The GLOBE Forest Legislation Study

A Review of Forest Legislation in Four Countries

Executive Summary

Supported by:

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Published by The Global Legislators' Organisation (GLOBE)
9 Dartmouth Street,
City of Westminster,
London SW1H 9BL,
United Kingdom

http://www.globeinternational.org

Typeset by Forthcoming Publications Ltd (www.forthpub.com)
Printed in Great Britain by CPI Antony Rowe, Chippenham

Contents

Acknowledgments

GLOBE International would like to thank the following organizations for collaboration and support to the GLOBE Forest Legislation Initiative (GFLI) and Publication of the GLOBE Forest Legislation Study:

- Norwegian Government/Norad
- Global Environment Facility (GEF)
- United Nations Environment Program (UNEP)

GLOBE International would also like to extend its gratitude to:

- UN-REDD Programme and its agencies for collaboration and support to the 2nd GLOBE International Forest Forum.
- Justice Antonio Herman Benjamin, High Court of Brazil, for his role as Chair of the Advisory Panel to the GLOBE Forest Legislation Study
- IUCN Environmental Law Center for collaboration in the early stages of drafting of this study

GLOBE and the authors and editors of the Forest Legislation Study would also like to thank the following individuals and organisations for continuous collaboration and for providing input and advice in the drafting of the individual country studies:

Brazil

Natalie Unterstell, Secretariat of Climate Changes and Environmental Quality, Ministry of the Environment

Aloísio Lopes Pereira de Melo, General Coordinator, General Coordination for the Environment and Climate Changes, Secretariat of Economic Policy, Ministry of Finance

Thais Dias Gonçalves, FUNAI

Eufran Amaral, State Secretary of the Environment, Acre State Government

Mônica Julissa, Climate Change Institute, Acre State Government

João Talochi, Coordinator of the State Center for Climate Changes (Ceclima), Amazonas State Government

Thais Linhares Juvenal, ONU-REDD/ FAO

André Lima, IPAM

Fernanda Carvalho, TNC

Almir Surui - Paiter Surui People

Prof. Gylvan Meira Filho, IEA-USP

Plínio Ribeiro, Biofílica

Marco Antônio Fujihara, Key Consultores

Maria Fernanda Gebara, Fundação Getúlio Vargas, Rio de Janeiro

Caroline Schmidt, PhD Student, University of Oxford

DRC

Fabien Monteils, DRC REDD National Coordination, UN-REDD

Bruno Guay, Technical Advisor, DRC REDD National Coordination, UN-REDD

Cléo Mashini, DRC REDD National Coordination.

Nkanu Mbizi, DRC REDD National Coordination

Joseph Itongwa Mukumo, REPALEF Coordinator

Alphonse Longbango, RRN Focal Point Kinshasa CODHOD Coordinator

Bartholomew Boika Mahamb

Nelson Tshitoko, Ministry of Energy

Georges Mulumba, Ministry of Energy

Philippe Duchochois, Ministry for the Environment

Flory Botamba, World Wildlife Fund (WWF)

Désiré Bujiriri, member of the Inter-Ministerial Committee, REDD-NC, Ministry for the Environment, Nature Conservation and Tourism

Director Victor Vundu, Ministry for the Environment, Nature Conservation and Tourism

Leopold Kalala Ndjibu, Ministry for the Environment, Nature Conservation and Tourism

Roger Muchuba, GTCR

Marc Rodriguez, Consultant

Jostein Lindland, Norwegian Representation to the DRC

Ken Creighton, USAID

Francesca Felicani-Robles, FAO

Judicaël Fétiveau, Consultant

Indonesia

The UK Embassy in Jakarta and its support to GLOBE through the project 'Supporting Indonesian legislators in addressing issues posed by sustainable development and climate change'

Prakarsa Perkumpulan, partner of GLOBE International in Indonesia

Farah Sofa, DFID UK Embassy Jakarta

Josi Katarina, UKP4, Jakarta

Windu Kisworo, The Asia Foundation

Dharsono Hartono, PT Rimba Makmur Utama

Mexico

Climate and Land Use Alliance/Ford Foundation

Juan Carlos Carillo, Mexican Centre of Environmental Law (CEMDA)

GMFLI

Elsa Esquivel Bazán, AMBIO

Iván Zuñiga and Sergio Madrid, Mexican Civil Council for Sustainable Forestry (CCMSS)

Gabriela Niño, Mexican Centre of Environmental Law (CEMDA)

Gloria Margarita Álvarez López and Verónica Lira, Research Centre for Sustainable Rural Development and Food Sovereignty (CEDRSSA) of the Chamber of Deputies

Daniela Rey and Linda Rivera, the Climate Law and Policy

Sergio Humberto Graf Montero, the National Forestry Commission (CONAFOR)

Paloma Neumann, Greenpeace Mexico

Leticia Gutiérrez Lorandi, MREDD

María Elena Mesta, the Mexican REDD+ Alliance

Gustavo Sánchez Valle, the Mexican Network of Rural Forestry Organisations (Red MOCAF)

Ernesto Herrera Guerra and Emilio Cruz, Let's Reforest Mexico

Gonzalo Chapela y Mendoza, the International NGO Network on Desertification - Mexico (RIOD-Méx)

Octavio Klimek Adviser, the PRD Parliamentary Group

CCMSS and the representatives from the different communally-held indigenous lands (ejidos), communities and indigenous peoples in the various states throughout the country for their participation in and their contributions to the First and Second Legislative Consultation Workshops with communities, ejidos, indigenous peoples and for the visit to the community to Ixtlán, Oaxaca

Forewords

Foreword by Lord Deben and Senator Alejandro Encinas Rodríguez

Lord Deben is president of GLOBE International and chair of the UK Committee on Climate Change. He was formerly UK secretary of state for the environment.

Mexican Senator Alejandro Encinas Rodríguez is vice-president of the Americas region of GLOBE International

(This text was published in a modified version as an op-ed in the Guardian on October 30, 2013)

With November's annual UN climate conference approaching, it is clear that the next two years are crucial if we are to reach a global climate deal in 2015. Reducing emissions from forests is a crucial step with deforestation representing up to 20% of global carbon dioxide emissions – more than that of the entire transport sector.

But international efforts to tackle deforestation can only succeed if they involve national parliaments, which will lay the groundwork for a global deal in 2015. This is the main message of this study released by the Global Legislators Organisation (GLOBE International) ahead of UNFCCC COP 19 in Warsaw.

Securing a global climate deal has always faced multiple obstacles. But one aspect of the international climate negotiations that was first viewed as a relatively easy win has gradually emerged as a major stumbling block: reducing emissions from deforestation and forest degradation (REDD).

The idea behind REDD is that developed economies with emission reduction obligations pay developing countries, where most of the world's major intact forests are found, for the service they provide in absorbing carbon dioxide from the atmosphere and locking it up.

As climate talks have progressed, perceptions of REDD have shifted markedly. Once seen as a mechanism to reduce greenhouse gas emissions quickly and cheaply, it is now viewed as a complex process incorporating much broader issues than simply reducing carbon, for example indigenous community rights. In the run-up to 2015, how REDD is handled will be crucial. And breaking the deadlock on forests can provide a breakthrough necessary to advance international climate negotiations ahead of 2015.

National parliaments have so far been neglected in REDD negotiations and support programmes. This is tremendously short-sighted given that REDD policies are only feasible with an appropriate legislative base. Urgent engagement with parliaments, and advancement of strong national forest legislation, is now crucial if a REDD deal is to be reached.

GLOBE's report draws on experiences in the Democratic Republic of Congo, Brazil, Indonesia and Mexico – four out of the six countries with the largest forest cover in the world. In recent decades, there has been a relentless march of deforestation caused by agricultural expansion, conversion to pastureland, infrastructure development, destructive logging, and fires. Brazil and Indonesia alone account for more than 51% of the world's emissions from forest loss. In the Amazon, for example, around 17% of forests have been lost in the last 50 years according to the WWF.

This destruction has not been entirely wanton. Globally, some 1.6 billion people rely directly on benefits that forests offer, including food, fresh water, clothing, traditional medicine and shelter.

While REDD can make a huge positive step toward tackling deforestation, the potentially large international transfers of funds and wide range of stakeholders involved have left the process open to risks of fraud and corruption. And progress towards national legislation, essential for REDD to work in practice has been achingly slow.

In part, this is because many parliaments lack capacity to bring legislation into being. In some cases, this is because knowledge about the value and importance of forests is low. By channelling more energy into boosting capacity and enabling parliaments to pass national legislation, governments and international institutions could help create the political space for a global forest deal in 2015. As is increasingly recognized, it is only by implementing national and sub-national forest and climate change frameworks that the political conditions for a global agreement in 2015 will be created.

Mexico is perhaps the best example of where REDD legislation is making a difference. In 2012, the Mexican legislature was one of the first in the world to pass laws preparing for REDD. The new laws link the Mexican forest emission monitoring system to international standards, and require that communities which depend on forests for their livelihoods are included in all decision-making on how forests are used.

These new laws have multiple benefits at home – for example reducing the risk of corruption and land-related conflicts. They have also enabled Mexico to play a leadership role in international forest negotiations, potentially influencing the more than 40 countries that are currently drafting national REDD strategies.
With 2015 on the horizon, much is now at stake for a global deal on forests and climate change. These can both still be secured with a concerted effort that is driven by national parliaments. Time is of the essence, however, and we ignore the ticking clock at our peril.

Foreword by Dr. Naoko Ishii

Dr. Naoko Ishii is Global Environment Facility CEO and Chairperson

Forests are a vital resource for us all. They help to sustain the global environment; forests provide a wide range of goods such as food, fiber and wood as well as ecosystem services including water catchment protection, climate regulation, and biological diversity. Forests also provide livelihood opportunities for an estimated 1.6 billion forest-dependent people and contribute to increased food security among the poorest and most vulnerable groups, particularly women and children.

Although the role of forests has gained remarkable attention in recent years and much progress has been made in sustainable forest management in many countries, forests continue to face a range of pressures resulting in continue forest loss and degradation. Experience has shown that for efforts to succeed in reducing emissions from deforestation and forest degradation, promoting sustainable forest management, and safeguarding the rights of local communities and indigenous peoples, they require enabling policies and regulatory frameworks together with a willingness among policymakers to prioritize actions that result in the long-term provision of benefits and services from forests.

The generation of multiple benefits from forests is a central mandate of the GEF. For over two decades the GEF has supported developing countries address the many complex challenges to be met in achieving sustainable forest management.

The importance of GLOBE's Forest Legislation Initiative, working directly with senior legislators to improve national forest governance, law enforcement, financial scrutiny, accountability and policy coordination cannot be exaggerated. GLOBE's analysis illustrates the importance of legislators engaging and learning from each other, and the value of shared experience from peers who have been involved with developing and overseeing forest and REDD+ legislation.

Given the key role parliamentarians play in the design and enactment of legislation that influence the future of forests in most developing countries, such as land tenure reform, benefit sharing from the use of forest resources, public participation and the development of environmental and social safeguards, this report is a timely and important addition to efforts to strengthen legislation and parliamentary scrutiny functions in forested developing countries.

Foreword by Tine Sundtoft

Tine Sundtoft is Minister of Climate and the Environment, Norway

Through its international Climate and Forest Initiative, the Norwegian government aims at supporting efforts to slow, halt and eventually reduce greenhouse gas emissions resulting from deforestation and forest degradation in developing countries (REDD+).

Destruction of forests threatens millions of persons, many of whom are among the planet's most vulnerable people, those who depend on forests for their subsistence. It is also a key factor behind the current biodiversity crisis. Furthermore, deforestation and forest degradation cause huge emissions of greenhouse gases, accounting for approximately 10 % of annual man-made carbon emissions.

Since its inception in April 2008, the Norwegian Governments International Climate and Forest Initiative has established a series of partnerships with key forest countries and contributed to significant advances in the development of a REDD+ mechanism under the UN Framework Convention on Climate Change (UNFCCC).

As part of its International Climate and Forest Initiative, Norway also provides support to NGOs, research institutes and civil society organizations to pilot projects and provide analyses supporting the REDD+ negotiations and learning.

GLOBE International's Forest Legislation Initiative (GFLI), supported by the Norwegian government through Norad since 2011, is an important component in supporting national readiness for REDD+ and promoting early action.

Enhancing national legal preparedness for REDD+ through engaging parliaments can help create the enabling conditions for a global deal on REDD+ in 2013. It can also provide much needed reform of forest governance on a broader level – including land tenure reform and increased public participation in decision-making.

The Oslo REDD Exchange, a major conference gathering 400 REDD experts and stakeholders and hosted by the Norwegian government in October 2013, concluded that mobilizing political will and national political ownership is one of the most challenging tasks ahead in making REDD work. GLOBE's highly relevant work, which was presented at the Oslo REDD Exchange Results Bar, effectively addresses this challenge through its unique global network of legislators and longstanding experience of supporting parliaments.

Most international donor initiatives in support of REDD+ today engage with Ministries of Environment and Finance, as well as civil society, but more seldom with parliaments. GLOBE is one of the few organizations which bridge this gap by building the capacity of legislators to advance REDD+ legislation as well as increase transparency and accountability of REDD+ financial flows through parliamentary scrutiny and oversight. The GFLI complements the support the Norwegian Government provides to the executive branch of government in forest countries.

The 1st edition of the GLOBE Forest Legislation Study is not only a much anticipated report, but also a highly relevant and timely practical guide and road map of legislative reform options for legislators and other stakeholders currently facing the task of enhancing legal preparedness for REDD.

The Norwegian Government is content to see this result of the first phase of support to the GFLI, and has recently agreed to extend support to GLOBE to the end of 2015, allowing the Initiative to expand to two additional countries – Colombia and Peru. We look forward to collaborating with GLOBE in the coming two years, supporting governments and particularly parliaments to implement key recommendations of this study in favor of early action and national readiness for REDD+. Ultimately, parliaments are key partners in mobilizing the political will and providing the legal frameworks that are needed for REDD+ to succeed.

Introduction to the GLOBE Forest Legislation Study and Methodology

Many tropical forest countries are now ready to begin revising existing legislation and designing new laws and regulations to incorporate national plans to reduce emissions from deforestation and forest degradation (REDD+). Currently, REDD+ pilot projects generally fall within an amalgam of existing forest legislation and policy guidelines, ministerial decrees and regulations as well as national climate change policies, some of which are non-legally binding. In light of the large volume of complex legislation across multiple sectors inherent in REDD+ issues at national levels, there is a critical need for analysis of relevant legal instruments in clear and simple terms via a step-by-step approach, in order to assist Parties in legislative reform and implementation.

Responding to this need, GLOBE International has prepared the 'GLOBE Forest Legislation Study', which includes detailed studies on REDD+ legal frameworks in four key forested countries – Brazil, the Democratic Republic of Congo, Indonesia and Mexico. These countries have been selected because they are major forested countries which are currently in the process of either preparing or starting to implement national REDD+ strategies. The four countries are also part of the GLOBE Forest Legislation Initiative (GFLI).

The GFLI works directly with senior legislators in the four countries (as well as Colombia and Peru since 2013) to improve forest governance, law enforcement, financial scrutiny, accountability and policy coordination whilst facilitating progressive and early engagement of national parliaments with REDD+.

Given GLOBE's unique access to legislators through national GLOBE chapters established in the parliaments in each of the four countries, the results of the study will directly inform ongoing legislative reform processes and support GLOBE's wider work with legislators on REDD+ legislative reform, including capacity building, South-South cooperation and international dialogue, and strategic advising of legislators on REDD+.

The aim of this study is to highlight potential legislative interventions in the GFLI countries that would support the implementation of their national REDD+ Strategy. The focus is on realistic, timely and politically attractive legislative amendments

either of existing legislation or new REDD+ legislation in countries where it is already being advanced. Considering the continuing uncertainty over a final international REDD+ agreement, these amendments should improve national legal frameworks by promoting early action to reduce deforestation and forest degradation even without a global REDD+ mechanism.

This study builds on and complements past and ongoing REDD+ legal reports, most of which have been largely descriptive of national REDD+ frameworks to date. Each of the national chapters within this study will focus in greater analytical detail on how to integrate REDD+ national strategies into legal frameworks, both within the forest sector and other sectors that are connected to deforestation, e.g. agriculture, spatial planning, land tenure, etc.

The study has been authored by national consultants/REDD+ legal experts in each of the four GFLI countries: Ludovino Lopes - Brazil, Augustin Mpoyi - DRC, Syarif Laode - Indonesia and Julieta Lira and Andres Avila Akerberg - Mexico. The executive summary and comparative analysis has been authored by John Costenbader and Darragh Conway, Climate Focus.

To reduce the environmental footprint of the publication of this study, we have chosen to print only the Executive Summary of the Study. The four comprehensive country studies upon which the Executive Summary is based (Brazil, DRC, Indonesia and Mexico) are available in pdf versions via www.globeinternational.org. The full bibliographies are also available online.

The four country studies have all been drafted based upon a shared Terms of Reference and framework of analysis. The first step has been to identify the latest national REDD+ strategy. As each country has not yet produced a final REDD+ strategy, the most recent and appropriate government paper(s) on REDD+ have been used. Once a strategy has been identified, it has been analysed using a framework that has allowed for consistent analysis between the four countries. This analytical structure includes eight 'REDD+ themes' that have been identified to reflect the key aspects of REDD+. These are outlined below:

- Land, Forest and Carbon Tenure
- Spatial Planning
- Institutional Arrangements
- Public Participation
- Benefit Sharing
- Safeguards
- MRV
- Implementation and Enforcement

These themes have been chosen to capture the key aspects of the Cancun agreement on REDD+[1] and provide a comprehensive framework to analyse the latest REDD+ national strategies. It should be noted that while the drivers of deforestation do not have a specific theme in this structure, the 'spatial planning' and 'implementation and enforcement' themes cover some of the underlying causes of deforestation.

Furthermore, the comprehensive approach adopted in this study of considering all the legal frameworks that is relevant to REDD+ means that every sector that influences the state of forests will be included in the gap analysis.

National legal frameworks have defined as national legislation, decrees and/or regulations with a comparable status, which are relevant to REDD+. Furthermore, while the focus of the study is on the national/federal level legislation, REDD+ legislation and policies that are being advanced at the state/provincial level are also touched upon in certain cases.

Throughout the drafting of the study, there has also been a certain degree of flexibility for the national authors to influence the focus of the content of each chapter. As a result, the four country chapters all carry their unique style and focus. Nonetheless, as they all cover the eight REDD+ themes outlined below, a comparative analysis has been highly relevant and possible.

The Executive Summary and comparative overview chapter summarizes the different approaches adopted by the four GFLI countries to implement REDD+ and provides an overview of legislative reform options. It goes beyond summarizing what is already stated in the country studies, providing overarching gap analysis and commentary in each of the eight thematic areas mentioned above.

The Executive Summary and Comparative Overview also places the study in a wider context, commenting on the relevance of its findings for the UNFCCC negotiations on REDD+ and other international REDD-related processes and debates. It identifies areas for potential further research, and any potential next steps for political action, for national legislators in the countries concerned as well as for GLOBE and the GFLI in relation to international REDD+ policy.

[1] Decision 1/CP.16, Section III C and Annex I.

Summary and Analysis

1. Introduction

As REDD+ develops from pilot projects to subnational and national programs, and to initiatives of a wide variety, the role of legal frameworks has grown in parallel. Legislative and regulatory reforms are vital in their roles as both a necessary stimulus to REDD-related activities and governance improvements, and as a means to crystallize technical and policy processes in the form of binding government documentation.

Near-term national REDD+ legislative reform is also highly relevant for the international REDD+ negotiations under the UNFCCC to succeed. The period leading to COP 21 in Paris, where an international climate change agreement is due to be reached, will be particularly important. Individual countries demonstrating their preparedness for REDD+ can provide much needed political momentum to the negotiations and help identify best legal practices that can influence evolving international standards.

In this context, the GLOBE International Forest Legislation Study (GFLS) provides a comprehensive analysis of legislation relevant to REDD+ in Brazil, the Democratic Republic of Congo, Indonesia and Mexico. It assesses both the existence and implementation of legislation across eight analytical categories that have been developed in consultation with international experts, namely: a) Land, Forest and Carbon Tenure; b) Spatial Planning; c) Institutional Arrangements; d) Benefit Sharing; e) Safeguards; f) Public Participation; g) MRV; and h) Implementation and Enforcement.

The individual country studies show that all four countries have made important strides in introducing legislation relevant to at least some of the above categories. Yet there remain major disparities in the level of comprehensiveness across the four countries and, within countries, across the different categories. Additionally, the existence of laws on the books does not necessarily indicate effective implementation, and many general laws remain ineffective due to an absence of implementing or secondary legislation (such as regulations or decrees), low institutional capacities or lack of political will, among other factors.

Table 1 provides an overview of the extent to which each of the eight themes considered in the study are addressed by general legislation in each of the study countries, together with how fully they are implemented, whether by secondary

legislation, institutional mechanisms or otherwise. It is important to note that several of these themes address areas that are broader than REDD+, and in these cases only the assesses the aspects most relevant to REDD+ are assessed.

Table 1: Existence and implementation of legislation across the eight thematic areas

Theme	DRC	Indonesia	Brazil	Mexico
1) Land, Forest and Carbon Tenure	2 - A	2 - B	2 - B	3 - B
2) Spatial Planning	1 - A	2 - A	2 - A	2 - B
3) Institutional Arrangements	2 - B	2 - B	2 - A	3 - B
4) Benefit Sharing	2 - A	2 - A	2 - B	1 - A
5) Safeguards	1 - A	1 - A	2 - A	2 - B
6) Public Participation	1 - A	2 - A	2 - A	2 - B
7) MRV	1 - A	2 - B	2 - B	2 - B
8) Implementation and Enforcement	1 - A	2 - B	2 - B	2 - B

Key:

Legislative coverage	Implementation
1 = no coverage	A = little implementation
2 = some coverage	B = moderate implementation
3 = comprehensive coverage	C = comprehensive implementation

This chapter of the report has two aims. In section 2, it provides a comparative overview of the four country studies. The intent of this section is to summarise conclusions of the four country studies, draw out main messages and recommendations, and provide horizontal, thematic analysis based on the eight thematic areas listed above. Section 3 of this summary aims to place the study in a wider context, providing overarching conclusions for the report, analyzing the relevance of its findings for the UNFCCC negotiations on REDD+ and other international REDD-related processes and debates. It identifies areas for potential further research for national legislators in the countries concerned as well as for GLOBE and the GFLI in relation to international REDD+ policy.

The world cannot afford to wait for forest governance to be perfected before addressing climate change and tropical deforestation. Though the legal work themes discussed in this study are each critical for REDD+, they should not be understood as threshold conditions to be overcome before REDD+ implementation can start. To assume that complex topics that have challenged tropical forest governance for decades could be solved before REDD+ may begin will be self-defeating to global efforts to reduce deforestation and conserve our remaining forests. Nevertheless, there are certain reforms that must be pursued as priorities in order to provide a minimal legal foundation for effective, equitable and efficient REDD+ implementation in the near-term.

2. Summary of Thematic Areas

a. Land, Forest and Carbon Tenure

Overview

Land and forest tenure systems are deeply connected with each country's historical, social and cultural context. The specific issues arising out of such systems and the strategies available to address them therefore naturally vary between countries. That said, the four country studies identify several common issues of central importance to REDD+.

Perhaps the primary issue each country experiences is some degree of conflict between state and community rights to land and forest, frequently arising from the uncertain recognition of traditional or customary rights of indigenous people and other local communities. Although most of the study countries' legal systems provide for some recognition of traditional rights, the extent of such recognition varies and is in many cases subject to uncertainty. Such uncertainty typically arises out of two factors: first, conflicting or unclear legal provisions regarding the scope and ownership of rights; and, secondly, inadequate identification of the persons who possess such rights. For example, in the DRC there exists a dual tenure system which provides shared land rights to the state and local communities. Ambiguities in the 2006 Constitution, however, allow for different views as to how far the rights of the state extend. At the same time, the absence of a system to register or provide titles for land rights has led to difficulties in ascertaining who can lay claim to a given piece of land.

Recognizing traditional rights which frequently correlate to de facto ownership and usage patterns has frequently been identified as an important factor in protecting community lands from outside encroachment and in turn encouraging more sustainable management. Mexico has recognised common property and promoted community forests since the 1970s, resulting in a strong community forest sector there. Similarly, various African countries have come to recognise community forests in recent years.[1] Although customary law is not guaranteed to be more sustainable than statutory law, it is critical for informal rules to gain recognition and lawmakers to harmonize the two types of norms. Similarly, it is important to simplify legal and administrative hurdles allowing forest-dwelling populations to

[1] For example, Mozambique's 1997 Land Law recognizes local communities' rights to hold land and obtain titles in common. *See* Doumbe-Bille, S. and Costenbader, J. (2011). 'Laws and Local Forest Management in Africa'. In: Arbor Vitae, IUCN Forest Programme, Issue 44, 11-12, at 11. URL: <http://cmsdata.iucn.org/downloads/av44_english_extended_final.pdf> (noting similar other land law reforms in Uganda, Tanzania, Niger, South Africa, Cameroun, Benin and Gabon).

secure tenure and permits for legal access and use of non-timber forest products while taking care not merely to make it easier for local elites or criminals to legalize unlawful forest activities.

Although all study countries have experienced similar issues in this regard, their different levels of advancement in addressing these issues serve to highlight challenges that arise at different stages. Indonesia illustrates the challenges at a basic level of advancement. While national legislation has previously provided for little recognition of indigenous rights, a ground-breaking 2013 decision of the Constitutional Court held this to be incompatible with the Constitution and amended the legislation accordingly. This presents major challenges for the Government of Indonesia in establishing a system for recognising and recording indigenous peoples' rights, as well as in resolving the claims of current licensees. In some cases, such licensees have overlapping permits granting them access to forests, which may now be considered to belong to indigenous communities.

At the other end of the spectrum, the *ejido* system in Mexico is among the most secure collective ownership systems in REDD+ countries globally, with 70% of land being subject to a combination of individual and collective management by *ejidos* (communities), with the majority under secure land titles. Yet certain issues remain. For one, within *ejidos* there are several groups who typically do not enjoy recognised rights despite being active land managers, most notably widows, heirs, casual labourers and *avecindados*.[2] This points to the need not only to ensure clarity as to the recognition of community rights, but also to the recognition of individual rights within communities. At the same time, there remain difficulties in Mexico with the recognition of the property rights of indigenous peoples which have not been formally registered as *ejidos*, pointing to the need to ensure that collective ownership systems are accessible to indigenous people.

A related issue experienced by several countries is the absence of adequate definitions of terms such as 'indigenous peoples', which may hinder the application of national and international laws that refer to such peoples and communities, such as those granting them specific land rights.

In most countries it is considered that in the absence of specific regulation, ownership of carbon is somehow tied to land and forest rights. However, in the absence of specific laws uncertainty generally remains. Several of the study countries have made some attempts to regulate carbon ownership, with varying

[2] Avencindados are persons who live in the area of an *ejido* but have not yet been formally recognised as ejiditarios (official community members).

degrees of success. In Mexico both 'carbon capture' and 'climate regulation' were included within the definition of 'environmental services' in reforms enacted in 2012, which are deemed to belong to the owners of the land from which they arise. However, it remains uncertain whether 'carbon capture' includes avoided emissions as well as removals, and whether 'climate regulation' refers only to the local climate or also the global climate. Similar issues have arisen in DRC where, though there have yet to be any attempts specifically to regulate carbon, under existing principles naturally stored carbon is likely to be treated differently from carbon subject to active management. In Indonesia, meanwhile, several regulations set out specific procedures for attaining rights to develop REDD+ projects. These regulations appear to imply a form of carbon ownership to licensees, though this was not clearly specified. Moreover, the respective regulations are not consistent, leading to confusion and uncertainty.

A common challenge in regulating carbon ownership is its relationship with land tenure. Carbon ownership is usually considered to be closely tied to land and forest ownership, so regulating it can be challenging in the face of remaining tenure uncertainties. Since clarifying land tenure is frequently a long-term process, the question arises whether interim solutions to carbon ownership are possible. One option may be to combine two systems of REDD+ entitlements: one relating to areas where rights are secure, and the other relating to areas where they have yet to be clarified. In the former full carbon rights could be assigned, while in the latter an equitable system of benefit sharing that is not strictly tied to land rights could be instituted. This can be complemented by providing for procedures authorizing REDD+ projects or programmes that do not prejudice the future determination of tenure rights on disputed lands and by ensuring a transparent and consultative process to obtain consent and partnership of communities in licensing procedures for both REDD+ and other forest activities.

The Brazil study additionally highlights the specific issues that will need to be regulated in the event that an offsetting or trading approach to REDD+ is adopted. In addition to defining who has rights to develop offset projects or programmes and claim ownership of any emission reductions created, these include determining that carbon rights can be separated from the land, how certificates are classified (e.g. as goods or securities) and electronic systems for recording the transfer and tracking of certificates.

Lessons learned

1. Reforming land tenure to the effect of clarifying the legal status of traditional rights and their relationship with other rights (in particular those of the state) is an important element not only in providing clarity for

REDD+ to be implemented, but for the broader goal of ensuring long-term sustainable land and forest management.

2. Clarifying tenure involves a range of steps that in most cases should seek to include:
   - Reforms clarifying the respective scope of rights of different groups, such as the state, private entities and local and/or indigenous communities;
   - The creation of clear and accessible processes for obtaining and registering land rights, as well as for resolving conflicting claims to land;
   - Defining important terms related to tenure, and in particular terms defining specific groups with special land rights such as 'indigenous people' or 'local communities'. This may also be complemented by providing an accessible process to register indigenous communities.
   - Providing for the recognition of rights of vulnerable persons within communities, which may include such groups as widows or casual labourers.
3. While specifically regulating carbon is not absolutely necessary for REDD+ to proceed it can greatly facilitate certainty. Regulation would be best done through a single instrument/framework at a sufficiently high level to ensure avoidance of conflicts, and which in most cases seeks to address the following aspects:
   - What ownership applies to (e.g. avoided emissions/removals; naturally/actively sequestered carbon).
   - What rights are included within ownership (e.g. right to develop/ participate in projects and programmes; right to generate and sell carbon credits; right to receive benefits).
4. While tenure reform is an important aspect of regulating carbon ownership, it is frequently a long-term process and should not be thought of as a pre-requisite to allowing REDD+ to move forward, provided that adequate interim measures are put in place, such as those on benefit sharing, REDD+ authorization procedures and Free, Prior and Informed Consent (FPIC). In designing interim measures, it is important not to prejudice the future clarification of tenure rights over a given area.
5. In the event that a market-based approach to REDD+ is pursued, a number of additional aspects of carbon ownership will need to be regulated, including determining whether carbon rights can be separated from the land, how certificates are classified (e.g. as goods or securities) and electronic systems for recording the transfer and tracking of certificates.

b. Spatial Planning

Overview

Reducing emissions from the forestry and land use sector requires addressing the competing land uses that underlie deforestation and forest degradation. Well-designed spatial planning processes can play a central role in this respect by allowing decision-makers to balance respective land uses, encourage them where they are most suited and, where they exist, exploit synergies in land use policy goals. At the same time, the existence of a coherent spatial planning framework is an important prerequisite for facilitating specific planning for REDD+, such as through identifying which actors are eligible to engage in which types of REDD+ projects and programmes in which areas, and ensuring that REDD+ is adequately coordinated with land use planning across all relevant sectors of the economy.

Spatial planning laws and processes of some form exist in all of the study countries. These include laws themselves defining eligible areas for given activities or land uses, establishing zoning processes for defining such areas and establishing development programmes or setting priorities. Some countries, most notably Mexico and Brazil, have a range of relatively well-developed planning processes spanning various sectors, while in Indonesia and DRC processes are focused predominantly on urban planning and only address forests and other areas important for REDD+ to a quite limited extent.

Regardless of their number and level of development, in all study countries where they exist laws and processes are primarily focused on specific sectors and undertaken by respective sectoral institutions without substantial coordination or integration of multi-sectoral perspectives. They therefore predominantly reflect the perspective of that sector only and as a result are frequently conflicting. This absence of legal clarity and coordination typically leads to economically more favourable uses winning out, usually to the detriment of forests. At the same time, it frequently leads to conflicting land rights being allocated by different entities in respect of the same areas.

In federal systems such as those in Mexico and Brazil, as well as in the quasi-federal system that exists in Indonesia and even to some extent in the DRC, this issue is compounded by conflicts between planning processes at federal (or national) and state (or provincial) level. A related issue identified by the Mexico and Indonesia studies is the absence of meaningful local government or community participation in the planning process. As a result, processes risk lacking adequate local information and conflicting with local land management priorities, a factor that becomes particularly relevant where, as for example in Mexico, the majority of the land is managed by communities.

Based on these factors, all study authors therefore identified greater coordination of these processes as a priority for REDD+. Two principal options were identified: establishing a centralized land use planning process at national level and establishing coordinating mechanisms to ensure the various processes are compatible. These options are not, however, mutually exclusive; in the event of a centralised planning process being developed coordination mechanisms may still facilitate ensuring that such plans are implemented coherently by respective ministries.

Several other barriers to coordination and consistency in land use planning were identified in the studies. One issue arising in some countries, for example Indonesia, is the absence of unified and officially recognised forest maps, preventing spatial planning for the forest sector being undertaken in a coordinated and consistent manner, and potentially leading to granting conflicting legal rights in respect of a given area. A further issue relates to the absence of effective and accessible dispute resolution systems to resolve conflicting land claims arising from the lack of coordinated planning processes.

Several study countries have begun to develop specific planning frameworks for REDD+, though have yet to develop comprehensive frameworks in this respect. Brazil, for example, has defined which areas are eligible for REDD+ but has not yet defined other important aspects such as priority areas, which activities are eligible in which areas, and which actors are entitled to develop projects and programmes in respective areas. Indonesia, meanwhile, has begun to develop a single national forest map to be used in all REDD+ planning, together with official maps for all nine pilot areas, but has yet to define the processes by which the maps will be used in planning for REDD+.

Lessons learned

1. Establishing integrated national spatial planning frameworks that have the capacity to incorporate multiple perspectives and address a variety of goals is vital for REDD+ and effective land use management more broadly. Such frameworks would benefit by aiming to:
    - contain both substantive and procedural elements. Substantive elements may include rules prohibiting or encouraging certain activities in certain types of areas, while procedural elements can include a variety of complementary instruments, including zoning and strategic planning processes;
    - provide for participatory planning processes that incorporate not only different relevant national institutions but also regional and local governments and, to the extent that it is practicable, local communities or other land managers;

- provide for coordination and participation in both the planning and implementation stages. Ongoing coordination may be provided through, for example, periodic inter-sectoral coordination meetings or the use of shared electronic planning systems;
- be grounded in consistent and unambiguous legislative provisions, which may be achieved through replacing existing dispersed legislative provisions with a single overarching spatial planning law.

2. Integrated spatial planning frameworks should seek to incorporate fully rules and processes for REDD+. Such rules and processes are likely to be somewhat different from those on specific sectors, since REDD+ activities may span a broad range of sectors and be integrated with other sectoral goals. Specific REDD+ rules and processes include the following:
   - rules setting out where and by whom given REDD+ activities can be implemented;
   - provisions identifying priority areas for REDD+ or for specific REDD+ activities;
   - coordinated inter-sectoral planning processes that seek to plan REDD+ activities across sectors in an integrated fashion and exploit synergies with sectoral goals.
3. Consistency in land mapping is a prerequisite for ensuring coordinated spatial planning. Legislation could assist by providing for the development or consolidation of integrating national and/or regional land use maps that are periodically updated to reflect land use decisions and planning processes.
4. Where problems with land use planning systems (or lack thereof) in the past have led to conflicting land rights being granted, establishing dispute resolution mechanisms can provide an important tool for solving conflicts and ensuring they do not hinder the effectiveness of reformed planning systems.

c. Institutional Arrangements

Overview

Implementing REDD+ raises a range of new challenges for governments that necessitate designating competent institutions to take responsibility for addressing them. These range from technical challenges such as monitoring, reporting and verification of land-based emissions, to practical challenges surrounding implementation of REDD+ activities, administrative challenges around licensing and approving REDD+ initiatives and the financial challenges of managing and distributing new sources of finance. The cross-sectoral nature of REDD+ also means that getting institutional arrangements right goes beyond assigning additional powers to new

or existing bodies, to necessitate aligning the responsibilities and actions of the various existing institutions involved in the land use sector to ensure optimal management of land. Effectively addressing these dual objectives is fundamental to creating the right governance conditions for REDD+ to work at national and sub-national levels.

Designating institutions responsible for REDD+

While inter-sectoral bodies are important for high-level coordination (see below), direct responsibility for day-to-day management of REDD+ is typically assigned to one or more executive bodies. Reflecting the variety of functions associated with REDD+, in several countries executive functions are shared among several bodies, who may be in turn supported by one or more technical bodies such as scientific committees or technical working groups. This can enhance efficiency to the extent that the new REDD+-related functions assigned to respective bodies build on their existing functions (e.g. financial institutions such as the Brazilian development bank, BNDES). Problems can arise, however, where, as in Brazil, there is no clarity on which of the several existing institutions which retain responsibilities with respect to REDD+ are entitled to lead, creating confusion and the potential for power struggles to arise. Regardless of the number of institutions that are established for managing REDD+, therefore, it is important that, first, it is clear which institutions are responsible for which mandates and, secondly, that one institution is assigned to take the lead and is assigned sufficient responsibility to carry out that mandate.

Deciding whether to establish new bodies or use existing bodies for REDD+ is among the key questions in establishing REDD+ institutional frameworks. Perhaps reflecting the novel challenges raised by REDD+, three of the four study countries (Brazil, DRC and Indonesia) have established one or more new institutions responsible for at least some aspects of its implementation. In most cases, however, the powers of new institutions have been limited and existing institutions such as forestry ministries or agencies have retained a high degree of involvement. This may reflect the reluctance of existing institutions to relinquish control over forestry matters, though it can also be seen as a practical decision to facilitate greater consistency with other activities in the forestry sector. In this vein, Mexico has assigned all REDD+ functions to existing institutions, most notably the National Forestry Commission (CONAFOR), reflecting its strong existing institutional framework for forestry.

While day-to-day management of REDD+ issues will usually fall to executive bodies, the legislative and judicial branches also play an important role. Legislative bodies are of course crucial in adopting REDD+-related laws, but can also play an

important role in monitoring and oversight of executive bodies, and creating specific oversight mechanisms to allow for this can improve transparency and accountability. Judicial bodies also play an important role in ensuring that laws are complied with by the executive and others, as demonstrated by the 2011 and 2013 Indonesia Constitutional Court decisions discussed above. Their role can be strengthened by facilitating access to justice through, for example, legal aid programmes, particularly for vulnerable persons.

Coordination of institutions

All country studies identified the need for improved coordination among the various national-level institutions with responsibilities relevant to REDD+ among the priority areas for reform. Depending on the country, these may include ministries or agencies with responsibilities for forestry, land, environmental affairs, agriculture or rural development, economic or foreign affairs, as well as any bodies charged with managing or promoting indigenous peoples' rights and potentially other bodies involved in competing land uses such as tourism, mining or energy generation. Three of the study countries (Brazil, DRC and Mexico) have already established some inter-sectoral coordinating bodies on either REDD+ or climate change more generally, usually at the level of ministers or senior civil servants, which have for the most part facilitated improved coordination and policy alignment. In some countries existing bodies designed to facilitate coordination in related areas may also be highly relevant for REDD+, such as Mexico's Inter-Ministerial Sustainable Rural Development Commission (CIDRS).

Several challenges have nonetheless limited the effectiveness of coordination mechanisms. In the first place, some inter-sectoral bodies have not been allocated sufficient powers to enable them to achieve their objectives. For example, in Brazil the limited power of the REDD+ National Commission to create new laws has been highlighted as potentially limiting its capacities. Similarly, Mexico's CIDRS has not yet incorporated REDD+ issues within its mandate, despite the important cross-overs with other issues it is responsible for. Perhaps equally important to legal mandates is the matter of practical capacities. In DRC two of the three bodies set up to coordinate the REDD+ process – the National REDD Committee and the Inter-ministerial Committee tasked with planning and coordinating cross-cutting issues – managed to meet only infrequently, limiting their ability to provide effective fora for coordination. While the failure to meet can partially be attributed to absence of financial resources, it is considered that an absence of political capital was also an important factor, which in turn affects the legitimacy of such bodies.

An additional challenge experienced has been to ensure the right representation. In Mexico neither the Inter-Ministerial Climate Change Committee nor CIDRS

include certain important institutions such as the National Commission for the Development of Indigenous Peoples or the Secretariat of Agrarian, Territorial and Urban Development, limiting their ability to coordinate with respect to issues primarily within the mandates of these organizations.

In addition to national level coordination, several country studies identified vertical coordination between different levels of government as a major barrier to effective implementation of REDD+. This is particularly important in federal or quasi-federal systems such as those in Brazil, Indonesia and Mexico, where state or provincial governments may retain significant powers with respect to forestry or land use issues. In addition, several studies identified the importance of empowering local level institutions, including community bodies, to participate in the development and implementation of REDD+ initiatives, as well as in forest and land use policy more generally. This is considered especially important in areas where communities remain the primary land managers.

Lessons learned

1. Given the cross-sectoral nature of REDD+, it is perhaps inevitable that there will be multiple institutions with responsibilities relevant to it. The best practice appears to be to address this through three mutually supportive arrangements, which may be supported by one or several technical bodies such as research institutes or technical working groups:
    - an inter-sectoral coordination body, preferably at ministerial or similar high level, with responsibilities to coordinate national level action on REDD+ and ideally also facilitate the coordination of land use decisions relevant to REDD+. Such a body can be created specifically for REDD+ or climate change or, alternatively, the REDD+ agenda can be incorporated within existing coordination bodies; and
    - assigning a single agency to lead on REDD+ or, where more than one agency is responsible, clearly defining their respective responsibilities. This could potentially constitute an agency attached to a given Ministry, such as the Forestry Ministry, though creating independent agencies or agencies sitting directly under the President or Executive may give them a higher status. Where it is intended to establish an executive body for REDD+ and this has not yet been done, in the meantime responsibility can be assigned to an existing institution such as a forestry agency.
    - Laying down mechanisms to ensure that effective oversight by legislative and judicial bodies can be carried out and facilitating access to justice for vulnerable persons.

2. In determining whether to establish new bodies for REDD+ or vest additional functions in existing bodies, factors that should be considered include the capacities of existing institutions to carry out REDD+ functions and the potential for synergies and/or conflicts between the mandates of new and existing institutions. Ultimately, decision-makers should consider what the establishment of a new institution would add and how it will fit within the existing institutional framework before going ahead with its establishment.
3. It is important to ensure that all bodies have the requisite competences to carry out their mandates. In the case of coordination bodies, it must be considered whether they are given substantive powers such as developing legislation/rules or are only to serve a coordination function. Executive bodies may also be tasked with developing legislation etc, while it is common for them to also be given responsibilities over matters such as granting licenses for REDD+ activities.
4. In addition to ensuring formal mandates are sufficient, it is important that all bodies are endowed with sufficient capacities and political capital to enable them to carry out their mandates. In the case of coordination mechanisms, it is crucial to ensure meetings are held sufficiently regularly and attended by sufficiently high-level representatives so as to allow for them to have a tangible influence over sectoral decision-making processes.
5. Vertical coordination mechanisms are also important for REDD+, particularly in countries with federal or other multi-level governance systems. One means to achieve this is through establishing platforms or mechanisms for states/provinces, municipalities and, where possible, communities within national policy-making and implementation processes.

d. Benefit Sharing

Overview

Benefit sharing assumes particular importance in REDD+ due to the multiplicity of actors who are intrinsically involved in land use and management in many developing countries. These include different levels of government, traditional communities and indigenous peoples, private or family land owners and investors or civil society groups involved in REDD+ initiatives. The diversity of actors, coupled with the vulnerability and high level of dependence on the land of certain groups, necessitates a certain level of government regulation of benefit sharing arrangements. This can have the dual effect of ensuring a minimum standard of protection to local actors and strengthening predictability for potential investors in REDD+. Moreover, since rights to participate in the receipt of benefits are often closely connected with land tenure rights, addressing benefit sharing through legislation can enable governments to ensure consistency with land tenure reform efforts.

None of the four study countries have yet adopted a comprehensive benefit sharing framework for REDD+, which may reflect the complex and politically sensitive nature of developing frameworks that are acceptable to the range of actors involved. Several of the countries have begun to set out their intended approach to benefit sharing through national REDD+ strategies or similar policy documents, allowing for some preliminary lessons to be drawn on the issues that have arisen in this process. Among the most important issues that have arisen in this respect are the following:

1. The need to define both rules and principles for benefit sharing (e.g. defining minimum shares for different actors) and distribution mechanisms (e.g. national and/or sub-national funds). With respect to distribution mechanisms, REDD+ or climate change funds have become an increasingly common means of managing and distributing funds, with regional, national or sub-national existing in all four study countries.
2. The need to differentiate between benefit sharing from different kinds of lands. For example, governments will likely have a less prominent role in determining benefit distribution from activities on private lands than on state lands, while their role with respect to community or indigenous lands may depend on the strength of tenure rights such communities have.
3. The need to differentiate between benefit sharing from different kinds of activities. In particular, some countries (e.g. Mexico) have sought to differentiate between emission reduction activities and emission removal activities, reasoning that the latter may require more pro-active management than the former. It is important to note, however, that this is not necessarily the case, since emission reduction activities may also require active management in many cases.
4. The need to differentiate between sharing of benefits from different sources. Sources of revenue for REDD+ may range from international public sources (e.g. international donors such as FCPF, UN-REDD or bilateral donors) to national public sources (e.g. national governments) or private financing, whether through loans, equity investments or carbon offset projects. The source of financing affects, *inter alia*, the role of the government in determining benefit distribution, the actors entitled to receive benefits and the mechanisms for their distribution.
5. How adequately to link funding for given emission reductions/removals to the activities that caused them. Accurately measuring, reporting and verifying emissions at local levels can be highly difficult and costly, raising the question of what alternative mechanisms can be employed to determine benefit sharing across different areas involved in REDD+ activities. In Brazil, for example, a range of government programmes have been developed to reward communities for forest conservation without necessarily linking payments to emission reductions or removals.

Several country studies, most notably those on Indonesia, Brazil and Mexico, identified a number of existing laws which, while not addressing benefit sharing from REDD+ directly, set out rules that may apply in the absence of a specific overriding framework being adopted for REDD+. These include general fiscal laws and laws governing benefit sharing from natural resources extraction in the forestry sector (as in Indonesia) and legislation guaranteeing indigenous peoples a certain share of revenue from activities on their lands (Brazil's Indian Statute). Similarly, in Mexico the Agrarian Law provides that communities and *ejidos* are responsible for their own internal governance, indicating that the distribution of REDD+ benefits within *ejidos* and communities will be based on their respective internal organisation and norms.

In addition to applying in the absence of REDD+-specific frameworks, such laws can also inform or be incorporated within such frameworks, though the extent to which this should be done will depend on factors such as their compatibility with REDD+ principles and objectives. For example, the Indian Statute (a federal law) in Brazil sets out the rights of indigenous peoples to the economic benefits from activities on their lands, which would appear to include REDD+. As this is a high-level law that would appear both directly applicable to REDD+ activities and in line with international REDD+ principles, there would be a strong argument for it to be respected in REDD+ benefit sharing procedures. On the other hand, under Indonesian legislation governing natural resources extraction in the forestry sector, revenue is shared only between national and regional governments. Since this is not compatible with REDD+ principles, it is likely that it would need to be replaced in the context of REDD+.

Where specific frameworks are being adopted for benefit sharing from REDD+, it is crucial to ensure that such frameworks are consistent with existing legislation such as those referred to above, or, alternatively, that such frameworks are adopted at a sufficiently high level of legislation so as to replace existing provisions for the purposes of REDD+. The importance of this is illustrated by the adoption of a ministerial regulation in Indonesia that sought to set out the proportion of benefits from REDD+ initiatives to be allocated to the government, project developers and local communities, respectively, with the proportions varying depending on the type of forest concerned.[3] This distribution was rejected by the Ministry of Finance on the basis that it was not consistent with the Fiscal Balance Law, while the Ministry further questioned the authority of the Ministry of Forestry to adopt such measures through a simple ministerial regulation in the first place.

[3] Ministerial Regulation No. P.36/Menhut-II/2009 on Licensing Procedure for the Utilization of Carbon Sequestration and/or Storage in Production Forests and Protected Forests.

Lessons learned

1. Benefit sharing systems should address both rules and principles for benefit sharing and distribution mechanisms. In both cases the level of prescriptiveness that is appropriate for the government to take in setting out common or minimum standards will depend on factors such as its authority over the land in question, whether the finance is public or private and the involvement of vulnerable persons such as indigenous communities.
2. Benefit sharing mechanisms should where possible build upon and be informed by existing laws. At the same time, the fact that such laws were often not designed with REDD+ in mind means that specific rules on REDD+ benefit sharing are in most cases also needed. The extent to which the REDD+ framework should incorporate existing rules will depend on factors such as their legal status/level of hierarchy, their direct applicability to and their appropriateness for REDD+.
3. In order to ensure certainty and enhance transparency and accountability, rules on benefit sharing should be adopted or explicitly provided for at a relatively high level (e.g. through national legislation).
4. Countries will need to decide on what bases they wish to differentiate between different types of benefit sharing situations and the rules applicable in each. The choice of rules may depend on factors such as the source of finance, the role of the state in receiving and managing the finance, the number of actors who share rights over the land in question, the share of each actor's participation in land management, and the attractiveness of the area for private investment (where this is envisaged or desirable).
5. Countries also would benefit from deciding to what extent payments will be linked to specific emission reductions/removals. Results-based payments at local level are complex and expensive to monitor; at the same time, beneficiaries will expect a certain amount of equity and correlation between their efforts and their payments.
6. Regional, national and/or sub-national REDD+ or climate funds are becoming increasingly common as a means of channelling REDD+ benefits from multiple sources to multiple individuals.

e. Safeguards

Overview

Numerous social and environmental concerns have been raised regarding REDD+ activities, including environmental issues such as conversion of natural forests to plantations to social issues such as displacing forest-dependent communities from their traditional lands. In order to avoid these and other harms, international negotiations on developing a global REDD+ mechanism have included discussions focused on establishing principles. Addressing this need, the Conference of the Parties to the UNFCCC decided in December 2010 on a broad list of 'social safeguards' towards this end, to be respected by all countries involved in REDD+ activities.[4]

No country of those surveyed here has established legislation directly addressing the topic of REDD+ safeguards, although arguably Mexico has the closest legislation already on the books in its LGDFS, which provides for certain social safeguards in environmental services initiatives (including FPIC under its 2012 reforms), as well as indirect safeguards in conservation legislation. Brazil also has numerous indirectly relevant laws providing safeguard type principles, albeit needing operationalizing to make them directly applicable to REDD+. Despite a wide variation in strength and coverage of existing legislation related to REDD+, all countries have some sort of legislative framework in place providing at least foundation-level safeguard principles. However, most countries surveyed (and most REDD+ countries generally) nonetheless lack sufficient regulations or decrees to implement and/or enforce such law.

In Brazil and Mexico, safeguards often have strong legislative frameworks only to lack any secondary legislation for their implementation. In the DRC and Indonesia, such general safeguard principles are less evident in national legislation (although currently under development in the DRC). Furthermore in Indonesia and the DRC, no safeguard provisions have been provided in the relevant forest legislation or REDD+ regulations. Additionally, neither country has developed legislation clearly outlining the circumstances requiring application of safeguards. Indonesia seems to be the furthest behind of the countries examined in its safeguards framework, as its forestry legislation and REDD+ regulations do not mention safeguards relating to the following main provisions, *inter alia*: treatment of customary landholders and

[4] UNFCCC. (2010). 'Cancun Agreements'. Decision 1/CP.16, Appendix I, par 2. (listing the following REDD+ safeguards: a) consistency with national objectives and priorities; b) transparent and effective forest governance; c) respect for the knowledge and rights of indigenous peoples and local communities; d) effective participation of stakeholders; e) multiple co-benefits of forests; f) permanence; g) leakage). <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

indigenous forest groups; protection of tenure rights; anti-corruption; government coordination; benefit-sharing; and public participation. Moreover, its treatment of local and indigenous communities has been the subject of considerable controversy in recent years even prior to the advent of REDD+.[5] Moreover, under the Indonesian 1999 Forestry Law, several amendments are required to bolster indigenous and customary rights to ensure that Indigenous peoples' rights to possess, develop, control and use their communal lands are respected.[6]

Despite their divergent legislative starting points, all the countries surveyed are in the process of adapting general environmental and social standards existing in background legislation to REDD+ issues. This will require a combination of modifying existing legislation and developing new implementing regulations and decrees at an agency or institutional level to actually carry out such legislative provisions. Given the variety of projects, programs and initiatives possible in most REDD+ countries, there is a clear need for legislative and/or regulatory processes to standardize and formalize REDD+ safeguard processes so as to ensure a common approach to safeguards. Additionally, in the process of formalizing safeguards countries such as the DRC will need to decide (if they have not already done so) whether or under what circumstances to make impact assessment mandatory, voluntary or exempted for REDD+.

Beyond legislative and regulatory reforms alone, however, most countries will also require capacity and institutional building to facilitate the implementation of safeguards. In this regard, Mexico has legislation providing for technical capacity building that could help address this deficit, but which in practice has rarely been implemented. Similarly, decision-makers, officials and the public in DRC and Indonesia are often poorly informed about what safeguards should be applied in which circumstances.

The leading work to date on safeguards has been done at an international level via principle-criteria-indicators approaches to developing safeguard standards. The leading examples of these are the Climate, Community and Biodiversity Standards

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[5] In particular, despite a legislative requirement that customary rights be respected in Indonesia under Forest Law 41/1999, mechanisms for determining customary rights have not been clearly formulated and there is debate over definition of the term 'indigenous'. See McDermott, C. L., Cashore, B. and Kanowski, P. (2010). Global Environmental Forest Policies - An International Comparison, pp. 173-174. UK: Earthscan Forest Library, Earthscan Publications, p. 173.

[6] Victoire Dah, F. (Committee for the Elimination of Racial Discrimination). 'Letter to the Ambassador, Permanent Mission of the Republic of Indonesia to the United Nations Office at Geneva' (13 March 2009), p. 2. <http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf>. Last visited 6 February 2012.

(CCBS) for voluntary project-level safeguards and the REDD+ Social and Environmental Standards (REDD+ SES), which provide a participatory process for government REDD+ programs to develop safeguards. Many countries are working to adapt these lessons at national and subnational contexts, and will need to develop domestic capacity and understanding about REDD+ processes without overly raising expectations of REDD+. The DRC is beginning to incorporate its safeguard process into legislation, and plans to use a principle-criteria-indicators approach. At a subnational level, the states of Acre and Amazonas in Brazil are using the REDD+ SES process to develop standards in their respective jurisdictions. Developments in both countries suggest progress in the right direction for establishing strong, context-specific safeguards meeting global standards.

Additionally, corruption and financial misuse have been identified as threats to REDD+ and main areas in need of safeguard development in Brazil, the DRC and Indonesia, where all three countries can draw on lessons from misuse of funds intended for forest protection and sustainable development. In the DRC, the recent move to decentralize the country increases the burden on ensuring financial management across numerous new local level governments. Under a 2008 law, the DRC plans to address this via a review by the General Inspectorate of Finance and the Auditor General of the financial accounts of provinces and decentralized territorial entities.[7] In Indonesia, the Dana Reboisasi fund instituted under the Soeharto regime amassed 5.8 billion USD over 20 years to pay for reforestation and rehabilitation of forestlands but much of this generally benefited powerful forestry companies while local communities were often displaced, without compensation, from their customary lands.[8] Although post-Soeharto governments have greatly improved forest fund governance in Indonesia, Indonesia and many other REDD+ implementing countries will need to ensure transparency and accountability via safeguards for income received and benefit distribution in developing a national REDD+ system.[9] The Indonesian forest fund experience highlights the need for provisions regulating state forest fund accountability and private developer involvement, given that many of the same forestry sector large-scale commercial actors are now posed to develop REDD+ projects.

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[7] DRC. 2008. Law No. 08/012 of 31 July 2008 on the fundamental principles of self-government of the provinces.

[8] See generally, Barr, C., 2010. 'Financial Governance and Indonesia's Reforestation Fund during the Soeharto and post-Soeharto Periods, 1989–2009', Center for International Forestry Research (CIFOR), Bogor, Indonesia. URL: <http://www.cifor.org/publications/pdf_files/OccPapers/OP-52.pdf>.

[9] Id.

Finally, the equitable treatment of indigenous peoples and their inclusion in decision-making processes are main topics of concern in many REDD+ countries and this has been highlighted as a foremost area of work identified as needing to be addressed in the DRC, Brazil and Mexico. Treatment of indigenous populations has been a long-standing issue of importance in Indonesia. In the DRC, the issue of defining pygmies as either 'local communities' or 'indigenous peoples' presents a challenge in protecting specific, historically vulnerable social groups from marginalization while also not ignoring other similarly situated marginal groups. Not to be overlooked, this topic is addressed in further detail below in the section on public participation.

Overarching constitutional and legislative principles protecting (and increasingly, promoting) social and environmental aims are a necessary first step to instilling REDD+ safeguards. However, without implementing regulations such principles can have little practical effect, as exemplified by all of the countries in this study. Similarly, the strategy of adapting background legislation to REDD+ should provide important efficiency benefits, as general legislative provisions regarding social and environmental protections can be made to address REDD+ more quickly via amendment and/or implementing regulations than could entire new legislation developed separately. However, principles-criteria-indicator approaches and participatory processes in terms of their tailoring to national or subnational circumstances (such as the CCBS and REDD+ SES) provide an important means to informing more detailed regulatory provisions that will ensure safeguards are implemented and enforced.

Lessons learned

Findings from the four country studies in this project highlight the following areas of work for development and implementation of meaningful safeguards for REDD+:

1. Adaptation and customization of existing background legislation, as well as promulgating necessary implementing regulations, will allow for governments to respond most efficiently to REDD+. For the development of safeguards specific to REDD+ (e.g. common criteria), longer-term legislation likely will need to be developed;
2. Both customization of existing law and development of new law is likely to work best when informed by principles-criteria-indicators participatory safeguard development approaches (e.g. REDD+ SES, CCBS);
3. Standardization and formalization of safeguard processes for REDD+ will be important to ensure a common approach to safeguards across projects, programs and initiatives in a given REDD+ country;

4. In many countries, technical capacity building and institutional development will be necessary in order to implement safeguard legal provisions;
5. Regardless of legal recognition chosen, it is important that protection of indigenous peoples is guaranteed in REDD+ programs and projects, although with similar levels of protection given to other vulnerable social groups and local communities.
6. Financial safeguards intended to prevent both official government corruption and misuse of public funds will be vitally important to ensuring equitable outcomes. REDD+ funds and similar financial receipt and distribution vehicles under development in many countries will need comprehensive regulation in order to ensure transparent and accountable management.

f. Public Participation

Overview

Closely related to the issue of safeguards, albeit connected more deeply with ongoing governance processes, public participation will be a central issue to establish early on in order to ensure input and support from local populations, and to guarantee equitable arrangements down the road. Generally, laws are accepted and followed when the public finds them fair and has a sense of ownership in their creation. Binding participatory procedures will be fundamental to regulatory success over the long term, as even perfectly-designed and implemented REDD+ systems need to evolve with changing circumstances and will require ongoing local community inputs to inform such changes. Moreover, local-level conflict resolution mechanisms will be essential to help resolve disagreements before they can disrupt REDD+ efforts.

When viewed with an eye towards efficiency, however, it also seems clear that countries would benefit from prioritizing stakeholder inputs and not mandating overly inclusive processes or imposing so many hurdles on policymakers and forestry officials as to ultimately obstruct REDD+ initiatives. For example, Free, Prior and Informed Consent (FPIC) – already included or under consideration in several countries in this study – is an important process for ensuring participation of local populations. Nonetheless, FPIC will need to be closely circumscribed to the project area in order to not become so cumbersome as to block project implementation altogether. Conversely, national-level processes are important but ought not to obfuscate the need for subnational and local-level access to information and participation.

Mexico and Brazil have elaborate, inclusive consultative committees and participatory processes in place, yet quite limited participation of indigenous and local communities in practice. In Brazil, no regulations are yet in force directly bearing on the consultation of affected stakeholders in REDD+ or any other conservation projects. As with most other areas of law relevant to REDD+ considered in this study, implementing regulations will be essential in actually enacting public participation legislative provisions.

In the DRC and Indonesia, public participation principles are less evident in national legislation, (although under development in the DRC). Only the Indonesian Environmental Law provides for public participation in environmental decisions at a general level, but neither the Forestry Law nor REDD+ Regulations address public participation.

In addition to the safeguards for preventing corruption described above, participatory legislation will need to provide independent multi-stakeholder-governed institutions to implement REDD+ schemes and manage funds. Such participation will support fiduciary safeguards by providing checks and balances in the system as well as promote public trust in REDD+ and local forest governance. If well informed on forest governance and REDD+ issues, parliaments can take a lead in crafting well-designed multi-stakeholder participatory processes for implementing REDD+ strategies and fund management.

Laws on FPIC, including special provision for indigenous communities, are already a main focus of several country approaches (Mexico, Brazil). Despite Mexico's 2012 legislative reform providing for FPIC, this has not been comprehensively implemented via secondary regulations. FPIC is included in the draft Brazilian National REDD+ Bill, which would guarantee participation of populations legally residing in indigenous lands, areas legitimately occupied by traditional populations and quilombola territories in REDD+ programs or projects developed in such areas. FPIC is not yet under consideration in the DRC or Indonesia, although of central relevance to initiatives directly affecting land use rights and resources in both countries. Conflict-resolution mechanisms for local communities and indigenous groups, necessary in all four of the countries examined here, also will be fundamental to ensuring equitable participation in REDD+ programs and projects.

Closely related to the 'informed' aspect of FPIC, access to information is a vital participatory safeguard provision for legislation in REDD+ countries. As defined broadly under international environmental law, access to information includes both a passive duty of states to respond to information requests and an active duty

of states to disseminate environmental information.[10] Access to information (in a timely and culturally sensitive fashion, including translation to minority local languages as necessary) has been identified as a major hurdle to participation of many rural, indigenous and disadvantaged communities in the countries surveyed (e.g. Mexico, DRC), even where state bodies are required to release public information requested to members of the public (as in Indonesia).

Indonesia recognized the passive form of the public's right to access information in its 2010 Freedom of Information Law, whereas Mexico's 2002 Federal Law on Transparency and Access to Public Government Information (LFTAIPG) provides both a passive right to information and active duty of the state to disseminate information. As citizens in remote forest areas home to REDD+ initiatives are especially likely to lack sufficient awareness to make educated requests for information related to REDD+ decision-making, a passive duty alone is often inadequate (although an important first step) and public awareness generally needs to be developed as well. However, as noted generally with regard to safeguards, promoting local understanding and capacity presents a challenge in not overly raising expectations of local communities. Moreover, active participatory provisions are essential to include in legislation relevant to REDD+ (e.g. specifying cases in which participation is mandatory, relevant social groups, terms of consultation, relevant documents, penalties for non-compliance, legal remedies).

Lessons learned

Participatory processes will be essential in promoting social acceptance of legal norms and institutions relevant for successful REDD+ and sustainable forest outcomes. In turn, such processes can greatly reduce enforcement burdens and better inform both decision-making and mechanisms for measuring, reporting and verifying REDD+ activities. The following represent the chief findings from this study relevant to promoting public participation:

1. As with most issues examined in this study, passing well-drafted legislation providing for public participation is an important first step but generally not enough by itself. Implementing regulations or decrees are typically necessary to ensure participatory provisions are tied directly to REDD+ projects and programs.
2. Provided they have adequate briefing on the relevant issues, parliamentarians can ensure multi-stakeholder participatory processes are included in legislation of REDD+ policies and fund management.

[10] See Rio Declaration, Art 10. See also, Aarhus Convention, Arts. 4, 5. For comprehensive resources on the legal right to information and initiatives underway, see right2info.org, 'Publications' URL: <http://right2info.org/resources/publications>.

3. Meaningful public participation needs to occur at multiple levels (e.g. national, subnational, local) and on various thematic issues (e.g. financial, technical, governance).
4. Care will need to be taken to balance the objectives of public participation with the need to make participation efficient and avoid blockading REDD+ initiatives.
    - By the same reasoning, FPIC is a prime example of one such participatory process that, although fundamental to include in REDD+ decision-making where relevant (i.e., situations directly affecting land use rights and resources), it is critical to keep efficient and limit to those directly affected by a given land use decision.
5. The right of access to information, both in its passive and active forms, is essential to include in REDD+ country legislation in order to ensure an informed public capable of participating in decision-making processes. Closely tied to this, forest governance processes will benefit by increasing public awareness while not overly raising public expectations about REDD+.

g. MRV

Overview

In most countries, MRV work is taking shape at an executive branch level in the form of methodological plans, strategies, policies and interagency coordination, as is to be expected given the work's technical nature. Mexico, however, has at least legislatively mandated establishment of its MRV system at a national level in its 2012 General Climate Change Law (to be effectuated via regulations) and potentially will do so at state levels as well. (Brazil could do the same in its National REDD+ legislation by adapting the CRA credit to the MRV system.) This could provide greater legal certainty and clarity to the MRV system in Mexico. However the country still faces challenges from a lack of official information on deforestation and degradation (a daunting task in countries with large, diverse forest areas such as Mexico), and will need to follow up with regulations implementing its MRV system.

Successful MRV will require close coordination and improved articulation of the roles of institutions at different levels, with similar functions, and/or overlapping authorities, which may be accomplished by drafting new and/or revising existing laws and regulations. For example, in Indonesia, a variety of institutions and agencies have roles relevant to MRV, including *inter alia*: the Director General of Forestry Planning, responsible for setting national emission reference levels; the REDD+ Management Agency, responsible for developing standards and

methodologies for REDD+, as well as consolidation and reporting of GHG emissions and sequestration from REDD+ programs, projects or activities; the Independent Assessment Agency, responsible for verifying REDD activity reports; and the REDD Commission, responsible for managing REDD implementation. Moreover, the Indonesian REDD+ National Strategy states that the MRV system should be synchronized with the Safeguards Implementation Information System for REDD+, requiring yet further coordination between institutions and agencies responsible for safeguards and MRV.

In addition to institutional coordination, MRV often will need to harmonize different technical approaches across large land areas – requiring unifying laws or regulations to ensure common or at least equivalent approaches are used. For example, in the DRC, a move to rapidly decentralize the country combined with a concentration of REDD+ projects in several large areas, as well as a vast overall land area, requires high levels of technical capacity and creates challenges for national-level MRV. In order to move ahead with its MRV approach, the DRC will need to develop a coherent policy position on the baseline for the accounting of carbon stocks and for the management of carbon credits or payment for results (i.e., setting baseline and accounting at national vs. subnational level), and then develop implementing regulations. In federal systems such as Brazil and Mexico, numerous MRV-type mechanisms exist at national and subnational levels, all at various stages of development and implementation, which could be integrated within a national MRV system but are likely in need of legislative or regulatory consolidation and improvement.

Lessons learned

Although a predominantly technical area of work, MRV requires legislative and regulatory reforms for its long-term success, including in particular the following:

1. Clear articulation of government roles will be necessary to ensure institutions and agencies work together and avoid gaps as well as redundancies in measurement, reporting and verification of REDD+ activities and outcomes;
    - In many countries (and especially federal countries such as Brazil and Mexico, or highly decentralized countries such as Indonesia and the DRC), it will be necessary to amend legislation to establish and/or coordinate the respective responsibilities at local community, regional and national levels for the operation of monitoring mechanisms.
2. Methodological approaches will need to be coordinated in order to ensure common metrics are used, for example in establishing reference levels, recording emissions reductions and tracking safeguard implementation across an entire jurisdiction;

- Standardization and consolidation of MRV systems, or at least methodological frameworks for establishing reference levels and performing MRV, is especially necessary in large federal and decentralized government systems (or those undergoing decentralization) with active subnational REDD+ programs. Such systems could be supported via a national platform or coordinating mechanism for the control, management and integration of available national data, as has been recommended in Brazil and Mexico.

h. Implementation and Enforcement

Overview

Even well-designed primary legislation cannot reduce forest carbon emissions unless implemented and enforced. In many countries, strong constitutional and legislative mandates supporting sustainable forest protection, participation and equal rights are far weaker than they would appear, as they lack secondary legislation to operationalize them (i.e., implementing decrees and regulations). Although all four countries surveyed here lacked implementing regulations to enact many legislative mandates, Brazil and Mexico represent prime examples of this phenomenon given their implementation challenges despite excellent (albeit often overabundant) legislative frameworks.

Conversely, overregulation can present a significant challenge to the successful implementation and enforcement of legislation, as the Mexico and Indonesia cases exemplify. In this regard, Indonesian REDD+ stakeholders have recommended cutting down on excessive forest sector regulations in order to provide less cover for graft.[11] Additionally, some tropical forest developing countries (e.g. the DRC) have sophisticated laws on the books that are, however, poorly adapted to their current domestic capacities and thus unenforceable upon implementation. Tenure laws in many developing countries vesting all land ownership in the state (such as until recently the de facto norm in the DRC) may have been imposed by former colonizers or imported without modification to national contexts, such as that of underlying indigenous or local community land and forest tenure.

Federal and decentralized governance systems, despite many advantages, may face implementation difficulties due to the addition of institutions and agencies with

[11] The August 2009 REDD+ Strategy implicitly pointed out the need to consolidate and clarify forestry regulations in order to address the '…sheer number and complexity of overlapping, inconsistent, and contradictory regulations in the forest sector, [which] provide ample opportunity for administrative corruption…' Indonesia, Revised Draft REDD+ Strategy for Indonesia (24 September 2010), p. 8.

concurring jurisdictions and competences. For example, in Indonesia, despite a move to decentralize many government functions, the REDD+ National Strategy to date does not have a legal foundation for implementation by relevant ministries and agencies. Federal entities in Mexico have acted to address this problem by establishing Inter-municipal Committees in conjunction with municipalities and states to serve as technical agents for the management and implementation of REDD+ and related projects and programmes.

Enforcement presents a nearly universal challenge to tropical forest developing countries. Several countries with the highest deforestation rates - notably Brazil - have generally excellent legislative frameworks for sustainable forest governance but until recently have lacked the 'enforcement culture' required to translate legislation into action on the ground.[12] In the DRC, although forest-related primary legislation is well developed, enforcement is generally weak and access to environmental information has been difficult for poorer forest dwellers due to ensuing corruption and administrative deficiencies. In Indonesia, although there have been moves to delegate some powers to provinces and districts, enforcement infrastructure is still not well developed at these levels following the country's 1998–2010 decentralization process.

If REDD+ reforms are to improve forest law enforcement, it is essential that criminal legislation and penal codes target and enforce not only individual forest users on the ground but also (and more importantly generally) larger actors with political connections, such as corporations and their shareholders. Additional reforms would be well served to prevent supporting agents such as banks, timber processers and transporters from conducting business with illegal forest actors. Towards this goal, Indonesia has made tackling forest-sector corruption a central issue in its REDD+ Strategy.[13]

Yet law enforcement is ultimately only a last-straw remedy in forest governance, and efforts to promote compliance with forest laws cannot be left to forest rangers and judges alone – a point to remember in the context of rural land and forest rights where opinions often differ. Besides addressing extrinsic regional and global pressures on forests creating demand for illegally obtained forest products,

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[12] See generally Hirakuri, S. R. (2003). 'Can Law Save the Forest? Lessons from Finland and Brazil'. Center for International Forestry Research, pp. 13-52. URL: <http://www.cifor.org/publications/pdf_files/books/law.pdf>. See also Hazen, T.E. (2010). 'The Effects of Brazilian Agricultural Property Policies and International Pressures on the Soybean Industry: Incentives for Amazon Deforestation and How it May Be Reduced'. San Diego J. Climate and Energy L. 2:223-248, 231 (noting Brazil's huge body of environmental law but glaring enforcement problems).

[13] Revised Draft REDD+ Strategy for Indonesia (24 September 2010), p. 8.

arguably one of the best means for increasing adherence to sustainable forest sector legal norms is the recognition and empowerment of forest dwellers via local community forest management, ownership, control and benefit-sharing. Although the country has had a head start of close to a century in its land reform process, Mexico provides a prime example of community land and resource rights legislation, which has greatly reduced its legislative workload ahead for REDD+.

Beyond the executive branch, national- and subnational-level legislative and judiciary bodies are essential to involve in order to bring additional scrutiny and oversight in implementing and enforcing forest governance laws and regulations. For parliamentarians and judges to tackle these issues, it will be essential to familiarize them with the often highly technical issues implicit in forest and environmental governance processes. As climate change and REDD+ can add political controversy in many countries, capacity building needs to be conducted in a manner sensitive to local environments and free of political overtones that may disaffect parliamentarians and judges, while also informing them at an appropriate level to enable them to effectively implement and enforce legislation.[14]

Lessons learned

Often overlooked or forgotten after passage of flagship legislation, implementation and enforcement are essential to enacting legislative reforms successfully. In working to promote these ingredients, law- and policy-makers may consider the following lessons from this study:

1. There is a need to strike a balance in regulation in order to effectively carry out a given set of legislative mandates while not overwhelming the legal process and capacity to implement additional new legislation;
2. Laws and regulations generally have the best chances of implementation and enforcement when adapted to local contexts with buy-in from local communities – this is one advantage of federal and decentralized systems. Simultaneously however, legal frameworks also need to provide harmonized rules and coordinated actions across jurisdictions and at a national level in order to be effective, suggesting responses such as the following:
    - Countries may establish a common technical standard of quality across projects and programs via a 'regulatory floor', as has been recommended in the case of Brazil;

[14] See, e.g., Townshend, Terry and Matthews, Adam C. T., (July 2013), 'National Climate Change Legislation: The Key to More Ambitious International Agreements', CDKN and GLOBE International July 2013, p. 7. URL: <http://cdkn.org/wp-content/uploads/2013/08/CDKN_Globe_International_final_web.pdf>.

- Another approach recommended to meet similar objectives is to monitor REDD+ implementation by expanding the powers of a central forestry agency, as in the case of Mexico;

3. Although necessary, given the remoteness and inhospitable terrain of tropical forest areas in most REDD+ countries, improved law enforcement alone seldom succeeds as a main strategy for driving long-term, sweeping forest-sector reforms such as REDD+. Rather, countries generally can benefit more from recognizing and empowering forest inhabitants, as well as via programmes that re-structure and neutralize deforestation and forest degradation drivers, such as community forestry, and equitable forest ownership and benefit-sharing arrangements.
    - However, forest sector criminal law enforcement is often overly harsh on those inflicting the least harm. For this reason, forest law enforcement reforms may be needed to shift penalties to larger scale forest actors often responsible for the largest share of illegal forest activities, as well as to those doing business or acting corruptly with such actors.
4. Parliamentary and judicial capacity building on REDD+, climate and forest governance issues are fundamental to enable these branches to provide essential oversight and scrutiny for improved implementation and enforcement of REDD-relevant legislation.

3. Conclusions and Analysis

a. Overarching Themes

The role of legislation in national REDD+ strategies

The central aim of the present study has been to identify the potential for legislative reforms to strengthen the ability of countries to implement national REDD+ strategies successfully. This naturally raises the question: What role does (or should) legislation play in implementing REDD+ strategies? The country studies appear to point to two primary roles for legislation in this respect.

The first role is to provide the enabling conditions for REDD+ strategies to be implemented. This entails providing certainty to REDD+ actors and establishing an operational framework in which specific REDD+ actions can be based. Prominent examples of this type of legislative measure include adopting institutional arrangements for REDD+, setting out procedures for granting authorizations for REDD+ activities and determining the safeguards and benefit-sharing procedures that must be applied thereto. This also includes setting out oversight frameworks to ensure REDD+ is implemented in accordance with adopted legislation. Such

measures may be thought of as largely procedural; necessary foundations upon which more substantive activities can be built. At the same time, the choices made in their design – from the designation of institutions to the eligibility criteria applied to actors and activities – provide a means to entrench important policy decisions on the role of REDD+ in national policy.
The second role is as tools to achieve REDD+ goals. Under this role, legislation moves from enabling REDD+ activities to becoming REDD+ activities themselves. Spatial planning reforms provide a prominent example in this regard. All country studies identified the potential for overarching spatial planning laws and processes to facilitate greater coordination of land use objectives and contribute to reduced deforestation and forest degradation. As in other areas where legislation is to be used in this way, legal measures provide only part of the puzzle here; political will is necessary to ensure processes are used effectively to meet REDD+ goals. Yet the use of legislation in this respect not only facilitates political processes to meet such goals, but offers a mean to entrench them over the long term.

Though these two roles can be conceptually distinguished, many reforms naturally support both. Land tenure reforms, for example, are considered by many to be an important aspect of clarifying carbon ownership and entitlement to participate in or benefit from REDD+, but are equally considered to play a key role in incentivising land users to invest in sustainable practices. At the same time, many reforms which may be primarily conceived in respect of one role can be expanded to address both. REDD+ institutional mechanisms, for example, may be primarily conceived for supervising and managing REDD+ activities, but may equally provide opportunities to improve overall land use management coordination, thus directly achieving REDD+ goals.

Within the two roles identified, different forms and levels of legislation can play complementary roles. Overarching constitutional and legislative principles can play an important role in defining the overall framework for REDD+ actions and ensuring they are implemented with a certain degree of consistency, both with each other and with other related land use activities. Specific regulations and standards, meanwhile, can set out more detailed rules for specific kinds of activities, and have the advantage of being easier to amend in accordance with changing circumstances. The case of safeguards provides a useful illustration. Overarching constitutional and legislative principles provide an important foundation for promoting social and environmental safeguards, consisting of a necessary first step to instilling REDD+ safeguards. However, without implementing regulations such principles can have little practical effect. The principles-criteria-indicator approach, coupled with a participatory process for their tailoring to

national or subnational circumstances, provides an important means to informing more detailed regulatory provisions that will ensure safeguards are implemented and enforced.

Finally, while legislation plays an important role in implementing REDD+, regulating all facets of REDD+ is not necessary, and may place an unnecessary burden on the mechanism. For example, specifying the types of financing arrangements that should apply to REDD+ projects could limit the scope for innovative financing mechanisms, while defining too many terms (e.g. deforestation, degradation) can limit the ability of project developers to define the scope of project activities. Where regulation is undertaken, balancing prescriptiveness with permissiveness is important to avoid stifling investment. For example, it is probably necessary to adopt some provisions on where and by whom REDD+ can take place, as this is already specified for other types of forestry activities; however, adopting provisions permitting REDD+ by, for example, all persons and in all types of forest (subject to specific restrictions related to that forest type) would provide greater flexibility and allow more types of projects to take place.

The role of REDD+ in broader land use law and policy

The strong international profile of REDD+ and the substantial financial flows it has been promised to generate have seen the subject gain great momentum in national policy and legislative agendas. All of the four study countries have taken at least some steps towards adopting specific legislative and institutional frameworks for REDD+ and are investing significant political capital in them. Yet international progress on agreeing on the scope and role of REDD+ remains slow and uncertain, and but a glimpse of the financial flows promised have thus far materialized. The market-based approach, once foreseen to be the predominant approach to REDD+ and thus the focus of a good deal of early legislative efforts, is no longer considered tenable by many and is unlikely to be deployed by many countries at all. These uncertainties in the international process create barriers to legislating effectively on some areas of REDD+, since it remains difficult for countries to determine what and how to regulate, and how much political capital to invest in doing so.

At the same time, it provides an opportunity to step back and consider the role of REDD+ in broader sustainable land use objectives. One important conclusion highlighted by the country studies is that, while certain of the legal reforms discussed are primarily or exclusively aimed to provide for 'REDD+' activities, many others are in fact related to broader objectives surrounding areas such as forest governance, biodiversity, conservation, provision of ecosystem services and sustainable rural development. While such reforms have clear correlations to REDD+, their benefits

stretch far beyond the interest of the international community in reducing greenhouse gas emissions. This fact is well recognised by countries such as Mexico and Brazil, which have had a broad variety of initiatives underway, seeking to address these objectives since well before REDD+ came on the international agenda, such as land tenure reforms and payment for ecosystem service initiatives. It is similarly highlighted by the recent Indonesian Constitutional Court decision which mandated the government to carry out major reforms regarding the recognition of indigenous peoples rights and, while entailing major implications for the achievement of REDD+ objectives, did not in fact directly consider the matter.

In this context, it is important to avoid the view of REDD+ as a form of panacea that will solve the multifarious problems surrounding deforestation, degradation and unsustainable land use, but rather as one among many means to achieve a range of interlinking objectives surrounding sustainable land management. The political and (hopefully) financial capital surrounding REDD+ can play an important role in facilitating progress towards these objectives; however, many of them can be seen as 'no-regrets' reforms that will provide important benefits even in the event that long-term finance for REDD+ does not meet current expectations.

Coordination

Given both the cross-sectoral nature of REDD+ and its close relationship with the spectrum of sustainable land use goals, effective coordination among sectors, policies and institutions emerges from the country studies as among the most important foci of legislative reforms. Establishing fora and mechanisms to facilitate general coordination of institutions as well as coordination of specific policy areas such as spatial planning can play a vital role in identifying synergies between sectoral objectives and ensuring against overlap and duplication of efforts. At the same time, the inevitable existence of competing land uses that often provide a more attractive financial alternative to conservation or sustainable management means that coordination by itself will not always be enough. Overarching policies that set out a clear vision for sustainable land management and entrench this vision in operable legal principles can play a crucial role in guiding both sectoral policy making and enabling the prioritisation of land uses where conflicts arise.

b. Relevance of findings to international debate

The present study provides opportunities for reflection on the wider international debate around REDD+ under the UNFCCC and related processes. This study can be seen to have lessons regarding how the international process may be improved in light of national legislative processes and what further guidance is needed from the UNFCCC before parties can move ahead with legislation. Although in many cases

guidance may not be needed from the UNFCCC, as seen in the four country studies presented here, UNFCCC work on safeguards and MRV has special importance for the development of national legislation. Also, the work of other related processes and groups on REDD+ may alternately help or hinder the development of REDD+-related law and policy. Equally, successful development of national legislation on REDD+ can provide much-needed impetus and commitment to international-level policy processes by demonstrating both national-level ambition and examples of specific legal mechanisms for addressing low emissions development and sustainable forest governance.

Safeguards

First, the study demonstrates that despite the international attention focused on countries meeting the 'Cancun Safeguards' established by COP Decision at COP-16 in Cancun, Mexico,[15] in fact most countries have stronger safeguards under their own pre-existing domestic legislation and under international agreements to which they have signed. For example, many national constitutions in Latin America have strong protections for the rights of indigenous peoples, as do Mexico and Brazil for the most part. Other rights relevant to REDD+ include civil and political rights, economic, social and cultural rights, and rights specific to particular groups. Additionally, most REDD+ countries are parties to at least a few basic human rights conventions,[16] and many are also parties to other conventions with potential implications for REDD+.[17] Moreover, almost all major Latin American countries planning to host REDD+ programs and activities are parties to ILO Convention 169, which addresses the rights of indigenous and tribal populations.

Although the Cancun Safeguards may be praised for establishing an absolute minimum 'regulatory floor' of human rights required for countries to host REDD+ activities, they are on the whole much less specific than the norms outlined above, and use language less suggestive of a normative framework. As is common in the UNFCCC, the language used in the safeguards is normatively ambiguous.[18] This approach reflects political trade-offs between allowing national governments flexibility (necessary to remain attractive for developing countries and thus gain the support of all Parties) and ensuring safeguards are respected.

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[15] UNFCCC. (2010). 'Cancun Agreements'. Decision 1/CP.16, Appendix I, par 2. URL: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

[16] For example, such conventions include U.N. International Covenant on Economic, Social and Cultural Rights (ICCPR) and U.N. International Covenant on Civil and Political Rights (ICESCR).

[17] More 'political' agreements under the U.N. include the Convention on the Elimination of Racial Discrimination (CERD) and the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).

[18] Such terms include, for example, 'should,' 'promote and support respect for', and 'take into account'.

However, given that higher standards for many human rights norms already exist for many states, states may be considered in violation of human rights obligations while still being compliant with the Cancun Safeguards. This situation suggests the involvement of the national and international human rights bodies discussed above. On the other hand, addressing the issue in a multiplicity of fora creates a potential for fragmentation and conflict with the UNFCCC process. Where different bodies apply different sets of rules or varying interpretations of existing rules, this creates uncertainty for actors that can hinder the progress of REDD+ as a mitigation tool.

A wide variety of options exists for resolving this apparent conflict, including two conflict avoidance clauses provided in the Cancun Agreements themselves, which suggest countries fully respect and follow the terms of all other agreements and human rights norms generally.[19] Although a full exploration of these issues is far beyond the scope of this paper, here we may conclude that the importance of the UNFCCC level safeguard provisions should not be overstated so as to outweigh that of pre-existing national and international norms in many REDD+ countries.

RLs/MRV

Concerning more technical issues, REDD+ countries would be able to move forward with drafting legislation if they receive clearer guidance, including on reference levels (RLs) and measurement, reporting and verification (MRV). In this regard, parties will especially need to decide whether to require international verification for MRV of all or only certain REDD+ and related mitigation activities. If COP-19 in Warsaw adopts decisions on RLs and MRV (e.g. based on the elements of decisions prepared in Bonn earlier in 2013 on these issues) then this would provide significantly enhanced certainty to parties in developing their own MRV systems and reference levels, as well as in developing common methodological approaches.

Other international processes

Building up to and in the years since Copenhagen, a number of bilateral and multilateral donor organizations have begun their own international processes (e.g. UN-REDD, FCPF, FIP, and bilateral programmes), which have had some relevance to REDD+ legal preparedness efforts. Such programs and processes have developed and promoted to varying extents, *inter alia*: Readiness reform assistance, various forest carbon and/or safeguard standards, and influence on legislative design (e.g. in design of safeguards frameworks and benefit-sharing systems). Such proliferation

[19] See UNFCCC COP (2010), Decision 1/CP.16, para. 8 ('Parties should, in all climate change related actions, fully respect human rights') and para. 2[a]) ('REDD+ activities should 'complement' or be 'consistent with relevant international conventions and agreements').

of REDD+ processes has fostered experimentation and increased understanding of good and best practices in these and other issues. However, this fragmentation also has led to REDD+ countries becoming overwhelmed amidst a surfeit of potential procedures and methodologies. For example, the UN-REDD and FCPF have different FPIC standards (the former requiring consent and the latter consultation), which has led to duplicate processes. The ensuing hesitation over which standard will become the norm across all international REDD+ processes then can delay legislation, as countries are not likely to invest significant time and resources in developing national FPIC legislation if international-level processes end up choosing a different standard.

In addition to harmonizing standards and methodologies across international processes, bilateral and multilateral donors are also able to lend much-needed assistance to legislation relevant to REDD+ by engaging on legal issues with government actors outside the executive branch alone. Such engagement needs to be carefully designed and coordinated with the executive branch, given its preeminent authority in most countries to act in international affairs and to avoid complicating policies and programs for REDD+, which are already heavily influenced by multiple donor interests in most REDD+ countries. Bearing this caution in mind, international donor organizations such as the World Bank and UN-REDD can provide vital assistance in capacity building on legislative drafting, oversight and interdepartmental scrutiny to parliamentarians, as well as in review of agency decisions and public or private cases related to REDD+ to judiciary members. Although several legislative and judiciary capacity-building programs have taken place in recent years addressing environmental and climate change issues,[20] it will be important to scale up such efforts in light of the urgent need to improve forest governance in most REDD+ countries.

c. Areas for potential further research/GLOBE action

Prioritization of legal reforms

The country studies show that establishing supporting legal frameworks for REDD+ is a process rather than a one-shot game. Though there exist certain legal reforms that can be considered prerequisites to the development of REDD+ activities, many

[20] Models of judiciary and parliamentary capacity building that may be expanded upon include the World Bank Legal and Judicial Capacity Building Project (see http://bit.ly/1hd43BG); World Bank Parliamentary Strengthening Program (see http://bit.ly/1hd488r) the Judges Programme of the UNEP Division of Environmental Law and Conventions (see http://bit.ly/HjIFws); and the Global Capacity Building Initiative for Parliamentarians of the Institute for Governance and Sustainable Development (see http://bit.ly/H4LXni). At a high level, GLOBE International began climate legislation capacity-building meetings with parliamentarians in 2013 in its 1st Annual Climate Legislation Summit (see http://bit.ly/16w1S9Z).

others should be seen as long-term sustainable land management objectives. Land tenure reforms provide perhaps the most pertinent example of this latter category. The land tenure reform process in Mexico, which arguably has the most secure tenure system of the four study countries, began in 1915 and was ongoing until 1992. Moreover, the Mexico country study identified a number of additional improvements that could be made to the system to support REDD+. Similarly, in Indonesia moves to act on the 2011 and 2013 Constitutional Court decisions on the categorization of state forests are thus far proving slow and uncertain. This indicates that, while land tenure reform remains a central part of achieving REDD+ objectives in the long term, they should equally not be held up as a barrier to implement other important REDD+ activities in the short and medium term.

To best facilitate the fast-start of REDD+ in a country, therefore, it is important for GLOBE and its various partners to identify the short-, medium- and long-term reforms that are necessary. This study helps identify a few of the most urgent priority reforms, including those that lay out the basic enabling conditions for implementing REDD+ initiatives, as well as those which can be realistically and effectively undertaken in the short term. Common examples of basic enabling conditions include introducing approval procedures for REDD+ projects and programmes and clarifying institutional responsibilities for supervising REDD+.

Other short-term reforms include addressing major barriers to REDD+, such as provisions that are inconsistent with REDD+ objectives. In Mexico, for example, conservation or enhancement of environmental services is not recognized as a land use, and rural land that is not designated for a recognized land use is presumed to be reserved for agricultural production. This represents a potentially major barrier to REDD+ by limiting security of land used for REDD+ projects and, moreover, would appear relatively straightforward to amend, making it potentially suitable for short-term reform. Similarly, resolving legislative inconsistencies that inhibit clarity for investors or other REDD+ participants is often a priority. In Indonesia, a high-level REDD+ law has been prioritised in order to streamline procedures and eliminate conflicts created by a large number of lower-level regulations on REDD+. Indonesia has also prioritised a national spatial planning map (the One Map Policy) to ensure consistency in the allocation of REDD+ licenses.

In areas where major long-term reforms are needed but which are also important for facilitating REDD+ activities in the nearer term, it may be useful for GLOBE and its country partners to put in place a framework in the short term that allows REDD+ to proceed without prejudicing the outcome of reform efforts. The case of land tenure and carbon rights provides a pertinent example. While awaiting

completion of such a process before beginning REDD+ activities would massively delay urgent actions, concerns may exist that implementing REDD+ in areas where conflicting claims to rights exist could prejudice efforts to clarify those rights. One way to deal with this is to provide a framework for REDD+ activities that are not contingent upon establishing rights to land and do not involve the creation of tradable credits. For example, Indonesia developed a benefit-sharing framework in 2009 that would be applied to REDD+ projects in state forests, where community claims exist but are often not yet formally recognized.[21] In Brazil, draft legislation prepared in 2009 envisaged a system where tradable credits could be generated where undisputed land ownership can be shown, while where tenure is less secure, land users may still be entitled to credits representing non-compensatory benefits from various national and international funding resources.[22]

Focusing on core legal reforms

As a potential alternative to prioritizing the full suite of legal reforms as outlined above, GLOBE also could choose to help countries with their legal reforms for REDD+ by focusing on a simpler list of core legal issues. Although the eight areas of legal reform outlined in this chapter are all important for long-term success towards REDD+ goals, in order to help countries prioritize their legal reforms it may be advisable to focus on a smaller subset of high-priority issues with which to begin. In particular, three broad and intimately related issues found in this study and other legal research related to REDD+ seem to represent the primary areas of legal reform that will need to be addressed in national and sub-national REDD+ programs. These three areas of 'core' legal work, consisting of both short- and long-term measures, may be classified as rights (i.e., land resources, timber and forest tenure, as well as carbon rights, and their corresponding benefits); design, institutional and implementation issues; and public participation.

In the area of rights, many countries face challenges in clarifying and securing tenure to land and forest resources and rights to forest carbon. Design, institutional and implementation issues, although numerous and broadly dispersed across sectors, ministries and jurisdictions, will need to be largely resolved for REDD+ to deliver on its long-term goals. In addition to these two main hurdles, generally accepted international law norms will need to guide legislative reforms to ensure public participation in decision-making. The relative importance of these

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[21] Ministry of Forestry (2009). 'Regulation Regarding Procedures for Licensing of Commercial Utilisation of Carbon Sequestration and/or Storage in Production and Protected Forests' (P.36/Menhut-II/2009). Note that this regulation was challenged by the Ministry of Finance and therefore its validity was likely revoked.

[22] Bill of law 5586/2009.

topics likely will differ in each country depending on national circumstances. Nonetheless, it will be important for countries to consider how to prioritize legislative and regulatory reform work streams for REDD+, as not all issues can be addressed at once and some reforms may take decades and some years or months.