



How can REDD+ promote & support social safeguards in national laws?

A comparative look at the integration of social safeguards into the laws of Ghana, Liberia & the Republic of Congo

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ClientEarth works in West and Central Africa to promote the use of law as a tool to improve the management of forests, to enable legal timber trade, to protect forest-dependent communities' rights and to reduce deforestation. Over the past two years, we have analysed the legal frameworks relevant to REDD+ in Ghana, Liberia and the Republic of Congo.



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Introduction

In West and Central Africa, home to 25% of the world's tropical forests,¹ the climate challenge is set against the threat of deforestation. In light of this threat, national laws and regulations seek to protect, restore, and manage the use of these forests for national development. International initiatives such as REDD+ (Reducing Emissions from Deforestation and forest Degradation) have identified that strengthening national laws to improve forest governance is an important tool to strike a balance between protection of forests and national development.²

REDD+ Social Safeguards

REDD+ is an international mechanism, established under the United Nations Framework Convention on Climate Change (UNFCCC), which aims to offer financial incentives to developing countries to reduce deforestation and forest degradation. REDD+ activities may place limits on the use of forests by local communities and indigenous peoples (LCIPs) for shifting cultivation, for gathering and for other subsistence activities, which could undermine, LCIPs' land rights, economic security and wellbeing. At the 2010 Conference of the Parties in Cancun, Parties to the UNFCCC agreed on a number of social and environmental safeguards that should be promoted and supported when undertaking REDD+ activities ('the Cancun safeguards' - see Box 1).³ These safeguards aim to guarantee the environmental objectives of REDD+, while avoiding negative social outcomes and promoting co-benefits for people, biodiversity and the climate.

Countries implementing REDD+ must provide information on how they are

addressing the Cancun safeguards, via a Safeguard Information System (SIS).⁴ Implementation of the SIS may rely on a combination of existing mechanisms (such as existing laws and policies) and new ones. A recent working paper by the Green Climate Fund identified national implementation of the Cancun safeguards and SISs as the least advanced of five key elements for REDD+ progress based on responses from 55 countries.⁵ The briefing aims to contribute to the greater availability of information on how to elaborate and operationalise REDD+ safeguards.

Content and methodology of the briefing

In this briefing, ClientEarth compares how the laws of Ghana, Liberia and the Republic of Congo promote and support three REDD+ safeguards on social protections (bolded in Box 1): (i) participation; (ii) transparency; (iii) rights of local communities and indigenous peoples, in which we focus on two specific rights of LCIPs – land tenure rights and benefit sharing. While the focus is on laws, we acknowledge the progress made in non-binding documents and planned or on-going legal reform processes.

Based on a comparison of the extent to which REDD+ social safeguards are integrated into existing national laws and governance systems in Ghana, Liberia and the Republic of Congo, the briefing also identifies gaps, which the REDD+ process may be well placed to address. The briefing offers lessons learned from these countries for other countries of West and Central Africa considering how to embed these social safeguards into their national laws.

Annex 1 provides a summary table of Ghana, Liberia and the Republic of Congo's approaches to integrate these safeguards into law.

Box 1: Cancun safeguards – Decision 1/CP.16. Appendix 1 of UNFCCC

When undertaking the [REDD+] activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:

- (a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) **Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;**
- (c) **Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;**
- (d) **The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities in the actions referred to in paragraphs 70 and 72 of this decision;**
- (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;
- (f) Actions to address the risks of reversals; and,
- (g) Actions to reduce displacement of emissions.

Scope of the briefing

The briefing focuses on existing laws because REDD+ governance frameworks are likely to build on existing laws and institutions, particularly forestry, environmental and land laws. Building on existing laws allows REDD+ to strengthen national forest governance systems, and ensure that REDD+ works in harmony with other forest management programmes. That is not to say that REDD+ may not also require new laws to address specific points, where the current laws cannot be adapted to accommodate REDD+.

The briefing places particular emphasis on how national laws can strengthen the involvement and the rights of civil society and LCIPs. We also recognise that legal recognition of civil society and LCIP rights is only the first step, which must be

complemented with appropriate enforcement in order to ensure actual change for these actors. In addition, capacity building and access to information are crucial for civil society and LCIPs to be actively involved in enforcing their rights and in decision-making processes.

The briefing concentrates on the national implementation of REDD+. **Annex 2** complements by considering the extent to which the European Union's FLEGT-VPA initiative has also contributed to the integration of the rights enshrined in the REDD+ social safeguards into national law in the three focus countries of this report. Similarly to REDD+, the FLEGT-VPA process emphasises strengthening national laws to improve forest governance and, therefore, linkages between the two processes are encouraged.

Why should REDD+ social safeguards be integrated into national law?

Countries should consider anchoring the requirement to promote and support the Cancun safeguards in national laws to:

- ensure REDD+ does no harm to local people – particularly LCIP's rights and livelihoods – and the environment;
- ensure REDD+ safeguards are respected and implemented and to

adopt a consistent legal approach to these issues at the heart of REDD+;

- attract REDD+ investors, by reducing uncertainties and setting a minimum standard for all REDD+ projects and programmes (whether jurisdictional, nested or individual); and
- strengthen national laws and institutions to improve forest governance even beyond REDD+.





1 Participation

Inclusive, active multi-stakeholder participation is a prerequisite for equitable and effective REDD+, and offers an opportunity to advance national objectives through participatory and informed debate. Participation contributes to stakeholder ownership of REDD+ projects and can prevent REDD+ projects from harming those affected. The focus of this section is on participation of civil society, including non-governmental organisations (NGOs) and LCIPs.

REDD+ participation can take many forms, including for example public consultation (collecting views and opinions before a decision is made), public collaboration in the scoping, debate and making of a decision, or joint decision-making (between all relevant stakeholders). Perhaps the most powerful form of participation is the

requirement to obtain the ‘free, prior and informed consent’ (FPIC) of LCIPs affected by a REDD+ project. FPIC is based on the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands or resources they customarily own, occupy, or otherwise use.⁶

Participation by civil society in REDD+

The Cancun Agreement asks countries to promote and support “the full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision”. We understand paragraphs 70 and 72 to cover REDD+ projects (“REDD+ actions”⁷) and the

development and implementation of national strategies or action plans. For this reason, we look at civil society participation in policy- and law-making (see Box 2), as well as participation in decisions related to specific REDD+ projects.

Ghana, Liberia and the Republic of Congo have all adopted national interpretations of the right to full and effective participation in their SIS 'Principles, Criteria and Indicators'. All three countries' SIS require stakeholder identification and participation in all REDD+ strategies, plans and actions (including projects).⁸ The dual focus in this section on both participation in law making and in project decision-making reflects these national priorities. The three countries also identify the need for capacity building to facilitate stakeholders' participation, including for local communities, indigenous people and marginalised groups (such as women).⁹

Integration of the right to public participation into national laws

The national legal frameworks of Liberia, Ghana and the Republic of Congo include broad requirements for participation in their national forestry and environmental laws, which are applicable to REDD+. However, few laws explain prescriptively how stakeholder participation in either policy-level or project-level decision-making should work in practical terms. For example, how should diverse views be considered and reflected in final outcomes/decisions; or when, where and how should community meetings be organised and conducted (e.g. with timely notice, at a location accessible for all, discussions and documentation in the local language, etc.)? For REDD+, legal provisions can be helpful to set a minimum standard of participation for decisions that may have an impact on peoples' lives and livelihoods, and can avoid participation becoming a rubber stamp process.

Box 2: Participation in REDD+ policy-making

Inclusive multi-stakeholder participation is an objective for policy-making in all three countries' National REDD+ Strategies. However, much has been written on the varied success of REDD+ to actively involve all relevant actors, particularly NGOs and LCIPs, in the development of REDD+ policies and strategies.¹⁰ Steps have been taken to integrate all stakeholders into decision-making bodies. In the Republic of Congo, for example, Decree n°2015-260 of 27 February 2015 provides that NGOs and LCIPs have a seat on REDD+ guidance and decision-making bodies, including the National REDD Committee (Comité National REDD+ or CONA-REDD), which also includes representatives of the Presidency, Parliament, many ministries, as well as the private sector.¹¹ Similarly, Ghana's National REDD+ Working Group is a coordinating body formed to elicit participation from a broad range of stakeholders and includes civil society (the National House of Chiefs and NGOs). In Liberia, only NGOs are represented on the REDD+ Technical Working Group, and there are currently no community representatives. Nonetheless, critics of these groups affirm that their role is to validate REDD+ policies, rather than to be actively involved in scoping and drafting inclusive and consensus-based policies.¹²

In Ghana, at the policy level, the Constitution recognises and guarantees the public's right to participate in policymaking at every level (national through local).¹³ Specific to the forest sector, the 2012 Forest and Wildlife Policy includes the objective to promote and develop mechanisms for citizens' participation in forest and wildlife resource management and policy formulation.¹⁴ However, neither of these legal documents define procedures for this participation, making them difficult to implement in practice.

At the project level, the most defined process of public participation occurs in the context of Environmental Impact Assessments (EIAs) – likely to be applicable to REDD+ projects. During the course of an EIA, projects must set up public hearings, granting all stakeholders the right to give their opinion on the use of land and resources.¹⁵ It must be noted that the EIA only extends to consultation, and the decision on whether to grant an environmental permit remains solely with the Environmental Protection Agency (EPA). NGOs and LCIPs may raise their objections against a REDD+ project subject to an EIA, but this does not necessarily translate into the EPA rejecting the project.

In Liberia, the principle of participation in the management of the countries' forest resources is established in the National Forestry Reform Law and its Regulations, including the overarching mandate of the Forestry Development Authority (FDA) to manage forest resources "with the participation of and for the benefit of all Liberians".¹⁶

Regulation 101-07 of the FDA establishes specific procedures that the FDA should follow when adopting or amending regulations, codes and manuals, including mandatory comment periods and public meetings. The Regulation also requires that the substance of all public comments be summarised and the draft regulation, code and manual revised in response.¹⁷ This is a positive step towards stakeholders' views

being reflected in final policy decisions. The scope of this Regulation is broad and includes any regulation, code or manual promulgated by the FDA and all supporting documentation;¹⁸ this scope would encompass REDD+ documents.

Considering REDD+ project-level participation, the Land Rights Act 2018 establishes a condition of FPIC from communities for any "interference with or use of" their customary lands.¹⁹ This reinforces a previous requirement for FPIC in community forest lands for "any decision, agreement, or activity affecting the status or use of community forest resources".²⁰ Again, the scope of these FPIC requirements should be broad enough to encompass REDD+ activities. As in Ghana, public participation is included as a guiding principle in the EIA process, including by those potentially affected by a project.²¹ The form of the participation is public meetings and consultations; similarly to in Ghana, civil society may raise their objectives to a REDD+ project's potential environmental or social impact, but the final decision rests with the government agency. However, the current list of projects requiring an EIA in Liberia does not include all REDD+ activities;²² therefore, the EIA public participation requirements may not apply.

In the Republic of Congo, a new Forest Code is in the final stages of drafting. In contrast to the current Forest Code, the draft new Forest Code²³ lays down the general principle of stakeholder participation in forest management²⁴ and requires the administration to make provisions for participatory forest management.

At the policy level, the draft Forest Code makes explicit reference to the participation of LCIP representatives in the development of national and local REDD+ strategies.²⁵

In addition, at the project level, specific legislation on the rights of indigenous peoples provides that they should be consulted in a culturally appropriate manner prior to any development or implementation

of legislative or administrative measures or development programs or projects that may affect them directly or indirectly, in order to obtain their FPIC.²⁶ This requirement is broad enough to encompass REDD+ activities. However, to our knowledge, it is not applied in practice.²⁷ In Congo, the EIA framework provides for public hearings and consultations on activities likely to cause significant direct or indirect environmental harm; however, the scope of this framework is vague and it is unclear whether REDD+ projects would be subject to its requirements.²⁸ Addressing this issue, the draft new Forest Code provides that any project in the forest domain is subject to an EIA.²⁹

Conclusion and recommendations

Despite certain broad legal requirements for participation of NGOs and LCIPs in REDD+ policy-making, in practice, civil society across all three countries pointed to the lack of meaningful participation in the development of key REDD+ policy documents.³⁰ This is particularly true of communities. Regarding project-level participation, in Ghana, Liberia and Congo, the EIA process incorporates requirements for consultation of stakeholders. Whether and how REDD+ projects follow these existing processes remains an important clarification question. The Land Rights Act in Liberia and the Indigenous Peoples Law in the Republic of Congo go even further to require FPIC of communities on all projects on their customary land – presumably including REDD+ projects.

Ghana, Liberia and the Republic of Congo may be able to learn from one another, as well as offer lessons to other countries of West and Central Africa on how to integrate the right to public participation into national laws, in order to promote and support the REDD+ safeguard. In particular, the following recommendations can be drawn

out from the experiences of Ghana, Liberia and the Republic of Congo:

- All stakeholders should have a seat at the table to input their views and contribute to decision-making on REDD+ projects and law and policy reform.
- EIA laws can offer a ‘good practice’ example of how to integrate practical specificities of public consultation on project-level decision-making. Given the novelty of REDD+, EIA legislation does not always make it clear whether REDD+ projects fall within its remit; amending the relevant legislation to explicitly include REDD+ projects will clarify this point.
- Joint decision-making or FPIC are perhaps the most powerful forms of participation. It is critical for national laws to set up FPIC in order to ensure higher participation standards at REDD+ project-level. Here, the Land Rights Act in Liberia and the Indigenous Peoples Law in the Republic of Congo offer inspiration, although they include few details on the process by which FPIC can be shown to be granted.
- It is the mandate of government to affirm and facilitate participation of the public in policy-making processes. On a project level, the right to public participation should be integrated into law in order to clarify the roles and responsibilities of the private sector and civil society and to ensure consistency.
- Active and meaningful participation of civil society and LCIPs is only possible if all stakeholders have the capacity to understand and contribute. Capacity building of both civil society and LCIPs should be part of REDD+ programmes, with LCIPs requiring particular attention.



2 Transparency

Transparency is at the core of good governance. Transparent governance structures are based on accountable and documented decision-making processes that follow pre-determined rules. They disclose information to the public and, in turn, support review and redress measures (see Box 3). Truly transparent governance requires building the capacities of those who could hold decision-makers to account and ensuring public information is accessible in language that is easily understood by a layperson. The following discussions primarily look into access to information as part of transparent forest governance processes³¹ - and particularly focus on

Transparency in REDD+

Enhancing transparent forest governance in law is crucial to reinforce stakeholders' trust in the system, help them understand how a decision was made, and to limit the risk of conflicts arising from discretionary decisions. In the context of REDD+, it is of particular interest because of the multiplicity of actors holding intertwined rights on land and natural resources. In this context, asymmetric access to information can hinder REDD+ success. NGOs and LCIPs.

Box 3 : Compliance mechanisms

Alongside access to information, transparent governance systems demand dispute resolution mechanisms, whether in the form of judicial court proceedings or alternative complaint mechanisms – which are complementary to court proceedings.

Although the UNFCCC does not require a complaint mechanism for REDD+, donors may ask partner countries to set up what is known in REDD+ parlance as a feedback and grievance redress mechanism (FGRM).³² Ghana, Liberia and the Republic of Congo all include a FGRM within their SIS. Contrary to judicial proceedings, FGRMs are not usually enshrined in national legislations. In Congo, for example, two distinct instruments are being developed; namely a national FGRM and a FGRM for the emission reduction program in Sangha and Likouala Departments. As shown in Ghana, however, FGRM are not necessarily entirely disconnected from legislation either: Ghana is considering amending the Alternative Dispute Resolution Act of 2010 for it to apply to environment matters and be used within REDD+.³³

That is why the Cancun Agreement states that “transparent and effective national forest governance structures, taking into account national legislation and sovereignty” should be promoted and supported when undertaking REDD+ activities. This general statement of principle insists on the importance of transparency to achieve good forest governance structures, which form part of the multi-sectoral legal and institutional frameworks of countries implementing REDD+. These national legal and institutional frameworks may integrate transparency and access to information to a greater or lesser extent, and may, therefore, already promote and support the REDD+ safeguard.

Open access to REDD+ information relies on cross-sectoral mechanisms but also overarching ones. Within REDD+, one such overarching instrument is the SIS.³⁴ In Ghana, Liberia and the Republic of Congo, SIS aims for REDD+ information to be made publically available.³⁵

Integration of transparency into national laws

Ghana, Liberia and the Republic of Congo all legally seek to ensure transparency through the recognition of the right to information in their national Constitution.³⁶ Liberia goes further with a specific law on access to information. All three countries also provide for (a certain level of) transparency in forest allocation processes (for either conservation or logging), which can be found in legal provisions dispersed across multiple forestry and concession laws.³⁷

In Ghana, despite requirements for the Executive or the Government to publish the land intended to be used as a forest reserve,³⁸ the Forest and Wildlife Policy 2012 has recognised that implementing transparency has been challenging for the forest sector.³⁹ Subsequent legislation, the Timber Resource Management and Legality Licensing Regulations of 2017 (L.I. 2254), has advanced the right to information by listing a range of information that the Forestry Commission must make available.⁴⁰ The latter provisions, however progressive, do not seem suited for REDD+

because they focus solely on the logging sector and therefore do not capture the whole range of REDD+ activities.⁴¹ This reflects a broader limitation of the Ghanaian legal framework on forests, which does not regulate standing forests as comprehensively as timber.

In the Republic of Congo, national laws already recognise the right of Indigenous Peoples to information. Law n°5-2011 on Indigenous People lays down that all relevant information on a proposed programme or development project likely to affect indigenous people directly or indirectly shall be provided to them in understandable language.⁴² To our knowledge, this has not consistently been applied in practice.

In the forest sector, additional specific mechanisms aim to ensure that LCIPs are informed at different stages of forest classification, allocation, and management.⁴³ For example, forest classification projects must be communicated on official notice boards in all affected villages.⁴⁴ Not all of these mechanisms, however, are detailed, limiting effective access to information. For instance, while the minutes from forest classification commission meetings can theoretically be used by LCIPs to appeal a decision, the minutes and decisions are not yet communicated to the public.⁴⁵ These limits are recognised and the on-going reform of the forestry legislation establishes transparency as a forest governance principle⁴⁶ and includes additional mechanisms to inform the public, particularly NGOs and LCIPs.⁴⁷ The reform includes draft regulations providing for the setup of REDD+ registers⁴⁸ and listing information in relation to forest management that the administration must publish, and the conditions to access it. In designing these instruments, decision-makers should consider their suitability for different types of REDD+ projects in order to ensure that the rules apply consistently.

In Liberia, the Freedom of information Act of 2010 is the general framework allowing the

public to request access to any information that would not cause injury or substantial harm to national security, criminal investigation, trade secrets, personal information and privileged communication. On paper, it constitutes an important instrument to ensure transparent governance. To our knowledge, however, it is not properly implemented in practice.

In the forestry sector, it is complemented by the legal obligation for the Forestry Development Authority (FDA) to ensure transparency and facilitate public access to a range of information including audits, Forest Resource License fee invoices, forest management plans, public comments, concession maps and contracts.⁴⁹ All information in the chain of custody system must also be published.⁵⁰ These numerous requirements are, however, limited to the logging sector and, regrettably, also lack consistent implementation. In consequence, the public cannot always access relevant information on forest management. Developing transparency provisions applicable to all REDD+ projects would ensure consistency across forest programmes. In addition, the broad application of the Freedom of Information Act, as well as continued awareness raising on its provisions, will be crucial to ensure the automatic publication of, or response to, requests for disclosure of information related to REDD+ projects.

Conclusion and recommendations

Liberia's overarching Freedom of Information Act is the most promising legal tool to implement this Cancun Safeguard, although it is not consistently implemented. The relevant national laws of Ghana and the Republic of Congo currently primarily focus on the logging sector. As REDD+ goes beyond logging to focus on protection or conservation of forests, processes set for the logging sector could be adapted to apply to all forest governance processes. In addition, enshrining transparency for REDD+ into national laws may be able to

address the identified limits to public information in the forestry sector.

Ghana, Liberia and the Republic of Congo may be able to learn from one another, as well as offer lessons for other countries of West and Central Africa in how to integrate the right to access to information into national laws, in order to promote and support the REDD+ safeguard. The following lessons can be learned from the experience of Ghana, Liberia and the Republic of Congo:

- The law should establish a process of documented decision-making, with set rules that all public decision-makers must follow.
- Public information about government decisions should be accessible in particular by civil society organisations and forest-dependent LCIPs. Only if NGOs and LCIPs are able to determine how a decision was made, can they seek to hold the decision-maker

accountable for any inconsistencies in the process.

- Transparent forest governance is best achieved through clear overarching legal and institutional arrangements. For example, the Liberian Freedom of Information Act offers an example of clear rights to information.
- Where the constitution recognises the right to information and/or when an overarching law on access to information exists, translating this high-level principle into transparent forest governance structures requires decision-makers to implement a range of measures throughout the stages of forest classification, allocation, and management. Their clarity, details and consistency are key to effectively allow public access to the information throughout diverse types of REDD+ projects, although they do not touch directly upon REDD+.





3 Local Community and Indigenous Peoples' Land Rights

A clear land rights regime is crucial for REDD+ projects to have a secure and legal basis, to identify land rights' holders, gain their consent and determine whether they are eligible for REDD+ benefits. Specifically, REDD+ projects rely on the project proponent's right to control over the REDD+ activities, including the right to exclude others from the land, in order to prevent third parties from undertaking activities that cause deforestation or degradation. Land tenure rights are not limited to full ownership and can be based on any combination of a bundle of overlapping rights including access, use, management, exclusion, transfer, and alienation rights. In this section, the focus is on land ownership rights, acknowledging the equal importance of forest use and management rights.

For LCIPs, it is important that tenure rights over land they have traditionally used are legally recognised, in order for their use and/or occupation of the land to be protected.⁵¹ While land rights are no silver bullet, land tenure insecurity increases the risk of land grabbing and loss of LCIP ownership and user rights to their forest land, including due to REDD+ projects. In contrast, LCIP rights on the land or on the forest may allow them to be consulted on the REDD+ project or grant their FPIC (see Section 1).

Right to land ownership in REDD+

The Cancun safeguards reference LCIP rights broadly, namely requiring “respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples”. While recognising that the requirement for respect of LCIP rights is broader, it is considered to include the respect of LCIP land rights. The safeguard does not go so far as to push countries to recognise or enhance LCIP land rights; nevertheless, REDD+ provides an important platform to clarify and strengthen LCIP land rights through catalysing policy and law reform. It ‘notes’ the existence of the UNDRIP, which places considerable emphasis on indigenous peoples land tenure rights.⁵²

The SIS of Ghana, Liberia and the Republic of Congo all stress the importance of land rights under Cancun safeguard (c). This includes the need to identify, recognise and respect LCIP’s rights to lands and resources;⁵³ in Ghana’s SIS, there is specific inclusion of both customary and statutory rights.⁵⁴ Liberia’s SIS goes so far as to require FPIC of local communities for REDD+ activities.⁵⁵

Integration of land tenure rights into national laws

REDD+ development and implementation sits within the framework of national land laws, which may or may not recognise LCIP land tenure rights. If national laws do not sufficiently cover LCIP rights, REDD+ may offer an avenue for greater recognition of land rights via legal reform.

Of the three countries, Liberia has the most progressive legal recognition of LCIPs’ land ownership rights, encapsulated in the new Land Rights Act of 2018. Nonetheless,

implementation of the Liberian law in practice still requires significant time and political will. In Ghana, land tenure rights are reasonably clear in law; however, the division of land rights do not offer the right incentives for REDD+. In the Republic of Congo, a lack of legal clarity on LCIPs’ land ownership and land use rights results in less robust legal protection.

In 2018, the Government of Liberia passed a new Land Rights Act that recognises customary land ownership rights alongside - and equal to - public, government and private land rights. Customary land ownership is communal, and includes the right to possess and use all non-mineral natural resources on the land.⁵⁶ Implementation of this land right will be challenging, particularly given limited land records and cadastral plans in Liberia. Nonetheless, the Land Rights Act confirms that the community does not have to produce documentary evidence in support of a land claim;⁵⁷ rather a valid claim can be established through oral testimonies of community members, maps and on agreement with neighbouring communities.⁵⁸ For REDD+, this means that REDD+ projects on customary land – whether they have a Deed or not – should receive the free, prior and informed consent (FPIC) of community land owners before commencing (for further discussion of FPIC, see Section 1).⁵⁹ For communities that own their forests, Liberian law grants the ability to plan for forestry activities, including conservation, on their land. This could be an avenue for the development of community-level REDD+ projects.⁶⁰

The Republic of Congo also adopted a new Land Law in 2018.⁶¹ This law makes it difficult for LCIPs’ land rights to be recognised, as it sets forth a complex and highly centralised two-tier process for customary land registration.⁶² It also prohibits the acquisition and occupation of rural lands where construction cannot be undertaken, including of natural forests.⁶³ Consequently, LCIPs who traditionally live in

Congo's forests are (indirectly) prevented from formalising their land rights in forested areas. This interpretation could also reduce LCIP's rights to consent (or not) to REDD+ projects on their land.

Nevertheless, the Indigenous Peoples Law of 2011 should be read as constituting an exception to the new Land Law. This law grants Indigenous Peoples a collective and individual right to property, possession, access and use of the land and natural resources they use or occupy traditionally for their livelihoods, traditional medicines or labour, regardless of the existence of formal land titles.⁶⁴ Because of its wide scope, the Indigenous Peoples Law would incidentally require any REDD+ project developer (as a project affecting the land or resources they traditionally own or use) to seek the approval or consent of indigenous peoples before commencing the REDD+ activities.⁶⁵ In the absence of implementing provisions on land rights, the Indigenous Peoples Law lacks details: who owns the right to forested land used by indigenous peoples remains unclear, and consequently so does REDD+ project ownership. Implementing provisions would support the enactment of Indigenous Peoples' right to land, as well as the establishment of 'a stable tenure system for indigenous peoples', as envisaged in Congo's REDD+ Strategy.⁶⁶

In Ghana, both statutory and customary ownership rights over forested lands are recognised in law.⁶⁷ However, the rights of two groups of land users have not been recognised in Ghana's laws; namely farmers, who are often engaged under tenancy or share-cropping arrangements, and forest-owning communities, whose rights are based on a trust relationship in which Stool or Skin Chiefs are custodians of the forest land and act on behalf of their local communities. Ownership of trees ('tree tenure') is a distinct right to land ownership in Ghana, and farmers and local communities again have few rights to trees on the land they use and manage.⁶⁸ This legal framework means both farmers and forest-owning communities have few

incentives to change their behaviour to support REDD+ by protecting the trees on their farmland and/or community land, as they have few rights to benefit from (and therefore receive no direct benefits from preserving) the forest. Ghana's REDD+ strategy acknowledges the importance of addressing "the lack of rights given to the majority of land users, who are the main decision makers in the landscape with respect to the fate of trees and forests, creating in many instances perverse incentives that drive deforestation and degradation."⁶⁹ In Ghana, the current policy direction is to reform tree tenure, to make the distribution of incentives or benefits for REDD+ activities fairer for farmers and local communities (see next section on benefit sharing).

Across all three countries, while REDD+ implementation may be improved with more legal clarity over land rights, it is important to note that even legally secure customary rights can be undermined if there is no community knowledge of those rights and no capacity to enforce them.

Conclusion and recommendations

With its emphasis on clarifying all land users, REDD+ provides an opportunity to recognise (customary) land rights in law for those who traditionally own, use and manage forest and land resources. LCIPs are identified as key beneficiaries of REDD+ in Liberia, Ghana and the Republic of Congo. In that context, REDD+ projects in all three countries are working with, or envisage working with, LCIPs to try to secure their land ownership or use rights and demarcate the borders of their customary land. Nonetheless, without clear land ownership rights enshrined in law, project-by-project approaches may not bring consistent outcomes.

Ghana, Liberia and the Republic of Congo may be able to learn from one another, as well as offer lessons for other countries of West and Central Africa, in how to establish

a clear, national land rights regime, in order to promote and support REDD+. In particular, the following recommendations can be drawn out from the experience of Ghana, Liberia and Republic of Congo:

- LCIPs land tenure rights should be formally recognised in and protected by law. Land tenure rights are not limited to full ownership and can be based on any combination of a bundle of overlapping rights including access, use, management, exclusion, transfer, and alienation rights. Where LCIPs do not have full ownership of land, they may still have other rights to that land, which should also be formally recognised in and protected by law.
- There are many ways for countries to approach legal clarification of land tenure rights from a completely new Land Law to tailored law reform of existing laws. Governments should consider the most appropriate option in the country context.
- LCIPs should be part of the decision-making process for any REDD+ projects affecting the use of their land and forest resources, or the land and forest resources that they use and manage (see Participation section). The recognition of land tenure rights can also result in LCIPs being granted the right to give their FPIC for a REDD+ project affecting them.





4 Benefit sharing

Equitable sharing of benefits (financial or otherwise) derived from REDD+ projects is crucial to incentivising the behaviour changes required for improved forest management, towards the aim of reducing deforestation and forest degradation.⁷⁰ Benefit-sharing mechanisms are an important complement to carbon rights regimes, as they can enlarge the scope of beneficiaries from only those with land rights and/or carbon rights to the REDD+ project area. Beneficiaries may also be those who have contributed to reducing deforestation, as well as those who are entitled to benefits because they are negatively affected by REDD+ activities. In the absence of an overarching law dedicated to benefit sharing in Ghana, Liberia and the Republic of Congo, this section looks at benefit-sharing mechanisms already existing and regulated in the logging sector. It discusses whether they are suited to achieve benefit sharing under REDD+ projects.

Benefit sharing in REDD+

There is no specific provision in the Cancun Safeguards explicitly requiring countries to set up a benefit-sharing mechanism. Yet, it may be considered as one of the “rights of indigenous peoples and members of local communities” mentioned in Cancun safeguard (c). In the SIS of Ghana, Liberia and the Republic of Congo, equitable benefit sharing is identified as one of the criteria clarifying the country interpretation of Cancun Safeguard (c).⁷¹ In addition, the absence of such a mechanism could fail to satisfy donors’ requirements, voluntary carbon standards or carbon markets.⁷²

The design of REDD+ benefit-sharing mechanisms can prove complex because stakeholders, including governments, tend to have competing stakes to the benefits, including due to overlapping rights to land (see Section 3). Fair and effective benefit-sharing mechanisms can help prevent issues resulting from unclear land rights regimes. Setting benefit sharing in laws is

important to ensure an even playing field across REDD+ projects and transparent procedures favourable to building trust.

Inclusion of benefit sharing into national laws

In Ghana and the Republic of Congo, benefit-sharing principles are set in REDD+ policy documents at the national level and do not (explicitly) consider benefit-sharing mechanisms that already exist at the project level. In these countries, REDD+ benefit-sharing mechanisms' design seem currently to be tailored to each project's circumstances.⁷³ However, all three countries' sectoral laws provide for the sharing of benefits arising from the exploitation of natural resources, and particularly timber.

The Republic of Congo has recently enacted a carbon credit ownership regime⁷⁴ but it does not yet have a set of binding rules to share the benefits associated with the sale of carbon credits. Its recently approved "Benefit-Sharing Principles for REDD+" are high-level guidelines, revolving around the seven following broad standards: (i) transparency; (ii) equity; (iii) based on direct and indirect benefits; (iv) effectiveness and efficiency; (v) stakeholder participation; (vi) taking into account REDD+ operations; and (vii) stakeholders' mapping. The guidelines do not provide details on the practical operation of REDD+ benefit sharing. This will be set out on a project-by-project basis, apparently without being anchored in national laws.⁷⁵

A benefit-sharing framework nevertheless has existed in the forestry sector prior to REDD+ - in the logging sector. This framework revolves around two main schemes⁷⁶: (i) concession contracts' social obligation clauses and (ii) local development funds. The latter currently applies to only a handful of companies that are required to pay into these funds.⁷⁷ Local development funds are managed by local multi-stakeholder committees, the so-called '*Conseils de Concertation*', that validate

community projects to be funded. The draft new Forest Code extends these funds' scope to all large-scale logging concessions. Lessons learned from the implementation of these local development funds, including challenges with their governance structures, fed into early discussions for the design of a REDD+ benefit-sharing mechanism,⁷⁸ although they are not yet reflected in the broad Benefit-Sharing Principles for REDD+.

In Ghana, REDD+ benefit-sharing mechanisms are currently being developed at the project level, with the Ghana Cocoa Forests REDD+ Programme (GCFRP) leading the way.⁷⁹ However, to our knowledge, there is no overarching mechanism applying to all REDD+ projects and only few national benefit-sharing principles relevant to REDD+ are developed in law. The Constitution offers guidance on the fair distribution of benefits arising from forest resources.⁸⁰ Any REDD+ benefit sharing mechanism will need to adhere to this Constitutional guidance.

As in the Republic of Congo, the logging sector in Ghana has implemented benefit-sharing arrangements in law, tailored to different forest management regimes.⁸¹ There are considerable lessons for REDD+ to learn from strengths and weaknesses in the logging sector. In particular, benefit-sharing mechanisms do not always appropriately identify all relevant stakeholders, particularly tenant farmers and communities, who work in or near forest land and have agency over the trees on that land, although no rights to benefit from the land or trees. As they receive few benefits, these stakeholders have no incentive to change their behaviour, in order to contribute to REDD+ activities. The REDD+ benefit-sharing mechanism must address this in order for REDD+ to be effective in reducing deforestation practices.

Similarly, in Liberia, a REDD+ benefit-sharing mechanism is not enshrined in national laws. However, Liberia's REDD+ Strategy states that REDD+ benefit sharing

will build on mechanisms existing across land-use sectors. In the forestry sector, benefit sharing is based on Social Agreements that are negotiated between logging companies and affected LCIPs. In addition, by law, communities should receive 30% of the land rental fees paid by the logging company (as well as any community projects directly agreed to in Social Agreements).⁸² However, the Government collects all land rental fees and reallocates the communities' 30% to a centralised National Community Benefit Sharing Trust (NCBST), to which communities apply for funding. Lessons learned from the logging industry include that payments from the Government to the NCBST can be slow, which in turn delays payments to affected communities. REDD+ could consider an alternative means through which carbon credit payments can be made directly to communities or to (an equivalent of) the NCBST.

Conclusion and recommendations

Despite the existence of benefit-sharing mechanisms in various land-use sectors, Liberia, Ghana and the Republic of Congo are still grappling to find a formula that works across current and upcoming national REDD+ programmes and projects, and which adheres to existing national legal requirements. Ideally, REDD+ benefit sharing should build on the strengths of already existing and suitable mechanisms (e.g. from the logging sector). As the implementation of benefit sharing in the logging sector has been a practical challenge, considerations for REDD+ benefit

sharing could conversely feed in to national reforms for benefit sharing across the forestry sector.

Ghana, Liberia and the Republic of Congo may be able to learn from one another, as well as offer lessons for other countries of West and Central Africa in how to integrate REDD+ benefit sharing into national laws, in order to promote and support REDD+. The following lessons can be learned from the experience of Liberia, Ghana and Republic of Congo:

- In the design of REDD+ benefit-sharing mechanisms, consideration must be had to land rights and carbon rights, particularly in countries where these regimes do not recognise all affected stakeholders.
- Where REDD+ benefit sharing mechanisms are based on policy principles, with further details elaborated individually at the project level, these principles should be anchored in national laws, to ensure they are consistently applied across all REDD+ projects.
- Enshrining REDD+ benefit sharing principles in law constitutes an opportunity to build on already existing sectoral mechanisms and to address their weaknesses. REDD+ benefit sharing should be mutually beneficial: REDD+ learns lessons from existing mechanisms and constitutes an avenue to consolidate benefit sharing.

Annex 1 - Summary of national approaches to integrate REDD+ social safeguards into law

	REPUBLIC OF CONGO	LIBERIA	GHANA
PARTICIPATION	<p>The draft Forest Code makes explicit reference to participation of LCIPs in REDD+, although it is yet to be passed by Parliament.</p> <p>The Indigenous Peoples Law requires IPs to be consulted in a culturally appropriate manner in policy-making or prior to project decisions, to obtain their FPIC.</p>	<p>Forest laws and policies establish a broad principle of participatory forest policy-making, including the requirement for stakeholder inputs to be considered and integrated into regulations.</p> <p>The Land Rights Act includes FPIC as a legally binding obligation for any “interference with or use of” customary lands.</p>	<p>The Constitution and Forest and Wildlife Policy 2012 establish a broad principle of participatory forest and wildlife policy-making.</p> <p>EIA laws and regulations establish more detailed public participation requirements.</p>
ACCESS TO INFORMATION	<p>The Indigenous Peoples Law recognises IPs’ right to information on projects affecting them, including potential REDD+ projects; but it is hardly applied in practice.</p> <p>The draft Forest Code broadens the scope of mechanisms aiming to ensure access to information compared to the current law. It provides for the creation of REDD+ registers accessible to the public.</p>	<p>Liberia’s forestry laws include mention of access to information. However, these instruments are limited to the logging sector and fail to incorporate REDD+.</p> <p>Liberia’s broader Freedom of Information Law, however progressive, is not implemented in practice.</p>	<p>The recently adopted L.I.2254 sets forth transparency rules for the forestry sector. However, its scope is limited to the sustainable management of forests and logging and fails to clearly incorporate REDD+.</p>
LAND TENURE RIGHTS	<p>The new Land Law makes it difficult for LCIPs’ land rights to be recognised and formally secured.</p> <p>The new Land Law contradicts the Indigenous Peoples Law regarding ownership of land rights, and particularly forest land rights. The latter should be considered as an exception to the Land Law.</p>	<p>The new Land Rights Act gives legal recognition and protection to customary land ownership. However, it will need considerable time and political will to be effectively implemented. Despite the Land Rights Act, Liberia still has to deal with the previous granting of overlapping rights and lack of a land cadastre.</p>	<p>REDD+ is situated within a legal framework that does not offer tenant farmers or local communities land ownership and only few tree tenure rights. This means these key stakeholders stand to receive few benefits, such as payments for protection or nurturing of trees.</p>
BENEFIT SHARING	<p>Congo has adopted broad REDD+ benefit-sharing principles that are to be adapted to each REDD+ project. This leaves significant discretion to REDD+ project developers.</p> <p>Benefit sharing is legislated in the forestry sector. Local development funds operate in a multi-stakeholder framework in which logging companies finance LCIPs’ projects. Their scope is being extended in the new draft Forest Code. They could prove useful mechanisms at the REDD+ project level.</p>	<p>Liberia’s REDD+ Strategy stipulates that REDD+ benefit sharing will build on and integrate the numerous mechanisms existing across other land-use sectors, including the forestry sector.</p> <p>The relatively progressive benefit-sharing mechanisms in the forestry sector suffer, however, from legal and political gaps hindering their full implementation.</p>	<p>A national REDD+ benefit-sharing mechanism has not yet been agreed upon, although the Ghana Cocoa Forest REDD+ Project is pioneering with a project-level mechanism.</p> <p>Benefit sharing mechanisms in the logging sector demonstrate the need to integrate all relevant stakeholders, to achieve behaviour change. This includes particularly LCIPs and tenant farmers.</p>

Annex 2 - FLEGT-VPA and REDD+ Linkages

This Annex considers the extent to which FLEGT-VPA processes also contribute to the integration of social rights enshrined in the Cancun safeguards into national law.

- **Participation**

Multi-stakeholder discussions are part of the design of the FLEGT-VPA initiative. Civil society has been included in an active way, leaving space for multi-stakeholder decision-making, rather than only information sharing. After the VPA is signed, Parties are legally bound to follow a multi-stakeholder process, with NGOs and LCIPs, when negotiating and implementing the FLEGT-VPA. A distinction, nonetheless, has to be made between NGOs and LCIPs - the inclusion of the latter has been insufficient in both FLEGT-VPA and REDD+ processes.

- **Transparency**

Transparent forest governance structures in forestry laws can be considered to stem from FLEGT-VPA processes in Liberia and the Republic of Congo. These countries' respective VPAs have Annexes on transparency measures providing for the publication of a wide range of information.⁸³ In Liberia, the Transparency Annex (IX) specifies for example that information should be routinely published through specific methods or provided on request under the Freedom of Information Act. However, these VPA commitments to transparency are still to be fully implemented. In Ghana, in the absence of a specific VPA transparency annex⁸⁴, the adoption of L.I.2254 is largely seen as an important milestone towards fulfilling the FLEGT-VPA requirement of transparency.

- **Land rights**

FLEGT-VPA legality definitions in Liberia and the Republic of Congo require respect of LCIP land tenure and use rights in timber logging areas. In Liberia, there is an argument to be made that recent land rights reforms have been influenced by the VPA process. However, the same cannot be said for the Republic of Congo, where the recent reform of the Land Law was not part of the FLEGT-VPA reform process and was not participatory. In Ghana, the VPA legality definition acknowledges the need for reform in how the law affirms local forest tenure and different stakeholders' rights, particularly farmers. Ghana's VPA has supported reforms of tree tenure and the sharing of benefits from trees, demonstrated by current law reform aims to establish a 'tree-tending fee' for farmers.

- **Benefit sharing**

In comparison with REDD+, the VPAs of Ghana, Liberia and Congo go further in requiring benefit sharing with certain stakeholders, as they include direct reference to benefit sharing in legality matrices. In that context, compliance with benefit sharing is necessary for the issuance of FLEGT licences. This has helped to improve the operation of benefit sharing in the logging sector in Ghana and Liberia and could contribute to its extension to all large-scale logging in the Republic of Congo. However, VPAs do not provide further guidance for the design of fair mechanisms. REDD+ and FLEGT-VPA processes could therefore act complementarily to enlarge the scope and improve the operation of benefit sharing.

¹ Ghana has had an average deforestation rate of 3% since 2000 (see: National REDD+ Secretariat (2017), Ghana's National Forest Reference Level, Forestry Commission). In Liberia and the Republic of Congo, although rates of deforestation remain relatively low, a potential increase is foreseen in the coming years (see: Megevand C. et al (2013), Dynamiques de déforestation dans le bassin du Congo ('Deforestation Trends in the Congo Basin'), World Bank and REDD+ Implementation Unit (2016), National Strategy for REDD+ in Liberia, Forestry Development Authority).

² See Article 3, Paragraph 3 of the United Nations Framework convention on climate change and Paragraph 73 of Decision 1/CP.16.

³ Decision 1/CP.16, Paragraph 69.

⁴ Pursuant to the Durban Agreements (Decision 12/CP.17), the SIS should among other things: (i) provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis; and (ii) provide information on how the safeguards are being addressed and respected.

⁵ Green Climate Fund (2019) 'Accelerating REDD+ implementation'. Green Climate Fund working paper No. 2. <https://bit.ly/2Tebp0i>.

⁶ Forest Peoples Programme (undated), 'Free, prior and informed consent (FPIC)'.

⁷ Mitigation actions in the forest sector, including reducing emissions from deforestation; reducing emissions from forest degradation; conservation of forest carbon stocks; sustainable management of forests; enhancement of forest carbon stocks.

⁸ Republic of Congo (2015) 'Les Principes, Critères et Indicateurs du processus REDD+ (PCI-REDD+) en République du Congo', Principle 1, Criteria 1.4. Ghana (2018) 'Ghana REDD+ Social and Environmental Principles, Criteria and Indicators (PCIs)', Principle D, Criteria DC1. Liberia (2019) 'Liberia REDD + Safeguards Information System', Principle C, Criteria C.5.

⁹ Republic of Congo (2015) 'Les Principes, Critères et Indicateurs du processus REDD+ (PCI-REDD+) en République du Congo', Principle 2, Criteria 2.2. Ghana (2018) 'Ghana REDD+ Social and Environmental Principles, Criteria and Indicators (PCIs)', Principle D, Criteria DC2.

¹⁰ See e.g. 'Broekhoven G. et al (2014) Linking FLEGT and REDD+ to Improve Forest Governance, European Tropical Forest Research Network Issue No 55.

¹¹ Decree n°2015-260 of 27 February 2015.

¹² Bekoe Ansah K. and Ozinga S. 'Creating synergies between REDD+ and FLEGT VPA in Ghana', in Broekhoven G. et al (2014) Linking FLEGT and REDD+ to Improve Forest Governance, European Tropical Forest Research Network Issue No 55.

¹³ Constitution of Ghana, Articles 37(2) and 35(6)(d).

¹⁴ Forest and Wildlife Policy 2012, Policy Objective 1, Strategic direction 1.1.2.

¹⁵ Environmental Assessment Regulation 1999, Section 17(1). EIAs are not always completed for forest sector projects. EIA procedures must be followed only if there is great adverse public reaction to the commencement of the project, if it will involve relocation or resettlement of communities or if significant environmental social impacts are anticipated.

¹⁶ National Forestry Reform Law, Section 3.1 and FDA Regulation 101-07, which sets out the requirements and procedure for public participation in law reform.

¹⁷ FDA Regulation 101-07, Section 23(c).

¹⁸ FDA Regulation 101-07, Section 2 (a).

¹⁹ Land Rights Act, Article 33.

²⁰ Community Rights Law with Respect to Forest Lands 2009, 2.2(c).

²¹ Environmental Protection and Management Law, Part III.

²² Environmental Protection and Management Law, Annex 1. The forestry activities requiring an EIA include: timber logging and processing; forest plantation and afforestation and introduction of new species; selective removal of single commercial tree species; pest management.

²³ Our analyses of Congo's reform - here and hereafter - are based on a draft Forest Code circulated in March 2019.

²⁴ Draft Forest Code, Article 3.

²⁵ Draft Forest Code, Articles 164 and 165.

²⁶ Law No. 5-2011 of 25 February 2011 on the promotion and protection of rights of indigenous peoples, Article 3; and Decree n°2019-201 of 12 July 2019 on Indigenous Peoples' participation and consultation procedures to developments projects and programmes.

²⁷ OCDH (2018), Guide pour la consultation des peuples autochtones en vue du consentement libre, informé et préalable et la participation, p. 5.

²⁸ Decree n°2009-415 of 20 November 2009 on the scope of application, content and procedures of assessment and the environmental and social impact notice, Article 31 and Articles 34 to 38.

²⁹ Draft Forest Code, Article 55.

³⁰ See e.g. Van Gisbergen I. (2014) 'Civil society participation in FLEGT and REDD+ in the Republic of the Congo'; Bekoe Ansah K. and Ozinga S. (2014) 'Creating synergies between REDD+ and FLEGT VPA in Ghana' in *Linking FLEGT and REDD+ to Improve Forest Governance*, European Tropical Forest Research Network Issue No 55.

³¹ <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

³² The Forest Carbon Partnership Facility (FCPF) and the Forest Investment Programme (FIP) both require compliance mechanisms. See: Ray D. et al. (2013), *A country-led approach to REDD+ safeguards and multiple benefits*, pp. 15-16.

³³ Ghana (2016) 'Participatory self-assessment and synthesis of Ghana's REDD+ readiness process', p. 24.

³⁴ Pursuant to the Durban Agreements (Decision 12/CP.17), the SIS should among others: (i) provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis; and provide information on how the safeguards are being addressed and respected; (ii) provide information on how the safeguards are being addressed and respected.

³⁵ See the indicators under the following criteria: Ghana (2018) 'Ghana REDD+ Social and environmental Principles, criteria and indicators', Criterion BC 4; Liberia (undated) 'Liberia's REDD+ Safeguards Information System – Principles, Criteria and Indicators', Criteria B.1 and B.2; Republic of Congo (2014) 'Document des Principes, Critères et Indicateurs du processus REDD+ en République du Congo', Criteria 1.1 and 1.3.

³⁶ Constitution of Ghana, Article 21(1)(f); Constitution of the Republic of Congo, Article 19; Constitution of Liberia, Article 15(c).

³⁷ Information on these forestry allocation processes is available at: www.clientearth.org/forests/

³⁸ Administration of Lands Act, 1962, Section 10(2) and Forest Act, 1927 (CAP 157), Section 3

³⁹ Forest and Wildlife Policy 2012, paragraph 2.2, n° 2.14 (h) and paragraph 5.4.

⁴⁰ Timber Resource Management and Legality Licensing Regulations (2017), section 76.

⁴¹ FLEGT-VPA transparency requirement is largely considered as having contributing to the adoption of the provisions of L.I. 2254 which is considered as an important milestone towards fulfilling Ghana's FLEGT-VPA.

⁴² Law n°5-2011 of 25 February 2011 promoting the rights of Indigenous peoples, Article 3.

⁴³ For complete reference, see: ClientEarth (2014) 'Droit à l'information des communautés locales et populations autochtones (République du Congo)'.

⁴⁴ Decree n°6509 of 19 August 2009, Article 13.

⁴⁵ Forest Code, Article 19; Decree n°6509 of 19 August 2009, Article 20.

⁴⁶ Draft Forest Code, Article 4.

⁴⁷ Forest classification, concession tendering and contracting, management plan development and adoption are subject to diverse form of public scrutiny. See: Draft Forest Code, Articles 40, 78, 79, 80, 86, 87, 137 and 139.

⁴⁸ The creation of such register was already set forth in the Republic of Congo's REDD+ National Strategy as one of the main instrument to ensure REDD+ transparency.

⁴⁹ National Forestry Reform Law, section 18.15.

⁵⁰ FDA Regulation 108-07, section 61.

⁵¹ RRI (2012) 'What rights? – A comparative analysis of developing countries' national legislation on community and indigenous peoples' forest tenure rights'.

⁵² The UNDRIP places considerable emphasis on land tenure rights. Article 26(1) states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and Article 8(2)(b) requires States to "provide effective mechanisms for prevention of, and redress for any action that has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources."

⁵³ Republic of Congo (2015) 'Les Principes, Critères et Indicateurs du processus REDD+ (PCI-REDD+) en République du Congo', Principle 2, Criteria 2.1.

⁵⁴ Ghana (2018) 'Ghana REDD+ Social and Environmental Principles, Criteria and Indicators (PCIs)', Principle C, Criteria CC2.

⁵⁵ Liberia (2019) 'Liberia REDD + Safeguards Information System', Principle C, Criteria C.5.

⁵⁶ Land Rights Act, Article 33.

⁵⁷ Land Rights Act, Article 9.

⁵⁸ Land Rights Act, Article 37(1).

⁵⁹ Land Rights Act, Article 33(3).

⁶⁰ Community Rights Law with Respect to Forest Lands 2009, Article 3.2(b).

⁶¹ The new land law - Law n°21-2018 of 13 June 2018 - seems to be partly repealing Law n°17-2000 of 30 December 2000 on land ownership that was previously governing land rights.

⁶² Property rights are only recognised only after completion of (i) the formal recognition of customary land followed by (i) the registration procedure. See: Law n°21-2018 of 13 June 2018, Articles 7 to 15.

⁶³ Law n°21-2018 of 13 June 2018, Article 42.

⁶⁴ Law n°5-2011 of 25 February 2011 promoting the rights of Indigenous peoples, Articles 31 and 32.

⁶⁵ Law n°5-2011 of 25 February 2011 promoting the rights of Indigenous peoples, Articles 38 and 39.

⁶⁶ Congo (2016), 'Stratégie nationale REDD+ de la République du Congo', p. 59.

⁶⁷ Constitution of Ghana, Article 11(1)(e) and Article 11(2).

⁶⁸ Under the modified taungya system (MTS), tree ownership is shared between the State and the farmers who establish the plantations – however, MTS is a national programme and does not have a legal basis.

⁶⁹ Ghana (2015), Ghana National REDD+ Strategy.

⁷⁰ Appendix 1 paragraph 2(e), Decision 1/CP.16.

⁷¹ Liberia (2019) 'Liberia REDD + Safeguards Information System', Principle C, Criteria C.3; Republic of Congo (2015) 'Les Principes, Critères et Indicateurs du processus REDD+ (PCI-REDD+) en République du Congo', Principle 2, Criteria 2.6; Ghana (2018) 'Ghana REDD+ Social and Environmental Principles, Criteria and Indicators (PCIs)', Principle C, Criteria CP2 and CC6.

⁷² The FCPF requires, for example, benefit sharing arrangements to be included in the ER Program Document, and have an advanced draft benefit sharing plan prior to ERPA signature, see: FCPF (2019) 'Note on benefit sharing for emission reductions programs under the Forest Carbon Partnership Facility and BioCarbon Fund Initiative for sustainable landscapes', 17 p.

⁷³ Ghana (2018) 'Advanced Draft Benefit Sharing Plan – Ghana Cocoa Forest REDD+ Programme'; République du Congo (2019) 'Principes généraux de partage des avantages du processus REDD+ en République du Congo'.

⁷⁴ Order n°113/MEF of 8 January 2019 recognises that a large set of stakeholders may have rights over carbon, Art. 4 to 7.

⁷⁵ The Emission Reduction Program Document (ER-PD) for the Emission Reductions Programme in Sangha and Likouala lays down initial elements for the development of programme specific benefit-sharing arrangements to be further detailed in a benefit-sharing plan and contractual agreements.

⁷⁶ In addition to these schemes, the Forest Code provides for the redistribution of some taxes to the local level.

⁷⁷ There is no general obligation set in law; individual ministerial orders require specific operators to put such mechanisms in place. Furthermore, Law n°5-2011 of 25 February 2011 succinctly provides that Indigenous People have the right to a share of the benefits arising from projects taking place on their land natural resources (Art. 41). To our knowledge, this is not implemented in practice.

⁷⁸ See EFI (2015) 'Drawing on experience to develop REDD+ benefit sharing'.

⁷⁹ The Emission Reductions Programme Document (ER-PD) for the Ghana Cocoa Forest REDD+ Programme (GCFRP) (2017) submitted to the FCPF provides some information on the benefit sharing arrangements.

⁸⁰ Constitution of Ghana, Article 267(6).

⁸¹ ClientEarth (2013) 'The distribution of benefits derived from Forest resources'; William K. Dumenu et al. (2014) 'Benefit Sharing Mechanism for REDD+ Implementation in Ghana'.

⁸² National Forestry Reform Law, Section 14.2 e (ii).

⁸³ The Annex X of the Voluntary Partnership Agreement between the European Union and the Republic of Congo requires for example the publication of a range of information by the forest administration on forest resource allocation, on forest resource production and on law enforcement in concession areas.

⁸⁴ Article 20 yet provides for the Joint Monitoring and Review Mechanism to work transparently and publish a range of information in its yearly report.

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