

**LEGAL ANALYSIS OF CROSS-CUTTING ISSUES FOR REDD+ IMPLEMENTATION
LESSONS LEARNED FROM MEXICO, VIETNAM AND ZAMBIA**

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Acronyms

AFOLU	Agriculture, Forestry and other Land Use
CCFU	Climate Change Facilitation Unit (Zambia)
CDM	Clean Development Mechanism
CEIS	Central Environmental Information System (Zambia)
CEMDA	Environmental Law Center (Mexico)
CEMMA	Committee for Ethnic Minority and Mountainous Areas Affairs (Vietnam)
CONABIO	National Biodiversity Commission (Mexico)
CONAFOR	National Forest Commission (Mexico)
CONAGUA	National Water Commission (Mexico)
CONANP	National Commission for Natural Protected Areas (Mexico)
COP	Conference of the Parties
CTC-REDD+	Climate Change Technical Commissions on REDD+ (Mexico)
DARD	Department of Agriculture and Rural Development (Vietnam)
DONRE	Department of Natural Resources (Vietnam)
DPC	District People Council (Vietnam)
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FIPI	Forest Inventory and Planning Institute (Vietnam)
FPD	Forest Protection Department (Vietnam)
FORMIS	National Forest Management Information System (Vietnam)
FPIC	Free, Prior and Informed Consent
IDLO	International Development Law Organization
IUCN	International Union for Conservation of Nature
ILUA	Integrated Land Use Assessment (Zambia)
INE	National Institute of Ecology (Mexico)
GDLA	General Department of Land Administration (Vietnam)
GHGs	Greenhouse Gas
GRZ	Government of the Republic of Zambia
JFM	Joint Forest Management (Zambia)
LAPs	Local Areas Plans (Zambia)
LEP	Law on Environment Protection (Vietnam)
LI	Law on Investment (Vietnam)
LULUCF	Land Use, Land Use, Change and Forestry
LFPD	Law on Forest Protection and Development (Vietnam)
MACO	Ministry of Agriculture and Cooperatives (Zambia)
MARD	Ministry of Agriculture and rural Development (Vietnam)
MEWD	Ministry of Energy and Water Development (Zambia)
MOFNP	Ministry of Finance and National Planning (Zambia)
MOF	Ministry of Finance (Vietnam)
MONRE	Ministry of Natural resources and Environment (Vietnam)
MPI	Ministry of Planning and Investment (Vietnam)
MRV	Monitoring, Reporting and Verification
MTENR	Ministry of Tourism, Environment and Natural Resources (Zambia)
NCCDC	National Climate Change Development Council (Zambia)
NCCRS	National Climate Change Response Strategy (Zambia)

NFI	National Forest Inventory (Vietnam)
NGO	Non-Governmental Organization
NRAP	National REDD+ Programme (Vietnam)
NTP-RCC	National Target programme to respond to Climate Change (Vietnam)
ODA	Official Development Assistance (Vietnam)
PES	Payment for Environmental Services
PPC	Provincial People Council (Vietnam)
PRMUs	Provincial REDD+ Management Units (Vietnam)
PROFEPA	Federal Environmental Protection Agency (Mexico)
R-PP	Readiness preparation Plan
REALU	Reducing Emissions from Any Land Use
REDD+	Reducing Emissions from avoided Deforestation and Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
SAGARPA	Secretary of Agriculture, Livestock and Rural Development (Mexico)
SE	National Secretary of Economy (Mexico)
SEDPS	Social and Economic Development Plans (Vietnam)
SEMARNAT	National Secretary of Environment and Natural Resources (Mexico)
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UN REDD	United Nations Reducing Emissions from Deforestation and Degradation
USAID	United States Agency for International Development
VAF	Vietnam Administration on Forestry
ZDA	Zambia Development Agency

INTRODUCTION

As agreed under the United Nations Framework Convention on Climate Change (UNFCCC), REDD+ stands for countries' efforts to reduce emissions from deforestation and forest degradation, and foster conservation, sustainable management of forests, and enhancement of forest carbon stocks. The Cancun Agreements reached at the sixteenth Conference of the Parties (COP 16) set the stage for a nationally-driven phased approach to REDD+. The Cancun Agreements also included the adoption of safeguards¹ in order to prevent unintended side-effects and promote the delivery of social and environmental co-benefits from REDD+ actions. At the most recent round of negotiations (COP 17) in Durban, South Africa, additional progress was made on REDD+, including guidance on systems for providing information on how safeguards are addressed and respected, and modalities relating to forest reference emission levels and forest reference levels.

While a number of challenges remain to be addressed, REDD+ is already translating into real action on the ground. The UN-REDD Programme² supports 42 countries spanning across Africa, Asia-Pacific and Latin America as they prepare and implement their national REDD+ strategies. While early discussions on REDD+ focused on financial and technical issues, increasing attention is now being placed on the design of legal frameworks supporting in-country REDD+ mechanisms. The issues to be addressed through REDD+ are complex in nature and successful REDD+ implementation will require harmonized and updated legal frameworks. REDD+ also has the potential to accrue economic, environmental and social benefits, provided that its implementation is supported by broader sustainable development strategies and participatory processes at the national level. Consistent legal frameworks are crucial tools to integrate REDD+ within national development policies and address economic, environmental and social issues related to REDD+ in a coherent way, in line with human rights principles³ and international environmental treaties and conventions (e.g. UNFCCC, CBD, UNCCD).

This study presents key lessons learned from Mexico, Vietnam and Zambia in order to provide a better understanding of legal aspects of REDD+ implementation through a review of legal priorities identified by national stakeholders in the three countries, with a view to enhance the support provided by the UN-REDD Programme in relation to legal preparedness for REDD+ implementation.

In 2011, the UN-REDD Programme commissioned IDLO's international and national legal experts to produce three country studies on REDD+ legal preparedness for Mexico, Vietnam and Zambia. The studies stressed the need to support the ongoing processes of legal reforms for REDD+. The main efforts were directed to develop a comprehensive analysis of relevant environmental sectoral laws of those countries and to address major drivers of Deforestation and forest Degradation. Specifically, the country studies analyzed key gaps, challenges and innovative aspects for REDD+ implementation with a view to identify potential legal reforms.

¹ Appendix I of the Cancun Agreements (Decision 1/CP.16).

² The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of FAO, UNEP and UNDP.

³ Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups (OHCHR).

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

A generic outline was developed that was applicable for the three countries. It consisted of a review of existing laws and institutions impacting REDD+ with identification of key challenges and proposals of legal and institutional innovations for REDD+.

The drafting process benefited from the expertise of national lawyers and local stakeholders from the three countries and the final versions of the studies were reviewed and validated by key national stakeholders during national workshops organized in Lusaka (Zambia), Mexico City (Mexico) and Hanoi (Vietnam) in November 2011⁴. Participants from the three national workshops included government representatives, particularly the ministries of agriculture and livestock, forests, natural resources and finance, as well as members of the civil society and NGOs⁵.

The major issues related to REDD+ legal preparedness identified by the participants, during the three consultation workshops include forest, land and carbon rights; recognition of customary rights; definitions of REDD+ terminology; major drivers of deforestation and degradation; harmonize sectoral laws; institutional coordination; public participation and FPIC; decentralization; benefit sharing and incentives to private and public investments. The present study analyses each of these issues, highlighting the implications for REDD+ implementation from a legal perspective. Particular reference is made to the national contexts of Mexico, Vietnam and Zambia, as well as to specific case studies, in order to provide a contextual understanding of REDD+ legal issues.

⁴ On Tuesday 8th November, Lusaka (Zambia), hosted by the Forestry Department, Ministry of Mines and Natural Resources, on Tuesday 15th November 2011, Mexico City (Mexico), hosted by the National Forest Commission, Head of the Legal Unit and on Monday 21st November, Hanoi (Vietnam), hosted by the Institute of Strategy and Policy on Natural Resources and Environment, Ministry of Natural Resources and Environment.

⁵ Forestry Department, Ministry of Agriculture and Livestock, Ministry of Finance and National Planning, Ministry of Lands, Ministry of Justice and Legal Affairs, Environmental Management Agency and Development Agency (Zambia), Ministry of Natural Resources and Environment, Ministry of Justice, Ministry of Agriculture and Rural Development, Forestry Administration, Ministry of Planning and Investment, Vietnam Environmental Administration, Climate Change Agency and NGOs (Vietnam), Head of Legal Unit of the National Forest Commission and Secretary of Agriculture and Livestock, members of Parliament, representatives of civil society, international experts and NGOs (Mexico).

LESSONS LEARNED ON REDD+ LEGAL PREPAREDNESS

I. A) FOREST, LAND AND CARBON RIGHTS

Key points

- A legal definition of carbon rights might be required to secure carbon ownership of individuals or groups involved in activities of forest carbon sequestration;
- Rights to carbon or benefits that flow from carbon should be distinguished from the rights to the carbon credit itself (or the title to the carbon emission reductions) in defining forest carbon rights⁶;
- Definitions of carbon rights may differ between States in relation to their association with the land (individual versus communal/ private versus public);
- Different options can be considered at national level to facilitate carbon transactions, and will affect potential needs to separate property rights on carbon from other ownership rights (interests) on forestlands (e.g. usufruct rights);
- Forest carbon rights may be granted through registration in land administration systems;
- Registries and certificates might include the rules concerning the control over transferability, inheritance, extinction, subdivisions of carbon property rights.

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

In the absence of specific REDD+ laws, carbon rights frameworks might differ in each country, according to the existing legislation in place. They can also be conferred by contract, finding a basis in either civil or common law systems.

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

6 REDD-net. Carbon rights in REDD+: towards a common understanding. 2010.

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

In **Zambia**, the ownership of all trees and forest produce derived from customary areas, National Forests, Local Forests, State Lands and open areas is vested in the President on behalf of the Republic, until lawfully transferred or assigned under this Act or any other written law (Forest Act, 1973). Currently, approximately 94% of total lands are customary lands, occupied by tribes. Land allocation is carried out by chiefs and the headmen of villages through *de facto* management. Therefore, although *de jure* ownership remains vested in the State, there is no formalized system of devolving management rights to villages, and the customary land market is unregulated (IDLO, Country Studies, 2011). In practice, insecurity of tenure and absence of formal use rights signify that forest resources are often vulnerable to exploitation and subject to deforestation. For the time being, existing provisions in land, forestry and environmental laws can be the basis for a nationally appropriate and workable legal design for carbon rights. For example, the Land Registrar shall issue a new Certificate for transfer of any interest in land, which could include carbon rights (Lands and Deeds Registry Act, 1994). In addition, the recognition of rights to forest produce (Forests Act, 1973) could be relevant to a future definition of carbon rights, because they signify a legal distinction between forests and land property rights (IDLO, Country Study, 2011). However, this has not been expressly recognized by the Government of Zambia and should be considered before any such determination is made.

Mexico's laws do not specify who owns carbon, but we can presume that forest owners and right holders will be the direct beneficiaries. The clarification of land tenure rights is a crucial component of forest-based approaches to combat climate change and define related carbon rights, especially as most of the forest land (70% of forest covered lands) is communal, owned by *ejidos*. Customary law, indigenous rights and cultural practices are also instrumental to understanding the issues related to land tenure rights and community forestry practices.

Article 7 of the Forest Sustainable Development Law (2003) considers sequestered carbon as an environmental service. However, there is no specific reference regarding the ownership of sequestered carbon. This might signify that forest owners, such as *ejidatarios*, communities and private owners, will be the direct beneficiaries of incentives for carbon sequestration. In this regard, article 32 underlines the fact that forest owners or right holders should be directly involved in the multiple uses of the goods and environmental services provided by forests, including carbon sequestration. According to the forest law and civil law, there is no doubt that the carbon revenues and benefits generated by carbon sequestration belongs to the land owners, considering that trees are indivisible units⁸.

⁷ SOFO, 2011 (Chapter 3).

⁸ Contribution from Dr. Sergio Arias, Head of Legal Unit, (CONAFOR). In Mexico, most of forest lands are owned by *ejidos* and communities, also known as social community, or by private owners. Compared to water user rights under the form of concessions, as

The legislative reforms to the country's environmental law (1988) and forest sustainable development law (2003) published in the Official Gazette on June 2012, focus on the development of economic instruments to promote environmental services that provide benefits to forest owners and forest land users, and the inclusion of REDD+ safeguards in light of the latest results of the Conference of the Parties of United Nations Framework Convention on Climate Change (UNFCCC) and the national REDD+ strategy of Mexico. All economic instruments will be considered as a means to promote environmental services, thus establishing a legal basis for new mechanisms supporting the principle that who conserves will receive the benefits from the services provided and in particular forest land owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests (articles 133, 134bis of the forest law). In addition, according to the 'Proárbol' technical rules (PES programme), there should be an agreement 'convenio de adhesión' between regional and sub-regional entities acting for CONAFOR and the beneficiaries of 'Proárbol' subsidies that are: a) individuals (Mexican citizens), b) ejidos and communities, or c) associations/private companies – to comply with activities of reforestation, and forest protection, conservation, plantation, and payments for environmental services (etc..). (Carbon Rights in REDD+: The case of Mexico, ODI, 2011).

In **Vietnam**, for the first time the Law on Forest Protection and Development (2004) stipulates options for the allocation of existing forest resources to entire village communities, thus providing the legal basis for community forestry ownership titles on carbon. More than one million households have now been issued with certificates for land ownership, either in natural or planted forests. In September 2007, the Ministry of Agriculture and Rural Development launched a USD 61 million programme to facilitate the process of forests and forest land allocation and set an ambitious target to be reached by 2010, stating that all areas of forests and forestland are to be allocated to local communities, individual households and other economic entities with provisions of Land Use Rights Certificates. Those certificates could be used to identify who is entitled to benefit from forest carbon revenues. The land law (2003) establishes the function of People's councils in supervising the implementation of the laws on land within their respective localities, which could be used to guarantee equitable carbon ownership rights to local communities. The law specifies when land use rights, issued by the Ministry of Natural Resources and Environment, shall be registered. Certificates of land use rights shall be issued for each parcel of land. The certificates of land use rights could include the recognition of carbon rights to land users as interests that run with the land and can be registered accordingly. The Ministry of Natural Resources and Environment could ensure collective carbon rights in parcels of land used by a community of citizens when issuing the related certificates of land. In addition, the State Committee for Ethnic Minority and Mountainous Area Affairs (CEMMA) has paid great attention to land use rights of ethnic minorities on forests and forestland. Resolution 30a/2008/NQ-CP has some special articles to ensure that tenure rights of ethnic minorities on forests and forestland are respected and properly implemented⁹.

LESSONS LEARNED

Existing land, forestry and environmental laws provide a starting point for establishing forest carbon ownership, although the challenge posed by overlapping and/or unregistered claims to land should be previously addressed. Also, whether existing use rights include the right to create, and benefit from a forest carbon asset is a matter that would benefit from clarification (Zambia). PES schemes might also be a valuable option for REDD+ programmes, while taking into account the need to specify the criteria of eligibility and norms defining the nature and ownership of carbon rights. For example, reforms aiming to harmonize PES definitions in forest and environmental laws have currently been approved by the

water resources belong to the Nation, trees and forests are owned by privates or communities and require a permit to be managed, which is less complicated to obtain.

⁹ Revised standard joint programme document. UN-REDD Viet Nam Programme. 2009.

Congress of Mexico, although carbon rights have not been specifically defined¹⁰. In Vietnam, the specific regulations on allocation of specialized use of forest lands could be used for the purpose of carbon sequestration, recognizing collective carbon rights. Resolution 30a/2008/NQ-CP could also be considered to link carbon ownership with ethnic minority tenure rights on forestlands, provided that mechanisms are available to ensure equitable sharing of benefits within the community.

I. B) RECOGNITION OF CUSTOMARY RIGHTS

Key points

- Engagement of customary land owners is required to ensure the successful implementation of REDD+ at local level;
- Statutory law should be aligned with customary practices to avoid potential conflicts over the land that could interfere with REDD+;
- Customary land owners must give their free, prior and informed consent to decisions affecting their lands;
- Effective and equitable local property rights are needed to identify beneficiaries of REDD+ revenues;
- Protection of the integrity of community and indigenous lands should be guaranteed by Law: Existing customary land claims can be incorporated into national formal legal frameworks¹¹.
- Women and customary rights to forests and land resources need to be recognized in order to guarantee an equitable distribution of REDD+ revenues.

Customary use rights may be understood as the access, control and use of land according to long-standing principles, values, customs, and traditions, including seasonal or cyclical use, operating outside the formal legal system. These rights are associated with traditional land administration institutions and customary law defining how rights are ruled, allocated and preserved. In this sense, gaps and inconsistencies may exist between statutory and customary law. However, it has been confirmed that the concept and practice of customary law in forest land tenure play an important role for rural communities. For example, it is important to note that while women and men have differentiated knowledge, uses and access to forests, women are the primary users of forests. Therefore, the roles they play as leaders, participants and beneficiaries in REDD+ must be carefully considered and reflected at every stage of policy and programme development¹².

In general terms, current government policies can conflict with traditional conceptions of land tenure and use rights. This can occur because land and forest administrators at different levels are sometimes unaware of the role and significance of customary systems, and their lack of knowledge limits the extent

10 For more information please see the attached link related to the UN-REDD Newsletter containing the article on Mexico REDD+ legal reforms: http://www.un-redd.org/Newsletter28/Mexico_REDD_Legal_Reforms/tabid/104165/Default.aspx

11 Statutory recognition of customary land rights in Africa. An investigation into best practices for lawmaking and implementation. Rachael S. Knight. FAO Legislative study 105. 2010.

12 The Business Case for Mainstreaming Gender in REDD+. UN-REDD Programme. 2011.

to which customary norms and rules can be incorporated into formal land management practices¹³. A challenge here is to promote these changes in a way that individuals are going to assimilate these laws as reflecting their culture. In the cases of legal reforms with large changes on people's local understanding, the levels of compliance are lower due to lack of acceptance (Caroline Schmidt, Oxford University).

REDD+ impacts and is impacted by customary land ownership mainly in two key ways. On the one hand, as much of the forest land that will become part of REDD+ is customarily owned or occupied, REDD+ will be ineffective in the absence of the full participation of customary land owners. On the other hand, REDD+ may pose threats to customary land ownership where insecure land tenure or inadequate protection from state authority may make local communities and Indigenous Peoples vulnerable to dispossession. Care must be taken to ensure that customary land owners give their free, prior and informed consent to decisions affecting their lands¹⁴. In addition, greater acknowledgement of the role of customary tenure will be required, and this should be formalized in REDD+ readiness plans and associated legislation¹⁵.

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

Recognizing that REDD+ has the potential to threaten their land, rights and livelihoods, the Indigenous Peoples Global Summit on Climate Change adopted the Anchorage Declaration, which calls for full and effective participation of Indigenous Peoples in REDD+ decision making and recognition of Indigenous self-determination. The Anchorage Declaration states that: "All initiatives under Reducing Emissions from Deforestation and Degradation (REDD) must secure the recognition and implementation of the human rights of Indigenous Peoples, including security of land tenure, ownership, recognition of land title according to traditional ways, uses and customary laws and the multiple benefits of forests for climate, ecosystems, and Peoples before taking any action¹⁶".

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

In **Zambia**, a high percentage of lands are held under customary tenure and most of the remaining State Land has been transferred under leasehold¹⁷. Customary land is occupied by 73 tribes, headed by 240 chiefs, 8 senior chiefs and 4 paramount chiefs. Land allocation is carried out by chiefs and the headmen of villages through de facto management. So far, management at the local level does not contain any provisions for the sustainable management of natural resources relevant to REDD+ such as agriculture, grazing, energy and other forest-based industries. Residents in customary lands can alter the nature of their rights to *de jure* control and thereby increase security of tenure in two ways: (1) the conversion of customary to leasehold tenure under the Lands Act and Lands regulations or (2) perpetual succession to land through incorporation under the Land (perpetual succession) Act. However, because customary

¹³ Statutory and Customary Forest Rights and their Governance Implications. The Case of Viet Nam. IUCN. 2008.

¹⁴ Indigenous people and customary land ownership under domestic REDD+ frameworks: a case study of Indonesia, Glen Wright, Law, Environment and Development Journal, 2011.

¹⁵ Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper #11. USAID. 2011.

¹⁶ The *Anchorage Declaration*, Indigenous Peoples Summit on Global Summit on Climate Change (2009), available at <http://www.indigenoussummit.com/servlet/content/declaration.html>.

¹⁷ It should be noted, however, that those figures are uncertain due to land conversions over recent years and further assessment is needed with a Land Audit planned for 2012.

tenure is already seen as legitimate de facto ownership of lands, many communities do not see the benefit of formalizing titles, which could leave them vulnerable to subsequent regulations by national authorities in the political administration¹⁸ (Country Study, IDLO, 2011).

In **Mexico**, following the adoption of the San Andrés Accords (1996), the Constitution was amended in 2001 to recognize the rights of indigenous communities to decide upon the conservation and management of their lands and habitats (article 2). Article 2 further includes the recognition that indigenous communities can manage and use natural resources found within their territories under the forms and modalities established by article 27 of the Constitution. In particular, article 27 constitutes the basis of the land law and guarantees the protection of the integrity of indigenous lands. It further establishes the basis for communal property through the legal formalization of the *ejidos*. These constitutional legal rights and obligations are particularly relevant for REDD+ and are reflected in the latest REDD+ reforms adopted in April 2012 to the environmental law (1988) and forest sustainable development law (2003)

In **Vietnam**, villages were traditionally the units that owned or had collective rights to use land and forest resources. The new formal land tenure regime known as “public ownership of land” includes four types of tenured land in upland areas. Customary law has relatively clear regulations on the use rights of community members. These rights of relevance for REDD+ can be summarized as follows: Forest land and resources are owned by the entire community. They can be used and exploited by community members, who are treated equally in terms of the use of community land. Forest resources other than land, including forest products and water sources, are communally owned and can be used by all community members. Outsiders may exploit these resources only with the permission of the village chief. Village chiefs and community land guardians are responsible for controlling, protecting and resolving all land-related conflicts (...)¹⁹. On the other hand, the Free Prior and Informed Consent is an important innovation for effective recognition of customary rights, particularly given the fact that Vietnam has 53 ethnic minority groups, representing 16 million people, many of whom live in and around forests.

LESSONS LEARNED

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

¹⁸ Similarly, it could be noted that there have been reports of unequal treatment for women and youth under customary systems (Country Study, IDLO, 2011).

¹⁹ Statutory and Customary Forest Rights and their Governance Implications. The Case of Viet Nam. IUCN. 2008.

I. C) FOREST DEFINITIONS AND REDD+

Key points

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

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

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

Large scale conversion of natural forests and peat soils to plantations is unreported and unaccounted for in some developed countries because of the current LULUCF forest definitions, resulting in huge emissions loopholes. Obvious overlaps between LULUCF and REDD+ frameworks should be considered and any definition which is of relevance to both must be consistent with the other²⁰.

The international debate has partially recognized these issues and a progression of concepts, from RED to REDD and REDD+, reflects a tendency to include an ever larger share of total land-use change. The logical end-point of this is to apply the same rules in developing countries and Annex I countries: account for all land use with a measurement protocol that ensures that there are no gaps between categories and that is therefore not sensitive to details of definition (i.e., if the carbon stock in a type of land cover is not

²⁰ The Need for the Review of the UNFCCC’s Forest-Related Terms, Definitions and Classifications, Civil Society Submission to the People’s World Conference on Climate Change and Mother Earth’s Rights. 2011.

captured by one category it has to be included in another). Reducing Emissions from Any Land Use (or across all land uses) or REALU could be the logical next step in the REDD debate.

A more comprehensive REALU approach is likely to allow trees outside forest, agro-forestry systems and community-based forest management to be treated fairly in the rules, proportional to carbon stored and emissions avoided. It will likely also further reduce emissions by enhancing carbon storage in agricultural production systems and systems linking agriculture and forests, such as food production²¹.

Case Study – Indonesia

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

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

The agreement on REDD+ contains a safeguard against conversion²² and affirms that REDD+ activities should be undertaken in accordance with these safeguards which should be promoted and supported: “actions²³ (..) are consistent with the conservation of natural forests and biological diversity, [and] are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits”. It is very important that this safeguard is implemented.

In **Zambia**, forests include trees and forest produce. Forest produce is defined expansively by the Forest Act (1973) to include bamboo, bark, bedding, bees, beeswax, boards, canes, and charcoal, among other items. Under the Forest Act (1973) “forest produce” includes bamboos, trees, timber, flowers, fruits, fuelwood and seeds among others; “trees” includes bushes, climbers, coppice, palms re-shoots, saplings, seedlings and shrubs of all ages and of all kinds and any part thereof, and “local community” means the residents within or adjacent to a Local Forest, Joint Forest Management Area or open area who by virtue of their rights over land including customary land tenure invest in and derive benefits from the sustainable utilisation of forest resources in their area. The recognition of rights relating to forest produce could be important to a future definition of carbon for REDD+ (Country Study, IDLO, 2011).

The legislative reforms passed in Mexico City on 24 April, 2012, position **Mexico** as one of the first countries to legislate in support of efforts to reduce emissions from deforestation and forest degradation (REDD+). Recognizing the need to reform environmental laws and harmonize legal inconsistencies for REDD+ implementation, the Mexican Congress has advanced a set of legal reforms to the country’s environmental law (1988) and forest sustainable development law (2003). The amendments to these laws were also focused on harmonizing definitions of key terms such as forest degradation and deforestation. Key aspects of these legal amendments include also the definition of environmental services in order to emphasize the relation of their benefits with the functionality of the natural ecosystem and the individuals settled in the territory. In addition, it is now recognized that environmental services are regulated by the forest sustainable development law. Additionally, the concept of forest management has been adjusted to now encompass the notion of environmental services and recognize their

²¹ Partnership for the Tropical Forest Margins (ASB). If we cannot define it, we cannot save it: forest definitions and REDD. Policy briefs.2009.

²² FCCC/CP/2010/7/Add.1, Appendix 1.2(e)

²³ Mitigation actions in the forest sector are specified under FCCC/CP/2010/7/Add.1 para 69 and include: Reducing emissions from deforestation, Reducing emissions from forest degradation, Conservation of forest carbon stocks, Sustainable management of forests and Enhancement of forest carbon stocks.

economical value. Forest land owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests²⁴.

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

LESSONS LEARNED

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

Deforestation

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

Forest Degradation

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

²⁴ For more information please see the attached link related to the UN-REDD Newsletter containing the article on Mexico REDD+ legal reforms: http://www.un-redd.org/Newsletter28/Mexico_REDD_Legal_Reforms/tabid/104165/Default.aspx

I. D) MAJOR DRIVERS OF DEFORESTATION AND DEGRADATION

Key Points

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

For REDD+ to succeed, policies and measures should effectively address the drivers of deforestation and forest degradation. In fact, deforestation and forest degradation contribute to climate change by releasing carbon stored in the soil into the atmosphere. Recent studies argue that 10% of current global greenhouse gas emissions (GHGs) are caused by deforestation²⁵. However, some of the main drivers are often outside the forest sector and therefore cross-sectoral legal solutions are likely to be most appropriate in addressing these issues. The alignment of REDD+ with the objectives of other sectors in the countries will also be important to ensure national ownership and political sustainability of REDD+.

The agriculture and energy sectors in particular are closely linked with forests and, therefore, with REDD+. Agriculture is the primary driver of deforestation in Latin America and Asia²⁶ and as global demand for agricultural products increases, the competition between agriculture and forests is expected to increase. Biofuel production (for renewable transport energy) is partly driving this demand for agricultural products and land, linking forests to the energy sector. Forests also provide biomass energy, relied upon by 2.7 billion people living in mainly rural areas in developing countries. These close links demonstrate the need to better understand how other sectors will affect the implementation of REDD+ legislation and where tradeoffs and synergies exist²⁷.

Land-use planning at landscape scale will therefore be fundamental to support policy and legal options that are appropriate for agricultural intensification, REDD+ and other land uses (food production, mining, infrastructure developments, etc.). Government policies on land tenure and land use planning, and the capacity to implement and enforce these policies, will also affect the relation between forests and agriculture (REDD-Net. Kristy Graham, Raffaele Vignola, 2011). So far, land tenure systems which consider forests as 'unproductive' have been the major cause of deforestation in Brazil (Araujo et al. 2009) and other parts of Latin America (Jaramillo and Kelly 1997; Southgate et al. 1991). It is widely known that

²⁵ New study published in Science, 2012. The authors — led by Nancy Harris of Arlington, VA-based Winrock International and including scientists from Applied GeoSolutions, NASA's Jet Propulsion Laboratory and the University of Maryland — used satellite-based analyses of tropical forest carbon stocks and tropical forest cover.

²⁶ High levels of deforestation in Asia and particularly Southeast Asia are also due to timber extraction and illegal logging.

²⁷ REDD+ and agriculture: A cross-sectoral approach to REDD+ and implications for the poor. Kristy Graham and Raffaele Vignola. REDD-Net. 2011.

while the objective of REDD+ is to reduce greenhouse gas emissions from the forest sector, the objective of the agriculture sector in most countries is to increase economic development and contribute to local and national levels of food security. However, there are a number of synergies between REDD+ and agricultural sector objectives, and the forest and agricultural sectors will ideally be able to coordinate their actions to build on these synergies and to avoid the existing tradeoffs between economic development, agricultural production, and deforestation and forest degradation.

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

In **Zambia**, charcoal production is one of the primary drivers of deforestation and forest degradation. The charcoal industry provides livelihoods for local communities that may undertake REDD+ activities, but it is also a source of income for people in the informal economy. As an alternative to developing and incentivizing alternative clean sources of energy, the Ministry of Energy and Water Development (MEWD) and Forestry Department could reduce the pressure of the charcoal industry on indigenous forests by taking steps to implement their existing national policies, which seek to promote sustainability through efficient technology, pricing tools and revitalization of the plantation system. Consequently, if Zambia is to address this driver and be consistent with REDD+ activities, it will have to provide an adequate substitute to maintain the social benefits that should flow from REDD+, in line with the goals of poverty alleviation and sustainable development. Until today, overlapping institutional jurisdictions for the charcoal industry and illegal practices have resulted in inaction from government agencies. Regarding the impact of agriculture on REDD+ preparedness, attention should be paid to unregulated practices regarding allotments granted by traditional administrations on customary lands or trade-offs on reserve lands which the agricultural lands Act (1960) does not have a mandate to address (Country Study, IDLO, 2011)²⁸.

In **Mexico**, agriculture may be a significant driver of deforestation and forest degradation due to the expansion of smallholder plots on customary and State lands, including protected areas, to compensate for low productivity. Therefore, agricultural laws and policies, as well as the land uses that promote deforestation and forest degradation, and the continued expansion of the agricultural frontier, are relevant to REDD+. For this reason, agricultural laws constitute one of the key areas of reform needed for an effective mechanism. Unauthorized use of non-timber products, forest trades, and illegal change of forest lands also contribute to deforestation and degradation. Those acts are penalized by articles 417 to 419 of the Federal Criminal Code. To counteract illegal activities, PROFEPA²⁹ is currently enacting a series of programmes to ensure the conservation of forests. In addition, PROFEPA is promoting Environmental Committees (CVAP) to engage local communities in the protection of forest and the sustainable use of forest resources. They have been created within the *ejidos* where the Assembly authorizes individual participation in the Committee. Special forest operations have also been implemented to resolve critical issues in this field (Country Study, IDLO, 2011).

²⁸ The major problem here is customary land conversions but also the alienation of very large-scale allotments through streamlined procedures, including for the development of biofuels. See the Zambia Country Study (IDLO, 2011).

²⁹ PROFEPA: Procuraduría Federal de Protección al Ambiente.

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

In Vietnam, the most important economic sector is agricultural production, including pepper, rice, rubber, aquaculture and coffee among others. In particular, the development of industrial tree plantations is considered a driver of deforestation and degradation and poses challenges for REDD+. To reverse this tendency, the Ministry of Agriculture and Rural Development (MARD) is encouraging the implementation of a scheme to support populations in the highlands to find replacement crops, allowing them to move from migratory to fix farming and to apply measures to improve and intensify the management of their lands (Country Study, IDLO, 2011).

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

LESSONS LEARNED

While economic development goals influence primary objectives in policies and laws, international treaties and agreements ratified by countries aiming to protect the environment, water, biodiversity, and forests from climate change and desertification, should become a priority for legislators and national Parliaments, taking into account a human rights approach. In order for REDD+ to succeed, it will be necessary to implement measures aiming to promote the potential long-term benefits and opportunity-costs of avoiding deforestation and degradation and reducing land uses changes for agriculture, plantations, mineral and charcoal exploitation.

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

I. E) HARMONIZE SECTORAL LAWS

Key Points

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

A combination of policy and legal options will be necessary for harmonizing REDD+ and agriculture priorities in the countries. Critical areas of intervention include, for example, the regulation of forest clearing for agricultural expansion, targeted support for intensification in appropriate areas, targeted support for smallholder farmers, payment for environmental services, the promotion of agro-forestry, well-defined forest and land property rights, and clear land tenure systems. Those priority areas of intervention will play a key role for an effective implementation of REDD+, based on strategic land use planning frameworks established in the countries (Sunderlin et al. 2009)³⁰. National and sub-national levels could be taken into account in defining REDD+ terminology to avoid inconsistencies between national and sub-national legislation (e.g. federal and state laws in Mexico) and to recognize local communities rights and benefits associated with REDD+ in national legal frameworks.

Certain countries have also enacted REDD+ regulations (e.g. Indonesia). Complex and unclear national laws relating to forest, land rights, environmental approvals and foreign investments are likely to increase difficulties in implementing REDD+ and make it harder for project developers to establish pilot projects. Whether developing new national REDD+ laws or modifying existing environmental or forest law frameworks, both options can avoid contradictions and establish clear legal mechanisms. In particular, contradictory laws will need to be resolved and land and forest regulations clarified to ensure that carbon-related benefits are allocated to those who depend most on forest cover. Without these reforms, there is a significant risk that REDD+ projects will cause local residents to lose rights to more powerful interests³¹.

In addition, streamlining REDD+ legal procedures may reduce administrative difficulties for governments and transaction costs for investors³². Similarly, countries may reconsider outdated laws and legal concepts existing in their legislation that could pose conflict for parties in their national REDD+ system,

³⁰ REDD+ and agriculture: A cross-sectoral approach to REDD+ and implications for the poor. Kristy Graham and Raffaele Vignola. REDD-Net. 2011.

³¹ Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America. Lisa Naughton and Cathy Day. USAID. 2012.

³² Climate change and the forest sector. Possible national and sub-national legislation. Rosenbaum, K.L., Schoene, D. and Mekouar, A. FAO Forestry Paper. 2004.

such as the need to amend or insert the definition of payment for environmental services within the environmental and forest laws. (IUCN, Legal Frameworks for REDD, 2009).

Finally, REDD+ forest management or legislation that prohibits activities through bans or licensing and enforcement may not be enough to address drivers of deforestation and forest degradation (IDLO, Country Study, 2011). Adequate legal instruments should be designed, in order to contribute to relieve human pressure on forests without compromising poverty alleviation and economic development targets. Economic incentives provided by REDD+ certainly contribute to that purpose.

In **Zambia**, the recent Urban and Regional Planning Bill of 2009, expected to be approved by Parliament, will regulate land use planning regardless of land tenure or land administration systems³³. Local district, municipal and city councils will now be the main authorities responsible for planning on state and customary lands. Each local authority will be required to prepare an integrated development plan (IDP) based on planning guidelines, receive and process planning applications, implement development plans, and promote sustainable land development. The planning guidelines will deal with issues such as areas of environmental value, agricultural production and forest reserves, customary tenure, and private-public partnerships for land development, and thus could greatly contribute to REDD+ planning and solve conflicts on land management. In addition, the national forest policy (NFP) of 2010 is under consideration for final approval by the Cabinet. The draft NFP was developed in parallel with the country's preparation for REDD+ readiness under the UN-REDD Programme, addressing the carbon sequestration, biological diversity and other natural resources functions of forests. It has a focus on REDD+ activities through integrated participatory management, improved law enforcement and private sector investment and aims to promote public and private partnerships to enhance investments, innovation and diversification in sustainable forest management. Cross-sectoral land reforms are under discussion in designing the draft Constitution of 2010. In particular the draft Constitution doesn't create significant new legislative reforms but goes far in requiring the revision of all sectoral legislation affecting land interests, establishing guiding principles, suggesting potential areas for reform, addressing imbalances in land alienability and guaranteeing fundamental rights to individuals and indigenous communities (IDLO, Country Study, 2011). Finally, the forest sector should take advantage of the Environmental Management Bill that requires all sectors to develop environmental strategies as a pathway for harmonising implementation of REDD+ compatible policies with sectors that impact on forests and forest resources³⁴.

In **Mexico**, recent efforts include the adoption of a general law on climate change, published in the official gazette in June 2012, which would amend more than 30 existing laws and regulations, including the law for use of renewable energy sources. The general law on climate change may facilitate compliance with climate change mitigation and adaptation, evaluation, and follow-up processes. The law states that the responsibility is shared among the Federal, State and Municipal governments. Each State highlights approaches that need to be clarified and are reflected in their climate change laws, demonstrating the potential for different legal and policy solutions at sub-national levels (e.g. Mexico City, Veracruz, Chiapas – the Yucatan Peninsula Accord). The climate change law of Veracruz, among its mitigation criteria, establishes the necessity to preserve and enhance carbon sinks through the reinforcement of current deforestation and degradation programmes. It establishes as a policy criterion a zero deforestation rate, and it emphasizes the role of payment for ecosystem services (PES) for the conservation and sustainable management of State forests. Chiapas's climate change law was enacted in 2010. Forest conservation and carbon sinks are the guiding criteria of the State's climate change action plan. The Yucatan Peninsula

³³ Until now, the town and country planning Act cap. 283 (1995) is the only piece of legislation that guides spatial planning in Zambia. However, the planning process under the Act is restricted to land use planning of areas in state land only.

³⁴ UN-REDD Programme. REDD Zambia National Programme Policy Brief. Forest management practices with potential for REDD+ in Zambia. 2012.

Accord is the first regional climate agreement, balancing regional cooperation with respect for the autonomy of sub-national governments. It commits the States to create a climate fund, to develop a regional adaptation strategy, and to facilitate a regional REDD+ programme (IDLO, Country Study, 2011).

In **Vietnam**, in addition to allocating lands, the Government of Vietnam also establishes civil contracts with owners over forested lands, which could contribute to harmonizing interests in land (Decree 01/CP of 1995 as amended in 2005 into the Decree 135/2005/ND-CP). These Decrees regulate the assignment of lands for the purposes of agriculture, plantations, agro-forestry and lands subject to aquaculture farming. The contractual assignment of production forest land shall include assignment contracts of production forests being natural forests or planted forests (art. 15) and of land for planting production forests (art. 16). Contractual assignments may be stable assignments corresponding to the crop cycle or the business cycle, or stage-based assignments. Rights and obligations of the contracted and contracting parties are provided for in articles 9 and 10. According to the Ministry of Agriculture and Rural Development (MARD), along with forest and land allocations and leases, the Government of Vietnam, under the 5 million Hectare Reforestation Programme has invested for the protection of over 2 million hectares of concentrated forests in the priority areas to contract for forest protection (IDLO, Country Study, 2011). However, there are still discrepancies in some of the current policies and programs of the forestry, agriculture, natural resources and environment, transportation, and construction sectors³⁵. The Draft UN-REDD Viet Nam Phase II will build on national and basic capacities in all forested provinces, recognizing the role of REDD+ in the national Social Economic Development Plan (SEDP) for the period 2016-2020. It will work with local stakeholders to ensure that REDD+ will be integrated into the annual Social Economic Development Plan (SEDP) and Forest Protection and Development Plan (FPDP) in pilot provinces, as well as the 2016-2020 provincial SEDPs and FPDPs, based on social and gender analysis, governance analysis, carbon data, and REDD+ opportunity cost analysis.

LESSONS LEARNED

Beyond economic development targets, it is possible to distinguish three sets of drivers of natural resource conflicts: institutional and rule operationalization-related drivers, property rights-related drivers, and social, cultural and traditional values-related drivers. In general terms, natural resources-based conflicts are the result of different parties competing for natural resources as a consequence of confusion, distortions, misunderstandings, and policies and laws that are inadequately suited to the realities of their intended targets, and by unclear property rights³⁶. Additionally, competing priorities and the power of market demand related for example to mining, oil and agriculture production represent economical incentives undermining successful REDD+ implementation. A prerequisite for the harmonization of sectoral laws for REDD+ is a better understanding of the factors, processes or conditions that could be considered as drivers of deforestation and degradation.

³⁵ Draft- UNREDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.

³⁶ Formal institutions, local arrangements and conflicts in the northern Bolivian communities after forest governance reforms. Walter Cano Cardona. PROMAB. 2012.

I. F) INSTITUTIONAL COORDINATION

Key Points

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

As political interest in REDD+ has grown substantially, so has the recognition that in most countries, successful national-level REDD+ mechanisms will require extensive and well-coordinated institutional preparation and governance reform³⁷. REDD+ readiness should help institutions to coordinate dialogue at multiple scales and build capacity at all levels to monitor and implement REDD+ strategies and programmes.

In addition, a clear distinction between the different roles of the executive and legislative branch is needed. Parliaments have to be included in order to secure long-lasting political ownership of the REDD+ process, as well as ensuring accountability and monitoring. Involving National Parliaments is necessary in order to ensure political buy-in from the opposition as well as the executive. In several countries, the administration within forestry agencies will be changed as a result of a new election and this can create tension; therefore working with Parliaments will ensure that all parties are informed on REDD+ matters (Sofi Halling, UNDP).

At the institutional level, coordination challenges may include those between government departments for example in terms of joint responsibilities with forests and climate change, or agricultural, land, energy and forestry ministries, or between production and conservation branches of forest ministries, between national, regional or provincial governments and between government, the private sector and civil society³⁸. In particular, care must be taken to monitor the implementation and impacts of new rules and institutions.

Clarity and coherence of institutional mandates related to REDD+ are crucial to overcoming misunderstandings and conflicts among REDD+ planning and implementing actors. In fact, gaps and conflicts in institutional mandates can result in the absence of action, duplication of efforts, or deter positive actions. Therefore, it is fundamental that legal and institutional frameworks have a high degree of cross-sectoral and multi-jurisdictional coordination from national to local level (IDLO, Country Study, 2011).

³⁷ Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper #11. USAID. 2011.

³⁸ Catalyzing REDD+ at the national level: Summary of experience so far. REDD-net. 2010.

Legal mandates are important to avoid that coordination agencies and committees add bureaucracy. And while central government coordination of activities will be required, these should be framed within positive incentives to encourage compliance³⁹.

In addition, institutional strengthening as well as guarantees issued by multilateral institutions may mitigate some of the country-related risks and help countries to raise REDD+ finance in advance of performance-based REDD+ payments. Disbursement of REDD+ finance at the national level may rely on existing procedures and agencies to mediate between implementers of REDD+ actions and governments. At the individual or village-level, delivering REDD+ payments may require updated legal structures, resource rights or contracts. However, most countries have some form of payment distribution networks that can serve this function⁴⁰.

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

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

In **Mexico**, under the Organic Law (2002) there are three Federal Secretaries with specific competences related to forests: the Secretary of Environment and Natural Resources (SEMARNAT), the Secretary of

³⁹ Ss.

⁴⁰ Options for Managing Financial Flows from REDD+. Charlotte Streck, Manuel Estrada Porrua, Carina Bracer, Michael Coren. Climate Focus.

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

In **Vietnam**, the Ministry of Agriculture and Rural Development (MARD), specifically the Viet Nam Administration of Forestry (VNFOREST) provides national leadership on REDD+. This includes leading the international negotiations on REDD+, and development and implementation of the National REDD+ Action Programme (NRAP)⁴¹. MARD chairs the National REDD+ Steering Committee and the NRAP's Executive Board, both consisting of representatives from all relevant ministries. MARD also hosts the Viet Nam REDD+ Office (VRO). In December 2008, the Prime Minister issued Decision No 158/2008/QĐ-TTg approving the National Target Programme on climate change. A National Standing Office was established with representatives of different ministries, with responsibilities for coordinating efforts to implement the National Target Programme to Respond to Climate Change (NTP-RCC). Under the NTP-RCC, MARD is responsible for the forest sector; a MARD Action Plan responding to climate change was developed, which also made reference to REDD+. Recognizing the need for inter-agency coordination, the government introduced various Directives⁴². These Directives aim to overcome weaknesses in forest management, ensure law enforcement, and improve effectiveness of state management in the forest sector. However, there are still obstacles to improving inter-agency cooperation due to lack of financing, conflicting legislation, policy or guidelines, and to a lack of human resources. In the near future, UN-REDD Viet Nam Phase II Programme will undertake a range of efforts to further strengthen the capacities of key agencies and institutions for effective implementation of REDD+. MARD and MONRE are also expected to collaborate closely to integrate REDD+ into land use planning (MARD leads on forestry and MONRE on land planning and management). The Ministry of Planning and Investment (MPI) and Ministry of Finance (MOF) are leading ministries on planning, budgeting and Official Development Assistance (ODA) management, and will also be members of the National REDD+ Steering Committee and Executive Board (EB) of the NRAP. MARD/VNFOREST is also expected to work particularly closely with MPI and local authorities to integrate REDD+ in social economic development planning at different levels⁴³.

⁴¹ The NRAP was approved by the Prime Minister only in June 2012. Implementation has not really started, yet.

⁴² Prime Minister's Directive 08/2006/CT-TTg and Directive No.1685/2011/CT-TTg.

⁴³ Draft- UNREDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.

LESSONS LEARNED

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

I. G) PUBLIC PARTICIPATION

Key Points

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

Public participation, supported by transparency and access to justice, is one of the most recognized principles of sustainable development⁴⁴. Since the United Nations Conference on Environment and Development (UNCED), there has been widespread agreement in international legal instruments dealing with the environment and socio-economic development, that active “participation” by affected groups

⁴⁴ See Principle 10, 1992 *Rio Declaration*. See also the 1998 *Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters* (25 June 1998) (in force 30 Oct. 2001).

and civil society is not only desirable but necessary if sustainable development objectives are to be met. These instruments reflect the emergence of three dimensions of the concept of “public participation”. First, people should be accorded the opportunity to participate in official socio-economic development decision-making processes and activities that impact their lives and well-being. Secondly, in order to participate fully, the public must be provided with, or at least have access to, adequate information concerning the decisions and activities of government. Thirdly, those whose rights are affected by State decisions should have a right of access to justice. States should therefore ensure that all persons have effective access to relevant information held by public and private actors regarding sustainable development issues. Effective participation also depends on attention to disparities within societies and removal of obstacles to participation by vulnerable groups such as minorities, or the poor⁴⁵. Proactive steps should also be taken to allow communities to develop their own REDD+ projects (Sarah A. Mason-Case, IDLO).

In relation to REDD+, multi-stakeholder participatory processes facilitate institutional cooperation, providing opportunities to relevant branches of the government at different levels to exchange information before a decision is made. Participation may contribute to build capacities and raise awareness among forest-dependent communities about REDD+ mechanisms, and improve their knowledge with regards to existing forest and environmental legislation. In particular, participatory processes may help in identifying land uses in areas selected to develop REDD+ projects, and prevent or resolve local conflicts. Thus, multi-stakeholder participation is fundamental to addressing tenure-related issues⁴⁶. Therefore, national REDD+ institutions must prioritise the recognition and clarification of rights to guide the process of realizing “full and effective participation” (UNFCCC 2010)⁴⁷. Moreover, local governance groups must be supported with training on how to negotiate their rights to the land and resources they use, and how to take effective advantage of the benefits currently available from REDD+⁴⁸.

In the context of REDD+ stakeholder engagement, objectives may range from simply raising awareness about climate change and the role of forests to determining how benefits from a REDD+ program will be shared within a specific community. Understanding the type of decision making process being targeted for stakeholder engagement can help inform the identification of objectives and relevant stakeholders. Depending on the objective of stakeholder engagement and the type of decision being made, different actors may be considered stakeholders in any given process. Individuals or groups that have a vested, direct interest in forests, agriculture and rural development may all be key stakeholders for REDD+. Stakeholders can be grouped into Government or public sector, civil society, private sector, the general public and consumers, the external community such as international financial institutions and rights-holders: property owners, indigenous peoples and tribal groups, communities or individuals that hold traditional or formally recognized usufruct (and/ or other) rights to land or resources that will be impacted by the decisions being made⁴⁹.

Overall, national legislation will have to identify the responsibility of national and local authorities in relation to the rights of forest dependent communities. This may include the obligation to follow a

⁴⁵ Sustainable Development Law. Principles, Practices and Prospects. Marie-Claire Cordonier Segger and Ashfaq Khalfan. Oxford. 2006.

⁴⁶ Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

⁴⁷ Land tenure and REDD+. Risks to property rights and opportunities for economic growth. Property rights and resource governance briefing paper #11. USAID. 2011.

⁴⁸ Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America. Lisa Naughton and Cathy Day. USAID. 2012.

⁴⁹ A draft framework for sharing approaches for better multi-stakeholder participation practices. Florence Daviet.

World Resources Institute. 2010.

participatory consultation process prior to the approval of a REDD+ project, the obligation to obtain free prior and informed consent from key stakeholders and land user rights and to respect refusal, the obligation to explicitly specify who will receive compensation under the REDD+ project and on which basis⁵⁰, and the obligation to follow specific procedures in all these phases. The law can also create obligations to ensure the publication of key updated information on REDD+: what type of information, in what forms and within what timeframes the information should be made public, comprehensible in local dialects, and which authority should be responsible⁵¹. In addition, it should be ensured that information is accessible in remote areas, possibly in collaboration with local authorities.

In **Zambia**, the recently enacted Environmental Management Act (2011) reflects the international obligations on public participation and access to information, stating that “the people shall be involved in the development of policies, plans and programmes for environmental management” and “the citizen shall have access to environmental information to enable the citizen to make informed personal choices”. The Minister (MTENR) must also prescribe under a statutory instrument how “the right” to participation in decision-making on policies, strategies, plans, laws and regulations will be ensured, including through public review of documents and public hearings. The National Policy on Environment of 2007 aims to “integrate” local representatives into the decision-making process in order to empower local communities in the management of natural resource, however in practice the implementation of these promises has been stalled due to a lack of capacity (IDLO, Country Study 2011).

The Strategic Programme for Climate Change Resilience, implemented by the Ministry of Finance and National Planning (MOFNP) is an interesting model for REDD+, based on innovative social and financial structures that allow communities to act as key stakeholders in early warning systems, joint decision-making and implementation of resource management. In particular, the Programme establishes a two-way information flow for decision making, emphasizing the participation of local communities in developing Local Areas Plans (LAPs) assisted by NGOs and supported by Specialized Provincial DMMUs monitoring review.

In **Mexico** *comunidades* and *ejidos* are legal entities that have the right to govern themselves, define how they will use their land and establish the boundaries of such uses within the communal properties. Great efforts will be required to ensure that these communities have the knowledge and skills to decide whether and how to participate in REDD+. Currently, CONAFOR provides outside technicians to communities with PES contracts. They are exploring the possibility of hiring and training technicians to live in the communities, an approach already adopted by SAO and Ambio. Support for this capacity building process will be provided by the central government, the international donor community and potentially from a payment for performance system of REDD+. Mexico should also seek opportunities to empower women in forest communities as part of its REDD+ capacity building and implementation efforts. Because most REDD+ projects will probably be located in areas where forestland is communally owned, the key to improving the status of women in those areas is to find ways for women to participate in community decision-making. The CTC should seek to ensure that organizations representing women and young generations have greater participation in the development of the REDD+ strategy⁵².

In **Vietnam**, a National REDD+ Information System (NRIS) will be set up with UN-REDD Phase II Programme support. The NRIS will be the main access point for all information on the implementation of national REDD+ policies and measures, and the ways in which the REDD+ safeguards are being addressed

⁵⁰ Indigenous Peoples' Land Rights and REDD: A case study. Sophie Lemaitre. RECIEL 20 (2), 2011.

⁵¹ Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

⁵² Case studies on REDD+ and carbon rights. Property rights and resource governance project (PRRGP). USAID. 2011.

and respected throughout the implementation of REDD+ activities. The accessibility for all REDD+ stakeholders (institutions, international organization, NGOs, communities, participants, etc.) and the general public will be granted by internet and digital archives. The NRIS will be used to show compliance with all the REDD+ safeguards⁵³. The NRIS will ensure that all reports of forest assessments by local communities and reports on the integration of their plans in the provincial Social and Economic Development Plan (SEDP) and forest development plans will be publicly available. Particular focus will be placed on the collection of REDD+ information and its translation into useful and accessible communications materials. Such materials will be shared digitally and made accessible to all stakeholders across Viet Nam and the region, as it will be web-based. The UN-REDD Viet Nam Phase II Programme will also support the National REDD+ Action Programme (NRAP) in achieving REDD+ readiness by ensuring that all rights-holders in supported pilot provinces have the capacity and opportunity to provide or withhold their consent for demonstration activities proposed in their localities. A priority of the Programme will be to establish a cadre of interlocutors in each pilot province, which may require a team varying in size from 20 to 100, depending on the size and diversity of the provinces. Each year, by a specified date, a full report on the previous 12 months will be prepared and delivered to the EB to ensure the right to FPIC is applied and respected. A National REDD Network with six technical working groups (TWGs) have also been established, where participation to some extent, in planning takes place.⁵⁴ The National REDD Network has the overall coordination function and is to support the development of REDD+ readiness in the context of efforts by the Government of Vietnam to address Climate Change mitigation and adaptation, as reflected in the National Target Programme on Climate Change Response for the period 2009-2015 (NTP-CCR). Decisions made by the National REDD Network will be presented to the National REDD+ Steering Committee.

LESSONS LEARNED

A human rights-based approach could apply to REDD+ discussions regarding public participation, as FPIC and consultation regarding potential changes in resource uses that could impact the livelihoods of indigenous and other local communities both ensure the respect of basic human rights principles. States have an obligation to consult indigenous people in decisions affecting them in order to avoid the future imposition of REDD+ decisions without their approval, and must allow them to continue to live as distinct communities on lands to which their cultures remain attached⁵⁵. FPIC processes can empower communities by changing the basic terms of engagement and can help even the most marginalized groups to participate in the decision making process and negotiate an equitable share of REDD+ benefits⁵⁶. Therefore, the right to be informed and have access to information should be guaranteed by the State. In this regard, establishing guidelines for access to all policies, regulations, reports, environmental strategies, enabling the participation of local communities in developing Local Areas Plans (LAPs) (Zambia), making efforts to ensure that organizations representing women and young generations have greater participation in the development of the REDD+ strategy through REDD+ Technical Committees (Mexico), developing a National REDD+ Information System (NRIS) and ensuring the participation of all rights-holders in REDD+ supported pilot provinces (Vietnam) represent concrete actions already undertaken by countries that need to be effectively implemented.

⁵³ Including “respect for the knowledge and rights of indigenous peoples and members of local communities”, “full and effective participation of relevant stakeholders” and “actions (...) to enhance other social and environmental benefits”. UNFCCC, Decision 1/CP.16, Appendix II, paragraph 2 (c)-(e).

⁵⁴ Draft- UNREDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.

⁵⁵ A/HRC/12/34, para. 41.

⁵⁶ Development without Conflict: The Business Case for Community Consent, WRI, 2007.

Procedures to guarantee a fair consultation are also important. Some tribes have different notions of property, which can affect their decisions. In Brazil for instance FPIC for research with indigenous groups requires that the whole tribe agrees, but it is not clear who would represent the tribes, if the chiefs only. Some indigenous representatives in Brazil do not live in the tribes anymore and various tribes in Brazil do not speak Portuguese, so FPIC is a quite sensitive issue, and being sure that a “democratic” process happens is as important as having the requirement established formally (Caroline Schmidt, Oxford).

There are many challenges relating to establishing robust participation mechanisms in decision-making for the implementation of REDD+. The identification of stakeholders, especially when looking to engage local communities and rights holders that may be difficult to access, is one of the most complex and time consuming aspects to be addressed. One survey of 12 pilot forest carbon initiatives found that engagement of local stakeholders was among the most challenging aspects in designing and implementing the initiatives, given the need for extensive outreach, training, and negotiations with large and often dispersed numbers of individual landowners and community members (Harvey, et al. 2010, 73). Finally, it should be noted that legal empowerment is not simply about negative rights or FPIC (i.e. outsiders refraining from conduct without consent), it is also about empowering communities to take proactive steps through local and accessible funding mechanisms (IDLO, Sarah A. Mason-Case).

I. H) DECENTRALIZATION

Key Points

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

In recent forest law reforms, local forest management has received a great deal of attention, particularly with regard to community-based activities and the realignment of powers and responsibilities between central and local governments. Local management of forests is now increasingly promoted in various ways, though it is still subject to numerous limitations⁵⁷. They are also more susceptible to local power relations and possible discretionary policies. Moreover, local governments tend to be weaker than the national government in negotiation, law enforcement, and other functions necessary for managing large

⁵⁷ Law and sustainable development since Rio. Legal trends in agriculture and natural resource management. FAO Legislative Study 73. 2002.

forest resources. Yet there are good reasons for forestry management to be decentralized. In principle, decentralization should bring decision-making closer to the people, helping to satisfy a generally accepted need for forest-dependent-communities to participate in decision-making.

Decentralization could result in an internationally recognized system of “community forestry”, whereby local communities hold collective legal rights to manage and use forest resources (Nepal)⁵⁸. However, “despite growing recognition of community rights by the state in many countries, the community-based tenure model is facing a major challenge due to inconsistent government policy and lack of institutional capacity” (Dahal and Adhikari, 2008).

In general, much of forest administration is also closely linked to land-use regulation which will affect REDD+ and which is typically a local responsibility even in relatively centralized systems. The transfer of responsibilities needs to be, but often is not, accompanied by the transfer of sufficient financial resources to fulfil the obligations. Ministries of Finance in developing countries often resist transferring adequate funds to territorial administrations, even where those funds consist essentially of forest-related taxes and forest services fees from a particular area⁵⁹.

Local administrations often lack the qualified staff necessary to achieve their mandate. As an initial response, the transfer of responsibilities should be accompanied by an interim transfer of staff from the central to the territorial administrations. In particular, transferred staff would help local authorities manage forest lands and resources and improve their management capacity⁶⁰. External technical and financial support could also be necessary for local governments to go through the whole REDD+ process. Coordination Committees could be introduced in order to promote a more inclusive management of forests, and to develop, implement, and monitor forest management plans and conservation in coordination with, and through active participation of, all concerned stakeholders. Those local Committees could be the primary channel for implementing REDD+ at the local level.

Another concern is how tenure security and decentralization are related and how market-based mechanisms like carbon trading and REDD+ could impact decentralization and tenure security. Many argue that unless decentralization incorporates significant, long-term devolution of land tenure to community-based forest management institutions, local political, economic and livelihood rights will remain at risk (Agrawal and Ostrom 2001), which will have direct implications for REDD+ implementation.

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

⁵⁸ Lessons about land tenure, forest governance and REDD+. Case Studies from Africa, Asia and Latin America. Lisa Naughton and Cathy Day. USAID. 2012.

⁵⁹ Forest law and sustainable development. Addressing contemporary challenges through legal reform. Lawrence C.Christy. Charles E. Di Leva. Jonathan M. Lindsay, Patrice Talla Takoukam. World Bank. 2007.

⁶⁰ Ss.

are: a) two-way information flows for decision-making and reporting; b) disbursement of donor finance to local development funds for participatory climate-resilience initiatives; and c) monitoring, reporting and strategic feedback (IDLO, Country Study, 2011).⁶¹

In **Mexico**, the Community Forestry Program of CONAFOR contributed to the creation and strengthening of community forestry institutions, thus alleviating pressure on forests. Community forestry has been widely recognized to have contributed significantly to the management and conservation of communal forest areas in Mexico (Benneker and McCall, 2009). As suggested in the Vision for REDD+, to prepare the REDD+ strategy, the approach will be based on sustainable community forestry, emphasizing forest communities' rights to exploit forest resources as well as combat poverty and sustainably manage the resources (Mexico R-PP 2010). It is well known that *comunidades* and *ejidos* are legal entities that have the right to establish their governing rules, define how they will use their land, limiting such uses within the communal properties. To exercise this right, the *comunidades* and *ejidos* must develop internal regulations and register them in the Registro Agrario Nacional (National Agrarian Registry). These regulations should address the organizational structure of the community, the rules to admit new members to the community, and the rules and criteria to determine the use of the land⁶². The creation in Jalisco of public decentralized organs among different municipalities for watersheds could be considered an innovative and effective institutional arrangement. So far, CONAFOR has chosen to use this model for developing REDD+ pilot projects. The stability of these institutions will be key to developing successful REDD+ governance. However, successful examples of decentralization are missing, although it is contemplated by the law, due to the lack of commitments by several States. Decentralization processes should encourage the involvement of forest user rights in the public sector, they should be inclusive and consider the relevance of the civil society and forest owners in decision-making processes undertaken by the government. This aspect is also related to the public participation which is considered by the law as a right associated to forest owners⁶³.

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

The UN-REDD Viet Nam Phase II Programme will support the development of required capacities in PRMUs to enable pilot provinces to effectively engage in the National REDD+ Action Plan (NRAP) activities. These capacities include the establishment of an appropriate legal framework and policies that support mainstreaming of REDD+ into provincial and local Social and Economic Development Plan (SEDPs) and Forest Protection and Development Plan, as well as institutional capacities to ensure clarity in mandates and responsibilities for data collection, monitoring, benefit distribution, law enforcement, participatory planning, and adherence to social and environmental safeguards and the strengthening of individual capacities through training on, for example, general REDD+ principles. Besides forest owners and managers, the main counterparts for the NRAP in facilitating these provincial planning processes are, among others, the Provincial Peoples' Committee, responsible for the SEDP and signing off on all other plans. The provinces will also have a central role in some of the planning processes that are essential to the NRAP, such as the Socio-economic Development Plan (SEDP) and the Land Use Plan (LUP). In addition, provincial authorities plan, approve, implement and monitor many processes that influence the use of natural resources, such as in forestry, commercial agriculture and aquaculture. For the NRAP to be

⁶¹ Note that decentralization of the forestry sector in Zambia, as in many African countries, extends back to the 1990s due to structural adjustment policies. This is where experimentation in past JFM and CBNRM projects were derived from (Sarah A. Mason-Case).

⁶² Case studies on REDD+ and carbon rights. Property rights and resource governance project. Working paper. USAID. 2011.

⁶³ Contribution from Dr. Sergio Arias, Head of the Legal Unit (CONAFOR).

effectively implemented, the provincial authorities have to be fully engaged, as provincial authorities play a role in virtually all aspects of NRAP implementation⁶⁴.

In December 2004, the passing of the Forest Protection and Development Law (FPDL) legally recognized community forest management (CFM) in Vietnam for the first time. Despite this step, skepticism remains about whether CFM can work in practice and to what extent legal recognition contributes to effective forest protection and management and REDD+ implementation. For forest protection and management to be effective, strong local institutions are necessary. Legal rights must be supported by strong local institutions to ensure forest protection and that benefits reach community members. It will be important that state policy encourages the uptake of local initiatives and local practice as guidance for drafting simple guidelines for CFM⁶⁵.

LESSONS LEARNED

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

I. 1) BENEFIT SHARING

Key Points

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

National environmental laws might recognize forest carbon sequestration as an environmental service. It is therefore paramount for REDD+ projects to be aligned with existing PES mechanisms. The distribution of benefits in PES projects could be regulated by national legal frameworks (e.g. technical norms) if

⁶⁴ Draft- UNREDD Vietnam – Phase II Programme: Operationalising REDD+ in Vietnam, February 2012.

⁶⁵ Forest Governance Learning Group (FGLG) Vietnam. Nguyen Quang Tan, Tran Ngoc Thanh, Hoang Huy Tuan, Yurdi Yasmi, and Thomas Enters. Policy brief. 2009.

government-managed or through contracts between the parties, on a voluntary basis. In public PES systems, legislative and regulatory rules should clearly define the services to be compensated, eligibility and performance criteria for receiving payments, monitoring rules, terms and sanctions⁶⁶. PES systems established by government can offer different benefits associated with REDD+ to local stakeholders. Community Forestry Programmes can also integrate benefit sharing principles to ensure sustainable management of forests. Beside cash payments, REDD+ benefits could take the form of no-interest loans, capacity building, services, goods or tax credits, which will require clear rules to guarantee an equitable distribution of payments among government and forest communities.

PES presents one of the most important developments for financing ecosystem conservation efforts in recent decades. Participatory Forest Management presents also strong promise as a decentralized management strategy compatible with PES under which local landholder communities may be included in a REDD+ scheme. This approach focuses on community forest management (CFM) and joint forest management (JFM) in which governments retain ownership of forest land and villagers are allowed to live in and benefit from forest resources. Recent studies on PFM recommend devolving ownership, management responsibilities and benefits of public lands to local governance levels and community actors for increased reforestation and forest conservation. CFM generally performs better than JFM due to the higher degree of local control and benefits received, however also entails risks and administrative difficulties for local or indigenous communities involved⁶⁷.

National legal provisions should therefore be established or updated to ensure that institutions and mechanisms facilitate benefit sharing from the international to the national or sub-national levels⁶⁸.

Benefits generated by REDD+ will be channelled by governments who will decide how best to distribute them. To define the legal mechanisms that will guarantee accountability, transparency, efficiency and equity, it is relevant to involve stakeholders that are part of long-term forest governance processes. They could include national and sub-national government representatives, forest land owners and those with user rights, forest-dependent communities and private land owners⁶⁹. In addition to national actors, intermediaries and foreign investors should also be considered as part of BS schemes. As national contexts are widely different, each country will need to identify national stakeholders on the basis of social, economic and environmental factors, as well as deforestation and degradation drivers. Lessons from previous PES initiatives indicate that a higher percentage of revenues should be allocated directly to the people responsible for providing the ecosystem services, such as forest-dependent-communities or indigenous peoples.

To guarantee functionality, it will be crucial to involve communities through consultation and participatory processes in the design of BS schemes, using efficient methods.⁷⁰ It will also be important to simplify relevant concepts related to benefit distribution mechanisms in order to facilitate the comprehension of key aspects of REDD+. Additionally, provisions should ensure that local landholders and indigenous communities are able, and have access to information explaining how the benefits will be distributed.

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

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

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

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

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

Another aspect that should be considered is that without clear land tenure rights it will be difficult to allocate REDD+ payments, considering the correlation between forest land rights and ownership rights on carbon. A possible solution could be to allocate carbon directly to local and indigenous communities⁷¹, taking into account the internal mechanisms governing communal lands at local level.

REDD+ benefits could be channelled using performance-based payments from national to sub-national level, through existing or newly created entities (e.g. regional or provincial committees) responsible for the allocation of benefits to the local communities. REDD+ projects could be classified by law, and the payments could vary accordingly. Carbon credits funds generated by those projects could then be distributed among national, provincial and municipal governments and local communities on the basis of percentages established by law, using rational criteria (tree species, type of forests)⁷². MRV systems for REDD+ implementation should be in place to measure carbon stocks in forests, in order to ensure the *additionality* of global emissions reductions from REDD+ and to guarantee the equitable rewarding of key stakeholders.

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

In **Mexico**, the overall trend is that community forestry has been successful in developing multi-functional uses of forests at the local level, including carbon sequestration. Clarity in national laws and sub-national programmes to implement benefit sharing principles are paramount for defining and allocating benefits among the *ejidos* and local communities, thus facilitating the permanence of carbon emissions reductions and attracting long-term investments in the country. Legislation on REDD+ should incorporate clear and harmonized legal procedures and rules, allowing for open participation among actors at sub-national and national levels, to ensure the successful and equitable distribution of REDD+ benefits. Cross-sectoral initiatives, such as the working group created in December 2009 focused on reducing emissions from deforestation and degradation and increasing carbon forest stocks linked to sustainable management (GT-REDD+), are extremely important instruments for harmonizing, developing and successfully implementing national public policies related to REDD+. According to those principles, the operational rules of 'Proárbol' ensure an equitable and non-discriminatory access for women and indigenous people to CONAFOR's subsidies (article 32, General law on sustainable forest development). Recently, the legislative reforms to the country's environmental law (1988) and forest sustainable development law (2003) passed by the Congress of Mexico and published in the official gazette in June 2012, state that according to the international treaties and national provisions, all economic instruments will be

⁷¹ Tacconi, L.

⁷² Legal frameworks for REDD. Design and implementation at the national level. John Costenbader. IUCN. 2009.

considered as a means to promote environmental services, thus establishing a legal basis for new mechanisms supporting the principle that who conserves will receive the benefits from the services provided. Forest land owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests. Finally, eight socio-environmental safeguards are established. These are in line with the UNFCCC safeguards and the national REDD+ strategy of Mexico.

In **Vietnam**, Benefit Sharing must be appropriate and provide incentives to local forest groups in an equitable and transparent manner. According to the Constitution of the Socialist Republic of Viet Nam (1992, last amendment 2001), all forest resources (including land, trees, and wildlife) are owned by the people (article 17). On behalf of the people, the State manages forest resources and legally entrusts the management of forests to specific groups. After initial PES projects were conducted in pilot sites in two provinces, in December 2010, the Government issued a decree expanding the 2008 PES decree to a national scale under the “Forest Protection and Development Fund. In particular, the Decree No. 99/2010/ND-CP provides for the policy on payment for forest environment services in Vietnam, covering: types of forest environment services which are paid for by users to providers defined in this Decree, providers and users of forest environment services, management and use of the payment for forest environment services, rights and obligations of providers and users of forest environment services and responsibilities of state management agencies at all levels and of all sectors for the payment for forest environment services. Benefits are expected to be distributed in six pilot provinces, only under the UN-REDD Viet Nam Phase II Programme, and to provide incentives to seven out of eight forest manager groups⁷³. For State-owned companies and management boards, it has been proposed that incentives will consist of cash-payments according to standard rates of compensation, adjusted by R-coefficients. For People’s Committees, it has been proposed that incentives will likely take the form of direct cash distribution to the people who protect and manage forests and/or of deposits to funds for improving social services, according to priorities defined by local stakeholders. Measures will be put in place to avoid the risk of corruption. The context is more complex for households and village communities. Viet Nam has 54 officially recognized ethnic minority groups, with different socio-economic conditions, ecological diversity, and regionally diverse land use rights and land and forest management arrangements (communal versus individual). There are still a number of households who are not entitled to forest land rights, but are dependent on forest resources. Furthermore, it is important to ensure that women are involved in decision-making at local level⁷⁴.

LESSONS LEARNED

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

⁷³ At present, the forest managers groups are: 1. State-owned companies (SOCs), or state forest enterprises (SFEs), 2. Individual households, 3. Management boards for Protection Forests (PFMBs), 4. Management boards for Protected Areas (PAMBs), 5. People’s committees (PCs), mostly at the commune level (CPCs), 6. Village communities, 7. Joint venture enterprises and 8. Army units.

⁷⁴ UN-REDD Viet Nam Phase II Programme.

I. J) PROVIDE INCENTIVES TO PRIVATE AND PUBLIC INVESTMENTS

Key Points

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

Each developing forest country offers unique opportunities for investment, but also poses crucial challenges including political risks, unclear land tenure regimes and elite capture of revenues. Each of these factors will impact the development path of REDD+. An investment in a country characterised by high political risk (e.g. land tenure issues, government instability, uncertain legal framework) would require high returns and would require “Risk-mitigating” mechanisms to attract broader interest from investors⁷⁵. Additionally, in order to effectively leverage the private sector, it is important to implement a set of policies that take into account the different composition of the investment community in sustainable investment across countries.

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

A recent survey of investors in REDD+ projects⁷⁶ has shown that political risk constitutes the largest risk factor preventing potential capital providers investing in REDD+ projects in developing forest countries. Forty-six per cent of investors surveyed listed this as the highest ranking risk factor (60% of inexperienced investors and 38% of experienced investors).

Currently, political and land tenure risks can be mitigated through specific insurance products offered by the World Bank (MIGA – the Multilateral Investment Guarantee Agency) and by some private insurance companies to protect the investors from political risks, natural disasters, land expropriation and other factors that might interfere with REDD+ successful achievements. However, the scale of existing MIGA insurance taken out to date is small relative to the size of the expected requirement for investment in REDD+. Further investigation should be given to the amount of additional capital that would need to be raised by MIGA to increase the capacity to bring it in line with the expected capital flow to developing forest countries, taking into account the set of REDD+ opportunities available in each respective country⁷⁷.

⁷⁵ The attractiveness of investments in REDD+ projects to the private sector. The Forest Investment review. DFID UK.

⁷⁶ Source: Clinton Foundation . Unlocking Climate Change Mitigation Potential of Sustainable Commercial Plantations. 2008.

⁷⁷ We could also make reference to the political risk insurance for REDD+ projects provided by the US-based Overseas Private Investment Corporation (OPIC).

To reduce risk to both public and private investors, updated legal frameworks, including foreign investment laws related to REDD+ activities, will be essential (at both the international and national levels). To promote REDD+ activities and attract foreign investors, the government might also adopt innovative fiscal incentives such as tax exemptions, and low interest loans⁷⁸. However, at this point, many of the technical legal issues relevant to REDD+ have not yet been clarified. These knowledge gaps must be addressed before legislative reforms are enacted.

The **Zambia** Development Agency (ZDA) has the mandate that it could allow it to facilitate private investments for REDD+ by establishing value added tax (VAT) exemptions on carbon credits or financing small rural forest management enterprises. The ZDA Inter-ministerial Board Agency might enact legal and institutional reforms aimed at addressing major factors of deforestation and land degradation, for example by removing perverse subsidies directed to the mining and energy sectors. The ZDA has the mandate that it could also act as an intermediary between the parties (foreign investors and forest-dependent-communities) and supervise the terms and conditions of contracts. Accountable and transparent financial systems, including BS mechanisms, will also attract private and public investments. The Office of the Auditor General is appointed by the Constitution to verify that money is used for appropriate purposes. Additionally, the Ministry of Finance and National Planning (MOFNP) is responsible for all the financial flows to the GRZ, and is also implementing and Integrated Financial management Information System (IFMIS) under the Public Expenditure Management and Financial Accountability (PFMFA) programme, supported by the World Bank. To facilitate land demarcations, the ZDA has adopted a systematic practice whereby it acquires leasehold titles to lands on behalf of investors for projects without transferring the title to those investors. In addition, ZDA will also assist in obtaining all necessary permits and approvals and identifying a national counterpart for the project. To ensure knowledge and access to information about land acquisition processes, standardized legal tools should be adopted to ensure the compliance with FPIC principles⁷⁹ (IDLO, Country Study, 2011).

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

In **Vietnam**, the law on foreign investment makes provisions for foreign direct investment “in order to expand economic co-operation with foreign countries and to support the cause of modernization, industrialization and development of the national economy on the basis of the efficient exploitation and

78 (Draft) Legal preparedness for REDD+. Crosscutting issues for domestic implementation. UN-REDD Programme (FAO). 2012.

79 However, it should be noted that this has been very contentious.

utilization of national resources,” including forestry activities (1996 as amended in 2000). Foreign investors may invest in Vietnam in any of the following forms: 1. Business co-operation on the basis of a business co-operation contract; 2. Joint venture enterprise; 3. Enterprise with one hundred (100) per cent foreign owned capital (Article 4). In accordance with the investment law and the law on forest protection and development, the Government offers incentives to organizations, households and individuals to promote afforestation on bare lands, such as providing preferred interest or loan durations for particular plant species and ecological regions, as well as exemptions from or reductions of land use tax or land use rental costs. The law on forest protection and development states that financial resources for forest protection and development include the state budget, the funds of forest owners, and the budget of the fund for forest protection and development (PFPD) regulated by Decree 05/2008/ND-CP. (IDLO, Country study, 2011).

LESSONS LEARNED

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

In Zambia, to ensure knowledge and access to information about land acquisition processes, standardized legal tools should be adopted to ensure the compliance with FPIC principles. In Mexico, the Partnership for Market Readiness (PMR) can help in REDD+ developments, as it focuses on opportunities to design and develop market instruments, and the necessary in-country capacity to implement these instruments. In Vietnam, the environmental protection fund is also a good financial resource for environmental protection projects including forest protection, with a low interest rate of 3%-5%/year. This can be used for the management of REDD+ revenues, transferring these revenues to the Fund under the form of trust receiving.

REDD+ Legal Reforms in Mexico

The legislative reforms passed in Mexico City on 24 April, 2012, position Mexico as one of the first countries to legislate in support of efforts to reduce emissions from deforestation and forest degradation (REDD+). Recognizing the need to reform environmental laws and harmonize legal inconsistencies for REDD+ implementation, the Mexican Congress has advanced a set of legal reforms to the country's environmental law (1988) and forest sustainable development law (2003). The amendments to these laws focus on harmonizing the definitions of key terms, the development of economic instruments to promote environmental services that provide benefits to forest owners and forest land users, and the inclusion of REDD+ safeguards in light of the latest results of the Conference of the Parties of United Nations Framework Convention on Climate Change (UNFCCC) and the national REDD+ strategy of Mexico. These legal reforms, which were initially presented to the Chamber of Deputies in December 2011, represent a critical step towards ensuring that local communities who sustainably manage their forests receive the benefits derived from any future carbon compensation scheme. By enshrining this in national legislation, the Mexican Congress is building a forward-looking legal framework that supports the concept that forests should be managed in a sustainable way, prioritizing the engagement of forest dependent communities.

The key aspects of these legal amendments are:

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

GLOBE Mexico, which is composed of a cross-party group of Mexican legislators, initially submitted the REDD+ legal reforms to the Chamber of Deputies in December 2011 and has been actively involved in their passage through both houses of the Mexican Congress. More recently, the Legal Unit of the National Forest Commission of Mexico has created a workspace to promote discussions and analyze forest, land, agriculture and environmental laws, which could be used to further analyze cross-sectoral issues related to REDD+ implementation, in collaboration with the Legal Unit of the Ministry (Secretary) of Agriculture and Livestock (SAGARPA). **Source:** UN-REDD Newsletter 28 –May 2012.

CONCLUSIONS

As pointed out in the introduction, the study was developed using a bottom-up approach. It analyzes legal issues related to REDD+ implementation, focusing on normative, governance and financial aspects identified by key national stakeholders on the occasion of three national workshops (November 2011 – in preparation of COP 17 Durban). The aim was to draw some lessons learned, to enhance the understanding of the legal implications of REDD+ implementation at national level and to facilitate the enacting of legal reforms in REDD+ countries. Priorities for legal reforms will depend on the “REDD+ topic”, for example amending existing laws will be necessary to address land tenure or drivers of deforestation, taking into consideration ongoing legislative reforms at country level.

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

- Definition of rights (land, forest carbon) and REDD+ terminology (trees, environmental services, forests, deforestation, degradation, carbon stocks etc.);
- Formal recognition of customary and indigenous rights;
- Identification of major drivers of deforestation and degradation and harmonization of legal inconsistencies across sectors;
- Legal infrastructure needed in order to strengthen REDD+ institutional coordination;
- Public participation processes and free prior and informed consent mechanisms need to be in place;
- Decentralized mechanisms need to be regulated to support REDD+ implementation at local level;
- Benefit distribution mechanisms need to be developed and regulated;
- Reform of investment laws.

The countries considered to develop this analysis – Mexico, Vietnam, Zambia and others - represent a range of regional contexts that differ in terms of economic development, social and cultural values, geographical data, climate, political regime, administrative and institutional framework as well as parliamentary activities. In addition, forests have different roles in the national and local economy. Therefore the social safeguards, economic incentives and legal infrastructures needed to successfully implement REDD+ will vary according to specific national contexts. On the other hand, the REDD+ safeguards adopted in Cancun and the Durban outcomes clearly indicate that the REDD+ activities should be consistent with national forest programmes and international conventions and agreements, transparent and effective national forest governance structures, and full and effective stakeholder participation. They should also respect and protect indigenous and local communities' rights and knowledge, taking into account existing incentives for the protection and conservation of national forests and their ecosystem services. The REDD+ safeguards should also enhance other social and environmental benefits and actions in order to address the risk of reversals and displacement of emissions. Currently, many countries that are in the process of finalizing their REDD+ strategies or programmes have identified specific needs to review, analyze and reform laws. Legal activities will therefore need to be included as a component in the “implementation” phase of the REDD+ strategies or programmes⁸⁰.

⁸⁰ See pilot countries of UN-REDD Programme, Forest Investment Program (FIP), Forest Carbon Partnership Facility and the REDD+ partnership.

Annex I

**Table 1: Priority legal issues identified by REDD+ stakeholders
(National Workshops held in November 2011)⁸¹**

Country	Zambia	Mexico	Vietnam
Priority areas of intervention			
Forest/land/ carbon rights	X	X	X
Recognition of customary rights	X	X	X
Definitions of REDD+ terminology		X	X
Major drivers of deforestation and degradation	X	X	X
Harmonize sectoral laws with REDD+	X	X	X
Institutional coordination	X	X	X
Public Participation <i>Free Prior and Informed Consent</i>	X	X	X X
Decentralization	X	X	X
Benefit sharing system	X	X	X
Provide incentives to private and public investments	X	X	X

⁸¹ On Tuesday 8th November, Lusaka (Zambia), hosted by the Forestry Department, Ministry of Mines and Natural Resources, on Tuesday 15th November 2011, Mexico City (Mexico), hosted by the National Forest Commission, Head of the Legal Unit and on Monday 21st November, Hanoi (Vietnam), hosted by the Institute of Strategy and Policy on Natural Resources and Environment, Ministry of Natural Resources and Environment.

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