

## **Complexities in REDD+ Safeguard Development and Implementation**

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*Forests are one of the most important allies in combating the consequences of global warming. They have more carbon stored in their biomass than all the carbon dioxide that is concentrated in the atmosphere. Unfortunately, human activities like logging, cattle and agriculture deforest and degrade more than 13 million hectares of forests every year, releasing all the carbon they have sequestered, and constituting the second major source of greenhouse gas emissions in the world. In order to address this problem, the United Nations have created REDD+, an international strategy designed to provide developing countries with financial and technological resources to conserve, enhance and sustainably manage their forests, compensating them for succeeding in reducing greenhouse gas emissions in the forestry sector. Furthermore, REDD+ safeguards have been created to prevent collateral damage in the developing country's sovereignty, population and biodiversity, as a result of the implementation of REDD+ strategies. In this sense, besides proving the emission reductions, developing countries need to report on how the safeguards have been acknowledged and secured to be able to qualify for REDD+ results-based payments. Although safeguards are key to the success of REDD+, the complexity of their nature makes their protection a challenge for the generally weak institutions and rules of law of developing countries. Thus, analysing the nature of each REDD+ safeguard, as well as identifying strategic considerations for their development and implementation is an imperative and significant task that this article aims to undertake.*

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## 1. INTRODUCTION

One of the most cost-effective strategies to counter global warming is the protection and conservation of natural carbon sinks which removes 55 per cent of emissions from the atmosphere every year.<sup>1</sup> Forests are the most complex natural carbon storages because they act both as carbon sinks when they sequester CO<sub>2</sub> during photosynthesis to store it as plant biomass and as carbon sources when the carbon stored in them is released as CO<sub>2</sub> into the atmosphere.<sup>2</sup> Forests cover 31 per cent of the land area in the world, approximately 4,000 million hectares, and they have sequestered around 4,500 gigatons of carbon on the surface, 33 per cent more than all the CO<sub>2</sub> concentrated in the atmosphere, and more than all the carbon contained in the remaining oil resources of the world. However, forests also suffer gravely from climate change. Changes in land use that cause deforestation and forest degradation constitute the second major source of greenhouse gas emissions.<sup>3</sup> Forests and climate change are thus intrinsically linked.

At the 11th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC)<sup>4</sup> held at Montreal in 2005, discussions began and working groups were formed to address greenhouse gas emissions from the forestry sector in developing countries. The final result of these negotiations was the creation of REDD+, an international strategy designed to provide developing countries with financial and technological resources to conserve, enhance and sustainably manage their forests, compensating them for achieving verified greenhouse gas emission reductions from the prevention of deforestation and forest degradation.

However, activities implemented by developing countries to protect their forests may have collateral negative effects on their sovereignty, population and biodiversity. In order to prevent these effects, the COP to the UNFCCC designed a set of seven safeguards that have to be met during REDD+ implementation as a condition to qualify for results-based payments. These REDD+ safeguards prevent international donors from undermining the sovereignty and legal frameworks of developing countries, as well as the international treaties to

1 TF Stocker and others (eds) *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, Cambridge, 2013) at 467.

2 JT Houghton and others (eds) "The Carbon Cycle and Atmospheric Carbon Dioxide" in *Climate Change 2001: The Scientific Basis. Contribution of Working Group I to the Third Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, Cambridge, 2001) at 185–187.

3 *Forests and Climate Change* (UK Forestry Standard Guidelines, Forestry Commission, 2011) <<http://www.forestry.gov.uk/publications>> at 1–3.

4 United Nations Framework Convention on Climate Change A/RES/48/189 (20 January 1994) [UNFCCC].

which the country is a party. They also aim to promote transparency and accountability in REDD+ activities, avoid emission reduction reversals over time and the displacement of emissions to other areas. Moreover, REDD+ safeguards require national governments to respect the rights and knowledge of indigenous peoples and local communities, promote the full participation of all relevant stakeholders in the scheme and avoid the conversion of natural forests.

Although in theory the inclusion of the safeguards in REDD+ strategies is ideal for preventing negative collateral effects caused by REDD+, in practice, their development and implementation is extremely complex, due to the diverse political, social, economic and legal circumstances of every developing country. The generally weak rules of law in developing countries, as well as their political and economic unrest and corruption rates, can make compliance with REDD+ safeguards truly challenging to achieve.

The objective of this article is to analyse the complexities of developing and implementing REDD+ safeguards, in order to contribute to their understanding and compliance. There is no generic method established to develop an adequate REDD+ safeguard strategy, nor there is an agreed set of mechanisms for an effective implementation, so this is by no means an exhaustive investigation. The UNFCCC has provided the general guiding principles for safeguard implementation, and it will be up to the developing countries and funding organisations to establish how these principles will be applied. Nevertheless, this article aims to clarify the implications of each safeguard, and outline some key considerations for their development and implementation.

## **2. REDD+ SCHEME BACKGROUND**

### **2.1 The Concept and Nature of REDD+**

The idea of designing a structure to protect forest carbon sinks in developing countries began in 2005, at COP11 in Montreal, and after several years of discussion and exploration of alternatives, in 2010, during COP16, “The Cancun Agreements” formally recognised the forest-related activities that would be included in REDD+ and addressed the negative effects that could arise from the implementation of REDD+ action plans. In 2013, COP19 approved the “Warsaw Framework for REDD+”, with the overall rules and procedures for REDD+ strategies. Finally, in 2015, at COP21, the Paris Agreement recognised the importance of the conservation and enhancement of carbon sinks.<sup>5</sup> Furthermore, the agreements acknowledged the complete REDD+ framework

<sup>5</sup> UNFCCC Paris Agreement FCCC/CP/2015/L.9/Rev.1 (adopted 12 December 2015, opened for signature 22 April 2016), preamble.

that was discussed in the previous 10 years as a crucial international policy to reduce greenhouse gas emissions, encouraging parties to implement and support it.<sup>6</sup>

REDD+ is a comprehensive framework that aims to reduce greenhouse gas emissions from the forestry sectors located in developing countries. The scheme encourages developing countries to implement REDD+ action plans by offering them payments in exchange for measurable greenhouse gas emission reductions from the conservation, enhancement and sustainable management of forested areas.

Implementing REDD+ strategies in developing countries depends on their national circumstances and capacities. Thus, the efficiency and speed of their execution will vary in each country. The framework is therefore designed as a phased structure that allows countries to achieve results at their own pace and according to their national policies, laws and regulations (PLRs). In the first phase, developing countries have to develop a national REDD+ strategy that encompasses the specific drivers of deforestation and forest degradation in their country and the potential responses that can be implemented to address them. They need in addition to prepare a national forest reference emission level and a national forest monitoring system,<sup>7</sup> as well as a safeguard information system (SIS). In the second phase, the developing country proceeds to implement its national REDD+ strategy. In the third and final phase, the strategy implementation should lead to verifiable emission reductions that will qualify for results-based payments, once all the requirements are met.

Developing countries need to establish an institutional organisation capable of developing, executing and monitoring REDD+ activities in their forestry sector, because the strategies need to be designed from the national to the local levels. A developing country can decide to create a single REDD+ agency in charge of all these functions, or allocate them between different ministries and government agencies that work together in a coordinated manner. REDD+ strategies can be centralised, with the national government controlling them through its ministries, or decentralised, with the central government delegating the implementation of the strategies to regional or local councils, but retaining the monitoring and reporting roles.

## **2.2 The Scope of REDD+ Projects**

REDD+ projects in developing countries have to be directed at reducing greenhouse gas emissions from the following forestry activities: (a) deforestation;

<sup>6</sup> Article 5(2).

<sup>7</sup> UNFCCC Decision 1/CP.16, paras 71 and 73.

(b) forest degradation; (c) conservation and enhancement of forest carbon stocks; and (d) sustainable management of forests.

### *2.2.1 Deforestation*

Deforestation is the “direct human-induced conversion of forested land to non-forested land”,<sup>8</sup> and it is the biggest source of greenhouse gas emissions in the forestry sector. When trees are cut down, the carbon stocks that were sequestered in their biomass are released into the atmosphere as CO<sub>2</sub>. Deforestation also lessens the natural moistness of the forest’s soil, degrading the forests, reducing the return of water vapour to the atmosphere, and killing the habitat of millions of species. The biggest driver of deforestation is agriculture. This accounts for 73 per cent of deforestation, where farmers clear forests to make room for planting crops or growing cattle. Other causes of deforestation are mining activities (7 per cent), infrastructure (10 per cent) and urban expansion (10 per cent).<sup>9</sup>

The simplest solution to deforestation is to stop cutting down trees but it is difficult to universally pursue this action because of the commercial interests that lie behind the forestry industry. Hence, more creative responses have to be designed, based on the sustainable management of forests that requires a balance between cutting down forests and planting new trees to compensate for the loss. This approach does not however compensate for the greenhouse gas emissions released when mature forests are cleared because young trees will take a considerable amount of time to acquire the carbon sequestration capacities that the old trees had. A further solution is to promote the use of non-forested areas for agriculture purposes, instead of clearing forested areas to prepare them for agriculture.

The problem with deforestation and the forestry industry is that prohibiting people from clearing privately owned forested areas for agriculture, as well as for wood and paper products, can result in economic and commercial damage. This is one of the reasons that REDD+ offers payments to developing countries for maintaining forests in their natural state to compensate for the productivity they would lose from not deforesting or degrading them.

### *2.2.2 Forest degradation*

Forest degradation is the reduction of the capacity of the forest to sustain itself and provide benefits like carbon sequestration and wood. Degradation does not

8 UNFCCC/CP/2001/13/Add.1, Annex, para 1(d).

9 N Hosonuma and others “An assessment of deforestation and forest degradation drivers in developing countries” (2012) 7(4) *Environmental Research Letters* 044009 at 8.

necessarily cause deforestation, because degraded forests can last long periods of time without being completely destroyed. In Brazil, forest degradation is responsible for 20 per cent of total emissions. In Indonesia, it is responsible for 33 per cent of total emissions, and in Africa, the annual rate of forest degradation is almost 50 per cent of the rate of deforestation.<sup>10</sup>

The most important drivers of forest degradation are timber extraction and selected logging (52 per cent), fuel wood collection and charcoal production (31 per cent), uncontrolled forest fires (9 per cent), and livestock grazing (7 per cent). In South America, timber extraction and logging are the principal causes of forest degradation, while in Africa forest degradation occurs mainly from fuel wood collection, charcoal production and livestock grazing in forests.<sup>11</sup>

Addressing deforestation does not solve the problem of forest degradation, and failing to recognise the latter's effects can lead to emissions that will not be acknowledged and measured. Its consequences are difficult to perceive, and thus, if forest degradation is not regarded as a problem, the decreased carbon storage capacities of a degraded forest will not be identified. As a result it will be assumed that the forest is sequestering more CO<sub>2</sub> than it really is, because the emissions resulting from degradation will not be accounted for.

### *2.2.3 Conservation and enhancement of forest carbon stocks*

Forest carbon stocks are the storages of carbon that have been accumulated by forests in their biomass, like wood, leaves, roots and soil. The vast majority of forest carbon stocks have been amassed in mature forests for years by photosynthesis processes that sustain their growth. These carbon stocks are vital to the carbon cycle of the earth, and if they are released to the atmosphere, they become a major cause of global warming. Conserving the forest carbon stocks that exist in mature forests, and enhancing the formation of new ones, is thus significant in the mitigation of climate change effects, and so these types of activities are rewarded under the REDD+ scheme.

To effectively conserve forest carbon stocks, it is important to have consistent information about the amount of forest biomass that exists and the carbon it has within itself as well as to detect areas of greater uncertainty regarding the conservation of carbon stocks, and estimate future carbon stocks and emissions under different scenarios.<sup>12</sup> It is also necessary to enhance the existing carbon stocks and promote the development of new ones, implementing

10 D Murdiyarso and others "How do we measure and monitor forest degradation?" in A Angelsen (ed) *Moving Ahead with REDD: Issues, Options and Implications* (CIFOR, Bogor, Indonesia, 2008) 99 at 99.

11 Hosonuma and others, above n 9, at 8.

12 G Assefa and others "Training Manual On: Forest Carbon Pools and Carbon Stock Assessment in the Context of SFM and REDD+" (Wondo Genet, Hawassa University,

activities focused on reforestation, which means planting trees in areas that were cleared in the past, and on afforestation, which aims to introduce trees to areas that were not previously forested.<sup>13</sup>

The regeneration of land areas that are subject to harvesting or degradation is not included in reforestation and afforestation because these momentary losses in forests are not considered deforestation.<sup>14</sup> These degraded lands are the result of unsustainable use, erosion, salinisation or acidification, and will need to be restored, or else they will eventually contribute to greenhouse gas emissions. Revegetation activities have to be executed in order to enhance carbon stocks by developing new vegetation or increasing existing vegetation on degraded lands that cannot be categorised as reforestation and afforestation.<sup>15</sup>

### 2.2.4 Sustainable management of forests

Sustainable management of forests is the management and stewardship of forests according to the principle of sustainable development, and was first mentioned in the report *Our Common Future*, commonly known as the Brundtland Report, produced by the World Commission on Environment and Development of the United Nations in 1987. According to the report, sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>16</sup> The concept of sustainable development is anthropocentric, and is based on a balance between the social, economic and environmental sectors, requiring consensus and trade-offs among them to achieve progression for all.

Sustainable forest management in the REDD+ scheme centres on promoting a sustainable use of forest supplies, like timber, with the specific aim of keeping carbon stocks at the same levels over time, avoiding deforestation and forest degradation. Management of other elements of the typical concept of sustainable forest management, like biodiversity conservation and poverty alleviation, is implicit in the REDD+ structure, and should not be disregarded.<sup>17</sup>

Ethiopia, November 2013) <<http://docplayer.net/19678405-Hawassa-university-wondogenet-college-of-forestry-and-natural-resources.html>> at 7.

13 RT Watson and others (eds) *IPCC Special Report: Land Use, Land-Use Change and Forestry* (Cambridge University Press, Cambridge, 2000).

14 J Penman and others (eds) *Good Practice Guidance for Land Use, Land-Use Change and Forestry* (IPCC, Institute for Global Environmental Strategies, Japan, 2003) at 4.53.

15 F Kossam “Revegetation Activities That Could be Eligible for Future CDM Projects in Africa” (Malawi, nd) <[https://unfccc.int/files/land\\_use\\_and\\_climate\\_change/application/pdf/agn\\_revegetation\\_inputs.pdf](https://unfccc.int/files/land_use_and_climate_change/application/pdf/agn_revegetation_inputs.pdf)>.

16 World Commission on Environment and Development *Our Common Future* (Oxford University Press, Oxford, 1987) at 41 [Brundtland Report].

17 “Sustainable management of forests and REDD+: Negotiations need clear terminology”

Sustainable forest management activities can be extremely helpful in reducing deforestation and forest degradation. Examples of sustainable management of forests include protecting forests from humans and herbivores by fencing them off and allowing them to develop in a natural way; reducing fire risk by eliminating ferns and grasses that can be fuel for such fires; adding missing species to the forest ecosystem and selecting the best ones for the site; planting native species in degraded areas; planting seeds directly into the forest land; and creating mixed-species plantations that are stronger in land areas with low forest density.<sup>18</sup>

The concept of sustainable forest management comes from the recognition that countries manage their forest resources with the objective of providing them with economic and social productivity, sometimes without regard to the environment. There has been criticism of incorporating sustainable forest management into the REDD+ scheme because it is difficult to account for the greenhouse gas emissions that are reduced by these activities, or for the potential emissions that would occur in the case of unsustainable administration of forests. Furthermore, critics state that sustainable forest management inside REDD+ justifies illegal logging being carried out with impunity under the framework of sustainability. Nonetheless, it is undeniable that sustainable forest management, when done in an effective way, is fundamental to promoting natural forest regeneration, and conserving and enhancing carbon stocks.

The activities that constitute the scope of the REDD+ scheme are not clearly differentiated, because of their intrinsic characteristics and interrelationships. As a consequence, implementing a particular activity of the REDD+ scheme could have effects on other types of forest projects. For example, activities focused on conservation of forest carbon stocks could result in reduced emissions from deforestation. Deforestation activities can be a strategy for the conservation of carbon stocks, and reduction in emissions from deforestation can be an effect of enhancement of carbon stock activities. Effective, sustainable forest management can cause reduction in greenhouse gas emissions from forest degradation. The overlap of REDD+ activities is useful to mitigate forest-related emissions because the complexity of the forested areas requires an interdependent and integrated strategy.<sup>19</sup>

The intricacy of the REDD+ structure and the interdependence of its activities can have long-lasting effects on a wide variety of sectors in a developing country. Indigenous and forest-dependent communities can be excluded

(Food and Agriculture Organization of the United Nations, December 2009) <<http://www.fao.org/forestry/18938-0efeb18b14c2ad28b0a2f2ce71b136f2e.pdf>> at 2.

18 P Elias and K Lininger *The Plus Side: Promoting Sustainable Carbon Sequestration in Tropical Forests* (Union of Concerned Scientists, Cambridge MA, November 2010) at 6.

19 M Dutschke *Key issues in REDD+ verification: Study commissioned by CIFOR* (Occasional Paper 88, Center for International Forestry Research, Bogor, Indonesia, 2013) at 15.



from the forested areas they inhabit, natural forests can be eliminated to pursue other type of plantations that could be accounted for REDD+ emission reductions, and the biodiversity can be depleted due to management strategies that are not well adapted to particular circumstances. In fact, thoughtless implementation of a REDD+ strategy could result in emission reductions but at the same time produce devastating effects on the development of a country. Therefore, the scheme needs to include a system that prevents the aim of reducing emissions from forests causing collateral damage on the social and economic sectors that depend on those very forests.

### **3. THE REDD+ SAFEGUARDS**

#### **3.1 The Need for REDD+ Safeguards**

REDD+ is an effective instrument in forest greenhouse gas emission mitigation, due to its ability to adapt to different contexts and its broad scope for addressing a wide range of problems related to the forestry sector. The scheme is so complex that it can benefit other areas of forests that are not specifically related to climate change mitigation, like the conservation of biodiversity, the social and economic inclusion of minorities like indigenous and forest-dependent communities, and the generation of alternative and more sustainable methods of timber production and agriculture.

However, the complexity of REDD+ can pose a series of risks when the scheme is being implemented in developing countries. The sovereignty of these countries could be undermined by the financial and technological donors, forcing them to act in ways that go against their culture and rule of law. New PLR frameworks may be compulsorily requested to adapt the developing country's rule of law to REDD+ requirements; social groups could have their livelihoods and traditions affected by the diverse activities taking place in the forested areas they inhabit; biological diversity could be threatened by REDD+ activities that are aimed at guaranteeing emission reductions instead of conserving natural forests; and decentralisation of political powers to ensure public participation may prove counterproductive if the country's institutional configuration is not solid enough.

To counter the potential risks that REDD+ poses to developing countries, the COP determined a set of seven safeguards that have to be promoted and supported in the implementation of REDD+ action plans.<sup>20</sup> REDD+ safeguards are intended to prevent its activities violating international treaties and the national PLRs of the developing country. Additionally, the safeguards set out

20 UNFCCC Decision 1/CP.16, Appendix I, para 2.

to promote the full participation of all the relevant stakeholders of the forestry sector, especially indigenous peoples and local communities, and the protection of the biological diversity of the country. Lastly, safeguards encourage the institution of adequate measures to ensure that the emission reductions are not reversed or displaced to other parts of the country.

To achieve compliance with REDD+ safeguards, the COP devised a series of measures that have to be fulfilled in order to develop and execute a REDD+ action plan. In addition to creating a national REDD+ strategy and a national forest reference emission level, developing countries need to set up a SIS to verify the effective promotion of the safeguards during the implementation phase.<sup>21</sup> Furthermore, during REDD+ implementation, and prior to qualifying for results-based payments, developing countries will have to provide information on how the REDD+ safeguards were addressed and respected.<sup>22</sup>

Nonetheless, the broad definition of REDD+ safeguards and the absence of specific guidelines for their adequate development and protection make it difficult for countries to implement them in an effective way. Guaranteeing that developing countries will observe the safeguards during the execution of their REDD+ action plan could be challenging due to the complexity and ambiguity of the REDD+ structure and the broad scope of the requirements that have been set up by the COP.

### **3.2 REDD+ Safeguard Development**

There is no defined process for developing a REDD+ safeguard scheme (RSS). Nevertheless, there are certain steps that are unavoidable in the process. First, it is important that the developing country starts a public process that involves different sectors in its society for the development of the REDD+ safeguards. In order to carry out the public process, the developing country will have to determine who will be the actors of the process and assemble them. The discussion in the public process should lead to a general consensus on the importance of the safeguards and a sense of commitment to them.

The public process for the development of REDD+ safeguards has to determine the relevant goals and scope of the RSS. Experiences from Brazil, Ecuador, Mexico and the Democratic Republic of Congo have helped define some key elements that should be addressed, including, among others, establishing general objectives and standards for the protection of the safeguards; performing preliminary environmental assessments on the risks and benefits of REDD+ in the country; evaluating the national and international PLRs in force to verify if they are consistent with a RSS, or if there

21 UNFCCC Decision 1/CP.16, para 71(d).

22 UNFCCC Decision 9/CP.19, para 4.

are gaps that will need to be filled with the enactment of new PLRs; defining the relevant stakeholders in the scheme and holding initial consultations with them to determine their potential risks, costs and benefits; and designing the participatory mechanisms and capacity-building methods that will enable the stakeholders to be part of the RSS and provide valuable feedback from it.<sup>23</sup>

Additionally, a SIS will have to be created to collect data on safeguard protection at a national level,<sup>24</sup> with transparent information accessible to all stakeholders. The SIS could be based in a measuring system already in place in the country, or a new system can be created. Although the UNFCCC does not specify the characteristics that a SIS needs to have, there are several elements fundamental to any measuring system in place. The SIS needs to have indicators to measure the effectiveness of an implemented RSS, with quantifiable parameters for every aspect that will be measured. Furthermore, the SIS needs methodologies for gathering the necessary information on the RSS for each indicator, with special regard to the type of data that should be collected. Finally, the SIS will need a framework to store and organise the gathered information, with adequate communication channels that can be accessed by any stakeholder that seeks to.<sup>25</sup>

The RSS can be led by government agencies, including regional and local councils, in order to incorporate in the discussion all the social groups that could be affected by REDD+. On the other hand, the process can be headed by civil organisations without the participation of the public administration. In Brazil, the process was headed by civil society, organised in a committee made up of delegates from different social sectors. Government agencies were not represented in the committee, but were informed about the development of the process. In Indonesia, by contrast, the government appointed a National REDD+ Task Force comprised of actors from civil society and non-governmental organisations. This task force developed the REDD+ safeguards, devised the SIS and organised pilot projects in different areas of the country.<sup>26</sup>

Regardless of the type of approach chosen for the development of the RSS, it is important that the REDD+ safeguard team that is assembled includes technical experts in biological diversity and the forestry sector, as well as legal advisers with expertise and experience in environmental matters and international law. The team must also include leading representatives of relevant

23 L Peskett and K Todd "Putting REDD+ Safeguards and Safeguard Information Systems into Practice" (UN-REDD Programme Policy Brief #03, Geneva, Switzerland, November 2012) at 3.

24 UNFCCC Decision 12/CP.17, para 2.

25 Peskett and Todd, above n 23, at 5.

26 P Gutman and others (eds) *WWF Guide to Building REDD+ Strategies: A toolkit for REDD+ practitioners around the globe* (World Wildlife Fund Forest and Climate Initiative, Washington DC, June 2013) at 42.

stakeholders like indigenous peoples and local communities. Ideally, this multidisciplinary team must be compact enough to be able to work together and, at the same time, big enough to enable the effective participation of the essential actors in the REDD+ strategy. It is necessary for this team to have communication channels in place to seek and obtain any information from government agencies connected directly or indirectly to the forestry sector and its resources, including the legislature, executive ministries and regional and local councils.

Once the REDD+ safeguards are developed and the SIS is in place, the national REDD+ strategy can be sent to the UNFCCC to be approved and, afterwards, implemented. However, REDD+ activities have to promote the REDD+ safeguards at all times during their implementation, and this can prove difficult due to their complexity and broad scope. In consequence, the relevant stakeholders need to fully understand the nature of each safeguard and have mechanisms in place for their effective implementation, because the results-based payments from the REDD+ emission reductions will depend on the adequacy of their protection.

Although every REDD+ safeguard has a specific objective to fulfil, they are all closely interconnected in such a manner that violations of one REDD+ safeguard will simultaneously cause infringements of others, and in order to comply with one of them, the relevant stakeholders will have to respect them all. Nonetheless, every safeguard has particular characteristics that distinguish it from the others. Consequently it is necessary to analyse the implementation mechanisms of each safeguard separately, and, at the same time, identify the connections between them.

## **4. REDD+ SAFEGUARD IMPLEMENTATION MECHANISMS**

### **4.1 REDD+ Safeguard (a): National and International Legal Frameworks**

#### *4.1.1 Understanding REDD+ safeguard (a)*

REDD+ safeguard (a) states that REDD+ activities should “complement or [be] consistent with the objectives of national forest programmes and relevant international conventions and agreements”. The safeguard aims to respect and guarantee the sovereignty of developing countries, requiring REDD+ activities to comply with all forest PLRs and institutions of the country. Any system that is designed for monitoring or reporting on the results of projects and the fulfilment of the safeguards has to be built upon the existing legal framework of the developing country.

On the other hand, the safeguard also determines that every strategy has to be consistent with international conventions and agreements that developing countries have ratified. The international treaties that can be connected to REDD+ activities should address issues related to the forestry sector, like forest biodiversity, indigenous peoples and forest-dependent communities, forestry industry trade regulations and climate change. REDD+ safeguard (a) is fundamental to the scheme, because it will provide the basis for its development and implementation.

#### *4.1.2 Implementing mechanisms for REDD+ safeguard (a)*

Compliance with REDD+ safeguard (a) requires an analysis of all the national and international legal frameworks that are in force in the country before designing a REDD+ strategy that is consistent with them. This process should focus on identifying the national PLRs that are in force and are related to the REDD+ scheme and its safeguards, and evaluating their scope, in order to determine obstacles and difficulties possible in a potential REDD+ safeguard protection strategy.

The process of identifying and evaluating the existing PLRs in the country needs to be done during the REDD+ safeguard development process, although compliance with REDD+ safeguard (a) will have to be monitored throughout the strategy implementation. If the safeguards cannot be effectively protected with the existing national PLRs, an analysis will have to be made to decide if the RSS will be possible under the national legislation. If not, alternatives and solutions will have to be designed, and in the worst case, legal reforms and policy-making will have to be recommended and carried out prior to the elaboration of the national REDD+ strategy.

Aside from the national programmes, the country will have to identify the international treaties that have been ratified and their legal implication for the implementation of the RSS. Moreover, the developing country needs to evaluate whether the international treaties it has ratified are being adequately applied and if they allow for an effective protection of REDD+ safeguards. If the developing country is not part of international treaties that would be needed to facilitate REDD+ safeguard protection, creative alternatives will have to be developed for the fulfilment of the RSS on a national scale. If, however, the national legal framework prevents this, recommendations on the acceptance and ratification of specific international treaties will have to be submitted. Aside from that, if there are international treaties in force that have not been implemented in the country, the REDD+ safeguard team will have to recommend steps necessary for their effective implementation. If the case demands it, the elaboration and submission of the national REDD+ strategy will have to depend on the prior execution of these steps.

Monitoring compliance with REDD+ safeguard (a) should not be difficult, as the national and international PLRs can be quickly identified and analysed. Indicators should be set for each international treaty and national PLR to ascertain that REDD+ activities are observing these legal instruments. Inevitably, most of these indicators will be intrinsically related to the observance of the rest of the safeguards, because compliance with them will imply a fulfilment of specific national and international obligations, especially regarding the participation of minority groups such as indigenous peoples and the conservation of forests and biodiversity.

## **4.2 REDD+ Safeguard (b): National Forest Governance**

### *4.2.1 Understanding REDD+ safeguard (b)*

REDD+ safeguard (b) states that REDD+ activities should be “transparent and effective national forest governance structures, taking into account national legislation and sovereignty”. To guarantee transparency and effectiveness, the implementation has to be public, allowing any person access to all the information regarding the project. The right of access to justice and fair trial has to be acknowledged, as well as a strict accountability system for the people appointed to manage and direct REDD+ projects.<sup>27</sup> Furthermore, there have to be clear and coherent PLRs and institutions that promote the participation of all stakeholders in the activities.

REDD+ action plans need to be effective national forest governance structures. This implies that their activities have to be efficient in managing forest resources, applying inclusive policies with short- and medium-term goals, but also with a long-term focus. In addition the safeguard requires that the activities should take into account national legislation and sovereignty.

REDD+ safeguard (b) is connected with REDD+ safeguard (a) in that each requires REDD+ activities to fully respect the national legal frameworks of developing countries and their sovereignty, as well as their national forest programmes and policies. Processes for access to public information, public participation and accountability are also recognised by international instruments like the International Covenant on Civil and Political Rights, the Model Inter-American Law on Access to Public Information, and the United Nations Convention Against Corruption.<sup>28</sup>

27 D Rey and others *A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards: A Review of Relevant International Law* (ClientEarth, London, UK, 2013) at 26.

28 International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976); Model Inter-American Law on

#### *4.2.2 Implementing mechanisms for REDD+ safeguard (b)*

REDD+ safeguard (b) requires the RSS to be transparent and effective, taking into account national legislation and sovereignty. Transparent activities require that information regarding their elaboration, implementation, monitoring and evaluation has to be readily available to any person who wants to access it. In consequence, the national REDD+ strategy should include processes of access to information that are simple, prompt, free and congruent with national regulations. These processes of access to information have to be made available to the public in simple and concise ways so anyone is able to require information about the activities. Mechanisms of public awareness could include digital campaigns in social media or direct workshops with people affected by the REDD+ scheme. Finally, the RSS must also provide counsellors to guide any person or entity in obtaining any information they seek.

At the same time, a transparent RSS has to promote accountability by the identification of its core principles and values, and a clear determination of the rights of the stakeholders and the responsibilities of the people in charge of the projects. Corruption should be reduced by assigning key functions according to merit and under strict codes of conduct, with harsh sanctions for corruptors and corrupted. The promotion of honourable conduct should be incentivised economically and non-economically, with results-based payments, the award of prizes, and by granting more responsibility and authority to honest public officials. It is important to establish REDD+ anti-corruption committees with the authority to monitor the implementation of the RSS and to encourage the investigation of criminal activities. Lastly, there should be strict monitoring and auditing mechanisms for public spending on REDD+ activities, with thorough and efficient procedures.

The SIS has to be able to identify whether REDD+ activities are transparent and effective. There should be indicators for the processes of access to public information, based for example on how many people seek information and what type of information is requested; who the applicants are and to what social group they belong; how many applications are granted, dismissed, denied and appealed, and on what grounds; how much time it takes for the government agencies to provide the information; and what type of complaints are received regarding the process and how the complaints are being treated. Additionally, corruption indicators have to be established to measure complaints against specific agencies or public servants for them to be held accountable for their actions. These indicators could reflect how much time judicial processes are taking and how efficiently they are being managed, and

whether honest behaviour is being rewarded and criminal activities punished in an effective way.

Maintaining an effective and transparent framework requires constant vigilance, adaption and assessment. REDD+ safeguard (b) is paramount to the general success of the RSS because it provides valuable feedback on the execution of its activities. It is only by keeping a constant check on the transparency and effectiveness of the policies that the results achieved will be able to endure the passage of time. However, the submission of the safeguard to developing countries' national frameworks could prove counterproductive if their laws do not promote transparency, accountability and access to information. In this sense, the government's political resolve will be fundamental in the promotion of transparent national forest governance through supporting the modification of existing PLRs or the enactment of new ones as needed.

### **4.3 REDD+ Safeguard (c): Indigenous Peoples and Local Communities**

#### *4.3.1 Understanding REDD+ safeguard (c)*

REDD+ safeguard (c) requires that REDD+ activities shall have “[r]espect 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”.

To understand REDD+ safeguard (c), it is necessary to identify who the indigenous peoples and members of local communities are, and what are their specific knowledge and rights. The United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions, but does not define indigenous peoples.

According to the Convention Concerning Indigenous and Tribal Peoples (ILO Convention 169) the concept of indigenous peoples is linked to the processes of conquest and colonisation to which their predecessors were subject,<sup>29</sup> and regardless of the oppression they have suffered and the loss of their sovereignty, that they have managed to retain, to a certain degree, their own socio-economic organisation, culture and political institutions.<sup>30</sup>

29 Convention Concerning Indigenous and Tribal Peoples (ILO Convention 169, 1989), art 1(1)(b) [ILO Convention 169].

30 It is important to mention that not all countries have ratified ILO Convention 169, so the concept of indigenous peoples contained in it is not globally recognised. Nevertheless, it provides an idea of which communities can be recognised as indigenous.



Indigenous peoples generally inhabit territories located in rural areas near tropical forests. They identify themselves as indigenous, and they live, feed and depend upon the resources acquired from wildlife, using the land for agriculture and the wood of the trees for fuel and warmth. Their way of life is deeply connected to nature, and they frequently consider themselves stewards of the earth.

REDD+ safeguard (c) also orders respect for local communities. While the term “local communities” does not have an internationally agreed meaning, a broad approach could define them as communities within a country that live in territories that coexist with natural forests and depend economically and socially on them. Nevertheless, the concept of local communities should be clarified to understand its implication.

REDD+ safeguard (c) determines that all REDD+ activities shall respect the knowledge of indigenous peoples and local communities. Certainly, their knowledge is valuable for REDD+ activities because most of them have lived for several generations in the forested areas, developing unique experience, innovations, practices and technologies for the conservation and management of the forests they inhabit, as well as an important understanding of their biodiversity.

The safeguard further determines that REDD+ activities have to respect the rights of indigenous peoples and local communities. Aside from the international human rights that have been globally recognised for every person, indigenous peoples have specific rights that are acknowledged due to their situation of social and economic vulnerability and particular culture and beliefs. In general, the most important rights of indigenous peoples that should be protected during the implementation of RSS are:<sup>31</sup>

- (i) **Non-discrimination:** indigenous peoples enjoy the same rights and freedoms as all other citizens in the world.<sup>32</sup>
- (ii) **Self-determination:** the right to belong to an indigenous community or nation, and to define and follow their own ideas of social, economic and cultural development, as well as to determine the way they manage their resources and wealth.<sup>33</sup>
- (iii) **Right to culture:** the right to manifest and express their culture, identity, dignity, traditions and beliefs.<sup>34</sup>

31 Rey and others *A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards*, above n 27, at 44–47.

32 United Nations Declaration on the Rights of Indigenous Peoples A/RES/61/295 (2 October 2007), arts 1, 2, 6, 7.

33 Articles 3, 5, 9.

34 Articles 8, 11(1), 12(1), 13.

- (iv) **Collective land tenure:** the possession and ownership of ancestral lands that indigenous peoples have traditionally owned and that are connected to their culture.<sup>35</sup> It includes the rights to territorial property, effective land dispute resolution systems, restoration of land and the provision of basic services for their communities.
- (v) **Benefit-sharing:**<sup>36</sup> Indigenous peoples have the right, as holders of forested areas, to receive an equitable portion of the benefits that result from the implementation of the RSS on forests that they inhabit. However, how the rights to benefit-sharing of indigenous peoples will be applied to REDD+ is yet uncertain, because these rights are connected to other issues that have not been resolved, like public participation, land possession and the ownership of carbon rights, among others. Certainly, the topic of benefit distribution remains one of the most difficult to resolve in the REDD+ scheme discussions.
- (vi) **Procedural rights:** Due to their particular social vulnerability, indigenous peoples need access to procedures additional to those granted to the rest of the population. One of these is the right to a process of free, prior and informed consent (FPIC) before governments enact any legal or administrative measure that could affect them directly.<sup>37</sup> Another special procedural right is the right to a process of relocation of indigenous peoples from their collective lands.<sup>38</sup>

Unlike the rights of indigenous peoples, the rights of local communities have not been clearly defined and recognised in international treaties. Nonetheless, human rights invariably apply to local communities as they would apply to anyone else. Although rights of local communities should be analogous to the rights of indigenous peoples, it is not entirely clear to what extent they should be assimilated. Despite that, REDD+ safeguard (c) expressly recognises that local communities have rights that need to be protected. However, in order to effectively implement the safeguard and successfully protect it, the RSS needs to clarify and define the rights of local communities and whether they are the same as those of indigenous peoples.

The interdependent nature of REDD+ safeguards is reflected by the importance that REDD+ safeguard (c) gives to the protection of the rights and

35 Article 26.

36 This right is based on the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity K3488 .A48 2011 (opened for signature 29 October 2010); United Nations Convention on Biological Diversity ATS 32 / 1760 UNTS 79 / 31 ILM 818 (1992).

37 ILO Convention 169, art 6(1)(a).

38 ILO Convention 169, art 16.

knowledge of indigenous peoples and local communities, as recognised by the international agreements and national legal frameworks that have to be respected by REDD+ activities, as stated in REDD+ safeguards (a) and (b).

#### 4.3.2 Implementing mechanisms for REDD+ safeguard (c)

Implementing REDD+ safeguard (c) can be one of the most challenging issues in the RSS. The social vulnerability and inequality that indigenous peoples and local communities have historically suffered suggest that the national legislation that protects them is not always enforced. They are excluded from the decision-making processes of their governments and even their local and regional councils; and the poverty and miserable conditions that they endure makes them one of the most vulnerable social groups in the world to the negative effects of global warming. As a consequence, indigenous peoples and local communities generally distrust public policies because they are not made part of these and perceive them as a government intervention instead of measures that are designed to protect them.

Guatemala, a country inhabited by 24 different indigenous tribes that represent approximately 60 per cent of the total population, 73 per cent of them living in conditions of poverty,<sup>39</sup> is an example of this. Although Guatemala is a party to ILO Convention 169, and thus obliged to guarantee FPIC to indigenous peoples in every legal and administrative measure that affects them, to ensure their rights are not violated, it fails to put this obligation into practice. The reason for this is that there are no national laws in force to detail the procedures to apply FPIC, nor to force corporations and government agencies to undertake them and punish them if they do not comply. Although the Constitutional Court has stated that this situation cannot continue, and has exhorted Parliament to enact a corresponding law, Parliament cannot be forced, and thus, has not done so, maintaining the uncertainty regarding FPIC<sup>40</sup> and the recognition and protection of the rights of indigenous peoples.

As it has been stated, there is no global consensus as to the definition of indigenous peoples and even less agreement over the meaning of a local community. Therefore, it is of utmost importance that one of the first steps of the REDD+ development process in a developing country is focused on

39 Grupo Internacional de Trabajo sobre Asuntos Indígenas “Los Pueblos Indígenas en Guatemala” (IWGIA, Copenhagen, Denmark) <<http://www.iwgia.org/regiones/latin-america/guatemala/66-esp-paises/guatemala6/575-los-pueblos-indigenas-de-guatemala>>.

40 G Mayén and others *El Derecho a la Consulta Previa, Libre e Informada* (Asociación de Investigación y Estudios Sociales de Guatemala, Lima, Peru, 2014) <[http://www.actualidadambiental.pe/wp-content/uploads/2014/11/Derecho-a-la-Consulta-Previa-libre-e-Informada\\_SPDA.pdf](http://www.actualidadambiental.pe/wp-content/uploads/2014/11/Derecho-a-la-Consulta-Previa-libre-e-Informada_SPDA.pdf)>.

determining the meaning of indigenous peoples and local communities that will be used in the RSS, and identifying all the indigenous tribes and local communities that will be affected by it and therefore will participate in its implementation.

Aside from identifying the indigenous peoples and local communities that will participate in the RSS, the most important issue in effectively protecting REDD+ safeguard (c) is gaining their trust. For this to happen, the REDD+ safeguard development process must include the indigenous tribes and the local communities that will be affected, and identify their rights within the RSS. Additionally, the participatory mechanisms that are defined have to include special procedures for the inclusion of indigenous peoples and local communities during REDD+ implementation. Processes of access to information have to be instituted to allow them to access relevant information and monitor the accountability of government officials.

Although the central aim of REDD+ safeguard (c) is to guarantee the rights of indigenous peoples and local communities during the REDD+ strategy implementation, the safeguard will for its part permit the RSS to benefit from the local knowledge of the forested areas and their biodiversity. To take advantage of the knowledge and experience of indigenous peoples and local communities, it will be necessary to have in place a specific system to integrate, register and analyse all the gathered information and filter it for use in the most efficient ways.

The REDD+ safeguard team will need to study both the international instruments and the national legal framework to evaluate whether they adequately protect REDD+ safeguard (c) or whether there is a need to enact new PLRs. Indeed, the recognition of the rights of indigenous peoples and local communities, as well as the institution of participatory processes like FPIC, will need specific legislative enforcement.

Finally, the SIS will have to record the indigenous peoples and local communities that are affected by the REDD+ action plan, and the rights that are acknowledged. Indicators will have to be instituted to measure: how are these rights being protected; how many complaints have arisen regarding violation of the rights of indigenous peoples and local communities, and how the complaints have been managed and resolved; how many lawsuits were filed against the violation of these rights, how much time they took to get to a decision, and how many of them resulted in guilty findings; which of the rights are being most violated; and which REDD+ activities have produced the most violations to the rights of indigenous peoples and local communities.

## **4.4 REDD+ Safeguard (d): Social Inclusion and Participation**

### *4.4.1 Understanding REDD+ safeguard (d)*

REDD+ safeguard (d) states that REDD+ activities should guarantee “the full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities”. A full and effective participation implies a transparent dialogue between government and civil society, and the complete inclusion of interested parties in the elaboration and implementation of plans and PLRs.

Different types of participation can include one-way information-sharing in which the stakeholders share information when requested; consultations, where the information-sharing is accompanied by an exchange of opinions; collaboration, in which the stakeholders get together to work collectively, but the decision-making authority remains with the stakeholder that initiated the communication; joint ventures, where the partners work together and the decision-making authority is shared; and empowerment, in which the actor that holds authority delegates it to another stakeholder or group of stakeholders, including the necessary resources to execute the related activities.<sup>41</sup> For a participation system to be effective there has to be tolerance of opposing views, especially with minority groups; a general rejection of discrimination and social exclusion; and the promotion of the culture of social groups and the protection of their religions and traditions, as well as intercultural exchanges.<sup>42</sup>

It is also important to define participatory mechanisms that allow the full inclusion of all the social groups and stakeholders in the decision-making processes of the REDD+ strategy. The REDD+ scheme should incorporate the affected individuals and organisations in the process of defining which REDD+ activities will be implemented and the structure they will be based on. These individuals and organisations could collaborate in the implementation of REDD+ projects, gathering onsite information, monitoring the execution of the activities and even leading the implementation of the strategies in the forested areas.

Furthermore, conflict resolution procedures and the right of access to justice have to be in place in order for the participation process to be effective. Participation is based on trust and the tolerant exchange of opinions, but also on the ability to challenge the decisions that are taken by the stakeholder that holds authority. Otherwise, the process will not be legitimate because the stakeholder that holds power — generally a government agency — can decide to go through

41 Rey and others *A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards*, above n 27, at 49.

42 Y Ghai *Public Participation and Minorities* (Minority Rights Group International Report, 2001) at 10.

the formality of gathering feedback from the other actors, but not take it into consideration in the final decision.

The objective of REDD+ safeguard (d) of promoting the full participation of all stakeholders in REDD+ activities is intrinsically linked to REDD+ safeguard (c), in that some of the most important stakeholders are indigenous peoples and local forest-dependent communities, not only because they are the ones that could be most affected by REDD+ policies, but because of the knowledge and experience they have in managing the forests they inhabit. In addition, REDD+ safeguard (d) has to be aligned with REDD+ safeguards (a) and (b), because the full participation of relevant stakeholders has to be effected with regard to the relevant international treaties, and respecting the legal and administrative frameworks of the countries in which REDD+ is implemented.

#### *4.4.2 Implementing mechanisms for REDD+ safeguard (d)*

A participation system for a REDD+ action plan has to enable the sharing of information between stakeholders. At the same time it has to promote transparent dialogues between them, making it possible for any stakeholder to be part of any REDD+ activity that affects them directly or indirectly and encourage the stakeholders to feel part of the strategy and become involved in the decision-making processes of the REDD+ action plan.

Before the REDD+ safeguard development phase is launched, the developing country will have to devise a preliminary participation mechanism to enable all stakeholders to participate in the development of the REDD+ safeguards. Afterwards, with all the actors working together, a participation process will have to be created within the RSS to allow all stakeholders to be part of the REDD+ action plan during its implementation phase.

Participatory processes need to be solidly built upon adequate PLRs. These legal frameworks have to establish institutional procedures to promote interaction and dialogue among the stakeholders and the pursuit of joint decisions and innovative solutions. In consequence, the developing country will need to identify the relevant international instruments and national laws and evaluate if they are sufficient enough to enable participation, or if there is a need to enact new laws or modify the existing ones. Additionally, participation systems need to include an efficient process of access to public information from decision-makers. Certainly, it is only possible for stakeholders to participate in and contribute to REDD+ activities if they are able to access all the significant information regarding the objectives of the projects, their characteristics, limitations, timeframes, areas of implementation, legal and administrative frameworks, and the individuals and organisations that will be affected by them.

Furthermore, it is important to identify the relevant stakeholders that

can be a part of the REDD+ decision-making processes and implementation strategies. The relevant stakeholders are the actors of government and civil society that will participate in the elaboration and implementation of the RSS. These stakeholders can be international country donors or organisations like the World Bank, the Green Climate Fund or international REDD+ monitoring institutions; specific government agencies, like the ministries of forestry, agriculture, mining and energy, and regional and local councils; civil society entities, like organisations for the conservation of forests and biodiversity, indigenous peoples and local, forest-dependent communities, and specific individuals like farmers and loggers that could be directly affected; and commercial corporations that are involved in activities in the forestry sector, like logging, agriculture and forest management.

Although the participation of multiple stakeholders in the development and protection of REDD+ safeguards is beneficial given the complex nature of REDD+, it may become challenging to manage adequately all the different opinions, claims and complaints that can arise from all the social groups. The participatory mechanisms that are in place need to be able to quickly identify problems and concerns and respond to them in an effective way, in order to establish trust and credibility among the relevant actors. Trust in the participatory mechanisms has to be built on a strict accountability system that monitors the decisions that are taken and the solutions that are devised. There need to be reliable and adequate processes of access to public information, efficient communication channels for the prompt resolution of complaints, conflict resolution alternatives like mediation and conciliation, and the possibility of filing lawsuits against unsatisfactory outcomes.<sup>43</sup>

The participatory mechanisms will not be effective enough if the stakeholders do not understand the key concepts of climate change and the nature, elements and objectives of a REDD+ strategy. In consequence, it is essential that capacity-building instruments be established so marginalised social groups, like indigenous peoples and local communities, are informed about the impacts of climate change; the possible risks and benefits of a REDD+ strategy; the participation mechanisms that exist in the RSS that will be implemented; the activities that will help reduce emissions from deforestation and forest degradation, as well as effective tools for the conservation, enhancement and sustainable management of forests; and the methods that will enable them to scrutinise and monitor the RSS and its results.<sup>44</sup>

The REDD+ national strategy that was designed in Indonesia since 2007 has raised several complaints from local communities over their limited participation in the implementation of projects and their ignorance as to their

43 Gutman and others (eds) *WWF Guide to Building REDD+ Strategies*, above n 26, at 45.

44 At 41.

rights and benefits. This has caused an increasing lack of trust in the government agencies and non-governmental organisations that manage the activities, and the uncertain legal status of the communities has affected motivation among local community members to protect and maintain their forested areas.<sup>45</sup>

Special regard has to be given to the consultation processes carried out with indigenous peoples and local communities that inhabit the forested areas that will be affected by the REDD+ strategy. These consultations need to be in good faith, non-onerous and fully informed, before taking any legal or administrative measures that affect them, like the FPIC that was instituted by ILO Convention 169.<sup>46</sup> The main obligation of governments under ILO Convention 169 is to consult the indigenous peoples regarding the nature and structure of a particular project that will affect them. However, the obligation to consult only requires that the process be followed in good faith, and not that an agreement between the government and the community has to be achieved. This means that indigenous peoples will not have the possibility of refusing the carrying out of a particular project and successfully vetoing it.

Nonetheless, participatory processes in the REDD+ action plan will need to transcend the simple information-sharing or consultation processes like FPIC that are made with indigenous peoples. The essence of a REDD+ participatory mechanism is that indigenous peoples and local communities are included from the beginning in the overall REDD+ development process, where they take part in the determination of the activities that will be carried out in the areas they inhabit, and how they will be executed. Participatory mechanisms go beyond simple consultations. They include collaborations and joint ventures, where the indigenous peoples and local communities are able to play a role in the implementation of the REDD+ activities in their areas. In some cases, full delegation can be recommended, allowing indigenous or local communities to be in charge of an entire activity, managing the resources allocated for it and heading its decision-making processes. Thus, the RSS will have to determine which REDD+ activities will be undertaken in the different areas of the country, with the stakeholders that will be affected, and the type of participation mechanism that will be permitted for them to contribute to their implementation.

Benefit-sharing procedures to distribute the results-based payments derived from REDD+ among stakeholders, especially indigenous peoples and local communities, should also be incorporated in the participatory mechanisms. These benefits will reward individuals and communities for conserving and sustainably managing forests, and compensate the opportunity costs of

45 F Daviet and G Larsen *Safeguarding Forests and People: A Framework for Designing a National System to Implement REDD+ Safeguards* (World Resources Institute, USA, 2012) at 18.

46 ILO Convention 169, art 6(1)(a).



implementing REDD+ activities. Rules on how benefit-sharing procedures will work should be defined during the REDD+ safeguard development, and pilot projects will have to be undertaken to test the methods.

Participatory mechanisms need emphasis on the inclusion of women in the dialogues, because the decision-making groups of indigenous peoples and local councils and communities tend to be mostly comprised of men. This should also be carefully taken into consideration when the system of benefit-sharing is devised for payments to indigenous peoples and local communities for their participation in the REDD+ action plans, because men are culturally the recipients of income in communities and families, and including women as beneficiaries could increase domestic violence.

Finally, SIS indicators should be established to evaluate the effectiveness of the participation processes in the REDD+ scheme. The SIS should measure who is participating and which social groups are not being included in the discussion, as well as gathering information on the reasons for not participating; how many types of participatory processes are being undertaken; which REDD+ activities have enabled more participation from their stakeholders; which authorities are working with stakeholders and which of them are constantly dismissing their requests and observations; how many complaints have arisen regarding participatory processes and social exclusion, and how much time was taken to resolve the complaints; which social groups have been more participative and which social groups have been excluded (by themselves or by someone else) from the REDD+ strategy implementation; and which participatory processes have had better results according to the perception of the stakeholders.

## **4.5 REDD+ Safeguard (e): Biological Diversity**

### *4.5.1 Understanding REDD+ safeguard (e)*

REDD+ safeguard (e) requires that REDD+ activities should be consistent with the conservation of natural forests and biological diversity, ensuring that REDD+ actions are not used for the conversion of natural forests. The safeguard adds that REDD+ activities should take into account the livelihoods of indigenous peoples and local communities and their interdependence on forests.

The primary objective of REDD+ safeguard (e) is clearly to ensure that REDD+ activities do not harm the biological diversity of the forests. According to the United Nations Convention on Biological Diversity, biodiversity comprises the living organisms from terrestrial or aquatic ecosystems and the ecological structures of which they are part.<sup>47</sup>

47 United Nations Convention on Biological Diversity (1992), above n 36, art 2.

REDD+ safeguard (e) also aims to prevent the conversion of natural forests. Thus the understanding of what constitutes a natural forest is crucial to REDD+. This is a complicated issue because forests can have particular characteristics in different parts of the world, due to climate variations and the particular geographical attributes of the areas in which they grow. The 2006 Guidelines for National Greenhouse Gas Inventories created by the Intergovernmental Panel on Climate Change allowed countries to use their own definitions of forest, even if they were not related to internationally accepted concepts.<sup>48</sup> Nevertheless, the guide recommended the use of the forest definition created by the Food and Agriculture Organization of the United Nations (FAO),<sup>49</sup> which does not include as forests the land under agricultural or urban use, fruit tree plantations and oil palm plantations.<sup>50</sup>

There has been a lot of criticism on this flexible ambiguity because it gives the opportunity to assign emission reductions to plantations that, technically, could be identified as forests, but in reality, have been the result of natural forest conversion.<sup>51</sup> Nonetheless, REDD+ safeguard (e) aims to prevent discussions over the scope of forest definitions, and the possibility of monoculture plantations replacing forested areas, by prohibiting “natural forest” conversion. While there is also no internationally agreed concept of “natural forest”, the term can be interpreted as forested areas that have originated without human activity and have not been converted to other land use before. The prohibition of converting natural forests is critical because the escalation of the demand for commodities like palm oil, sugar, biofuels, wood and paper has increased the amount of natural forests that have been converted to plantation areas.

REDD+ safeguard (e) also states that REDD+ activities should take into account the right to sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests, as reflected in the United Nations Declaration on the Rights of Indigenous Peoples. This demonstrates the deep connection between REDD+ safeguards (a), (c) and (e). Finally, the protection of biodiversity and the prevention of natural forest conversion has to be based upon the full participation of all relevant stakeholders, allowing them to comment on the strategies and be part of them, as mentioned in REDD+ safeguard (d).

48 UNFCCC Decision 13/CP.19, Annex, para 2(g).

49 S Egleston and others (eds) *2006 IPCC Guidelines for National Greenhouse Gas Inventories* (Institute for Global Environmental Strategies, Hayama, Japan, 2006) at 6.

50 Food and Agriculture Organization of the United Nations “Terms and definitions” in *Global Forest Resources Assessment 2010* (FAO Forestry Paper 163, Rome, Italy, 2010) at 209.

51 N Sasaki and FE Putz “Critical need for new definitions of ‘forest’ and ‘forest degradation’ in global climate change agreements” (2009) 2(5) *Conservation Letters* 226 at 226.

#### *4.5.2 Implementing mechanisms for REDD+ safeguard (e)*

Promoting and protecting REDD+ safeguard (e) is essential for a REDD+ national strategy because the essence of REDD+ is to conserve and enhance forests in their natural state to keep all the sequestered carbon in their biomass. If natural forests are converted, the carbon will be released as CO<sub>2</sub> to the atmosphere and contribute to global warming.

In order to prevent natural forest conversion, the first step will be to define in the RSS the concept of “natural forest” for certainty about which areas should be protected and which activities will be prohibited. The developing country will also have to evaluate its national inventory of anthropogenic emissions by sources and removals by sinks that was sent to the UNFCCC update to the most recent results. This inventory should register the natural forests in the country, as well as the type of trees that cover those forests and their level of deforestation, vulnerability and degradation. It would also be useful to map all the plantations and converted forests that are in place in the country, to monitor them and prevent them from growing further.

The developing country will have to determine the principal causes of natural forest conversion, like palm oil and agriculture, and the main actors linked to those causes. Communicating with those actors is important to reach consensus on non-forested areas they could use instead of deforesting and converting natural forests. Furthermore, PLRs have to be enacted, if adequate ones are not already in force, to prevent and punish natural forest conversion.

The developing country should also be able to identify the forested areas that are most threatened, affected, deforested or degraded, and promote measures to rehabilitate, conserve and manage them in a sustainable way. Furthermore, steps should be taken to increase the forested area in the country, particularly those areas that have a higher amount of biodiversity, and reforest the areas that have been more affected by deforestation and land-use change. Biodiversity should also be protected by developing a list of protected species and areas, and setting up special regulations for their protection. Effective environmental impact assessment programmes should be undertaken as well to prevent actions and policies that would have negative effects on biodiversity.<sup>52</sup>

Finally, the SIS should have indicators in place to measure: the amount of natural forests, their vulnerability and its increase or decrease; the causes of natural forest conversion and their rates of expansion; what activities endanger natural forests; what REDD+ activities are being implemented and the effect they have for the protection of natural forests; the number of livelihoods that depend on forest ecosystems, the income-generating activities that depend

<sup>52</sup> Rey and others *A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards*, above n 27, at 88–91.

on natural forests, and the change in them resulting from REDD+ strategy implementation; how many protected areas and species are in the country, what type of protection they have, and which areas and species are better and worse protected; and which stakeholders protect their natural forests in a more efficient way.

#### **4.6 REDD+ Safeguards (f) and (g): Reversals and Displacements**

##### *4.6.1 Understanding REDD+ safeguards (f) and (g)*

REDD+ safeguards (f) and (g) state that REDD+ activities should include “actions to address the risks of reversals ... [and] actions to reduce displacement of emissions”. These safeguards are intrinsically related to the general objective of REDD+ of reducing greenhouse gas emissions from the forestry sector, rather than to preventing the negative effects that an ineffective REDD+ implementation could have on national and international frameworks, relevant stakeholders and forest biodiversity.

The objective of REDD+ safeguard (f) is to ensure that the effective emission reductions from REDD+ are permanent and do not backtrack after being implemented. A reversal is produced when an emission reduction is registered but over time the reduction is cancelled by a later greenhouse gas emission. Reversals can be caused by variations in carbon stocks due to natural causes like earthquakes, forest fires, storms or pests, or by the effects of global warming. In addition, an increase in the prices of commodities in the market could make deforestation drivers like agriculture, cattle or timber more productive than protecting forests. The political instability that characterises the majority of developing countries could cause a risk of new governments abolishing forest protection PLRs and encourage the growth of deforestation and forest degradation activities. Finally, inefficient execution of forest governance policies could cause projects to be managed unsustainably or be cancelled due to implementation errors, and institutional corruption could trigger financial obstacles for REDD+ activities.

On the other hand, REDD+ safeguard (g) aims to guarantee that REDD+ activities actually reduce greenhouse gas emissions, avoiding the displacement and leakage of emission reductions. Leakages of greenhouse gas emission reductions can be caused when a REDD+ activity prevents forest emissions in one area but, as a consequence, it produces more emissions in another area. These types of leakages are generated when REDD+ activities are executed in limited areas without an effective regional or national action plan to protect the surrounding sectors.

Emission reduction leakages can also occur internationally, when deforestation or forest degradation activities are prevented in a particular country by

the implementation of a REDD+ strategy, and these activities are relocated to another country that does not have such stringent PLRs on the forestry sector.

#### *4.6.2 Implementing mechanisms for REDD+ safeguards (f) and (g)*

The protection of REDD+ safeguards (f) and (g) is necessary to ensure that the emission reductions from REDD+ activities are effective and long-lasting. There is, however, no international instrument designed to cope with the concepts that are developed in the two safeguards. As a consequence, it is important that the REDD+ safeguard development process defines the concepts of “risks of reversals” and “displacement of emissions” to give certainty to what the safeguards will aim to prevent.

The REDD+ strategy has to be nationally based in order to prevent emission reversals and displacements to other parts of the country. Moreover, a nationally based strategy will mean that emission reductions will be accounted for at a national level, so the risks of displacements and reversals will be diminished because the change in space and time of the emission reductions would be compensated for as long as the national emissions are being reduced.

Nevertheless, developing countries will still find it difficult to maintain national emission reductions over time if the rates of deforestation and forest degradation vary in different locations without control. Monitoring systems should be in place to identify displacements and reversals inside the country. The SIS should have indicators to measure the rates of deforestation and land-use change, as well as the reduction or increase of emissions in different areas of the country. Furthermore, activities leading to the displacement of emissions should be prohibited and punished.

Prevention of international displacement of emissions is more complicated. Although the reduction of international displacement of emissions should be a global effort, developing countries need to have available information about their REDD+ activities so the international community can make the necessary analyses to determine if there have been international displacements.

Another complicated issue is the prevention of emission reversals caused by the social, economic and political context of the country. Nevertheless, enabling the participation of minority groups in order for them to be part of the REDD+ activities, and reducing their social vulnerabilities, can be important for the social cohesion of the country. In addition, the indicators related to the transparency and efficiency of the REDD+ strategy implementation should allow the formulation of recommendations to the government for the enactment or modification of PLRs to build a stronger rule of law in the country.

## 5. CONCLUSION

The REDD+ scheme is a highly adaptive mechanism that acknowledges the cost-effectiveness of reducing emissions from deforestation and forest degradation. REDD+ allows developing countries to determine their own action plans according to their particular economic, social and political circumstances, and pays them for delivering results in emission reductions. REDD+ activities are focused on combating deforestation and forest degradation by strategies designed to conserve, enhance and sustainably manage the forestry sector. The fact that these interdependent activities are not clearly differentiated, because the scope of the scheme is broad and complex, has consequences in a variety of sectors in a developing country. REDD+ safeguards are a creative way of approaching the wide effects that REDD+ can have on legal frameworks, social groups and biological diversity.

In order to qualify for results-based payments under the REDD+ scheme developing countries have to report on how every REDD+ activity has addressed and protected each of the REDD+ safeguards. Full compliance with REDD+ safeguards is, thus, unavoidable. However, REDD+ safeguards have a complex nature, and protecting them requires exhaustive processes that include gathering and evaluating adequate information, identifying central issues of concern, devising inclusive and participatory strategies and creating multidisciplinary teams to design and implement REDD+ safeguard protection policies as well as monitoring them throughout the execution of REDD+ activities.

If a country wants its REDD+ national strategy to be approved, it has to develop a RSS through a public process involving different actors in its society. Goals, principles, relevant stakeholders, participatory mechanisms, risks, costs and benefits have to be determined, as well as a SIS with adequate indicators to measure compliance with each safeguard. This process can be led by the government or by civil society, which will have to assemble a multidisciplinary REDD+ safeguard team that will be in charge of the process.

The complexity of the safeguards and their interconnection make it important to analyse each safeguard implementation mechanism separately to identify the relationships between them. REDD+ safeguard (a) states there should be consistency between national forest programmes and international conventions. A process of identification and analysis of the legal instruments is necessary to effectively determine which ones are in force and then adapt the overall strategy to them. On the other hand, REDD+ safeguard (b) focuses on the transparency and efficiency of the REDD+ strategy. Compliance with it will require ethical principles, processes of access to public information, accountability, merit-based selections, participation mechanisms, and strict monitoring and reporting.

REDD+ safeguards (c) and (d) focus on the participation and acknowl-

edgement of the rights of the relevant stakeholders, especially indigenous peoples and local communities. The RSS has to provide a definition of indigenous peoples and local communities and their rights that will be protected. Participation rights have to be granted for every stakeholder that could be affected, and in this sense, it is important to identify in the RSS all the relevant stakeholders, as well as their risks and potential benefits. Special regard needs to be given to the participation of women in the REDD+ scheme and in the benefit-sharing system that is defined, because gender discrimination rates are high in developing countries.

REDD+ safeguard (e) centres on the protection of biological diversity and the prevention of natural forest conversion. In order to achieve this, the RSS needs to provide a concept for natural forests, and determine which activities will constitute a natural forest conversion. The promotion of this safeguard is paramount to the overall REDD+ scheme, because protecting natural forests means conserving the forest carbon stocks that have been sequestered by mature forests. Finally, while REDD+ safeguards (f) and (g) are not linked to the collateral effects that can be caused by a REDD+ strategy, they do require an effective RSS to be addressed. Emission reduction reversals and displacements cannot be avoided without transparent national governance and the full participation of the relevant stakeholders in the action plan. The protection of these safeguards needs a nationally based strategy that combines all the elements of a REDD+ strategy in a creative way.

REDD+ safeguards promote the strengthening of rules of law, the participation and social inclusion of minority groups like indigenous peoples, the transparency, accountability and decentralisation of government institutions, and the protection of the environment. Unfortunately, governments of developing countries tend to have weak rules of law and high corruption rates, and thus they benefit from systems with low levels of participation and social inclusion, and without transparency and accountability mechanisms to control them. In order for the REDD+ safeguards to be fully protected, political resolve will be necessary, because the RSS will undeniably be subjected to the national PLRs and the power and will of the government.

Although there is still work to be done, and progress in meeting REDD+ safeguard requirements has been slower than compliance with the rest of the elements of the REDD+ scheme, it is clear that the safeguards are not just a key element for the success of REDD+. They could also be crucial factors in the social, political and economic progress of developing countries, and this could possibly be the most significant reason to keep investing time and effort in reinforcing and promoting their protection in every REDD+ strategy. Difficult decisions and complex actions will have to be undertaken to adequately develop and implement the safeguards, but resilient efforts will undoubtedly produce benefits that will likely surpass the scope of the REDD+ scheme.