE THE LEGAL CONSIDERATIONS THAT COUNTRIES MUST CONSIDER IN RELATION TO CARBON RIGHTS?

The legal considerations linked to regulating carbon rights, and therefore the choices that countries must make when considering whether and how to legislate on the issue, are numerous, and are related to the country's chosen approach to REDD+[222]. These considerations include:

- whether the country intends to allow participation in the voluntary carbon market through project based REDD+ or if it is undertaking purely national implementation – (if project based, carbon rights are important);
- whether the government can claim exclusive rights over carbon, as a publicly-owned commodity or whether it is considered private property;
- if carbon is considered private property, deciding whether sequestered carbon (i.e. the carbon itself as a commodity) can be a property separable from the tree or biomass in which it is stored, meaning that ownership of carbon rights can be transferred independently from tenure; and
- if carbon rights are linked to tenure, deciding what type of tenure right (i.e. usufruct, ownership etc.) is sufficient to obtain carbon rights (e.g. right to sell, transfer etc.). For example in Indonesia, there is currently no legislation explicitly dealing with carbon rights. Therefore the trade and transfer of carbon rights is regulated by the existing legal framework according to which buying and selling forestland is prohibited. Due to this, carbon rights are being transferred through the attainment and exercise of usufruct rights over land, generally in the form of forest concessions, as opposed to ownership. The rights to trade emission reduction certificates are acquired as part of the concession contract[223].


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HORIZONTAL AND VERTICAL COORDINATION

WHAT ARE HORIZONTAL AND VERTICAL COORDINATION?

Horizontal coordination can be understood as the management of activities between several government units within the State which operate in different sectors and do not have hierarchical control over each other. Horizontal coordination is required to achieve multi-sectoral policy objectives, such as addressing the drivers of deforestation for the purposes of REDD+, which span a range of national government departments who are working in isolation from each other[224]. Vertical coordination can be understood as the management of activities between different levels of government.

IMPORTANCE OF HORIZONTAL COORDINATION FOR REDD+

Coordination between institutions responsible for the management of different land-use sectors is important for REDD+ as many key drivers of deforestation stem from sectors other than forestry. It is also important for building upon existing capacities of, and avoiding duplication of effort among, agencies with similar mandates, such as a national REDD+ agency and the country's environment agency.

Historically, countries have granted preferential treatment to sectors that contributed exclusively to economic development, which has resulted in legal and policy choices that support deforestation rather than sustainability and conservation. Improving horizontal coordination in the context of REDD+ could lead to a more integrated approach to land-use planning which balances development and environment objectives.

Institutions involved in the management and regulation of various land-use sectors have different and often opposing mandates and operate over sometimes overlapping jurisdictions. This can result in competition and conflicts. For example, if a REDD+ project is planned in a specific area, the Ministry of Forestry of a country which has the power to grant logging concessions may conflict with the country's national REDD+ agency in the absence of coordination provisions (e.g. an integrated land-use strategy).

Conflicting mandates and overlapping jurisdictions can also create inefficiencies and sometimes prevent institutions from achieving their respective goals. For example, the lack of inter-ministerial coordination provisions in Cameroon has resulted in the allocation of overlapping land-use rights. The Ministry of Forestry proposed in 2008 to designate an area, known as a Forest Management Unit, as a Council Forest in the Ngoyla Mintom region. At the same time, the Ministry of Agriculture proposed the same site to a Malaysian Company for an oil palm plantation. However, the Ministry of Economic Planning had already declared by decree a portion of the area as Public Utility for the purpose of the CamIron railway corridor, and the Ministry of Industries, Mines and Technological Development had signed a decree granting the site to the Companie Minière du Cameroon for iron ore exploration[225]. Another example of the lack of coordination and overlapping jurisdictions between ministries responsible for land-use (e.g. forestry and agriculture) is in Indonesia, where evidence suggests that the concessions granted in the country add up to an area that represents 150% of Indonesia's total land area. This has caused difficulties for agencies working towards Indonesia's REDD+ commitments.

Lack of horizontal coordination affects the day-to-day operation of land-use management. In the event that government policy turns towards greater integration of land-use planning, clear coordination provisions become even more essential.

IMPORTANCE OF VERTICAL COORDINATION FOR REDD+

In addition to this, REDD+ faces a host of challenges linked to the need for its implementation at multiple levels of government. These include, for example, potential conflicts between subnational and national agencies on responsibilities for land cover data, making aggregation difficult[226]. Vertical coordination is therefore essential for REDD+. For example, it needs to be ensured when designing the institutional arrangements which will be involved in the implementation of REDD+, when planning and developing safeguards implementation plans, and when monitoring and reporting on emission reductions. This is all the more important because countries are developing ways of simultaneously accounting for emission reductions and removals at the national, subnational, and project levels. Indeed,

jurisdictional and nested REDD+ is being developed to allow governments to account for emission reductions and removals generated through large-scale policies and programmes, and to integrate local REDD+ projects into national or subnational accounting frameworks.

The involvement of relevant entities at local, regional, national and federal levels is important to gain a common understanding of the goals of REDD+ and to ensure a clear allocation of responsibilities. Policies, laws and regulations should create clear mandates for agencies to communicate with each other and coordinate their efforts (e.g. share and communicate updated spatial plans at all levels of government). For example, Indonesia's Forestry Affairs Act[227] and Regional Autonomy Act[228] include different provisions regarding who is responsible for forest planning. The Forestry Affairs Act provides that this is the responsibility of the Minister of Forestry. However, the Regional Autonomy Act grants rights to provincial and local governments to have the autonomy to manage forests within their administrative areas. This results in overlapping authorities, which can lead to disputes between central and local government, and the ineffective formulation of forest development plans[229].

APPROACHES FOR ENHANCING HORIZONTAL AND VERTICAL COORDINATION THROUGH DOMESTIC LEGAL FRAMEWORKS

Greater coordination across sectors and between levels of government is difficult to achieve and requires significant political will and resources. In order to achieve this as part of REDD+, a broader policy shift towards an integrated approach to land-use management is needed. The legal framework can serve to facilitate this shift.

Countries could take the following actions:

- Decide on the eligibility of areas for different land-uses through plans (e.g. subordinate sectoral plans to integrated high-level plans)[230];
- Establish provisions on coordination across the different land uses through high-level strategies or policies (e.g. ensuring that the national REDD+ strategy of a country contains provisions to compel the national REDD+ agency to coordinate with other relevant agencies);
- Create an inter-ministerial committee with powers to develop policies across various land-use sectors, possibly first through a policy and subsequently a law;
- Create a strategy to ensure that land-use planning includes relevant government agencies across scales (e.g. regional and local governments)[231];
- Integrate national and/or regional land-use maps so as to identify jurisdictional overlaps, and have them periodically updated to reflect land-use decisions. This could be done through a policy or legislation[232]; and
- Finally, in the long term, aim to achieve fully integrated land-use management and to enable the careful balance of benefits and trade-offs between the different land uses. One way to help achieve this could be to replace dispersed legislative provisions on land use with a single overarching spatial planning law[233].

CONSISTENCY IN SECTORAL LAWS AND POLICIES

WHAT IS CONSISTENCY IN SECTORAL LAWS AND POLICIES?

Sectoral laws set out, amongst other things, the mandates and powers of institutions responsible for managing or regulating an economic sector. They define acceptable behaviours, incentives and penalties, as well as the jurisdiction of the government, ministry or agency responsible for overseeing its regulation. Each specific land-use (e.g. REDD+, agriculture, mining or energy) is governed by a set of sectoral laws and policies. These sectoral laws and policies specify the objectives and priorities of each land-use (e.g. reducing emissions from deforestation, food production, or extraction of natural resources). They are typically developed in isolation from each other with input from sector-specific stakeholders, and sometimes result in overlapping jurisdictions without clear provisions on how to address such overlaps.

IMPORTANCE OF CONSISTENCY IN SECTORAL LAWS AND POLICIES FOR REDD+

Inconsistencies in sectoral laws can lead to the creation of sector-specific incentives that reward some behaviours to the detriment of other sectors (i.e. perverse incentives). For example, preferential subsurface rights or compulsory acquisition clauses within mining laws could potentially be exercised to the detriment of existing land-uses (e.g. agriculture)[234]; oil laws can include preferential land-use rights on any type of land[235]; and energy laws, for example on biofuels, can incentivise behaviours that go against the goals of REDD+, such as forest clearing to develop monocultures[236]. It is therefore important for the success of REDD+ to examine a country's legal frameworks for these conflicts and inconsistencies, in order to be able to ascertain whether the legal frameworks enable or hinder REDD+.

It is also crucial for there to be coherence between REDD+ and other policy initiatives that can have an impact on reducing deforestation and/or mitigating climate change, in order to avoid duplication of effort. For example, these may include initiatives under the European Union's Forest Law Enforcement, Governance and Trade (FLEGT) scheme and the implementation of its Voluntary Partnership Agreements (see page 151); national programmes for Payments for Ecosystem Services; or certification initiatives.

Overall, a lack of consistency between different sectoral laws and policies could threaten the sustainability of REDD+ projects, and create an insecure environment for project developers and risk for investors. Finally, the existence of inconsistencies and perverse incentives could prevent countries from responding to international commitments or implementing international agreements relating to sustainability or conservation.

APPROACHES FOR ENSURING INTER-SECTORAL LEGAL AND POLICY COHERENCE THROUGH THE LEGAL FRAMEWORK:

Countries could decide to start by identifying which sector-specific legal incentives might have perverse effects on REDD+ by undertaking a comprehensive review of applicable sectoral legislation, to amend or remove them through reform.

In order to do this, countries could take the following measures:

- The national REDD+ strategy could list the legal or policy drivers of deforestation (i.e. perverse incentives) that need to be addressed, based on an in-depth gap analysis;
- Each sectoral law or policy could then be reformed based on the finding of the review.

ANTI-CORRUPTION MEASURES

WHAT IS MEANT BY CORRUPTION?

There are concerns that unless corruption is controlled, REDD+ will not be implemented in an effective, efficient and equitable manner[237]. Parties to the UNFCCC adopted the Cancun Safeguards which reassert the need for "transparent and effective national forest governance structures"[238] (see page 55).

Although there are several international conventions on corruption, there is no single definition of the term[239,240]. Corruption is generally understood to mean the misuse of entrusted powers, such as public office for private gain. Corruption can occur at any level of government through the abuse of entrusted powers. This can involve embezzlement of public money, forcing citizens to deliver bribes in order to receive public goods, or government employees receiving preferential treatment. Finally, public corruption can also involve the manipulation of policies, institutions and rules of procedure to sustain power, status and wealth.

Corruption is a governance issue. It has causes and consequences that reach beyond REDD+ and the forest sector. The impacts of corruption are particularly destructive in developing countries where the rule of law is weaker. It is in these countries that REDD+, which relies on good governance, is taking place[241]. Due to the wide ranging impacts of corruption, anti-corruption measures are enabling conditions that will improve the chance of REDD+ being implemented successfully.

THE IMPORTANCE OF ANTI-CORRUPTION MEASURES FOR REDD+

Corruption could affect the implementation of REDD+ in a number of ways. Illegal or illicit arrangements between companies and public authorities could provide access and ownership rights to those involved in logging, mining and agriculture at the expense of others, thus prioritising other land uses over REDD+[242]. Large agricultural or timber conglomerates could bribe national politicians and high-level bureaucrats to undermine the establishment of REDD+ at the national level, or could induce local governments to opt out of implementing REDD+ in their area or weaken local REDD+ policies. Corruption can also undermine the effectiveness of state agencies, either by reducing trust in that agency or by diverting it from its purpose, e.g. if a forest ranger takes bribes from illegal loggers[243].

REDD+ could also provide opportunities for new forms of corruption: 1) elite capture – REDD+ funds destined for local communities could be misappropriated by political elites; 2) misuse of funds intended for forests – where state forest revenue management lacks transparency and adequate or independent accountability procedures; 3) fraud in measuring and reporting on REDD+ performance and results (e.g. overstating avoided emissions or understating problems with permanence[244]); and 4) illegal or illicit acquisition of land or carbon rights by foreign investors and speculators (known as 'carbon cowboys'), in anticipation of revenues from REDD+[245].

APPROACHES FOR ADDRESSING CORRUPTION USING THE LEGAL FRAMEWORK

A robust legal framework is vital for reducing corruption. Many countries are already signatories of international anti-corruption conventions such as the 2004 United Nations Convention Against Corruption, which provides guidance on the steps they can take to reduce corruption through their legal framework.

However, in addition to this, effectively reducing corruption will also require changes to a country's institutional and compliance frameworks (see pages 22-23). This could involve strengthening institutions to facilitate public participation and enhance accountability; establishing or improving the rule of law (including ensuring laws are respected and enforced and that the judiciary is independent); fostering a culture of transparency and zero-tolerance to corruption in public institutions; and providing an enabling environment for the healthy functioning of civil society and a free media.

There are a number of options for countries to address corruption through their legal framework:

- Establishing a law or laws criminalising corruption which: define corruption[246]; clarify the prohibited practices and penalties; establish an anti-corruption institution tasked with monitoring and investigating corruption; include provisions for the protection of 'whistle-blowers' that report incidents of

corruption; and mandate the development of a national anti-corruption strategy[247].

- Improving the transparency of financial management: this could include requiring information on how revenues are distributed to subnational governments, local offices and non-governmental bodies is disclosed through the preparation and publication of financial reports; ensuring that all agency revenues and asset holdings are publicly disclosed; and requiring that independently audited reports be prepared to show how public funds have been used[248]. These requirements could be included in the anti-corruption law or be part of a standalone law on the financial transparency of the public sector.
- Other measures include ensuring the State provides citizens with adequate procedural rights such as access to information (see pages 121-123), access to justice (see pages 129-131), and public participation (see pages 126-128).

Steps taken to address corruption can fall under a country safeguard approach as part of efforts to "address and respect" UNFCCC safeguard (b)[249]. These steps could then be monitored and reported through the Safeguard Information System (SIS) (see pages 52-65).

THE EU'S FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE (FLEGT) VOLUNTARY PARTNERSHIP AGREEMENT (VPA) PROCESS AS A VEHICLE FOR ADDRESSING CORRUPTION

Countries could use the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) process, which aims to strengthen governance and reduce corruption in the forestry sector[250]. VPAs are trade treaties negotiated between a tropical forestry country and the European Union. They set out the establishment of a Legality Assurance System which will verify the legality of timber produced in a country (according to domestic legislation) and issue FLEGT licences for products which comply. The Legality Assurance System provides a comprehensive and transparent system of verification that is obligatory for any timber being exported to the EU, and in most countries that have finalised such an agreement to date, exports to any destination, as well as domestic sales. It may cover all parts of the production chain, including concession allocation, environmental and social criteria, and payments to government. The Legality Assurance System is designed to focus on verifying that due process has been followed, rather than simply checking that a specific permit has been granted, so reducing the opportunity for approvals to be received through corrupt means. In some countries, the development of the Legality Assurance System has been an important process in building transparency and understanding of the legal requirements, to establish a clear definition of what is required for full legal compliance. In some countries, requirements may be unclear or conflicting, making legal compliance more challenging and creating opportunities for corruption. The FLEGT VPA also generally includes provisions to boost accessibility of information (transparency) in the forestry sector, as well as dispute resolution or grievance mechanisms, which may help increase access to such processes in countries with weak judicial systems.

Anna Halton
Global Canopy Programme

GENDER EQUALITY

WHAT IS GENDER EQUALITY?

Gender equality is a human right which is included in a range of international agreements[i]. It is achieved when men and women enjoy equal rights and responsibilities, and when they have access to equal opportunities. It implies that the interests, needs and priorities of both men and women are considered and protected in a country's legal frameworks[251]. Given historical discrimination, paying specific attention to equality for women is often required to address gender gaps in laws and policies[252]. Studies underline the links between the protection of the environment and advancing gender equality[253] and more than 60 official gender references have been included in UNFCCC decisions[254,255]. To respond to these global mandates, countries should ensure that their climate change policies integrate gender considerations and include provisions and safeguards for gender equality[256].

THE IMPORTANCE OF GENDER EQUALITY FOR REDD+

The conservation and the loss of forests can have different impacts on women and men, as they rely upon, have access to, use, and control forests and forest products differently. For example, women often depend more on common resources as they often lack property rights and have fewer job opportunities than men[257], which could make it more difficult for them to adapt to the loss of forests. Women also often have distinct expertise and knowledge of their forests, demanding that they be actively engaged, for effective governance and management[258].

It is therefore important when designing REDD+ policies to understand that women are vital stakeholders, and that they have distinct needs and knowledge which can directly influence the success of REDD+ projects. Without gender equality in national laws and policies there is a danger that women could be both marginalised as stakeholders and excluded from REDD+ benefits, which could undermine the feasibility and sustainability of REDD+ projects.

Actively pursuing gender equality through legal frameworks can lead to the creation of social, environmental and economic benefits which are important for the success of REDD+, but also for achieving climate change goals and overcoming other development challenges[259]. The inclusion of gender considerations in climate change and forestry policies can also contribute to ensuring that REDD+ frameworks are in line with international law and human rights standards which promote gender equality[260].

APPROACHES FOR ADDRESSING GENDER INEQUALITY THROUGH THE LEGAL FRAMEWORK

A first consideration is to ensure that both women and men's substantive rights (see page 120) are equally respected and protected. For example, in line with the provisions of international agreements relating to women's equal access to land ownership and resource rights, countries could develop safeguards to ensure these rights[261].

Secondly, it is important to ensure that women's and men's procedural rights are equally respected and protected (see page 120). These rights include ensuring full and effective consultation and participation of women and men at all stages of REDD+ design and implementation (see pages 126-128); providing women and men equal access to information regarding all aspects of REDD+ development (see pages 121-123); and developing legislation for a grievance mechanism which is accessible to women and protects their rights on an equal basis with those of men (see pages 129-131).

The recognition of substantive and procedural rights can help ensure that all REDD+ stakeholders have access to a fair share of the benefits resulting from REDD+ activities (see page 155). Non-discrimination laws for benefit-sharing could support this approach.

In order to do all of the above and to comply with international women's rights legislation, a country could start by analysing its legislative frameworks (including statutory and traditional/customary law) at national, sub-national and local levels. This process could identify whether the existing provisions for gender equality (e.g. based on the 1979 UN Convention to Eliminate All Forms of Discrimination against Women) are sufficient, or if amendments are needed in future policy, legislative or institutional reforms associated with REDD+.

i.These international agreements include, for example, the African Charter on Human and People's Rights, American Convention on Human Rights, CBD, CEDAW, the two international covenants, ILO C169, UNDRIP, and the Universal Declaration on Human Rights (CIEL, ForestDefender).

The results of the analysis, along with any necessary reform, could be detailed within a national REDD+ strategy. More detailed documents could also be developed, such as 'Gender and REDD+' roadmaps or climate change gender action plans, making sure that these are endorsed by the State and are coherent within the context of other climate change policies such as National Adaptation Programmes of Action (NAPAs) or Nationally Appropriate Mitigation Actions (NAMAs)[262,263]. Subsequent changes, such as the reform of institutional mandates to improve gender equality (e.g. to improve the representation of women), will have to be done through legislation in order to be legally enforceable.

BENEFIT-DISTRIBUTION SYSTEMS

WHAT IS A BENEFIT-DISTRIBUTION SYSTEM IN THE CONTEXT OF REDD+?

In the context of REDD+, a benefit-distribution system can be defined as a mechanism which allows for the allocation and distribution of benefits (financial or otherwise) derived from REDD+ project activities to relevant stakeholders. These include forest owners undertaking actions to reduce deforestation and forest degradation, or other relevant stakeholders including local forest-dependent communities and indigenous peoples.

When designed and implemented appropriately, benefit-distribution systems can encourage improved forest management and help address economic drivers of deforestation (e.g. lack of alternative livelihoods as a driver of deforestation). However, such systems are complex to set up, due to the range of participants, objectives and scales at which they may operate. For example, benefit-distribution systems can be vertical (e.g. between central, regional or local governments) and horizontal (e.g. between local government and project developers, or between and within communities)[264].

In addition, setting up a benefit-distribution system includes not only understanding the different types of benefits which can be gained from REDD+, but also the costs of its implementation. Benefit-sharing refers to the distribution of net gains from the implementation of REDD+, i.e. including the costs of such implementation in the calculation of the benefits to be distributed[265].

Benefits may be direct, such as payments resulting from the implementation of a REDD+ project or programme, or the increase in provision of ecosystem services from standing forests. They could also be indirect, such as improved governance; increased public participation; increased skills; or enhanced rights to natural resources. The costs associated with REDD+ implementation may include the direct costs of setting up the REDD+ system or implementing a policy; or opportunity costs such as the loss of profits from alternative land uses.

Finally, benefits should not be given to prevent illegal behaviour (such as illegal logging), but to compensate for legal behaviour that supports the objectives of REDD+.

THE IMPORTANCE OF BENEFIT-DISTRIBUTION SYSTEMS FOR REDD+ AND BEYOND

The success of REDD+ will greatly depend on the design and implementation of benefit-distribution mechanisms (or benefit-sharing mechanisms), which operate at multiple levels of governance[266]. The creation of positive incentives for reducing carbon emissions is key in gaining support for REDD+ activities. It can allow affected communities to become partners in REDD+ activities, governments to achieve greater social inclusiveness, and investors to reduce risks associated with a project. If benefits are equitably shared with local stakeholders, it will also reduce the likelihood of reversals of emission reductions, which could be caused by local populations that lack economic alternatives.

A particular concern from civil society is that benefits that arise from REDD+ could be captured at higher levels, without reaching those most affected by REDD+ implementation. Particularly vulnerable stakeholders such as indigenous peoples and local communities, who have less power to influence such processes, may be especially at risk[267], thus emphasising the need for. robust anti-corruption measures as a key component of a legal framework for REDD+.

APPROACHES FOR DEVELOPING BENEFIT-DISTRIBUTION SYSTEMS FOR REDD+ USING THE LEGAL FRAMEWORK

When developing benefit-distribution mechanisms for REDD+, countries could consider using their legal frameworks to take the following steps:

- Build on existing benefit-distribution mechanisms. This could be done by examining and modifying the scope of existing laws on benefit-sharing (e.g. PES laws), to cover REDD+. Building on existing legal frameworks can reduce costs, however it also means that the approaches taken rely on a country's existing accountability and financial management systems, which may require strengthening.
- Define the legal basis and form of the benefit-sharing arrangement. The basis for the entitlement to benefit from the preservation of an environmental service could be included in the constitution. This could then be regulated by a specific statute (e.g. law on benefit-sharing for REDD+ or more broadly, on PES). The specifics of the benefit sharing arrangement (form, delivery, timing, parties) could be determined by the provisions in the above mentioned statute (in the event of a public mechanism) or through contracts (in the case of private finance)[268].
- Identify and define eligible beneficiaries. REDD+ beneficiaries can include the government (at different levels), forest owners or users, project developers, or communities (either within or outside a forest area). Entitlement to benefits may be linked to land rights, collective rights or performance of desired behaviour in specific REDD+ projects[269]. Depending on the source of REDD+ finance, beneficiaries could be identified either through contracts (private, carbon market) or through statutory legal instruments (public sources of finance).
- Decide what type of mechanism to use for the distribution of benefits. This could include establishing public funds to distribute payments, community trust funds to distribute non-monetary benefits or even using existing PES schemes[270]. This could be specified in a policy or through the reform of an existing law (e.g. PES law).

The development of benefit-distribution mechanisms will vary from country to country, as they are inherently linked to other, broader governance issues. For example, giving relevant stakeholders the ability and power to participate meaningfully in REDD+ (see pages 126-128), including in determining how benefits are generated and shared, can improve REDD+ implementation and strengthen its legitimacy at the local level. This includes agreeing on the timing, type and amount of the benefit that will be shared.

Additionally, in many countries lack of clarity and security surrounding land tenure remains one of the most problematic issues for the distribution of REDD+ finance. This is because the stream of conditional funding requires that legitimate rights holders and responsibility bearers be identified, and that their

legal status be stable for the lifetime of the initiative. Therefore, where tenure disputes are unlikely to be resolved quickly, laws should contain alternative arrangements for payments that do not rely on ownership[271].

Finally, it is recommended by many commentators that in order to avoid the risks linked to inadequate benefit-sharing mechanisms, primary legislation should, where possible be adopted to ensure certainty and enhance transparency and accountability[272].

CONCLUSION

GENERAL LESSONS AND RECOMMENDATIONS

Policies, laws and regulations represent the building blocks that help determine how REDD+ will be managed and implemented. Depending on their design, they can not only serve to ensure a country responds to international requirements for REDD+ in a way which suits its national circumstances, but can also guard against the risks of REDD+ and ensure the delivery of multiple benefits, such as improved governance and livelihoods.

Since the emergence of REDD+ as an international initiative, there has been much discussion surrounding the technical issues linked to its implementation, such as how to measure greenhouse gas emission reductions and how to determine the benchmarks against which these reductions should be calculated. In contrast, relatively little information is available on the steps that countries have taken, or could take, to ensure that their legal framework is suited to REDD+ implementation. The authors hope that the examples and insights provided in this book help to fill this gap and support further efforts in this area.

The development of strategies, policies, laws and regulations for the implementation of REDD+ is highly complex and is linked to a country's national circumstances, including its culture and political history. Analyses of legal frameworks are therefore highly contextual by nature. Nevertheless, based on the analysis in this book, it is possible to draw the following general lessons and conclusions:

The domestic legal framework for REDD+ should, wherever possible, build on a country's existing legal framework

Developing an adequate legal framework for REDD+ in a country does not mean creating an entirely new set of REDD+ specific policies, laws and regulations in isolation from its existing legal framework. On the contrary, the process should seek to build on a country's existing domestic policies, laws, institutional mandates and regulations. Such an approach could also contribute to the realisation of other relevant goals (e.g. national sustainable development goals, or meeting obligations under international law).

Undertaking gap analyses of the existing legal framework can help countries assess the framework's compatibility with REDD+ implementation. It can also help to identify opportunities for cost-effective measures to build on this framework in order to allow for REDD+ implementation, and clarify the timeline for doing so. Many countries have already produced such gap analyses and identified the steps they need to take within their national REDD+ strategies.

Broader governance issues should be addressed alongside REDD+ specific requirements

REDD+ implementation will not be successful unless the governance challenges that many countries face, such as corruption, are addressed. Therefore, using policy and legislation to create an enabling environment for REDD+ implementation should not be seen as a two-step process in which technical international REDD+ requirements are addressed first, and broader governance issues are given secondary importance. Instead, although addressing broader governance issues such as clarifying land tenure might be more lengthy and challenging, they should, as much as possible, be given equal priority.

There is no prescribed order for addressing these broader governance issues, but some of them could have useful knock-on effects on others, and understanding these relationships can facilitate their realisation. For example, procedural rights such as the right of access to information, public participation and access to justice are key to ensuring the realisation of other substantive rights, and to achieving other objectives such as reducing corruption.

The choice of whether to use policy or legislation can only be determined on a case-by-case basis

The approaches presented in this book illustrate that there is often a choice between relying on policy or taking the additional step of developing legislation. A key consideration is that while legislation enables the enforcement of its provisions, its development and adoption generally require a longer time frame and are more technically and politically complex than policies.

While policies might be a better choice for addressing technical issues such as the development of reference levels, legislation cannot be avoided in instances when there is a need for

guaranteed enforceability, for example in the case of fundamental rights. In a similar vein, the mandates and powers of newly created entities, such as a national REDD+ management body, need to become legally enforceable in order to be effective.

Where a decision is taken to create an institution through legislation, the use of primary legislation (e.g. an act of Parliament) or secondary legislation (e.g. regulations or presidential decrees) to do so will have important implications. While the latter might involve less technical and administrative complexity, secondary legislation is limited in that it can create institutions, but cannot grant those institutions any powers of enforcement. Primary legislation is therefore recommended in cases where enforcement will be critical.

The legal framework alone is not enough

Developing robust legal frameworks is vital for REDD+ implementation, as without clear guidance and rules entrenched in policy and legislation, countries may face problems such as lack of coordinated action due to unclear mandates. However, legal frameworks alone are not enough to ensure efficient, effective and equitable REDD+ implementation. Similar focus should be given to the other components of the governance system (i.e. the institutional and compliance frameworks).

In addition, it is important to recognise that developing appropriate legal, institutional and compliance frameworks for REDD+ will only be useful if the right conditions exist on the ground, such as sufficient political will, and adequate technical and financial capacity. An active civil society can also contribute significantly to the efficiency, effectiveness and equity of REDD+ implementation.

More clarity is needed on the overlap between landscapes and REDD+ to support the development of appropriate and complementary strategies

Developing legal frameworks for REDD+ may provide lessons for moving towards a more integrated and cross-sectoral approach to land use (i.e. a 'landscapes approach'), and vice versa, particularly given their mutual need for improved coordination, cohesion and long-term thinking in decision-making across different sectors of the economy. Preparing legal frameworks for REDD+ can contribute to generating momentum and political will for these changes. More work is needed in order to understand these potential synergies and ensure that REDD+ evolves within a landscapes approach.

Preparation of legal frameworks by developing countries needs to be accompanied by financial commitments from developed countries

The motivation for developing countries to develop their legal frameworks for REDD+ is based the anticipation of a functioning international REDD+ mechanism. Developed countries have a central role to play in stimulating finance for REDD+ in the interim period leading up to 2020, in order to ensure that REDD+ can function as part of a future global climate change agreement. Complementary and simultaneous efforts from both will therefore be essential for achieving successful REDD+ implementation, and for enabling the overall transition towards a deforestation-free economy.

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ANNEXES

ENDNOTES

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97. Article 3 (d) Ley 30215

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171. Convention Concerning the Protection of the World Cultural and Natural Heritage, Convention on the Elimination of Discrimination Against Women, Convention on the Rights of the Child, International Covenant on Civil and Political Rights, International Labour Organization Convention No. 169, Convention for the Safeguarding of Intangible Cultural Heritage (article 27), Convention on the Protection and Promotion of Diversity of Cultural Expressions, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, Aarhus Convention, among others.

172. African Charter on Human and Peoples' Rights, American Convention on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, among others.

173. United Nations Declaration on the Rights of Indigenous Peoples, Universal Declaration of Human Rights, among others.

174. UNFCCC Decision 1/CP.16, article 6(a)(i),(ii); Convention on Biological Diversity Decision XI/19, among others.

175. Convention on Biological Diversity (1992), Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in international Trade (1998), Rio Declaration Principle 10 (1992), Aarhus Convention (1998), UNFCC Article 6(a)(ii) (1992), Convention on Persistent Organic Pollutants (2001), among others.

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186. UNFCCC Decision 1/CP.16 Appendix, paragraph 2 includes UNFCCC Safeguard (d) which states that countries should promote and support "[t]he full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of [decision 1/CP.16]";

187. UN-REDD/FCPF. (2012) Joint guidelines on stakeholder engagement in REDD+ readiness with a focus on the participation of indigenous peoples and other forest-dependent communities. [Online] Available from: http://www.un-redd.org/Stakeholder_Engagement/Guidelines_On_Stakeholder_Engagement/tabid/55619/Default.aspx.

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ACRONYMS

BUR	Biennial Update Report
CDM	Clean Development Mechanism
COP	Conference of the Parties
CSA	Country Safeguard Approach
ER-PIN	Emission Reductions Program Idea Note
FAO	Food and Agriculture Organisation of the United Nations
FCPF	Forest Carbon Partnership Facility
FLEGT	Forest Law Enforcement Governance and Trade action plan
FREDDI	Fund for REDD+ in Indonesia
GCF	Green Climate Fund
GHG	Green House Gas Emissions
GRIF	Guyana REDD+ Investment Fund
IPCC	Intergovernmental Panel on Climate Change
LULUCF	Land Use, Land-Use Change and Forestry
MRV	Measurement, Reporting and Verification
NAMA	Nationally Appropriate Mitigation Actions
NAPA	National Adaptation Programmes of Action
NC	National Communications
NFMS	National Forest Monitoring System
PES	Payment for Ecosystem Services
REDD+	Reducing Emissions from Deforestation and Forest Degradation
REL	Reference Emission Level
RL	Reference Levels
R-PP	Readiness Preparation Proposal
SIS	Safeguard Information System
UNFCCC	United Nations Framework Convention on Climate Change
VCS	Verified Carbon Standard
VPA	Voluntary Partnership Agreement