



## Legal analysis of cross-cutting issues for REDD+ implementation

Lessons learned from Mexico, Viet Nam and Zambia





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The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest-dependent communities, in national and international REDD+ implementation.

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2013





# Table of contents

<i>Acknowledgments</i>	<i>iv</i>
<i>Acronyms</i>	<i>v</i>
<i>Introduction</i>	<i>vii</i>
<b>Lessons learned on REDD+ legal preparedness</b>	<b>1</b>
Forest, land and carbon rights	2
Recognition of customary rights	5
Forest definitions and REDD+	7
Major drivers of deforestation and forest degradation	10
Harmonization of sectoral laws	13
Institutional coordination	16
Public participation	19
Decentralization	22
Benefit sharing	25
Incentives for private and public investments	28
 <i>Conclusions</i>	 <i>31</i>
<i>Annex: Priority legal issues identified by REDD+ stakeholders</i>	<i>32</i>
<i>References</i>	<i>33</i>



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# Acronyms

AFOLU	Agriculture, Forestry and other Land Use
CCFU	Climate Change Facilitation Unit (Zambia)
CDM	Clean Development Mechanism
CONAFOR	National Forest Commission (Mexico)
CFM	Community Forest Management
COP	Conference of the Parties
CTC-REDD+	Climate Change Technical Commissions on REDD+ (Mexico)
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FPIC	Free, Prior and Informed Consent
IDLO	International Development Law Organization
IUCN	International Union for Conservation of Nature
GHG	Greenhouse Gas
JFM	Joint Forest Management (Zambia)
LAPs	Local Areas Plans (Zambia)
LULUCF	Land Use, Land-Use Change and Forestry
LFPD	Law on Forest Protection and Development (Viet Nam)
MARD	Ministry of Agriculture and Rural Development (Viet Nam)
MIGA	Multilateral Investment Guarantee Agency
MOFNP	Ministry of Finance and National Planning (Zambia)
MONRE	Ministry of Natural Resources and Environment (Viet Nam)
MPI	Ministry of Planning and Investment (Viet Nam)
MRV	Monitoring, Reporting and Verification
MTENR	Ministry of Tourism, Environment and Natural Resources (Zambia)
NCCDC	National Climate Change Development Council (Zambia)
NGO	Non-Governmental Organization
NRAP	National REDD+ Programme (Viet Nam)
NRIS	National REDD+ Information System (Viet Nam)
NTP-RCC	National Target Programme to Respond to Climate Change (Viet Nam)
PES	Payment for Environmental Services
PMR	Partnership for Market Readiness (Mexico)
PRMUs	Provincial REDD+ Management Units (Viet Nam)
PROFEPA	Federal Environmental Protection Agency (Mexico)
REALU	Reducing Emissions from Any Land Use
REDD+	Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
SAGARPA	Secretary of Agriculture, Livestock and Rural Development (Mexico)
SEDPs	Social and Economic Development Plans (Viet Nam)
SEMARNAT	National Secretary of Environment and Natural Resources (Mexico)
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change



UN-REDD	The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in developing countries
USAID	United States Agency for International Development
VNFOREST	Viet Nam Administration of Forestry
ZDA	Zambia Development Agency





# Introduction

The Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) in Cancun (COP 16) "encouraged developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances: (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; (e) Enhancement of forest carbon stocks"<sup>1</sup>. The Cancun Agreements reached at the COP 16 set the stage for a nationally-driven phased approach to REDD+. The Cancun Agreements also included the adoption of safeguards<sup>2</sup> to prevent unintended side effects and promote the delivery of social and environmental co-benefits from REDD+ actions. At the most recent round of UNFCCC negotiations additional progress was made on REDD+, including agreements on guidance for systems to provide information on how safeguards are addressed and respected, and modalities related to forest reference emission levels and forest reference levels.

While a number of challenges remain to be addressed, REDD+ is already being translated into real action on the ground. The UN-REDD Programme<sup>3</sup> supports 46 countries in Africa, Asia and the Pacific, and Latin America as they prepare and implement their national REDD+ strategies. While early discussions on REDD+ focused on financial and technical issues, increasing attention is now being placed on the design of legal frameworks supporting in-country REDD+ mechanisms. The issues to be addressed through REDD+ are complex, and successful REDD+ implementation will require harmonized and updated legal frameworks. If its implementation is supported by broader sustainable development strategies and participatory processes at the national level, REDD+ has the potential to deliver economic, environmental and social benefits. Consistent legal frameworks are crucial tools for integrating REDD+ within national development policies and addressing economic, environmental and social issues related to REDD+ in coherent ways that are in line with human rights principles<sup>4</sup> and international environmental treaties and conventions, such as the UNFCCC, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification.

This study presents key lessons learned from Mexico, Viet Nam and Zambia. It is intended to provide a better understanding of legal aspects of REDD+ implementation through a review of legal priorities identified by national stakeholders in these three countries. The study aims to enhance the support provided by the UN-REDD Programme in relation to legal preparedness for REDD+ implementation.

In 2011, the UN-REDD Programme commissioned international and national legal experts from the International Development Law Organization (IDLO) to produce three country studies (Mexico, Viet Nam and Zambia) on REDD+ legal preparedness. The studies stressed the need to support the ongoing processes of legal reforms for REDD+. The main efforts were directed at developing a comprehensive analysis of relevant environmental sectoral laws in those countries and assessing the major drivers of deforestation and forest degradation. Specifically, the country studies analysed key gaps, challenges and innovative aspects for REDD+ implementation with a view to identifying potential legal reforms.

The REDD+ provisions of the Cancun Agreements and the expert literature produced to date constituted the analytical foundation for the country studies. The 2010 Cancun Agreements provide policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; the role of conservation and sustainable management of forests; and the enhancement of forest carbon stocks. They refer to the activities listed in paragraph 70 of this decision and providing guidance on how those activities can be implemented to ensure results – based and sustained outcomes – while also enhancing development goals, human rights (particularly those of indigenous peoples), and other environmental and social benefits.

<sup>1</sup> Paragraph 70 of the Cancun Agreements – Dec. 1/CP.16.

<sup>2</sup> Appendix I of the Cancun Agreements (Decision 1/CP.16).

<sup>3</sup> The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and Forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of FAO, the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP).

<sup>4</sup> Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups (United Nations Office of the High Commissioner on Human Rights).

A generic outline was developed that was applicable for the three countries. It consisted of a review of existing laws and institutions that have an impact on REDD+ and identified key challenges and proposals for legal and institutional reform for REDD+.

The drafting process benefited from the expertise of national lawyers and local stakeholders from the three countries. The final versions of the studies were reviewed and validated by key national stakeholders during national workshops organized in Lusaka (Zambia), Mexico City (Mexico) and Hanoi (Viet Nam) in November 2011<sup>5</sup>. Participants from the three national workshops included government representatives, particularly from the ministries of agriculture and livestock, forests, natural resources and finance, as well as members of the civil society and non-governmental organizations (NGOs)<sup>6</sup>.

The major issues related to REDD+ legal preparedness identified by the participants during the three consultation workshops include: forest, land and carbon rights; the recognition of customary rights; definitions of REDD+ terminology; major drivers of deforestation and degradation; the harmonization of sectoral laws; institutional coordination; public participation and free prior and informed consent (FPIC); decentralization; benefit sharing and incentives; and private and public investments. The present study analyses each of these issues and highlights the implications for REDD+ implementation from a legal perspective. To provide a contextual understanding of REDD+ legal issues, particular reference is made to the national contexts of Mexico, Viet Nam and Zambia, as well as to specific case studies.

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5 On Tuesday 8 November 2011, Lusaka (Zambia), hosted by the Forestry Department, Ministry of Mines and Natural Resources; on Tuesday 15 November 2011, Mexico City (Mexico), hosted by the National Forest Commission, Head of the Legal Unit; and on Monday 21 November 2011, Hanoi (Viet Nam), hosted by the Institute of Strategy and Policy on Natural Resources and Environment, Ministry of Natural Resources and Environment.

6 Forestry Department, Ministry of Agriculture and Livestock, Ministry of Finance and National Planning, Ministry of Lands, Ministry of Justice and Legal Affairs, Environmental Management Agency and Development Agency (Zambia); Ministry of Natural Resources and Environment, Ministry of Justice, Ministry of Agriculture and Rural Development, Forestry Administration, Ministry of Planning and Investment, Viet Nam Environmental Administration, Climate Change Agency and NGOs (Viet Nam); Head of Legal Unit of the National Forest Commission and Secretary of Agriculture and Livestock, members of Parliament, representatives of civil society, international experts and NGOs (Mexico).

LESSONS LEARNED ON  
REDD+ LEGAL PREPAREDNESS

# Forest, land and carbon rights

## Key points

- A legal definition of carbon rights might be required to secure carbon ownership of individuals or groups involved in activities of forest carbon sequestration.
- Rights to carbon or benefits that flow from carbon should be distinguished from the rights to the carbon credit itself (or the title to the carbon emission reductions) in defining forest carbon rights<sup>9</sup>.
- Definitions of carbon rights may differ between states in relation to their association with the land (individual versus communal/private versus public).
- Different options can be considered at the national level to facilitate carbon.
- Transactions. These options will affect the potential need to separate property rights on carbon from other ownership rights (interests) on forest lands (e.g. usufruct rights).
- Forest carbon rights may be granted through registration in land administration systems.
- Registries and certificates might include rules concerning the control over transferability, inheritance, extinction and subdivisions of carbon property rights.

While contributing to climate change mitigation, the financial arrangements being developed under the voluntary markets for enhancing carbon stocks in forest lands have also created the need for developing countries to define who owns carbon in forest lands. However, owning an intangible resource such as carbon poses challenges for traditional property law systems. Specifically, ownership of carbon property rights and the role of the government in relation to the recognition of communities' customary rights over their lands are important aspects related to the sharing of benefits generated by carbon sequestered by forests. However, carbon property rights are often difficult to assure if land tenure rights are insecure.

In the absence of specific REDD+ laws, carbon rights frameworks might differ in each country depending on existing legislation. These rights can also be conferred by contract based in either civil or common law systems.

Usually, forest ownership is associated with land ownership (Romano and Reeb, 2006). However, because of its unique and immovable nature, land is frequently subject to simultaneous uses. The definition of property rights on forest and land are largely associated with its nature, but their legal regime can differ from those applied to intangible resources. Therefore, the identification of land ownership is not always sufficient to ensure ownership over the carbon stock in a forest (Christy, Di Leva, Lindsay and Talla, 2007). Nevertheless, it could be reasonably asserted that *a priori* forest carbon is owned by the person who owns forest lands, or who is entitled to usufruct rights and forest user rights (Forest carbon tenure in Asia-Pacific, FAO, 2011). REDD+ will impact owners of land and trees whether or not they are deemed to own the carbon in their trees, and the non-recognition of local carbon ownership are likely to minimize local incentives for REDD+ to succeed (La Viña, A. & Lynch, O.J. 2010).

The need to secure forest carbon rights also raises the question of whether such rights constitute a new property separate from the land, or whether those rights are associated with the land. These debates are largely circumscribed by each country's national legal regime. However, the debate is open in many countries (e.g. Australia)<sup>7</sup> and there are limitations to both approaches. Further development of legal frameworks at the national level is necessary to ensure sustainable implementation of REDD+ schemes. This debate raises two major concerns. The first relates to the legitimacy of claiming ownership of carbon as a separate property when carbon is sequestered by forests and the necessary compensation for the services provided by REDD+ activities. The second relates to the adoption of specific measures that define duties and liabilities linked to transferable forest carbon rights. On the one hand, in countries where the government owns all carbon sequestration potential and there are no transactions, the state will presumably bear the risks and losses. On the other hand, if forest carbon sequestration rights are freely traded on the market, contracting parties should specify who is liable for the contract obligations (Costenbader J., ed. 2009).

In **Zambia**, the ownership of all trees and forest produce derived from customary areas, national forests, local forests, state lands and open areas is vested in the President on behalf of the Republic, until lawfully transferred or assigned under the Forest Act or any other written law (Forest Act, 1973). Currently, approximately 94 percent of total lands are

<sup>7</sup> State of the World's Forests. FAO, 2011 (Chapter 3).



customary lands occupied by tribes. Land allocation is carried out by chiefs and the headmen of villages through *de facto* management. Therefore, although *de jure* ownership remains vested in the state, there is no formalized system of devolving management rights to villages, and the customary land market is unregulated (IDLO, Country Studies, 2011). In practice, insecurity of tenure and absence of formal use rights signify that forest resources are often vulnerable to exploitation and subject to deforestation. For the time being, existing provisions in land, forestry and environmental laws can be the basis for a nationally appropriate and workable legal design for carbon rights. For example, the Land Registrar may issue a new certificate for transfer of any interest in land, which could include carbon rights (Lands and Deeds Registry Act, 1994). In addition, the recognition of rights to forest produce (Forests Act, 1973) could be relevant to a future definition of carbon rights, because it signifies a legal distinction between forests and land property rights. However, this has not been expressly recognized by the Government of Zambia and requires consideration before any such determination is made.

**Mexico's** laws do not specify who owns carbon, but we can presume that forest owners and right holders will be the direct beneficiaries. The clarification of land tenure rights is a crucial component of forest-based approaches to combating climate change and defining related carbon rights, especially as most (70 percent) of the forest covered land is communal, owned by *ejidos*. Customary law, indigenous rights and cultural practices are also instrumental for understanding the issues related to land tenure rights and community forestry practices. Article 7 of the Forest Sustainable Development Law (2003) considers sequestered carbon as an environmental service. However, there is no specific reference regarding the ownership of sequestered carbon. This might signify that forest owners, such as *ejidatarios*, communities and private owners, will be the direct beneficiaries of incentives for carbon sequestration. In this regard, article 32 underlines the fact that forest owners or right holders should be directly involved in the multiple uses of the goods and environmental services provided by forests, including carbon sequestration. According to the forest law and civil law, given that trees are indivisible units, there is no doubt that the carbon revenues and benefits generated by carbon sequestration belong to the land owners<sup>8</sup>.

The legislative reforms to the country's Environmental Law (1988) and Forest Sustainable Development Law, published in the Official Gazette on June 2012, focus on: the development of economic instruments to promote environmental services that provide benefits to forest owners and forest land users; and the inclusion of REDD+ safeguards in light of the latest results of the Conference of the Parties of the UNFCCC and the national REDD+ strategy. All economic instruments will be considered as a means to promote environmental services, thus establishing a legal basis for new mechanisms supporting the principle that who conserves will receive the benefits from the services provided. Forest land owners in particular will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests (articles 133, 134bis of the Forest Law). In addition, according to 'Proárbol' technical rules for its payment for environmental services (PES) programme, there should be an agreement (*convenio de adhesión*) between regional and sub-regional entities acting for the Comisión Nacional Forestal (CONAFOR) and the beneficiaries of 'Proárbol' subsidies that are: a) individuals (Mexican citizens) or are allocated to b) *ejidos* and communities, or c) associations/private companies -- to comply with activities of reforestation, and forest protection, conservation, plantation, and payments for environmental services (etc.). (Carbon Rights in REDD+: The case of Mexico, ODI, 2011).

In **Viet Nam**, for the first time the Law on Forest Protection and Development (2004) stipulates options for the allocation of existing forest resources to entire village communities, thus providing the legal basis for community forestry ownership titles on carbon. More than one million households have now been issued with certificates for land ownership, either in natural or planted forests. In September 2007, the Ministry of Agriculture and Rural Development (MARD) launched a USD61 million programme to facilitate the process of forests and forest land allocation. It set an ambitious target to be reached by 2010, stating that all areas of forests and forestland are to be allocated to local communities, individual households and other economic entities through the provision of land use rights certificates. These certificates would be used to identify who is entitled to benefit from forest carbon revenues. The Land Law (2003) establishes the function of people's councils in supervising the implementation of the laws on land within their respective localities. These laws could be used to guarantee equitable carbon ownership rights to local communities. The law specifies when land use rights, issued by the Ministry of Natural Resources and Environment (MONRE) shall be registered. Certificates of land use rights shall be issued for each parcel of land. The certificates of land use rights could include the recognition of carbon

<sup>8</sup> Contribution from Dr. Sergio Arias, Head of Legal Unit, (CONAFOR). In Mexico, most of forest lands are owned by *ejidos* and communities, also known as social community, or by private owners. Compared to water user rights under the form of concessions, as water resources belong to the country, trees and forests are owned by privates or communities and require a permit to be managed, which is less complicated to obtain.

rights to land users as interests that run with the land and can be registered accordingly. MONRE could ensure collective carbon rights in parcels of land used by a community of citizens when issuing the related certificates. In addition, the State Committee for Ethnic Minority and Mountainous Area Affairs has paid great attention to land use rights of ethnic minorities on forests and forestland. Resolution 30a/2008/NQ-CP has some special articles to ensure that tenure rights of ethnic minorities on forests and forestland are respected and properly implemented<sup>9</sup>.

### *LESSONS LEARNED*

Existing land, forestry and environmental laws provide a starting point for establishing forest carbon ownership, although the challenge posed by overlapping or unregistered claims to land should be addressed beforehand. Also, whether existing use rights include the right to create and benefit from a forest carbon asset is a matter that would benefit from clarification (Zambia). PES schemes might also be a valuable option for REDD+ programmes, while taking into account the need to specify the criteria of eligibility and norms defining the nature and ownership of carbon rights. For example, reforms aiming to harmonize PES definitions in forest and environmental laws have currently been approved by the Congress of Mexico, although carbon rights have not been specifically defined<sup>10</sup>. In Viet Nam, the specific regulations on the allocation of specialized use of forest lands could be used for the purpose of carbon sequestration and for recognizing collective carbon rights. If mechanisms are available to ensure equitable sharing of benefits within the community, Resolution 30a/2008/NQ-CP could also be seen as linking carbon ownership with ethnic minority tenure rights on forest lands taking into consideration gender equality in tenure governance.

<sup>9</sup> Revised standard joint programme document. UN-REDD Viet Nam Programme. 2009.

<sup>10</sup> For more information please see the attached link related to the UN-REDD Newsletter containing the article on Mexico REDD+ legal reforms: [http://www.un-redd.org/Newsletter28/Mexico\\_REDD\\_Legal\\_Reforms/tabid/104165/Default.aspx](http://www.un-redd.org/Newsletter28/Mexico_REDD_Legal_Reforms/tabid/104165/Default.aspx)





# Recognition of customary rights

## Key points

- Engagement of customary land owners is required to ensure the successful implementation of REDD+ at the local level.
- Statutory law should be aligned with customary practices to avoid potential conflicts over land that could interfere with REDD+.
- Customary land owners must give their free, prior and informed consent to decisions affecting their lands.
- Effective and equitable local property rights of men and women are needed to identify beneficiaries of REDD+ revenues.
- Protection of the integrity of community and indigenous lands should be guaranteed by law. Existing customary land claims can be incorporated into national formal legal frameworks<sup>9</sup>.
- Women and customary rights to forests and land resources need to be recognized to guarantee an equitable distribution of REDD+ benefits.

a Statutory recognition of customary land rights in Africa. An investigation into best practices for lawmaking and implementation. Rachael

Customary use rights may be understood as the access, control and use of land according to long-standing principles, values, customs and traditions, including seasonal or cyclical use, which operate outside the formal legal system. These rights are associated with traditional land administration institutions and customary law that define how rights are ruled, allocated and preserved. Gaps and inconsistencies may exist between statutory and customary law. It has been confirmed that the concept and practice of customary law in forest land tenure play an important role for rural communities. For example, it is important to note that while women and men have differentiated knowledge about, uses for, and access to forests, women are the primary users of forests. Therefore, the roles women play as leaders, participants and beneficiaries in REDD+ must be carefully considered and reflected at every stage of policy and programme development<sup>11</sup>.

In general terms, current government policies can conflict with traditional conceptions of land tenure and use rights. This can occur because land and forest administrators at different levels are sometimes unaware of the role and significance of customary systems. Their lack of knowledge limits the extent to which customary norms and rules can be incorporated into formal land management practices<sup>12</sup>. The challenge is to promote these changes in a way that allows individuals to assimilate these laws as a reflection of their culture. In cases of legal reforms that entail substantial changes in people's understanding of their customary rights, the levels of compliance are lower due to lack of local acceptance.

REDD+ has impacts on and is affected by customary land ownership in two key ways. On one hand, as much of the forest land that will become part of REDD+ is customarily owned or occupied, REDD+ will be ineffective without the full participation of customary land owners. On the other hand, REDD+ may pose threats to land users and customary land owners where insecure land tenure or inadequate protection from state authority can make local communities and indigenous peoples vulnerable to dispossession. Care must be taken to ensure that customary land owners give their free, prior and informed consent to decisions affecting their lands<sup>13</sup>. In addition, greater acknowledgement of the role of customary tenure will be required. This should be formalized in REDD+ readiness plans and associated legislation<sup>14</sup>.

Forestry law already faces critical problems in relation to local practices and indigenous peoples, particularly the overlapping of logging concessions and illegal logging on customary lands. REDD+ has the potential either to perpetuate or alleviate many of these problems.

Recognizing that REDD+ has the potential to threaten their land, rights and livelihoods, the Indigenous Peoples Global Summit on Climate Change adopted the Anchorage Declaration, which calls for full and effective participation of indigenous peoples in REDD+ decision making and the recognition of indigenous self-determination. The Anchorage Declaration states that: "All initiatives under Reducing Emissions from Deforestation and forest Degradation (REDD)

<sup>11</sup> The Business Case for Mainstreaming Gender in REDD+. UN-REDD Programme. 2011.

<sup>12</sup> Statutory and Customary Forest Rights and their Governance Implications. The Case of Viet Nam. IUCN. 2008.

<sup>13</sup> Indigenous people and customary land ownership under domestic REDD+ frameworks: a case study of Indonesia, Glen Wright, Law, Environment and Development Journal, 2011.

<sup>14</sup> Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper #11. USAID. 2011.

must secure the recognition and implementation of the human rights of Indigenous Peoples, including security of land tenure, ownership, recognition of land title according to traditional ways, uses and customary laws and the multiple benefits of forests for climate, ecosystems, and Peoples before taking any action<sup>15</sup>.

Given these concerns, developing countries must be assessed on their recognition of customary land ownership and the protection of rights related to the implementation of REDD+ mechanisms.

In **Zambia**, a high percentage of lands are held under customary tenure and most of the remaining state land has been transferred under leasehold<sup>16</sup>. Customary land is occupied by 73 tribes, headed by 240 chiefs, eight senior chiefs and four paramount chiefs. Land allocation is carried out by chiefs and the headmen of villages through *de facto* management. So far, management at the local level does not contain any provisions for the sustainable management of natural resources relevant to REDD+ such as agriculture, grazing, energy and other forest-based industries. Residents in customary lands can alter the nature of their rights to *de jure* control and thereby increase security of tenure in two ways: the conversion of customary to leasehold tenure under the Lands Act and lands regulations; or perpetual succession to land through incorporation under the Land (perpetual succession) Act. However, because customary tenure is already seen as legitimate *de facto* ownership of lands, many communities do not see the benefit of formalizing titles, which could leave them vulnerable to subsequent regulations by national authorities in the political administration<sup>17</sup> (Country Study, IDLO, 2011).

In **Mexico**, following the adoption of the San Andrés Accords (1996), the Constitution was amended in 2001 to recognize the rights of indigenous communities to decide upon the conservation and management of their lands and habitats (article 2). Article 2 further includes the recognition that indigenous communities can manage and use natural resources found within their territories under the forms and modalities established by article 27 of the Constitution. In particular, article 27 constitutes the basis of the land law and guarantees the protection of the integrity of indigenous lands. It further establishes the basis for communal property through the legal formalization of the *ejidos*. These constitutional legal rights and obligations are particularly relevant for REDD+ and are reflected in the latest REDD+ reforms adopted in April 2012 to the Environmental Law and Forest Sustainable Development Law.

In **Viet Nam**, villages were traditionally the units that owned or had collective rights to use land and forest resources. The new formal land tenure regime known as 'public ownership of land' includes four types of tenured land in upland areas. Customary law has relatively clear regulations on the use rights of community members. These rights relevant for REDD+ can be summarized as follows: forest land and resources are owned by the entire community. They can be used and exploited by community members, who are treated equally in terms of the use of community land. Forest resources other than land, including forest products and water sources, are communally owned and can be used by all community members. Outsiders may exploit these resources only with the permission of the village chief. Village chiefs and community land guardians are responsible for controlling, protecting and resolving all land-related conflicts (...) <sup>18</sup>. On the other hand, FPIC is an important innovation for effective recognition of customary rights, particularly given the fact that Viet Nam has 53 ethnic minority groups, representing 16 million people, many of whom live in and around forests.

## LESSONS LEARNED

Communities should play a key role in developing rules, based on their local values and communal management plans, regarding the management of land and forest resources. National committees, such as national forest commissions, seeking a way to incorporate general provisions into framework laws and regulations, could be the appropriate forum to discuss commonalities and differences among customary practices across the country. An assessment of customary use rights covering a period of 20-30 years might facilitate the understanding of predictable practices related to the access, use and control of forest lands for the near future, thus encouraging REDD+ developments and sustainability. As women are the primary users of forests, they should take part in decision-making bodies and be informed about REDD+ programmes. In general terms, participatory law developments will be fundamental to ensure that local communities' values, as well as their cultural and ethnic principles, are reflected in provisions related to REDD+.

<sup>15</sup> The *Anchorage Declaration*, Indigenous Peoples Summit on Global Summit on Climate Change (2009), available at: <http://www.indigenoussummit.com/servlet/content/declaration.html>.

<sup>16</sup> It should be noted, however, that those figures are uncertain due to land conversions over recent years and further assessment is needed with a land audit planned for 2012.

<sup>17</sup> Similarly, it could be noted that there have been reports of unequal treatment for women and youth under customary systems (Country Study, IDLO, 2011).

<sup>18</sup> Statutory and Customary Forest Rights and their Governance Implications. The Case of Viet Nam. IUCN. 2008.

# Forest definitions and REDD+

## Key points

- Application of UNFCCC accounting rules for agriculture, forestry and other land use (AFOLU) can help countries to bypass the need for clear definitions, reduce leakage and promote multifunctional landscapes that include agro-forestry and food production.
- National legislators should carefully consider what legal options are needed to reform current laws to harmonize REDD+ terminology. This could consist of adapting existing definitions or incorporating new ones in national laws.
- A comprehensive approach to land-based emissions from UNFCCC, which would not depend on a forest definition, would further reduce emissions by enhancing carbon storage in agricultural production systems and systems linking agriculture and forests.
- Obvious overlaps between the category "Land Use, Land-Use Change and Forestry" and REDD+ frameworks should be considered and any definition that is relevant to both must be consistent with the other.

In many countries, forest loss or conversion might not be officially counted as deforestation. Therefore, there is a risk that in the current framing of REDD+ outcomes at ground level will depend on a variety of factors, including the operational definitions of (natural) forests, forest conservation, trees, deforestation, ecosystem services, and land degradation.

In the negotiations on reducing emissions from forests and other aspects of land use, there seems to have been an assumption that 'forest' is a clear concept that can be used in negotiated agreements for the post-Kyoto period. However, the lessons from the implementation of afforestation/reforestation in the Clean Development Mechanism (CDM) of the Kyoto Protocol show that the definition that was agreed under the Marrakesh Accords and has been used to date does not always correspond to what individual countries consider to be forest or non-forest. Therefore, a major challenge for the UNFCCC is to move to a more comprehensive approach to land-based emissions that does not depend on a definition of forest.

Large-scale conversion of natural forests and peat soils to plantations is unreported and unaccounted for in some developed countries because of the current LULUCF forest definitions. This has resulted in huge emissions loopholes. Obvious overlaps between LULUCF and REDD+ frameworks should be considered, and any definition that is relevant to both must be consistent with the other<sup>19</sup>.

The international debate has partially recognized these issues. A progression of concepts, from RED to REDD and REDD+, reflects a tendency to include an ever larger share of total land-use change. The logical end-point of this is to apply the same rules in developing countries and Annex I countries and account for all land use with a measurement protocol that ensures that there are no gaps between categories and is therefore not sensitive to details of definition (i.e., if the carbon stock in a type of land cover is not captured by one category it has to be included in another). Reducing Emissions from Any Land Use (or across all land uses) or REALU could be the logical next step in the REDD debate.

A more comprehensive REALU approach is likely to allow trees outside forest, agro-forestry systems and community-based forest management to be treated fairly in the rules, proportional to carbon stored and emissions avoided. It will likely also further reduce emissions by enhancing carbon storage in agricultural production systems and systems linking agriculture and forests<sup>20</sup>.

19 The Need for the Review of the UNFCCC's Forest-Related Terms, Definitions and Classifications, Civil Society Submission to the People's World Conference on Climate Change and Mother Earth's Rights. 2011.

20 Partnership for the Tropical Forest Margins (ASB). If we cannot define it, we cannot save it: forest definitions and REDD. Policy briefs. 2009.

## Case Study – Indonesia

In February 2010, it was reported in the international media that the Indonesian Forestry Ministry was “... drafting a decree to include oil palm plantations in the forest sector to comply with international standards in mitigating climate change.” In response to civil society’s reaction to this proposal, the Indonesian Government announced in April 2010 that this controversial initiative would not be pursued.

The conversion of natural forests, whether to wood plantations or oil palm plantations, creates substantial greenhouse gas (GHG) emissions, with up to 80 percent of carbon lost to the atmosphere, depending on the type of forest ecosystem and the type of plantation that replaces it.

The agreement on REDD+ contains a safeguard against conversion<sup>a</sup> and affirms that REDD+ activities should be undertaken in accordance with these safeguards, which should be promoted and supported: “actions<sup>b</sup> (...) are consistent with the conservation of natural forests and biological diversity, [and] 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”. It is very important that this safeguard is implemented.

a FCCC/CP/2010/7/Add.1, Appendix 1.2(e)

b Mitigation actions in the forest sector are specified under FCCC/CP/2010/7/Add.1 para 69 and include: Reducing emissions from deforestation, Reducing emissions from forest degradation, Conservation of forest carbon stocks, Sustainable management of forests and Enhancement of forest carbon stocks.

In **Zambia**, forests include trees and forest produce. Forest produce is defined expansively by the Forest Act to include bamboo, bark, bedding, bees, beeswax, boards, canes, and charcoal, among other items. Under the Forest Act ‘forest produce’ includes bamboos, trees, timber, flowers, fruits, fuelwood and seeds among others; ‘trees’ include bushes, climbers, coppice, palms re-shoots, saplings, seedlings and shrubs of all ages and of all kinds and any part thereof; and ‘local community’ means the residents within or adjacent to a local forest, Joint Forest Management Area or open area who by virtue of their rights over land including customary land tenure invest in and derive benefits from the sustainable utilisation of forest resources in their area. The recognition of rights relating to forest produce could be important to a future definition of carbon for REDD+ (Country Study, IDLO, 2011).

The legislative reforms passed in Mexico City on 24 April 2012, position **Mexico** as one of the first countries to legislate in support of efforts to reduce emissions from deforestation and forest degradation. Recognizing the need to reform environmental laws and harmonize legal inconsistencies for REDD+ implementation, the Mexican Congress has advanced a set of legal reforms to the country’s Environmental Law and Forest Sustainable Development Law. The amendments to these laws were also focused on harmonizing definitions of key terms such as forest degradation and deforestation. Key aspects of these legal amendments also include the definition of environmental services to emphasize the relation of their benefits with the functionality of the natural ecosystem and the individuals settled in the territory. In addition, it is now recognized that environmental services are regulated by the Forest Sustainable Development Law. Additionally, the concept of forest management has been adjusted to encompass the notion of environmental services and recognize their economic value. Forest land owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests<sup>21</sup>.

Enacted in 2004, **Viet Nam’s** Law on Forest Protection and Development (LFPD) states that forests include natural forests and planted forests on production forest, protection forests and special-use forest land (clause 1, article 3). However, the LFPD has no definition of forest degradation. In 2009, MARD supplemented the law by developing specific criteria for a definition of forest under circular no. 34/2009/TT-BNNPTNT. Such definitions are helpful, as they prevent barren lands from being classified as ‘forests’ for the purpose of REDD+. The Government regulates the management and use of special-use forests, protection forest and production forests, taking into account the function (natural forest, plantation forest); terrain conditions (mountainous land forests, wetland forests, mangroves); the tree type (woody forest, mixed forest); and the state of forest reserves (poor, medium, rich, very rich, or no reserve) (Country Study, IDLO, 2011).

<sup>21</sup> For more information please see the attached link related to the UN-REDD Newsletter containing the article on Mexico REDD+ legal reforms: [http://www.un-redd.org/Newsletter28/Mexico\\_REDD\\_Legal\\_Reforms/tabid/104165/Default.aspx](http://www.un-redd.org/Newsletter28/Mexico_REDD_Legal_Reforms/tabid/104165/Default.aspx)



## LESSONS LEARNED

REDD+ is a country-driven programme, and forest-related definitions and terminology should therefore consider national tree species; the forest ecosystem's intrinsic values; distinctions between forest and land classifications; forest ownership rights; specificities in deforestation and degradation processes (e.g. arid zones versus tropical/humid forests) should also take into account the need to comply with international standards and criteria (e.g. FAO definitions, UNFCCC). However, the primary objective of REDD+ in terms of climate change mitigation requires a better understanding of dynamics relating forests to other land uses (e.g. agro-forestry). Forest and land national inventories could facilitate that task, taking into account that measurement, reporting and verification (MRV) systems will need to be in place to effectively measure carbon stocks in forests. An important aspect will be ensuring consistency among the definitions contained in national laws and regulations.

### Deforestation

The conversion of forest to another land use or the long-term reduction of the tree canopy cover below the minimum 10 percent threshold.

Explanatory note: Deforestation implies the long-term or permanent loss of forest cover and implies transformation into another land use.

Such a loss can only be caused and maintained by a continued human-induced or natural perturbation. Deforestation includes areas of forest converted to agriculture, pasture, water reservoirs and urban areas. The term specifically excludes areas where the trees have been removed as a result of harvesting or logging, and where the forest is expected to regenerate naturally or with the aid of silvicultural measures. In areas of shifting agriculture, forest, forest fallow and agricultural lands appear in a dynamic pattern where deforestation and the return of forest occur frequently in small patches. To simplify reporting of such areas, the net change over a larger area is typically used. Deforestation also includes areas where, for example, the impact of disturbance, overutilization or changing environmental conditions affects the forest to an extent that it cannot sustain a tree cover above the 10 percent threshold.

### Forest Degradation

Changes within the forest which negatively affect the structure or function of the stand or site, and thereby lower the capacity to supply products and/or services.





# Major drivers of deforestation and forest degradation

## Key Points

- Major drivers of deforestation and forest degradation are often outside the forest sector. Therefore legal reforms should be cross-sectoral.
- Strategic land-use planning frameworks should be established at the national level to harmonize agricultural, mining, forest and other land uses according to REDD+ priorities.
- Illegal logging, unclear forest and land rights, lack of secure tenure for local people, gaps in land-use planning, fragmented laws and unclear legal regimes related to the conversion of forest to agricultural lands are considered examples of legal barriers driving deforestation and forest degradation.
- There are a number of synergies between REDD+ and agricultural sector objectives that can be realised through cross-sectoral coordination.

For REDD+ to succeed, policies and measures should effectively address the drivers of deforestation and forest degradation. Deforestation and forest degradation contribute to climate change by releasing carbon stored in the soil into the atmosphere. Recent studies suggest that 10 percent of current global GHGs are caused by deforestation<sup>22</sup>. However, some of the main drivers of deforestation are often outside the forest sector. Therefore cross-sectoral legal solutions are likely to be most appropriate in addressing these issues. The alignment of REDD+ with the objectives of other sectors will also be important to ensure national ownership and political sustainability of REDD+.

The agriculture and energy sectors in particular are closely linked with forests and consequently with REDD+. Agriculture is the primary driver of deforestation in Latin America and Asia<sup>23</sup>. As global demand for agricultural products increases, the competition between agriculture and forests is expected to increase. Biofuel production for renewable transport energy is partly driving this demand for agricultural products and land, which links forests to the energy sector. Forests also provide biomass energy, which 2.7 billion people, mainly in rural areas in developing countries, rely on. Because of these close links, there is a need for a better understanding about how other sectors will affect the implementation of REDD+ legislation and where tradeoffs and synergies exist<sup>24</sup>.

Land-use planning at a landscape scale will therefore be fundamental to support policy and legal options that are appropriate for agricultural intensification, REDD+ and other land uses (food production, mining, infrastructure developments, etc.). Government policies on land tenure and land-use planning, and the capacity to implement and enforce these policies, will also affect the relation between forests and agriculture. So far, land tenure systems that consider forests as 'unproductive' have been the major cause of deforestation in Brazil and other parts of Latin America (Jaramillo and Kelly 1997; Southgate *et al.* 1991). It is widely known that, while the objective of REDD+ is to reduce greenhouse gas emissions from the forest sector, the objective of the agriculture sector in most countries is to increase economic development and contribute to local and national levels of food security. However, there are a number of synergies between REDD+ and agricultural sector objectives. The forest and agricultural sectors will ideally be able to coordinate their actions to build on these synergies and avoid the existing tradeoffs between economic development, agricultural production, and deforestation and forest degradation.

Government policies on land tenure and land-use planning, and the capacity to implement and enforce these policies also affect the linkages between forests and agriculture. In addition, property rights and land tenure systems play a critical role in driving deforestation. So far, the definitions of environmental services contained in forest, environmental, and agricultural laws could be harmonized and references could be made to the services provided by stakeholders involved in REDD+ activities, thereby balancing REDD+ with other land priority uses.

22 New study published in Science, 2012. The authors — led by Nancy Harris of Winrock International (Arlington, Virginia, USA) and including scientists from Applied GeoSolutions, NASA's Jet Propulsion Laboratory and the University of Maryland — used satellite-based analyses of tropical forest carbon stocks and tropical forest cover.

23 High levels of deforestation in Asia and particularly Southeast Asia are also due to timber extraction and illegal logging.

24 REDD+ and agriculture: A cross-sectoral approach to REDD+ and implications for the poor. Kristy Graham and Raffaele Vignola. REDD-Net. 2011.





In **Zambia**, charcoal production is one of the primary drivers of deforestation and forest degradation. The charcoal industry provides livelihoods for local communities that may undertake REDD+ activities, but it is also a source of income for people in the informal economy. As an alternative to developing and incentivizing alternative clean sources of energy, the Ministry of Energy and Water Development and the Forestry Department could reduce the pressure of the charcoal industry on indigenous forests by taking steps to implement existing national policies that seek to promote sustainability through efficient technology, pricing tools and revitalization of the plantation system. If Zambia is to address this driver and be consistent with REDD+ activities, it will have to provide an adequate substitute, which is in line with the goals of poverty alleviation and sustainable development, as a way of maintaining the social benefits that should flow from REDD+. Until today, overlapping institutional jurisdictions for the charcoal industry and illegal practices have resulted in inaction from government agencies. With regard to the impact of agriculture on REDD+ preparedness, attention should be paid to unregulated practices concerning allotments granted by traditional administrations on customary lands or tradeoffs on reserve lands that the Agricultural Lands Act (1960) does not have a mandate to address (Country Study, IDLO, 2011)<sup>25</sup>.

In **Mexico**, agriculture is a significant driver of deforestation and forest degradation due to the expansion of smallholder plots on customary and state lands, including protected areas, to compensate for low productivity. Therefore, agricultural laws and policies, as well as the land uses that promote deforestation and forest degradation, and the continued expansion of the agricultural frontier, are relevant to REDD+. For this reason, agricultural laws constitute one of the key areas of reform needed for an effective mechanism. Unauthorized use of non-timber products, illegal forest trade and change of forest lands also contribute to deforestation and forest degradation. Those acts are penalized by articles 417 to 419 of the Federal Criminal Code. To counteract illegal activities the Procuraduría Federal de Protección al Ambiente (PROFEPA) is currently enacting a series of programmes to ensure the conservation of forests. In addition, PROFEPA is promoting environmental committees to engage local communities in the protection of forest and the sustainable use of forest resources. They have been created within the *ejidos* where the assembly authorizes individual participation in the committee. Special forest operations have also been implemented to resolve critical issues in this field (Country Study, IDLO, 2011).

In **Viet Nam**, because of their significant contribution to the gross domestic product, mining and mineral exploitation activities are considered a factor in the degradation of forest land and deforestation. Mining and mineral exploitation laws and regulations will be important for REDD+ implementation, as subsurface rights often come before forest rights and can cause reversals in the way forests are managed to reduce emissions. The Law on Minerals (2010) prohibits mining activities in the areas of special-use forests, protection forests or areas planned for special-use forests or protection forests. However there are still conflicts between forest and mineral planning. Currently, mining and mineral exploitation are prioritized and often take place in natural forests, which results in forest loss. In addition, the UN-REDD Viet Nam Phase II Programme proposal lists the following four key drivers of deforestation and forest degradation: conversion to agriculture (particularly to industrial perennial crops); unsustainable logging (notably illegal logging); infrastructure development; and forest fires.

In Viet Nam, the most important economic sector is agricultural production, including pepper, rice, rubber, aquaculture and coffee. In particular, the development of industrial tree plantations is considered a driver of deforestation and forest degradation and poses challenges for REDD+. To reverse this trend, the MARD is encouraging the implementation of a scheme to support highland populations in finding replacement crops that would allow these communities to move from migratory to fixed farming, and to apply measures to improve and intensify the management of their lands.

In this regard, the Decision No. 124/QĐ-TTg/2012 approves the master plan for agricultural production development to improve the productivity, quality, competitiveness, effectiveness and sustainability of agriculture. The Decision provides for the development objectives of the master plan and describes orientations for land-use planning and agricultural development by commodity lines that include food crops, vegetables, soy bean, sugarcane, cotton, animal feed plants, commodities, rubber, various types of nuts, fruit trees, husbandry, forestry and fisheries. The Decision further outlines the principle approaches solutions for achieving the positive outcome of this plan and specifies the ministries responsible for the implementation of this Decision.

<sup>25</sup> The major problem here is customary land conversions but also the alienation of very large-scale allotments through streamlined procedures, including for the development of biofuels. See the Zambia Country Study (IDLO, 2011).

## LESSONS LEARNED

Economic development goals influence the primary objectives of policies and laws. At the same time, international treaties and agreements that take into account a human rights approach to protecting the environment, water, biodiversity, and forests from climate change and desertification, should become a priority for legislators and national parliaments, taking into account a human rights based approach. For REDD+ to succeed, it will be necessary to implement measures to highlight the potential long-term benefits and opportunity costs of avoiding deforestation and forest degradation and reducing land-use changes for agriculture, plantations, mineral and charcoal exploitation.

Cross-sectoral legal reform should clearly reflect a balanced approach to promoting development objectives. This is particularly true as forest conservation, sustainable management of forests and the enhancement of carbon stocks in forests could certainly be combined with agricultural production if intensified; mineral extraction and renewable energy production if well regulated; and agro-forestry practices if integrated in management plans. For this reason, a landscape approach is recommended for land-use planning.



# Harmonization of sectoral laws

## Key Points

- Strategic land-use planning reflecting communal rights on forest lands plays a key role in harmonizing sectoral interests.
- National and sub-national legislation should be harmonized to recognize indigenous peoples and local communities rights and benefits associated with REDD+.
- Contradictory laws will need to be resolved and land and forest regulations clarified to ensure that carbon-related benefits are allocated to those who depend most on forest cover including marginalized groups such as women, the poor and indigenous peoples.
- To establish clear legal mechanisms, the development of new national REDD+ laws and/or the reform of existing environmental or forest laws should pay particular attention to avoiding contradictions.
- Policy and legal adjustments should reduce human pressure on forests so as not to compromise poverty alleviation and economic development targets.

A combination of policy and legal options will be necessary for harmonizing REDD+ and agricultural priorities in countries. Critical areas of intervention include the regulation of forest clearing for agricultural expansion; targeted support for intensification in appropriate areas; targeted support for smallholder farmers; payment for environmental services; the promotion of agro-forestry, well-defined forest and land property rights; and clear land tenure systems. Those priority areas of intervention will play a key role for the effective implementation of REDD+, based on strategic land-use planning frameworks established at the country level (Sunderlin *et al.* 2009)<sup>26</sup>. When defining REDD+ terminology inconsistencies between national and sub-national legislation should be avoided (e.g. federal and state laws in Mexico). Local communities' rights and especially the rights of indigenous peoples and other marginalized groups and benefits associated with REDD+ should be recognized in national legal frameworks.

Certain countries have enacted REDD+ regulations (e.g. Indonesia). Complex and unclear national laws relating to forest, land rights, environmental approvals and foreign investments are likely to increase difficulties in implementing REDD+ and make it harder for project developers to establish pilot projects. Whether developing new national REDD+ laws or modifying existing environmental or forest law frameworks, both options can avoid contradictions and establish clear legal mechanisms. In particular, contradictory laws will need to be resolved and land and forest regulations clarified to ensure that carbon-related benefits are allocated to those who depend most on forest cover. Without these reforms, there is a significant risk that REDD+ projects will cause local residents to lose rights to more powerful interests<sup>27</sup>.

In addition, streamlining REDD+ legal procedures may reduce administrative difficulties for governments and transaction costs for investors<sup>28</sup>. Similarly, countries may reconsider outdated laws and legal concepts in their current legislation, such as the need to amend or insert the definition of payment for environmental services within the environmental and forest law, that could pose conflict for parties in their national REDD+ system (Costenbader J., ed. 2009).

Finally, REDD+ forest management or legislation that prohibits activities through bans or licensing and enforcement may not be enough to address drivers of deforestation and forest degradation. Adequate legal instruments should be designed to contribute to relieving human pressure on forests without compromising poverty alleviation and economic development targets. Economic incentives provided by REDD+ certainly contribute to that purpose.

In **Zambia**, the recent Urban and Regional Planning Bill of 2009, expected to be approved by Parliament, will regulate land-use planning regardless of land tenure or land administration systems<sup>29</sup>. Local district, municipal and city councils will now be the main authorities responsible for planning on state and customary lands. Each local authority will

26 REDD+ and agriculture: A cross-sectoral approach to REDD+ and implications for the poor. Kristy Graham and Raffaele Vignola. REDD-Net. 2011.

27 Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America. Lisa Naughton and Cathy Day. USAID. 2012.

28 Climate change and the forest sector. Possible national and sub-national legislation. Rosenbaum, K.L., Schoene, D. and Mekouar, A. FAO Forestry Paper. 2004.

29 Until now, the town and country planning Act cap. 283 (1995) is the only piece of legislation that guides spatial planning in Zambia. However, the planning process under the Act is restricted to land use planning of areas in state land only.

be required to: prepare an integrated development plan based on planning guidelines; receive and process planning applications; implement development plans; and promote sustainable land development. The planning guidelines will deal with issues including areas of environmental value, agricultural production and forest reserves, customary tenure, and private-public partnerships for land development. Consequently they could greatly contribute to REDD+ planning and solve conflicts regarding land management. In addition, the 2010 National Forest Policy is under consideration for final approval by the Cabinet. The draft national forest policy was developed in parallel with the country's preparation for REDD+ readiness under the UN-REDD Programme and addresses carbon sequestration, biological diversity and other natural resources functions of forests. It focuses on REDD+ activities achieved through integrated participatory management, improved law enforcement and private sector investment and aims to promote public and private partnerships to enhance investments, innovation and diversification in sustainable forest management. Cross-sectoral land reforms are under discussion in designing the draft Constitution of 2010. The draft Constitution doesn't create significant new legislative reforms but goes far in requiring the revision of all sectoral legislation affecting land interests, establishing guiding principles, suggesting potential areas for reform, addressing imbalances in land alienability and guaranteeing fundamental rights to individuals and indigenous communities. Finally, the forest sector should take advantage of the Environmental Management Bill that requires all sectors to develop environmental strategies as a pathway for harmonizing the implementation of REDD+ compatible policies with sectors that have an impact on forests and forest resources<sup>30</sup>.

In **Mexico**, recent efforts include the adoption of a General Law on Climate Change, published in the Official Gazette in June 2012, which would amend more than 30 existing laws and regulations, including the law for use of renewable energy sources. The General Law on Climate Change may facilitate compliance with climate change mitigation and adaptation, evaluation, and follow-up processes. The Law states that responsibility is shared among the federal, state and municipal governments. Each state highlights approaches that need to be clarified and are reflected in their climate change laws. This demonstrates the potential for different legal and policy solutions at sub-national levels (e.g. Mexico City, Veracruz, Chiapas – the Yucatan Peninsula Accord). The Climate Change Law of Veracruz, among its mitigation criteria, establishes the necessity to preserve and enhance carbon sinks through the reinforcement of current deforestation and forest degradation programmes. It establishes as a policy criterion a zero deforestation rate and emphasizes the role of PES for the conservation and sustainable management of state forests. Chiapas's climate change law was enacted in 2010. Forest conservation and carbon sinks are the guiding criteria of the State's climate change action plan. The Yucatan Peninsula Accord is the first regional climate agreement, balancing regional cooperation with respect for the autonomy of sub-national governments. It commits the States to create a climate fund, develop a regional adaptation strategy, and facilitate a regional REDD+ programme (IDLO, Country Study, 2011).

In **Viet Nam**, in addition to allocating lands, the Government of Viet Nam also establishes civil contracts with owners over forested lands, which could contribute to harmonizing interests in land use (Decree 01/CP of 1995 as amended in 2005 into the Decree 135/2005/ND-CP). These decrees regulate the assignment of land for the purposes of agriculture, plantations, agro-forestry and aquaculture farming.

The contractual assignment of production forest land will include assignment contracts of production forests being natural forests or planted forests (art. 15) and of land for planting production forests (art. 16). Contractual assignments may be stable assignments corresponding to the crop cycle, the business cycle, or stage-based assignments. Rights and obligations of the contracted and contracting parties are provided for in articles 9 and 10. According to MARD, along with forest and land allocations and leases, the Government of Viet Nam, under the five million hectare Reforestation Programme has invested in the protection of over two million hectares of concentrated forests in priority areas to contract for forest protection. The Draft UN-REDD Viet Nam Phase II will build on national and basic capacities in all forested provinces, recognizing the role of REDD+ in the national Social Economic Development Plan (SEDP) for the period 2016-2020. It will work with local stakeholders to ensure that REDD+ will be integrated into the annual SEDP and Forest Protection and Development Plan (FPDP) in pilot provinces, as well as the 2016-2020 provincial SEDPs and FPDPs, based on social and gender analysis, governance analysis, carbon data, and REDD+ opportunity cost analysis. However, there are still discrepancies in some of the current policies and programmes of the forestry, agriculture, natural resources and environment, transportation, and construction sectors<sup>31</sup>.

30 UN-REDD Programme. REDD Zambia National Programme Policy Brief. Forest management practices with potential for REDD+ in Zambia. 2012.

31 Draft- UN-REDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.



## LESSONS LEARNED

Beyond economic development targets, it is possible to distinguish three sets of drivers of natural resource conflicts: institutional and rule operationalization-related drivers; property rights-related drivers; and social, cultural and traditional values-related drivers. In general terms, natural resources-based conflicts are the result of different parties competing for resources due to confusion, distortions, misunderstandings, and policies and laws that are inadequately suited to the realities of their intended targets, and by unclear property rights<sup>32</sup>. Additionally, competing priorities and the power of market demand related activities such as mining, oil and agriculture production, represent economic incentives that undermine successful REDD+ implementation. A prerequisite for the harmonization of sectoral laws for REDD+ is a better understanding of the factors, processes or conditions that are considered as drivers of deforestation and forest degradation.

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<sup>32</sup> Formal institutions, local arrangements and conflicts in the northern Bolivian communities after forest governance reforms. Walter Cano Cardona. PROMAB. 2012.





# Institutional coordination

## Key Points

- REDD+ implementation will require a coordinated institutional framework to overcome misunderstandings and conflicts among those involved in REDD+ planning and implementation.
- Coordination should be cross-sectoral covering the national to local level to avoid gaps and conflicts in institutional mandates.
- Multilateral institutional strengthening may reduce country-related risks and help to raise REDD+ finance.
- Delivering REDD+ payments at the local level may require updated legal structures able to distribute REDD+ revenues.
- Forest and REDD+ coordination agencies/committees at national and sub-national levels can help ensure cross-sectoral coordination.

As political interest in REDD+ has grown substantially, so has the recognition that in most countries, successful national-level REDD+ mechanisms will require extensive and well-coordinated institutional preparation and governance reform<sup>33</sup>. REDD+ readiness should help institutions to coordinate dialogue at multiple scales and build capacity at all levels to monitor and implement REDD+ strategies and programmes.

In addition, a clear distinction between the different roles of the executive and legislative branch is needed. Parliaments have to be included to secure long-lasting political ownership of the REDD+ process and ensuring accountability and monitoring. Involving national parliaments is necessary to ensure political buy-in from the opposition and the executive. In several countries, the administration within forestry agencies will change as a result of new elections and this can create tension. For this reason, working with parliaments will ensure that all parties are informed on REDD+ matters.

At the institutional level, coordination challenges may involve: government departments, (e.g. in terms of joint responsibilities with forests and climate change, or agricultural, land, energy and forestry ministries); the production and conservation branches of forest ministries; national, regional or provincial governments; and government, the private sector and civil society<sup>34</sup>. In particular, care must be taken to monitor the implementation and impacts of new rules and institutions.

Clarity and coherence of institutional mandates related to REDD+ are crucial to overcoming misunderstandings and conflicts among those involved in REDD+ planning and implementation. In fact, gaps and conflicts in institutional mandates can lead to inaction, duplicate efforts or deter positive actions. Therefore, it is fundamental that legal and institutional frameworks have a high degree of cross-sectoral and multi-jurisdictional coordination from the national to local level.

Legal mandates are important to avoid the situation in which coordination agencies and committees increase bureaucracy. While central government coordination of activities will be required, these activities should be included in a framework of positive incentives to encourage compliance<sup>35</sup>.

In addition, institutional strengthening and guarantees issued by multilateral institutions may mitigate some of the country-related risks and help countries to raise REDD+ finance in advance of performance-based REDD+ payments. Disbursement of REDD+ finance at the national level may rely on existing procedures and agencies to mediate between implementers of REDD+ actions and governments. At the individual or village-level, delivering REDD+ payments may require updated legal structures, resource rights or contracts. However, most countries have some form of payment distribution networks that can serve this function<sup>36</sup>.

33 Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper #11. USAID. 2011.

34 Catalyzing REDD+ at the national level: Summary of experience so far. REDD-net. 2010.

35 FAO Legal Office. 2002. Law and sustainable development since Rio - Legal trends in agriculture and natural resource management. FAO Legislative Study 73. FAO.

36 Options for Managing Financial Flows from REDD+. Charlotte Streck, Manuel Estrada Porrua, Carina Bracer, Michael Coren. Climate Focus.





REDD+ will engage many agencies across sectors of government, including those overseeing infrastructure development, mining, foreign trade and tourism. To coordinate across sectors, forest and REDD+ coordination agencies could be created to be responsible for coordinating activities between the national and regional levels of government. National, regional or provincial multi-stakeholder REDD+ committees could be established to facilitate civil society engagement in the REDD+ process and promote dialogue between public and private institutions. Another solution could be strengthening zoning and the capacity of land-use planning committees as a means of improving coordination among institutions granting land rights and establishing a unified cadastre system (Peru Readiness Preparation Plan, March 2011).

The Government of **Zambia** has dedicated one component in its UN-REDD National Programme Document to strengthening the national governance framework for the implementation of REDD+. This component includes the reform of related institutional, legal and financial mechanisms. The National Climate Change Response Strategy recently finalized by the Climate Change Facilitation Unit (CCFU) of the Ministry of Tourism, Environment and Natural Resources (MTENR), proposes three models to coordinate climate change governance. An Inter-ministerial Steering Committee has also been established to negotiate a conclusive framework. Although the UN-REDD focal point is located in the forestry department, separate from the CCFU, the Steering Committee will probably establish a new institutional framework with REDD+ as one of the many climate change activities under the umbrella of a centralized National Climate Change Development Council (NCCDC). The MTENR, the Ministry of Finance and National Planning (MOFNP) and/or Office of the Vice President may chair the NCCDC. Members of the NCCDC will include representatives of key stakeholder groups and relevant ministries, who will be informed by expert working groups and overseen by high-level inter-ministerial and permanent secretary committees. Various cross-sectoral aspects of REDD+ would be undertaken by relevant implementing agencies to address sustainable forestry extension services, alternative energy, agricultural management, and accountable finance distribution systems. However, at the local level, councils frequently face difficulties in executing their duties due to outdated legislation. Some ongoing reforms could include creating appropriate legal and institutional structures by reviewing existing laws, and regulations to enact changes that ensure consistency between decentralized mandates and national laws. In addition, there is a strong traditional administration system that guaranteed by the Constitution, which should be respected as a legal requirement in implementing REDD+ projects (IDLO, Country Study, 2011).

In **Mexico**, under the Organic Law (2002) there are three federal secretaries with specific competences related to forests: the Secretary of Environment and Natural Resources (SEMARNAT), the Secretary of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) and the Secretary of Economy. Agencies operating under SEMARNAT that are relevant for forest management include: the national Commission for Natural Protected Areas, the National Biodiversity Commission, the National Institute of Ecology, PROFEPA, the National Water Commission, the Sub-secretary of Environmental Planning and Policy and CONAFOR. CONAFOR is the national REDD+ focal point, has the obligation to propose the value of environmental services and collaborates with SEMARNAT in the design and implementation of compensation mechanisms for carbon sequestration environmental services. Recently, to encourage participatory law developments, the Legal Unit of the National Forest Commission of Mexico has created a workspace to promote discussions and analyse forest, land, agriculture and environmental laws. The workspace could be used to further analyse cross-sectoral issues related to REDD+ implementation, in collaboration with the SAGARPA's legal unit. At the federal level, an Inter-secretarial Climate Change Commission (2005) was created by administrative decree to develop climate change adaptation and mitigation policies. Amendments have been proposed to the Organic Law to institutionalize the authority and competences of appropriate secretaries in relation to climate change objectives. The inclusion of specific REDD+ provisions in these amendments would strengthen the capacity of state agencies to implement REDD+ national programmes, ensure consistency among policies and provide certainty to investors and beneficiaries about the responsible institutions governing REDD+ decision making. It would also be advisable for the implementation of the REDD+ strategy to include specific mechanisms to coordinate Federal and State Climate Change Technical Commissions (CTC-REDD+).

In **Viet Nam**, MARD, specifically the Viet Nam Administration of Forestry (VNFOREST) provides national leadership on REDD+. This includes leading the international negotiations on REDD+ and the development and implementation of the National REDD+ Action Programme (NRAP)<sup>37</sup>. MARD chairs the National REDD+ Steering Committee and the NRAP's Executive Board, both of which consist of representatives from all relevant ministries. MARD also hosts the Viet Nam REDD+ Office. In December 2008, the Prime Minister issued Decision No 158/2008/QĐ-TTg approving the National Target

37 The NRAP was approved by the Prime Minister only in June 2012. Implementation has not really started, yet.

Programme to Respond to Climate Change (NTP-RCC). A National Standing Office was established with representatives of different ministries with responsibilities for coordinating efforts to implement NTP-RCC. Under the NTP-RCC, MARD is responsible for the forest sector. A MARD Action Plan responding to climate change was developed that also made reference to REDD+. Recognizing the need for inter-agency coordination, the government introduced various directives<sup>38</sup>. These directives aim to overcome weaknesses in forest management, ensure law enforcement and improve effectiveness of state management in the forest sector. However, there are still obstacles to improving inter-agency cooperation due to lack of financing and human resources, as well as conflicting legislation, policy or guidelines. In the near future, UN-REDD Viet Nam Phase II Programme will undertake a range of actions to further strengthen the capacities of key agencies and institutions for effective implementation of REDD+. MARD and MONRE are also expected to collaborate closely to integrate REDD+ into land-use planning. MARD leads on forestry and MONRE on land planning and management. The Ministry of Planning and Investment (MPI) and the Ministry of Finance are leading ministries on planning, budgeting and official development assistance management, and will also be members of the National REDD+ Steering Committee and executive board of the NRAP. MARD/VNFOREST is also expected to work particularly closely with MPI and local authorities to integrate REDD+ in social economic development planning at different levels<sup>39</sup>.

### LESSONS LEARNED

REDD+ implementation will require institutional, legal and financial reforms. REDD+ strategies and programmes already include REDD+ coordination mechanisms such as the NCCDC in Zambia, the Federal and State CTC-REDD+ in Mexico, and the National REDD+ Steering Committee in Viet Nam. Presumably, REDD+ could contribute to strengthening governance mechanisms, providing knowledge, tools and adequate resources to appropriate national and sub-national entities and agencies, if mandates and responsibilities are clearly defined. However, merely creating committees and councils will only add bureaucracy if real legal mandates, incentives and penalties for inaction are not appropriate. REDD+ focal points are very often based in the ministries of forests. However, the ministries of finance, energy, transport, agriculture, livestock, tourism, and justice should always be consulted to ensure participatory decision-making processes for decisions affecting REDD+. Local governance structures are often ineffective due to both a lack of resources and capacities, and outdated laws. REDD+ could be catalytic in encouraging legal reforms to update appropriate environmental laws, based on multi-stakeholder processes where the civil society, local communities and women are equitably represented. National parliaments have a central role in guaranteeing stability and long-term effects of REDD+ reforms, and helping establish clear and transparent legal frameworks that will support equitable and efficient REDD+ implementation.

38 Prime Minister's Directive 08/2006/CT-TTg and Directive No.1685/2011/CT-TTg.

39 Draft - UN-REDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.



# Public participation

## Key Points

- Public participation is one of the most widely recognized principles of sustainable development and should be applied to REDD+ implementation at all levels to promote participatory law development.
- Participatory processes facilitate institutional cooperation in terms of sharing relevant information before a decision affecting indigenous peoples, forest-dependent communities is made, and building on their capacities and knowledge concerning REDD+ and forest law.
- Participation is a key approach to address tenure-related issues, identify land uses in areas selected for REDD+ projects and prevent or resolve local conflicts.
- National legislation will have to identify the responsibility of national and local authorities in relation to access to information and the participatory rights of forest-dependent communities.
- For indigenous peoples, FPIC can be guaranteed through adequate REDD+ planning as well as recourse mechanisms to address their complaints.

Public participation, supported by transparency and access to justice, is one of the most recognized principles of sustainable development<sup>40</sup>. Since the United Nations Conference on Environment and Development there has been widespread agreement in international legal instruments dealing with the environment and socio-economic development, that active 'participation' by affected groups and civil society is not only desirable but necessary if sustainable development objectives are to be met. These instruments reflect the emergence of three dimensions of the concept of 'public participation'.

First, people should be accorded the opportunity to participate in official socio-economic development decision-making processes and activities that have an impact on their lives and well-being. Secondly, to participate fully, the public must be provided with, or at least have access to, adequate information concerning the decisions and activities of government. Thirdly, those whose rights are affected by state decisions should have a right of access to justice. States should therefore ensure that all persons have effective access to relevant information held by public and private actors regarding sustainable development issues. Effective participation also depends on attention to disparities within societies and removal of obstacles to participation by women<sup>41</sup> and vulnerable groups such as indigenous peoples and minorities or the impoverished<sup>42</sup>. Proactive steps should also be taken to allow communities to develop their own REDD+ projects.

In relation to REDD+, multi-stakeholder participatory processes facilitate institutional cooperation and provide opportunities to relevant branches of the government at different levels for exchanging information before a decision is made. Effective and meaningful public participation may contribute to building capacities and raising awareness among forest-dependent communities about REDD+ mechanisms, and improve their knowledge with regards to existing forest and environmental legislation. In particular, participatory processes may help in identifying land uses in areas selected to develop REDD+ projects and prevent or resolve local conflicts. Thus, multi-stakeholder participation is fundamental to addressing tenure-related issues<sup>43</sup>. Therefore, national REDD+ institutions must prioritize the recognition and clarification of rights to guide the process of realizing "full and effective participation"<sup>44</sup>. Moreover, local governance groups must be supported with training on how to negotiate their rights to the land and resources they use, and how to take effective advantage of the benefits currently available from REDD+<sup>45</sup>.

In the context of REDD+ stakeholder engagement, objectives may range from simply raising awareness about climate change and the role of forests, to determining how benefits from a REDD+ programme will be shared within a specific community.

40 See Principle 10, 1992 Rio Declaration. See also the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (25 June 1998) (in force 30 Oct. 2001).

41 "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) highlights the significant roles rural women play in the economic survival of their families, and the right they have to participate in the elaboration and implementation of development planning at all levels, and to participate in all community activities".

42 Sustainable Development Law. Principles, Practices and Prospects. Marie-Claire Cordonier Segger and Ashfaq Khalfan. Oxford. 2006.

43 Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

44 Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper #11. USAID. 2011.

45 Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America. Lisa Naughton and Cathy Day. USAID. 2012.

Understanding the type of decision-making process being targeted for stakeholder engagement can help inform the identification of objectives and relevant stakeholders. Depending on the objective of stakeholder engagement and the type of decision being made, different actors may be considered stakeholders in any given process. Individuals or groups that have a vested, direct interest in forests, agriculture and rural development may all be key stakeholders for REDD+. Stakeholders can be grouped into government or public sector, civil society, private sector, the general public and consumers, and the external community, such as international financial institutions. They can also be rights-holders such as property owners, women, indigenous peoples and tribal groups, communities or individuals that hold traditional or formally recognized usufruct (and/or other) rights to land or resources that will be affected by the decisions being made<sup>46</sup>. In addition, to include Free Prior and Informed Consent (FPIC) mechanisms in the REDD+ processes, operational handbooks can be used by countries for the participation of indigenous peoples that include the FPIC Principle, such as the *Joint Guidelines on Stakeholder Engagement of the FCPF and UN-REDD Programme*<sup>47</sup> as well as the *UN-REDD Programme Guidelines on Free Prior and Informed Consent*<sup>48</sup>.

Overall, national legislation will have to identify the responsibility of national and local authorities in relation to the rights of indigenous peoples and forest-dependent communities. This may include the obligation to follow a participatory consultation process prior to the approval of a REDD+ project; the obligation to obtain free prior and informed consent from key stakeholders and land user and to respect refusal; the obligation to explicitly specify who will receive compensation under the REDD+ project and on which basis<sup>49</sup>; and the obligation to follow specific procedures in all these phases. The law can also create obligations to ensure the publication of key updated information on REDD+. This would cover what type of information, in what forms and within what timeframes the information should be made public and comprehensible in local dialects, and which authority should be responsible<sup>50</sup>. In addition, it should be ensured that information is accessible in remote areas, possibly in collaboration with local authorities.

In **Zambia**, the recently enacted Environmental Management Act (2011) reflects the international obligations on public participation and access to information. It states that "the people shall be involved in the development of policies, plans and programmes for environmental management" and "the citizen shall have access to environmental information to enable the citizen to make informed personal choices".

The MTENR must also prescribe under a statutory instrument how 'the right' to participation in decision making on policies, strategies, plans, laws and regulations will be ensured, including through public review of documents and public hearings. The National Policy on Environment of 2007 aims to 'integrate' local representatives into the decision-making process to empower local communities in the management of natural resource. However, in practice the implementation of these promises has been stalled due to a lack of capacity. The Strategic Programme for Climate Change Resilience, implemented by MOFNP, is an interesting model for REDD+. The Programme is based on innovative social and financial structures that allow communities to act as key stakeholders in early warning systems, joint decision-making and the implementation of resource management. In particular, the Programme establishes a two-way information flow for decision making, emphasizing the participation of local communities in developing Local Areas Plans (LAPs) assisted by NGOs and supported by specialized provincial units.

**Mexico** *comunidades* and *ejidos* are legal entities that have the right to govern themselves, define how they will use their land and establish the boundaries of such uses within the communal properties. Great efforts will be required to ensure that these communities have the knowledge and skills to decide whether and how to participate in REDD+. Currently, CONAFOR provides outside technicians to communities with PES contracts. They are exploring the possibility of hiring and training technicians to live in the communities. Support for this capacity building process will be provided by the central government, the international donor community and potentially from a payment for performance system of REDD+. Mexico should also seek opportunities to empower women in forest communities as part of its REDD+ capacity building and implementation efforts. Because most REDD+ projects will probably be located in areas where forest land is communally owned, the key to improving the status of women in those areas is to find ways for women to participate in community decision making. The CTC-REDD+ should seek to ensure that organizations representing women and younger people have greater participation in the development of the REDD+ strategy<sup>51</sup>.

46 A draft framework for sharing approaches for better multi-stakeholder participation practices. Florence Daviet. World Resources Institute. 2010.

47 [http://www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=7047&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=7047&Itemid=53)

48 [http://www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=8717&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53)

49 Indigenous Peoples' Land Rights and REDD: A case study. Sophie Lemaitre. RECIEL 20 (2). 2011.

50 Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

51 Case studies on REDD+ and carbon rights. Property rights and resource governance project (PRGRP). USAID. 2011.





In **Viet Nam**, a National REDD+ Information System (NRIS) will be set up with UN-REDD Phase II Programme support. The NRIS will be the main access point for all information on the implementation of national REDD+ policies and measures, and the ways in which REDD+ safeguards are being addressed and respected throughout the implementation of REDD+ activities. The accessibility for all REDD+ stakeholders (institutions, international organization, NGOs, communities, participants, etc.) and the general public will be granted through the internet and digital archives. The NRIS will be used to show compliance with all the REDD+ safeguards<sup>52</sup>. The NRIS will ensure that all reports of forest assessments by local communities and reports on the integration of their plans in the provincial SEDP and FPDP will be publicly available. Particular focus will be placed on the collection of REDD+ information and its translation into useful and accessible communications materials. As the system will be web-based, materials will be shared digitally and made accessible to all stakeholders across Viet Nam and the region. The UN-REDD Viet Nam Phase II Programme will also support NRAP in achieving REDD+ readiness by ensuring that all rights-holders in supported pilot provinces have the capacity and opportunity to provide or withhold their consent for demonstration activities proposed in their localities. A priority of the NRAP will be to establish a cadre of interlocutors in each pilot province, which may require a team varying in size from 20 to 100, depending on the size and diversity of the provinces. Each year, by a specified date, a full report on the previous 12 months will be prepared and delivered to the executive board to ensure the right to FPIC is applied and respected. A National REDD Network with six technical working groups have also been established where participation, in planning takes place to some extent<sup>53</sup>. The National REDD Network has the overall coordination function and supports the development of REDD+ readiness in the context of efforts by the Government of Viet Nam to address climate change mitigation and adaptation, as reflected in the NTP-RCC for the period 2009-2015. Decisions made by the National REDD Network will be presented to the National REDD+ Steering Committee.

## LESSONS LEARNED

A human rights-based approach apply to REDD+ discussions regarding public participation, as both FPIC and consultation regarding potential changes in resource uses that could impact the livelihoods of indigenous peoples, women, and other local communities ensure the respect of basic human rights principles. States have an obligation to consult indigenous people in decisions affecting them to avoid the future imposition of REDD+ decisions without their approval. States must allow indigenous peoples and women to continue to live as distinct communities on lands to which their cultures remain attached<sup>54</sup>. FPIC processes can empower communities by changing the basic terms of engagement and can help even the most marginalized groups to participate in the decision-making process and negotiate an equitable share of REDD+ benefits<sup>55</sup>. Therefore, the right to be informed and have access to information should be guaranteed by the state. In this regard, establishing guidelines for access to all policies, regulations, reports, environmental strategies; enabling the participation of local communities in developing LAPs (Zambia); making efforts to ensure that organizations representing women and young generations have greater participation in the development of the REDD+ strategy through CTC-REDD+ (Mexico); developing a NRIS (Viet Nam); and ensuring the participation of all rights holders in REDD+ supported pilot provinces (Viet Nam) represent concrete actions already undertaken by countries that need to be effectively implemented.

Procedures that guarantee consultation and consent are also important. Working with indigenous peoples and local communities to make sure they are legally empowered to participate in REDD+ requires ensuring they have the knowledge and capacity to assert their rights to consultation and consent, and that their cultural practices and traditional decision-making systems are integrated into these processes. For example, while certain communities may choose to delegate decision-making authority to a representative or chief, others may require group consensus in order to provide consent. It is important to recognize that there is no “one size fits all” approach to consultation and FPIC, so processes should be tailored carefully in collaboration with communities to ensure legitimacy. In the context of REDD+, affected communities may live in remote areas and require sensitization in local languages, requiring sufficient time and resources that should be accounted for in activity budgets.

52 Including “respect for the knowledge and rights of indigenous peoples and members of local communities”, “full and effective participation of relevant stakeholders” and “actions (...) to enhance other social and environmental benefits”. UNFCCC, Decision 1/CP.16, Appendix II, paragraph 2 (c)-(e).

53 Draft- UN-REDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.

54 A/HRC/12/34, para. 41.

55 Hertz, S, La Vina, A, Sohn, J. Development without Conflict: The Business Case for Community Consent, WRI, 2007.

# Decentralization

## Key Points

- In recent forest law reforms, decentralization processes related to local forest management have received increasing levels of attention.
- Through decentralization, forest-dependent communities can participate more actively in REDD+ decision-making processes.
- Forest administration is also closely linked to land-use regulation that will affect REDD+ and is typically a local responsibility.
- Qualified staff, which could come from external sources, and financial support are necessary for local governments to effectively engage in and support REDD+ processes.
- Departmental or municipal forest committees could be the primary channel for implementing REDD+ at the local level.
- Decentralization should incorporate significant, long-term devolution of land tenure to community-based forest management institutions to ensure long-term results related to REDD+ activities.

In recent forest law reforms, local forest management has received a great deal of attention, particularly regarding community-based activities and the realignment of powers and responsibilities between central and local governments. Local management of forests is now increasingly promoted in various ways, although it is still subject to numerous limitations<sup>56</sup>. It is also more susceptible to local power relations and possible discretionary policies. Moreover, local governments tend to be weaker than the national government in negotiations, law enforcement and other functions necessary for managing large forest resources. Yet there are good reasons for forestry management to be decentralized. In principle, decentralization should bring decision making closer to the people and help to satisfy a generally accepted need for forest-dependent communities to participate in decision making.

Decentralization could result in an internationally recognized system of 'community forestry', whereby local communities hold collective legal rights to manage and use forest resources (Nepal)<sup>57</sup>. However, "despite growing recognition of community rights by the state in many countries, the community-based tenure model is facing a major challenge due to inconsistent government policy and lack of institutional capacity" (Dahal and Adhikari, 2008).

In general, most forest administration is also closely linked to land-use regulation, which will affect REDD+ and is typically a local responsibility even in relatively centralized systems. The transfer of responsibilities needs to be, but often is not, accompanied by the transfer of sufficient financial resources to fulfil the obligations. Ministries of finance in developing countries often resist transferring adequate funds to territorial administrations, even where those funds consist essentially of forest-related taxes and forest services fees from a particular area<sup>58</sup>.

Local administrations often lack the qualified staff necessary to achieve their mandate. As an initial response, the transfer of responsibilities should be accompanied by an interim transfer of staff from the central to the territorial administrations. In particular, transferred staff would help local authorities manage forest lands and resources and improve their management capacity. External technical and financial support could also be necessary for local governments to go through the whole REDD+ process.

Coordination committees could be introduced to promote a more inclusive management of forests. They could also develop, implement and monitor forest management plans and conservation in coordination with and through active participation of all concerned stakeholders. Those local committees could be the primary channel for implementing REDD+ at the local level.

Another concern is how tenure security and decentralization are related and how market-based mechanisms like carbon trading and REDD+ could affect decentralization and tenure security. Many argue that unless decentralization incorporates

<sup>56</sup> Law and sustainable development since Rio. Legal trends in agriculture and natural resource management. FAO Legislative Study 73. 2002.

<sup>57</sup> Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America. Lisa Naughton and Cathy Day. USAID. 2012.

<sup>58</sup> Forest law and sustainable development. Addressing contemporary challenges through legal reform. Lawrence C.Christy. Charles E. Di Leva. Jonathan M. Lindsay, Patrice Talla Takoukam. World Bank. 2007.





significant, long-term devolution of land tenure to community-based forest management institutions, local political, economic and livelihood rights will remain at risk (Agrawal and Ostrom 2001). This will have direct implications for REDD+ implementation.

The Government of **Zambia's** decentralized administration framework is anchored in the Constitution (1996). As the Constitution allocates jurisdictional authority across the country, it is central for REDD+ legal preparedness. In 2002, Zambia adopted its first National Decentralization Policy, to improve the public service through the devolution of power to locally elected authorities. Since then, the Parliament has enacted relevant legislation, including under the Sixth National Development Plan (2011–2015) and Revised Decentralization Implementation Plan (2009–2013), to mainstream this process. Therefore, any REDD+ mechanism will have to respect the jurisdictional requirements of decentralized administration, whether for benefit-sharing distribution systems, forest management plans or enforcement. The Strategic Programme for Climate Change Resilience aims to: assist communities in vulnerable areas to address their own options in the local development plans; include climate finance into existing community development funds and strengthen the institutional foundation for future climate change governance. Three components that are relevant to future REDD+ initiatives are: two-way information flows for decision making and reporting; disbursement of donor finance to local development funds for participatory climate-resilience initiatives; and monitoring, reporting and strategic feedback (IDLO, Country Study, 2011)<sup>59</sup>.

In **Mexico**, the Community Forestry Programme of CONAFOR contributed to the creation and strengthening of community forestry institutions, thus alleviating pressure on forests. Community forestry has been widely recognized to have contributed significantly to the management and conservation of communal forest areas in Mexico. As suggested in the Vision for REDD+, to prepare the REDD+ strategy, the approach will be based on sustainable community forestry, emphasizing forest communities' rights to exploit forest resources as well as combating poverty and sustainably managing the resources (Mexico Readiness Preparation Plan 2010). It is well known that *comunidades* and *ejidos* are legal entities that have the right to establish their governing rules, define how they will use their land and limit such uses within the communal properties. To exercise this right, the *comunidades* and *ejidos* must develop internal regulations and register them in the Registro Agrario Nacional (National Agrarian Registry). These regulations should address the organizational structure of the community, the rules to admit new members to the community, and the rules and criteria to determine the use of the land<sup>60</sup>. The creation in the state of Jalisco of public decentralized organs among different municipalities for watersheds could be considered an innovative and effective institutional arrangement. So far, CONAFOR has chosen to use this model for developing REDD+ pilot projects. The stability of these institutions will be key to developing successful REDD+ governance. Although decentralization is contemplated by the law, successful examples of decentralization are lacking due to the lack of commitment by several states. Decentralization processes should encourage the involvement of forest user rights in the public sector. They should be inclusive and consider the relevance of the civil society and forest owners in decision-making processes undertaken by the government. This aspect is also related to the public participation, which is considered by the law as a right associated to forest owners<sup>61</sup>.

In **Viet Nam**, provincial forestry agencies will have various responsibilities in implementing REDD+, including planning for REDD+ implementation, MRV and benefit distribution. Many of these functions will be delivered through Provincial REDD+ Management Units (PRMUs), but only in the context of the pilot provinces of the UN-REDD Programme.

The UN-REDD Viet Nam Phase II Programme will support the development of required capacities in PRMUs to enable pilot provinces to effectively engage in NRAP activities. These capacities include the establishment of an appropriate legal framework and policies that support mainstreaming of REDD+ into provincial and local SEDPs and FPDs. They also include institutional capacities to ensure clarity in mandates and responsibilities for data collection, monitoring, benefit distribution, law enforcement, participatory planning, and adherence to social and environmental safeguards; as well as the strengthening of individual capacities through training on, for example, general REDD+ principles. Besides forest owners and managers, the main counterparts for the NRAP in facilitating these provincial planning processes include the Provincial Peoples' Committee, which is responsible for the SEDP and signing off on all other plans. The provinces will also have a central role in some of the planning processes essential to the NRAP, such as the SEDP and the Land Use Plan. In

59 Note that decentralization of the forestry sector in Zambia, as in many African countries, extends back to the 1990s due to structural adjustment policies. This is where experimentation in past JFM and CBNRM projects were derived from (IDLO).

60 USAID. 2011. Case studies on REDD+ and carbon rights. Property rights and resource governance project. Working paper.

61 Contribution from Dr. Sergio Arias, Head of the Legal Unit (CONAFOR).

addition, provincial authorities plan, approve, implement and monitor many processes that influence the use of natural resources, in areas such as forestry, commercial agriculture and aquaculture. For the NRAP to be effectively implemented, the provincial authorities have to be fully engaged, as they play a role in virtually all aspects of NRAP implementation<sup>62</sup>.

In December 2004, the passing of the Forest Protection and Development Law legally recognized community forest management (CFM) in Viet Nam for the first time. Despite this step, skepticism remains about whether CFM can work in practice and to what extent legal recognition contributes to effective forest protection and management and REDD+ implementation. For forest protection and management to be effective, strong local institutions are necessary. Legal rights must be supported by strong local institutions to protect forests and ensure that benefits reach community members. It will be important that state policy encourages the uptake of local initiatives and local practice as guidance for drafting simple guidelines for CFM<sup>63</sup>.

### LESSONS LEARNED

Existing laws should be reviewed to create appropriate REDD+ legal and institutional structures to enact changes that ensure compatibility between decentralized mandates and national laws (Zambia). For example, if REDD+ financial flows are directed to local entities through local development funds, well-defined rules should guarantee transparency and effective management of payments to local communities. The law can also guarantee sustainability and stability of coordination committees, for example by defining the duties and responsibilities of provincial agencies for REDD+ implementation (Viet Nam) and strengthening climate change governance by including a REDD+ component in existing departmental or municipal forest commissions.

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62 Draft- UN-REDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.

63 Nguyen Quang Tan, Tran Ngoc Thanh, Hoang Huy Tuan, Yurdi Yasmi, and Thomas Enters. 2009. Forest Governance Learning Group (FGLG) Vietnam. Policy brief.



# Benefit sharing

## Key Points

- Unclear land tenure rights make it difficult to allocate REDD+ payments.
- Forest carbon sequestration is commonly defined as an environmental service by forest laws. Therefore PES schemes could be used for benefit sharing derived from REDD+ implementation.
- Lessons from previous PES initiatives provide evidence that a higher percentage of revenues should be allocated directly to people responsible for providing the ecosystem services to ensure any equitable distribution of REDD+ benefits.
- Community forestry schemes can be used for REDD+ revenues distribution.
- Legal provisions should be designed or updated to incorporate clear rules that guarantee an equitable distribution of payments among governments and forest communities.
- Provisions should ensure that local landholders and indigenous communities understand and have access to relevant information explaining how the benefits will be distributed.

National environmental laws may recognize forest carbon sequestration as an environmental service. It is therefore paramount for REDD+ projects to be aligned with existing PES mechanisms. The distribution of benefits in PES projects could be regulated by national legal frameworks (e.g. technical norms) if government managed or through contracts between the parties, on a voluntary basis. In public PES systems, legislative and regulatory rules should clearly define the services to be compensated, eligibility and performance criteria for receiving payments, monitoring rules, terms and sanctions<sup>64</sup>. PES systems established by government can offer different benefits associated with REDD+ to local stakeholders. Community forestry programmes can also integrate benefit-sharing principles to ensure sustainable management of forests. Beside cash payments, REDD+ benefits could take the form of no-interest loans, capacity building, services, goods or tax credits. This will require clear rules to guarantee an equitable distribution of payments among government and forest communities.

PES presents one of the most important developments for financing ecosystem conservation efforts in recent decades. Participatory forest management also shows strong promise as a decentralized management strategy compatible with PES under which local landholder communities may be included in a REDD+ scheme. This approach focuses on CFM and joint forest management (JFM) in which governments retain ownership of forest land and villagers are allowed to live in and benefit from forest resources. Recent studies on PFM recommend devolving ownership, management responsibilities and benefits of public lands to local governance levels and community actors for increased reforestation and forest conservation. CFM generally performs better than JFM due to the higher degree of local control and benefits received. However, it also entails risks and administrative difficulties for local or indigenous communities<sup>65</sup>.

National legal provisions should therefore be established or updated to ensure that institutions and mechanisms facilitate benefit sharing from the international to the national or sub-national levels<sup>66</sup>.

An option to allocate REDD+ benefits could be through governments who could consider appropriate mechanisms of benefit-distribution. To define the legal mechanisms that will guarantee accountability, transparency, efficiency and equity, it is important to involve stakeholders that are part of long-term forest governance processes. These stakeholders could include national and sub-national government representatives, forest land owners and those with user rights, forest-dependent communities and private land owners<sup>67</sup>. In addition to national actors, intermediaries and foreign investors should also be considered as part of benefit sharing schemes. As national contexts are widely different, each country will need to identify national stakeholders on the basis of social, economic and environmental factors, as well as deforestation and degradation drivers. Lessons from previous PES initiatives indicate that a higher percentage of revenues should be allocated directly to the people responsible for providing the ecosystem services, such as forest-dependent communities or indigenous peoples.

64 Indonesia: options and challenges for fair and efficient payment distribution mechanisms. Reducing emissions from deforestation and forest degradation (REDD). Van Noordwijk, M. Working paper. ICRAF. 2008.

65 REDD+ Benefit sharing: a comparative assessment of three national policy approaches. John Costenbader. 2011.

66 Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

67 A three-fund approach to incorporating government, public and private forest stewards into a REDD funding mechanism. International Forestry Review 10(3). Johns, T. *et al.* 2008.

To guarantee functionality, it will be crucial to involve communities through consultation and participatory processes in the design of benefit sharing schemes.<sup>68</sup> It will also be important to simplify relevant concepts related to benefit distribution mechanisms to facilitate the comprehension of key aspects of REDD+. Additionally, provisions should ensure that local landholders and indigenous communities understand and have access to information explaining how the benefits will be distributed.

Another aspect that should be considered is that without clear land tenure rights it will be difficult to allocate REDD+ payments, given the correlation between forest land rights and ownership rights on carbon. A possible solution could be to allocate carbon directly to local and indigenous communities<sup>69</sup>, which would involve taking into account the internal mechanisms governing communal lands at local level.

REDD+ benefits could be channelled using performance-based payments from national to sub-national level through existing or newly created entities (e.g. regional or provincial committees) responsible for the allocation of benefits to the local communities. REDD+ projects could be classified by law, and the payments could vary accordingly. Carbon credits funds generated by those projects could then be distributed among national, provincial and municipal governments and local communities on the basis of percentages established by law, using rational criteria (tree species, type of forests)<sup>70</sup>. MRV systems for REDD+ implementation should be in place to measure carbon stocks in forests to ensure the additionality of global emissions reductions from REDD+ and guarantee the equitable rewarding of key stakeholders.

In **Zambia**, a JFM programme on state lands allowed communities to benefit from the direct products of forest management. However, the provision establishing the redistribution of funds from fees for concessions and licenses to local communities has never been enforced. A community-based natural resource management programme, mainly focused on wildlife conservation, was more successful in the redistribution of funds, but subject to elite capture of revenues. In addition, game management areas overlapped with forest and natural resources uses. Based on these experiences, it is clear there is a need for REDD+ to create adequate incentives not only for forest products, but also to participatory decision-making and comprehensive rules that promote multiple functions of forests. Another challenge that will affect equitable benefit sharing relates to the forest land tenure regime. Communities cannot directly benefit from REDD+ revenues on customary lands, because they cannot contract, transfer or assign any interest without converting customary ownership to leasehold title. As customary forest lands cannot be registered, local communities will face difficulties in determining how to share REDD+ benefits and who has rights arising from forest carbon sequestration (IDLO, Country Study, 2011).

In **Mexico**, the overall trend is that community forestry has been successful in developing multifunctional uses of forests, including carbon sequestration, at the local level. Clarity in national laws and subnational programmes to implement benefit sharing principles are paramount for defining and allocating benefits among the *ejidos* and local communities, thus facilitating the permanence of carbon emissions reductions and attracting long-term investments in the country. To ensure the successful and equitable distribution of REDD+ benefits, legislation on REDD+ should incorporate clear and harmonized legal procedures and rules, allowing for open participation among actors at subnational and national levels. Cross-sectoral initiatives, such as the working group created in December 2009 that focuses on reducing emissions from deforestation and degradation and increasing carbon forest stocks linked to sustainable management, are extremely important instruments for harmonizing, developing and successfully implementing national public policies related to REDD+. According to those principles, the operational rules of Proárbol ensure an equitable and non-discriminatory access for women and indigenous people to CONAFOR's subsidies (article 32, General Law on Sustainable Forest Development). Recently, the legislative reforms to the country's Environmental Law and Forest Sustainable Development Law passed by the Congress of Mexico and published in the Official Gazette in June 2012, state that according to the international treaties and national provisions, all economic instruments will be considered as a means to promote environmental services. This establishes a legal basis for new mechanisms that support the principle that whoever conserves will receive the benefits from the services provided. Forest land owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests. Finally, eight socio-environmental safeguards are established. These are in line with the UNFCCC safeguards and the national REDD+ strategy of Mexico.

68 REDD+ benefit sharing: A comparative assessment of three national policy approaches. John Costenbader. FCPF-UN-REDD Programme. 2011.

69 Tacconi, L., S. Mahanty, H. Suich eds. 2010. Payments for Environmental Services, Forest Conservation and Climate Change: Livelihoods in the REDD?. Edward Elgar, Cheltenham.

70 Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

In **Viet Nam**, benefit sharing must be appropriate and provide incentives to local forest groups in an equitable and transparent manner. According to the Constitution of the Socialist Republic of Viet Nam (1992, last amendment 2001), all forest resources (including land, trees and wildlife) are owned by the people (article 17). On behalf of the people, the state manages forest resources and legally entrusts the management of forests to specific groups. After initial PES projects were conducted in pilot sites in two provinces in December 2010, the Government issued a decree expanding the 2008 PES decree to a national scale under the Forest Protection and Development Fund. In particular, the Decree No. 99/2010/ND-CP provides for the policy on payment for forest environment services in Viet Nam. It covers: the types of forest environment services that are paid for by users to providers defined in this Decree; the providers and users of forest environment services; the management and use of the payment for forest environment services; rights and obligations of providers and users of forest environment services; and responsibilities of state management agencies at all levels and of all sectors for the payment for forest environment services. Benefits are expected to be distributed in six pilot provinces, only under the UN-REDD Viet Nam Phase II Programme, and to provide incentives to seven out of eight forest manager groups<sup>71</sup>. For state-owned companies and management boards, it has been proposed that incentives will consist of cash payments according to standard rates of compensation, adjusted by R-coefficients. For People's Committees, it has been proposed that incentives will likely take the form of direct cash distribution to the people who protect and manage forests and/or of deposits to funds for improving social services, according to priorities defined by local stakeholders. Measures will be put in place to avoid the risk of corruption. The context is more complex for households and village communities. Viet Nam has 54 officially recognized ethnic minority groups with different socio-economic conditions, ecological diversity, and regionally diverse land use rights and land and forest management arrangements (communal versus individual). There are still a number of households who are not entitled to forest land rights, but are dependent on forest resources. Furthermore, it is important to ensure that women are involved in decision-making at local level<sup>72</sup>.

### LESSONS LEARNED

Clear mechanisms defining how REDD+ benefits will be distributed should be established by laws designed to protect and recognize equitable compensation to forest-dependent communities, governments and third parties. PES provisions as well as rules defining internal participation of communities in decision-making processes related to land and forests activities, could be instrumental to achieving that goal. However, there are still many local actors with a high degree of dependence on forests who are not entitled to forest rights. Registers could be established at the municipal level to register communal lands while recognizing that customary practices could become a source of law. As benefit-sharing mechanisms are related to land ownership, the law should support the customary institutions to enforce their decisions, but should also subject these institutions to state supervision to ensure there is no discrimination or abuse of land rights. This said, there have to be alternative arrangements developed for payments that do not rely on ownership, and prioritization of what needs to be addressed and in what order.

71 At present, the forest managers groups are: 1. State-owned companies (SOCs), or state forest enterprises (SFEs), 2. Individual households, 3. Management boards for Protection Forests (PFMBs), 4. Management boards for Protected Areas (PAMBs), 5. People's committees (PCs), mostly at the commune level (CPCs), 6. Village communities, 7. Joint venture enterprises and 8. Army units.

72 UN-REDD Viet Nam Phase II Programme.



# Incentives for private and public investments

## Key Points

- Political and land tenure issues constitute the major risks for foreign operators willing to invest in REDD+.
- To reduce risks to both public and private investors in REDD+ activities, updated legal frameworks, including foreign investment laws, will be crucial.
- To promote REDD+ and attract foreign investors, governments can also adopt fiscal incentives, such as tax exemptions or low interest loans.
- Before legislative reforms are enacted, knowledge gaps and technical legal issues relevant to REDD+ should be clarified to avoid inconsistencies between national laws and international provisions.

Each developing forest country offers unique opportunities for investment, but also presents crucial challenges, including political risks, unclear land tenure regimes and elite capture of revenues. Each of these factors will have an impact on the development path of REDD+. An investment in a country characterized by high political risk (e.g. land tenure issues, government instability and uncertain legal framework) would require high returns and 'risk-mitigating' mechanisms to attract broader interest from investors<sup>73</sup>. Additionally, to effectively leverage the private sector, it is important to implement a set of policies that take into account the different composition of the investment community in sustainable investment across countries.

To encourage private as well as public investments, specialized co-investing programmes could be developed by widening, where possible, the mandate of existing agencies and funds.

A recent survey of investors in REDD+ projects, has shown that political risk constitutes the largest risk factor that prevents potential capital providers from investing in REDD+ projects in developing forest countries. Forty-six per cent of investors surveyed listed this as the highest ranking risk factor (60 percent of inexperienced investors and 38 percent of experienced investors).

Currently, political and land tenure risks can be mitigated through specific insurance products offered by the World Bank's Multilateral Investment Guarantee Agency (MIGA) and by some private insurance companies that protect the investors from political risks, natural disasters, land expropriation and other factors that might interfere with REDD+ success. However, the scale of existing MIGA insurance taken out to date is small relative to the size of the expected requirement for investment in REDD+. Further investigation that takes into account the set of REDD+ opportunities available in each respective country should be undertaken regarding to the amount of additional capital that would need to be raised by MIGA to increase the capacity to bring it in line with the expected capital flow to developing forest countries<sup>74</sup>.

To reduce risk for both public and private investors, updated legal frameworks, including foreign investment laws related to REDD+ activities, will be essential at both the international and national levels. To promote REDD+ activities and attract foreign investors, governments might also adopt innovative fiscal incentives, such as tax exemptions and low interest loans<sup>75</sup>. However, at this point, many of the technical legal issues relevant to REDD+ have not yet been clarified. These knowledge gaps must be addressed before legislative reforms are enacted.

The **Zambia** Development Agency (ZDA) has the mandate that could allow it to facilitate private investments for REDD+ by establishing value added tax exemptions on carbon credits or financing small rural forest management enterprises. The ZDA Inter-ministerial Board Agency might enact legal and institutional reforms aimed at addressing major factors of deforestation and land degradation, for example by removing perverse subsidies directed to the mining and energy sectors. The ZDA has the mandate that could also allow it to act as an intermediary between the parties (foreign

<sup>73</sup> The attractiveness of investments in REDD+ projects to the private sector. The Forest Investment review. DFID UK.

<sup>74</sup> We could also make reference to the political risk insurance for REDD+ projects provided by the US-based Overseas Private Investment Corporation (OPIC).

<sup>75</sup> (Draft) Legal preparedness for REDD+. Crosscutting issues for domestic implementation. UN-REDD Programme (FAO). 2012.



investors and forest-dependent communities) and supervise the terms and conditions of contracts. Accountable and transparent financial systems, including benefit-sharing mechanisms, will also attract private and public investments. The Office of the Auditor General is appointed by the Constitution to verify that money is used for appropriate purposes. Additionally, MOFNP is responsible for all the financial flows to the the Government of the Republic of Zambia and is also implementing an Integrated Financial management Information System under the Public Expenditure Management and Financial Accountability programme, supported by the World Bank. To facilitate land demarcations, the ZDA has adopted a systematic practice whereby it acquires leasehold titles to lands on behalf of investors for projects without transferring the title to those investors. In addition, ZDA will also assist in obtaining all necessary permits and approvals and identifying a national counterpart for the project. To ensure knowledge and access to information about land acquisition processes, standardized legal tools should be adopted to ensure the compliance with FPIC principles<sup>76</sup>.

**Mexico** is a signatory to several international insurances, such as the MIGA and Chapter 11 of the North American Free Trade Agreement. At the national level, the current revision of the forest definitions of the General Law on Sustainable Forest Development, such as *aprovechamiento forestal* and 'payments for ecosystem services' will also contribute to determining who receives payments and establishing eligibility for hosting carbon markets. Globe-Mexico is supporting this initiative in Parliament. In addition, the current development of state climate change laws and the possibility of establishing financial mechanisms for carbon markets raise the question of whether a REDD+ legal framework should establish coherence between different carbon credit markets. Another matter to consider is whether the payments received for forest conservation would be deductible from income taxes or whether they would have any special treatment under the Federal Tax Law. It would be beneficial to consider the development of sustained tax incentives for potential buyers of carbon credits and the current tax scheme of non-afforestation and non-reforestation CDM projects in the review of the Federal Law of Income Tax. Mexico is also participating in the Partnership for Market Readiness (PMR), a grant-base capacity building trust fund that provides funding and technical assistance for the collective innovation and piloting of market-based instruments for GHG emissions reduction. (IDLO, Country Study, 2011).

In **Viet Nam**, the law on foreign investment makes provisions for foreign direct investment "to expand economic co-operation with foreign countries and to support the cause of modernization, industrialization and development of the national economy on the basis of the efficient exploitation and utilization of national resources" (1996 as amended in 2000). These provisions include forestry activities. Foreign investors may invest in Viet Nam in any of the following forms: business co-operation on the basis of a business co-operation contract; joint venture enterprises; and enterprises with 100 percent foreign owned capital (Article 4). In accordance with the Investment Law and the Law on Forest Protection and Development, the Government offers incentives to organizations, households and individuals to promote afforestation on bare lands. These incentives include providing preferred interest or loan durations for particular plant species and ecological regions, as well as exemptions from or reductions of land-use tax or land-use rental costs. The Law on Forest Protection and Development states that financial resources for forest protection and development include the state budget, the funds of forest owners, and the budget of the fund for forest protection and development regulated by Decree 05/2008/ND-CP.

## LESSONS LEARNED

Updated laws, including investment laws related to REDD+ activities, accompanied by innovative fiscal incentives, will be essential to attract investment. Knowledge gaps should be addressed by economists and legislators, before enacting legal reforms. Accountable and transparent financial systems will attract private and public investments. Ministries of finance will have a key role in this aspect.

In Zambia, to ensure knowledge and access to information about land acquisition processes, standardized legal tools should be adopted to ensure the compliance with FPIC principles. In Mexico, the PMR can help in REDD+ developments, as it focuses on opportunities to design and develop market instruments, and the necessary in-country capacity to implement these instruments. In Viet Nam, the environmental protection fund, with an annual low interest rate of 3-5 percent, is also a good financial resource for environmental protection projects, including those that involve forest protection. This can be used for the management of REDD+ revenues by transferring these revenues to a REDD+ fund.

<sup>76</sup> However, it should be noted that this has been very contentious.

## REDD+ Legal Reforms in Mexico

The legislative reforms passed in Mexico City on 24 April 2012, position Mexico as one of the first countries to legislate in support of REDD+. Recognizing the need to reform environmental laws and harmonize legal inconsistencies for REDD+ implementation, the Mexican Congress has advanced a set of legal reforms to the country's Environmental Law and Forest Sustainable Development Law. The amendments to these laws focus on: the harmonization of the definitions of key terms; the development of economic instruments to promote environmental services that provide benefits to forest owners and forest land users; and the inclusion of REDD+ safeguards in light of the latest results of the Conference of the Parties of the UNFCCC and the national REDD+ strategy of Mexico. These legal reforms, initially presented to the Chamber of Deputies in December 2011, represent a critical step towards ensuring that local communities that sustainably manage their forests receive the benefits derived from any future carbon compensation scheme. By enshrining this in national legislation, the Mexican Congress is building a forward-looking legal framework that supports the concept that forests should be managed in a sustainable way and prioritizes the engagement of forest-dependent communities.

### Key aspects of these legal amendments

- The definition of environmental services has been adapted to emphasize the relation of their benefits with the functionality of the natural ecosystem and the individuals settled in the territory. In addition, it is now recognized that environmental services are regulated by the Forest Sustainable Development Law.
- The terms 'deforestation' and 'forest degradation' are defined, which is critical for the implementation of REDD+.
- The concept of forest management has been adjusted to now encompass the notion of environmental services and recognize their economic value.
- The national forest inventory is now linked to the REDD+ MRV system which should be established in the country in accordance with the latest recommendations from the UNFCCC.
- All economic instruments will be considered as a means to promote environmental services, thus establishing a legal basis for new mechanisms supporting the principle that whoever conserves will receive the benefits from the services provided.
- Forest land owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests.
- Eight social and environmental safeguards have been established. These are in line with the UNFCCC safeguards and the national REDD+ strategy of Mexico.
- Finally, these reforms urge the executive power to establish, in a period no longer than three years, a national system for monitoring, registration and verification to evaluate and systematize emission reductions derived from actions that prevent deforestation and forest degradation.

GLOBE Mexico, which is composed of a cross-party group of Mexican legislators, initially submitted the REDD+ legal reforms to the Chamber of Deputies in December 2011 and has been actively involved in their passage through both houses of the Mexican Congress. More recently, the Legal Unit of the National Forest Commission of Mexico has created a workspace to promote discussions and analyse forest, land, agriculture and environmental laws. The workspace could be used to further analyse cross-sectoral issues related to REDD+ implementation, in collaboration with the Legal Unit of SAGARPA.

Source: UN-REDD Newsletter 28 –May 2012.



# Conclusions

As pointed out in the introduction, the study was developed using a bottom-up approach. Focusing on normative, governance and financial aspects identified by key national stakeholders during three national workshops held at the end of 2011, the study analyses legal issues related to REDD+ implementation. The aim was to draw some lessons learned, enhance the understanding of the legal implications of REDD+ implementation at national level and facilitate the enacting of legal reforms in REDD+ countries. Priorities for legal reforms will depend on the 'REDD+ topic'. For example, amending existing laws will be necessary to address land tenure or drivers of deforestation. This will involve taking into consideration ongoing legislative reforms at the country level.

To summarize, the main legal issues posed by REDD+ that were identified during the national workshops in 2011 and analysed contextually in this study are:

- The definition of rights (land, forest carbon) and REDD+ terminology (trees, environmental services, forests, deforestation, degradation, carbon stocks, etc.);
- the formal recognition of customary and indigenous rights, including the rights of marginalized groups such as women and the poor;
- the identification of major drivers of deforestation and forest degradation and harmonization of legal inconsistencies across sectors;
- the legal infrastructure needed to strengthen REDD+ institutional coordination;
- public participation processes and FPIC mechanisms that need to be in place;
- decentralized mechanisms that need to be regulated to support REDD+ implementation at local level;
- the benefit distribution mechanisms that need to be developed and regulated; and
- the reform of investment laws.

The countries considered to develop this analysis – Mexico, Viet Nam, Zambia and others – represent a range of regional contexts that differ in terms of economic development, social and cultural values, geographical data, climate, the political regime, administrative and institutional frameworks, and parliamentary activities. In addition, depending on the country, forests have different roles in the national and local economy. Therefore, the social safeguards, economic incentives and legal infrastructures needed to implement REDD+ successfully will vary according to specific national contexts. The REDD+ safeguards adopted in Cancun and the Durban outcomes clearly indicate that the REDD+ activities should be consistent with national forest programmes and international conventions and agreements; have transparent and effective national forest governance structures; and include full and effective stakeholder participation. They should also respect and protect indigenous women and local communities' rights and knowledge and take into account existing incentives for the protection and conservation of national forests and their ecosystem services. The REDD+ safeguards should also enhance other social and environmental benefits and actions to address the risk of reversals and displacement of emissions. Currently, many countries in the process of finalizing their REDD+ strategies or programmes have identified specific needs to review, analyze and reform laws. Legal activities will therefore need to be included as a component in the 'implementation' phase of the REDD+ strategies or programmes<sup>77</sup>.

<sup>77</sup> See pilot countries of UN-REDD Programme, Forest Investment Program (FIP), Forest Carbon Partnership Facility and the REDD+ partnership.

## Annex: Priority legal issues identified by REDD+ stakeholders

Country / Priority areas of intervention	Zambia	Mexico	Viet Nam
Forest/land/carbon rights	x	x	x
Recognition of customary rights	x	x	x
Definitions of REDD+ terminology		x	x
Major drivers of deforestation and forest degradation	x	x	x
Harmonization of sectoral laws with REDD+	x	x	x
Institutional coordination	x	x	x
Public Participation Free Prior and Informed Consent	x	x	x x
Decentralization	x	x	x
Benefit sharing system	x	x	x
Incentives for private and public investments	x	x	x

National Workshops held in November 2011<sup>78</sup>

<sup>78</sup> On Tuesday 8 November, Lusaka (Zambia), hosted by the Forestry Department, Ministry of Mines and Natural Resources; on Tuesday 15 November 2011, Mexico City (Mexico), hosted by the National Forest Commission, Head of the Legal Unit; and on Monday 21 November, Hanoi (Viet Nam), hosted by the Institute of Strategy and Policy on Natural Resources and Environment, Ministry of Natural Resources and Environment.





# References

- Agrawal, A. Ostrom, E. 2001. *Collective Action, Property Rights, and Decentralization in Resource Use in India and Nepal*. Politics & Society, Vol. 29 No. 4. Pp. 485-514.
- Cano Cardona, W. 2012. *Formal institutions, local arrangements and conflicts in the northern Bolivian communities after forest governance reforms*. Programa Manejo de Bosques de la Amazonia Boliviana (PROMAB) Scientific Series, Vol. 14.
- Christy, L.C., Di Leva, C.E., Lindsay, J.M. & Takoukam, P. T. 2007. *Forest law and sustainable development. Addressing contemporary challenges through legal reform*. Law, Justice, and Development Series. World Bank
- Clinton Foundation. 2008. *Unlocking Climate Change Mitigation Potential of Sustainable Commercial Plantations*.
- Cordonier Segger, M-C. & Khalfan, A. 2006. *Sustainable Development Law. Principles, Practices and Prospects*. Oxford University Press.
- Costenbader, J. 2011. REDD+ benefit sharing: *A comparative assessment of three national policy approaches*. Forest Carbon Partnership Facility (FCPC) - UN-REDD Programme.
- Costenbader J., ed. 2009. *Legal frameworks for REDD - Design and implementation at the national level*. International Union for Conservation of Nature (IUCN) Environmental Policy and Law Paper No. 77. IUCN. Dahal, G.R., and Adhikari, K.P. 2008. Trends and Impact of Forest Tenure Reforms in Asia: Cases from India, Indonesia, Lao PDR, Nepal and the Philippines. *Forest and Livelihood Journal* 7(1). University of Oxford.
- Daviet, F. 2010. *A draft framework for sharing approaches for better multi-stakeholder participation practices*. FCPC- UN-REDD Programme.
- Department for International Development (DFID) United Kingdom. 2009. *The Forest Investment Review*. Chapter 1: The attractiveness of investments in REDD+ projects to the private sector.
- FAO Legal Office. 2002. *Law and sustainable development since Rio - Legal trends in agriculture and natural resource management*. FAO Legislative Study 73. FAO.
- FAO Forestry Department. 2011. *State of the World's Forests*. FAO.
- Graham, K. & Vignola, R. 2011. *REDD+ and agriculture: A cross-sectoral approach to REDD+ and implications for the poor*. REDD-Net.
- Herold, M. et al. 2011. A review of methods to measure and monitor historical carbon emissions from forest degradation. *Unasylva* No. 238. FAO
- Hertz, S, La Vina, A, Sohn, J. 2007. *Development without Conflict: The Business Case for Community Consent*. WRI.
- IDLO. 2011. Legal preparedness for REDD+ in Mexico. Country Study.
- IDLO. 2011. Legal preparedness for REDD+ in Viet Nam. Country Study.
- IDLO. 2011. Legal preparedness for REDD+ in Zambia. Country Study.
- Jaramillo, C.F. and Kelly, T. 1997. Deforestation and property rights in Latin America. The Inter- American Development Bank, Working paper. pp.1-40.
- Johns, T. et al. 2008. A three-fund approach to incorporating government, public and private forest stewards into a REDD funding mechanism. *International Forestry Review*, 10(3).
- Kamelarczyk, K. B. F. 2009. *Carbon Stock Assessment and Modeling in Zambia*. MRV Working Paper 4. UN-REDD Programme
- Knight, R. S. 2010. *Statutory recognition of customary land rights in Africa*. An investigation into best practices for lawmaking and implementation. FAO Legislative Study 105. FAO.
- Laestadius, L., Potapov, P., Yaroshenko, A. & Turubanova, S. 2011. Measuring forest degradation. Global forest alteration, from space. *Unasylva* No. 238. FAO.
- La Viña, A. & Lynch, O.J. 2010. *REDD Lights: who owns the carbon in forests and trees?* Ateneo School of Government; College of Law, University of the Philippines.
- Lemaitre, S. 2011. *Indigenous Peoples' Land Rights and REDD: A case study. Review of European Community and International Environmental Law*, 20 (2).
- Mwitwa, J. & Kokwe, M. 2012. *Forest management practices with potential for REDD+ in Zambia*. UN- REDD Zambia National Programme Policy Brief. UN-REDD Programme.

- Naughton-Treves, L. & Day, C. eds.** 2012. *Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America*. University of Wisconsin - Madison Land Tenure Center.
- REDD-net.** 2010a. *Carbon rights in REDD+: towards a common understanding*.
- REDD-Net.** 2010b. *Catalyzing REDD+ at the national level: Summary of experience so far*.
- REDD.Net.** 2010c. *Monitoring, reporting and verification of social and development issues*.
- Rosenbaum, K.L., Schoene, D. & Mekouar, A.** 2004. *Climate change and the forest sector - Possible national and subnational legislation*. FAO Forestry Paper 144. FAO
- Simula M. & Mansur, E.** 2011. A global challenge needing local response. *Unasylva* No. 238. FAO
- Sommerville, M.** 2011. *Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper*. United States Agency for International Development (USAID) Issue Brief. Property Rights And Resource Governance Briefing Paper No. 11. USAID
- Southgate, D., Sierra, R. & Brown, L.** 1991. *The causes of tropical deforestation in Ecuador: A statistical analysis*. World Development, 19(9): 1145-1151.
- Streck, C., Porrua, M.A., Bracer, C., & Coren, M.** 2010. *Options for Managing Financial Flows from REDD+*. Climate Focus.
- Sunderlin, W.D., Larson, A.M. and Cronkleton, P.** 2009. *Forest tenure rights and REDD+: From inertia to policy solutions*. In Angelsen, A. (eds.) *Realising REDD+: National strategy and policy options*. Bogor, Indonesia: Center for International Forestry Research (CIFOR), pp. 139-149.
- Tan, N. Q., Chinh, N. V. & Hanh, V. T.** (2008) *Statutory and Customary Forest Rights and their Governance Implications. The Case of Viet Nam*. Statutory and Customary Forest Rights and their Governance Implications: The Case of Viet Nam. IUCN.
- Tan, N. Q., Thanh, T. N., Tuan H. H., Yasmi Y. & Enters, T.** 2009. *Red Books for Greener Trees: Strengthening Community Forestry in Vietnam*. Forest Governance Learning Group (FGLG) Policy brief. FGLG
- Tan, N. Q., Truong, L.T., Van, N. T. H. & K'Tip.** 2010. *Evaluation and verification of the free, prior and informed consent process under the UN-REDD Programme in Lam Dong Province, Vietnam*. The Center for People and Forests
- UN-REDD Programme.** 2012. *Legal preparedness for REDD+. Crosscutting issues for domestic implementation* (Draft).
- UN-REDD Viet Nam Programme Phase II.** 2009. *Revised standard joint programme document*.
- USAID.** 2011. *Case studies on REDD+ and carbon rights*. Property rights and resource governance project. Working paper.



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