

Ademola Oluborode Jegede *Editor*

Implementing REDD+ in Africa

A Human Rights Perspective

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Ademola Oluborode Jegede
Ismail Mahomed Centre for Human and
Peoples' Rights, School of Law, Faculty of
Management Commerce and Law
University of Venda
Thohoyandou, South Africa

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*To the forest dependents and the custodians of
its beautiful values*

Foreword by Elisa Samuel Boerekamp

One of the interesting dilemmas in the climate change discourse is that interventions being implemented in response to the global challenge of climate change have the potential not only to aid human rights. They may also have significant adverse consequences for the human rights of local populations. Perhaps no intervention best reflects this situation than the implementation of REDD+—Reducing Emissions from Deforestation and forest Degradation, the sustainable management of forests, and the conservation and enhancement of forest carbon stocks. In Africa, the REDD + initiative is embraced by a number of states with the optimism that it will help with the global mission to address climate mitigation by reducing carbon emissions associated with forest depletion and promote conservation. More importantly, it is thought of by many as a way of incentivising local communities and indigenous populations for the services that they render in the context of forest management.

However, the implementation of the project has been a nightmare in some settings for local populations in Africa who are often displaced from the forests due to non-recognition of the customary tenure and sustainable use of local populations by the chief implementers of this project, namely, states and non-state actors. The lack of recognition of customary tenure of local populations in the context of REDD + reinforces the colonial environment protectionists' agenda on developing countries, with little regard for or understanding of what the environment (in this case forests) means for Indigenous Peoples and Local Populations. Ultimately, it poses a huge threat to notion of sustainable use of these population, a concept that is stressed in key environmental instruments including the Convention on Biodiversity (Articles 6 and 10); the United Nations Framework Convention on Climate Change (preamble); the Paris Agreement thereunder (preamble); and the 2030 Agenda for Sustainable Development. At the regional level in Africa, the approach is incompatible with the fundamental objective of Agenda 2063 and the African Convention on the Conservation of Nature and Natural Resources to foster the conservation and sustainable use of natural resources.

This edited volume by Professor Ademola Oluborode Jegede seeks to answer critical questions which the implementation of REDD+ is posing to human rights of

vulnerable populations in Africa. It consists insightful analysis of a range of topical themes relating to the implementation of REDD+ in Africa. Using human rights lens, the contributors engage with human rights obligations and REDD+ forest governance, specific challenges of vulnerable populations in the context of REDD+ in Africa, specific case study analysis of projects in REDD+ partner states, focusing on issues including gender, tenure security, carbon rights and stakeholder engagement in Africa. In some contexts, contributions interrogate pertinent domestic regulatory frameworks and emerging jurisprudence on the implementation of REDD+ and protection of rights in Africa.

Due to the dearth of scholarship from Africa on these issues, I have no hesitation that the book will appeal to readers including researchers, litigants, practitioners, adjudicatory bodies including courts, professionals, decision makers, negotiators, and academics interested in REDD+, climate change, forest law and human rights of vulnerable and local populations in Africa.

Center for Judicial and Legal Training of
Mozambique - Centro de Formação
Jurídica e Judiciária (CFJJ), Matola,
Mozambique

Elisa Samuel Boerekamp

Foreword by Prof Patricia Kameri-Mbote

Climate Change is one of the most significant challenges facing humanity—one facet of the triple planetary crisis. The negative impacts of climate change are more prevalent now than ever. Developing countries, including countries in Africa and Small Island Developing States, face relatively higher challenges in climate adaptation, despite being the most exposed. Climate change amplifies existing inequalities for countries, individuals, and communities, compounding economic and social inequalities. The most vulnerable, including women, children, Indigenous Peoples and local communities, as well as minority groups often carry the greater burden.

Countries have employed significant efforts to address the existential threat of climate change. Through the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, countries charted a path forward on climate action. Countries have also acted through other areas of law such as trade, security, ocean management, corporate, and human rights law. Climate action through law has been augmented by market-based and equity-based solutions. States and non-state actors have increasingly introduced innovations aimed at addressing climate change, including targeted sector innovation such as action to reduce emissions from deforestation and forest degradation (REDD+).

Through REDD+, countries also promote sustainable management, conservation, and incentivised forest carbon stocks in developing countries. REDD+ has delivered major contributions towards addressing climate change. Forests play multiple roles in societies, from being a source of food, to being a place of worship and centre of cultural heritage. Countries in Africa, with economies heavily reliant on natural resources, place high value on forests. Thus, implementation of REDD+ objectives must take into account the multiple values and uses associated with forests.

Communities, including those that rely on forests the most, are critical in addressing climate change. Climate action at local levels must promote the economic and social dimensions of sustainable development, alongside environmental objectives. How then should REDD+ programmes be implemented, in a way that is inclusive and just, while achieving the three dimensions of sustainable development? A human rights approach offers an important entry point in answering this question.

Research on climate change impacts in Africa, and publication of scholarly works, support climate action. This is why the United Nations Environment Programme (UNEP) welcomes the publication of this book. Providing a human rights perspective on implementing action to reduce emissions from deforestation and forest degradation in Africa delivers an important impetus in supporting climate action by and for African countries at global platforms.

This book emphasises the role of people, including Indigenous Peoples and local communities, at the centre of climate mitigation and adaptation. In its various chapters, authors explore different experiences in African countries in implementing the REDD+ framework, through a human rights approach. The authors navigate REDD+ implementation and human rights in general, REDD+ and gender, minority groups, sustainable development, and criminology. These diverse interpretations and proposals on human rights approaches illuminate experiences in these spaces, allowing policymakers to contextualise implementation. What emerges from these chapters is that a human rights approach captures issues that may remain overlooked or under-addressed through a focus solely on market, governance, or regulatory frameworks for forests management and preservation.

UNEP through the Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law, supports countries to strengthen, develop, and implement legal and institutional frameworks, and to build capacity to mitigate and adapt to climate change. UNEP also works to promote advancement of the universal right to a clean, healthy and sustainable environment at international, regional and national levels. In this context, I encourage public, judicial, and administrative officials, policymakers, national human rights institutions, and jurists to read this contextual African publication, to support climate action, and to protect human rights, including the right to environment, in Africa, and beyond.

Law Division, United Nations
Environmental Programme (UNEP),
Nairobi, Kenya

Patricia Kameri-Mbote

Preface

Africa contributes least to the global emissions underlying climate change. Yet with her forest resources, it carries huge responsibility to participate in global interventions on climate change. REDD+ is a mechanism developed by parties to the United Nations Framework Convention on Climate Change and affirmed under the Paris Agreement for its role to enhance sinks and reservoirs of greenhouse gases. It reflects prominently in the United Nations Agenda 2030 which urges urgent actions to tackle climate change (Goal No. 13) and sustainable protection and management of forests (Goal No. 15) as essential spotlights in the global drive towards development.

With a focus on REDD+, this peer reviewed book navigates the contours of human rights law and environmental law, twin fields, both alike in strengths and weaknesses. The edited book critically engages with peculiar issues that are of human rights significance to states and other actors in Africa as they implement the REDD+ project. The shortcomings and successes that are part of the experiences in the implementation of REDD+ or which can form part of it in Africa, have not been engaged and analysed from a human rights perspective. Consequently, this project is necessitated by the paucity of scholarship reflecting the human rights dimension on the implementation of REDD+ programme with focus on states that are partners in Africa.

The questions that the authors address in the edited volume include: what are states and non-state actors international human rights obligations in the context of REDD+ implementation in Africa; how have existing practices in states in Africa reinforce or negate human rights standards; what critical issues relating to rights exist for vulnerable groups such as women, Indigenous Peoples, forest dwellers in the implementation of REDD+ in Africa; from a human rights perspective, how are those issues being addressed; are there gaps in the existing laws, if so, how can such gaps be addressed from a comparative point of view; what role can different actors play in fostering changes; and from a human rights perspective, what best practices exist in the implementation of REDD+ in Africa?

It is hoped that this book will be of interest to readers both within and outside the law. Diplomats, negotiators, policymakers, activists, and students of international politics, in particular, may find it useful as it examines REDD+ in the context of international human rights law and domestic practices in Africa.

Thohoyandou, South Africa

Ademola Oluborode Jegede

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Editor and Contributors

About the Editor

Ademola Oluborode Jegede (PhD) is a Professor of Law and an NRF-rated researcher in the Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa. He holds degrees from Obafemi Awolowo University Ile-Ife (LLB), University of Ibadan (MPH), and the Centre for Human Rights, Faculty of Law, University of Pretoria (LLM & LLD Human Rights). He has been a research visitor to the Centre for International Environmental Law, USA, Human Rights Institute at Abo Akademi, Finland, and a fellow of Salzburg Global Seminar, Austria. His research principally focuses on the interface of climate change and biodiversity loss with human rights of vulnerable groups and general international human rights law. His writings on these themes include the co-edited books *Climate Change Justice and Human Rights: An African Perspective* (Pretoria University Law Press, 2022); *Human Rights and the Environment under African Union Law* (Palgrave, 2020); and the book: *The Climate Change Regulatory Framework and Indigenous Peoples' Lands in Africa: Human Rights Implications* (Pretoria University Law Press, 2016). He is the Initiator and the Convening Editor of the African Journal of Climate Law and Justice (AJCLJ), and an External Expert Member to the African Committee of Experts on the Rights and Welfare of the Child Working Group on Children Rights and Climate Change.

Contributors

Clement Agyemang Centre for Human Rights, University of Pretoria, Pretoria, South Africa

Jean-Claude N. Ashukem Global Environmental Law Centre (GELC), University of the Western Cape, Bellville, South Africa

Olaoluwatofunmi Tabitha Bamgbose Department of Public Law, Faculty of Law, University of Lagos, Lagos, Nigeria

Mobolaji Precious Ezekiel Department of Jurisprudence and International Law, Faculty of Law, University of Benin, Benin City, Edo State, Nigeria

Igor Bidossessi Guedegbe Faculty of Law and Political Sciences (FADESP), University of Abomey-Calavi, Abomey-Calavi, Republic of Benin

Ademola Oluborode Jegede Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa

Beng Simon Keluh North West University, Potchefstroom Campus, Potchefstroom, South Africa

Peter Komiti Brunel University, Uxbridge, London, UK

Lassana Koné Forest Peoples Programme, Kinshasa, Democratic Republic of Congo

Landry Bidossessi Bonou Faculty of Law and Political Sciences (FADESP), University of Abomey-Calavi, Abomey-Calavi, Republic of Benin

Almeida Zacarias Machava Centre of Studies on Regional Integration and SADC Law of the University Eduardo Mondlane, Maputo, Mozambique

Justin Monyiping Ater Malok The University of Juba, Juba, South Sudan

Ngcimezile Mbano-Mweso Faculty of Law, University of Malawi, Zomba, Malawi

Onthatile Olerile Moeti University of Glasgow, Glasgow, Scotland, UK

Goemeone E. J. Mogomotsi The Okavango Research Institute, University of Botswana, Gaborone, Botswana

Patricia Kefilwe Mogomotsi The Department of Economics, Faculty of Social Science, University of Botswana, Gaborone, Botswana

Mansha Mohee The Governance and Shareholder Relations Section of the Office of the Secretary General and General Secretariat of the African Development Bank Group, Abidjan, Côte d'Ivoire

Untalimile Crystal Mokoena Department of Public Law, University of Venda, Thohoyandou, South Africa

Malayna Raftopoulos University of Liverpool, Liverpool, UK

Lagua Clare Ukuni Faculty of Law, Islamic University in Uganda, Mbale, Uganda

Part I
Introduction

REDD+ and Human Rights: Sketching Historical and Conceptual Contours



Ademola Oluborode Jegede

Abbreviations

| | |
|---------|--|
| BAP | Bali Plan of Action |
| CESCR | Committee on the Economic, Social and Cultural Rights |
| COP | Conference of Parties |
| CRN | Coalition for Rainforest Nations |
| RED | Reducing Emissions from Deforestation |
| REDD | Reducing Emissions from Deforestation and Forest Degradation |
| REDD+ | Reducing emissions from deforestation and forest degradation, and fostering conservation, sustainable management of forests, and enhancement of forest carbon stocks |
| SBSTA | Subsidiary Body for Scientific and Technological Advice |
| SID | Small Island Developing States |
| UNFCCC | United Nations Framework Convention on Climate Change |
| UN-REDD | United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries |

1 Introduction

Reducing emissions from deforestation and forest degradation, and fostering conservation, sustainable management of forests, and enhancement of forest carbon stocks (REDD+) is an important response to climate change in Africa. Forests cover

A. O. Jegede (✉)

Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa
e-mail: ademola.jegede@univen.ac.za

675 million hectares forming 23% of land area in Africa.¹ Humid forests are especially significant in West Africa, Central Africa, while the Congo Basin is the second largest forest in the world. Equally, dry forests are significant in the Sahel, Southeast and North Africa and represent 42% of tropical forest area in the continent.² Forests are crucial to the livelihood of local populations. More than half of the continent's population rely directly or indirectly on forests for their livelihoods in Africa.³ However, Africa has been the continent experiencing the highest rate of deforestation, with 0.49% per year representing some 3.4 million hectares lost annually.⁴ In climate change discussions and Africa, as a response to climate change, REDD+ consists of five different activities: (1) reducing deforestation, (2) reducing degradation, (3) promotion of conservation of forest carbon stocks, (4) incentivising sustainable management of forests, and (5) the enhancement of forests as holders of stocks of carbon in developing countries.⁵ Countries in Africa, namely Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of the Congo Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Guinea Bissau, Kenya Liberia, Madagascar, Malawi, Morocco, Nigeria, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe have been partners in different stages of United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD).⁶ REDD+ has evolved in the negotiation of international climate regulatory framework with different relevance and gradations.

2 REDD+ and International Climate Regulatory Framework

The evolution of REDD+ is borne out of the necessity that forests play important role as carbon sinks and reservoirs in the climate change agenda. Forests fall within the definition as both a 'source' and 'sink' of greenhouse gases, not least because, as science has shown, the felling of forests for whatever purposes releases carbon dioxide into the atmosphere and this situation contributes approximately 17–20%

¹World Bank, 'Forests, Trees, and Woodlands in Africa' https://www.profor.info/sites/profor.info/files/Africa-Forests-Trees-ActionPlan_0_0.pdf.

²Siyum (2020), pp. 1–16.

³African Union (2020); Somorin (2010), p. 103.

⁴AFDB (2016).

⁵Centre for International Environmental Law (2014), p. 5; UNFCCC 'Report of the Conference of the Parties on its 13th session', held in Bali from 3–15 December 2007, Addendum, Part Two, Action Taken by the Conference of Parties at its 13th session (2008) FCCC/CP/2007/6/Add.1; REDD may also offer to forest communities opportunity for poverty alleviation and thereby having some adaptation utility, see Kowero (2010), p. 23.

⁶'Partner Countries' <https://www.un-redd.org/our-work/partners-countries?f%5B0%5D=regions%3A940>.

of total greenhouse gas emissions.⁷ The protection of forests and their nurturing also serve as a ‘sink’ in that it can remove carbon dioxide from the atmosphere.⁸ Besides, forests are a significant storehouse of biodiversity.⁹ Forests provide services for Indigenous Peoples and local communities who rely on them for services, including food, shelter, clean water and climate prediction.¹⁰ Thus, it is not a surprise that scholarship show that it is difficult to meet the commitment to limit global warming without encouraging developing countries to keep their forests ‘standing’.¹¹ Particularly, economists view that reducing forest loss offers a low option in terms of cost for reducing global climate change.¹² Hence, since it was proposed as a forest-based mitigation strategy for a post-2012 Kyoto climate regime, REDD+ seeks to operate as an incentive for the developing countries to protect and better manage their forest resources, by creating and recognising that standing forests have a financial value.¹³ This financial value which will arise from the carbon stored by forests is expected to evolve over time and, when traded, could attract similar or greater profits than the profits from logging, monoculture plantations, and agriculture which are drivers of deforestation.¹⁴

To attain its current status in international climate change regulatory framework, REDD+ evolved from two previous forms: Reducing Emissions from Deforestation (RED) and Reducing Emissions from Deforestation and Forest Degradation (REDD).¹⁵ It has been engaged in negotiation debates of a range of Conference of Parties (COP) meetings starting from when RED was proposed by Costa Rica and Papua New Guinea on behalf of the Coalition for Rainforest Nations (CRN) at the 2005 COP 11 in Montreal.¹⁶ Subsequently, the countries that were mostly affected by forest degradation and not deforestation, contended the need for RED to address degradation. Leading this point were the countries in the Congo Basin which convinced others that it was technologically possible to account for carbon credits from reducing forest degradation.¹⁷ Consequently, the focus in international climate change discourse shifted from RED to ‘Reducing Emissions from Deforestation and

⁷ Van der Werf et al. (2009), p. 737.

⁸ Van der Werf et al. (2009), p. 737.

⁹ Wilson (2006).

¹⁰ Brunner et al. (2010), p. 2.

¹¹ Den Besten et al. (2014), p. 40.

¹² Eliasch (2008).

¹³ Corbera and Schroeder (2011), p. 89.

¹⁴ Brunner et al. (2010), p. 5.

¹⁵ Den Besten et al. (2014), p. 40; Humphreys (2008), p. 433.

¹⁶ Other participating countries working under the CRN include: Bangladesh, Central African Republic, Cameroon, Chile, Congo, Colombia, Costa Rica, DRC, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Ghana, Guatemala, Honduras, Indonesia, Kenya, Lesotho, Malaysia, Nicaragua, Nigeria, Panama, Papua New Guinea, Paraguay, Peru, Samoa, Solomon Islands, Thailand, Uruguay, Uganda, and Vanuatu, see Brunner et al. (2010), p. 5; Constance et al. (2012), p. 64.

¹⁷ Brunner et al. (2010), p. 5; Constance et al. (2012), p. 64.

Forest Degradation’, or REDD, with ‘forest degradation’ indicating the additional ‘D’. This change was required to tackle the problems of overgrazing and the degrading effects of deforestation which are peculiar to the forests system of developing countries.¹⁸ The conceptual shift to REDD was officially recognised at the Subsidiary Body for Scientific and Technological Advice (SBSTA) in 2006.¹⁹ Later, there was consensus on the need to extend the scope of REDD to cover three elements, namely conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries, which became the ‘+’ in REDD. It was officially recognised in 2007, at COP 13 in Bali, which adopted the Bali Plan of Action (BAP).²⁰ The Copenhagen Accord, which is the singular outcome of the event at COP 15, 2009, made progress in relation to issues, including its scope, guiding principles and safeguards of REDD+. Signed by 114 nations amidst much disagreement regarding other matters on the agenda, the Copenhagen Accord sets the stage for REDD+ as a global initiative to decelerate the alarming rate of deforestation.²¹

Following negotiations, the contribution of COP 16 in 2010 at Cancun to the development of REDD+, is reflected in the Cancun Agreements: ‘Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ (Cancun Agreements).²² Reinstating the elements of REDD+, paragraph 70 of Cancun Agreements encourages parties from developing countries to contribute to mitigation actions in the forest sector by undertaking five activities, namely (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; (e) Enhancement of forest carbon stocks. Importantly, the Cancun Agreements affirm, in implementing the activities mentioned under paragraph 70, that developing country parties should promote the safeguards referred to in paragraph 2 of appendix 1 of the agreement.²³

At the Durban Climate Change Conference, COP 17, in 2011, the COP addressed REDD+ in key decisions. For instance, Decision 2/CP.17 discussed financing of REDD+ activities and advised that the implementation of REDD+ should be

¹⁸Den Besten et al. (2014), p. 43; Brunner et al. (2010), p. 5.

¹⁹UNFCCC SBSTA ‘Reducing Emissions from Deforestation in developing countries: Approaches to Stimulate Action’ (2006) FCCC/SBSTA/2006/MISC.5.

²⁰UNFCCC CP ‘Bali Action Plan’ Decision 1/CP.13, FCCC/CP/2007/6/Add.1.

²¹UNFCCC CP ‘Copenhagen Accord’ Decision 2/CP.15, FCCC/CP/2009/11/Add.1.

²²UNFCCC CP ‘The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ Decision 1/CP.16, FCCC/CP/2010/7/Add.1 (Decision 1/CP.16) paras 2(c) and (d).

²³UNFCCC CP ‘The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ Decision 1/CP.16, FCCC/CP/2010/7/Add.1 (Decision 1/CP.16) para 69.

consistent with the safeguards in appendix I of the Cancun Agreements.²⁴ The decision also considered that ‘appropriate market-based approaches’ for results-based actions,²⁵ and noted that non-market-based approaches, such as joint mitigation and adaptation approaches, could be developed.²⁶ In another decision, titled ‘Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16’,²⁷ the COP affirms that systems for providing information on safeguards should be transparent and flexible and requires that the safeguards are to be respected.²⁸

At COP 18 in 2012, decisions were adopted regarding policy approaches and positive incentives on REDD+. Particularly, section C of Decision 1/CP.18 deals with finance for REDD+ activities.²⁹ Notably in 2013, decisions reached at COP 19 highlighted that the information with respect to compliance with safeguards should be done voluntarily, and be possibly included in national communication or other communication channels including the UNFCCC web platform.³⁰ Other decisions relate to results-based finance for REDD+,³¹ mitigation actions in the forest sector,³² forests monitoring systems,³³ and Development of alternative policy approaches, including joint mitigation and adaptation approaches for the integral and sustainable management of forests were part of the focus at COP 21.³⁴ Also, there

²⁴UNFCCC CP ‘Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ Decision 2/CP.17, FCCC/CP/2011/9/Add.1, para 63 (Decision 2/CP.17).

²⁵Decision 2/CP.17, para 66.

²⁶Decision 2/CP.17, para 67.

²⁷UNFCCC CP ‘Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16’ Decision 12/CP.17, FCCC/CP/2011/9/Add.2 (Decision 12/CP.17).

²⁸Decision 12/CP.17, paras 2–5.

²⁹UNFCCC CP ‘Agreed outcome pursuant to the Bali Action Plan’ Decision 1/CP.18, FCCC/CP/2012/8/Add.1.

³⁰UNFCCC CP ‘The timing and the frequency of presentations of the summary of information on how all the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected’ Decision 12/CP.19, FCCC/CP/2013/10/Add.1 (Decision 12/CP.19) paras 3 and 4.

³¹UNFCCC CP ‘Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70’, FCCC/CP/2013/10/Add.1 Decision 9/CP.19.

³²UNFCCC CP ‘Coordination of support for the implementation of activities in relation to mitigation actions in the forest sector by developing countries, including institutional arrangement’ FCCC/CP/2013/10/Add.1 Decision 10/CP.19.

³³UNFCCC CP ‘Modalities for national forest monitoring systems’ FCCC/CP/2013/10/Add.1 Decision 11/CP.19.

³⁴UNFCCC CP ‘Alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests’ FCCC/CP/2015/10/Add.3 Decision 16/CP.21.

was emphasis on the need to ensure transparency, consistency, comprehensiveness and effectiveness in the implementation of the REDD+ safeguards.³⁵ At COP 22, a number of decisions were adopted to integrate forests-related considerations into climate finance, where appropriate.³⁶ It resurfaced substantially at COP 26 in Glasgow, where states pledged to halt and reverse forest loss and land degradation by 2030, and agreed on the urgency of ensuring the integrity of all ecosystems, including the forests.³⁷ At COP 27 held at Sharm El Sheikh in Egypt, states were urged to ‘collectively aim to slow, halt and reverse forest cover and carbon loss’ and ‘consider, as appropriate, nature-based solutions or ecosystem based approach’.³⁸ At that forum, it was announced that of the \$12 billion pledged to protect, restore and sustainably manage forests over five years (2021–2026), \$2.67 billion was already spent.³⁹ Also, the Forests People Climate collaborative was established which committed \$400 million of philanthropic funding to forests.⁴⁰ The foregoing development signifies that REDD+ activities are more than a nature based solution to climate change, the activities stemming from the initiative have potential implications for the livelihood of populations who depend on forests.

In the discourse on global climate change response measures, the significance of REDD+ is further reflected and boosted by key provisions in the pillar instruments which constitute the international climate change regulatory framework. The provisions which carve the primacy of forests in climate change mitigation and adaptation are evident in the Article 4 of the United Nations Framework Convention on Climate Change (UNFCCC) which enjoins parties to take measures to address human-induced emissions by sources and removals by sinks of all greenhouse gases.⁴¹ The UNFCCC further defines ‘source’ as ‘any process or activity that releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere’. It defines a ‘sink’ as ‘any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere’.⁴² These provisions of UNFCCC are reinforced by the Kyoto Protocol which requires each of the parties listed under Annex 1 to implement policies and measures aimed at protecting sinks and enhancing reservoirs of greenhouse gases not

³⁵ UNFCCC CP ‘Further guidance on ensuring transparency, consistency, comprehensiveness and effectiveness when informing on how all the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected’ FCCC/CP/2015/10/Add.3 Decision 17/CP.21.

³⁶ See for instances, UNFCCC CP ‘Report of the Standing Committee on Finance’ FCCC/CP/2016/10/Add.1 Decision 8/CP.22; UNFCCC CP ‘Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund’ FCCC/CP/2016/10/Add.1, Decision 10/CP.22.

³⁷ UNFCCC CP ‘Glasgow Climate Pact’ FCCC/PA/CMA/2021/10/Add.1 Decision 1/CMA.3; COP26: Together for our planet <https://www.un.org/en/climatechange/cop26>.

³⁸ UNFCCC CP ‘Sharm el-Sheikh Implementation Plan’ FCCC/CP/2022/10/Add.1 Decision 1/CP.27 paras 50 and 51.

³⁹ World Resources Institute (2022).

⁴⁰ Alayza (2022).

⁴¹ UNFCCC, Art. 4.

⁴² UNFCCC, Art. 1(8) and (9).

prescribed under the Montreal Protocol, ‘taking into account its commitments under relevant international environmental agreements’.⁴³ Also, forests are recognised in Article 5(1) of the Paris Agreement, which requires parties to ‘take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases. . . including forests’.

3 Relevance of Human Rights Approach to REDD+

REDD+ is more than an environmental initiative for the climate system; it is an initiative of human rights importance to landowners, Indigenous Peoples, local communities, as well as affected individuals who may hold rights that could be impacted by its policies and legal framework at the domestic level. Hence, the implementation of REDD+ in African states that are united in their common quest for economic development is a delicate experiment. It involves the balancing of multiple objectives including resource exploitation, land management, agriculture, food and fuel production, ecosystem services, biodiversity, and more importantly, the protection of peoples’ livelihoods, amenities, and sacred sites of forest dependent populations. An effectively implemented REDD+ initiative could positively impact the livelihoods of communities whose livelihood are dependent on forests. Conversely, an ineffectively implemented REDD+ could negatively impact on rights to which these communities are entitled under national and international human rights law. Issues around governance, tenure security, gender equality and stakeholder engagement which are core to the successful implementation of the REDD+ programme are no less significant to the rights of populations likely to be affected by the programme. Hence, choices made in balancing multiple objectives associated with the implementation of REDD+ may have both negative and positive implications on states as duty bearers, as well as groups and individuals as rights holders in Africa.

States, as duty bearers of rights have responsibility to ensure the implementation of REDD+ in a manner that aids and not hinder human rights in Africa. The obligation to comply with internationally recognised human rights requires three levels of duty from states: the duty to respect, protect and fulfil human rights. The conceptualisation of these obligations owes its introduction and current influence on international human rights law to the pioneering work of Shue and Eide.⁴⁴ The tripartite obligations have since gained international traction, in the broader area of economic, social and cultural rights,⁴⁵ where the Committee on Economic, Social and Cultural Rights (CESCR) emphasises that the protection of ‘all human rights,

⁴³ Kyoto Protocol, Art. 2(1)(a)(ii).

⁴⁴ De Schutter (2013), p. 5; Shue (1980), p. 52.

⁴⁵ General Comment No. 12: The right to adequate food, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 20th Sess., 14–20, U.N. Doc. E/C.12/1999/5 (1999) (United Nations General Comment

imposes three types or levels of obligations on state parties: the obligations to respect, protect and fulfil'.⁴⁶ Also, it has been shown that these layers of obligation apply to civil and political rights.⁴⁷ The obligation to respect signifies that states must refrain from interfering with or hindering the enjoyment of human rights. The obligation to protect demands that individual and groups should be protected from human rights abuses, especially by non-state actors. The obligation to fulfil requires states to take positive action to facilitate the enjoyment of basic human rights.⁴⁸

The African human rights system, as defined by a set of main human rights instruments that are admitted by states as binding and the quasi-judicial and judicial treaty monitoring bodies human rights instruments and monitoring mechanisms,⁴⁹ offers four layers of obligations. In *Ogoniland* case,⁵⁰ the African Commission on Human and Peoples' Rights (the Commission), a quasi-judicial monitoring body for the African Charter on Human and Peoples Rights (African Charter),⁵¹ in the context of environmental claims over the degradation of the land of Ogoni people, developed jurisprudence on a four-layer of obligation in respect of the rights, civil, political and socio-economic rights, guaranteed under the African Charter.⁵² These are obligation to 'respect', 'protect', 'promote' and 'fulfil'.⁵³ According to the Commission, the obligation to respect entails that states should not interfere in the enjoyment of human rights. Also, it signifies that there should be respect on the part of the state for 'right-holders, their freedoms, autonomy, resources, and liberty of their action'.⁵⁴ In relation to the situation of a collective group, the obligation to respect entails that resources collectively belonging to this group should be respected.⁵⁵ In discussing the obligation to protect, the Commission enjoins the state to adopt measures, including legislation, and provide effective remedies in protection of right holders 'against political, economic and social interferences'. It further requires the regulation of non-state actors to ensure that their operation does not hinder the realisation of rights.⁵⁶ Corresponding to the obligation to protect human rights, according to the

No. 12); General Comment No. 13: The right to education, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 21st Sess., 46–48 (1999) (United Nations General Comment No. 13).

⁴⁶ Committee on Economic, Social and Cultural Rights Report on the 22nd, 23rd and 24th Sessions, E/2001/22E/C.12/2000/21 para 33.

⁴⁷ Nowak (2005), pp. 37–41.

⁴⁸ De Schutter (2013).

⁴⁹ Mutua (2000).

⁵⁰ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR) (*Ogoniland* case).

⁵¹ African (Banjul) Charter on Human and Peoples' Rights, adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on 21 October 1986.

⁵² Committee on Economic, Social and Cultural Rights Report on the 22nd, 23rd and 24th Sessions, E/2001/22E/C.12/2000.

⁵³ *Ogoniland* case para 45.

⁵⁴ *Ogoniland* case para 45.

⁵⁵ *Ogoniland* case para 45.

⁵⁶ *Ogoniland* case para 46.

Commission, is the obligation to promote the enjoyment of all human rights,⁵⁷ which entails that the state should ensure ‘that individuals are able to exercise their rights, for example, by promoting tolerance, raising awareness, and even building infrastructures’.⁵⁸ The obligation to fulfil, according to the Commission, requires the state to mobilise ‘its machinery towards the actual realisation of the rights’.⁵⁹

In the context of implementing REDD+ in Africa, arguably, the failure by a state to formulate appropriate legislation for the protection of populations whose livelihood depends on forests is incompatible with the levels of duties imposed on states by human rights law. It offends the obligation to respect because it signifies that states in Africa are involved in REDD+ without an appropriate legal basis to address its negative consequences, such as the loss of land tenure, displacement, lack of respect for gender and other vulnerability status, denial of benefits from carbon storage. Furthermore, it is in breach of the obligation to protect because an ineffectively implemented REDD+ reflects that states are unable to regulate different actors involved in the implementation of REDD+ including the non-state actors. This means that the negative consequences of the involvement of non-state actors may remain largely unchecked. The failure by states to effectively implement REDD+ is inconsistent with the obligation of states in Africa to promote the enjoyment of rights. Contrary to the promotion of a culture of tolerance and awareness—raising that the obligation entails, a weak implementation signifies that there remains a lack of tolerance for diversity, for instance, the culture and lifestyle of local and forest dependent communities in the context of responding to climate change. It sends a wrong signal to non-state actors and international organisations involved in its implementation, demonstrating that respect for the identity and rights of these communities is not a priority in Africa.

It is difficult to imagine that a weak legal framework for the REDD+ may support the mobilisation of the ‘machinery towards the actual realisation of the rights’ of populations whose livelihood is dependent on forests, as required by the obligation of the state to fulfil human rights.⁶⁰ For instance, a range of human rights as shown later in the book will be undermined where implementation of REDD+ leads to displacement, exclusion from carbon payments, discrimination or other abuses at the national level. Such developments will hinder the obligation of states to provide these peoples with the necessary access to survival amenities. This edited volume is a collection of critical and reflective analysis on the implementation of REDD+ in Africa with a particular focus on its implications for human rights of those populations whose livelihood depends on forests.

⁵⁷ *Ogoniland* case para 46.

⁵⁸ *Ogoniland* case para 46.

⁵⁹ *Ogoniland* case para 47.

⁶⁰ *Ogoniland* case para 47.

4 Key Themes

The edited book consists of four parts and sixteen chapters dealing with cross-cutting issues in the implementation of REDD+ in Africa.

Part I: REDD+ and Human Rights: Sketching Historical and Conceptual Contours

The introductory chapter which foregrounds the edited volume sketches the evolution of REDD+ and its implications for state obligations under human rights law. In doing so, it offers a conceptual basis for specific issues in Africa addressed in the edited volume. REDD+ is a project of human rights importance to landowners, Indigenous Peoples, local communities, as well as affected individuals who may hold rights that could be adversely impacted by weak legal framework and practices at the domestic level. The tripartite obligations to respect, protect and fulfil rights are established in human rights law.

Part II: REDD+ and Protection of Human Rights

The five chapters in this part analyse normative and practical issues of human rights significance which typify some of the topical emerging outcomes in the implementation of REDD+ in selected states in Africa.

In chapter 'Forest-Dependent Communities and a Rights-Based Approach in the Implementation of REDD+ in Nigeria', Ezekiel and Komiti discuss the nexus of global inflation, a pandemic-ruined economy, and high demand for cheap food and household energy with high rate of deforestation in Nigeria. While admitting that REDD+ aims at responding to forests depletion and address climate change, they rely on the importance of food and energy consumption rights to explain the implications of REDD+ projects on human rights of local populations. The authors recommend that for REDD+ projects to be a successful climate solution as projected, the need for a human rights approach in their implementation in Nigeria is a *sine qua non*.

In chapter 'Land Rights of Indigenous Peoples and Local Communities in the REDD+ of the Republic of Congo', Kone analyses the impact of land tenure insecurity on customary rights, non-compliance with international human rights commitments and examine the vulnerability of Indigenous Peoples and local communities in the context of REDD+ in the Republic of Congo. The chapter recommends that REDD+ implementation phase should apply a systematic human rights approach to climate change, which means to recognise and protect collective and customary land tenure systems and adopt strong enforceable safeguards for Indigenous Peoples and other land-dependent communities. A mechanism of direct representation should be established during the consultations with communities on ground to supplement the action of national and local platforms.

In chapter 'Customary Land Rights of Local Communities and the Implementation of REDD+ in Cameroon', Ashukem and Keluh argue that Cameroon's legal framework on REDD+ does not protect the socio-economic rights of local communities nor does it ensure sustainability. The legal framework of Cameroon on REDD+ is assessed to determine its viability for the protection of local communities'

human rights during REDD+ projects. Based on the assessment, the chapter concludes that Cameroon's legal framework has failed to protect the rights and interests of local communities and needs to be reviewed. It would be disingenuous not to acknowledge the remarkable symbiotic relationship between forest tenure and the rights of forestry communities in the context of REDD+ in Cameroon.

In chapter 'Village Cores, Rights, and the Implementation of REDD+ in Benin', Landry and Guedegbe engage with village cores, representing a part of the population that rely on the fruits and products of the forest for their survival in Benin. The authors argue that measures by the government against deforestation and degradation do infringe sometimes on the fundamental rights of the villagers, including the right to property. They recommend the recognition of the rights of village cores in the implementation of REDD+. In addition, authors view that while a landscape approach at the policy and field intervention levels may limit the impact on the integrity of forests and strengthen the resilience of ecosystems, it may impact on the standard of living of the village cores.

In chapter 'REDDs+ and the Right of Local Populations to Carbon Payments in Africa', Jegede and Ashukem interrogate whether carbon payments are linked to human rights, and if so, what evidence exists on how payments may respond to the plight of local communities and therefor aid the realisation of their rights in the context of REDD+ in Africa. Drawing from an array of substantive and procedural rights, their chapter demonstrates the link between carbon payments and human rights. It shows the weaknesses in the legal environment on carbon payments and explores practices that have worked for ensuring carbon payments to local communities in the implementation of REDD+ in Africa. The authors conclude that carbon payments present both challenges and opportunities for Africa, and it is the duty and responsibilities of African States to address these challenges to enable all relevant stakeholders, including local population and forest dependent communities benefit from carbon payments in Africa.

Part III: Gender, Decision-Making and REDD+

The implementation of REDD+ in Africa states should neither be gender insensitive nor neutral. The importance of gender-responsive climate policies and equitable participation of women and men in the UNFCCC process and provisions were the subject of a COP decision in 2016.⁶¹ Hence, part three interrogates gender, contested relevance of existing legal framework and decision-making related features of REDD+.

In chapter 'Gender and REDD+ Governance in Malawi: Enhancing Women's Right to Participation', Mbano-Mweso focuses on Malawi and establishes that prevalent gender inequality undermines women's opportunity and ability to influence policy decisions on forest management and the implementation of activities under the REDD+ process. The author investigates gender and governance of the REDD+ project in Malawi with a focus on the legal guarantees and platforms of participation for women. Mbano-Mweso further demonstrates. how the

⁶¹UNFCCC CP 'Gender and climate change' FCCC/CP/2016/10/Add.2 Decision 21/CP.22.

implementation of REDD+ may enhance agency, legitimacy, and equity through women's right to participation. Promoting genuine participation, as the chapter shows, will require a necessary institutional frame that links the different relevant local government institutions and central government with clear mechanisms for accountability.

In chapter 'Gender and the Implementation of REDD+ in Uganda', Ukuni discusses the relationship between climate change and human rights, affirming that climate change affects women and men differently in Uganda. The opportunity provided by REDD+, as the author argues, is useful in addressing the deficit of gender consideration which is noticeable in the implementation of REDD+ in Uganda. With a specific reference to the general lack of women to registered land titles, the author reasons that deliberate and proactive measures must be put in place to ensure that women benefit from the promises of REDD+ in Uganda.

In chapter 'The Role of the Parliament in the Implementation of REDD+ in Ghana', Agyemang notes that Ghana started implementing the REDD+ initiative since 2008 but with little success due to challenges including the non-recognition of the right of local populations to carbon rights and incentives or benefits for supporting the REDD+ initiative as well as weak enforcement of forest laws. Against this background, the author argues that through its legislative and oversight powers, the Parliament can help overcome the above challenges for a successful implementation of the REDD+ programme in Ghana.

In chapter 'REDD+ and the Rights and Forest Crimes Mix in Nigeria', Bamgbose and Jegede demonstrate that while the implementation of REDD+ is not without promises, the human rights of local communities whose livelihood depends on forests is a main concern and is exacerbated by crimes that are regularly associated with forests. Their chapter engages with the mix of rights and forest crimes as they may interface with the implementation of REDD+ and the rights of forest dependent populations in Nigeria. The chapter concludes that except laws that safeguard forest territories are effectively enforced to guarantee rights, it will be difficult to harness the expected outcomes in the implementation of REDD+ in Nigeria.

In chapter 'Legal and Institutional Frameworks on the Implementation of REDD+ in South Sudan', Monying finds that South Sudan lacks comprehensive legal framework for implementing REDD+. The chapter contends that institutional and policy gaps also exist in the implementation of REDD+. On a note of optimism, Monying demonstrates that regardless of the impeding factors, there are possibilities that may be explored for the realisation of REDD+ aspirations in South Sudan.

Part IV: Sustainable Development, REDD+ and New Grounds

REDD+ is a development issue for states already in the process of implementation or should potentially be involved in its implementation in Africa. Contributions in this part explain what REDD+ signifies in the context of sustainable development in Africa.

In chapter 'REDD+ and Agenda 2030 in Africa: A Green Criminology and Rights-Based Perspective', Raftopoulos examines the linkages and synergies between REDD+ and the SDGs, which through a range of economic, social, and environmental goals purport to provide a roadmap for sustainable development.

Adopting a green criminological perspective which allows scholars to analyse discourses related to environmental harm, laws and regulations within a model of environmental justice, the author discusses the opportunities and challenges African states face in advancing a rights-based approach to REDD+ alongside the 2030 Agenda and fulfilling their human rights obligations.

In chapter 'Leveraging SFM-REDD+ Synergies Towards Sustainable Development in African Small Island Developing States', Mohee submits that the management of natural resources, particularly forests, are salient features of the sustainable development agenda of Small Island Developing States (SIDS). While arguing that REDD+, an incentive-based climate-related forestry mechanism with an emphasis on the promotion of sustainable forest management (SFM) offers a potent opportunity for boosting drivers of development in SIDS, the author indicates that African SIDS have not adequately engaged in REDD+. Consequently, the chapter explores the scope for leveraging SFM instruments and mechanisms for enhancing REDD+ readiness and implementation in African SIDS and concludes that enhanced REDD+ readiness and implementation can be achieved by strengthening partnerships with SIDS-led organisations.

In chapter 'Balancing Interests: The Right to Development and the National REDD+ Strategy in Mozambique', Machava explores the contestation around the right to development in the context of the implementation of REDD+ initiative in Mozambique. The Mozambican government approved the national REDD+ Strategy with developmental objectives, which can be seen as reflecting the pursuit of the right to development. Thus, the author assesses how the approach mediates the tension between environmental protection and the right to development of the local communities, where the REDD+ projects are implemented. The conclusion of the chapter is that the local communities' participation in the REDD+ projects is an important window for the realisation of the right to development in Mozambique.

In chapter 'A Case for the Participation in the REDD+ to Address the Natural Resources Use and Governance in Botswana', Moeti, Mogomotsi and Mogomotsi analyse the risks and trade-offs between natural resources, climate change and human rights using the case study of the San in Botswana. Making a case for the participation of Botswana in REDD+, the authors argue that participation, particularly of Indigenous Peoples in the programme may address the climate change risks that exacerbate vulnerabilities and inequities which characterise current natural resource governance regimes in Botswana. The involvement of Indigenous Peoples may aid synergies, cost-effectiveness, and effective management approaches that may serve as a springboard for the San to issue tailor made demands to their government.

In chapter 'Towards Implementing REDD+ in South Africa: A Human Rights Perspective', Mokoena submits that Forests offer a livelihood to the world's significant population and South Africa is no exception to these realities. Yet, South Africa is not yet involved in the REDD+ initiative. Considering its involvement in developing a National Strategic Framework for the project and the White Paper on climate change which demonstrates its support for REDD+, the author interrogates and

analyses how REDD+ may advance or impede on human rights of the people depending on forests in South Africa.

5 Conclusion

Overall, due to the development associated with climate change related interventions, the implementation of REDD+ has received remarkable attention in Africa in the last decade. The extent to which this attention has translated to the protection of human rights of local populations whose livelihood depends on forests is disputed. Nor is the link of the implementation of REDD+ to development well clarified. Except for isolated incidents, the implementation of REDD+ continues to largely follow the traditional environmental law regime of governance which is state driven. As evident from the contributions in this edited volume, states retain clear dominance and or control over land tenure system, participation, incentive payments and general legal framework related to the implementation of REDD+. This approach does not always work out positively for the protection and fulfillment of the rights of local populations. Yet, states also bear the responsibility to respect, protect, fulfil and promote rights of populations in the context of REDD+. The general theme which resonates all through the contributions in this edited book is that normative and institutional measures and changes are inevitable for a durable protection of human rights in the context of implementing REDD+ in Africa.

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Ademola Oluborode Jegede (PhD) is Professor of Law and an NRF-rated researcher in the Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa. He holds degrees from Obafemi Awolowo University Ile-Ife (LLB), University of Ibadan (MPH), and the Centre for Human Rights, Faculty of Law, University of Pretoria (LLM & LLD Human Rights). He has been a research visitor to the Centre for International Environmental Law, USA, Human Rights Institute at Abo Akademi, Finland, and he is a fellow of Salzburg Global Seminar, Austria. His research principally focuses on the interface of climate change and biodiversity loss with human rights of vulnerable groups and general international human rights law. His writings on these themes include the co-edited books *Climate Change Justice and Human Rights: An African Perspective* (Pretoria University Law Press, 2022); *Human Rights and the Environment under African Union Law* (Palgrave, 2020); and the book: *The Climate Change Regulatory Framework and Indigenous Peoples' Lands in Africa: Human Rights Implications* (Pretoria University Law Press, 2016). He is the Initiator and Convening Editor of the African Journal of Climate Law and Justice (AJCLJ), and an external expert to the Working Group of Children and Climate Change established by the African Committee of Experts on the Rights and Welfare of the Child.

Part II
REDD+ and Protection of Human Rights

Forest-Dependent Communities and a Rights-Based Approach in the Implementation of REDD+ in Nigeria



Mobolaji Precious Ezekiel and Peter Komiti

Abbreviations

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| ACHPR | African Charter on Human and Peoples Rights |
| CBD | Convention on Biological Diversity |
| CER | Certified Emissions Reduction |
| CFRN | Constitution of the Federal Republic of Nigeria |
| COP | Conferences of Parties |
| EU | European Union |
| FAO | Food and Agriculture Organisation (FAO) |
| FCPF | Forest Carbon Partnership Facility Fund |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights |
| ILO | International Labour Organization |
| LULUCF | Land Use, Land Use Change and Forestry |
| RED | Reduction of Emissions from Deforestation |
| REDD+ | Reducing Emissions from Deforestation and Forest Degradation |
| UNDP | United Nations Development Program |
| UNEP | United Nations Environment Program |
| UNFCCC | United Nations Framework Convention on Climate Change |
| UN-REDD | United Nations EDD Program |
| UN WOMEN | United Nations Entity for Gender Equality and Empowerment for Women |

M. P. Ezekiel (✉)

Department of Jurisprudence and International Law, Faculty of Law, University of Benin, Benin City, Edo State, Nigeria

e-mail: delebolaji@uniben.edu

P. Komiti

Brunel University, Uxbridge, London, UK

VER Voluntary Emissions Reduction

1 Introduction

Although it is presented as a solution for global warming and climate change, the REDD proposal allows the powerful capitalist countries to maintain their current production, consumption and, therefore, pollution. They will continue to consume energy generated by sources that produce more and more carbon emissions. Historically responsible for creating the problem, they propose a “solution” that primarily serves their interests. While making it possible to purchase the “right to pollute”, mechanisms like REDD strip “traditional” communities (riverine, indigenous. . . , rubber tappers, women coconut gatherers, etc.) of their autonomy in the management of their territories.¹

With a population of 206.1 million as of 2020, as estimated by the World Bank,² and a skyrocketing increase in its demography, Nigeria has the potential to emerge as the second most populated country in the world by 2100. It will overtake the United States of America (US) and China, only to be surpassed by India.³ The effect of this ever-increasing population is a pressing, insatiable and constant demand for the exploitation of Mother Earth’s resources, such as forest-generated food products, including bush meat, medical herbs, and firewood.

It has been reported that, like every other developing nation, about 80% of the Nigerian population uses firewood as a source of domestic and household energy,⁴ thus making the umbilical cord of its economic output directly tied to its energy and food consumption status. The implication of an ever-increasing population, such as witnessed in Nigeria with a non-commensurate financial result, is a lack of food and starvation of its citizen. The direct victims are mainly the vulnerable members of society, such as women, children, persons with disability, and forest-dependent communities, who heavily rely on the forest as their primary source of revenue, livelihood, and income. The ordeal of the vulnerable victims who possess no power to challenge the government is exacerbated when policies such as Reduction of Emission from Deforestation and Forest Degradation (REDD+) are promoted through government mechanisms to stop forest-dependent communities from relying on forests as a source of income and livelihood. The outcome is not just hunger and starvation, as earlier mentioned, but extreme poverty and hardship.

¹Letter from the State of Acre ‘Acre: In defence of life and the integrity of the peoples and their territories against REDD and the commodification of nature’ (26 October 2011). <<https://umaincertaantropologia.org/2011/10/26/acre-in-defence-of-life-and-the-integrity-of-the-peoples-and-their-territories-against-redd-and-the-commodification-of-nature/>> accessed on 27 February 2022.

²The World Bank (2022) <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NG>> accessed on 27 February 2022.

³The Guardian (2020) Nigeria’s population to overtake China, US by 2100 – Study. <https://guardian.ng/news/nigeria-to-overtake-china-u-s-by-2100-study/>> accessed on 27 February 2022.

⁴Famuyide et al. (2011), p. 1.

Illustratively, while Ayodele has reported that Nigeria has the world's impact deforestation rate of primary forest, 'with about 55.7 per cent of its primary forest being lost between 2000 and 2005',⁵ a report by the World Bank revealed that 'about 70 per cent' of the Nigerian population who relied heavily on firewood and forest generated food, are mostly rural and forest-dependent communities.⁶ This heavy reliance on forest-generated products in Nigeria, either for domestic or commercial purposes, brings to the fore the necessity of revisiting the exciting intersection of food, energy consumption, forestry and environmental pollution from a human rights perspective.

The discussion on food and firewood consumption needs to take a paradigm shift from a mere focus on rural communities to both rural and urban communities, as current economic realities, especially in Nigeria, have shown that the impact of high prices of food and energy is drastically being felt in both rural and urban communities. This has led to a deep yearning for cheaper forest-generated food and energy sources as alternatives to imported ones. Famuyide et al., for instance, pinpointed that steady increases in cooking gas and kerosene prices have resulted in increased demand and consumption of firewood as a source of energy in Nigeria.⁷ The average price of cooking gas, a 5-kg cylinder in Nigeria for instance has been reported to witness a sporadic increase between December 2020 and December 2021 by 84.4%, i.e. N1,949.75 to N3, 594.81, just as 12.5 kg rose from N4,157.68 to N7,319.76, increasing at the rate of 76.1%.⁸ This obviously leads to a lack of energy access in Nigeria. The effect is ultimately human, economic and environmental underdevelopment and, according to Agbaitoro et al., non-realisation of Goals 7 and 13 of the United Nations Sustainable Development Goals.

The preceding development has not only resulted in high demand for cheap and alternative food and energy sources but has also led to a high rate of deforestation of primary forests, the statistics of which have been pegged at 55.7% between 2000 and 2005 and annual forest area change of -410,000 hectares between 1990-2000 and 2000-2005, representing -2.7% and -3.3%, respectively, in Nigeria.⁹ While these early statistics are disheartening, fresh deforestation statistics published by Lansu et al. in 2020¹⁰ show it is worsening. Deforestation due to charcoal production in Nigeria on surface earth mounds has skyrocketed from 55% to 85% between 1990 to 2015. The report also pegged deforestation above-ground biomass at 184 megagrams to 532 megagrams between 1990 to 2015.¹¹ Further, it is projected that deforestation,

⁵ Ayodele (1978).

⁶ World Bank (1978), p. 23. <https://doi.org/10.1596/0-1952-0890-0>.

⁷ Famuyide et al. (2011), p. 1.

⁸ Sule (2022).

⁹ Famuyide et al. (2011), p. 1.

¹⁰ Lansu et al. (2020).

¹¹ Lansu et al. (2020).

if not addressed in Nigeria, will increase by 21% in 2030, leading to 19% less biomass in the country.¹²

Suffice it to add that deforestation is a complicated matter in Nigeria. This is because cutting down of forests, logging, collection of firewood, timber extraction, and conversion of forest into oil plantation is not just a way to survive a cumbersome economy and generate income for poor forest-dependent families but also a source of wealth accumulation for those who can engage in timber selling and palm oil plantation in commercial quantities.¹³

It is against this background and taking into account the importance of the forest to a host of poor and forest-dependent Nigerian communities that any attempt or policy aimed at regulating the use of the forest, such as REDD+, will not only be *prima facie* seen as a move to render Nigerian forest-dependent communities impoverished. It will also be viewed as an infraction of their right to food, energy, income generation, earning of wages, wealth accumulation and in the long run right to life under relevant domestic and international human rights law.

Thus, while conceding to the REDD+ epistemology that reliance on forest-generated food and energy by Nigerian forest-dependent communities has baneful and prejudicial effects on the environment, contributing to climate change, aridity, and desertification of the Sudano-Sahelian region of the West African sub-region; it should not escape mention that littering the literature and advocacy with the negative effect of the use of the forest by forest-dependent communities, all in an attempt to make REDD+ projects receive legitimacy, without addressing the human rights implications of REDD+ forest conservation and preservation policies, amount to environmental and human rights injustice of carbon offsetting. This may also be responsible to a large degree for the non-actualisation of REDD+ projects and extreme poverty in the affected regions.

Evidence from Cross River State, the REDD+ pilot state in Nigeria, reveals that any attempt to restrict forest dependents in Nigeria from accessing the forest may result in extreme hardship and poverty.¹⁴ It may also amount to obeying human rights law in breach. REDD+ projects, as manifest in this chapter, devoid of human rights framing, will amount to exchanging forest-dependent rights to food, energy and other forest resources for multinationals' right to pollute.

Hence, this chapter, while revisiting the importance of forest conservation, reforestation, and afforestation from the lens of REDD+ in Nigeria, suggests a shift of the REDD+ advocacy and research in Nigeria from the traditional climate change and carbon offsetting perspective to include a human rights approach to balance the variables in forest use without the extreme marginalisation of forest-dependent communities that follows the implementation of REDD+ projects.

In achieving these objectives, the chapter is divided into five Sections covering cross-cutting themes, commencing with an introduction in the first Section; the

¹²Lansu et al. (2020).

¹³Abua et al. (2013).

¹⁴Corbera et al. (2007), p. 587.

second Section apart focuses on the contextualisation of REDD+ in the North and South debate with reflection on Nigeria. The third Section reflects on the constituents of a human rights approach to the REDD+ regime in Nigeria while the fourth Section demonstrates the significance of a human rights-based approach on local livelihood. The fifth Section concludes by exploring the necessity of implementing REDD+ projects and policies with human rights approach by including forest dependents as stakeholders in formulating and implementing any REDD+ project in Nigeria. Without human rights in its formulation, regulation and implementation, REDD+ will not succeed in forest protection or climate mitigation as projected.

2 REDD+ in the North and South Debate: Nigeria in Context

REDD+ brings interconnected forest conflict issues such as land tenure and land rights to concessions, extractive industries, large-scale infrastructure projects, community involvement, governance and transparency, road building, biodiversity protection, agricultural practices, and land-use changes, among others. The need to minimise global anthropogenic warming has apparently become one of the greatest problems of the twenty-first century confronting mankind. This is so considering climate change impacts such as changing weather patterns, rising sea levels, the threat of flooding, and the threat to food production.¹⁵ There is, therefore, the need for immediate and drastic actions for a better and safer planet for the benefit of mankind.

Reducing deforestation has been identified as one of the best ways to immensely reduce forest and land-use sector emissions because deforestation and forest degradation have been identified to be responsible for 11% of total global warming and greenhouse gas emission.¹⁶ In light of these, the international community's attention has been drawn to adaptation and mitigation actions regarding forestry. In this light, reducing deforestation and forest degradation have been conceptualised as meaningful solutions to climate change.¹⁷ Hence, destructive land-use changes in tropical forests have been seen to have contributed to 10–15% of global carbon dioxide emissions.¹⁸ It is in recognition of the significance of the forest that international actors have developed REDD+ as a global forest management tool designed to combat global climate change and global warming, as reducing deforestation and forest degradation have been discovered to have the potential of delivering 30% of the climate solution desired in the world.¹⁹

¹⁵Corbera et al. (2007).

¹⁶UN-REDD.

¹⁷UN-REDD.

¹⁸Sustainable Tropics Alliance (2014), p. 3.

¹⁹UN-REDD.

Of the total emissions of greenhouse gases, 17% are associated with deforestation and land cover change.²⁰ This signifies that deforestation is the second largest anthropogenic source of carbon dioxide after fossil fuel combustion.²¹ Hence, mitigation of greenhouse gas emissions within the United Nations Framework Convention on Climate Change (UNFCCC) becomes necessary for developing countries. REDD+ in this context is a brainchild of the United Nations (UN), which places enormous value on carbon stored in forests as a reward for tropical developing countries for forest conservation and preservation by obtaining financial support from the private sector, multinationals, and global north governments that are directly responsible for greenhouse gases emission from fossil fuel, taking the form of direct payment or carbon offsetting.²²

Although adopted in 1997 by the UNFCCC, the Kyoto Protocol only entered into force in February 2005. Based on the principle of common but differential greenhouse gas emission responsibilities, the protocol imposes no formal emissions limits on the global south while setting developed countries' emission reduction targets at a minimum of 5% below 1990 greenhouse gas levels by 2012.²³ These results from the industrial nations' historical and generational greenhouse gas emissions that have partly contributed to the current contemporary global challenge of climate change. Australia, for instance, being the highest per capita source of carbon dioxide emission in 2009 was committed by the Protocol to increasing emissions by 8% over the 1990 levels.²⁴ To achieve this target cost-effectively, it has been argued that the concerned multinationals, technocrats, corporations, and economists pushed and lobbied the industrialised nations, especially the United States, to introduce and adopt emission trading and carbon offsetting during the 1990s negotiations.²⁵

However, as recommended by the European Commission, direct regulation and taxation in the form of a carbon tax were the popular options in Europe, as against carbon trading and offsetting. The European Council carbon tax recommendation was withdrawn in 2001 due to incessant opposition from industry and key Member States. With emission trading and offsetting, global carbon-cycling capacity was partitioned, just as it opened the floodgate for multinationals and industrialised

²⁰Intergovernmental Panel on Climate Change (2007).

²¹Van der Werf et al. (2009), pp. 737–738.

²²Carbon offsetting according to van den Bragt is the process of compensating for one's emissions (typically measured in tonnes of carbon dioxide-equivalent (CO₂e)) by funding carbon emission reductions elsewhere.

²³Article 3 of the Kyoto Protocol to the UNFCCC.

²⁴Amongst OECD countries Australia is the highest per capita emitter of all GHGs combined. TROVE, 'Australia's Emission in A Global Context' (May 2019, The Garnaut Climate Change Review) <<http://www.garnautreview.org.au/chp7.htm>> accessed on 1 March 2022.

²⁵Lohmann (2006) 'Made in the USA: A short history of carbon trading' (Published in September 2006, Development Dialogue), pp. 31–70. http://www.daghammarskjold.se/wp-content/uploads/2006/09/carbon_trading_web.pdf.

nations to buy and sell ‘certificates to pollute’ and trade their way out of an already weak emission target.²⁶ The global north eventually has a harmonious interest in emission trading and offsetting. When President George W. Bush, for instance, withdrew from the Kyoto Protocol in 2001, emission trading remained an integral part of the Protocol. The power vacuum left by his withdrawal was filled by the European Council after adopting the US emission credit in place of its initial recommended tax credit.²⁷

With carbon credit, significant emitters of greenhouse gases secure a tradable or marketable certificate to emit one ton of carbon dioxide or an equivalent of another greenhouse gas, serving as an exchange or offset for gases emitted by the holder.²⁸ Very often, the immediate reduction of the emission of greenhouse gases is not economically viable; hence, recourse to carbon credit to comply with the emission cap and target offset.²⁹ The reward for achieving the carbon offset is additional carbon credits, which may be deployed to subsidise future projects to reduce emissions.³⁰ While the carbon credits were introduced by the Kyoto Protocol, the Paris Agreement subsequently validates its utilisation by making provisions for facilitating other carbon markets.³¹

Carbon credits could be Voluntary Emissions Reduction (VER) or Certified Emissions Reduction (CER). While the former is a type of carbon offset that is exchanged over the counter or willingly in a credit market, the latter is created through a regulatory framework to offset greenhouse gases emissions, the main difference between both types of carbon credit being the presence of a third-party approving body that approve and regulate the CER as opposed to the VER.³² The way the carbon market operates is such that if a polluter chooses to emit above its approved level, it can cover up the excess in the carbon market by buying emission credit, just as a polluter that uses below its emission cap can sell the surplus in its credit carbon to another polluter or greenhouse gas emitter that may need it.³³ Considering the benefit that the global North and significant emitters of greenhouse gases derived from the carbon market, it has been argued in some quarters that carbon credit is another wave or phase of neoliberalism or neoliberal globalisation,³⁴

²⁶Lohmann (2006).

²⁷Wettestad J (2005) The making of the 2003 EU Emissions Trading Directive: An ultraquick process due to entrepreneurial proficiency?

²⁸Wettestad (2005).

²⁹³³ CHI (2015 to 2022) <<https://corporatefinanceinstitute.com/resources/knowledge/other/carbon-credit/>> accessed on 2 February 2022.

³⁰CHI (2015 to 2022).

³¹CHI (2015 to 2022).

³²CHI (2015 to 2022).

³³Lohmann (2006).

³⁴While both neoliberalism and neoliberal globalisation are used interchangeably, the latter has been specifically attributed to the United States and United Kingdom efforts at global restructuring through the instrumentality of the World Bank or International Monetary Fund; see Larner (2003), p. 509.

politically introduced to restructure climate mitigation by establishing new property rights regimes in an attempt to reduce powers of national governments and other municipal stakeholders such as labour unions, social movements, and the non-governmental organisations over the war on climate change.³⁵

In 2005, there was a new proposal for the Reduction of Emissions from Deforestation (RED) in the global south, where it was agreed that Southern countries should be encouraged to voluntarily undertake actions capable of reducing emissions from deforestation with support from international organisations.³⁶ An additional 'D' was added to the acronym, signifying 'forest degradation' hence the concept of Reduction of Emission of Deforestation and Degradation (REDD). It also has uncertainties and complexities that bedevilled previous degradation emission regimes such as LULUCF.³⁷ Thus, the 'Bali Action Plan' of 2007 mounts pressure on concerned corporate bodies and multinationals to reframe the concept of forestry offsets. The plan called for: 'Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries, referred to as REDD '+' (plus)'.³⁸

The World Bank launched its Forest Carbon Partnership Facility Fund (FCPF) in 2008, which was immediately followed by the United Nations UN-REDD programme; both schemes are designed to set up pilot projects under the REDD+ regime despite the lack of a final UN agreement and several public oppositions against it. Worthy to note is that the FCPF consists of two funds: the Readiness Fund and the Carbon Fund; while the former supports countries in developing a national REDD+ strategy (phases 1 and 2), the Carbon Fund, a public-private partnership that became operational in July 2011, facilitates actual trading in forest carbon credits (phase 3).³⁹ There was resistance against REDD+ in the Global South. This was manifested in a World People's Conference on Climate Change and the Rights of Mother Earth called by the President of Bolivia in 2010.⁴⁰

³⁵ Gilbertson and Reyes (2009), p. 7.

³⁶ Gilbertson and Reyes (2009), p. 7.

³⁷ Land Use, Land Use Change and Forestry (LULUCF) was an early attempt made to bring use of land into emissions trading prior to the introduction of REDD+. It was bedeviled with many uncertainties such as the yardstick for measurement of carbon dioxide molecules associated with forests, the possibility of continuous occurrence of forestry emissions and removals many years after a project or intervention happens unlike emissions from fossil fuels which occur immediately when the fuel is burnt, etc.

³⁸ UNFCCC (2007).

³⁹ The British Petroleum (BP) oil giant in 2011 became the first company to join the FCPF Carbon Fund, enabling itself to offset its own emissions or to trade offset credits in the carbon market; see Vidal (2011).

⁴⁰ Peoples' Agreement (2010) presented at the World Peoples Conference on Climate Change and the Rights of Mother Earth (WPCCC) Cochabamba, Bolivia, 22 April 2010 <<http://pwccc.wordpress.com/2010/04/24/peoples-agreement/>> accessed on 2 March 2022.

Nigeria's REDD+ readiness plan was approved for funding in October 2011 after its application for the UN-REDD in 2009.⁴¹ Nigeria REDD+ is bifurcated into state and national programmes, with Cross River state being the pilot state.⁴² The national programme has a Secretariat domiciled in the Federal Ministry of Environment's Department of Climate Change.

The Nigeria national REDD+ steering committee is an advisor to the Department of Climate Change and state REDD+ programmes such as Cross River State, the pilot state. The national civil society organisations' REDD+ forum represents civil society views in Nigeria-REDD+ programmes.⁴³ The Nigeria-REDD+ state programme has a Climate Change Council for each state, with the Cross River State Climate Change Council being the pilot state council. The state's Climate Change Council is saddled with the responsibility of formulating climate change policies for the state. States Forestry Commission also plays a vital role in the states' REDD+ programmes. They take directives from the Climate Change Council and act accordingly. Like many others in the global south, Nigeria-REDD+ programmes are designed and funded by the UN-REDD. The UN-REDD secretariat is in Geneva, Switzerland, with regional centres in Africa, Asia-Pacific, Latin America and the Caribbean. UN-REDD+ and, by extension, Nigeria-REDD+ programmes are financed by the governments of Norway, Switzerland and the European Union and managed by the United Nations Development Program (UNDP), the United Nations Environment Program (UNEP), United Nations Entity for Gender Equality and Empowerment for Women (UN WOMEN) and the Food and Agriculture Organisation (FAO).⁴⁴ UN Women brings in gender balance perspectives into the REDD+ programme; FAO brings in expertise on developing national accounting systems for greenhouse gas inventors; UNEP provides technical support on forest conservation and management while UNDP shoulders administration and governance responsibilities of UN-REDD+ programmes.⁴⁵ The UN-REDD+ programme collaborates with the UNFCCC and the FCPF of the World Bank to achieve its objectives.

The point is that the Nigeria-REDD+ programme is a fragment of an international climate change mitigation programme with promoters and supporters majorly from the global north. The multiplicity of actors in the Nigeria-REDD+ projects alone is enough reason why poor and rural forest dependents in Nigeria may not be direct beneficiaries of REDD+ incentives.⁴⁶ The modus operandi of the UN-REDD programme is such that financial benefits are not paid directly to the victims.

⁴¹Oyebo et al. (2010).

⁴²Oyebo et al. (2010).

⁴³Oyebo et al. (2010).

⁴⁴UN REDD Programme Fund | MPTF Office <<https://mptf.undp.org/fund/ccf00>> accessed on 13 December 2022.

⁴⁵UN REDD Programme Fund.

⁴⁶Pham et al. (2013).

Payment is made only through their national and local representatives, which in the case of Nigeria is the Nigeria Federal Government and the concerned state governments.⁴⁷ The structure of the Nigerian government is such that funds meant for local governments are usually captured by state governments,⁴⁸ a development that signifies that such funds do not get to those who need it most. Ehigiamusoe et al. opined that state governors are so powerful in Nigeria that they can dismiss and replace local government administrators if the local government administrators refuse to obey the governors' instructions.⁴⁹ Even if the local government authorities were to be directly paid REDD+ funds in Nigeria, the direct victims may still not have access to the said funds or benefits, as the local government elites are likely to hijack such benefits away from the forest-dependent families and households. REDD+ funds and their utility is, thus, a complex and complicated matter with many intrigues in Nigeria.

3 Proposing a Human Rights-Based Approach to REDD+

Although REDD+ projects have an avalanche of attractive benefits, securing such benefits with a human rights approach designed to avoid inhuman and refractory outcomes has proven difficult. REDD+ research and advocacy have considerably covered a wide array of topics from different perspectives and approaches. Such perspectives include forest-dependent perspectives,⁵⁰ cost-effective views,⁵¹ formulation, implementation, and regulation of REDD+ projects,⁵² and carbon rights perspectives.⁵³

A human rights approach could help in resolving most REDD+ controversies and puzzles, such as lack of access to the forest. Hunter opined that 'the rights-based approach brings perspective and expertise that hold the promise of setting adaptation priorities in a way that meets the twin goals of reducing climate change impacts while progressively fulfilling economic, social, and cultural rights'.⁵⁴ Knox argues that the fastest way to change the general perception that climate change mitigation is solely within the realm of science; a scientific problem deserving only scientific solutions is to invoke a human rights approach capable of providing human rights

⁴⁷ Pham et al. (2013).

⁴⁸ Adeyemi (2013), pp. 84–98.

⁴⁹ Ehigiamusoe and Jumare (2013).

⁵⁰ Evans et al. (2014), pp. 98–108.

⁵¹ Fosci (2013), pp. 196–200.

⁵² Pettenella and Brotto (2012), pp. 46–52.

⁵³ Karsenty et al. (2012), p. 20.

⁵⁴ Karsenty et al. (2012), p. 20.

solutions to the myriad of climate change challenges.⁵⁵ Other authors have explained the link of climate change to human rights and REDD+.⁵⁶

The importance of a human rights approach to climate change problems is better understood when it is observed that there is no other system capable of resolving controversies through a combined instrumentality of ethics and legal obligation other than human rights systems.⁵⁷ No other approach can competently adapt to the intersections of climate change regime, environmental law, and international human rights law in advocating for the fulfilment of multinationals and state-owned human rights obligations to forest-dependent communities other than a human rights system.

While a human rights approach can place legally binding obligations on carbon traders and climate change actors, restraining them from violating the forest dependents' rights to access forest resources, it can equally place universally accepted moral and ethical obligations on the forest dependents in supporting REDD+ projects. This approach can enable forest dependents in Nigeria to contribute their quota towards climate change mitigation without unnecessarily depriving them of their livelihood and forest-generated income. This will ultimately bring about a desired win-win outcome for both carbon traders and victims of carbon trading, such as the forest dependents in Nigeria. There is no better way to assuage and guarantee forest dependents' desire to secure legal protection from being deprived of the right to access the forest in the global carbon market other than a human rights approach. Raftopoulos opined that many environmentally destructive development practices such as REDD+, which has been allowed to take place on traditional lands, have severe impacts on forest-dependent communities such that they struggle for land conservation and protection at the same time.

Therefore, if adequately formulated and regulated within the riverbank of human rights law, REDD+ in Nigeria has an enormous potential to end income inequality, safeguard forest dependents' right of freedom of access to the forest, rights to generate income and accumulate wealth from the forest, right to work and earn wages, and land tenure rights. A human rights approach in this manner will also impose climate obligations on the forest dependents and consequently compel them to work towards climate mitigation, afforestation, and reforestation.⁵⁸ What this means for unsuccessful climate change regimes and by implication, REDD+ projects, is that little or no attention has been devoted to the impacts of REDD+ on forest-dependent communities' rights in Nigeria. Acknowledging this loophole in reframing the UNFCCC and Paris Agreement will be instrumental in causing a paradigm shift in the ordeal of forest dependents in Nigeria who are at risk of losing their only source of income and livelihood to the carbon market.

⁵⁵ Knox (2014), p. 22.

⁵⁶ Jegede and Adejonwo (2022); Jegede (2016, 2017).

⁵⁷ Angelsen (2008), pp. 113–118.

⁵⁸ Jegede (2016).

A further fallout of the lack of human rights approach to REDD+ projects in Nigeria is its failure to create a participatory room for forest dependents whose livelihood and income are sought to be protected through REDD+ projects. REDD+, in this context, has been criticised for being undemocratic and uncivilised in its treatment of the forest dependents, especially for its lack of transparency, accountability, and failure to obtain the prior consent of the forest dependents before designing and implementing its policies.⁵⁹ It was in this spirit that Raftopoulos stated that the inadequate participation and the exclusion of local communities in REDD+ had become a real bone of contention for the vulnerable victims such as the forest dependents.⁶⁰

Thus as expected, the emergence of REDD+ under the UNFCCC, unlike most United Nations projects, has led to a series of agitations from forest dependents, raising anxiety as to its impact on the rights, well-being, and interest of the primary victims of carbon trading, that is, forest dependents that rely on the forest as their primary source of livelihood, income, shelter, and survival.⁶¹ Forest-dependent communities' anxiety over REDD+ projects, according to Savares, includes; 'potential loss of traditional territories and restriction of rights of indigenous and local communities to access to, use of, and ownership of land and natural resources; lack of equitable benefit-sharing of REDD+ activities; exclusion of indigenous and local communities from designing and implementation of REDD+ policies and measures; and loss of traditional ecological knowledge'.⁶²

Forest-dependent communities' concerns and anxiety over REDD+ projects are compounded by the lack of known binding legislations governing carbon sequestration. Hence, the advocacy and research on forest dependents' rights and interest under REDD+ regimes, to pinpoint the ugly ordeal of forest communities under REDD+ projects and thereby work towards environmental and climate justice, have made recourse to human rights law, especially third-generation human rights. Apart from making elaborate provisions on civil and political rights, human rights instruments provide for nascent rights such as natural resources, self-determination, cultural heritage, and economic and social development, which, if incorporated into REDD+, will not only allay the fears of the forest dependents but will equally ensure a seamless actualisation of REDD+. Raftopoulos has argued that a human rights-oriented REDD+ provides forest communities with a significant opportunity to campaign for broader rights and entitlements, a participatory platform, and secure land tenure.⁶³ Savares, in aligning with this school of thought, opined that human rights provide useful guidance to inform and strengthen international and national law and policymaking on REDD+. Such guidance has increasingly been

⁵⁹Freudenthal et al. (2011), pp. 1–28.

⁶⁰Raftopoulos (2016), p. 518.

⁶¹Griffiths (2009).

⁶²Savaresi (2013), p. 5.

⁶³Raftopoulos (2016), p. 521.

incorporated in international processes dealing with development and natural resources to avoid conflicts and exploit synergies with states' extant obligations.⁶⁴

Regardless of the preceding arguments in favour of incorporating human rights into REDD+ projects, carbon traders, multinationals, and other stakeholders in the carbon market may find it difficult to concede to the proposed human rights approach, especially on the ground that human rights seem concerned about entitlement rather than duties and obligations. Hence, duty holders, such as Global North countries, may envisage a climate regime against their interest or that of their countries' multinationals; only to provide a platform for the forest dependents to agitate for the enforcement of their rights while contributing very little to the success of the scheme. A human rights approach to REDD+ is likely to suffer from the challenge of the gap between human rights in practice and human rights in theory. It may be challenged by its ineffectiveness for the accountability of multinationals for any human rights infraction since they are not parties to international treaties. A human rights approach may only achieve some diplomatic and moral objectives concerning multinationals.

However, a human rights approach has the potential to recalibrate forest dependents' rights and interests under REDD+ while also ethically placing obligations on them to contribute their quota towards climate mitigation and bring about a win-win climate solution than any other legal regime that could be suggested. A particular human rights instrument of value to this discussion and which forest dependents will not hesitate to pinpoint is the Convention on Biological Diversity (CBD) which came into force in 1993, under which forest dependents, among others, are guaranteed the right to environmental conservation. The CBD has often come in handy in advocacies designed to secure forest dependents' bio-cultural rights and rights to use forest resources.⁶⁵ Nigeria signed and ratified the CBD in 1992 and 1994, respectively and has since demonstrated commitments to its objectives by participating in its different Conferences of Parties (COP) and other related activities.⁶⁶ The CBD requires states to respect forest-dependent rights to the environment by refraining from activities infringing on their rights.

International human rights instruments under which forest dependents can rely to promote and protect their rights to forest resources are the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social, and Cultural Rights 1966 (ICESCR), and the African Charter on Human and Peoples Rights 1981 (ACHPR). Apart from ratifying the ICCPR, the rights enunciated under it are guaranteed under chapter four of the Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN). Economic, Social and Cultural rights under the ICESCR are captured under the non-justiciable chapter two of the CFRN; hence, environmental rights or rights of forest dependents to access the forest are

⁶⁴Savaresi (2013), p. 5.

⁶⁵Raftopoulos (2016), p. 521.

⁶⁶Biosafety Unit, 'List of Parties' <<https://www.cbd.int/information/parties.shtml>> accessed on 12 December 2022.

generally non-justiciable in Nigeria. Nigeria has, however, domesticated the ACHPR which captures most rights relating to economic, social and cultural rights.

In the case of *Ogugu v State*, the Nigerian Supreme Court held that the rights enumerated in the ACHPR are enforceable by High Courts in Nigeria depending on the circumstances of each case and by the rules, practice and procedure of each court.⁶⁷ Similarly, in *SERAC v Nigeria*, the African Commission on Human and Peoples' Rights held that by participating in the contamination of air, water and soil and thereby harming the health of the Ogoni population and by failing to protect the Ogoni population from harm caused by private actors, the Nigerian Government violated the rights to clean environment as stipulated in Article 24 of the ACHPR.⁶⁸ In *General Sanni Abacha & Others v Chief Ganni Fawehinmi*, the Nigerian Supreme Court held that the ACHPR is a special genus of law in the Nigerian legal system and that although the Charter is not superior to the CFRN; it is, superior to ordinary statutes and will not bow to any inconsistent statutory provision. The court further held that unless ACHPR is repealed, Nigeria will continue to be obligated to its provisions in line with the principle of *pacta sunt servanda*.⁶⁹ Hence, mainstreaming human rights into REDD+ projects in Nigeria will safeguard the interest of the forest dependents as the human rights jurisprudence has already taken judicial notice of environmental rights in Nigeria. This will afford the forest dependents a jurisprudence they could rely on in protecting those rights through the court systems in Nigeria.

It should be added that human rights bodies across the globe have upheld claims about breaches of substantive human rights weaved around prejudicial and perverse environmental practices, especially those with adverse effects on forest dependents.⁷⁰ The Inter-American Court of Human Rights, for instance, in 2001, found that Nicaragua had violated the right of the members of the community to use and enjoy their property by granting logging concessions to third parties to utilise resources located in the area where members of the community lived and carried out their activities.⁷¹ The challenge of the gap between human rights in practice and theory comes into the limelight in the enforcement of decisions rendered by human rights bodies and tribunals, as human rights decisions lack the binding force of law, with states retaining the discretion of measures to be adopted in fulfilling their human rights obligations. It has been stated that the 'name and shame' effects

⁶⁷(1994) 9 NWLR (Pt 366) 1.

⁶⁸Communication No. 155/96, African Commission on Human and Peoples' Rights, Done at the 30th Ordinary Session, held in Banjul, The Gambia, 13–27 Oct. 2001.

⁶⁹6 NWLR (2000) (Pt. 660) 228 at 293– 95, para(s) E– A.

⁷⁰Human Rights Council, *Analytical study on the relationship between human rights and the environment* (2011) Report of the United Nations High Commissioner for Human Rights UN Doc A/HRC/19/34. Office of the United Nations High Commissioner for Human Rights, Geneva, Switzerland. <https://digitallibrary.un.org/record/718748?ln=en>.

⁷¹Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-America Human Rights Court (21 August 2001).

international human rights judgments have on the concerned states and parties are worth the pursuit and, should not be undermined.⁷²

Takacs has controversially extended the human rights argument to non-state actors participating in REDD+ projects.⁷³ These non-state actors will necessarily include multinationals in carbon trade and corporate bodies such as the World Bank and International Monetary Fund that provide funding for REDD+ projects. The argument has been that if REDD+ is not a basis for human rights abuse in the name of carbon incentives and credits, all hands must be on the deck to promote and protect the rights of forest dependents to forest resources, non-state actors, inclusive. While it is desirable to feature non-state actors in the REDD+ debate, the extent to which they can be held liable for human rights infractions of forest dependents' rights to the forest is the one billion question that remained unanswered.

In Nigeria, multinationals incorporated as artificial persons can be prosecuted in courts for violating forest-dependent rights to the forest under relevant provisions of the ACHPR and chapter four of the CFRN. Aside from this, international human rights complaint mechanisms such as the Africa Court on Human and People's rights are helpless in enforcing forest-dependent rights against multinationals as they are not parties to their founding instruments. However, human rights approach remains relevant as it will at least require the observance of relevant international and domestic human rights laws whenever they engage in any REDD+ project. Using the language of rights, where there are infractions of the forest dependents' human rights due to the implementation of REDD+ projects, the affected victims can initiate litigation for redress in Nigerian courts against the government and multinationals incorporated in the country.

4 Significance of a Human Rights-Based Approach

The significance of a human rights approach to REDD+ can be demonstrated in Nigeria by considering their effects on the livelihood of forest dependents communities. REDD+ economic implications range from losing possession and control over forest lands to religion, culture, tradition, and forest-generated resources such as bushmeat, medical herbs, wood, charcoal, crop waste, and animal dung.⁷⁴ Without the application of a human rights-based approach, implementing REDD+ projects and policies risks exacerbating the ongoing problem of poverty of forest dependents in Nigeria. This will have a corresponding implication on and violation of their fundamental rights to food, religion, energy, right to work and earn wages, and wealth accumulation. Violation of these rights could possibly result in future rural-urban migration and displacement, child abuse and child labour, and forced

⁷²Nicholson and Chong (2011), p. 121.

⁷³Takacs (2010), p. 521.

⁷⁴Takacs (2010), p. 521.

migration. In principle, REDD+ projects in the Global South are designed to make provisions for jobs, services, health clinics, schools, fuel-cooking stoves, or even cash payments.⁷⁵ One central livelihood area negatively affected by implementing REDD+ projects across Nigeria is access to forest lands for food and cash crops cultivation. A 2021 research on 'livelihood impacts of forest carbon protection in the context of REDD+' revealed that more than half of a sampled population in Cross Rivers State claimed that the banning of the opening of forests for agricultural and farming undertakings by government officials operating under the aegis of REDD+ projects have immensely reduced the sizes of their farmlands.⁷⁶ They further claimed that government officials do not stop at restricting their access to the forest farms but also destroy them, leaving forest farmers impoverished and in a state of food insecurity, affecting their overall well-being.⁷⁷ The authors proposed that Nigeria's REDD+ projects should incorporate social safeguards while implementing its components in the regions, especially in the light of the fact that the forest carbon protection scheme has its objectives as the strengthening of the forest community rights of access and sustainable utilisation of natural capital as climate change mitigation measures.⁷⁸

To achieve the above purpose, human rights perspective is useful to ensure a harmonious achievement of the underlining goals of forest conservation and preservation of REDD+ projects and a win-win outcome for both carbon traders and forest-dependent communities. Amuyou et al. recommend that '...the activities of the REDD+ project should be seen as creating opportunities that will enhance the standard of living of the people rather than accentuating poverty. REDD+ handlers should create avenues that increase the population's access to food security, increase income from farm and off-farm activities, and protect the environment. In addition, such programs should promote the people's health and guarantee social safeguards' sustainability.⁷⁹ This is necessary because one of the major loopholes in current REDD+ projects is the failure to take into consideration mechanisms for the protection of the right of indigenous peoples and forest dependents to livelihood and forest generated income.⁸⁰

A human rights-based approach in the context of REDD+ in Nigeria will operationalise a forest-dependent-oriented approach. This will address the historical gap in a sector which over the years has focused on the protection and development of the forest, but neglected the development and improvement of the forest dependents; owners of the biodiverse territories sought to be developed and protected.

⁷⁵Morgan (2010).

⁷⁶Amuyou et al. (2021), pp. 14–15.

⁷⁷Amuyou et al. (2021), pp. 14–15.

⁷⁸Amuyou et al. (2021), pp. 14–15.

⁷⁹Amuyou et al. (2021), pp. 14–15.

⁸⁰Carbon Trade Watch (2011) <http://www.carbontradewatch.org/monocultures/on-the-international-day-against-monoculture-plantations-support-the-no-redd-platform.html> > accessed on 3 March 2022.

Hence, incentives to be given to states and affected forest-dependent communities in Nigeria under REDD+ projects should not be provided to exchange and transfer their rights to forest resources to ‘third parties’ carbon traders’ for profit.⁸¹ To institute REDD+ projects in Nigeria with the sole aim of making profits at the expense of the poor forest dependents is not only, inhuman, and preposterous but also a breach of the forest dependents’ rights to livelihood. To serve the purpose of their human rights protection, a successful REDD+ regime in Nigeria must be forest dependents oriented.

5 Conclusion and Recommendations

The implementation of REDD+ has some negative impacts on the Nigeria forest dependents. It infringes on the forest dependents’ rights to access the forest freely and harness its resources for income generation and wealth accumulation. REDD+ does this by exchanging forest resources with carbon or emission credit, intending to offset multinationals and industrialised nations’ emission targets at the expense of Nigeria’s indigenous forest dependents’ livelihood, interest and rights. Denying forest dependents access to the forest by sequestering it for carbon credits and exchanging their forest fortunes with benefits of REDD+ projects is counter human rights. This chapter has thus revealed the need to intentionally accommodate the interests and rights of forest dependents in REDD+ projects by ensuring that UNFCCC parties get committed to adopting human rights safeguards capable of bridging the gap between REDD+ and forest dependents’ rights to forest resources. Human rights approach should be introduced into the REDD+ regime, to impose clear duties and obligations on stakeholders, particularly the state and multinationals. This will be helpful in ethically guiding all stakeholders on their interaction with the forest, in enhancing parties’ capacity to diligently embark on monitoring and verification exercise in implementation of REDD+ projects and reminding state parties to operate in consonance with their domestic and international human rights obligations in their dealing with REDD+ projects.

The political and economic goals underpinning REDD+ projects, should be replaced with the genuine intention of forest conservation and preservation in alignment with Indigenous Peoples and forest dependents’ economic needs and yearning. Until this is done, with a mindset that stops commodifying forest resources in the name of emission credits, hardship will be visited on the forest dependents who must have been deprived of their only known means of livelihood and income. Also, the forest sought to be conserved and preserved will be adversely impacted as the forest dependents may turn to criminal activities and or commodify it for criminal undertakings. A human rights-based approach will reduce this trend as it will protect the interests of forest dependents in the implementation of REDD+ in Nigeria.

⁸¹ Van Dam (2011), p. 407.

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Mobolaji Precious Ezekiel is an Associate Professor of law and currently the Acting Head of Department, Jurisprudence and International Law, Faculty of Law, University of Benin. She holds a Doctorate in Human Right Perspective of Tortious Liability and Sports and an LLM in Regional Integration Policies from University of Benin. She co-authored a book on Petroleum Resources and Nigeria: A Social-Legal Perspective (Galda-Verlag, Germany). She is presently engaged in discussions on International Trade and Economic Law and Oil & Gas issues.

Peter Komiti is a holder of multiple award-winning Commonwealth Shared Scholarship and Legal Adviser to Triune Authority Human Rights Defender Society. He is currently an LLM candidate of International Human Rights Law, Brunel University London.

Land Rights of Indigenous Peoples and Local Communities in the context of REDD+ in the Republic of Congo



Lassana Koné

Abbreviations

| | |
|-------|---|
| ACHPR | African Commission on Human and Peoples' Rights |
| AHRLJ | African Human Rights Law Journal |
| CAFI | Central African Forestry Initiative |
| CBD | Convention on Biological Diversity |
| CIFOR | Center for International Forestry Research |
| COP | Conference of the Parties |
| CSO | Civil Society Organisation |
| DGM | Dedicated Grant Mechanism |
| ER-P | Emission Reduction Programme |
| FAO | Food and Agriculture Organization of the United Nations |
| FCPF | Forest Carbon Partnership Facility |
| FPIC | Free, Prior and Informed Consent |
| FPP | Forest Peoples Programme |
| HRC | Human Rights Committee |
| IFAD | International Fund for Agricultural Development |
| ILO | International Labour Organization |
| IPLC | Indigenous Peoples and Local Communities |
| IWGIA | International Work Group for Indigenous Affairs |
| LDF | Local Development Fund |
| LoI | Letter of Intent |
| NDC | Nationally Determined Contributions |
| PAs | Protected Areas |

L. Koné (✉)

Forest Peoples Programme, Abidjan, Côte d'Ivoire

| | |
|--------|--|
| REDD+ | Reducing Emissions from Deforestation and Forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks |
| ROC | Republic of Congo |
| RRI | Rights and Resources Initiative |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| UNFCCC | United Nations Framework Convention on Climate Change |

1 Introduction

The Republic of Congo (ROC) straddles the equator and covers an area of 342,000 square kilometres, most of which is forest. The ROC's forest area is currently estimated at 22,410,682 hectares, or 65.52% of the national territory.¹ This crucial carbon sink and biodiversity habitat is also the ancestral home of forest Indigenous Peoples and Local Communities (IPLC), who for millennia have relied upon and cared for the lands, territories and natural resources throughout these forest areas. Since 2008, ROC has engaged in the process of Reducing Emissions from Deforestation and Forest Degradation (REDD+), together with conservation, sustainable management of forests and enhancement of forest carbon stocks to help mitigate climate change.² The country has ratified the United Nations Framework Convention on Climate Change (UNFCCC) and it ratified the Paris Agreement on 21 April 2017.³ There are five enabling programs related to REDD+ including land use planning, and support for forest governance.⁴ In addition, ROC has proposed an ambitious target in its Nationally Determined Contribution (NDC) to reduce national emissions by 48% mainly through the implementation of the REDD+ mechanism.⁵ The Emissions Reduction Program in the Sangha and Likouala districts in northern ROC covers 12.4 million ha of which 11.7 million ha of forest.⁶ The REDD+ implementation is currently, and for the next years, mainly driven by the Central African Forest Initiative (CAFI). ROC and CAFI signed a Letter of Intent (LoI) in September 2019 to protect the country's forests and accelerate the fight against

¹FAO (2010), Evaluation des ressources forestières mondiales, Rome.

²ROC (2017), National REDD+ Strategy Investment Plan for the Republic of Congo 2018–2025, 11.

³Paris Agreement under the United Nations Framework Convention on Climate Change 2015, adopted by Conference of the Parties, 21st session Paris, 30 November–11 December 2015FCCC/CP/2015/L.9/Rev.1.

⁴ROC (2017), p. 12.

⁵ROC (2017), p. 11.

⁶ROC (2017), p. 13.

climate change.⁷ The LoI includes ambitious commitments to a national land-use policy through a multi-sectoral and inclusive spatial planning process.⁸ The agreement will support land use plans for a sustainable management and the protection of peatlands by prohibiting any drainage and drying. Discovered in 2017 in the Congo Basin,⁹ these peatlands are vitally important in the fight against climate change, as they contain nearly three years of global greenhouse gas emissions.¹⁰ However, the existing legal framework does not provide a genuine recognition of Indigenous Peoples' collective ownership of customary lands. The IPLC who rely on the forest for their subsistence are not adequately supported. While they hold ancestral rights to large areas of forest land through the country, national land laws in Congo do not protect these rights in full (rather considering that unregistered lands belong to the state) and allow the government to allocate lands that have been under customary use for centuries for other purposes, including for REDD+ pilots projects, without free, prior and informed consent (FPIC) or just and equitable compensation.¹¹

As REDD financing is being secured, there are many concerns that the legal and institutional environment for REDD+ will not fully consider the specific needs of vulnerable communities, including the IPLC. The rights of IPLC are not always similar, but in most cases, non-indigenous traditional communities with a collective tradition also enjoy the same rights.¹² As in many other parts of the Congo Basin, the Bantu ethnic farming people and the primarily hunter-gatherer Indigenous Peoples in ROC have long occupied ancestral territories converted into logging concession or protected areas. Many of the problems caused by development projects or conservation initiatives including REDD+ apply to all IPLC, but this chapter considers those problems experienced primarily by Indigenous Peoples. The chapter focuses on the specific rights of IPLC in the context of REDD+ in Congo. Following this introduction, the second Section analyses how tenure insecurity can undermine the realisation of REDD+ benefits for IPLC. The third Section examines the meaning of the legal recognition of Indigenous Peoples in Congo and possible repercussion for them in the context of REDD+. The fourth Section critically engages with peculiar issues that are of human rights significance.

⁷CAFI (2019) Letter of Intent on the establishment of a long-term partnership to implement the Investment Plan of the National REDD+ Strategy between the Central African Forest Initiative (CAFI), and the Republic of Congo.

⁸CAFI (2019), p. 12.

⁹The Guardian (2017), World's largest tropical peatland found in Congo basin.

¹⁰Dargie et al. (2017), pp. 86–90.

¹¹OCDH (2017), Report on the situation of the rights of indigenous peoples: Alarming findings six years after the adoption of the law.

¹²FPP (2013), The Rights of Non-Indigenous 'Forest Peoples' with a focus on Land and Related Rights: Existing International Legal Mechanisms and Strategic Options.

2 Insecure Land Tenure and REDD+

Land tenure is organised within the framework of a complex set of regulations, stemming from the colonial legal frameworks and current administration in Congo.¹³ The overlapping nature of several legal frameworks relating to land tenure complicates the understanding of the extent of property rights in Congo. But, the multiplicity of laws and regulations is a source of legal insecurity for land rights holders, including customary land rights.¹⁴

Statutory laws (including forest and land laws) confer on the state absolute control over land and forest resources.¹⁵ Private property is defined by the Civil Code¹⁶ as the right to enjoy and use property in the most absolute manner, provided that it is not inconsistent with national laws and regulations.¹⁷ However, the land law restricts private land ownership to ownership of the soil only.¹⁸ Indigenous communities in ROC have ancestral relations with their land. Yet, national laws and policies have so far very poorly considered these relations. The land law recognises some collective and customary property rights,¹⁹ insofar as they are not incompatible with registered title deeds.²⁰ The customary law is not without positive developments, including the recognition of the collective property rights of Indigenous Peoples,²¹ and the right to Free Prior Informed Consent (FPIC).²² Without formal land titles, Indigenous Peoples are expected to retain their pre-existing land rights.²³ However, the land law has taken a step backwards in this area in underscoring legal uncertainty by introducing ambiguous provisions regarding public interest expropriation.²⁴ In practice statutory law takes precedence over customary law. The land law introduces a new mechanism for the recognition of customary land through the establishment of an ad hoc body established at the local level for the registration of customary land rights.²⁵

¹³ ClientEarth (2020a, b), p. 16.

¹⁴ ClientEarth (2020a, b), p. 16.

¹⁵ Law establishing the rules of occupation and acquisition of land 2018 n°18-2018 of 13 June 2018, Section 53.

¹⁶ Civil Code 2018 n°21-2018 of 13 June 2018, Section 17.

¹⁷ Land ownership Law 2000 n°17- 2000 of 30 December, Section 4.

¹⁸ Land ownership Law 2000 n°17- 2000 of 30 December, Section 18.

¹⁹ Land ownership Law 2000 n°17- 2000 of 30 December, Section 5.

²⁰ Law on the General principles applicable to State lands and land tenure 2004 n° 10-2004 of 26 March 2004, Section 31.

²¹ Law on the promotion and protection of indigenous peoples 2011 n°5-2011 of 25 February 2011, Section 31.

²² Law on the promotion and protection of indigenous peoples 2011, Section 3.

²³ Law on the promotion and protection of indigenous peoples 2011, Section 32.

²⁴ Law establishing the rules of occupation and acquisition of land 2018, Sections 23 and 38.

²⁵ Decree No. 2006-255 of 28 June 2006 on the establishment, attribution, composition and functioning of an ad hoc body for the recognition of customary land rights, Section 1; Decree n°

The public domain is understood to be all real estate belonging to public persons, including any vacant property. In the absence of proof of private ownership, such as title deeds or registration certificate, a land is therefore presumed to belong to the state.²⁶ The Congolese land administration considers lands that are not ‘visibly’ occupied and used as vacant and under state ownership. Such ‘vacant’ lands can be allocated following a vacant land survey.²⁷ These provisions pose potential problems for Indigenous Peoples who use and access their lands according to traditional practices yet may still find their lands designated as vacant or unproductive.²⁸ The precarious land tenure system has left communities increasingly marginalised from traditional economic activities and from the decision-making process regarding the use of natural resources. They face growing threat of dispossession due to their marginalisation and insecurity of tenure. As an illustration, the law on public utility expropriation²⁹ remains vague and unclear as it has not been regulated. The grounds for expropriation in the public interest include economic development grounds, as well as planning operations.³⁰ These grounds threaten the precarious occupation of customary rights holders. Customary land rights can be translated into registered property titling, based on registration procedures, as defined in legal provisions.³¹ The ‘*mise en valeur*’³² requirement, means that the land should be ‘enhanced’ by the applicant through farming, plantations or other productive use of the land.³³ The process for obtaining a land title and therefore the right to private property, has to go through acknowledgment and recognition of the customary land rights.³⁴ The land then needs to be registered in the names of the right holders or their representative in the case of a collective property.³⁵ Decrees n° 2006-255³⁶ and n° 2006-256³⁷ foresee ad hoc decentralised bodies at local levels to implement mechanisms for the

2006-256 of 28 June 2006 on the institutions, attribution, composition and functioning of an ad hoc body for the identification of customary land rights.

²⁶ ClientEarth (2020a, b), p. 14.

²⁷ Law on the General principles applicable to State lands and land tenure 2004, Section 51.

²⁸ HRC (2011), Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 10 A/HRC/18/35/Add.5.

²⁹ Law on the procedure of expropriation for public utility 2004 n° 11-2004 of 26 March 2004.

³⁰ Law establishing the general principles applicable to the land and property regime 2004 n° 10-2004 of 26 March 2004, Section 21.

³¹ Decree establishing, attributions, composition and functioning of an ad hoc body for the recognition of customary land rights 2006 n° 2006-255 of 28 June 2006.

³² Law on the farming land regime 2008 n° 25-2008 of 22 September 2008.

³³ Law on the farming land regime 2008 n° 25-2008, Section 7.

³⁴ Law on general principles applicable to State-owned land and tenure regimes 2004 n° 10-2004 of 26 March 2004.

³⁵ Law on general principles applicable to State-owned land and tenure regimes 2004 n° 10-2004, Sections 38 and 39.

³⁶ Law on the farming land regime 2008 n° 25-2008 of 22 September 2008.

³⁷ Decree on the institution, attributions, composition and functioning of an ad hoc body for the recording of customary land rights 2006 n° 2006-256 of 28 June 2006.

acknowledgment and recognition of land rights. However, these bodies are slow to become operational, and cadastral mapping of customary landowners is still embryonic.³⁸ Decentralised bodies do exist at the departmental level, but, most of the communities are not aware of their existence and therefore do not make use of them.³⁹ Law No. 21-2018 of 13 June 2018, which sets out the rules for occupying and acquiring land, cancels some of the achievements of the decree on ad hoc commissions for the recognition and establishment of customary land rights. Furthermore, contrary to Law No. 05 of 25 February 2011⁴⁰ on the promotion and protection of the rights of IPLC in ROC, it does not mention that Indigenous Peoples have specific rights to land.⁴¹ Land allocations and uses do not take into account the customary land rights of IPLC.⁴² There is a lot of overlap between resource exploitation activities and community uses, and often communities' use rights are not considered in the contracts signed between the state and private investors.⁴³

In the context of REDD+ or social economic development aspirations, the issue of land use for natural resource exploitation has overtaken the customary land rights of IPLC.⁴⁴ Rural populations who depend essentially on land have few tools to hold other active stakeholders in land issues accountable. Existing legal frameworks, including the new Forest Code⁴⁵ and land tenure regime aim to secure communities' access and usage rights. Recent legal reforms could help secure collective ownership of customary lands, and not only resources. In this regard, the adoption of Law No. 21-2018 of 13 June 2018 seems like a missed opportunity and a step back compared to the law on Indigenous Peoples.⁴⁶ The 2018 Land Law establishes a new mechanism for the recognition of customary land. As a result, the procedure for recognising IPLC customary land is becoming more cumbersome and much more expensive. It provides that 'the national territory constitutes an area of land that may be parcelled out to form land'.⁴⁷ This provision confirms the government's ambition to create land reserves through expropriation of the IPLP for unjustified motives and illegitimate reasons. In addition, it provides that 'the State, local authorities (...) may occupy and acquire customary lands previously recognized by the State'.⁴⁸ Such a situation accentuates the precariousness of the occupation or ownership of customary land by indigenous communities. Moreover, the provision stresses that 'no one

³⁸ Ayari and Counsell (2017).

³⁹ Ayari and Counsell (2017).

⁴⁰ Law on the promotion and protection of indigenous peoples 2011.

⁴¹ Law on the promotion and protection of indigenous peoples 2011, Section 31.

⁴² ClientEarth (2020a, b).

⁴³ OCDH et al. (2020), p. 2.

⁴⁴ OCDH et al. (2020), p. 3.

⁴⁵ Law on Forestry Code 2020 n° 33-2020 of 8 July 2020.

⁴⁶ Law on the promotion and protection of indigenous peoples 2011 n°5-2011.

⁴⁷ Law establishing the rules of occupation and acquisition of land 2018 n°18-2018, Art. 2.

⁴⁸ Law establishing the rules of occupation and acquisition of land 2018 n°18-2018, Art. 38.

may be deprived of his land ownership except in the public interest (...).⁴⁹ This increases legal uncertainty for Indigenous Peoples and local communities because the notion of public utility in Congolese law remains vague and unclear.

3 Legal Recognition of Indigenous Peoples in Congo

The African Commission on Human and Peoples' Rights (ACHPR) is of the view that, no single definition can capture the characteristics of indigenous populations. Rather, it is much more relevant and constructive to try to bring out the main characteristics allowing the identification of the IPLC in Africa.⁵⁰ This is in fact the major internationally recognised approach, advocated by the ACHPR as well as the United Nations bodies dealing with the human rights of Indigenous Peoples.⁵¹ The concept in effect embodies the following constitutive elements or characteristics, among others:

The overall characteristics of groups identifying themselves as Indigenous Peoples are that their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalisation, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. The discrimination, domination and marginalisation violate their human rights as peoples/communities, threaten the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development.⁵²

In ROC, the Baaka (northern Likouala and Sangha departments), Mbendjele (southern Likouala and Sangha departments), Mikaya (Sangha Department), Luma (Sangha, Cuvette and Likouala departments), Gyeli (north-western West Cuvette Department), Twa (Plateaux department to border with Democratic Republic of Congo) and Babongo (Lékoumou, Niari, and Kouilou departments) are

⁴⁹Law establishing the rules of occupation and acquisition of land 2018 n°18-2018, Art. 23.

⁵⁰ACHPR (2007), Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the African Commission on Human and Peoples' Rights at its 41st Ordinary Session held in May 2007 in Accra, Ghana, p. 30.

⁵¹ACHPR and IWGIA (2006), p. 9.

⁵²ACHPR and IWGIA (2006), p. 10.

hunter-gatherer communities who identify themselves as Indigenous Peoples.⁵³ They are distinct from the majority Bantu ethnic groups and represent a small minority of 1.4 to 10% of ROC's estimated population of 4.4 million, primarily of Bantu origin.⁵⁴ Although they speak different languages and inhabit different regions of ROC, they share a number of defining features. Unlike the Bantu, who have long been largely sedentary and village-based, until recently, Indigenous Peoples maintained a semi-nomadic way of life, and some still do, their subsistence based on hunting and gathering forest products. Their social structure is typically egalitarian, without a highly defined leadership hierarchy.⁵⁵ While the term Pygmy continues to be used in other States of Central Africa, in the ROC, the term carries negative connotations due to its association with an assumption of inferior status and its connection to marginalisation, exclusion and oppression. For this reason, the Congolese Government has a policy against calling people 'Pygmies', and now officially designates such groups as Indigenous Peoples or *populations autochtones*, as stipulated in the 2011 Law on the Promotion and Protection of the Rights of Indigenous Populations and the new Forest Law.⁵⁶

The law, the first of its kind in Africa, is based on the concept of 'Indigenous Peoples' as understood internationally,⁵⁷ and by the ACHPR.⁵⁸ The adoption in 2011 of the law which allows for the legal recognition of both individual and collective ownership of Indigenous Peoples' customary land,⁵⁹ was well acclaimed at the national, regional and global level, as it offered some hope and represented a pioneering approach to the recognition of Indigenous Peoples' rights in Africa. The law distinguishes indigenous populations from other groups of the national population by their cultural identity, their way of life and their extreme vulnerability.⁶⁰ The law prohibits the use of the term 'pygmy',⁶¹ recognises Indigenous Peoples' collective and individual rights to their traditionally owned lands and resources,⁶² and exempts them from going through complex registration processes, thereby

⁵³ IFAD and IWGIA (2014), p. 1.

⁵⁴ Report of the Special Rapporteur on the rights of indigenous peoples, p. 5.

⁵⁵ Report of the Special Rapporteur on the rights of indigenous peoples, p. 5.

⁵⁶ The new forest code defines indigenous population as a forest-dwelling population distinguished from other groups in the national population by its cultural identity and way of life; See Law n° 33-2020 of 8 July 2020 on Forestry Code, Section 2.

⁵⁷ United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on 13 September 2007.

⁵⁸ ACHPR and IWGIA (2006), Indigenous peoples in Africa: the forgotten peoples? The African Commission's work on indigenous peoples in Africa; ACHPR and IWGIA (2007), Advisory opinion of The African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples.

⁵⁹ Law on the promotion and protection of indigenous peoples 2011 n°5-2011, Section 31.

⁶⁰ Law on the promotion and protection of indigenous peoples 2011 n°5-2011, Section 1.

⁶¹ Law on the promotion and protection of indigenous peoples 2011 n°5-2011, Section 1.

⁶² Law on the promotion and protection of indigenous peoples 2011 n°5-2011, Section 31.

facilitating easier access to land.⁶³ In practice, the law remains unenforced, as it took almost eight years to adopt the subsequent supplementing decrees. It remained unenforced until the adoption in July 2019, of a series of Decrees supplementing the 2011 Indigenous Populations Law.⁶⁴ Also, there are still some gaps in the implementation decrees, especially the Decree on participation and consultation which does not address Free, Prior, and Informed Consent (FPIC), a prerequisite for REDD+ project.

4 REDD+: An Aid or Hindrance to Rights?

REDD+ offers an opportunity to strengthen the rights of IPLC. It is widely admitted that securing IPLC collective tenure rights would make a substantial contribution to reducing deforestation and forest degradation.⁶⁵ But, an analysis of climate change vulnerabilities in the Congo Basin landscapes reveals that forest communities are the most exposed to climate change impacts.⁶⁶ Recent studies revealed significant gaps in the implementation of human rights and social safeguards for marginalised communities.⁶⁷ A number of issues, as shall be manifest, show that REDD+ may serve as both aid and hindrance to the realisation of rights.

4.1 *Potential in REDD+ to Enhance Rights*

There is a growing consensus and increasing scientific evidence that tenure security is an enabling factor in reducing deforestation and degradation. More effective forest stewardship by IPLC is usually attributed to their active participation in forest governance, direct benefits from forest products and the desire to maintain the resource for future generations.⁶⁸

The link between human rights and climate change has been recognised by numerous international human rights bodies.⁶⁹ The African Commission for Human and Peoples' Rights adopted a resolution on Climate Change and Human Rights, requesting Member States to implement the special measures of protection

⁶³Law on the promotion and protection of indigenous peoples 2011 n°5-2011, Section 32.

⁶⁴These include the decrees on: (a) access to social services including healthcare; (b) composition and functioning of the interministerial committee; (c) access to education; (d) granting of civil status (administrative) documents; (e) consultation and participation; (f) protection of cultural heritage.

⁶⁵FAO (2021).

⁶⁶Pongui and Kenfack (2012).

⁶⁷Orozco and Salber (2019).

⁶⁸Bradley and Fortuna (2021).

⁶⁹Wewerinke and Curtis (2011), pp. 141–160.

for vulnerable groups such as children, women, older persons and indigenous communities among others.⁷⁰ At the national level in ROC, REDD+ is considered a ‘sustainable development tool’ and a genuine ‘pillar of green economy’.⁷¹ ROC and CAFI reached a new phase in their partnership in 2019, with the signature of a Letter of Intent that presented an overarching commitment to establish a long-term partnership aimed at the realisation of the investment plan of the national REDD+ strategy.⁷² The agreement is implemented through eight objectives including the improvement of land tenure security in rural areas, and acknowledgment of and respect for customary land rights.⁷³ Accordingly, the customary land rights of indigenous communities, as provided by the Indigenous Peoples Law is amenable to alignment with the interests of the IPLC.⁷⁴

ROC has stated its intention to develop national land-use plans, including zoning processes to identify areas suitable for different uses, such as agro-industrial development, through adoption of the law for the orientation of land-use planning and development.⁷⁵ According to the National REDD+ Strategy Investment Plan, the land use planning program aims to promote and secure REDD+ investments through sustainable multi-sectoral spatial planning and thus alleviate conflicts of land use.⁷⁶ The foregoing signifies that, if fully implemented, existing legislation may help with the realisation of the right to land of the IPLC. It can also assist with the realisation of other rights linked to land such as their subsistence and wellbeing.

4.2 *REDD+ as a Threat to Rights in ROC*

The REDD+ regime contains many assumptions about the identity, tenure and rights of IPLC who inhabit, use or claim rights to forested lands.⁷⁷ The consequences of this are manifold, and include overlapping land uses, which often create conflict, and pervasive disregard of the needs of local communities.⁷⁸ National regulations have been adopted to avoid negative impacts on the environment and on the populations

⁷⁰ ACHPR (2016) Resolution on Climate Change and Human Rights in Africa, ACHPR/Res.342 (LVIII) 2016.

⁷¹ Pongui and Kenfack (2012).

⁷² Letter of Intent on the establishment of a long-term partnership to implement the Investment Plan of the National REDD+ Strategy, adopted 2 September 2019.

⁷³ Letter of Intent, p. 17.

⁷⁴ Letter of Intent, p. 18.

⁷⁵ Law No. 43-2014 on territorial planning and development.

⁷⁶ ROC (2017), National REDD+ Strategy Investment Plan for the Republic of Congo 2018–2025, 2017.

⁷⁷ Tehan et al. (2017).

⁷⁸ Orozco and Salber (2019), p. 19.

affected by development projects,⁷⁹ but, the planning of sub-national REDD+ projects is based on weak social analysis and fails to detail safeguards and social and rights standards such as FPIC required under national and international laws.⁸⁰

Olawuyi outlines a human rights-based approach to carbon finance as a functional framework for mainstreaming human rights into the design, approval, finance and implementation of carbon projects.⁸¹ Also, Jegede proposes a human rights approach as fundamental in addressing Indigenous Peoples' land issues in climate change context.⁸² A rights-based due diligence framework through which human rights issues can be anticipated and addressed and describes the key human rights issues at stake in their planning and execution.⁸³ These benchmarks characterised by a six-part legal threshold contain practical measures to protect the human rights of community members affected by carbon projects, shifting the focus on human rights from an afterthought to a key component that is considered throughout the lifespan of a project.⁸⁴

In the context of ROC, the lack of a due diligence framework in the development of REDD+ makes it difficult to anticipate the risk for IPLC. The adaptation and mitigation aspirations of Congo face the challenge of a weak human rights impact assessment. Community participation in forest management and decision-making processes is weak, and accountability, particularly in relation to the fight against corruption and conflict resolution, is limited, and communities are in a dire need of effective grievance mechanisms.⁸⁵ The institutional and legal framework is a structural predicament to enable the protection of the human rights of IPLC affected by REDD+ projects. Major shortcomings include among others the lack of FPIC and adequate grievance mechanism, and an ineffective judicial recourse mechanism.

4.2.1 Deficit of FPIC

FPIC has emerged as a key principle in international law and jurisprudence related to Indigenous Peoples. FPIC refers to the right of Indigenous Peoples to give or withhold their free, prior and informed consent to activities that will affect their rights to their lands, territories and other resources including their intellectual property and cultural heritage.⁸⁶ The right is affirmed in the UN Declaration on

⁷⁹Decree establishing the scope, content and procedures of the environmental and social impact assessment 2009, n° 2009-415.

⁸⁰Feintrenie (2014), p. 1584.

⁸¹Olawuyi (2016).

⁸²Jegede (2016), pp. 18–22.

⁸³Olawuyi (2016).

⁸⁴Olawuyi (2016).

⁸⁵FERN (2020), p. 6.

⁸⁶Colchester (2010), pp. 18–19.

the Rights of Indigenous Peoples (UNDRIP)⁸⁷ and in the jurisprudence of the international human rights treaty bodies including the Inter-American Court of Human Rights⁸⁸ and the African Commission on Human and Peoples' Rights.⁸⁹ All peoples have the right to self-determination, a fundamental principle in international law, embodied in the African Charter on Human and Peoples' Rights⁹⁰ ratified by ROC.⁹¹ FPIC, as well as Indigenous Peoples' rights to lands, territories and natural resources are embedded within the universal right to self-determination. The normative framework for FPIC consists of a series of international legal instruments including UNDRIP,⁹² the International Labour Organization Convention 169 (ILO 169),⁹³ and the Convention on Biological Diversity (CBD).⁹⁴

According to the Indigenous Peoples Law, when natural resource development activities may affect indigenous communities, a process of consultation with communities, prior to commencement of the development activities is required. The consultations must be conducted in good faith, without pressure or threats in order to secure FPIC.⁹⁵ In addition to that, the Congolese Forest Code provides a definition of FPIC,⁹⁶ while the Decree No. 2019-201 of 12 July 2019 describes the modalities for consultation and participation.⁹⁷ The Forest Code identifies the beneficiaries of FPIC but does not specify who is liable for it.⁹⁸ The Decree does not explicitly guarantee the clip in the same terms as the law on Indigenous Peoples, and limits the duration of consultations to only three months⁹⁹ and does not give more concrete indications on how to seek and obtain FPIC from indigenous communities.¹⁰⁰

⁸⁷The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007.

⁸⁸*Saramaka People v. Suriname* (2007) IACHR No. 172 (2007) (Ser. C). See also *Kaliña and Lokono Peoples v Suriname*, paras 204, 210.

⁸⁹ACHPR (2009), *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2009) AHRLJ 75.

⁹⁰African Charter, Article 20.

⁹¹Ratified on 9 December 1982.

⁹²ROC has voted in favour of UNDRIP.

⁹³ROC has not ratified ILO 169.

⁹⁴Ratified on 1 August 1996.

⁹⁵Law on the General principles applicable to State lands and land tenure 2004 n° 10-2004 of 26 March 2004, Section 3.

⁹⁶Local authorities, local communities and indigenous peoples shall express their free, prior and informed consent in the development in the preparation, implementation and monitoring of actions and decisions concerning them in relation to exploitation and sustainable management of forest resources, Section 5.

⁹⁷Decree establishing procedures for the consultation and participation of indigenous peoples in socio-economic development projects and programmes 2019, n° 2019-201 of 12 July 2019.

⁹⁸Decree establishing procedures for the consultation and participation of indigenous peoples, p. 3.

⁹⁹Law on the General principles applicable to State lands and land tenure 2004, Section 5.

¹⁰⁰HRC (2019), Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Congo from 14 to 24 October 2019, 2020, A/HRC/45/34/Add.1, p. 15.

According to the decree, an advisory commission¹⁰¹ will conduct each consultation. But, it fails to include the presence of an indigenous representative on this.¹⁰² In addition, the decree does not specify the date on which the consultation opens. There is no indication of whether it is before the signing of the contract between the state and the project developer or after the operations of the promoter have started.

In practice, meaningful prior consultation with forest peoples affected by development projects has not taken place. There are shortcomings with regard to ensuring adequate participation and consultation of project affected persons. The inclusion of IPLC in project design is a particular challenge. The stakeholder definition in the national REDD+ strategy include the administration, the financial and technical partners, civil society (CSO) and IPLC.¹⁰³ The document suggests that civil society and IPLC participation will be done through the involvement of CACO-REDD¹⁰⁴ and through the temporary workgroup of the Dedicated Grant Mechanism (DGM).¹⁰⁵ However, the work of these platforms is hampered by internal conflicts and a chronic lack of funding.¹⁰⁶ The CACO-REDD coordination platform faces certain challenges. As a result, tensions and lack of cohesion within the platform hinder progress, differing interests create friction between civil society and Indigenous Peoples' organisations, disconnection between CACO REDD members and their constituencies at national and local level.¹⁰⁷ There are economic considerations and the inclination of NGOs to prefer to advance their own agendas and interests outweigh interest in influencing the REDD+ process. The government is only moderately open to genuinely involving civil society and Indigenous Peoples' organisations.¹⁰⁸ Thus, these platforms are not in a capacity to represent communities in an appropriate manner, and they cannot be considered as legitimate representatives of IPLC. CSOs have also participated in the process of revising forest law and elaboration of forest policies, and other technical meetings on REDD+. However, some CSOs argue that they were not able to participate in the drafting of REDD+ documents but only to validate these documents which were written by

¹⁰¹This commission is composed of representatives from four ministries, a local government official, a local elected official, a person representing the project developer and a representative of civil society: Law on the General principles applicable to State lands and land tenure 2004, Section 6.

¹⁰²Law on the General principles applicable to State lands and land tenure 2004, Section 6.

¹⁰³ROC (2017), p. 124.

¹⁰⁴Consultation Framework for Civil Society Organisations and Indigenous Peoples on REDD+.

¹⁰⁵To enhance their role in forest management and climate action, self-selected representatives of Indigenous Peoples and Local Communities created the Dedicated Grant Mechanism for Indigenous Peoples and Local Communities (DGM). Through their design and implementation of the DGM, these community leaders are actively working to protect forests and to strengthen their capacity to participate in climate action at local, national and global levels. This is an initiative supported by the World Bank, the Climate Investment Funds, and Conservation International.

¹⁰⁶HRC (2019), p. 5.

¹⁰⁷EU REDD Facility (2015).

¹⁰⁸EU REDD Facility (2015).

consultants.¹⁰⁹ In their views, there was almost no CSO participation in REDD+ meetings that followed (e.g. elaboration of ER-PIN in 2014), hence they had to publish position papers to raise their concerns.¹¹⁰ As a result, national REDD readiness planning in ROC has so far not engaged with IPLC effectively. Although environmental concerns are mentioned in the legislation, the social impacts of large-scale land deals are not.¹¹¹ The decree refers to public hearing, public consultation, and public inquiry procedures, but does not consider FPIC.¹¹²

4.2.2 Non-Compliance and Ineffective Judicial Recourse

Although access to justice is enshrined in the Congolese Constitution,¹¹³ the enjoyment of this right by indigenous communities is very limited in practice. This is exacerbated by geographical circumstances, as villages are far away from cities where administrative offices and courts are located.¹¹⁴ It is complicated and costly for communities to initiate or follow up with a legal action. Moreover, the lack of knowledge and information about their rights and relevant administrative, judicial and legal procedures—not to mention the language barrier—further impede access to justice for local communities.¹¹⁵

Judicial activism in the forest sector is rare, and the judge's involvement remains limited due to procedural constraints (regime of land and forest resource ownership, on the one hand, special regime for the recording and punishment of forest offenses, on the other hand). There are also substantive constraints, with numerous legislative provisions creating obligations without attaching them to corresponding offenses and penalties.¹¹⁶ State ownership in the forestry sector therefore translates into a state monopoly on litigation. Yet, the state has a dual legitimacy to act in justice: firstly, as the one responsible for law enforcement and public order, and secondly as the owner of the land, forests and resources.¹¹⁷

When the barrier of inaccessibility of the courts is overcome, it is rarely in favour of Indigenous Peoples. The simple reason is that most citizens who can afford to initiate legal proceedings are from the dominant groups in society. An illustration is given by a petition brought before the Constitutional Court by a Congolese citizen in

¹⁰⁹ Satyal (2018), p. 87.

¹¹⁰ Satyal (2018), p. 87.

¹¹¹ Satyal (2018), p. 85.

¹¹² Law on the General principles applicable to State lands and land tenure 2004, Section 2.

¹¹³ ROC (2015), Constitution, Section 47.

¹¹⁴ OCDH (2017), p. 31.

¹¹⁵ Ayari and Counsell (2017), p. 73.

¹¹⁶ Nguiffo (2020), pp. 107–114.

¹¹⁷ Nguiffo (2020), pp. 107–114.

2018 by way of an action to declare Section 16 of the Land Law unconstitutional.¹¹⁸ In this case, Mr. Nongou Elie Jean Pierre questions the constitutional basis for infringement of private property using a procedure other than that of expropriation in the public interest. The applicant argues that Section 16 provides that ‘For the constitution of the State’s land reserves necessary for the implementation of the national economic and social development plan, a retrocession of ten percent (10%) of the land recognised is returned to the State’.¹¹⁹ According to him, this legislation establishes ‘a new type of alienation of private property to the benefit of the State without fair or equitable compensation’. He also questions the legality of this section in relation to the Constitution which provides that ‘no one may be deprived of his property except in the public interest’.¹²⁰ The Court found that Section 16 is inconsistent with the Constitution and cannot, therefore, be implemented.¹²¹ The problem is that paragraph 2 of Section 16 remains problematic for customary land holders. However, the petition brought before the Constitutional Court has not specifically targeted the provision. If Indigenous Peoples are not provided with legal assistance, they are unable to raise their own issue before local or national jurisdictions.

4.2.3 Inadequate Grievance Mechanism

The main causes of the most frequent disputes related to REDD+ are, among others, land insecurity, incoherent land tenure policies inappropriate to the context of legal pluralism, inadequate land use planning, the absence of state institutions in rural areas, structural inequalities and the persistence of discriminatory practices against indigenous populations.¹²² In the context of ROC, REDD+ can have adverse impacts, including potential conflicts with local communities or cause possible environmental harm. In the absence of proper judicial mechanisms, project affected communities are very often left to non-judicial grievance mechanisms of multi- and bilateral financing institutions or REDD+ projects developers, which are important for ensuring their rights. Grievance mechanisms provide an opportunity for communities to access a mechanism to seek redress for adverse environmental and/or social effects associated with REDD+ projects. However, the existing framework in ROC lacks an effective mechanism to address the complaints raised by IPLC who may have been negatively impacted by a climate project. The lack of awareness of their rights despite the adoption of a law on indigenous populations and access to

¹¹⁸ Decision No. 002/DCC/SVA/18 of 13 September 2018 on the appeal for unconstitutionality of section 16 of Law No. 21-2018 of 13 June 2018 establishing the rules of occupation and acquisition of land.

¹¹⁹ Decision No. 002/DCC/SVA/18 of 13 September 2018, p. 3.

¹²⁰ Decision No. 002/DCC/SVA/18 of 13 September 2018, p. 3.

¹²¹ Decision No. 002/DCC/SVA/18 of 13 September 2018, p. 6.

¹²² FCPF (2014).

information prevents IPLC from accessing effective remedies during the implementation of REDD+ projects.

4.2.4 Lack of Exclusive Right to Carbon

Under regional and international law,¹²³ communities have rights to the lands and resources they customarily occupy and use. The African charter states that:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

The African regional human rights systems equally discussed this essential aspect of Indigenous Peoples' land rights. In the Ogiek case¹²⁴ for example, the Ogiek indigenous community of Kenya have successfully challenged the denial of their land rights before the African Court of Human and Peoples Rights. The Court found violations of Articles 1, 2, 8, 14, 17 (2) and (3), 21 and 22 of the African Charter on Human and Peoples' Rights.¹²⁵ In relation to the right to property under Article 14, the Court held that this can apply to groups or communities, and that it can be individual or collective.¹²⁶ It interpreted the right in light of Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which recognises Indigenous Peoples' 'right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership'.¹²⁷

However, like many countries in Central Africa, ROC's Land Law confers ownership of all natural resources above and below ground on the state. It gives the state absolute control over land and forest resources,¹²⁸ while restricting private land ownership to ownership of the soil only.¹²⁹ As explained earlier in section 2, despite the dual system of rights (de jure rights as issued by the state and de facto rights as based on customary norms) the state holds formal resource ownership and has the power to allocate resources and the prerogative to revoke rights in the public

¹²³ Collective land rights are guaranteed in the Preamble of the UNDRIP, which affirms that 'indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples'; 'No one shall be arbitrarily deprived of his property', so declares Article 17 of the 1948 Universal Declaration of Human Rights.

¹²⁴ ACHPR v Kenya, Application 006/2012, judgment of African Court of Human and Peoples' Rights, issued 26 May 2017.

¹²⁵ Minority Rights Group International (2017), Victory for Kenya's Ogiek as African Court sets major precedent for Indigenous Peoples' land rights, Briefing.

¹²⁶ ACHPR v Kenya, Application 006/2012, judgment of African Court of Human and Peoples' Rights, issued 26 May 2017, para 123.

¹²⁷ ACHPR v Kenya, Application 006/2012, judgment of African Court of Human and Peoples' Rights, issued 26 May 2017, para 126.

¹²⁸ ClientEarth, Section 53.

¹²⁹ ClientEarth, Section 18.

interest. As a result, Indigenous Peoples' lands are often conceded to private or public business, including logging companies¹³⁰ and project developers.

The regulatory framework does not provide Indigenous Peoples and local communities with the security of land tenure necessary to engage in REDD+. Land tenure security is key to bring some clarity on carbon right. There are some dualities between customary land tenure and modern land tenure. The forestry code defines the carbon credit as a unit corresponding to one tonne of CO₂ equivalent on the carbon markets.¹³¹ The holders of customary rights and use rights are eligible for carbon credits.¹³² For the purposes of carbon credits, a forest is any natural or artificial vegetation formation larger than 0.5 hectares, with trees higher than 3 metres and a tree cover of more than 30%.¹³³ In community forests,¹³⁴ the carbon credits generated belong solely or jointly to the local community and/or the Indigenous People concerned, depending on whether the project is implemented by them or by a third party.¹³⁵ The terms and conditions for the commercialisation of carbon credits are to be defined by future regulations,¹³⁶ which means the current legal framework is incomplete to secure carbon credits for IPLC.

4.2.5 Weak Benefit Sharing Formula

Lack of recognition of customary land tenure makes it difficult to achieve revenue sharing objectives under REDD+. The existing benefit-sharing mechanism in Congo is the Local Development Fund (LDF) established within the framework of forest concessions. IPLC are still not fully involved in the management of LDF, whose management they find unclear.¹³⁷ The LDF is identified as a potential benefit-sharing mechanism for the IPLP, however, it has not yet been tested to assess its performance. In addition, there appears to be a certain confusion between the gross and net benefits of REDD+ that needs to be clarified, as well as the question of the expected level of performance and its implications for financing—whether the benefits dedicated to IPLC are only intended to be redistributed (unconditionally)

¹³⁰ Barume (2010).

¹³¹ Forestry Code, Law n° 33-2020 of 8 July 2020.

¹³² Forestry Code, Section 180 (3).

¹³³ Forestry Code, Section 2.

¹³⁴ Under Section 15 of the new Forest Code, a community forest is either a natural forest located in the community development series of a managed forest concession; a forest plantation located on the land of a local community or Indigenous People, a forest whose creation and sustainable management is initiated by a local community; or a natural forest located on the land of a local community and Indigenous People, which has been classified for their benefit.

¹³⁵ Forestry Code, Section 15 (4).

¹³⁶ Forestry Code, Sections 184 and 186.

¹³⁷ Final report from technical assistance (2015), Support for the Local Development Fund mechanism in the forest sector of the Republic of Congo, July 2015, p. 15.

or whether they are to be used to support REDD+ activities (part of the revenues of which will be dependent on the level of performance).¹³⁸

4.2.6 Anti-Right Conservation Policy

Protected areas (PAs) in the Republic of Congo are the preferred model for conservation. During the colonial period, they were a political tool to control the territory.¹³⁹ After independence, this approach was upheld. However, this model of protected area management, which does not consider customary land and resource rights of communities, has led to conflict and human rights violations.¹⁴⁰ Protected areas are often contested by communities on the ground that they do not provide tangible benefits and infringe on rights enshrined in international conventions, including the right to own and control their lands, territories and resources, and their FPIC.¹⁴¹

The conservation model has a long history of disempowering IPLC sometimes to the point of dispossessing them of lands and livelihoods, with the misguided goal of protecting important biodiversity habitats.¹⁴² Since independence, IPLC have suffered a process of gradual land dispossession as the result of the proliferation of nature conservation initiatives, logging concessions, deforestation, oil fields, commercial plantations¹⁴³ and infrastructural developments.¹⁴⁴ Far from improving the lives of local people, PAs investments directly affect the land and forest rights of communities, creating ‘fortress’ conservation zones that diminish, rather than enhance, local livelihoods and biodiversity.¹⁴⁵

5 Conclusion

IPLC are being increasingly marginalised from mainstream participation in decision-making about use of natural resources and forest governance, and face increasing threats of dispossession, due to longstanding tenure insecurity.¹⁴⁶ The underlying

¹³⁸ Final report from technical assistance (2015), p. 15.

¹³⁹ Roulet and Hardin (2010), p. 123.

¹⁴⁰ Ayari and Counsell (2017), p. 6.

¹⁴¹ Gami (2003), p. 40.

¹⁴² Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF’s conservation work (2020), Embedding human rights in nature conservation: from intent to action, p. 95.

¹⁴³ ROC (2012), p. 214.

¹⁴⁴ IFAD and IWGIA (2014), p. 8.

¹⁴⁵ Tauli-Corpuz et al. (2020).

¹⁴⁶ Koné and Pichon (2019).

risks of REDD+ investment plan is to provide the Congolese Government with substantial funds to establish state land reserves benefiting investors. In practice, however, the implementation of REDD+ is a delicate experiment. It involves the balancing of multiple objectives including climate mitigation, resource exploitation, land management, land-use planning, agriculture, ecosystem services, biodiversity, and more importantly, the protection of peoples' livelihoods and respect for their fundamental human rights.¹⁴⁷ A human rights assessment is deficit in the development of the national REDD+ strategy and subsequent roadmaps. The right to property has been affirmed as an international human right. But several studies and declarations have highlighted that among the most troublesome manifestations of historical discriminations against Indigenous Peoples has been the lack of recognition of indigenous modalities of property.¹⁴⁸ Inasmuch as property is a human right, the fundamental norm of non-discrimination requires recognition of the forms of property that arise from the traditional or customary land tenure of Indigenous Peoples.¹⁴⁹ Clearly defined property rights at the local level can play multiple critical roles in re-establishing effective commons individual property rights including community ownership.¹⁵⁰ It can play an important place in the context of the implementation of REDD+ in ROC. The REDD+ implementation phase should apply a systematic human rights approach, which requires the recognition and protection of collective and customary land tenure systems and associated rights.

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¹⁴⁷ Campbell (2009), p. 397.

¹⁴⁸ Anaya (2004).

¹⁴⁹ Anaya (2004).

¹⁵⁰ Mavah et al. (2022), p. 212.

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Lassana Koné holds an LLM in Human Rights and Democratisation in Africa University of Pretoria, South Africa and currently works with Forest Peoples Programme (FPP) in the Congo Basin. He possesses extensive knowledge in conservation and human rights of Indigenous peoples. He has previously developed legal empowerment tools to strengthen communities' capacities to protect their land rights and prepared extensive legal advice on the contents of FPIC, and undertaken training on legal framework pertaining to land rights in Congo Basin countries and the African human rights systems.

Customary Land Rights of Local Communities and the Implementation of REDD+ in Cameroon



Jean-Claude N. Ashukem and Beng Simon Keluh

Abbreviations

| | |
|--------|---|
| FCPF | Forest Carbon Partnership Facility |
| LCB | Land Consultative Board |
| MINEF | Ministry of Environment and Forests |
| MINEP | Ministry of Environment and Nature Protection |
| MINFOF | Ministry of Forestry and Wildlife |
| MINFOF | Ministry of Forests and Fauna |
| R-PIN | Readiness Plan Idea Note |
| R-PP | Readiness Preparation Proposal |
| TFAP | Tropical Forest Action Plan |
| UNFCCC | United Nations Framework Convention on Climate Change |
| WWF | World Wide Fund |

1 Introduction

The need to reduce global emissions from deforestation and forest degradation has in recent years brought to the fore the thorny issue of land tenure in developing countries, including Cameroon. The interwoven relationship between land tenure and REDD+ demonstrates that tenure rights could positively prevent or reduce, as the case may be, deforestation and forest degradation to increase forest carbon

J.-C. N. Ashukem (✉)

Global Environmental Law Centre (GELC), University of the Western Cape, Bellville, South Africa

B. S. Keluh

North West University, Potchefstroom Campus, Potchefstroom, South Africa

stock.¹ The proliferation of the global green economy agenda characterising the twenty-first century, portrays overlapping competing interests and claims over rights and ownership in forested land as one of the contemporary challenges facing the government of Cameroon. This challenge makes it difficult for the government to align its economy with the global REDD+ agenda.²

In Cameroon, as it will be discussed in this chapter, while customary law recognises forested land as constituting a *prima facie* common property resource for local communities, under statutory law, all forested land is deemed to be the property of the state. This overlap in tenure rights and property protection portrays a highly controversial and conflicting legal anomaly whose status quo is posing enormous constraints on Indigenous Peoples and local communities' land rights.³ At the same time, the anomaly hinders their potential to develop socially, economically and culturally. Given this legislative overlap, key questions are worth asking: how can this conflicting view be addressed without impacting local communities' human rights? How are forested land rights managed, used and conserved to promote and ensure sustainability? How is democratic transition in land rights realised? How can inclusive development transformation be achieved? How can social stability and cohesion be maintained?⁴ Local Communities and Indigenous Peoples are used interchangeably without undermining the juristic deference, including that Indigenous Peoples are recognised under international law, having secured prominence spaces here in a holistic sense to mean the same thing since Indigenous Peoples also live in a community.⁵

Despite the constitutional and statutory guarantee of property rights, the commitment to respect and protect the rights and interests of minority groups, including local communities, and to adhere to all ratified international and African regional human rights instruments, there is still a substantive gap in the recognition of customary institutions and customary rights to property, resources, and forest rights in Cameroon.⁶ This substantive gap, we argue, supports the dispossession and eviction of local communities from their traditional ancestral land. National land law provides only limited security of occupancy for unregistered house plots and farmlands, to the extent that there is compensation when the government either acquires land for a public purpose, including granting unregistered land in absolute or to itself in the form of state or national forests. Law N° 94/01 of 20 January 1994 governing Forests, Wildlife and Fisheries of 1994 (Forestry Law) and its Decree of Implementation,⁷ grant local communities merely the right to usufruct of forest products.

¹ Assembe-Mvondo et al. (2014), p. 148.

² Assembe-Mvondo et al. (2014), p. 148.

³ Alden-Wily (2010), p. 5.

⁴ Alden-Wily (2010), p. 5.

⁵ For details, see Ashukem (2016), pp. 1–5.

⁶ Alden-Wily (2010), p. 5.

⁷ Decree No. 95-531-PM of 23 August 1995 (hereafter Decree of Application).

On the other hand, Ordinance N^o 74/01 of July 6, 1974, to Establish Rules Governing Land Tenure, including amendments of 1977 (Ordinance No. 74/01), poses serious challenges to both local communities and Indigenous Peoples' right to land as it does not recognise customary right over statutory right, lacking official recognition of property rights to land. Land titling procedures are tough and costly for traditional users in Cameroon, and consequently, local communities do not have legal title to the lands on which they live and on which they depend for their livelihood. Without recourse to (controversial) civil redress to protect traditional rights, local communities remain subject to (frequent) eviction and relocation,⁸ a fact that raises significant concern about their fundamental human rights to property and means of subsistence. In addition to these challenges, policy and decision-making processes on land matters ignore the effective participation of local communities, nor are their inputs considered.⁹ Based on the foregoing, and a critical review of Cameroon's land and forestry law regime to determine the accommodation of customary land rights, we contend that there is neither the protection of the socio-economic rights of local communities nor sustainability of the REDD+.

Section 2 offers an overview of the forest, forest policy and forest governance in Cameroon to clarify the legal nuance embedded with the plight of local communities' human rights generally and in the context of REDD+ projects with particular reference to the categorisation of forest in Cameroon. In Sect. 3, the extent to which the legal framework in Cameroon protects local communities' land and forest rights is examined. Section 4 examines the implementation of REDD+ and the plight of local communities' rights in Cameroon, and Sect. 5 is the conclusion.

2 Forest, Forest Policy and Forest Governance

The implementation of REDD+ in Cameroon is predicated on the status quo of land and natural resource governance, which harbours the highest rate of deforestation rate in the Congo Basin region.¹⁰ The desire to reduce the rate of deforestation and to optimise economic and social benefits through fostering sustainable forest management is the centre of many forest-related reforms in Cameroon,¹¹ with key drivers of deforestation and forest degradation being associated with agriculture, notably shifting cultivation of slash and burn, and timber harvesting.¹²

The management plan, which serves as a development plan, is an essential element of the community forest management agreement between the forest administration and the village community concerned. Under Section 30(3) of the Decree of

⁸Costenbader (2009), p. 17.

⁹Ashukem (2019), pp. 365–370.

¹⁰Food and Agricultural Organization (2011), p. 7.

¹¹Somorin et al. (2014), p. 88.

¹²Bele et al. (2011), pp. 369–385; Dkamela (2011), p. 8.

Application, a management agreement for a community forest must be valid for the same amount of time as the forest's general management plan. Re-evaluated every five (5) years, the government is required to entrust the management of forestry resources for a renewable term of 25 years to the village community concerned.¹³ The agreement between the state and the recipient community follows a management plan, which includes all activities carried out in the community forest.¹⁴ Section 31(1) of the Decree of Application empowers the Administration to regulate community forest management and to sanction communities, including terminating their management agreement. This provision does not confer property rights, nor does it confer any title on the forest. Consequently, it makes it easier for the state to expropriate the land. As will be evident below, property rights over forested land remain the exclusive right of the state, and the community's rights are limited to exploiting, using and developing forest resources. Therefore, community forests are not the property of village communities, but national domain dependencies managed under state control. The state transfers only the usufruct rights and continues to retain the powers of control over the forest.¹⁵

Cameroon's participation in the Tropical Forest Action Plan (TFAP) in the early 1990s facilitated the need for an effective, equitable, institutional and legal reform for sustainable forest management.¹⁶ Cameroon is also a signatory to the United Nations Framework Convention on Climate Change (UNFCCC).¹⁷ The UNFCCC aims to reduce greenhouse gas emissions, on which premise, Cameroon undertook legal reforms to address environmental issues. Consequently, the foregoing culminated in the creation of the Ministry of Environment and Forests (MINEF) in 1992 now the Ministry of Forests and Fauna (MINFOF); a zoning plan adopted in 1993 to define specific boundaries between development and environmental conservation. The Forestry Law was enacted in 1994 and the Decree of 23 August 1995 on the Terms of Application of the Forest Regime, stressed the management of forests and the conservation of biodiversity, taking into consideration global trends.¹⁸ The enactment of the Forestry Law in tandem with the introduction of a decentralised forest management scheme led to a fundamental shift in the previously state centralised system of forest management. The Forestry Law recognised the rights of riparian and decentralised indigenous communities to enter and use the forestland and the rights of the indigenous communities to share forest revenues.¹⁹ Consistent

¹³Logo (2007) <http://www.fao.org/forestry/12717-09bdf38d000abba2b9e4d9c56e946b22e.pdf> (last accessed on 15 April 2021).

¹⁴Section 37(2)(3)(4) of the Forestry Law.

¹⁵All this explanation is in conformity with Section 37 of the Forestry Law and Article 3(11) and (16), Article 27(4) and (5) of the Decree of Application.

¹⁶Essama-Nssah and Gockowski (2000), <https://agris.fao.org/agris-search/search.do?recordID=XF2015011359> (last accessed on 15 April 2021).

¹⁷UN Framework Convention on Climate Change (UNFCCC), ILM 851, 1992.

¹⁸Decree No. 95-531-PM of 23 August 1995. It specifies the rules for the application of the Forest Code, particularly the procedure and criteria for the allocation of forest concessions.

¹⁹Logo (2007).

with the concept of national heritage embedded in the Forestry Law that the forest and its resources belong to the state, Section 11 requires the state to protect the forest and its natural resources for the benefit of all Cameroonians. Under the Forestry Law, customary right implies the right of local communities to harvest for their personal use trees, wildlife and fishery products, except protected species.²⁰ However, Section 8(2) obliges the Minister to either temporarily or permanently suspend logging rights on grounds of public interest after consultation with the local communities. The Forest Law specifies that the Cameroonian forest, recognised as a national forest, be categorised as permanent and non-permanent forests,²¹ for which permanent forests consist of land used primarily for forestry and/or as a sanctuary for wildlife habitat, and the non-permanent forest is forestland used for any other purpose.²²

2.1 Categorisation of Cameroon Forest by the Forest Law

2.1.1 Permanent Forests

Forest tenure functions around the founding construct embedded in the Forestry Law, according to which Section 20(1) categorises national forest into permanent and non-permanent forests. As earlier mentioned, permanent forest comprises only land used for forestry and wildlife habitat, and non-permanent forest comprises forested land used for other purposes other than forestry.²³ Through this categorisation and by Section 37, the law allocates to community and private individuals, community forests to enable them to benefit from forest royalties in the exploitation of natural resources. However, according to the classification of forests, permanent forests belong to the state while communal forests are the private domain of councils. The management of permanent forests stems from the desire to have a vegetation cover reflecting national biodiversity. Section 24(2) requires a decree to provide for the definitions, rules and conditions of use of the various types of state forests. This provision does not only empower the state to have a land title in its name, but it also fixes the geographical limits and objectives of the land, including the production, recreation, protection or conservation of biodiversity.²⁴ State forests are expected to consider the land use plan of the ecological area in question. This plan sets the objectives, management rules, and modalities for local populations to exercise their rights of use. However, this right may be limited in certain

²⁰Section 8(1) of the Forestry Law.

²¹Section 20(1) of the Forestry Law.

²²Section 20(2) and (3) of the Forestry Law.

²³Section 20(2) and (3) of the Forestry Law.

²⁴For details, see Sections 24 and 25 of the Forestry Law; see also Article 17 of the Decree of Application.

circumstances and the local populations shall be entitled to compensation as stipulated in the decree of implementation.²⁵ Section 26(3) of the Forestry Law requires the state forest to maintain the local populations' logging rights and to prohibit public access to the state forest.²⁶ On the other hand, council forests are either classified on behalf of municipalities (Local Councils) or planted by them, for which the limits and objectives of management of council forests could be analogous to those of state forests. Local councils have a right to a land title in their name under the private domain of the municipalities. Council forests have a management plan approved by the Forestry Administration.²⁷

2.1.2 Non-Permanent Forests

Non-permanent forests are equivalent to 'protected areas', consisting of (any parcel of) forested land assigned to uses other than forestry. Non-permanent forests comprise communal forests, community forests and forests belonging to private individuals.²⁸

Communal forests do not include orchards, agricultural plantations, fallow lands, incidental afforestation of farmland, and pastoral developments. However, after reconstitution of the forest cover, the old fallows and agricultural or pastoral lands not subjected to a title deed may be reconsidered as communal forests. The Forestry and Wildlife Administration manages all forest products on a conservatory basis and the village population only have recognised user rights.²⁹ Considered by the state as 'vacant and ownerless forests', communal forest generally constitutes national customary property for which local communities living next to these forests are granted recognisable user rights to use forestry products³⁰ although they are expected to explain the use of such trees during inspections of the forest.³¹ Section 26 prohibits the trading of timber and extraction of sand, gravel or laterite extraction within the communal forest.³²

One of the main innovations of the Forestry Law is the creation of community forests. This community forest is designed as the state's commitment to a participatory approach in forest resources management.³³ However, the vigorous implementation of this participatory approach remains wanting since neither the Forestry Law nor its Implementation Decree provide a concrete description of a community forest.

²⁵ Sections 26–29 of the Forestry Law.

²⁶ Section 26(3) of the Forestry Law.

²⁷ Section 30 of the Forestry Law; for details, see Title III Chapter I of the Decree of Application.

²⁸ Sections 20 and 34 of the Forestry Law; see also Logo (2007).

²⁹ Sections 35 and 36 of the Forestry Law; see also Article 25 of the Decree of Application.

³⁰ See Sections 26(2) of the Decree of Application.

³¹ Logo (2007).

³² Section 26(2) and (4) of the Decree of Application.

³³ Section 37 of the Forestry Law.

Cameroon's contemporary concept of the community forest is vague and can only be understood concerning where they are found and the use restrictions imposed. Thus, community forests are those that are situated on the outskirts or near the communities in which their activities are conducted. These forests are allocated in priority to the nearest communities with a maximum area not exceeding 5000 hectares and their creation may intervene only in an area free from any forest exploitation licence.³⁴ A community willing to manage a community forest must apply to the competent administrative authority which might be approved as favourable or rejected as unfavourable and the application returned to the community by the authority.³⁵

Lastly, private forests are planted by individuals, whether natural or legal and established in their domain, acquired in compliance with the laws and regulations in force. The owners of these forests, with the assistance of the administration in charge of the forests, are required to draw up management plans. Any new allocation of land must comply with the regional planning master plan. Forest products found in natural forest lands belonging to private land shall be owned by the state, except in the case of legal acquisition of these products by individuals.³⁶ In the next section, we examine Cameroon's legal framework to determine its level of protection of local communities' human rights during the implementation of REDD+ projects.

3 Legal Framework on Land and Forest Rights

3.1 *The Constitution*

Although not explicitly stated, Cameroon's Constitution is the supreme law. Enforceable and justifiable fundamental human rights are contained in the Preamble of the Constitution, which under Section 65, is part of the Constitution.³⁷ The Constitution affirms attachment to respecting and protecting fundamental rights and freedoms enshrined in all ratified international conventions and regional instruments, including the Charter of the United Nations, and the African Charter on Human and Peoples' Rights. The Constitution does not explicitly guarantee the right to land or property. The Constitution of Cameroon reiterates conventional generalities such as the freedom of settlement, guarantee of the right to use, enjoy and dispose of property and protection against deprivation of property, unless for a public purpose and subject to the payment of compensation to be determined by law.³⁸ However, the Constitution embodies certain elements that are intrinsic to the

³⁴Section 27 of the Decree of Application.

³⁵Section 29 of the Decree of Application.

³⁶Section 39 of the Forestry Law. For details on the legal procedure of acquisition of private forest, see Article 33 of the Decree of Application.

³⁷Ashukem (2021), p. 124.

³⁸Alden-Wily (2010), p. 50.

right, including the notion of ownership, recognition and protection of traditional values and customs and the protection of the rights of minorities and indigenous populations. The Preamble provides that:

Ownership shall mean the right guaranteed to every person by law to use, enjoy and dispose of the property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law; the right of ownership may not be exercised in violation of the public interest or in such a way as to be prejudicial to the security, freedom, existence or property of other persons.

According to the Constitution, deprivation of the property rights, particularly the right to own, use, enjoy and dispose of the property, is prohibited. Despite this guarantee, the Constitution fails to formally acknowledge the right of customary land-holding as amounting to real property interests. This failure suggests that no protection is afforded to customary land tenure, including the payment of compensation where the government appropriates the land for public purposes. Problematically, the legal definition of the concept of public purpose embedded in the property right is loosely defined, although Section 12(2) of Ordinance No. 74/01 outlines the reasons for expropriating private property. These include the public, economic or social utility or indirectly at the request of local councils, public establishments, and public service concessionaires when no joint settlement between the bodies in question and the owners has been achieved. Also, the context of the protection of customary (land) rights remains largely ambiguous—it imposes a narrower responsibility on the state to protect the right of minority and Indigenous Peoples. This raises questions as to who is included in the panoply of protection.

Nonetheless, the preamble recognises the protection of minority rights including local communities, particularly concerning their right to ownership of (customary) property, and obliges the state to ensure the protection of minorities, in addition to preserving the rights of the indigenous population. Section 1(2) of the Constitution enjoins the government of Cameroon to recognise and protect the traditional values if they conform to democratic values, human rights and the law. Although the foregoing guarantee gives hope to customary land rights holders in the sense that the government recognises their traditional values and customs within the boundaries of the law affecting land interest, translating this constitutional mandate into practice remains a dream deferred.

3.2 The Forestry Law

Cameroon's Forestry Law dates back to the Forestry Order No. 73/18 of 25 May 1973. This law was amended by the Forestry Law No. 81/13 of 27 December 1981, which focused on the regulation of logging activities, although devoid of transparency.³⁹ Consistent with the World Bank-led structural adjustment programming in

³⁹ Alden-Wily (2010), p. 76, citing Oyono (2004).

the 1980s, the pivotal forest sector needed urgent reform and the law was reviewed in 1989 with the adoption of a new Forest Policy in 1993 that later became the new Forestry Law in 1994 to promote and enhance sustainable forest management. Although the Forestry Law and its Decree of Implementation provide an integrated framework for sustainable and inclusive forestry governance,⁴⁰ its underlying aim is to facilitate commercial logging of timber and forest produce.⁴¹ Under Section 2, this constitutes any 'land covered by vegetation with a predominance of trees, shrubs and other species capable of providing products other than agricultural produce'. Like the Constitution, the Forestry Law has no stand-alone provision on land or property rights, despite the recognition in its Section 62 that the holding of any extractive licence by companies does not *prima facie* confer the right of ownership on land.

Nevertheless, since its enactment in 1994, the law has ushered in tremendous changes. The change concerns the alteration of the way Indigenous Peoples and local communities such as the Baka pygmies in the South East Region, interact with their traditional land when the government allocates concession rights to foreign companies in Djoum and Upper Nyong.⁴² The law has conceptually changed the ownership and rights in forested lands as Section 21 has concentrated all unoccupied forested land under state control, making all other lands, including customary land susceptible to disposition for economic development by the state. This dispossession has dire socio-economic and legal ramifications on local communities' customary land rights and ownership over natural resources. The fact that the state still retains ownership and control over land and its resources, including local communities' land, poses significant and epistemological challenges to their right to land. While Section 6 requires ownership of forest to be determined by the regulations governing land tenure and state lands, which subjects any parcel of forested land that is neither the private nor public property of the state to the domain of national land. In contrast, Section 7 guarantees landowners, such as the state, local councils, village communities and private individuals, use rights to their property, which are subjected to restriction in the land tenure and state lands regulations. Under Section 25(1), all State Forests are declared the private property of the state and under Section 25(4) all existing classified forests become the private property of the state on the commencement of the Forestry Law. Collectively, these provisions place all forested lands in Cameroon as the private or public property of the state, with the mandate to ensure its protection and rational management.

⁴⁰See Section 1 of the Forestry Law.

⁴¹Alden-Wily (2010), p. 75.

⁴²Njieassam (2017), p. 83.

3.3 Ordinance No. 74/01

Section 1(2) of Ordinance No. 74/01 embodies the concept of public trust and recognises the state as the guardian of all lands in Cameroon with the concomitant power to ensure the rational use of land or in the imperative interest of the defence of the economic policies of the nation. While this guarantee may be akin to the concept of public trust doctrine in other jurisdictions such as Uganda and South Africa, it nevertheless, is different in Cameroon. The difference lies in its potential in enabling either easy expropriation of private land or appropriation of any unregistered land in the public interest under Section 2(1) of the Ordinance. This provision does not provide for compensation for expropriated land as in the case of the Bagyeli and Bakola communities during the implementation of the Chad-Cameroon oil pipeline project.⁴³

Part III of the law considers national land as public land that is under the control, guardianship and administration of the state having and exercising absolute allocatory powers in land matters. By this, it means that all lands in Cameroon are the de facto public property of the state which confirms our view that customary landowners are mere occupants of public law, including their private lands where they are unable to prove a certificate of registration. The implication is that customary landowners may at any time be removed from their land in the absence of conclusive proof of a certificate of registration. This hinges on the violation of their right to the land which they have held under customary land tenure as indicated by the African Commission on Human and People's Rights in *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*.⁴⁴ To adopt a national land heritage that replaced the old concept of *terres vacants et sans maitre*, or vacant land without a master, Ordinance No. 74/1 adopted the concept of national land, and placed its management under the control of the state as the legal administrator by Section 16 which provides that:

National lands shall be administered by the State in such a way as to ensure rational use and development thereof. Consultative boards presided over by the administrative authorities and necessarily comprising representatives of the traditional authorities shall be established for this purpose.

Notwithstanding the above, the Ordinance fails to define national land, beyond mere components of what it considers to constitute national land while assigning a role to each of these components. The classification of land as private and national lands is seemingly restrictive. It prevents customary land from being considered private land, which is deliberately defined to exclude unregistered property.

⁴³Nelson and Tchoumba (2004) <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/pipelines-parks-and-people-bagyeli-document-land-usenear> (last accessed on 17 April 2021).

⁴⁴276/03: *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*.

Additionally, private land includes either the public or private property of the state⁴⁵—a situation that excludes what exists in national land as stipulated in Section 14:

(1) National lands shall as of right comprise lands which, at the date on which the present Ordinance enters into force, are not classed into the public or private property of the State and other public bodies. (2) National lands shall not include lands covered by private property rights as defined in Section (1).

As the legal administrator of national land, it is apposite that the state has a stronghold on land to dispose for purpose of fostering national economic development. This legal possibility implicitly substitutes the state for ethnic groups and communities hitherto considered the rightful owners of the land.⁴⁶ Section 17 of the law only refers to ‘customary communities and members thereof’ and guarantees them only peaceful occupation and use of land, which is limited to those parts of customary land where human presence and development is evident. Section 15 provides two exclusive categories of national lands: the first category involves land that is occupied either with houses, farms and plantations and grazing land manifesting inherent human presence and development, and the second category involves any land that is free from effective occupation. It is evident from the foregoing that customary interests in land which harbours the common property assets of rural communities do not relate to the second category.

3.4 Ordinance No. 74/02 of 6 July 1974

Section 2(2) of Ordinance No. 74/02 of 6 July 1974 defines public property as inalienable, imprescriptible, reserved for a public purpose, and unable to be subjected to private tenure. The putative reference to ‘public and private land of the State’ implicitly makes it the de facto property of the state instead of being national property.⁴⁷ Section 7 declares that ‘*bona fide* owners and occupants of public property may not be dispossessed thereof unless the public interest so requires, and subject to compensation’. The ordinance reflects the curtailed enjoyment of the rights to land which local populations are entitled that may undermine their interests in the implementation of REDD+.

⁴⁵See Section 14(1) of the Ordinance.

⁴⁶Assembe-Mvondo et al. (2014), p. 149.

⁴⁷Alden-Wily (2010), p. 53.

3.5 *Decree No. 76/166 of 27 April 1976*

Decree No. 76/166 of 27 April 1976 requires the creation of a Land Consultative Board (LCB) by the Senior Divisional Officer seated in the subdivisions. The Decree specifies that the LCB in any region must consist of a government delegate, the Divisional Officer, the chief, and two village notables of the community where the land is situated.⁴⁸ Land investment decisions must be with the consent of a simple majority of members present considering the presence of the chief and the notables of that community.⁴⁹ Also, by Sections 19 and 22 of this law, local communities may apply for grants of land on a temporary or absolute basis as the case may be for public interests where the land would be subjected to part of the private property of the community.

4 REDD+ and the Lesson of Local Realities

4.1 *Contextual Realities*

Colloquially referred to as Africa's in miniature because of its geographical and cultural diversity, Cameroon is endowed with abundant natural resources, including forested land constituting more than half of the country's landscape when considering all categories, mainly confined in the South and South West regions and comprising of between 17.5 and 23.8 million hectare.⁵⁰ Forested land, therefore, plays a catalytic role in the implementation of REDD+ projects in Cameroon, and therein lies the problem of overlapping land rights. Cameroon's forest resource helps to shape the country's forest policy and laws for the eventual implementation of these projects for development partners to benefit from carbon credits in the global climate change agenda. Climate change is a danger particularly in Africa and Cameroon, not just for economic growth, but also for sustainable development and various aspects of human security. As elsewhere, climate change is of great significance, and this is why Cameroon has signed a variety of agreements aimed at mitigating the effects of climate change, as well as including it in its emerging 2035 agenda towards sustainable development.⁵¹ Cameroon is a party to and has endorsed the United Nations Universal Declaration of Human Rights of 1948, and the UN Declaration on the Rights of Indigenous Peoples.⁵² It has signed and ratified the

⁴⁸Section 12 of Decree No. 76/166.

⁴⁹Section 15 of Decree No. 76/166.

⁵⁰Alden-Wily (2010), p. 75.

⁵¹Amougou (2018), pp. 5–16.

⁵²UN Declaration on the rights of Indigenous People 2007. It sets out a universal framework of minimum standards for the protection, integrity and well-being of the world's Indigenous Peoples

Convention on Biological Diversity.⁵³ With the fight against climate change which is a global phenomenon, Cameroon is a party to the Paris Agreement of the UNFCCC of 2015 with the zeal of reducing greenhouse gas (GHG) emissions.

REDD+ also brings to the fore the need for states to take urgent action to tackle climate change consistent with Sustainable Development Goals 13 and 15 as important highlights in the global push towards development.⁵⁴ It creates a financial value for forest-stored carbon by expanding rewards for forest-stored carbon. REDD+ is more of a climate system environmental initiative; it is a project of human rights significance to landowners, Indigenous Peoples, and local populations, as well as impacted individuals who might hold rights that may be affected at the domestic level by its policies and legal structure. Paragraph 70 of Decision 1/CP.16 emphasised that REDD+'s activities must consider international and national commitments, the rights of Indigenous Peoples, and local communities. Additionally, the document insists that REDD+ should engage and allow for the active participation of key parties, especially indigenous populations and local communities in decision-making processes.⁵⁵ This means that the procedures and conditions for public participation under Ordinance No. 74/02 must be followed when attempting to implement the REDD+ project.⁵⁶

Successful REDD+ results can be obtained on the guarantee of the government of Cameroon that forests will remain intact and secured permanently. This could be achieved through equal and effective treatment of rights of ownership and use of land; sharing of benefits; documenting and authenticating land rights; monitoring; accessing information; and ensuring public participation in all REDD+ legal frameworks.⁵⁷ REDD+ requires that where differences are detected, changes to current legal instruments can be required. In specific terms, pre-existing regulations allowing for perverse benefits or obligatory institutions detrimental to the spirit of the current REDD+ (i.e. encouraging deforestation and degradation of forests) should, to a practicable degree, be revised or repealed.⁵⁸

In Cameroon, the Ministry of Forestry and Wildlife (MINFOF) is responsible for developing, implementing and assessing the forest and wildlife policies of the government. MINFOF ensures that the development and implementation of regeneration, reforestation, inventory and forest management programmes are developed and controlled. It ensures compliance by the actors involved in the process with the

and elaborates on existing standards of human rights and fundamental freedoms in the light of the special situation of indigenous populations.

⁵³Convention on Biological Diversity 1992.

⁵⁴REDD+ is a promising component of the climate change and development agenda for developing countries to reduce emissions from forested lands and invest in low-carbon pathways to sustainable development, that would earn result-based payments for result-based actions in the context of climate change and development agenda.

⁵⁵Para 70 of Decision 1/CP.16 of Cancun 16 CoP 2010.

⁵⁶UN Human Rights Council (2009) at para. 94.

⁵⁷Costenbader (2009), p. 5.

⁵⁸Costenbader (2009), p. 12.

regulations in the logging sector. Through REDD+, MINFOF is actively fighting climate change, with a particular focus on the role that forests could play in decreasing emissions from deforestation and forest degradation.⁵⁹ REDD+ has indeed been introduced as a way for the forest sector to decrease carbon emissions, while simultaneously protecting and enhancing the living standards and well-being of local communities.

Although MINFOF is the manager of the forest in Cameroon, the organisation of the REDD+ project in Cameroon has been led by the Ministry of Environment and Nature Protection (MINEP). This stems from the fact that a Climate Change Unit that coordinates the operations of the activities and processes involved in the creation of a National REDD+ strategy is under the Ecological Monitoring and Control Unit of MINEP. In August 2008, MINEP submitted Cameroon's R-PIN (Readiness plan idea note) to the World Bank's FCPF (Forest Carbon Partnership Facility) and coordinated the Readiness Preparation Proposal (R-PP).⁶⁰

4.2 *Implication Realities*

Before establishing the context of the implication of REDD+ on the local community's land right, it is important to first understand what customary land means in Cameroon. Customary land law refers to the unwritten rules and procedures through which a rural community regulates its land relation among its members, and with neighbouring or associated communities.⁶¹ So defined, customary land tenure has since the advent of Ordinance No. 74/01 suffered from inadequate protection based on a lack of registration of title to constitute ownership of the land. The core problem is embedded in Sections 1(b) and 14 of the Ordinance which require that the state shall be the only custodian of lands and that only two categories of land exist to wit: public and private land, although customary land tenure could fit into any of these categories and supposedly private land. This classification opens the possibility for allocating customary land by the state for public purposes loosely considered by Section 18(1) of Ordinance No. 74/01 as any use which can be justified as having either public, economic or social utility, thereby depriving local communities of their right to land.

Also, despite the Constitutional guarantee on property rights, neither Cameroonian law nor practice has made it easier for customary landowners to register their holdings to secure their rights in the property. The reason is that the registration process is remote, cumbersome and expensive and converts customary lands into

⁵⁹ Amougou and Forgab (2018), pp. 17–22, <http://library.kas.de/GetObject.ashx?GUID=c547659a-f172-e811-b68a005056b96343&IDUSER=NotAllowed> (last accessed on 17 April 2021).

⁶⁰ See details in Somorin et al. (2014), p. 91.

⁶¹ Alden-Wily (2010), p. 41.

individual parcels of land without the protection of any social conditions.⁶² Even where there is conclusive proof of a certificate of title, one can still be deprived of his or her right to property. Evidence of such reality can be found in Buea, where there have been complaints relating to deprivation of property despite a proof of certificate of land ownership.⁶³ Another development is that only cultivated or used land is registered. This means that collectively owned non-permanent cultivated lands which are the subject of customary land tenure are *prima facie* susceptible to apportionment by the government to grantees.⁶⁴ The fact that all or any unregistered land is ruled as the property of the state, has proven to be a serious concern. The Forestry Law follows a similar approach in that it is believed that forest resources are released by the state to logging companies, an approach which prioritises profit above the need of forest dependent for subsistence. Such an approach often reduces the forest dependants who are customary landowners from being permissive occupants and users of national land to tenants of government. Declarations of forests as the private property of the state have led to the dispossession and displacement of over 25,000 rural communities from their customary land rights.⁶⁵

Fundamentally, the plight of forest communities relating to land also raises issue relating to equality before the law. It is the *de jure* reality that while government freely allows corporate activities in some parts of forests, forest dependent populations are treated as more or less squatters on the land which they have held in common under diverse customary laws and practices before the enactment of statutory laws.⁶⁶ This is despite the constitutional requirement of equality for all Cameroonians and the commitment to protect the right of minorities.⁶⁷ This means that local communities holding customary land rights do not have recognition and protection of their customary land rights as real property interests. We posit that in allowing for this approach, the government has breached the constitutional requirement to guarantee all Cameroonians with the necessary conditions for their socio-economic and cultural development. Further, it is in violation of the rights and interests of minorities and Indigenous Peoples to use, enjoy and dispose of the property.

The deteriorating nature of the rights of local communities is exacerbated by the fact that Section 8(1) of the Forestry Law only considers customary rights, and by extension, the right in customary land tenure, to be the rights granted by the state to local communities to harvest only forest, wildlife and fisheries products for their personal use. Article 12 and 15 of Decree No. 76/166 of 1976 means that an investment project cannot begin without a complete and meaningful engagement

⁶² Alden-Wily (2010), p. 11.

⁶³ Mimi Mefo Info (2021) <https://mimimefoinfos.com/desperate-widow-cries-out-over-land-expropriation-attempts/> (last accessed on 21 April 2021).

⁶⁴ Alden-Wily (2010), p. 11.

⁶⁵ Alden-Wily (2010), p. 19. Also see, Awono et al (2014) 76–86

⁶⁶ Alden-Wily (2010), p. 5.

⁶⁷ See the preamble of the Constitution of Cameroon.

with local stakeholders, as well as their involvement in appropriate decision-making processes, during which they freely agree to activity taking place. This requirement allows traditional leaders to ensure that local needs are met. However, in practice it is not always the case.

For instance, the Cameroon's R-PIN was approved by the FCPF despite the fact that there was very little or no involvement of civil society, Indigenous Peoples or local communities. It is reported that the Ministry of the Environment and Nature Protection (MINEP), the World Wide Fund (WWF) and ONF-International wrote the Readiness Plan Idea Note (R-PIN) without proper involvement of the national civil society, Indigenous People or the local communities.⁶⁸ It is unclear whether logging companies and/or timber exporters were contacted since there were not enough local NGOs and civil society organisations involved.⁶⁹ There are no clear proposals for consultation with Indigenous Peoples or forest-dependent communities in the R-PIN. Local consultation is relegated to sporadic NGO programs, rather than being incorporated into the Forest Carbon Partnership Facility (FCPF)-related REDD+ preparation planning in Cameroon.⁷⁰ A vivid example is the situation of the forest dependent Baka and the Bagyeli indigenous populations who continue to suffer from socio-economic marginalisation based on the restriction placed on the hunting and gathering lifestyle by the Forestry Law. Ndagala asserts that for traditional livelihoods to be economically and ecologically sustainable, forest-dependent communities need to be protected from forced dispossession.⁷¹ Therefore, this excludes the indigenous populations, especially the pigmies who are supposed to be at the forefront of the negotiation process coupled with the fact that their livelihood is dependent on the forest. As a result, the FCPF-related REDD+ procedure is failing to live up to its expectations, which state that the Facility shall Follow the World Bank's standard operating procedures, recognise the significance of full participation of forest-dependent Indigenous Peoples and forest dwellers in decisions that can affect them while upholding their rights under national law and international obligations.⁷² Failure to consult local/pygmy communities earlier in REDD+ negotiations and plans is in breach of their human rights, including the right to food, water, environment and life, during REDD+ implementation.

Based on the foregoing, it is apposite that Cameroon's land law is unjust with regard to customary land rights protection. The development has a correlated implication in that it has positioned the state and corporations to aid and abet injustices in the forest sector by undermining the tenure of local communities. We

⁶⁸FCPF R-PIN Cameroon (2008) 2 https://www.forestcarbonpartnership.org/system/files/documents/Cameroon_R-PIN_07-31-08.pdf (last accessed on 14 September 2022).

⁶⁹See detailed review of R-PIN Responses to Templates Questions on FCPF R-PIN – External review form at <https://www.forestcarbonpartnership.org/country/cameroon> (last accessed on 14 September 2022).

⁷⁰FCPF R-PIN (2008).

⁷¹Preamble of the Constitution of Cameroon.

⁷²See Section 3(1)(d) of the amended Charter Establishing the Forest Carbon Partnership Facility 2020.

argue that either intentionally or by design, the Forestry Law wrongfully added to the significant demise of the customary land tenure and particularly so, in the context of forestry rights. This implies that the most valuable forest resources of local communities are being designated in an unnecessary and rent-seeking way as the private property of the state to the extent that sustainable management and conservation of forest is also affected. Services rendered by communities in that space are rarely compensated when their land is expropriated. For example, during the Chad-Cameroon oil pipeline project, the Baka pygmies were not compensated for the expropriation of and displacement from their land.⁷³ the situation of these communities remains what Egbe termed a decade ago as a mirage.⁷⁴

5 Conclusion

In this chapter, we have critically reviewed Cameroon's legal framework on REDD+ and noted that it is both wanting in social and development respect and is constitutionally unsound since it deviates from the protection of constitutionally entrenched rights. From the above analysis, it was shown that the Cameroon's legal framework on REDD+ defeats the interests and protection of customary landowners through non-explicit recognition of their right to land, as it merely guarantees ownership of property and concentrating all land under the state, creating a conflict of interest. If the state were to relinquish forest ownership, it would help resolve the inherent conflict of interests that characterised the current legal framework. Otherwise, local communities would forever have the problem of lack of capacity to own, manage, regulate and conserve forests and enjoy the rewards of doing so in the context of REDD+ in Cameroon.

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⁷³Nelson and Tchoumba (2004).

⁷⁴Egbe (2001).

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Jean-Claude N. Ashukem (PhD) is a researcher at the Global Environmental Law Centre of the University of Western Cape, South Africa. He holds an LLD in Law and Development, LLB and Maitrise from the University of Yaoundé II, Soa, and an LLM and LLD in environmental law and governance from the North-West University of the Potchefstroom Campus. Jean-Claude has interests in environmental rights, land grabbing and investment. He has published extensively on these issues in international and national journals as well as book chapters.

Beng Simon Keluh is currently an LLD candidate at the North West University of the Potchefstroom Campus, South Africa, researching on environmental law and governance with special interests in climate change governance and energy, and their impacts on local communities' rights. He holds an LLB from the University of Buea, a Maîtrise en Droit from the University of Yaoundé, Cameroon.

Village Cores, Rights, and the Implementation of REDD+ in Benin



Landry Bidossessi Bonou and Igor Bidossessi Guedegbe

Abbreviations

| | |
|--------|--|
| FAO | Food and Agriculture Organization of the United Nations |
| FPIC | Principles of Free, Prior and Informed Consent |
| GHG | GreenHouse Gas |
| NTFP | Non-Timber Forest Product |
| PNP | Pendjari National Park |
| PNW | W National Park |
| REDD+ | Reducing Emissions from Deforestation and forest Degradation |
| SDG | Sustainable Development Program |
| UNDP | United Nations Development Programme |
| UNDRIP | UN Declaration on the Rights of Indigenous Peoples |
| UNDROP | United Nations Declaration on the Rights of Peasants and other People Working in Rural Areas |
| UNFCCC | United Nations Framework Convention on Climate Change |
| UN | United Nations |
| WAP | W-Arly-Pendjari |

L. B. Bonou (✉)

Faculty of Law and Political Sciences (FADESP), University of Abomey-Calavi, Abomey-Calavi, Republic of Benin

Cotonou, Benin

I. B. Guedegbe

Faculty of Law and Political Sciences (FADESP), University of Abomey-Calavi, Abomey-Calavi, Republic of Benin

1 Introduction

Climate change which is characterized by extreme increases in temperature, rising sea levels, and changes in weather patterns, and other extremes often causes adverse effects on human health, and natural ecosystems.¹ Decision 1/CP.16 of the COP/MOP taken under the UNFCCC, encourages developing country parties to contribute to mitigation actions in the forest sector by undertaking the following activities as deemed appropriate by each party and in accordance with their respective national capacities and circumstances: reducing emissions from deforestation; reducing emissions from forest degradation; conserving forest carbon stocks; sustainable forest management; and enhancing forest carbon stocks.² These measures must be able to contribute to the satisfaction of the needs of Village Cores, living off the fruits of the forest. Yet, ecosystem, especially the forest has a role to play in addressing climate change.³ In 2009, the signatories of the Copenhagen Accord agreed to reduce global greenhouse gas emissions, based on scientific findings, to avoid a temperature increase beyond 2 °C, without giving a legally binding directive.⁴ The Agreement also emphasizes the vital importance of safeguarding ecosystem biodiversity to maintain its essential services and to mitigate the adverse effects of climate change.⁵ The signatories to the Copenhagen Accord emphasized the critical impact of climate change on the biodiversity-rich countries of the South, which will therefore need special assistance to establish an adequate adaptation program.⁶ The adverse consequences of climate change are global, but states in Africa are particularly vulnerable because of their limited capacity to adapt.⁷ Africa is the most vulnerable continent to climate variability and change, a situation that is exacerbated by the interaction between “multiple constraints” including heavy dependence on agriculture, widespread poverty and low adaptive capacity.⁸ The African Union’s Agenda 2063 regards climate change as a major threat likely to hinder the aim of realizing an integrated, prosperous and peaceful Africa.⁹ However, the scientific and practical information on the distribution, threats and survival potential of a large number of threatened plants and animals in the Republic of Benin (Benin) is lacking.¹⁰

¹ African Union (2014), p. 9.

² African Union (2014), p. 31.

³ den Besten et al. (2014), p. 40.

⁴ UNFCCC CP “Copenhagen Accord” Decision 2/CP.15, FCCC/CP/2009/11/Add.1.

⁵ UNFCCC CP “Copenhagen Accord” Decision 2/CP.15, FCCC/CP/2009/11/Add.1.

⁶ UNFCCC CP “Copenhagen Accord” Decision 2/CP.15, FCCC/CP/2009/11/Add.1.

⁷ Rodolfo and Emrullahu (2022); Boko et al. (2007).

⁸ African Union (2014), p. 9.

⁹ African Union (2015). “Agenda 2063: The Africa we want.”

¹⁰ Neuenschwander et al. (2011), p. vii.

The Republic of Benin, as a party to the United Nations Framework Convention on Climate Change (UNFCCC),¹¹ voted for resolution 66/288 of the United Nations General Assembly, entitled “the future we want.”¹² This resolution, which came out of the Rio+20 Earth Summit, marks the commitment of the Heads of State and governments “to sustainable development and the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.”¹³ Climate change governance in Benin is characterized by a strong expression of the government’s will to address the adverse effects of climate change and contribute to Benin’s Low Carbon and Climate Resilient Development Strategy 2016–2025.¹⁴ The consideration of climate change in development strategies and policies stems from international commitments made by Benin.¹⁵ Among these efforts, there is the situation of Village Cores that forms the basis for the present reflection on Village Cores, rights and implementation of REDD+ in Benin. Village Cores refer to family groups living near forests and benefiting from its fruits and products. These groups live in extreme poverty, and their only means of subsistence are the fruits and products from the forest; in other words, they exploit the forest to draw what is necessary for their survival.¹⁶ This chapter is significant as it allows for an analysis of the compliance of measures taken by the Beninese government in the context of REDD+ measures. By focusing on Village Cores, this chapter contributes to an area where knowledge is scanty. The question that is raised is whether the measures taken by Benin within the framework of REDD+ contribute or hinder the protection of the rights of the Village Cores. Following this introduction, Sect. 2 of the chapter discusses the impact of the activities of Village Cores on forests while Sect. 3 demonstrates how measures adopted by the state in the implementation of REDD+ may interface with rights of populations in the Village Cores. Section 4 is the conclusion.

2 Forests and the Impact on Village Cores

Forests have played an essential role in human history. For millennia, episodes of deforestation have accompanied population growth and development around the world.¹⁷ Factors such as climate change, culture, technology, and trade have contributed in large measure to accelerating, slowing, and even reversing

¹¹ United Nations Framework Convention on Climate Change (UNFCCC) (1992) ILM 851.

¹² African Union (2015).

¹³ Directorate General for Climate Change, p. 15.

¹⁴ Benin’s Low Carbon and Climate Resilient Development Strategy 2016–2025.

¹⁵ Direction Générale des Changements Climatiques, pp. 18 et seq.

¹⁶ Bierschenk and Olivier de Sardan (2003).

¹⁷ Meyerson (2003).

deforestation.¹⁸ Over time, the interactions between the human and forests have evolved, in line with social and economic changes. There is a strong correlation between major societal changes and forest use patterns.¹⁹ Pre-agrarian societies (including hunter-gatherer communities) rely heavily on forests for their livelihood.²⁰ As agrarian societies emerged and expanded, the nature of this dependence changed. The demand for agricultural land and products needed for an agricultural economy becomes a primary concern, and the provision of ecosystem services becomes a high priority.²¹

Benin's forests are essentially a mosaic savanna ecosystem. They are located in a climatic zone where average rainfall is less than 1200 mm per year in the interruption zone of the West African dense forest belt called the Dahomey Gap.²² Forests provide essential habitat for biodiversity and ecosystem services, energy, food, and cultural needs for the population. Forests and mangroves are key regulators of the global environment through carbon storage, which contributes to climate change mitigation and adaptation.²³ Forests are rich in biodiversity in Benin. National parks cover 1.26 million hectares, or about 11% of the national territory. Pendjari National Park (PNP) and W National Park (PNW) cover 40% of a contiguous transboundary protected area network called "W-Arly-Pendjari" (WAP) of 3.39 million hectares, which is shared with Burkina Faso (36%) and Niger (24%).

The importance of biodiversity and livelihoods in the development of REDD+ has been recognized at different levels. The forest is a means of livelihood for some populations in Benin. Their survival is linked to the existence of these forests from which they draw materials for their daily needs.²⁴ But REDD+ actions do negatively impact the sustainability of our forests and conservation and livelihood. Forests serve the subsistence purpose as they are useful for livelihood and subsistence in Benin.²⁵ Urban food forestry involves implementing a combination of agriculture, forestry, and agroforestry in urban areas to supply cities with food. This can be done using a variety of fruit and nut trees, berry bushes, vegetables, herbs, edible flowers, and ornamental plants. It is generally the means of subsistence for the Village Cores, whose only work consists of working the land and getting what they need for survival. Natural forests provide a wide variety of oilseeds and fruits at certain times of the year and other non-timber forest products such as coffee, cocoa, and honey. Since the poor are the most vulnerable to climate change, they are the most dependent on the biodiversity that provides the basis for a wide range of these products for their daily lives and income generation. Consideration of many

¹⁸Carbon Brief (2019).

¹⁹Ritter and Dauksta (2012).

²⁰Ember (2020).

²¹Rist (2008), pp. 21–24.

²²Natta (2003).

²³Boyd et al. (2007).

²⁴Encinas de Munagorri (2009), p. 11.

²⁵Castro et al. (2018), p. 60.

non-timber forest products is a key element of human adaptation to climate change by spreading the risk if a product is no longer available due to changing site conditions.²⁶

According to the FAO, Benin has lost about 20% of its forest cover in the space of 20 years, i.e., about 1,200,000 ha, due to deforestation caused by the massive use of wood for cooking, the practice of slash-and-burn agriculture, and illegal logging.²⁷ The impacts of climate change on the various components of the forestry and land use sector contribute to: reducing the national carbon sequestration potential, causing the loss of floral and faunal biodiversity, and generating a progressive savannization/desertification of the territory.²⁸ In the central and north of Benin, the phenomenon of deforestation occurs frequently. These are the parts of the country that cultivate a lot of yams. To cultivate yams, the forests are destroyed, which contributes to climate variation.²⁹

Deforestation is pronounced and accelerating mainly in the north of Benin. National statistics show a loss of 7.6 to 5.9 million hectares of forest, a decrease in area of 14% and a deforestation rate of 1.4% per year between 2005 and 2015.³⁰ The main drivers of deforestation are related to land use change due to extensive agriculture, illegal logging activities for timber, and fuelwood and charcoal production. Indirect drivers of deforestation and forest degradation relate to rapid population growth and persistent poverty; competing development models between production sectors (agriculture, livestock, and forestry); poor forest governance and law enforcement; land rights issues; lack of incentives for sustainability measures in forestry and agriculture; and the growing threat of climate change.³¹ Deforestation has progressed gradually as forests are cleared and converted to arable land to feed an expanding population. The value of non-market goods and services provided by the forest may well be greater than that of market production. Forests are often a very important part of rural economies, providing a supplement to agricultural income and employment in areas where there are few other employment opportunities.³²

In Benin, forests are often a safety net for the poor and landless, as they can gather and hunt without having effective land rights, which is not possible on agricultural land.³³ They directly or indirectly provide at least 20% of rural families' livelihoods, including 20% of the disposable income used by poor and landless households to meet other family needs.³⁴ Charcoal and fuelwood are among the main sources of

²⁶ German Technical Cooperative (2009), p. 19.

²⁷ Sarrafmanuela and Da Silva (2020).

²⁸ Direction Générale des changements climatiques, p. 36.

²⁹ Direction Générale des changements climatiques, p. 36.

³⁰ World Bank Group (2015), p. 3.

³¹ World Bank Group (2015), p. 3.

³² Agrawal et al. (2013).

³³ Wren-Lewis et al. (2020).

³⁴ Goldstein and Barro (1999).

cash for poor people living in or near forests.³⁵ In addition to timber, to the Village Cores, charcoal and fuelwood, forests also provide a wide range of other non-timber products: wild roots and fruits, herbs, shoots, mushrooms, medicinal substances, gums, honey, game, etc. Globally, about one billion people depend on medicines derived from forest plants for their health.³⁶ Climate change has accentuated the decrease or even led to the disappearance of some endemic plant species used for their nutritional value or medicinal or aesthetic properties. This has reduced the income of most members of Village Cores who depend on these plants such as the traditional healers, sellers of traditional cosmetic products and marks the decline of traditional plant-based practices.³⁷

The implementation of the REDD+ in developing countries can have impacts at various levels on the rights of people living off forest products. Benin, which is in this category of developing countries, has adopted a multitude of measures related to REDD+. Among these we have the privatization of certain forests with the consequence of restricting access to the population. The implementation of the REDD+ initiative may have an impact on the activities and territorial competencies of administrations involved in areas related to other land uses, such as mining, energy, and agriculture. Managing the REDD+ initiative without a well-established institutional system could lead to a partial overlap of territorial and institutional competences and consequently to conflicts and rivalries between ministries in charge of environmental, agricultural or forestry issues. Given the vulnerability of Village Cores, Benin should take measures that ensure their protection of rights.

3 REDD+ Measures and Village Cores Rights

Measures adopted in the implementation of REDD+, notably the restoration of forest landscapes and land, combined with an ambitious energy transition policy to reduce the pressure on forests and agroforestry parks to meet the population's domestic and household energy needs have implications for the rights of Village Cores. Specifically, the government has set itself the ambition, within the framework of the Paris Agreement, to protect the vegetation cover and reduce the deforestation rate by 41.7% by 2030.³⁸ As part of the "Bonn Challenge" initiative, Benin has also set itself the goal of restoring more than 0.5 million ha of degraded forests by 2030.³⁹ Following the adoption of the Sustainable Development Goals (SDGs) by the United Nations General Assembly in September 2015, Benin, with the support of the United Nations Development Programme (UNDP) and the Food and Agriculture

³⁵ Girard (n.d.).

³⁶ OECD (2009), p. 108.

³⁷ Climate and Development Network (2015), p. 11.

³⁸ GEF (2019).

³⁹ Mansourian and Berrahmouni (2021).

Organization of the United Nations (FAO), began the process of prioritization and nationalization of the 161 SDG targets, which resulted in the adoption of 49 priority targets for the implementation of the SDGs.⁴⁰ Other measures in the context of deforestation include the ban on the use of formwork wood and the marketing of charcoal.⁴¹ Fuelwood is a by-product of extensive slash-and-burn agriculture. Some operators do not cut wood directly from the forest for commercial purposes, but harvest it during the clearing of forest fallows.⁴² Currently in Benin, there are many large dam projects for electricity production, which has led the government to take several spaces from the population; this is the case, for example, of the Glo-Djigbé project and the Mariagleta project.

The foregoing measures of the Beninese government have impacts on the rights of the population who derive their subsistence needs from them. Several rights of the population are relevant for consideration. For instance, the right to property is recognized in the Constitution. Article 22 of the Beninese Constitution of December 11, 1990, modified by Law No. 2019-40 of November 7, 2019, states that: “every person has the right to property. No one can be deprived of his or her property except in the public interest and in exchange for fair and prior compensation.” This UNAGOUU fundamental right of the Village Cores is restricted by government measures that pursue the ambition of restoring the forest spaces occupied by these nuclei.

The implementation of the REDD+ also implicates the right to a healthy and viable environment. As stipulated in the first paragraph of Article 1 of the Constitution, “everyone has the right to a healthy, satisfactory and sustainable environment and has the duty to defend it. The State shall ensure the protection of the environment.” Some projects presented as solutions to the climate emergency are in fact sources of social, sanitary and food problems for the populations. This is the case, for example, of the agrofuel development policy, which results in the monopolization of agricultural land intended for food production, or of large dam projects for the production of clean electricity, which expropriate and deprive local communities of their land. In threatening the right to a healthy environment, other rights of the members of the Village Cores are also involved. These include: the right to food, the right to land, the right to health, the right to housing, the right to water, the right to education, the right to energy, and more generally the right to a dignified life and the right to development.⁴³

Climate change is already a threat to the rights of populations, particularly of certain categories that are very vulnerable, such as women, indigenous populations, poor farmers, or traditional societies. These people live in close proximity to their environment, and owe their survival to the production and preservation of natural resources. In addition, some international projects and investments that have

⁴⁰ Benin Ministry of Living Environment and Development (2017), p. 6.

⁴¹ Girard (n.d.).

⁴² World Bank Group (2020).

⁴³ Climate and Development Network (2015), p. 28.

negative climate impacts in developing countries create serious social and environmental risks for local communities and Indigenous Peoples. There are many cases of land rights violations, human rights violations, and environmental degradation related to mining or forestry projects.⁴⁴ In 2012, sacred forests were listed as a category in Benin's legislation on protected areas⁴⁵ to maintain important ecological groups and to help further prevent habitat fragmentation, as these forests are at high risk of deforestation and degradation. The legislation, the first of its kind in Africa, gives legitimacy to traditional beliefs and activities involving the forest and provides cultural support for forest conservation. In addition, there has been an increased demand from communities to develop management plans for sacred forests, which has resulted in formal boundaries and official recognition of its values.⁴⁶

The local public sector in the broad sense has obviously always been the operator of multiple interventions on the living environment of villages. Through new institutional, contractual, and financial forms, integrated policies for the management of the physical living environment of urban areas seem to be gradually emerging in connection with the recent deepening of urban inter-municipality.⁴⁷ The governance of climate change aims to put in place decision-making mechanisms that guarantee the quality of knowledge while respecting democratic requirements. It involves citizens, companies, and governments. It is intended to be applied in the public and private sector, at the local and state level, regionally and globally.⁴⁸

Given that climate change is ongoing and has direct impacts on the existence and survival of species and ecosystems, resilient forests are necessary to ensure that REDD+ measures are sustained. Resilience depends on the availability of a wide range of options to respond and adapt to environmental changes such as climate change. This range of future options depends on biodiversity. Forest ecosystems, capable of adapting to climate change, can provide livelihoods for forest-dependent people and communities, which contribute as partners to safeguarding forests and mitigating climate change. For this partnership to be sustainable, these populations should have an active role in decision-making and receive financial compensation for their efforts.⁴⁹

To meet the expectations of Village Cores in their quest for daily needs, the government has initiated and financed policies to reduce greenhouse gas emissions by promoting improved wood energy stoves and oil or gas stoves. Also, it has adopted best land use practices, sustainable forest management, (sustainable forest and land management through the restoration of 3000 ha of land and forest plantations, and the establishment of 2000 ha of plantations to provide biomass, improved

⁴⁴ Climate and Development Network (2015), p. 28.

⁴⁵ Inter-Ministerial Order No. 0121/MEHU/MDGLAAT/DC/SGM/DGFRN/SA of November 16, 2012.

⁴⁶ World Bank Group (2020), p. 8.

⁴⁷ Mathieu and Guermond (2005), p. 61.

⁴⁸ Encinas de Munagorri (2009), p. 11.

⁴⁹ German Technical Cooperation (2009), p. 4.

agricultural techniques on more than 9000 ha through the adoption of best land use practices).⁵⁰ Benin was one of the pioneers in launching a participatory forest co-management process. Through this process, communities benefit from the collection of taxes on legally harvested forest products. The law stipulates that communities receive between 10% and 40% of the taxes on wood energy collected by logging companies and paid to the Treasury, depending on the type of logging. This share is intended to finance community development infrastructure such as roads, bridges, and schools.⁵¹

The contribution of the forestry sector to poverty reduction is poorly quantified but highly visible through the non-timber forest products (NTFPs) provided. Forests are an essential component of short-term welfare for rural populations because they contribute to the provision of NTFPs. The potential for development of these products is high as demand is increasing rapidly, but their value chains are poorly organized. A national strategy for the valorization of NTFPs targets 10 priority non-timber forest products, five of which are of major economic interest, namely, Shea butter, Néré, Baobab, Tamarind, and Garnicia Kola. However, the level of natural potential in relation to demand differs considerably from one product to another: while strong pressure endangers Shea, Néré, Baobab and Tamarind species, other high-value products, such as honey or wild mushrooms, are still not fully exploited.⁵²

The level of participation of Village Cores members in the implementation of REDD+ in Benin is still low—a development which undermines the right of the populations to participation. Given that so many people depend on forest resources for their livelihoods, and the impact that REDD+ implementation can have on these people (e.g., land confiscation, evictions, and misappropriation of funds), it is imperative that those who are likely to be affected by REDD+ projects or policies be involved in the decision-making and implementation processes. The participation of relevant stakeholders can help raise awareness of REDD+ among forest communities. In this sense, it can build capacity, provide an opportunity for people to voice their concerns, and contribute to equitable benefit sharing. The participation of representatives of forest communities can also be useful in raising awareness about REDD+. For its part, the participation of local community representatives in the design and implementation of a REDD+ project can help inform project implementers of the issues affecting that community. Participatory mechanisms can promote the successful implementation of REDD+ projects and their permanence through greater local support and involvement. To meet the requirements of the Paris Agreement, the Beninese government has set up a sub-program to strengthen carbon sinks and reduce emissions from deforestation and forest degradation. This sub-program is of the REDD+ type, reducing GHG emissions by combating

⁵⁰World Bank (2023).

⁵¹World Bank Group, p. 3.

⁵²Global Canopy Programme (2014), p. 2.

deforestation and sustainable land management. It concerns both the management of existing protected areas and new protected areas to be created.⁵³

Based on its current form, however, it is difficult to say that the Beninese government's measures consider the rights of Village Cores. Benin's policy at the moment is development at all costs, and this obscures the aspect of the population's well-being. In a development process, the population has a preponderant place that should not be left aside. The Village Cores live off the benefits of nature, in this case the forest, but the government's limitations on access to the forest are a blow to the development of the Village nuclei. This development is inconsistent with the operational provisions of the Paris Agreement on human rights.⁵⁴ It is also incompatible with REDD+ safeguard principles, which recognize and respect the rights of Indigenous Peoples and women, and the Cancun Adaptation Framework,⁵⁵ which recognizes traditional and local knowledge, and the recognition of the principles of free, prior, and informed consent (FPIC).

The application of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),⁵⁶ is essential to deliver the benefits of REDD+ to Village Cores, but this is not yet the case. UNDRIP's preamble calls for "control by indigenous peoples over developments affecting them and their lands, territories and resources."⁵⁷ Article 10, which provides that "Indigenous Peoples shall not be forcibly removed from their lands or territories," strengthens their position. Article 25 reiterates the rights of Indigenous Peoples to maintain their unique relationship with traditionally owned lands and to "uphold their responsibilities to future generations in this regard." Article 29 acknowledges the right of Indigenous Peoples to the conservation and protection of their environment and the centrality of their stewardship for that purpose.

Even if it is argued that UNDRIP is only applicable where community self identifies as such, the relevance of United Nations Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP)⁵⁸ is not disputed. Articles 5(1) and 28 of UNDROP affirm the right of the Indigenous Peoples and local populations to have access to and to use in a sustainable manner the natural resources in a manner that safeguards their livelihood. Participation in decision-making is an essential provision of the two instruments. Article 18 of UNDRIP provides: "Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by

⁵³Direction Générale des Changements climatiques, p. 37.

⁵⁴Paris Agreement UN Doc. FCCC/CP/2015/10/Add.1 Decision 1/CP.21.

⁵⁵Framework Convention on Climate Change, Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Decision 1/CP.16: FCCC/CP/2010/7/Add.1.

⁵⁶United Nations Declaration on the Rights of Indigenous Peoples, adopted at 107th plenary meeting 13 September 2007 (UNDRIP).

⁵⁷UNDRIP, Preamble.

⁵⁸UN Declaration on the Rights of Peasants and other People Working in Rural Areas (2018). DateGeneva: UN, 8 October 2018.

themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”⁵⁹ A similar provision is found in Article 10 (1) of UNDROP which affirms that “Peasants and other people working in rural areas have the right to active and free participation, directly and/or through their representative organizations, in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods.” The application of human rights instruments is necessary to inspire the involvement of stakeholders at the local level, and that the respect for the rights and interests of Village Cores are engaged with a focus on long-term sustainability of REDD+.

4 Conclusion

With the increasing evidence of climate change and its adverse consequences, REDD+ is a relevant to fight deforestation and forest degradation, and thereby reduce carbon emission. However, the implementation of REDD+ is not without its downsides in Benin. As has been shown in this chapter, measures associated with the implementation of REDD+ may threaten the livelihood of Village Cores, a section that represents a part of the population that depends and lives on forest products in Benin. In so doing, it may threaten a range of their rights including the right to food, the right to property and participatory rights. To respond to this development, while implementing REDD+, Benin must apply the relevant provisions of national and international human rights instruments to balance the ambition of the project with the rights of members of Village Cores.

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⁵⁹Also, see UNDRIP Articles 5, 27, and 41.

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Landry Bidossessi Bonou is a researcher under the UNESCO Chair in Human Rights and Democracy, University of Abomey-Calavi, Republic of Benin. He holds a Masters in Human Rights and Democracy Law degree from University of Abomey-Calavi, Republic of Benin and his research interests is on participation, inclusivity and environmental rights.

Igor Bidossessi Guedegbe is an Associate Professor of Law and the holder of the UNESCO-DPHD Chair, Faculty of Law and Political Sciences (FADESP), University of Abomey-Calavi, Republic of Benin. He is the Coordinator of the Research Master in Law and Judicial Institution (DIJ), and the Doctoral School of the University of Abomey-Calavi, Republic of Benin. His research interests include environment and business under the OHADA Law.

REDDs+ and the Right of Local Populations to Carbon Payments in Africa



Ademola Oluborode Jegede and Jean-Claude N. Ashukem

Abbreviations

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| ACRWC | African Charter on the Rights and Welfare of the Child |
| AWG-KP | Ad Hoc Working Group on Further Commitment for Annex 1 Parties Under the Kyoto Protocol |
| AWG-LA | Ad Hoc Working Group on Long Term Cooperative Action Under the Convention |
| COP | Conference of Parties |
| ERR | Emission Reductions and Removals |
| ICCPR | International Covenant on Civil and Political Rights |
| IPACC | Indigenous Peoples of Africa Co-ordinating Committee |
| IPCC | Intergovernmental Panel of Climate Change |
| MOP | Meeting of the Parties |
| SBI | Subsidiary Body for Implementation |
| SBSTA | Subsidiary Body for Scientific and Technological Advice |
| UDHR | Universal Declaration of Human Rights |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| UNDROP | UN Declaration on the Rights of Peasants and Other People Working in Rural Areas |
| UNFCCC | United Nations Framework Convention on Climate Change |
| WFR | Warsaw Framework for REDD+ |

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A. O. Jegede (✉)

Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa
e-mail: ademola.jegede@univen.ac.za

J.-C. N. Ashukem

Global Environmental Law Centre (GELC), University of the Western Cape, Bellville, South Africa

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1 Introduction

Over the years, regulatory policies on greenhouse gas emissions from deforestation have become the focal point of international climate change discourse.¹ An example of this trend is the initiative on Reducing Emissions from Deforestation and Forest Degradation (REDD+) which does not only seek to provide incentives in the form of financial value in forest in developing countries, including Africa, but to also maximise the socio-environmental benefits emanating from forests as carbon sink.² Through the initiative, African states are obligated to design national regulatory policies, principles and incentives that will address the underlying factors of deforestation and simultaneously enable and facilitate the possibility of vulnerable communities to benefits from the implementation of REDD+ projects.³ Generally, Africa currently generates only a tiny percentage of its carbon credit potential,⁴ but a well-designed REDD+ framework should be suitable vehicle or agency to secure and enhance the realisation of the rights of local populations in Africa.⁵ Writings show that this outcome can only be achieved through sustainable management and enhancement of forest carbon stocks, and facilitation of standardised and quantified trade of forest carbon.⁶

Local communities in Africa living in abject poverty have to weigh carbon payments against the associated benefits relating to eschewing deforestation such as forfeiting resource extraction that supports their livelihoods.⁷ Benefit sharing has been defined as the ‘distribution of direct and indirect net gains from the

¹Peskett and Brodnig (2011), p. 1.

²See Food and Agricultural Organization, United Nations Development Programme, United Nations Environment Programme Perspective on REDD+: UN-REDD Programme (FAO, UNDP, UNEP, Rome, 2010).

³It is important to note that under the United Nations Convention on Climate Change, REDD+ constitute five main activities, namely: (1) reducing deforestation; (2) reducing degradation; (3) promotion of conservation of forest carbon stocks; (4) incentivising sustainable management of forests; and (5) the enhancement of forests as holders of stocks of carbon in developing countries.

⁴Climate Champions ‘Africa Carbon Markets Initiative launched to dramatically expand Africa’s participation in voluntary carbon market’, 8 November 2022 <https://climatechampions.unfccc.int/africa-carbon-markets-initiative/>.

⁵The terms ‘local populations’, ‘local communities’, ‘forest dependents’ and ‘Indigenous Peoples’ are sometimes used interchangeably in this paper. This is considering the focus of the paper is on carbon payments which have similar legal significance to all these categories. The authors are, however, conscious of the status particularly of Indigenous Peoples in international human rights law.

⁶Corbera and Schroeder (2011), pp. 89–99; Brunner et al. (2010), p. 5.

⁷Godwell Nhamo (n.d.) ‘REDD+ and the Global Policy Negotiating Regimes: Challenges and Opportunities for Africa’.

implementation of REDD+'.⁸ Luttrel et al. distinguish between two types of benefits: monetary and non-monetary benefits. According to the authors, monetary benefits relate to gains on REDD+ from international and national finance and sale of carbon credits or from donor funds that are linked to REDD readiness, policy reforms or payment based on emissions reductions. On the other hand, non-monetary benefits are the result of increased sustainability of forest products that provides benefits to non-carbon ecosystem services.⁹

Against the foregoing background, the fundamental question that we pose is: whether carbon payments are linked to human rights, and if so, what evidence exists on how payments to local communities may be undermined in the context of REDD + in Africa. Drawing from an array of substantive and procedural rights, the paper demonstrates the link between carbon payments and human rights and argues that carbon payments can be an agency for the realisation of rights of local communities in Africa. The chapter is structured into five parts. Following this introductory Section, the focus of Sect. 2 is the examination of the human rights linkage with carbon payments. Section 3 sketches the weaknesses in the legal environment that may constrain carbon payments as the plight of forest and local communities in Africa. Section 4 discusses practices on carbon payment that can address the plight of forest and local communities and serve as an agency for the realisation of their rights in the context of REDDs+ in Africa. Section 5 is the conclusion.

2 Carbon Payments and Human Rights

A carbon-based payment for REDD+ is pro-human rights only if it offers economic value to standing forests, enhance the protection of forests from degradation, and ensure that communities are rewarded and their rights are generally respected. Carbon rights have been clarified in literature from a legal perspective to mean 'the legal form for carbon'.¹⁰ For Knox et al., carbon payments reflect 'the right to economically benefit from reduced emissions or increased sequestration by carbon stored in biomass'.¹¹ Carbon rights are used in various ways, such as 'a tonne of sequestered carbon, the legal right to own that sequestered carbon or a moral claim to benefit from carbon-based payments'.¹² While carbon benefits are often created through direct act of REDD+ intervention project, such benefits do not have legal or property consequence on their own except mandated by law.¹³ Recognising the various interpretations of creating a legal form for carbon rights such as carbon unit,

⁸Luttrel et al. (2012), p. 131.

⁹Luttrel et al. (2012), p. 131.

¹⁰Yeang et al. (2014), p. 2.

¹¹Knox et al. (2010), p. 7 ff.

¹²Yeang et al. (2014), p. 2.

¹³Yeang et al. (2014), p. 3.

carbon credit or emission reduction, Yeang et al. identify and distinguish three features of the legal form of carbon rights.¹⁴ They identify reservation of terrestrial carbon as the physical outcome of REDD+ intervention; that the appellation of carbon rights largely depends on the legal framework or contract; and that there is a huge difference between the actual legal ownership of the trapped carbon and the ownership of the units or credits of emission reduction that are created from the carbon.¹⁵ According to Cotula and Mayers, ‘carbon rights are a form of property right that “commoditise” carbon allowing for its trading’.¹⁶ As Peskett and Brodnig further explain, certain questions are pertinent for an understanding of the nature of carbon as property. These questions relate to what is being owned, who may own what, who has the right to benefits and how these may be integrated into international and national REDD+ regimes.¹⁷

Arguably, carbon payments in the implementation of REDD+ initiatives are a human rights issue because of their implications for a number of substantive and procedural human rights of forest dependent and local populations. The lack of attention on these rights is most likely to adversely affect forest dependent communities and local population who largely depend on forest resources for their livelihoods and means of subsistence.

2.1 Linking Carbon Payments to Substantive Rights

Carbon is linked to forest as much as its gains. The idea of rewarding for carbon storage is at the heart of REDD+ which seeks to promote conservation of forest carbon stocks; incentivise sustainable management of forests, and enhance forests as holders of stocks of carbon in developing countries.¹⁸ For indigenous and local communities who have traditionally live in the forests and depend on forest resources, the protection or otherwise of substantive rights is linked to carbon benefit of local populations involved in REDD+ initiatives. This is due to the centrality of land ownership to the core features of the initiative such as benefit sharing and carbon stock linked to forests. Where national legislation confers ownership of land on states, this may signify carbon rights as the sole property of the state since it is linked to land resources.¹⁹ Such a land rights regime which neglects the asset (land ownership) that underlines carbon emission reduction or removal activities may deny the local populations the freedom to assert their right to carbon payment. Hence, it is inconsistent with the protection guaranteed to these populations in

¹⁴Yeang et al. (2014), p. 3.

¹⁵Yeang et al. (2014), p. 3.

¹⁶Cotula and Mayers (2009), p. 9.

¹⁷Peskett and Brodnig (2011), p. 3.

¹⁸Hansungule and Jegede (2014); Centre for International Environmental Law (2014), p. 5.

¹⁹Knox et al. (2012), p. 2.

several international human rights instruments. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),²⁰ guarantees the individual and collective rights to lands. Article 25 of UNDRIP affirms that Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with ‘their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources’. Article 26(1) affirms that Indigenous Peoples have the rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or occupied, while Article 26(2) provides that states’ duty to guarantee the right to land must be realised in respect of tradition and the land tenure systems of Indigenous Peoples. The UNDRIP also contains related rights, such as conservation,²¹ benefit-sharing,²² access to justice,²³ and co-operation,²⁴ which are arguably connected with carbon trade and its gains.

Articles 1(2) and (4) of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) recognise different vulnerable groups including Indigenous Peoples and forest dependents.²⁵ Article 16(1) of UNDROP guarantees to peasants and other people working in rural areas ‘the right to an adequate standard of living for themselves and their families’ and the right of those communities to traditional ways of ‘forestry and to develop community-based commercialization systems’. This provision acknowledges that the livelihood and subsistent needs of these communities to water, food and housing are dependent on the forest resources. Hence, to achieve an adequate standard of living for themselves, Article 17(1) of UNDROP recognises the right of the communities ‘to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein’. These varieties of access reflect the meaning of subsistence which has been defined as the right to those material provisions needed for one’s self-preservation, i.e. those material provisions required for enjoying a minimal physical and physiological well-being. Water, food, air, shelter, and access to basic medical provisions and energy sources are normally taken to be its main focuses.²⁶ Also, Article 14 of the African Charter on Human and Peoples’ Rights (African Charter) guarantees the right to property, providing that it can be limited only in the interest of public policy and in accordance with the

²⁰United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on 13 September 2007.

²¹Articles 24 and 29 of UNDRIP.

²²Articles 10 and 28 dealing with compensation; also, Arts. 11.2 and 28.1 on restitution.

²³Article 40 of UNDRIP.

²⁴Articles 38 and 39 of UNDRIP.

²⁵United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas Resolution adopted by the General Assembly on 17 December 2018A/RES/73/16521 January 2019.

²⁶Shue (1980), p. 23.

provision of the law.²⁷ The African Commission on Human and Peoples' Rights (African Commission) has been flexible on what constitutes the concept of 'property'. For instance, in *Malawi African Association and Others v Mauritania*, land was considered 'property' for the purposes of Article 14 of the African Charter.²⁸ In *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) (Endorois case)*, traditional land was regarded by the African Commission as constituting 'property' under the Charter.²⁹

Arguably, a lack of benefit from carbon payments by forest dependent communities negates their right to subsistence because carbon is a forest resource. The right to subsistence is a substantive provision in a number of international human rights instruments. Article 25 of the Universal Declaration of Human Rights (UDHR) includes the right to subsistence in affirming that '[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'.³⁰ Article 1(2) of the International Covenant on Civil and Political Rights (ICCPR) equally provides that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.³¹

No doubt, the forest dependent communities exist at the very basic subsistence levels. Allowing these populations to derive economic benefits from carbon stock will improve their livelihood as they can use such proceeds to meet basic socio-economic needs. It also provides incentives for conservation. Sustainable conservation will ensure the continuous existence of resources on which their livelihood depends and will in turn contribute to the realisation of their right to subsistence.

²⁷ African (Banjul) Charter on Human and Peoples' Rights, adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on 21 October 1986 (African Charter).

²⁸ Communication No. 54/91, 61/91, 98/93, 164/97, 196/97, 210/98 *Malawi African Association and Ors v Mauritania* [2000] ACHPR 19; (11 MAY 2000) para 128.

²⁹ Communication 276/03, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) (Endorois case)* 27th Activity Report: June–November 2009, para 187.

³⁰ United Nations Universal Declaration of Human Rights (UDHR) (1948).

³¹ International Covenant on Civil and Political Rights (ICCPR), Art. 1.2.

2.2 *Linking Carbon Payments to Procedural Rights*

The protection or otherwise of procedural rights of forest dependents and local communities involved in REDD+ initiatives is necessary in the carbon payments process. The communities will not benefit and gain from carbon storage except other stakeholders, particularly the state corporations and development agencies involved in the implementation of REDD+ take the participation, consultation, access to information and justice of local populations and communities seriously. Procedural rights of the forest dependents and local communities are guaranteed in international instruments. Of these rights, access to information, the right to participate in decision-making and the right to seek a remedy have been prominently discussed.³² On access to information, Principle 10 of the Rio Declaration provides that:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities.³³

Under the United Nations Framework Convention on Climate Change (UNFCCC), state parties are required to promote at the national, sub-regional and regional levels public access to information on climate change and its effects.³⁴ Access to information is critical to the process of incentivising carbon considering that the methodology of measuring carbon stock is largely scientific and dominated by western epistemology and not the indigenous knowledge system. Hence, access to information will not only aid the transparency of the process but the participation of relevant communities. Article 11(1) of UNDRIPS asserts the right of peasants and other people working in rural areas to ‘seek, receive, develop and impart information, including information about factors that may affect the production, processing, marketing and distribution of their products’. Also, the African Convention on the Conservation of Nature and Natural Resources, as revised (Conservation Convention), enjoins states to put in place legislation to ensure access to information on environmental matters.³⁵ Carbon is a product that has elements of trading and marketing before it can yield gain as an incentive, hence, access to information is necessary for the understanding of the process.

³² Atapattu (2004), p. 283.

³³ Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, at Rio de Janeiro from 3–14 June 1992 (Rio Declaration), Principle 10; also see generally, Agenda 21, adopted at the United Nations Conference on Environment and Development, at Rio de Janeiro from 3–14 June 1992 (Agenda 21), chap. 3.

³⁴ United Nations Framework Convention on Climate Change (1992) ILM851 (UNFCCC). UNFCCC, Art. 12.9 and 10.

³⁵ African Convention on Conservation of Nature and Natural Resources, 2003 (Conservation Convention) Art. 16.1(a); on the examples of other instruments dealing with information, see Convention for the Protection of World Cultural and Natural Heritage, 23 November 1972, Art. 27; World Charter for Nature, Art. 16.

Participation is an essential procedural right for the carbon measurement, marketing, and incentivising process. The carbon storage, trading and incentivising process is difficult to imagine without the participation of forest dependent and local communities whose efforts form a crucial part of the process. When climate-related information is supplied to Indigenous Peoples and forest dependent communities upon or without request, and the process is carried out with their full participation and consent, there is a limited basis to allege, let alone found, a violation of a right in relation to their engagement with carbon storage. The need for participation is evident in the preamble of the UNFCCC which acknowledges that:

the global nature of climate change calls for the widest possible co-operation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions.

Article 18 of UNDRIP provides that:

Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.³⁶

Article 13(6) of UNDRIPS requires states to consult and cooperate with peasants and other people working in rural areas and their representative organisations for the purpose of protecting them from ‘economic exploitation, child labour and all forms of contemporary slavery, such as debt bondage of women, men and children, and forced labour, including of fishers and fish workers, forest workers. . .’. This position also resonates with Article 14(1)(c) of the Conservation Convention which enjoins states to ensure that legislative measures allow participation of the public in decision-making. It amounts to exploitation, and therefore a breach of the provisions of the aforementioned instruments, for communities who have always lived in the forests not to benefit from payments based on carbon storage and trading.

Furthermore, the African Commission Resolution 367 on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector,³⁷ requires of states the obligation to put in place legislation on measures to be taken by non-state actors to ensure that host communities participate in and benefit from decision making processes affecting them and their livelihoods. In the *Endorois* case, the African Commission considered that an essential element in deciding whether land is appropriated in accordance with law is the consultation of Indigenous Peoples. For an effective consultation, consent should be obtained and a failure to observe this requirement may lead to the violation of the right to

³⁶United Nations Declaration on the Rights of Indigenous Persons (UNDRIP), adopted by a majority vote of the United Nations (UN) General Assembly on September 13, 2007, also see generally Articles 5, 27 and 41.

³⁷ACHPR 367: Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector, ACHPR/Res. 367 (LX) 2017.

property.³⁸ Therefore, participation of forest dependents and local communities in carbon activities is key to the realisation and enjoyment of the benefits in carbon storage and trade.

The position with carbon storage, measurement, trading and incentivisation also raises question as to what accountability measure is put in place for redress where forest dependent and local communities consider their interest neglected. The communities should be able to challenge the role of state and non-state actors in the carbon value chain. Access to justice is particularly key as judicial or quasi-judicial proceedings under human rights law are not the first option, where issues can be addressed administratively or through recourse to alternative conflict resolution procedures.³⁹ However, accessing justice is often challenging considering that in terms of the current state of international human rights, suits against international organisations from domestic jurisdiction, and accountability of non-state actors, in the implementation of the climate change response measures are in doubt.⁴⁰ This signifies that disputes involving forest dependents and local communities against non-state actors and international organisations before domestic courts relating to REDD+ carbon payments may be problematic.

In relation to access to justice, principle 10 of the Rio Declaration stresses the need for ‘effective access to judicial and administrative proceedings, including redress and remedy’.⁴¹ Article 12(1) of UNDRIPS provides that ‘peasants and other people working in rural areas have the right to effective and non-discriminatory access to justice, including access to fair procedures for the resolution of disputes and to effective remedies for all infringements of their human rights.’ It further stipulates that decisions must consider and align with their customs, traditions, rules and legal systems’. In protecting the environment and natural resources, the Conservation Convention requires parties to ‘adopt legislative and regulatory measures necessary to ensure timely and appropriate access to justice’.⁴² The Conservation Convention provides for peaceful resolution of disputes, and where this fails, recourse to the Court of Justice of the African Union.⁴³

The Cancun Agreement epitomises the relevance of procedural rights in REDD+ initiatives as it offers safeguards which states must address and respect throughout the life cycle of REDD+ projects. Paragraph 2 of Appendix I of the Cancun

³⁸ *Endorois* case, para 226.

³⁹ Article 40 of UNDRIP.

⁴⁰ For instance, international organisations generally enjoy immunity when performing their institutional purpose, see Tesfagabir (2011), p. 99.

⁴¹ Rio Declaration, Principle 10.

⁴² Conservation Convention, Art .16. 1(d).

⁴³ Conservation Convention, Art. 30; pursuant to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (1998/2004), the Court of Justice has now been merged with the African Court of Human and Peoples’ Rights under a new mechanism referred to as the African Court of Justice and Human Rights, see ‘Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (1998/2004)’.

Agreement provides that: when undertaking the 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 the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivise 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;
- (g) Actions to reduce displacement of emissions.

The foregoing decision was reiterated by Decision 2 of COP 17, which reaffirms that regardless of the source of financing, REDD+ must in principle be guided by and be consistent with the safeguards in Appendix I of the Cancun Agreement. Taking the view that decisions of COP 16 obligate states to comply with these standards for which they must declare through their national communications their level of compliance, it is logically expected that states should observe procedural rights on REDD+ carbon processes inclusive of carbon payments.

3 Carbon Payments and a Constraining Legal Framework

In reality, whether the critical communities do benefit from carbon-based payments for enhancement of their rights is contested. The making of decision as to the allocation of financial and non-financial benefits from the implementation of REDD+ to various stakeholders as a function of equitable sharing remains uncertain.⁴⁴ Although the concept of benefit sharing is not exclusive to REDD+, there are issues relating inter alia to identification of legitimate beneficiaries, definition of benefits, the efficient distribution of costs, institutional structure required for financial transfer and the process of decision making and implementation.⁴⁵ While a comprehensive legislation on REDD+ should respond effectively to these issues, as shown in the sections below, this is not always the case from the experiences of local

⁴⁴ Streck (2020), pp. 1–2; Wong et al. (2019), p. 1038.

⁴⁵ Luttrell et al. (2012), p. 130.

populations who participate in the project. Legal framework may sometimes undermine the right of local populations to carbon payments in Africa.

3.1 Limited Recognition of Carbon Payments in Existing Framework

In Africa, there seems to be no legal foundation for exclusive conferment of carbon rights and benefit sharing in favour of local communities in the REDD+ initiatives. This is evident in a few legislative measures adopted on REDD+ in a number of African states. For example, regulations, property rights, and transfer of ownership rights applicable to Emissions Reduction Units were established by the 2018 Homologation Decree in the Democratic Republic of Congo.⁴⁶ The Decree allows for non-performance-based payments representing 4% of the value of ERs, shared equally among Indigenous Peoples (2%) and Local Communities (2%) and performance-based payments effected in form of rural investments and nationally certified projects.⁴⁷ However, the percentage level shows that the interests of the communities are adjudged nominal by the state. The Decree largely vested in the national government concomitant rights to all carbon units which can in principle be transferred through a ‘certificate d’homologation’ to private developers including foreign donors and countries.⁴⁸ Also, Article 2 of the 2020 Forest Code of the Democratic Republic of Congo defines forests for the purpose of carbon credit, while Article 186 creates the national body for the regulation, monitoring and enforcement of the carbon market.⁴⁹ Article 185 affirms that the sale of carbon credits belonging to natural or legal persons is subject to a tax on the sale of forest carbon credits, which are collected by the public treasury’s collection agent. The challenge, however, is that besides the reality that appropriate bodies are not yet established as required by the provisions, the new law remains silent on sharing of benefits arising from the sale of carbon.

The draft REDD+ decree of Madagascar stipulates that the government is the beneficiary of all emission reductions and removals (ERRs) generated by REDD+ activities with the exclusive right to commercialise them.⁵⁰ Also, the government of Mozambique provides that all forest carbon resides with the national government.⁵¹

⁴⁶See Art. 3, DRC (2018) Ministerial Order No. 047/CAB/MIN/AAN/MML/05/2018 of 9 May 2018 on the process of approval of REDD+ investments in the DRC.

⁴⁷See generally Article 2 of the DRC (2018) Ministerial Order No. 047.

⁴⁸See generally Article 2 of the DRC (2018) Ministerial Order No. 047; Luttrell et al. (2012), p. 130.

⁴⁹Law No. 33-2020 on the Forest Code was finally promulgated on 8 July 2020.

⁵⁰Luttrell et al. (2012), p. 130.

⁵¹Government of Mozambique. Regulamento Para Programas e Projectos Inerentes à Redução de Emissões Por Desmatamento e Degradação Florestal de Carbono (REDD+); (Maputo, Mozambique, 2018), p. 7.

In Cameroon, Article 7 of the Law No. 94/01 provides that ‘the State, local councils, village communities and private individuals may exercise on their forests and aqua cultural establishments all the rights that result from ownership, subject to restrictions laid down in the regulations governing land tenure and State lands and by his law’.⁵² This provision suggests that even if carbon rights are within the rights accruable to stakeholders other than the state, the possibility that they will benefit still depends on the goodwill of the state.

The foregoing approach follows the nature of international environmental law intervention which is often state centred. Key institutions under the aegis of the international climate change regulatory framework are the Conference of Parties (COP), Meeting of the Parties (MOP), the Intergovernmental Panel of Climate Change (IPCC), Subsidiary Body for Scientific and Technological Advice (SBSTA), Subsidiary Body for Implementation (SBI), Ad Hoc Working Group on Long Term Cooperative Action Under the Convention (AWG-LA), and the defunct Ad Hoc Working Group on Further Commitment for Annex 1 Parties Under the Kyoto Protocol (AWG-KP).⁵³ These institutions are operationalised by state representatives, a development which has bearing on how interventions are formulated. Issues of vulnerable groups such as Indigenous Peoples and forest dependents have been presented at this for a but usually on the margins of activities driven by states.

For instance, the presentation on behalf of the African countries of the Congo Basin to the SBSTA by, Gabon that sustainable management of the forests cannot be achieved without the participation of Indigenous Peoples was a rarity.⁵⁴ On the status of Indigenous Peoples and local communities in the formulation of an appropriate approach to forest emission reduction, the contribution of parties was specifically invited by the SBSTA. These contributions were considered at the 13th session of the SBSTA.⁵⁵ No African state responded to the call for submissions. What has been more regular is the participation of associations in the deliberations of the Ad Hoc Working Group on Long Term Cooperative Action Under the Convention. At one of the initial meetings, Indigenous Peoples of Africa Co-ordinating Committee (IPACC), in their joint submission reiterates that climate change directly threatens the services for which the ecosystem is known, such as the provision of food, clean water, coastal protection and the people who depend on these activities. Hence, as the natural areas are of cultural and religious significance to these people, protecting and restoring these areas are critical for an effective implementation of REDD.⁵⁶ However, these activities have not translated into

⁵²Law No. 94/01 of 20 January 1994 to lay down Forestry, Wildlife and Fisheries Regulations (Cameroon).

⁵³Gale (2013), p. 32; Bodansky (2001), p. 201.

⁵⁴UNFCCC SBSTA ‘Paper No. 8: Gabon on behalf of Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea and Gabon’ FCCC/SBSTA/2006/MISC.5 75 (UNFCCC SBSTA ‘Paper No. 8’).

⁵⁵UNFCCC SBSTA ‘Paper No. 8’.

⁵⁶UNFCCC AWGLCA ‘Paper No. 4: International Union for the Conservation of Nature on behalf of the International Union for the Conservation of Nature, The Nature Conservancy, WWF,

concrete statements in the political decisions of the COP, that is, the highest organ under the UNFCCC in any significant manner. It has not for instance ensured direct benefits to the Indigenous Peoples, forest dependents and local populations as required under a range of substantive and procedural rights to which they are entitled under international human rights law.

3.2 Contested Stake of Forest Dependent Communities

A corollary to the lack of recognition of land is the neglect of the services of the forest dependent communities in the process. Even where the land ownership is not properly recognised, the services of communities leading to carbon emission reduction and removal is often disregarded in carbon payments. This development underlies why the distribution of REDD+ benefits has been identified as the most controversial and complex issue confronting REDD+ implementation.⁵⁷ The question has been asked over and over again that which relevant actor (the state, stakeholders or local communities) has the exclusive right to exploit and solely benefit from GHG emissions reductions and removals in REDD+ and related rights to international payment.⁵⁸ The possibility for carbon rights to flow either from the ownership of (land) assets or the control of the activity itself that reduces deforestation or enhances forest carbon stock, makes it imperative to clarify the actual beneficiaries of REDD+ implementation. Many forest users and local communities in Africa clearly lack formalised right to ownership of forested land. With little or no recognition for customary land tenure systems, the services of forest dependent people and local communities are more likely to be exempted from carbon payments in Africa.

In some cases as in Uganda, the concept of public trusteeship is used where the state holds the land in trust for the people and only recognises formalised land tenure despite explicit provision in the Constitution and the Land Act that customary land constitutes *inter alia* one of the recognised forms of land holding in the country.⁵⁹ Through this land governance approach, it is logical that the state automatically becomes *de jure* benefactor of REDD+ projects with the sole legitimacy to negotiate implementation of REDD+ activities and payments in their jurisdiction. The controversial land tenure regime in Africa does not recognise or protect customary land rights where most REDDs+ interventions take place. In a sense, the implementation

Conservation International, Birdlife International, Indigenous People of Africa Co-ordinating Committee, Practical Action, Wild Foundation, Wildlife Conservation Society, Fauna and Flora International and Wetlands International Ecosystem-based adaptation: An approach for building resilience and reducing risk for local communities and ecosystems' FCCC/AWGLCA/2008/MISC.6/Add.2, 65.

⁵⁷ Luttrell et al. (2012), p. 129.

⁵⁸ Peskett and Brodnig (2011), p. 1; Streck (2020), p. 1.

⁵⁹ For details, see Ashukem (2020), p. 121.

of REDD+ project takes place in a vacuum of uncertainty over customary land rights.⁶⁰ Unless otherwise stated in law and policy, it is generally presumed that the forest and its associated products belongs to the owner of the land (the State) which by induction suggests that the owner also owns carbon and non-carbon rights/benefits since carbon can also be considered/attributed as another kind of forest resource. Local communities are often only granted the right to use forested land and to benefit from its fruits,⁶¹ The absence of formalised land ownership rights constitutes a huge impediment in the eventual allocation of benefits from REDD+ projects. In other words, without formalised land rights, there is a basis already for excluding the communities from receiving or enjoying any benefits from REDD+ projects implemented on any of their supposed forested land as they cannot show conclusive proof of ownership of the land or forest. In contrast, the lack of clarity about land rights advantages forest actors who 'assume that existing land and forest tenure, and current policy instruments for sharing benefits from the forests, will serve as the basis for allocating payments for carbon emission reduction'.⁶² Notwithstanding the foregoing, traces of inclusion of local communities in carbon payments do exist in certain states in Africa.

4 Practices on Carbon Payments as an Agency of Rights

Payments from carbon should incentivise states, companies, organisations, and institutions as well as local populations that engage in projects and programmes that ensure carbon sequestration and reduction. While the benefits derived by local populations are contested, it is possible to see in Africa situations whereby payments have targeted local communities and enhanced their living conditions, and in so doing, aid the realisation of their rights. The benefits can be both non-monetary and monetary in nature. Non-monetary refers to benefits incidental to carbon payments such as conservation and cultural use of forests which result from project implementation aside from the financial remuneration. Evidence of both non-monetary and monetary rewards associated with carbon payments can be found in some African states, namely Mozambique, Niger, Gabon, Uganda, Democratic Republic of Congo (DRC) and Ethiopia, where states still generally retain the ownership of land and resources.

In Mozambique, local communities are heavily dependent on natural resources for their livelihood, hence, the possibility of carbon payments encourages forest dependents to sustainably use forest resources and reduce the threat to biodiversity and the climate. Unsustainable use of forests threatens the survival of forests. For instance, the use of wood burning, timber and charcoal burning is one of the major

⁶⁰Luttrel et al. (2012), p. 142.

⁶¹Streck (2020), p. 7.

⁶²Luttrel (2012), p. 142.

contributors to the increasing rate of deforestation in the Gaza Province in Mozambique.⁶³ Participation in REDD+ incentive system is a means of averting such trend and it constitutes a non-monetary reward in the carbon payment process. This is evident among the community members in the Pungwe region who actively participated in the Solafa Carbon Credit REDD+ project where community members were responsible for forest conservation and carbon capture through planting of various trees buffer zone of the Gorongosa National Park in Sofala province.⁶⁴ Community members received some of the proceeds of the carbon credits sold which sustained their livelihood.⁶⁵ Mozambique also received \$6.4 million from the Forest Carbon Partnership Facility (FCPF) for the sale of carbon credits from the Zambézia Integrated Landscape Management Program (ZILMP) making it the first country to receive payment from FCPF.⁶⁶ The FCPF operationalises result based payments as envisaged by the Warsaw Framework for REDD+ (WFR) which defines the global conditions for developing countries to reduce emissions and enhance forest carbon stocks and enable the provision of results-based climate finance payments in return for measured GHG reductions and removals.⁶⁷ Hence, in terms of the ZILMP benefit sharing agreement, 70% of the net payments from sale of carbon credits is distributed amongst local communities.⁶⁸

Niger framework embodies benefit sharing which allows for both non-financial and financial benefits from carbon payments. Section 148 of the Niger Constitution states that the natural resources and subsoil are the property of the people of Niger. Under Section 152, proceeds from natural resources are shared between the state and the specific territory in which the resources were exploited.⁶⁹ Niger received \$450,000 for the sale of carbon credits sold from the afforestation and agro-forestry project where they planted trees on an abandoned land for a period of 14 years.⁷⁰ In terms of non-monetary benefits, the project has advanced soil restoration and provided fertile soil for production of Arabic gum, used as a stabiliser in the food industry. It has created employment and income for community members through the collection and sale of Arabic gum.⁷¹ Local community members also received monetary incentives as the funds for the carbon credits sold in the agro-forestry project in Kone Beri was shared with local communities that participated in the project.⁷² The communities utilised the funds to advance their plantations and

⁶³ Almeida and Barbeiro (2020).

⁶⁴ Monjane et al. (2022).

⁶⁵ Monjane et al. (2022).

⁶⁶ World Bank (2021).

⁶⁷ International Bank on Reconstruction and Development (2014).

⁶⁸ Forest Carbon Partnership (2019), pp. 13–14.

⁶⁹ Constitution of Republic of Niger, 2010.

⁷⁰ Serkovic (2020).

⁷¹ Serkovic (2020).

⁷² World Bank (2020).

maintain resources and machinery used for agricultural purposes. They also supplied schools and health posts with resources and materials.⁷³

Gabon categorises forests into Permanent Forest Estate and Rural Forest Domain. Local communities enjoy customary user rights in the Rural Forest Domain.⁷⁴ These rural forest domains spread over 8 million hectares of land.⁷⁵ The regulation on benefit sharing was adopted in 2014 and followed by 2016 adoption of guidelines on the procedure for implementation of the regulations in Gabon. Based on this legal framework, 26 communities entered a benefit sharing agreement with 8 concession holders.⁷⁶ The Nze Vetican village is one of the villages that have temporary community permits and manages 5000 hectares of forested land. The Nze Vetican community also engages in benefit sharing agreement where they sell the wood from the forest to local private companies and receive payments estimated at \$5700.⁷⁷ In 2019, Gabon entered into an agreement with the Central African Forest Institute for payment of \$150 million in result-based carbon absorption. In June 2021 the country received \$17 million in payments for its efforts in preserving its forested lands.⁷⁸ Under the legal environment in Gabon, communities may take legal actions to seek enforcement of the benefit sharing agreements.⁷⁹ For instance, in the Northeast of Gabon, the Kota community of Massaha challenged the government to recognise and protect their land and cultural forests as they are threatened by logging exploitations. The community has been managing the sacred forests for generations and seek the government to declassify their forests, sacred sites and ancestral villages that are under the control of a foreign logging company.⁸⁰

Some rural farmers in Albertine Rift, Western Uganda engage in Trees for Carbon Benefits Scheme, which has benefited farmers through cash, control of soil erosion and protection of crops from impacts of climate change.⁸¹ The scheme which is aimed at carbon offsetting by increasing carbon sequestration, encourages land use practices and links farmers to carbon market. The Scheme encourages farmers to earn money through carbon credits generated from trees they planted.⁸² As a consequence of this scheme, the villagers also protect the forest from illegal loggers who cut down trees for production of charcoal.⁸³ In the DRC, Decree No. 14/18/204 establishes local community forests concessions and confers customary community

⁷³ Ibid.

⁷⁴ Legault and Cochrane (2021), pp. 1–8.

⁷⁵ Legault and Cochrane (2021), pp. 1–8.

⁷⁶ Client Earth (2021), p. 66.

⁷⁷ Worldwide Fund (2014).

⁷⁸ Congo Basin Forest Partnership (2022).

⁷⁹ Centre for International Development and Training (2021).

⁸⁰ Land Portal (2022).

⁸¹ Nabbanja (2021).

⁸² Nabbanja (2021).

⁸³ Tenywa (2021).

rights over their forest concessions. The communities are given the right to apply for a recognition of a forest concession to a maximum land cover of 50,000 hectares.⁸⁴ Once a community obtains the right to a local community forest concession, they are allowed to utilise forest resources subject to sustainable management of the forest.⁸⁵ The system is not without its weaknesses,⁸⁶ Local community members are encouraged to utilise their community forests sustainably and are able to earn a living through their forests.⁸⁷

In Ethiopia, forest-based carbon sequestration assessments and performance enhancement is empowering and improving the livelihoods of local community members who depend on the forests.⁸⁸ With most of the proceeds of carbon credit sale aimed at benefiting local communities through rural development projects and rural economy-orientated programmes,⁸⁹ local communities in the Oromia Region have received rewards for managing their forests, although the forests are pressured by deforestation and possible forest degradation.⁹⁰ Local community members in Humbo village have sold carbon credits from their land restoration project where they restored more than 2000 hectares of biodiversity rich land.⁹¹ The payments of carbon credits sold have helped advance their livelihoods through economic development infrastructures. Members of communities received more than \$394,000 from the carbon credit sold which were utilised to reduce health risks, improve nutrition, school attendance and livestock maintenance by women.⁹²

In the light of the above, for communities which benefit from carbon payments, its impact on nutrition, school attendance and livestock maintenance at least shows the potential in carbon payments to positively impact on the rights of these populations to food, education, and health. The rights regime of these populations, particularly under the relevant human rights instruments of the African Union, recognises these rights as essential. The normative elements of the right to food are clarified by the CESCR General Comment No. 12 (1999) on the right to adequate food (Art. 11) of the ICESCR, applicable include: availability of adequate food and accessible to all individuals under the jurisdiction of a state.⁹³ While it is not categorically stated under the African Charter, the jurisprudence of the African

⁸⁴Rights and Resources Initiative (2014).

⁸⁵Vissa (2020).

⁸⁶See, for instance, the discussion of Lassana Kone in chapter 'Land Rights of Indigenous Peoples and Local Communities in the REDD+ of the Republic of Congo' of this edited book.

⁸⁷Ngwato (2020).

⁸⁸Gebreselassie (2017).

⁸⁹Ethiopiaproperous (2018).

⁹⁰World Bank (2017).

⁹¹World Bank (2012).

⁹²World Vision (n.d.). Humble Humbo's carbon trade upgrade. <https://www.worldvision.com.au/global-issues/work-we-do/climate-change/humble-humbo-carbon-trade-upgrade>.

⁹³United Nations General Comment No. 12: The right to adequate food (1999).

Commission shows that the right to food is justiciable. In *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (Ogoniland case)*,⁹⁴ the African Commission interpreted Articles 4 (right to life), 16 (right to health) and 22 (right to economic, social and cultural development) to ground a violation of the right to food. The right to food is also expressly mentioned in Article 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),⁹⁵ and Article 14(2)(c) of the African Charter on the Rights and Welfare of the Child (ACRWC).⁹⁶ A similar provision of access to food is found in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (Older Persons Protocol),⁹⁷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Persons with Disabilities Protocol),⁹⁸ and the African Youth Charter.⁹⁹ Carbon payments will enhance the rights to food of the vulnerable groups such as women, older persons, persons living with disabilities, and the youth that form the local populations in the forest sector.

The availability of carbon payments that can be used as costs for educational services by the local populations is a boost to the right to education of local populations. Article 17(1) of the African Charter guarantees for every individual the right to education. The right is also safeguarded by Article 11 of the ACRWC, Article 13(1) of the African Youth Charter, Article 12 of the Maputo Protocol, Article 16(1) of the Persons with Disabilities Protocol, and article 16 of the Older Persons Protocol. In Resolution 346(LVIII) of 2016, the African Commission on the right to education in Africa expressed the concern that 'many children, particularly girls, vulnerable children such as children with disabilities, refugee children, migrant children, street children, internally displaced children, girls who abandon school as a result of pregnancy, and children from marginalised communities have not been given equal opportunity' to education.¹⁰⁰ The CESCR General Comment No. 13 on the Right to Education (Art. 13) affirms the essential and interrelated features of the

⁹⁴Communication 155/96, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (Ogoniland case)*.

⁹⁵Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005 (Maputo Protocol).

⁹⁶African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force on 29 November 1999 (ACRWC).

⁹⁷Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons, adopted by the Twenty Sixth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia on 31 January 2016 (Older Persons Protocol).

⁹⁸Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted by the Thirtieth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia on 29 January 2018 (Persons with Disabilities Protocol).

⁹⁹African Youth Charter, adopted by the Seventh Ordinary Session of the Assembly, held in Banjul, the Gambia on 2 July 2006, Art. 14.2.

¹⁰⁰ACHPR '346 Resolution on the Right to Education in Africa' ACHPR/Res.346(LVIII) 2016.

right to education as: Availability Accessibility, Acceptability, and Adaptability.¹⁰¹ Carbon payments can advance the accessibility of vulnerable groups such as women, older persons, persons living with disabilities, and the youth that form the local populations in the forest sector to education.

Carbon payments may also have a positive implication on the realisation of the right to health of local populations. Article 16 of the African Charter guarantees the right to enjoy the best attainable state of physical and mental health and that states must ensure that everyone has access to medical care. The right to health is safeguarded under Article 14 (1) of the Maputo Protocol, Article 14(1) of the ACRWC, Article 15 of the Older Persons Protocol,¹⁰² Article 20(1) of Persons with Disabilities Protocol,¹⁰³ and Article 16 of the African Youth Charter.¹⁰⁴ In General Comment No. 14 on the Right to Health, the CESCR noted that poverty plays a major role in limiting the access of populations to health and undermining their right to health.¹⁰⁵ Carbon payments may respond to this poverty crisis and enhance the right to enjoyment of health by groups likely to be vulnerable situations such as women, older persons, persons living with disabilities, and the youth that form the local populations in the forest sector.

5 Conclusion

The main aim of this chapter is to interrogate whether carbon payments are linked to human rights, and if so, what evidence exists on how payments to local communities may undermine or advance the rights of local populations in the context of REDD+ in Africa. As has been shown, due to the centrality of land ownership and access to the core features of the REDD+ initiative, carbon payments have bearing upon the rights of local communities and forest dependents in Africa. Carbon payments also have implications for procedural rights, namely the participation, consultation, access to information and justice of local populations and communities. A limited legal recognition of carbon payments in existing framework and lack of recognition of the stake of forest dependent communities in carbon payments are a major challenge to the participation of these communities in carbon payments. Amidst these challenges, there are promises on both non-monetary and monetary rewards associated with carbon payments in some African states, namely Mozambique,

¹⁰¹ CESCR General Comment No. 13: The Right to Education (Art. 13) Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10).

¹⁰² Article 15 of the Older Persons Protocol.

¹⁰³ Article 20. 1 of Persons with Disabilities Protocol.

¹⁰⁴ Article 16 of the African Youth Charter.

¹⁰⁵ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), para 5.

Niger, Gabon, Uganda, Democratic Republic of Congo (DRC) and Ethiopia. A development which we have shown may advance human rights, particularly the rights to food, education and health. Consequently, we submit that it is crucial for African states to formulate adequate regulatory and policies measures that would proactively guarantee adequate participation of local communities in decision processes of REDD+ projects, ensure fair and transparent processes and procedures of decision-making, ensure equitable and fair benefit sharing of the benefits of REDD+ projects; and ensure adequate protection of local communities' forest rights to enable them enjoy the corresponding and associated royalties to forest products. Carbon payments present both challenges and opportunities for Africa. It is the duty and responsibilities of African states to address these challenges to enable all relevant stakeholders, including local populations and forest dependent communities benefit from carbon payments in Africa.

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Ademola Oluborode Jegede (PhD) is Professor of Law and an NRF-rated researcher in the Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa. He holds degrees from Obafemi Awolowo University Ile-Ife (LLB), University of Ibadan (MPH), and the Centre for Human Rights, Faculty of Law, University of Pretoria (LLM & LLD Human Rights). He has been a research visitor to the Centre for International Environmental Law, USA, Human Rights Institute at Abo Akademi, Finland, and he is a fellow of Salzburg Global Seminar, Austria. His research principally focuses on the interface of climate change and biodiversity loss with human rights of vulnerable groups and general international human rights law. His writings on these themes include the co-edited books *Climate Change Justice and Human Rights: An African Perspective* (Pretoria University Law Press, 2022); *Human Rights and the Environment under African Union Law* (Palgrave, 2020); and the book: *The Climate Change Regulatory Framework and Indigenous Peoples' Lands in Africa: Human Rights Implications* (Pretoria University Law Press, 2016). He is the Initiator and Convening Editor of the *African Journal of Climate Law and Justice* (AJCLJ), and an external expert to the Working Group of Children and Climate Change established by the African Committee of Experts on the Rights and Welfare of the Child.

Jean-Claude N. Ashukem (PhD) holds an LLB and Maitrise from the University of Yaoundé II, Soa, an LLM and LLD in environmental law and governance from the North-West University of the Potchefstroom Campus. Jean-Claude has interests in environmental rights, land grabbing and investment. He has published extensively on these issues in international and national journals as well as book chapters.

Part III
Gender, Decision Making and REDD+

Gender and REDD+ Governance in Malawi: Enhancing Women's Right to Participation



Ngcimezile Mbanu-Mweso

Abbreviations

| | |
|--------|--|
| ADC | Area development committees |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CESCR | Committee on Economic Social Culture Rights |
| COP | Conference of the Parties |
| DEC | District Executive Committee |
| DESC | District Environment Subcommittee |
| DFO | District Forestry Officer |
| DoF | Department of Forestry |
| EMA | Environment Management Act |
| ESCR | Economic social and cultural rights |
| FRIM | Forestry Research Institute of Malawi |
| GHG | Greenhouse gases |
| HRC | Human Rights Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| MRP | Malawi REDD+ Program |
| MRRP | Malawi REDD+ Readiness Programme |
| NEP | National Environmental Policy |
| NFP | National Forest Policy |
| REDD+ | Reducing emissions from deforestation and forest degradation |
| UN | United Nations |
| UNFCCC | United Nations Framework Convention on Climate Change |

N. Mbanu-Mweso (✉)
Faculty of Law, University of Malawi, Zomba, Malawi
e-mail: nmweso@unima.ac.mw

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| USAID | United States Agency for International Development |
| VDC | Village Development Committees |
| WFR | Warsaw Framework for REDD+ |

1 Introduction

Gender equality and women's participation are crucial in forest protection and use. The difference between women and men in reliance on forests for their livelihoods, knowledge, skills, and experience are vital for successful forest management and conservation.¹ Forests and trees play a crucial function as carbon sinks and they contribute to the fight against climate change. Despite the small contribution to factors causing global climate change including anthropogenic emissions of greenhouse gases (GHG), Malawi is particularly vulnerable to climate change due to its unique and fragile ecosystems.² Malawi is ranked as the 39th most vulnerable and 21st least ready to adapt to climate change.³ This is a result of many factors including Malawi's high reliance on natural resources, high dependence on rain-fed agriculture, poverty, reliance on biomass energy, deforestation, population growth, and environmental degradation.⁴ Malawi is committed to contributing towards global efforts to reduce GHG emissions in key sectors of forestry, agriculture, and energy.⁵ Malawi is also a member to the United Nations Framework Convention on Climate Change (UNFCCC) and is implementing the mechanism developed for reducing emissions from deforestation and forest degradation (REDD+).⁶ According to the Malawi REDD+ Programme plan, two main mitigation options being pursued in the forestry sector are protection and conservation (of existing forests), and afforestation (covering tree planting, as well as natural and assisted regeneration).⁷ Malawi seeks

¹ See Colfer et al. (2016), generally.

² Missanjo and Kadzuwa (2021), p. 2.

³ Irish Aid Malawi Climate Action Report For 2016 <https://www.irishaid.ie/media/irishaid/allwebsitemedia/30whatwedo/climatechange/Malawi-Country-Climate-Action-Reports-for-2016.pdf> World Bank Profile, Malawi Dashboard (2014); http://sdwebx.worldbank.org/climateportal/home.cfm?page=country_profile&CCode=MWI&ThisTab=Dashboard UNDP climate change profile for Malawi: <http://www.geog.ox.ac.uk/research/climate/projects/undpcp/index.html?country=Malawi&d1=Reports>.

⁴ Missanjo and Kadzuwa (2021), pp. 3–4.

⁵ Missanjo and Kadzuwa (2021), p. 4 stating that it is due to unsustainable use of fuelwood and charcoal (97% of Malawians rely on biomass energy for cooking fuel), and poor agricultural practices, resulting in a high rate of deforestation and forest.

⁶ UN General Assembly, *United Nations Framework Convention on Climate Change (UNFCCC): resolution/adopted by the General Assembly*, 20 January 1994, A/RES/48/189.

⁷ Government of Malawi, *Intended Nationally Determined Contribution* (2015), p. 2. Available at <https://www.climatelearningplatform.org/republic-malawis-intended-nationally-determined-contribution-indc>.

to slow and eventually reverse GHG emissions from deforestation and forest degradation and increase removals through afforestation.⁸

There has been a growing focus on forests in Malawi over the past two decades and recognition of the need to remedy deforestation.⁹ Community participation has been recognised as key in decentralised decision-making in natural resource management including in forest governance,¹⁰ however, this has not always resulted in real power or benefit to the people, especially women.¹¹ This chapter investigates gender and governance of the REDD+ project in Malawi with a focus on the legal guarantees and institutional arrangements including platforms of participation for women. The chapter is divided into four Sections. After the introduction, Sect. 2 examines the role of gender and participation from a human rights perspective with a focus on women in REDD+ governance. This is followed by Sect. 3 which interrogates REDD+ governance in Malawi by focusing on the legal and institutional framework and how it promotes gender and participation. Section 4 is the conclusion.

2 REDD+ Governance: Gender and Participation as an Agency

This section analyses REDD+ governance from a gender perspective with focus on participation of women as a human right guaranteed in human rights instruments.

2.1 REDD+ Governance

REDD+ is an international mechanism introduced by parties to UNFCCC during the Eleventh Conference of the Parties (COP) in 2005. The mechanism is designed to prevent or reduce climate change-inducing forest-based emissions through incentives for governments, companies or owners of forests in developing countries.¹² The COP negotiated for over a decade with varying preliminary outcomes on international efforts to address the crisis of forest destruction.¹³ Under Article

⁸Government of Malawi, *Intended Nationally Determined Contribution* (2015), p. 6.

⁹See Government of Malawi (GoM) National Forestry Policy (2016) Available at <https://www.dof.gov.mw/storage/app/media/Policies%20and%20Strategies/National%20Forest%20Policy%202016.pdf>.

¹⁰Forest Act No. 11 of 1997.

¹¹Forest Act No. 11 of 1997.

¹²Article 5 of Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, T.I.A.S. No. 16-1104.

¹³See Young (2017), p. 14.

12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol), the basis is established for developed countries to pay developing countries for the carbon emissions avoided through a reduction in forest loss.¹⁴ In 2013, the COP created a framework called Warsaw Framework for REDD+(WFR) to guide activities to reduce human pressure on forests that result in greenhouse gas emissions.¹⁵ WFR has the methodological and financing guidance for implementing REDD+ activities. In 2015, there was further recognition of REDD+ in the Paris Agreement with calls for the enhancement of forest carbon stocks in developing countries through the implementation of REDD+ activities.¹⁶

According to Lederer, 'REDD+ is not just about keeping carbon in the forest, it is about how the world's forests are governed'.¹⁷ Lederer further argues that the future success of REDD+ depends less on technical issues than it does on the governance of the mechanism.¹⁸ Brockhaus defines REDD+ governance broadly as encompassing 'a range of institutions, organisations, principles, norms, mechanisms and decision-making procedures'.¹⁹ With a focus on political actors, Brockhaus investigates three main aspects of REDD+ governance, namely the policy domain where REDD+ strategies emerge, mechanisms in coalition building and organisations or structures in which they operate.²⁰ They argue that the relationship between these three key aspects of REDD+ governance is essential for fostering the power of agency, that is the ability of actors to influence decisions and policy outcomes.

Aquino and Guay define REDD+ governance more specifically as 'the institutions, processes, decision-making mechanisms that enable the country to channel resources from the international level to measures on the ground that address the drivers of deforestation'.²¹ Brockhaus et al. state that legitimacy is achieved by

¹⁴Kyoto Protocol to the United Nations Framework Convention on Climate Change, (1997) 2303 UNTS 162 adopted at COP 3 in Kyoto, Japan, on 11 December 1997.

¹⁵The Warsaw Framework for REDD+ consists of the following UNFCCC COP decisions: Decision 9/CP.19, Work Programme on Results-based Finance to Progress the Full Implementation of the Activities Referred to in Decision 1/CP.16, paragraph 70; Decision 10/CP.19, Coordination of Support for the Implementation of Activities in Relation to Mitigation Actions in the Forest Sector by Developing Countries, Including Institutional Arrangements; Decision 11/CP.19, Modalities for National Forest Monitoring Systems; Decision 12/CP.19, The Timing and the Frequency of Presentations of the Summary of Information on how all the Safeguards Referred to in Decision 1/CP.16, Appendix I, are being Addressed and Respected; Decision 13/CP.19, Guidelines and Procedures for the Technical Assessment of Submissions from Parties on Proposed Forest Reference Emission Levels and/or Forest Reference Levels; Decision 14/CP.19, Modalities for Measuring, Reporting and Verifying; Decision 15/CP.19, Addressing the Drivers of Deforestation and Forest Degradation, UN Doc. FCCC/CP/2013/10/Add.1, 31 January 2014.

¹⁶Paris Agreement, Article 5.

¹⁷Lederer (2012), p. 107.

¹⁸Lederer (2012), p. 107.

¹⁹Brockhaus et al. (2013), p. 1.

²⁰Brockhaus (2013), p. 1.

²¹Aquino and Guay (2013), p. 2.

obtaining the consent of the governed.²² In their view, an ideal governance structure must achieve legitimacy together with effectiveness and efficiency. They explain that legitimacy is the acceptance of structures by multiple stakeholders including local communities engaged in REDD+ and the transparency and accountability, distribution of power and wealth of REDD+ financial flows.²³ Effectiveness is about the capacity to raise funds and deliver on reduced emissions through addressing causes of deforestation and forest degradation. There must be forest conservation and restoration as a result of challenging and transforming existing structures.²⁴ Efficiency is the ability to deliver cost-efficient REDD+ results including co-benefits.²⁵ To achieve legitimacy, Somorin et al. argue that effectiveness and efficiency, the interaction between state and non-state actors and institutional context is crucial.²⁶ They further opine that REDD+ governance is about collective decision-making.²⁷ REDD+ governance must ensure meaningful participation of actors in forming institutional structures that create values, rules and norms that in turn influence REDD+ actions, processes and outcomes.²⁸ The capacities and responsibilities of multiple actors and the institutional rules of how they interact with each other for collective decision-making and collaboration will determine the success or otherwise of REDD+.²⁹

Participation emerged as a central concept when global trends moved away from strong centralised state 'government' to more decentralised and democratic 'governance'.³⁰ According to Stoker, this shift from a strong central government to decentralised and democratic governance removed the government as the single source of decision-making authority.³¹ In governance, the government adopted a new governing style where multiple actors interact and influence each other.³² These actors were often drawn from, but also beyond, the government. The initial idea was to bring people closer to the government and the government closer to the people so that the principles of democracy and inclusivity could be more easily applied.³³ On natural resources, the focus fell on people and the social and natural environment on which they depend. New relationships of people, power, and politics resulted from this shift, moving away from the command-and-control approach that was relied on

²² Brockhaus (2013), p. 2.

²³ Aquino and Guay (2013), p. 2.

²⁴ Brockhaus (2013), p. 3.

²⁵ Brockhaus (2013), p. 3.

²⁶ Somorin et al. (2014), p. 89.

²⁷ Somorin et al. (2014), p. 89.

²⁸ Somorin et al. (2014), p. 89.

²⁹ Vatn and Vedeld, P. 'Getting ready! A study of national governance structures for REDD+' Noragric Report No. 59 April 2011, p. 3.

³⁰ Stoker (1998), p. 21.

³¹ Stoker (1998), p. 21.

³² Stoker (1998), pp. 17 and 19.

³³ Goldin (2010), pp. 195–212.

initially for participatory approaches.³⁴ An example is co-management in environmental governance, involving the sharing of power and responsibilities between the state and communities or user groups. The goal is to ensure that the people most affected by environmental decisions or problems take part in such decisions. Therefore, platforms at the lowest level, possible like the village, were formed and the people were trained and provided with an opportunity for knowledge sharing. Biermann et al. have argued that environmental problems are inherently political, hence they require effective voice and choice for local communities; for them to choose policies that they see as both equitable and effective.³⁵ This increases the legitimacy of decisions made, and when coupled with greater transparency and information disclosure, empowers individuals and communities to hold the government accountable.³⁶

2.2 *Participation as a Human Right*

It was Chambers and his contemporaries who cemented participation during the 1990s within the development pantheon.³⁷ Introducing phrases such as ‘putting the last first’, Chambers and others emphasised the need for new approaches to ensure the voices of the poor in development practice. Unfortunately, although the participation of people was ideally meant to empower poor communities through opportunities to take place in decision-making, in reality, it became a liberal co-optation mechanism where the people were brought into ‘governance’ without the intention of hearing and responding to their voices and demands. For instance, in water governance in Malawi, women together with their communities ‘participated’ through labour contributions, maintenance works, and/or the collection of fees for water use.³⁸ The collected fees were then misappropriated by politicians resulting in the disconnection of water supply.³⁹ Participation became a means to facilitate the illegitimate or unjust exercise of power that perpetuates structures of inequality and oppression.⁴⁰ Hence, at the end of the 1990s, scholars such as Cooke, Kothari, and Williams, concluded that participation had become ‘tyrannical’.⁴¹

The recognition of development as a human right and, thus, the approach to participation from a human rights-based perspective offered a better framework for

³⁴ Department for International Development (DFID) (2007), p. 6.

³⁵ Biermann et al. (2012), p. 17.

³⁶ Biermann et al. (2012), p. 16.

³⁷ Chambers (1983), Cernea (1985), Salmen (1987) and Nici and Wright (1995).

³⁸ Kwaule F. ‘Piped Supplies for Small Communities (PSSC) Project Malawi’ (1993), p. 3.

³⁹ WaterAid *Managing communal water kiosks in Malawi: experiences in water supply management in poor urban settlements in Lilongwe* (2008), p. 6.

⁴⁰ Cooke and Kothari (2002), p. 4; Leal (2010), p. 75; Midgley (2011), p. 178.

⁴¹ See generally Cooke and Kothari (2002); Williams (2004), pp. 557–578.

placing people first.⁴² The insistence on the primacy of people and their well-being as a central focus of development means that community participation was not to be valued only as an instrument to achieve a particular end, but as an end in itself—one valued for its intrinsic value. This is different from the other forms of participation discussed above. Gready points out that a human right-based approach re-politicises development work ‘as being based on rights rather than on benevolence or charity (or needs-based or involving essentially technical assistance)’ and re-claims key concepts such as participation from domestication.⁴³

Participation as a human right is guaranteed in several global and regional human rights instruments. On global instruments, the International Covenant on Civil and Political Rights (ICCPR) guarantees this right in Article 25.⁴⁴ According to the Human Rights Committee (HRC), the human right to participate lies at the core of democratic government based on the consent of the people.⁴⁵ The HRC also links the human right to participate to political self-determination which entails freedom of choice, whether regarding political status or government or pursuing development.⁴⁶ The International Court of Justice defines the right to self-determination as ‘the need to pay regard to the freely expressed will of peoples’⁴⁷ and explains that it ‘requires a free and genuine expression of the will of the peoples’.⁴⁸ The HRC established that taking part in public affairs is exerting influence or choice. It explains that this could be through public debates with freely chosen representatives or directly through organisations or associations with others. In *Marshall v Canada*, the HRC stated that the human right to participate ‘cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of

⁴²See UN General Assembly, Declaration on the Right to Development: resolution/adopted by the General Assembly, 4 December 1986, A/RES/41/128 that formally brought human rights to development. Development itself is recognised as an inalienable human right in Article 1.

⁴³Gready (2008), pp. 737–138.

⁴⁴United Nations International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Adopted on 16 December 1966 and entered into force on 23 March 1976.

⁴⁵See United Nations Human Right Council General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service. 12/07/96.CCPR/C/21/Rev.1/Add.7 para 1 (GC 25).

⁴⁶See GC 25 para 2; The right to self-determination is provided for in the Art. 1 ICCPR, United Nation *Charter of the United Nations* (UN Charter) 24 October 1945, 1 UNTS XVI, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 16 December 1966, A/RES/2200. Adopted on 13 December 1996 and entered into force on 3 January 1976. ICESCR, Art. 1 provides as follows:

All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

⁴⁷*Western Sahara*, Advisory Opinion, (1975) ICJ Reports 12, para 33.

⁴⁸*Western Sahara* (1975), para 32.

participation in the conduct of public affairs'.⁴⁹ The HRC established that in a democratic state, representatives may be relied on in the conduct of public affairs where matters affect the interests of large segments of the population or the population as a whole.⁵⁰ However, when matters affect the interest of more specific groups of society, this should be accompanied by prior consultations, such as public hearings with these specific groups.⁵¹ The HRC emphasises that the essence of the human right to participate is the exercise of power or choice.⁵²

In addition to the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises a right to participate specifically in cultural life.⁵³ In interpreting this right, the Committee on Economic Social Culture Rights (CESCR) has stated that to participate means the right to act freely or to choose.⁵⁴ Freedom of choice and influence are recognised as central tenets of the human right to participate. Article 13 of the ICESCR establishes education as an important element enabling people to participate effectively. The CESCR confirmed that education is an empowerment right, 'the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities'. Participation as a mechanism for agency and empowerment is a means through which otherwise excluded vulnerable and marginalised groups can assert their rights in resources for equitable distribution. The CESCR recognises participation as an empowerment right to challenge inequality.⁵⁵

The human right to participate emphasises the need to eliminate discrimination in opportunity to participate and requires the state to ensure legislative and other measures towards this goal.⁵⁶ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵⁷ guarantees the right of women to participate by obliging states to address the problem of discrimination against women. Discrimination undermines the opportunity to participate and influence decisions. Article 14 of the CEDAW makes specific guarantees to women in the rural areas as they face not only gender discrimination, but also discrimination based

⁴⁹ *Marshall v Canada* Communication No. 205/1986, U.N. Doc. CCPR/C/43/D/205/1986 at 40 (1991) para 5.5.

⁵⁰ *Marshall v Canada* (1991), para 5.5.

⁵¹ *Marshall v Canada* (1991), para 5.5.

⁵² GC 25, para 6–8.

⁵³ ICESCR, Art. 15(1).

⁵⁴ CESCR, General Comment on the Right to Take Part in Cultural Life as recognised in Article 15 of the Covenant, 11 December 1992, UN Doc. E/C.12/1992/SR.17 (1992) para 14 & 15(a).

⁵⁵ See for instance Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 15 The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)* 20 January 2003, E/C.12/2002/11 para 24 (GC 15).

⁵⁶ See ICCPR, Arts. 2 & 25.

⁵⁷ Articles 7, 8, 13 & 14 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Adopted on 18 December 1979 and entered into force on 3 September 1981.

on geographic location. CEDAW obliges states to 'take into account the particular problems faced by rural women' as well as the 'significant roles that rural women play in the economic survival of their families'.⁵⁸

Participation is constitutive of dignity as it is based on the recognition of every human being's inherent capacity to help themselves and to make decisions that affect their everyday lives.⁵⁹ In *Law v Canada*, the Supreme Court of Canada held that dignity is harmed when individuals and groups are marginalised, ignored, or devalued and denied their full place in society.⁶⁰ Writing on participation in realising economic social and cultural rights (ESCR), Chenwi argues that participation ensures that people 'are active stakeholders rather than just passive recipients of socio-economic goods and services'.⁶¹ She explains that the lack of participation results in development plans and services that are not relevant to local needs and conditions.⁶² She further points out that the lack of participation undermines democratic accountability which is essential for the effective enforcement of economic social and cultural rights.⁶³ The type of participation is not simply nominal participation but genuine participation, based on the opportunity for disadvantaged and marginalised people to have their needs reflected in policies and laws. The focus is to empower have-nots in society to effect social change and share in the benefit of society by voicing their needs.⁶⁴ CEDAW promotes substantive equality in terms of the requirement for equality in the opportunity to participate but also equality in results by requiring benefits as a result of participation.⁶⁵

In the African human rights system, the meaning of participation as opportunity and influence is evident in the case of the *Centre for Minority Rights Development and Others v Kenya (Endorois case)*.⁶⁶ The applicants alleged that there was a lack of participation in crucial decisions affecting their lands. They explained that the government had refused to register their welfare committee, a representative body of the Endorois community, thereby denying them the right to fair and legitimate consultation. The government only consulted with individuals they handpicked to lend their consent 'on behalf' of the community.⁶⁷ They, therefore, alleged that

⁵⁸ See Article 14, CEDAW.

⁵⁹ Nussbaum (2000) (2011), p. 12. See *Minister of Health NO v New Clicks South Africa (Pty) Ltd (Treatment Action Campaign as Amicus Curiae)* 2006 (1) BCLR 1 (CC) para 627. See also *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) where Sachs J discussing dialogue and mediation between disputing parties wrote that this promotes respect for human dignity and underlines the fact that we all live in a shared society.

⁶⁰ *Law v Canada (Minister of Employment and Immigration)* (1999) 1 SCR 497.

⁶¹ Chenwi (2011), p. 129.

⁶² Chenwi (2011), pp. 128–129.

⁶³ Chenwi (2011), pp. 128–129.

⁶⁴ Special Rapporteur Report on Poverty, para 14; GC 15, paras 16, 24 & 37(f).

⁶⁵ CEDAW, Arts. 4, 7 and 14 (2).

⁶⁶ *Centre for Minority Rights Development and Others v Kenya (Endorois case)* (2009) AHRLR 75 (ACHPR 2009) 289.

⁶⁷ *Endorois case* (2009), para 20.

consultations that took place were not in good faith or with the objective of achieving agreement or consent.⁶⁸ On participation, the African Commission on Human and Peoples' Rights (African Commission) held that the consultations undertaken with the community were inadequate and, thus, did not constitute effective participation.⁶⁹ The African Commission found that giving illiterate people documents to read was unreasonable and not helpful in ensuring their participation on the basis of equality. The African Commission stated that the 'community members were informed of the impending project as a *fait accompli*, and not given an opportunity to shape the policies or their role in the Game Reserve'.⁷⁰

The African Commission went on to establish that participation must be active, free, and meaningful, as established in the UN Declaration on Development.⁷¹ This would require fair and legitimate consultation with the affected parties through legitimate representatives of their choice, who are informed or enabled to appreciate the matters and consequences of different decisions.⁷² Finally, there must be opportunities for choice and influence of decisions. Concerning the communication that took place, the African Commission held that the consultation by the government of Kenya with the Endorois people was not sufficient.⁷³ The consultations were not conducted in a manner that effectively involved the Endorois people, leaving them 'feeling disenfranchised from a process of utmost importance to their life as a people'.⁷⁴ The government of Kenya had manipulated the Endorois people, hence ensuing confusion as to their rights or resentment that their consent had been wrongfully gained.⁷⁵ Empowerment is the ultimate goal of participation from a human rights perspective.⁷⁶ A human right to participate ensures that participation is not extractive or instrumental, but that it builds capacity, social capital, confidence, rights awareness and knowledge.⁷⁷ Participation as empowerment is closely inter-related to agency, which represents the processes by which choices are made and put into effect.⁷⁸

Furthermore, the African Commission held in the *Jawara v The Gambia* case that the right to participation is linked with the right to self-determination (following the position of the HRC).⁷⁹ The complainant was a former president of the Gambia who

⁶⁸ *Endorois* case (2009), para 274.

⁶⁹ *Endorois* case (2009), para 281.

⁷⁰ *Endorois* case (2009), para 281.

⁷¹ *Endorois* case (2009), para 283. See U.N. *Declaration on the Right to Development*, U.N. Doc. A/RES/41/128 (1986), Art. 2.3.

⁷² *Endorois* case (2009), para 282 & 292.

⁷³ *Endorois* case (2009), para 290.

⁷⁴ *Endorois* case (2009), para 297.

⁷⁵ *Endorois* case (2009), para 297.

⁷⁶ Special Rapporteur Report on Poverty, para 71.

⁷⁷ Special Rapporteur Report on Poverty, para 71.

⁷⁸ Kabeer (2005), p. 14.

⁷⁹ *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000), para 73.

argued that the military coup had violated the right to self-determination for the people of the Gambia.⁸⁰ The African Commission agreed with the complainant that the military taking over power by force, albeit peacefully, had undermined peoples' right to freely choose and determine their political stance. The African Commission explained that the ballot was the means of exercising political choice.⁸¹

The human right to participate is recognised in several of the African human rights instruments including the African Charter on Human and Peoples' Rights (African Charter)⁸² and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol).⁸³ The Women's Protocol provides for women's right to participate in all decision-making processes without any form of discrimination. It calls on states to ensure that discrimination in participation is prohibited and redressed through affirmative action so that women are equal partners with men at all levels including development, implementation of policies, and decision-making.⁸⁴ The African Commission in *Legal Resources Foundation v Zambia* stated that excluding people from participation is discrimination and this violates the right to participate as stipulated in the African Charter.⁸⁵ Government should not handpick individuals to act on behalf of the people or introduce modes of participation that result in excluding relevant stakeholders from meaningfully participating as stated by the African Commission in the *Endorois* case.⁸⁶ Culturally appropriate modes and terms of engagement are particularly important in ensuring that women who have been excluded in decision-making processes are able to take part and have their voices heard. Effective representation and participation of women at all levels of decision-making on an equal basis with others provides real power in affecting the outcome of decisions. In

⁸⁰ *Jawara v The Gambia* (2000), para 72.

⁸¹ *Jawara v The Gambia* (2000), para 72–73.

⁸² African Charter on Human and Peoples' Rights (1981) Adopted on 27 June 1981 and entered into force on 21 October 1986, Art. 13.

⁸³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2000). Adopted on 13 September 2000 and entered into force on 25 November 2005, Arts. 9 & 19 (b) (Women's Protocol).

⁸⁴ Women's Protocol, Art. 12.

⁸⁵ *Legal Resources Foundation v Zambia* (2001) AHRLR 84 (ACHPR 2001) (*Legal Resource Foundation* case).

⁸⁶ The *Endorois* case is comparable to the case of *Saramaka People v Suriname* before the Inter-American Court of Human Rights (IACHR), IACHR Series C No. 185 (2008). The case involved the Saramaka people, descendants of self-liberated African slaves who lived in a traditional way, fishing, hunting and woodworking in their traditional territory in Suriname. The Suriname government granted mining and logging concessions on their lands, without their full and effective consultation. On participation, the IACHR established that the state must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan ... within Saramaka territory. The IACHR incorporated the right to effective and culturally appropriate participation into the right to development.

relation to this, the African Charter for Popular Participation in Development and Transformation (African Charter on Participation) defines participation as:

[I]n essence, the empowerment of the people to effectively involve themselves in creating structures and in designing policies and programmes that serve the interests of all.⁸⁷

Participation is a continuous transparent process, whereby the state provides opportunities to disadvantaged and marginalised people to take part in the formulation and implementation of policies. In this continuous process, citizens can hold the government accountable to ensure that their interest is the government's primary consideration. It is a two-way process that must be approached in good faith, void of top-down approaches, allowing for individual and collective participation with an emphasis on disadvantaged groups enabled to equally influence decisions and government being transparent. Participation must entail equity in accessing decision-making processes with specific attention on enabling women, equity in the ability to influence decisions, and equity must also be reflected in outcomes. Participation as a human right is an expression of dignity, equality, and self-government (democracy) and is grounded in the recognition of humans' inherent capacity to help themselves and to make decisions that affect their everyday lives.

It may be noted that different terms are relied on to support the type of participation discussed above. The terms used to qualify participation include, 'genuine', 'meaningful', or 'effective', which represent participation which fosters opportunities to take part or act in an empowered way as well as influence, which is the power or political force in determining decisions.⁸⁸

In summary, not all participation is equal, only real or genuine participation is power. Participation is power where the primacy concern is people specially providing a means to hear the voices of the marginalised and disadvantaged people and finding equitable solutions to enhance their ability to flourish. Participation as a human right guaranteed in international law at the global and regional level aims to empower people. The human right to participate recognises people as agents who must have power to affect outcomes through genuine participation. Participation from a human rights perspective is not extractive or instrumental, but a two-way process in good faith, void of top-down approaches but one that builds capacity, social capital, confidence, rights awareness and knowledge with specific attention on enabling women and other discriminated groups to challenge inequality.

⁸⁷ UNECA The African Charter for Popular Participation in Development and Transformation adopted in February 1990 at the International Conference on Popular Participation in the Recovery and Development Process in Africa, para 11.

⁸⁸ Chenwi (2011), pp. 129–130.

2.3 *Participation and Gender in REDD+*

Besides the human rights basis, women's participation in environmental management and gender equality, specifically in climate change and REDD+, can also be traced through international environmental law instruments. Participation is recognised in the Rio Declaration on Environment and Development (Rio Declaration) as essential for all environmental issues in Principle 10.⁸⁹ The Rio Declaration identifies three key elements to participation: access to information, opportunity to participate in decision-making processes, and effective access to judicial and administrative proceedings.⁹⁰ Besides this non-binding instrument, participation in environmental matters is recognised in several treaties such as the UNFCCC,⁹¹ the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa,⁹² and the Convention on Access to Information, Public Participation and Decision Making and Access to Justice in Environmental Matters (Aarhus Convention).⁹³ The Cancun Safeguards under the UNFCCC identify participation as a crucial aspect of REDD+ by requiring that states implement 'full and effective participation of relevant stakeholders in particular indigenous peoples and local communities'.⁹⁴

Community participation is considered central to combatting degradation and deforestation; it is indispensable in ensuring that community needs are considered in REDD+ initiatives and in improving forest conditions.⁹⁵ Participation enables knowledge sharing and is central to ensuring better and more informed decisions.⁹⁶ Persons with interests in the utilisation, enjoyment, and valuation of resources must be included in decision-making to avoid negatively impacting the livelihoods which are dependent on forest resources. Decision-making, thus, contributes to whether a stakeholder will benefit from initiatives or not.⁹⁷ Further, and as already alluded to there is gendered use of forest resources.⁹⁸ Social variables are large determinants of levels of participation in forest and natural resources management.⁹⁹ The outcome of community participation is influenced by the social-economic dynamics of the

⁸⁹Rio Declaration on Environment and Development, 31 ILM 874 (1992).

⁹⁰See Duvic-Paoli (2012), pp. 80–105 writing that access to information is a prerequisite to meaningful participation in environmental decision-making while access to justice is a means to having decisions reviewed.

⁹¹Article 6.

⁹²33 ILM 1328 (1994), Preamble, Article 3 (a).

⁹³38 ILM 517 (1999).

⁹⁴UNFCCC, Cancun Decision 1/CP.16.

⁹⁵Macqueen et al. (2011). See also Chinangwa et al. (2017), pp. 338–367.

⁹⁶Nagoli et al. (2019), p. 3.

⁹⁷Thompson (2013), p. 5.

⁹⁸Marin and Kuriakose (2017).

⁹⁹Dubois and Lowore (2000).

communities themselves.¹⁰⁰ Accompanying any form of community participation in forest management is the fact that there are entrenched power differences. Typically, within community groups, power dynamics, including gendered structures, are prevalent.¹⁰¹ Women, in particular, experience societal, economic, and cultural inequalities, and legal impediments within the forest sector to fully and effectively participate on an equal basis with men.¹⁰² Their exclusion from participation and forest and land tenure means that initiatives do not benefit from their knowledge and perspectives; concurrently, the women do not benefit from the initiatives. A United States Agency for International Development (USAID)-funded study found that Malawian women's ability to participate meaningfully is impeded due to time constraints, weak community leadership, and limited access to and control of resources including education and land.¹⁰³ The USAID study further indicated that the lack of gender considerations in REDD+ puts women at risk of suffering higher workloads without compensation, displacement or denial of access to forests, denial of a fair share of benefits, and the widening of knowledge gaps.¹⁰⁴

Gender equality is not mentioned in the UNFCCC but through COP and different initiatives, it has subsequently been accorded special focus.¹⁰⁵ Kabaseke states that although there has been subsequent slight redress to the omission by COP and the establishment of the Women and Gender Constituency (WGC) to ensure that women's voices are captured into the UNFCCC, this has not borne many fruits.¹⁰⁶ Failure to mainstream gender in the main framework is a weakness as climate change affects livelihoods and particularly affects the livelihoods of women, especially those in rural areas, more severely due to gender. For instance, climate change may increase tensions within families, and it may increase gender-based violence. Effects of drought and flooding cause food insecurity and push women and girls into further poverty, transactional sex in exchange for goods, being trafficked into commercial sexual exploitation, and being in child and forced marriages.¹⁰⁷ Further, because of gendered forest and land use, environmental changes may increase gender disparities.¹⁰⁸ Owing to differences in roles, rights, and responsibilities, as well as use and knowledge, women and men have different experiences in relation to forests and land. Women rely more on natural resources for their livelihoods whereas

¹⁰⁰ Chinangwa et al. (2017), pp. 338–367.

¹⁰¹ Dubois and Lowore (2000).

¹⁰² James et al. (2021), pp. 860–867.

¹⁰³ United States Agency for International Development 'Protecting Ecosystems and Restoring Forests in Malawi (PERFORM) Gender Analysis and Plan' (2015), p. 4.

¹⁰⁴ PERFORM (2015), pp. 16–17.

¹⁰⁵ See Kabaseke, p. 296 providing an explanation of why gender equality was not mainstreamed in the UN FCCC and how there have been mechanisms instituted or subsequent instrument to address the initial gap; see UNFCCC CP 'Gender and climate change' FCCC/CP/2016/10/Add.2 Decision 21/CP.22.

¹⁰⁶ Kabaseke.

¹⁰⁷ Njikhho (2020), pp. 17–23.

¹⁰⁸ Njikhho (2020).

men tend to focus on profitable forest products.¹⁰⁹ These, in turn, translate into differences in the way women and men contribute to and benefit from REDD+. Accordingly, REDD+ can enhance gender equality in several ways. First, REDD+ can contribute towards mitigating the impacts of climate change, which will consequently lead to the mitigation of the effects of climate change on exacerbating gender disparities.¹¹⁰ Second, REDD+ initiatives that are designed to specifically include both women and men can address the specific needs of both women and men, resulting in the operation of programmes to mitigate the gendered impacts of climate change.¹¹¹ Third, the implementation of REDD+ can enhance gender equality when policies specifically target women because the evidence reveals that women tend to contribute less to forest management and decision-making on the use of forest resources.¹¹² By specifically targeting women, the implementation of REDD+ can improve gender equality in forest decision-making, participation, and management. This may be done, for instance, through the recognition of women as stakeholders in REDD+ policy-making on an equal basis with men, and the creation of spaces and capacities for them to engage in the design and implementation of REDD+ policies and projects.¹¹³ Further, REDD+ mechanisms must recognise the differentiated gender roles, rights, responsibilities, and knowledge between women and men as they participate. Sustainable Development Goal 5 is to 'achieve gender equality and empower all women and girls'.¹¹⁴ Full and effective participation of women, including equal opportunities for leadership in all aspects of life, is recognised as one of the key ways of achieving the goal.¹¹⁵

3 Malawi REDD+ Governance

Malawi's vulnerability to climate change is perhaps the basis for its commitment to preparing for and implementing REDD+. REDD+ Malawi's activities can be traced back to 2006 and to two organisations: Forestry Research Institute of Malawi (FRIM) and Leadership for Environment and Development (LEAD) Southern Africa.¹¹⁶ The first REDD+ pilot projects with two sites were commenced in 2008. The projects were funded by United States Agency for International Development (USAID) to benefit from carbon finance as motivation for forest protection

¹⁰⁹ Marin and Kuriakose (2017), p. 2.

¹¹⁰ Marin and Kuriakose (2017).

¹¹¹ Marin and Kuriakose (2017).

¹¹² Marin and Kuriakose (2017).

¹¹³ Setyowati (2012), p. 59.

¹¹⁴ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1: <https://www.refworld.org/docid/57b6e3e44.html>.

¹¹⁵ Goal 5.5.

¹¹⁶ Troell and Banda (2016), p. 3.

and scaling up and/or more co-management agreements.¹¹⁷ The agreement was made between the Department of Forestry (DoF) and communities surrounding Mkuwazi Forest Reserve and Thazima Gate of the Nyika National Park. The purpose was to ensure community participation in the protection, control, and sustainable utilisation of forest resources.¹¹⁸ Several projects have since been undertaken. In 2012, the Malawi REDD+ Readiness Programme (MRRP) was established with support from USAID, and the United States Forest Service (USFS) which partnered with the government.¹¹⁹ The MRRP has three primary objectives: Malawi's membership into the multilateral REDD+ body, the development of a draft REDD+ Strategy, and building capacity in relevant institutions. In 2014, Malawi became a partner of the UN-REDD+ Programme, which assists governments in their preparation for REDD+ activities. To date, the MRRP has developed a REDD+ action plan, established the Malawi REDD+ Programme (MRP) and a REDD+ governance framework among other things.¹²⁰

Although REDD+ is still in its formative stages, the work it has carried out so far based on legal, policy, and institutional arrangements (besides the implemented projects) gives insight into governance architecture.¹²¹ The following discussion considers the legal and institutional framework with a focus on whether women are guaranteed both opportunity and voice to ensure legitimacy and equity.

3.1 *Legal and Policy Framework*

Treaties ratified by Malawi after the adoption of the Constitution on 18 May 1994 become binding on Malawi after being domesticated by an Act of Parliament.¹²² This requirement establishes Malawi as a dualistic state where international law does not automatically become part of the binding law domestically.¹²³ However, the Constitution provides a different rule on agreements entered into before the adoption of the Constitution. Such agreements, according to Section 211 (2), automatically became binding on Malawi unless otherwise provided for by an Act of Parliament.¹²⁴

¹¹⁷ Kafumbata et al. (2014).

¹¹⁸ Kafumbata et al. (2014).

¹¹⁹ Troell and Banda (2016), p. 4.

¹²⁰ Troell and Banda (2016), p. 4.

¹²¹ Zelli et al. (2019), p. 12 stating that REDD+ pilot projects are part of national REDD+ programmes.

¹²² Constitution of Malawi 1995, Section 211 (1).

¹²³ *Chihana v Republic* MSCA Criminal Appeal No. 9 of 1992 (unreported) stressing that a treaty ratified by Malawi requires domestication through an Act of Parliament to become binding domestically. See also Brownie I *Principles of Public Law* 7th ed (2008).

¹²⁴ Constitution of Malawi 1995, Section 211(2) considers domesticated all ratified international agreement before the commencement of the Constitution whether they were actually domesticated by an Act of Parliament or not. See Maluwa T *International Law in Post-Colonial Africa* (1999)

International agreements ratified prior to 1994 include ICCPR,¹²⁵ ICESCR,¹²⁶ CEDAW,¹²⁷ and the Africa Charter.¹²⁸ Because these instruments form part of domestic law, they can all be invoked during litigation and have the same status as any other domestic legislation passed by Parliament.¹²⁹ Malawi has undertaken to realise the rights guaranteed in these instruments. As discussed above, the human right to participate is entrenched in these instruments and requires equality between men and women in opportunity, access, and influence of the outcomes of participation. Furthermore, the UNFCCC is part of the law in Malawi as it was ratified before the 1994 Constitution.¹³⁰ Malawi has also ratified the Kyoto Protocol and Paris Agreement.¹³¹

A commitment to gender equality and the human rights to participate and to develop in an environmentally sustainable manner can further be seen through the guarantees in the Constitution of the Republic of Malawi, the supreme law of the land.¹³² The right to gender equality is enshrined in Section 20 of the Constitution, which upholds the principle of equal rights for men and women and prohibits any discrimination against all persons. Gender equality is also recognised as a fundamental principle and a goal for the nation in Section 13 which provides that gender equality is achieved when there is full participation of women on an equal basis with men in all spheres of life. The section recognises the lack of parity in participation as a major manifestation of gender discrimination affecting women. Furthermore, the right to development provides a firm basis for REDD+ in Malawi besides the recognised right to a healthy environment in Section 13. Kapindu has argued that the right to development in the Constitution provides a basis for many ESCR not explicitly recognised in the catalogue of human rights included in the Bill of Rights in the Constitution.¹³³ Further, the case of *Gable Masangano v Attorney General* established principles of national policy as being of great importance in enforcing ESCR as they can be relied on to explain the content of the ESCR guaranteed in the Bill of Rights.¹³⁴

chap. 6 on protecting human rights in the constitution of Malawi (specifically 153–159). See also *S Kalinda v Limbe Tobacco Limited* Civil Case No. 542 of 1995 (unreported) Mwaungulu J.

¹²⁵Acceded to on 22 December 1993.

¹²⁶Acceded to on 22 December 1993.

¹²⁷Ratified on 12 March 1987.

¹²⁸Ratified on 17 November 1989.

¹²⁹In *S Kalinda v Limbe Tobacco Limited*, the court held that international law human rights are not supreme over the Constitutional guaranteed rights. This is because the Constitution is the supreme law of the land and the international agreement became part of the domestic law at the same level of other Acts of Parliament. See Section 48(2) of the Constitution, providing for primacy of an Act of Parliament over all other forms of law, but subject to the Constitution.

¹³⁰21 April 1994.

¹³¹Ratified on 26 October 2001.

¹³²Constitution of Malawi 1995, Section 5. See also Sections 15–42 (Chap IV).

¹³³Kapindu (2013), p. 125.

¹³⁴Constitutional Case No. 15 of 2007.

The Constitution provides for the establishment of a local government system for the promotion of local democracy, transparency, accountability, and participation.¹³⁵ The local government system entails having decentralised political and administrative authorities, primarily to democratise state power and ensure participatory democracy and decision-making at the grassroots level.¹³⁶ In this system, decisions must be made at the lowest level possible to ensure that democratic principles of accountability, transparency, and participation of all people in decisions and development processes become a reality while promoting legitimacy, effectiveness, efficiency, and equity.¹³⁷ The Guidebook on the Local Government System in Malawi specifically states that the main role of citizens in local government is ‘to participate in policy formulation, to take part in the implementation of development activities and to demand transparency, accountability and services from their council’.¹³⁸ It prescribes that women and men equally participate in the different platforms and even requires that there should be 50:50 representation in leadership positions in some platforms at lower levels of local government.¹³⁹

There are various sectoral laws and policies which are also relevant to REDD+ and require community participation. In the review that follows, the focus is on the most relevant laws and policies providing a basis for REDD+, community participation, and gender equality. REDD+ is specifically mentioned in the National Forest Policy 2016 (NFP)¹⁴⁰ and the National Climate Change Management Policy.¹⁴¹ It is regarded as a mechanism for climate change mitigation that provides incentives to communities through access to carbon financing. Besides these two policies, the Forestry Act,¹⁴² the National Environment Policy (NEP)¹⁴³ and the Environment Management Act (EMA),¹⁴⁴ among other regulatory frameworks, provide a strong basis in terms of provisions, principles, and goals that support REDD+.

Community participation is the emphasised approach in all the statutes and policies as regards the environment, generally, and natural resources and forest management, specifically. The Forestry Act, in Sections 25 and 55, establishes

¹³⁵ Constitution of Malawi 1995, Section 146. The National Decentralisation Policy of 1998 and the Local Government Act No. 42 of 1998 operationalised the constitutional provision.

¹³⁶ Local Government Act s 3. See also Chasukwa and Chinsinga (2013), p. 357.

¹³⁷ National Decentralisation Policy (2000), p. 2.

¹³⁸ Government of Malawi (2013) Guidebook on the Local Government System in Malawi, the Ministry of Local Government and Rural Development, p. 28.

¹³⁹ Government of Malawi (2013), p. 38.

¹⁴⁰ National Forestry Policy (2016), p. 32.

¹⁴¹ GoM National Climate Change Management Policy (2016) 11. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/NCCM-Policy-Final-06-11-2016.pdf>.

¹⁴² Forestry Act No. 4 of 1997. The Act provides for the participatory management and conservation of forestry resources in Malawi.

¹⁴³ GoM *National Environment Policy* (2004). Available at <http://extwprlegs1.fao.org/docs/pdf/mlw169499.pdf>.

¹⁴⁴ Environment Management Act No. 19 of 2017 providing for the protection, conservation, sustainable utilisation and management of the environment and natural resources.

community participation and, particularly, co-management of forest resources. The objective is the promotion of communities' empowerment for sustainable management, conservation, and utilisation of forest resources and benefit sharing.¹⁴⁵ The communities must participate in making rules and regulations for the forest at both the local and national levels.¹⁴⁶ Similarly, the NFP emphasises local community participation in forest conservation and management.¹⁴⁷ The community participation envisaged is one where there are partnerships of communities with the private sector, government, and civil society and incentives for community-based forest management. Community participation is recognised as crucial for improved protection, conservation, management, and sustainable utilisation of Malawi's natural resources.¹⁴⁸ Although the NEP recognises the instrumental value of participation, it does put in place strategies to ensure meaningful participation that guarantees taking part in decision-making processes and ensuring substantial benefit goes to communities.¹⁴⁹ The EMA recognises the right to participate in the management of the environment and natural resources and also guarantees equitable sharing of benefits and costs of sustainable use of the environment and natural resources.¹⁵⁰ The Act also mandates the Environmental Protection Authority to establish guidelines and regulations to realise the right to participate in environmental management.¹⁵¹ Furthermore, all duty-bearers in the field of environmental management are mandated to promote public participation in the development and implementation of environmental policies.¹⁵²

Gender equality is promoted in the Gender Equality Act which proscribes all forms of gender discrimination in both public and private spheres as criminally sanctionable behaviour.¹⁵³ The NFP recognises gender discrimination in the forest sector but does not specifically provide guidance on how to deal with it or how to ensure the participation of women. Further, the NEP addresses gender discrimination by requiring that gender be mainstreamed into all environmental planning levels and that women be considered key stakeholders in the sustainable use of natural

¹⁴⁵ See Rule 3 of Forest (Community Participation) Rules 2001.

¹⁴⁶ See also Rule 9 of Forest (Community Participation) Rules requiring that communities must be consulted where regulations or subsidiary legislation under the Forestry Act are to be made or amended except where it is unnecessary or impractical to have such a requirement.

¹⁴⁷ National Forestry Policy (2016), pp. 15 & 32.

¹⁴⁸ National Environment Policy (2004), paras 2.2.7, 2.3(h), 4.6 (b). Also, it states that public participation in environmental decision-making helps to build consensus and strengthen public support for environmental decisions and programmes.

¹⁴⁹ National Environment Policy (2004) para 4.1(i) stating that local communities that are dependent on natural resources must take a leading role in identifying, planning, implementing and benefiting from sustainable management of natural resources. See also para 4.6(b).

¹⁵⁰ See EMA, Sections 3(i) and 5(1)(a).

¹⁵¹ EMA, Section 5(2).

¹⁵² EMA, Section 3(2) €.

¹⁵³ Gender Equality Act No. 3 of 2013, see Sections 4 and 5.

resources.¹⁵⁴ It provides for gender training and gender analysis methodologies and tools in environmental and natural resources management. Other strategies provided for include public awareness campaigns, facilitation of women's participation in environmental decision-making, resource ownership and management, collaboration with institutions responsible for gender and collecting gender-disaggregated data. The EMA also mandates mainstreaming gender into environmental programmes but the Forestry Act is silent on gender.

Overall, the legal framework broadly provides for norms that promote the establishment of the REDD+ programme and recognition and guarantees for participation and gender equality that are essential for REDD+ governance, especially for legitimacy and equity. Equity as a requirement, especially starting with mainstreaming gender equality by consistently recognising all laws and policies, would strengthen the commitment and implementation in the different sectors and spheres of life. The emphasis on community participation and recognition that this is for empowerment to influence decisions at the different levels including policy formulation and implementation is in line with human right to participate. Laws, policies and guidelines recognises people especially women as agents that must be have opportunity to participate and influence outcomes that benefit them. The legal framework is sufficient for REDD+ governance that promotes women's participation and equitable outcomes.

3.2 Institutional Arrangement: Opportunity to Participate and Power to Influence

Troell and Banda hold that the existence of institutions should be to ensure that rights are allocated and protected in an equitable and accountable manner and that rights holders have meaningful avenues for addressing challenges to their rights through formal and/or informal dispute resolution mechanisms.¹⁵⁵ Overall, there are multiple institutions in Malawi relevant to the REDD+ programme with some created seemingly haphazardly outside regulatory frameworks and with inadequate and inappropriate arrangements posing a challenge to the promotion of legitimacy and equity.¹⁵⁶

The structure for REDD+ in Malawi has been established primarily within the Department of Forestry (DoF), which is housed in the Ministry of Natural Resources, Energy and Mining (MNREM).¹⁵⁷ The DoF is originally and primarily responsible for managing and protecting Malawi's forest¹⁵⁸ and it now houses the REDD+ secretariat and is designated as the REDD+ focal point under UNFCCC.

¹⁵⁴National Environment Policy (2004) paras 2.3(d), 4.8 (a) and 4.8.2.

¹⁵⁵Troell and Banda (2016), p. 10.

¹⁵⁶Troell and Banda (2016), p. 24.

¹⁵⁷Troell and Banda (2016).

¹⁵⁸See the Forestry Act.

The REDD+ programme has taken a top-down approach in its development as it starts at a national scale as opposed to starting at the subnational level and then gradually expanding. This is because of the country's largely centralised government structure and relatively small size. Since becoming the REDD+ secretariat in 2012, the DoF has led in the development of relevant documents and measures (including initial drafts of the national REDD+ action plan.), as well as in the identification of targets and the prioritisation of key activities. With funding from USAID and the International Program of the United States Forest Service (USFS-IP), a three-year Malawi REDD+ Readiness Programme (MRRP) was established to support the Malawi REDD+ Programme. A REDD+ experts Group (RExG) consisting of government, civil society, donors, and private sector representatives oversaw and guided the REDD+ secretariat and three technical working groups on communications and awareness, governance and policy, and, science and technology.¹⁵⁹ These structures, although in the DoF, were found wanting in terms of being integrated into general decision-making and management structures of the DoF and other government planning and implementing processes.¹⁶⁰ The RExG reports to the National Technical Committee on Climate Change (NTCCC) and the NTCCC, in turn, reports to National Steering Committee on Climate Change (NSCCC). Both the NTCCC and NSCCC are technical forums that have specialists from the government. The roles and responsibilities of these and other institutions, as well as the internal arrangements for collaboration and meaningful participation, directly or through representatives, are not clear as pointed out by Troell and Banda.¹⁶¹

Besides the DoF, there are two other main institutions at national level which are relevant to forestry and REDD+. The first is the Forest Management Board which was established by the Forestry Act to provide advice to the minister on all matters related to forestry and tree management.¹⁶² It consists of technocrats (principal secretaries and directors) from government agencies, parastatals, and various stakeholders as additional members appointed by the Minister of MNREM. According to Troell and Banda writing in 2016, the Board was conceived as a multi-stakeholder mechanism for oversight and coordination but it has not operated as such as it rarely met since its establishment and when it did, it was concerning issues of finance through the Forest Management and Development Fund.¹⁶³ The second other main institution is the Forest Research Institute of Malawi (FRIM) under the DoF, which conducts operational forestry and stakeholder-oriented research on sustainable management, utilisation, and conservation of trees and forests. The goal of FRIM is to contribute to improving the welfare of the people of Malawi by generating usable technologies and providing information.¹⁶⁴

¹⁵⁹Troell and Banda (2016), p. 10.

¹⁶⁰Troell and Banda (2016), p. 21.

¹⁶¹Troell and Banda (2016), p. 21.

¹⁶²Section 15 of the Forestry Act.

¹⁶³Troell and Banda (2016), p. 22.

¹⁶⁴<http://www.sdn.org.mw/frim/>.

Notably there is no cross-sectoral coordination between REDD+ agencies and the Ministry of Gender, Children Disability and Social Welfare responsible for gender mainstreaming. Gender mainstreaming would ensure inclusion of gender-sensitive safeguards in the development of national REDD+ programmes and a gender-transformative strategy for the advancement of gender equality and safeguarding women's rights.¹⁶⁵ The gender profile for personnel in the above-named institutions illustrates that the role of women in decision-making is still very limited. First, in government males generally dominate, taking up to 75% of decision-making positions and 63% of non-decision-making positions.¹⁶⁶ The NSCCC had only 30% females as members with both co-chairs being males in 2020.¹⁶⁷ This is similarly the position at the global level as studies have found that women are generally less likely to be in positions of power in governments and organisations tasked with planning for and responding to climate change.¹⁶⁸ It is believed that women leaders are often more likely than their male colleagues to act for women or women's interests.¹⁶⁹ Poor representation of women, lack of responsible gender mainstreaming personnel or focal point would impede concern for gender issues and implementation of gender strategies among the national REDD+ institutions. The national level institutions and their composition therefore does not provide a strong indication for women's opportunity and voice in REDD+ Malawi.

There are also several institutions at district and local level. The first is the District Executive Committee (DEC) which provides policy and programming guidance to the District Commissioner and the District Assembly. It consists of technical personnel from the District Council, sectoral departments, and civil society organisations. One subcommittee of DEC is the District Environment Subcommittee (DESC). DESC membership consists of sectoral district officers, including district forestry officers (DFOs). The DESC is responsible for situational analysis and the production of action plans for natural resources and environmental management, provision of technical advice to the district council, awareness raising, and capacity development for sustainable resource management. There are three regional forestry offices and DFOs in all designated districts to support, advice, plan, and implement forestry activities for conservation and sustainability. The DFOs are also specifically responsible for supporting and corroborating with traditional leaders, civil society, and community groups and institutions in conserving and managing forests and the environment.

The traditional authority level has area development committees (ADCs) and village development committees (VDCs). The ADCs are composed of traditional

¹⁶⁵ See Gama et al. (2016), p. 4.

¹⁶⁶ Government of Malawi *Periodic Report on the Africa Charter on Human and People's Rights and the Maputo Protocol* (2019), pp. 9–90.

¹⁶⁷ National Steering Committee on Climate Change (NSCCC), Minutes of the 22nd NSCCC, Lilongwe 2020.

¹⁶⁸ Beaumier et al. (2015), pp. 550–559; Sultana (2018), pp. 17–33.

¹⁶⁹ Angevine (2017), pp. 98–110.

leaders at all levels (the traditional authority, village head-persons, and sub-traditional authorities), members of Parliament, councillors, and district council representatives. The ADCs are responsible for forming working groups within VDCs and identifying environmental and natural resources issues to be addressed. VDCs are responsible for community and resource mobilisation for natural resource management to lead environmental action planning. Besides these institutions, there are also village natural resource management committees (VNRMCs) which are the institutional mechanism for managing village forest areas (VFAs) as established under the Forestry Act. Members of the community are elected into the VNRMCs and they are responsible for managing and utilising VFAs. This is meant to be done through an agreement with the Director of Forestry who may specify practices, the roles of the DoF, or the expenditure of revenue provided. Without this agreement, the VFA may be managed by the DoF.¹⁷⁰ The VNRMCs are envisioned as a mechanism for participatory forest management. Development partner-funded programmes also introduce institutional structures such as local forestry organisations (LFOs) under the European Union funded Integrated Forest Management and Sustainable Livelihoods Programme (IFMSP). An LFO consists of a group of individuals, households, families or communities who have come together with a common interest in managing trees, forests, and forest resources.¹⁷¹ Such institutions are deemed as community initiatives envisaged under the Forestry (Community Participation) Rules (2001), although they are not necessarily an initiative by the communities themselves. Troell and Banda find that institutions created outside legislation have the potential to undermine consistency and accountability toward the established goals in their establishment and functioning.¹⁷² The Environmental Affairs Department (EAD), under MNREM, has primary responsibility for the supervision and coordination of matters relating to the environment pursuant to the National Environmental Policy and the EEMA. At both district and sub-district levels, the EAD has local institutions that oversee the implementation or management of environmental and natural resources.¹⁷³

The many platforms at the local level are an opportunity for individual and collective agency to advance community needs in decision-making processes for REDD+ and related initiatives. There are multiple levels of institutions for community participation and to influence the development and implementation of policies and projects. The link between these local government institutions and national government is through DoF which is the REDD+ secretariat and focal point under UNFCCC. Chiweza and Hussein establish that there is higher women's participation and influence of decisions at the lowest level institutions such as VDCs and

¹⁷⁰Troell and Banda (2016), p. 24.

¹⁷¹Troell and Banda (2016), p. 24.

¹⁷²Troell and Banda (2016), p. 24.

¹⁷³It also has village, area, and district environmental committees for the management of environment and natural resources, in accordance with the National Decentralization Policy and the Local Government Act, 1998 and the EMA.

ADCs.¹⁷⁴ These platforms provide opportunity to practice and learn how to articulate issues and organise for common causes and interests. These institutions also have more women represented in leadership positions and in the members because of government's prescriptions on the composition of the committees. Although women leadership, does not automatically translate to greater action or influence towards the promotion of women's rights, the institutional arrangement for equal representation and leadership offers women opportunity to participate and use position for influence. The women's actual empowerment and representation of women's issues in these participatory spaces and leadership positions is however influenced by many other factors and motivations.¹⁷⁵ At the high levels of local government institutions, women's participation is limited like at the national level institutions. Besides the employed members, the elected members who are not subject to any gender quota are dominated by males.¹⁷⁶ In 2014, a total of 17.4% of women contested in local government elections leading to minimal representation of women as only 13.4% got elected.¹⁷⁷ In 2019, 22.6% of local council candidates were female and 23% are now elected members of local government candidates are women. A human right to participate and gender equality would require that measures including legal prescriptions for gender quotas and also appropriate capacity and support be put in place for meaningful participation for women at all levels.

Too many local institutions for community participation, as opined by Troell and Banda, may result in the participation fatigue of local-level stakeholders who are faced with multiple institutions working on natural resource issues.¹⁷⁸ There are overlaps of mandate, duplication of efforts, and investments that are not targeted and effective.¹⁷⁹ There are no clear mechanisms established in the institutional structures for ensuring linkages and accountability in the local and national institutions. Their overreliance on experts and their technical knowledge in the MRP at the top and the lack of proper mechanisms in managing and guaranteeing that there is input from the local level point to limited opportunity to exercise choice, although there are many platforms for participation. The formulation and establishment of these forums and their lack of clear guidance or regulation risk promotion of participation that serves only to ensure its instrumental function and not legitimacy through opportunity to influence decisions and secure equitable outcomes for the communities. Such institutional architecture will undermine women's agency to gain power through participation and challenge inequalities experienced in society, specifically within REDD+, if there is no change in the current approach.

¹⁷⁴ Chiweza, AL, Entry points for gender and local governance, (Draft final Report for UN Women, Lilongwe, 2015) and Hussein (2021), pp. 961–962.

¹⁷⁵ Chiweza (2021, 2015).

¹⁷⁶ Chiweza (2021, 2015); Hussein (2021), pp. 958–960.

¹⁷⁷ The commonwealth (2019) Malawi election is big win for women, says gender expert. Available at <https://thecommonwealth.org/news/malawi-election-big-win-women-says-gender-expert>.

¹⁷⁸ Troell and Banda (2016), p. 27.

¹⁷⁹ Troell and Banda (2016), p. 28.

Opportunity to participate and power to influence are undermined by the above-mentioned institutional weaknesses. Women's meaningful participation that affirms dignity and equitable outcomes due to real opportunity to have interests and needs considered when there is voice and influence is not guaranteed. The community platforms do not always result into voice and influence into national processes as there is poor coordination and linkages with national platforms that have preference to experts and technical knowledge resulting into top down solutions or designs and implements of REDD+ in Malawi. Institutional arrangements must be reviewed and provided with proper internal and external mechanisms and coordination to realise meaningful participation that guarantees voice and influence.

4 Conclusion and Recommendations

Governance of the Malawi REDD+ programme based on gender equality and the human right to participate has the potential to impact women's lives positively. Women are most affected by climate change and the depletion of natural resources such as forests or trees that they rely on for livelihoods and survival. Their recognition as crucial stakeholders and their effective participation through gender-sensitive mechanisms that guarantee their influence in decision-making processes and benefit from outcomes must be among the guiding principles for REDD+ governance. Adopting this approach in REDD+ governance would contribute to the success of the programme because of legitimacy and equity which are important components for the successful implementation of REDD+.

Malawi's legal and institutional framework recognises the important role of community participation and specifically women's participation and voice for legitimacy and equitable results. The legal environment addresses gender discrimination and requirements for women's opportunity to, access, and equitable outcomes in participatory platforms. The institutional framework, however, bears a great risk to realising women's participation in REDD+ governance due to a lack of adherence to regulatory frameworks resulting in multiple and uncoordinated platforms established in a top-down manner. The institutional landscape reveals the potential of perpetuating participation void of its power and, thus, undermining legitimacy and equity, and ultimately, women's right to participate in REDD+ governance.

As a way forward for realising women's right to participate in REDD+ governance, I recommend institutional review and coordination for real opportunity to influence decisions and gendered outcomes. There should be a system of participatory modalities that guarantee wide participation accompanied with mechanisms that ensure that the voice of the women is heard. Gender must be mainstreamed throughout all processes and institutional arrangement that are coordinated and consistent monitored and supported with all relevant financial and capable human resource. Promoting genuine participation will also require a necessary institutional frame that links the different relevant local government institutions and central government with clear mechanisms for accountability so that there is an incentive for government

to act. There must also be strategic litigation campaigns based on the justiciable rights to equality and participation. The chapter has established that both these rights exist in Malawian law and must thus be used by people as a basis for strategic litigation campaign. I recommend that NGOs actively pursue this possibility. With the right community that has suffered from lack genuine participation in implementing or benefiting from REDD+ projects or policies within a specified context of processes must challenge the inadequacies of the participation that offers no real power to affect outcomes.

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Ngcimezile Mbano-Mweso (PhD) is a Senior lecturer in the Faculty of Law, University of Malawi. She has an LLD from University of Western Cape, an LLM in human rights and democratisation in Africa from University of Pretoria and LLB (Hons) from University of Malawi. She teaches and researches gender, governance, and environmental law. She is also the coordinator of Gender Justice Clinic, a platform for students training, advocacy, research and legal services.

Gender and the Implementation of REDD+ in Uganda



Lagua Clare Ukuni

Abbreviations

| | |
|--------|---|
| ACHPR | African Charter on Human and Peoples' Rights |
| ACODE | Advocates Coalition for Development and Environment |
| BUL | BIDCO Uganda Limited |
| CEDAW | Convention on the Elimination of all forms of Discrimination against Women |
| CRRF | Comprehensive Refugee Response Framework |
| CSOs | Civil Society Organization |
| ESMF | Environmental and Social Management Framework |
| FCPF | Forest Carbon Partnership Facility |
| FGRM | Feedback and Grievances Redress Mechanism |
| FREL | Forest Reference Emissions Level |
| GCR | Global Compact on Refugees |
| GDP | Gross Domestic Product |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| IPCC | Intergovernmental Panel on Climate Change |
| KP | Kyoto Protocol to the United Nations Framework Convention on Climate Change |
| KSW | Kakira Sugar Works |
| MAAIF | Ministry of Agriculture Animal Industries and Fisheries |
| MEMD | Ministry of Energy and Minerals Development |
| MoGLSD | Ministry of Gender Labour and Social Development |
| MRV | Measurement, Reporting and Verification mechanisms |

L. C. Ukuni (✉)

Faculty of Law, Islamic University in Uganda and Uganda Martyrs University Nkozi, Kampala, Uganda

| | |
|--------|---|
| NCCAC | National Climate Change Advisory Committee |
| NCCP | National Climate Change Policy |
| NDP | National Development Plan |
| NEA | National Environment Act |
| NEMA | National Environment Authority |
| NFMS | National Forest Monitoring System |
| NFPA | National Forestry and Tree Planting Act |
| NTC | National Technical Committee |
| REDD+ | Reducing Emissions from Deforestation and forest Degradation |
| SDG | Sustainable Development Goals |
| SESA | Strategic Environmental and Social Assessment |
| SIS | Safeguards Information Systems for National REDD+ activities and Strategy |
| UDHR | Universal Declaration of Human Rights |
| UFP | Uganda Forestry Police |
| UNFCCC | United Nations Framework Convention on Climate Change |
| UWA | Uganda Wildlife Authority |

1 Introduction

Climate change impacts men, boys, girls and women differently. This is because of the different gender roles assigned to women and girls.¹ Women and girls are most affected by the negative effects of climate change also because of inequalities and discrimination based on gender. Uganda has to a large extent tried to accommodate principles of equality, nondiscrimination, women empowerment in its constitutional framework.² Uganda has built a comprehensive and gender sensitive bundle of laws and policies related to gender.³ For instance, Section 5 (3) (c) of the National Climate Change Act 2021 provides that in developing the framework strategy on climate change, the department will take into account gender and human rights issues and goes further to provide in Section 5(4) (f) that the Framework Strategy on climate change shall identify the differential impacts of climate change on gender and the vulnerable and marginalised communities.⁴ The National Climate Change Act undertakes to develop a National Climate Change Action Plan which according to Section 6 (2) (d) shall indicate the specific resilience, mitigation and adaptation measures, responses and actions to be adopted for ecosystems, gender matters, the vulnerable and marginalised communities and for the variability extreme of climate change. Section 28 of the Land Act outlaws discrimination against women and

¹Nakiyemba et al. (2022).

²See Arts. 21(1), 33(1) and 33(5) of the 1995 Constitution of Uganda, as amended.

³ACODE (2021), p. 8; also, see Acosta et al. (2015), pp. 1–4.

⁴The National Climate Change Act.

children with regard to ownership, occupation and use of any land.⁵ Vision 2040 is Uganda's key to national planning framework for institutions and other stakeholders working on key natural resources and gender issues.⁶ Vision 2040 identifies key environmental challenges such as climate change and recognises the challenges faced by women, the minority groups and other marginalised groups in accessing and controlling land.⁷ The National Land Policy 2013 makes commitments to protecting the land rights of groups and communities marginalised by history or on the basis of gender, religion, ethnicity, and other forms of vulnerability to achieve balanced growth and social equity.⁸

Uganda is one of the countries participating in the REDD+ processes. The national REDD+ Process in Uganda started in 2008 when Uganda became a participant of the Forest Carbon Partnership Facility (FCPF) after approval of the Forest Carbon Partnership Readiness Plan Idea Note (ER-PIN).⁹ It has embarked on implementation of REDD+ readiness phase as one of the activities for the implementation strategy.¹⁰ In line with its obligations and commitments under the UNCCCF, Uganda committed to promote and support seven safeguards when undertaking REDD+ activities at the Readiness phase whose objective was to contribute to a design of a socially and environmentally viable national strategy for reducing emissions from deforestation and forest degradation.¹¹ It developed framework for a National Safeguards Information Systems for National REDD+ activities and Strategy (SIS), a national reference scenario of emissions from deforestation and forest degradation (FREL), a Measurement, Reporting and Verification Mechanisms (MRV), National Forest Monitoring Systems (NFMS), a Strategic Environmental and Social Assessment (SESA) and Environmental and Social Management Framework (ESMF).¹²

This chapter interrogates the extent to which gender is necessary in climate related law and is respected in the implementation of REDD+ in Uganda. It shows the value in and importance of engaging women in genuine, meaningful and informed participation for effective climate change action. It further argues that Uganda can and should embrace the opportunity provided by REDD+ to correct its trajectory on having laudable laws and policies on paper but with no or little impact on the ground.

⁵The Land Act, Chap 227.

⁶Uganda's Vision 2040.

⁷Uganda's Vision 2040.

⁸The National Land Policy 2013.

⁹Ministry of Water and Environment (2016).

¹⁰Ministry of Water and Environment (2021), pp. 8–9.

¹¹Ministry of Water and Environment (2021), pp. 8–9.

¹²Ministry of Water and Environment (2021), pp. 8–9.

2 The Necessity of Gender in Climate Legal Framework

Gender is both an important subject of international human rights law and climate change normative development. At the international level, human rights treaties and their respective enforcement mechanisms have provisions protecting women's rights generally and including women's access to and control over natural resources. Uganda has ratified international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR),¹³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁴ These instruments emphasise the principle of non-discrimination.¹⁵ In addition, Uganda ratified the Convention on Elimination of all forms of Discrimination against Women (CEDAW).¹⁶ Although the CEDAW predates the current global treaties on climate change and does not have specific provision on climate change, the general provisions on non-discrimination can be used to buttress the specific substantive provisions that may be affected by climate change.¹⁷ Further in its general recommendations, the CEDAW Committee provide for integration of gender perspective in response to climate change with a view to addressing gender inequality, disaster reduction and sustainable development including protection of the environment.¹⁸

Uganda is also a state party to the United Nations Framework Convention on Climate Change¹⁹ which calls on the parties to protect the climate system for the benefit of present and future generations of humankind, based on equity and in accordance with their common but differentiated responsibilities and respective capabilities.²⁰ Whereas there is no specific mention of gender in the UNFCCC, it has formed the basis of some of the recent decisions of the Conference of Parties (COP). At COP 25, parties agreed a five-year enhanced Lima work programme on gender and its gender action plan.²¹ At COP 26, parties adopted a decision which,

¹³International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 9 U.N.T.S. 171.

¹⁴International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966.

¹⁵See Article 3 of the ICCPR and ICESCR.

¹⁶Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

¹⁷CEDAW, Article 2.

¹⁸See for instance General Recommendation No. 37 (2018) on gender-related dimensions of disaster risk reduction in a changing climate.

¹⁹United Nations Framework Convention on Climate Change (UNFCCC) (1992) ILM 851.

²⁰See generally preambular provisions and Article 4(1)(b) of the UNFCCC.

²¹Conference of the Parties Report of the Conference of the Parties on its twenty-fifth session, held in Madrid from 2 to 15 December 2019 Conference of the Parties FCCC/CP/2019/13/Add.1 16 March 2020.

among other things, reviews the Gender Action Plan implementation,²² while at COP 27, parties concluded on the intermediate review of the implementation of the gender action plan which included amendments to some deliverables and new activities in priority areas. The outcome of this is an informal document that contains the Gender Action Plan and amendments.²³ Accordingly, the UNFCCC unequivocally calls upon the developed country parties to take the lead in combating climate change and the adverse effects thereof.²⁴ The Fourth World Conference on Women recognised that women are most affected by climate change and have less access to productive natural resources and have largely been absent at all levels of policy formulation. The Conference urges governments to ensure that women have access to land resources and are involved in decision-making at all levels.²⁵ The Rio Declaration on Environment and Development recognises that women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.²⁶ The Rio Declaration was reiterated in the outcome document of the United Nations Conference on Sustainable Development, entitled ‘The future we want’ which acknowledges the need for the principle of gender equality and effective participation of women in all initiatives relating to climate change.²⁷

The Paris Agreement under the United Nations Framework Convention on Climate Change²⁸ provides that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on ‘human rights, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, the empowerment of women and intergenerational equity’.²⁹ The state parties also acknowledge that climate actions, including capacity-building for mitigation and adaptation action, should be gender responsive, participatory and fully transparent, taking into consideration vulnerable groups, communities and ecosystems.³⁰

At the African regional level, Uganda has ratified key instruments relevant to gender and the protection of the environment such as the African Charter on Human

²² Conference of the Parties Report of the Conference of the Parties on its twenty-sixth session, held in Glasgow from 31 October to 13 November 2021 FCCC/CP/2021/12/Add.2 8 March 2022.

²³ Conference of the Parties Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022 FCCC/CP/2022/10/Add.3 17 March 2023.

²⁴ See Article 3(1) UNFCCC.

²⁵ Beijing Platform for Action.

²⁶ See Principle 20 of the Rio Declaration on Environment and Development (1993).

²⁷ Paragraphs 25, 190–192, 236–244 of the Outcome document of the United Nations Conference on Sustainable Development: The future we want (2012).

²⁸ Paris Agreement as contained in the report of the Conference of the Parties on its twenty-first session, FCCC/CP/2015/10/Add.1.

²⁹ Paragraph 11 of the preamble to the Paris Agreement (2015).

³⁰ See Article 7(2) of the Paris Agreement (2015).

and Peoples' Rights (ACHPR)³¹ and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol).³² While Article 24 of the African Charter guarantees the right to healthy environment, the Maputo Protocol guarantees women's right to live in a healthy and sustainable environment and participate in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.³³ These two provisions when effectively put to use can help enhance the application of gender dimension to REDD+ and safeguard the rights of women in the context of climate change. Uganda is also a state party to the Kampala Convention, the first continental and internationally binding instrument on Internally Displaced Persons (IDPs) that draws a nexus between climate change and displacement.³⁴ It recognises climate change induced displacements and calls upon states parties to protect and assist persons who have been displaced due to human made or natural disasters including climate change.³⁵ Uganda had a share of climate change induced displacements caused by both sudden and gradual effects of climate change and environmental degradation a proof of the nexus between displacement and climate change.³⁶ Women during climate change induced displacements are left to head their households while their partners move in search of work.³⁷ The extent to which the urgency of mainstreaming gender is reflected in the approach on REDD+ is the focus of next section.

3 REDD+ Legal Framework and Gender Gap

At the national level, the Ugandan laws reflect the international and regional commitments to eliminating discrimination against women.³⁸ While the Constitution provides for gender equality, it does not specifically provide for women's rights to own land and other property which has negative connotation for REDD+ as natural resources like forests are on the land. This impacts negatively on participation of women in REDD+ activities. The National Climate Change Act 2021 is enacted to give the force of law in Uganda to the UNFCCC, its Kyoto Protocol and the Paris

³¹ African (Banjul) Charter on Human and Peoples' Rights, adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 (African Charter).

³² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted on 01 July 2003.

³³ See Article 18(1), (2) (a) of the Maputo Protocol.

³⁴ The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); Adeola (2020); Jegede (2016).

³⁵ Article 5(4) of the Kampala Convention.

³⁶ IOM (2022).

³⁷ The Independent Magazine (2022).

³⁸ See generally Articles 33, 38, 39 and 41 of the Constitution.

Agreement.³⁹ It specifically provides for development of a strategy that takes into account gender and human rights issues differential impacts of climate change on gender as well as resilience and adaptation needs of the vulnerable and marginalised communities.⁴⁰ The Land Act,⁴¹ the Forestry and Tree Planting Act,⁴² National Environment Act,⁴³ and National Environmental Management Policy⁴⁴ are among the legislative and policy frameworks on which climate change related issues in Uganda are anchored. Uganda's National Climate Change Policy (NCCP)⁴⁵ which is aligned to Vision 2040 is expected to guide efforts towards the attainment of Vision 2040 and encourage people-centred sustainable development ensuring that climate change actions help the country move towards long term development goals. The NCCP takes the approach of promoting community-based approach to adaptation, will address cross-cutting issues such as HIV/AIDS and gender as genders are affected differently by climate change as these vulnerable groups are also particularly at risk from climate impacts and must be given due attention in the policy and at its implementation. The NCCP is also clear on the need to mainstream gender issues in climate change adaptation and mitigation approaches in order to reduce the vulnerability of women and children to the impacts of climate change and recognise their key role in tackling this issue.⁴⁶ The policies can guide the coordination in climate change related interventions, however, there are gaps as some of the laws and policies do not specifically refer to women's protection in response to climate change induced impacts. Some of the gaps can perpetuate or increase the vulnerability of women to climate change compared to men.⁴⁷ These gaps if left unaddressed will impact negatively on the REDD+ activities. Women and girls in Uganda have no or less access to productive resources such as land, receive less education, and are voiceless as they are not involved in political and household decision-making processes that affect their lives including climate change interventions.⁴⁸ By virtue of their positions in society and the role they play in subsistence agriculture (usually dependent on rains), and their none or weaker access/control to resources (land, financial services, money) and weak or no decision-making power, women are in addition more vulnerable to climate shocks.

³⁹ See Sections 3(a) and 4 (1) of the National Climate Change Act, 2021.

⁴⁰ Section 5(3) (b), (c) of the National Climate Change Act.

⁴¹ The Land Act, 1998.

⁴² The Forestry and Tree Planting Act, 2003.

⁴³ National Environment Act, 1995.

⁴⁴ National Environmental Management Policy.

⁴⁵ National Climate Change Policy, 2015.

⁴⁶ The National Climate Change Policy (2015), pp. 9, 14–17.

⁴⁷ UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, (2009), A/HRC/10/61, paras 45–47, also see Balikooowa et al. (2019), p. 1.

⁴⁸ ACODE (2021), p. 26.

The land tenure system in Uganda is a barrier to women and is one of the drivers of inequality as is illustrated here.⁴⁹ Despite the clear provisions of the Constitution, Land Act and National Land Policy on women's right to property including land,⁵⁰ in practice, structural barriers still impede women from owning land. The land tenure system in Uganda has been classified under four tenure categories under the 1995 Constitution as amended and the Land Act (1998) to include the customary, freehold, and leasehold.⁵¹ This composition indicates that 68.6% of the land in Uganda is held under customary tenure, 18.6% under freehold, and 3.6 under leasehold.⁵² The land tenure system gives women user rights and not ownership over land.⁵³ Available literature indicates that only about 16% of women in Uganda own land in their own right.⁵⁴ Women will more than men be prone to suffer from food insecurity because of their nurturing role in families, they will spend more time in search of fuel (firewood, charcoal), fetching water and shielding members of the family (children, the sick and elderly) from the adverse effects of climate change than men.⁵⁵

Uganda has no specific REDD+ legislation or policy, however, its implementation of REDD+ is grounded in policies and legislation of climate change, environment, wetlands, wildlife, agriculture, renewable energy, land, culture, among others.⁵⁶ The Uganda Forest Policy (UFP) and the National Forestry and Tree Planting Act (NFPA), the 2016 regulations made thereunder provide an enabling legal framework for a variety of community groups to participate in forestry and forest management including community forests and ownership on private land.⁵⁷ The extent to which the legislation mainstream gender is the focus of this section.

Generally, forests continue to be under threat from illegal logging, wildfires, pollution, storms, pests, and the impacts of climate change.⁵⁸ In parts of Northern Uganda especially Adjumani district, deforestation and charcoal burning have been reported at their peak as culprits took advantage of the lockdown.⁵⁹ With the several calls to agriculture, many people in Uganda resorted to farming during the 'COVID-19' pandemic period, meaning large portions of land have been cleared for farming. Some of the responses from adverse effects of climate change have further

⁴⁹See Oxfam (2019), pp. 15–16; also, see ACODE (2021), pp. 7–8.

⁵⁰Section 27 of the Land Act, 1998.

⁵¹Article 237(1) of the 1995 Constitution of Uganda.

⁵²See Ministry of Lands, Housing and Urban Development (2010), p. 12; also, see Pedersen et al. (2012).

⁵³Ministry of Lands, Housing and Urban Development (2019), pp. 6–9.

⁵⁴Rugadya (2010); Kes et al. (2011).

⁵⁵See the UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, (2009), A/HRC/10/61.

⁵⁶Ministry of Water and Environment (2020), pp. 17–18.

⁵⁷Section 17 of the National Forestry and Tree Planting Act 2003.

⁵⁸Ministry of Finance, Planning and Economic Development (2021), p. 3; World Bank (2021).

⁵⁹The Independent (2021).

exacerbated already bad situation. For example, as a result of floods in Kasese district, affected communities resorted to firewood selling.⁶⁰ This practice not only affects the gains made in the conservation of the environment in terms of afforestation efforts but has placed women in precarious positions. In a report published by Iris Aid, the Notre Dame Global Adaptation Initiative (ND-GAIN) Index ranks Uganda as the 9th most vulnerable and 27th least ready to adapt to climate change, of the countries it covered for 2015.⁶¹

Forest degradation and loss in Uganda have further been aggravated by attempts by government of Uganda to give away gazetted forest areas to individual private investors for commercial purposes in a bid to spur industrialisation and economic development in the country. This development is not new. In 1997, the Government of Uganda (GoU) degazetted 1006 hectares of Namanve Central Forest Reserves for the development of an industrial estate against public protests.⁶² Despite the protests, government went ahead and completely cleared the forest.⁶³ In 2000, the government gave away 3500 hectares of forest reserves on Bugala Islands in Lake Victoria to BIDCO Uganda Ltd (BUL), a vegetable oil processing company to establish a Palm Oil Tree estate and Oil Refinery on the islands. In addition to this give-away, BUL was vying for more of the gazetted land. This too prompted public protests. Despite the protests, the National Environment Management Authority (NEMA) went ahead to approve the project and today a large chunk of the gazetted natural forest estate has been converted into a Palm Oil tree plantation.⁶⁴ In 2001, the government gave away another forest known as Butamira Forest Reserve for the benefit of Kakira Sugar Works (KSW) Ltd. Despite public protests and legal suits stopping the land give-away, the government went ahead to give away the land to KSW. Perhaps what stands out vividly in terms of spirited fight across the political divide and involving participation of women is the attempt to give away Mabira Forest, home to a variety of bird species, ecotourism and its ecological role in the environment to Sugar Corporation of Uganda (SCOU) in 2007.⁶⁵ The situation in ungazetted forest lands is precarious especially where vast expanse of land is cleared for agriculture. Fires were also a major source of degradation of land cover, and are commonly seen in central and northern Uganda.⁶⁶ Direct drivers of deforestation and forest degradation are subsistence agriculture and biomass extraction for timber, charcoal, and commercial fuel wood. More recently, commercial farms, infrastructure, urban development, rapid population growth, influx of refugees and mining are increasingly reducing forest cover in some areas.⁶⁷

⁶⁰The World Bank, Uganda's Economy Recovering from COVID-19 Impact Amid Uncertainties.

⁶¹Irish Aid Uganda Climate Action Report (2016).

⁶²The Observer News Paper (2013).

⁶³The Observer News Paper (2011).

⁶⁴The New Vision News Paper (2005); see also New Vision News Paper (2013).

⁶⁵The Daily Monitor (2012).

⁶⁶Ministry of Water and Environment (2016), p. 27.

⁶⁷World Bank (2021).

The East Africa Crude Oil Pipeline (EACOP) project has raised concerns over environmental conservation, land, livelihoods and food security, women's health and safety, economic and social issues that may negatively impact affected communities in disproportionate ways.⁶⁸ The EACOP is another eye opener that development should not permit the violation of human rights and degradation of the environment, governments need to ensure private businesses do not disrupt the social setups and infringe on human rights.⁶⁹ The gaps and challenges, particularly concerning the lack of gender mainstreaming, identified in the EACOP should offer an important lessons to REDD+ to improve on participation of women. But this is hardly the case in the REDD+ process. Much concern remains around the participation of women as principal actors in all the phases of REDD+.⁷⁰ The REDD+ mechanism poses several potential risks for women, which, if not considered as a matter of urgency, could underline or broaden gender disparity.⁷¹ The Ugandan REDD+ processes identified different potential risk factors at the readiness, implementation and consolidation phases amongst which were: limited information access and consultations with women about REDD+, weak land policies, limited time to participate in REDD+ activities, cultural barriers and few pilots targeting women were among the risks envisaged.⁷²

At the readiness phase, it was identified that there was no effective communication strategy in place that recognised the different needs and packaging of information for different audiences thus limiting the dissemination of information to women creating gaps in the flow of information and the fear that correct information may not reach women.⁷³ Further, it was notable that women's access to resources in the forests are limited by their gender roles, cultural barriers. They access mainly non-cash benefits such as firewood, herbs, fuel and wood from the forests but have no or limited control over cash generated from the forest as these are controlled by men.⁷⁴ The legal framework does not exclude women from the opportunity to own land or forests;⁷⁵ however, structural barriers such as the land tenure system and the economic status of women dictate that economically empowered and educated women can own resources including land because they know their rights thus leaving out a majority of women especially the uneducated in the rural setting. These barriers affect not only women's access to resources but also their participation in forest projects. Whereas the laws permit women equal rights to participate in

⁶⁸ Oxfam (2019), pp. 2–9.

⁶⁹ Oxfam (2019), pp. 2–9.

⁷⁰ IUCN (2012).

⁷¹ Setyowati (2012), p. 7.

⁷² IUCN (2012).

⁷³ IUCN (2012).

⁷⁴ IUCN (2012).

⁷⁵ Article 26(1) of the Constitution of Uganda guarantees the right to own property either individually or in association with others.

public affairs like men,⁷⁶ women's ability to meaningfully participate is affected by their levels of education, exposure, cultural stereotypes and the patriarchal nature of Uganda's society that favours men in decision-making.⁷⁷ Women are often denied access to services, credit, technology, and capacity building activities.⁷⁸

Following the gaps identified in the readiness phase, at the implementation, women may not get information in all phases of the REDD+ implementation, and their participation may reduce. There is feedback that the percentage of women participating in the decision-making in REDD+ remains low and efforts need to be made to increase the overall participation of women through training on mainstreaming gender into REDD+.⁷⁹ The number of women who are informed about the existence of REDD+ is small compared to those who are not aware about it. In the spread of information, rural women seem to be less informed about REDD+ compared to women in the urban setting.⁸⁰ With the trend on the participation of women, it is unlikely that women in Uganda will influence decision-making and benefits considerably from the REDD+ activities.

At the consolidation phase, women continue to face barriers at the household, community and national levels especially in the governance arena as they have weak capacity to negotiate, and low understanding of the technical aspects of REDD+ processes.⁸¹ A limited access to ownership of land signifies that women are likely to be affected by REDD+ policies differently than men, possibly to their detriment. For example, they could be subjected to higher workloads without appropriately scaled compensation, displaced from or denied access to forests, denied a fair share of benefits, or left out of consultations and capacity-building activities.⁸² As Setyowati notes, women are rarely recognised as primary stakeholders in forests.⁸³ Although decisions about forest management affect their lives and livelihoods, women are restricted in their ability to voice concerns and be involved in decision-making. Because they often lack employment and decision-making power within their communities, as well as formal education, women are rarely able to influence the allocation of resources and household decisions.⁸⁴ The lack of control of resources by women and specifically their ownership to land has been a recurrent one through the REDD+ phases. While not specific to the REDD+ processes, it is a challenge that

⁷⁶See Article 38 on the right to participation in decision-making (civic rights and activities) of the 1995 Constitution, as amended.

⁷⁷Gender and Climate Change in Africa (2016).

⁷⁸Setyowati (2012), p. 59.

⁷⁹UN-REDD Uganda National Program Final Evaluation (2018), pp. 21–22.

⁸⁰WOUGNET (2022).

⁸¹IUCN (2012).

⁸²Setyowati (2012), p. 58.

⁸³Setyowati (2012), p. 58.

⁸⁴Marin and Kuriakose (2017), pp. 1–5.

if not well addressed would pose risks to the enjoyment of benefits under the REDD+ programme.⁸⁵

The National REDD+ Strategy and Action Plan (NRSAP) is positive on a number of fronts but does have its limitations. The NRSAP recognises that REDD+ implementation is a multiyear undertaking with long-term commitments to programmes and investments at national and subnational levels, within and outside protected areas. It emphasises (i) institutionalising the REDD+ Strategy implementation into national institutions responsible for the respective options of tackling drivers and underlying causes of deforestation and forest degradation; (ii) arrangements that integrating REDD+ actions into other conservation and land use policies and practices encompassing, agriculture, energy, livestock, rural development, among others; (iii) capacity and skills transfer to ensure sustainability of the REDD+ investments; and (iv) measures for cost-effective implementation in order to realise optimal and equitable benefits from the REDD+.⁸⁶

The Climate Change Action Plan recognises REDD+ as a mitigation and adaptation measure.⁸⁷ The National Climate Change Advisory Committee (NCCAC) which is statutory organ established to advise on climate change agenda serves as the Steering Committee for the REDD+ process.⁸⁸ The NCCAC provides policy level guidance and coordination of REDD+ process within the climate change agenda as well as across the different sectoral and economic sector. Membership to the NCCAC is comprised of representatives of key government and nongovernment institutions with significant mandate over climate change issues or significant interest in issues of climate change and REDD+. There is a technical oversight to REDD+ process, a National Technical Committee (NTC) provides technical oversight and guidance to the REDD+ process; the membership to NTC is drawn from REDD+ stakeholders within and outside government institutions (at managerial or senior level). Technical Experts Support (Taskforces): Three taskforces, namely SESA/Safeguards Taskforce, Policy Task Force (Policy, Legislation, Regulations) Taskforce and Methodological Taskforce (MRV) serve as platforms for specialists or experts to provide input into in REDD+ preparatory activities. Membership to the Taskforces is based on individual technical relevance to the business of the taskforce. Members are drawn from REDD+ stakeholder's institutions or independent specialists. Members of the Taskforce serve on individual basis.⁸⁹

However, there are gaps in the governance structure especially with regard to the meaningful engagement and participation of groups (women). Attempts have been

⁸⁵ Ministry of Water and Environment (2021), pp. 15–16.

⁸⁶ Ministry of Water and Environment (2020), National REDD+ Strategy and Action Plan, p. 11.

⁸⁷ Ministry of Water and Environment (2015), Uganda National Climate Change Policy, pp. 4–7.

⁸⁸ Ministry of Water and Environment (2019), p. 4; Responses to Comments of the FCFP Participants Committee Meeting and Independent Tap Review on Uganda's Report of Participatory Self-Assessment of Uganda's REDD+ Readiness Process (Uganda's R-Package, 2018).

⁸⁹ Ministry of Water and Environment (2016), National REDD+ Process and R-PP Implementation, p. 39.

made in including women in REDD+ processes through participation in national planning.⁹⁰ The formal recognition of women's roles creates an enabling environment and provides opportunities for women to assume leadership roles in REDD+ processes, including decision-making. The effective participation of women requires recognition of their substantive rights (e.g. their right to lands and forests) and procedural rights (e.g. consultation, access to information and access to remedy). The representation of women at various levels of consultations on REDD+ policies is still limited, and the role of women in decision-making is still restricted. In addition, and perhaps as a result, many existing REDD+ projects reinforce gender inequality by failing to acknowledge women as equal partners in design, consultation, decision-making and the benefit-sharing mechanism.⁹¹

The Feedback and Grievances Redress Mechanism (FGRM) for supporting the implementation of Uganda's REDD+ Strategy and Action Plan provides avenues through which grievances related to REDD+ activities are addressed.⁹² The FGRM is clear that if people or communities affected by REDD+ related conflicts do not find the interventions and resolutions of the FGRM satisfactory, they may seek redress through the mainstream formal court system.⁹³ The NCCAC has representatives from government and other stakeholders, this could create opportunities for synergies where government agencies such as NEMA, CSOs and Non-Governmental Organizations (NGOs) will collaborate especially through the FGRM. This will go a long way in ensuring that grievances and conflicts related to the implementation of REDD+ activities are handled in expeditiously and using approaches that are restorative with a view to upholding peaceful existence and harmonious living in communities.

The Ministry of Water and Environment is designated as the lead institution for the overall implementation and coordination through its departments and agencies responsible for forestry, environment, climate and water.⁹⁴ The ministry collaborates with: i) Uganda Wildlife Authority (UWA) which manages forests in wildlife conservation areas; ii) Ministries responsible for Agriculture and livestock (Ministry of Agriculture, Animal Industry and Fisheries—MAAIF), Energy (Ministry of Energy and Minerals Development—MEMD), Gender and Social Development (Ministry of Gender, Labour and Social Development—MoGLSD), and local governments in management of local forest reserves and forests outside protected areas as well as sustainable fuel wood and commercial charcoal production and utilisation. The Ministry of Finance, Planning and Economic Development coordinates governments financing and resources mobilisation for REDD+ Strategy Implementation. The National Planning Authority integrates REDD+ into the overall

⁹⁰Pham et al. (2016).

⁹¹Gurung et al. (2011).

⁹²Ministry of Water and Environment (2016); Feedback and Grievances Redress Mechanism for Supporting the Implementation of Uganda's REDD+ Strategy and Action Plan (FGRM), p. 1.

⁹³FGRM, pp. 2–3.

⁹⁴FGRM, pp. 27, 60.

national Development Plans, invading the ongoing preparation of National Development Plan III (2021–2025). While the link with the MoGLSD is important, it is not yet within public knowledge whether and how their activities are impacting other entities involved in REDD+. Consequently, participation of women and the protection of their rights in the implementation of REDD+ may not improve if the foregoing trend is not addressed through deliberate policy choices that will propel more women to be represented in committees at different levels where they will articulate issues concerning them and build networks and agencies.

4 Conclusion

Gender is a crucial factor in the implementation of climate response actions such as the REDD+. While the participation of Uganda in REDD+ is not without supportive legal and policy standards, women issues in participation, accessing and owning land and other resources remain a challenge. While participation all through the phases of REDD+ is urgent for women, inadequate efforts are being made to engage women at REDD+ meetings and activities. Cultural stereotypes, timing of the meetings and activities, level of education and exposure of some women hinder meaningful participation and enjoyment of the benefits. Cultural biases are still a threat to their land tenure and ownership regime. The normative development at the national level in relation to REDD+ has not adequately attended to these challenges relating to women. Concrete measures are required to address this gap. The REDD+ processes have to deliberately and proactively recognise women as beneficiaries and ensure that they are supported in the implementation process. There is need for deliberate regulations and strategy to support the recognition of the rights of women in the implementation of REDD+. This will contribute towards building their agency and further empowerment her to take decisions without falling back into patriarchal expectations to take decisions.

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Lagua Clare Ukuni holds an LLM from the University of Pretoria and an LLB degree from Makerere University, Uganda. Clare is currently a lecturer at the Faculty of Law, Islamic University in Uganda and Uganda Martyrs University Nkozi. Her research interest is around social justice with specific focus on women and children, the refugee scourge and its interaction with the environment. Clare has also worked in the humanitarian field dealing with legal assistance to refugees.

The Role of the Parliament in the Implementation of REDD+ in Ghana



Clement Agyemang

Abbreviations

| | |
|-------|---|
| FCPF | Forest Carbon Partnership Facility |
| MDA | Ministries, Departments and Agencies |
| MPs | Members of Parliament |
| OASL | Office of the Administrator of Stool Lands |
| REDD+ | Reducing Emissions from Deforestation and forest Degradation, the sustainable management of forests, and the conservation and enhancement of forest carbon stocks |
| R-PIN | REDD+ Project Idea Note |
| R-PP | Readiness Preparation Proposal |
| SPA | Social Responsibility Agreement |

1 Introduction

The implementation of the REDD+ programme in Ghana has since its commencement in 2008 seen some significant progress as indicated in the country's twenty (20)-year plan to champion emissions reduction from deforestation and forest degradation and address the threats to the ecosystem services and environmental integrity to maximise co-benefits from forests.¹ This initiative shows the country's commitment to implement REDD+.

¹Ghana REDD+ Strategy 2016-2035, p. 16.

C. Agyemang (✉)
Centre for Human Rights, Faculty of Law, University of Pretoria, Pretoria, South Africa
e-mail: clement.agyemang@up.ac.za

However, a successful implementation of REDD+ in Ghana would be dependent on the country's capability to effectively address the drivers of deforestation and forest degradation which are agricultural expansion, logging, fuel-wood harvesting, charcoal production, wildfires, infrastructure development, mining and sand winning.² Second, an examination of the national laws and policies governing this initiative, shows the lack of clarity on natural resources rights particularly carbon rights³ which could have provided incentives to farming communities and land users for supporting REDD+ initiative thereby reducing deforestation and forest degradation. Third, there is a weak enforcement of existing laws to ensure an effective implementation of the REDD+ programme.⁴ This chapter therefore attempts to find solutions to the above challenges through the Parliament of Ghana. It argues that by means of its legislative and oversight powers the Parliament can amend inadequate laws, enact new ones where necessary and monitor their enforcement for a successful implementation of the REDD+ programme in Ghana. This chapter is presented in four Sections. Following this introduction (Sect. 1), Sect. 2 focuses on the gaps in the existing laws and challenges related to their enforcement. Section 3 deals with potential role of the parliament in implementing REDD+. Section 4 is the conclusion.

2 REDD+: Legislation and Implementation Gaps

Ghana joined the REDD+ in 2008,⁵ a year after the REDD+ readiness plan was provided in 2007 by the Bali Action which was later confirmed at Copenhagen in 2009.⁶ In 2008, Ghana submitted its REDD+ Project Idea Note (R-PIN) under the auspices of the Forest Carbon Partnership Facility (FCPF) of the World Bank and since then the country has been making remarkable progress. Besides, between 2013 and 2015, Ghana has developed a National REDD+ Strategy to ensure smooth and effective implementation of the REDD+ project.⁷ In fact, as a key participant in the FCPF, the Government of Ghana is executing its Readiness Preparation Proposal (R-PP) concerning the REDD+ Readiness phase, and has solicited FCPF Readiness Preparation Grant to support the design of its REDD+ Strategy. This strategy seeks to remedy deforestation and degradation to ensure the reduction of greenhouse gas emissions into the atmosphere.⁸ Ghana's attempt to implement REDD+ involves

²Ghana REDD+ Strategy 2016-2035, p. 18.

³Ghana REDD+ Strategy 2016-2035, p. 64.

⁴Ghana REDD+ Strategy 2016-2035, p. 65.

⁵Arhin (2015).

⁶Abbey (2015), p. 11.

⁷Hajjar (2015).

⁸Forestry Commission of Ghana, 'Environmental and Social Management Framework for the REDD+ Mechanism in Ghana' (2016).

several stakeholders which are the ministry of lands and natural resources as the main responsible stakeholder with the forestry commission as the lead agency. They work in collaboration with the Environmental Protection Agency, the Districts/Municipal and Metropolitan Assemblies as well as other actors and partners.⁹ However, there are challenges which exist regarding issues such as land and tree tenure, benefit sharing, carbon rights and weak forest law enforcement which are analysed. The challenges hinder the effective implementation of REDD+ in Ghana.

2.1 Land and Tree Tenure and Benefit Sharing

The forests of Ghana are classified into forest reserves, off-reserve forests, and plantations – state, communal, private and institutional plantations.¹⁰ Tenure rights over all trees or forest that naturally occur whether in forest reserves or outside forest reserves are vested in the Head of State in trust of the people. Naturally occurring forests are managed as resources on vested lands where the state has management rights whereas customary owners remain owners of the lands and its resources.¹¹ This makes the regime of land and tree tenure arrangements complex in Ghana as they distinguish between rights (use, ownership) associated with land and those over the resources on it (timber trees).¹² However, for non-state plantations and communal forests outside forest reserves, management is undertaken by the respective owners of the resources.¹³ The foregoing is reinforced by the Constitution of Ghana which though allows management of stool lands by customary laws,¹⁴ gives the state a considerable influence over the administration and management of those lands.¹⁵ Indeed, Article 267 section 1 of the 1992 Constitution of Ghana stipulates that customary lands in Ghana should be managed under customary laws. Article 267 sections 2 to 9 offer the widest influence in the administration and management of customary lands and even provide a formula for the collection of revenues that accrues from customary lands by state institutions.¹⁶ According to Henry et al., land and tree tenure issues are an obstacle to the implementation of REDD+ in Ghana.¹⁷ Regrettably, the legal framework underpinning this management framework is unclear as perceived by Asare et al. to be stumbling blocks for

⁹Forestry Commission of Ghana (2016), pp. 7–8.

¹⁰Agyei (2012), p. 29.

¹¹Agyei (2012), p. 29.

¹²Foli and Dumenu (2013), p. 12.

¹³Agyei (2012).

¹⁴Article 267(1), Constitution of Ghana.

¹⁵Articles 267(2)(3)(4)(5)(6)(7)(8) & (9), Constitution of Ghana.

¹⁶Articles 267(1)(2)(3)(4)(5)(6)(7)(8) & (9), Constitution of Ghana; see Agyei (2012), pp. 29–30.

¹⁷Henry et al. (2011), p. 131.

forest carbon projects in Africa.¹⁸ Apart from public lands where the state wields exclusive control over any benefits, with lands held by stools/skins (traditional authorities), or families or clans, timber trees that occur naturally belong to the state whether in reserves or areas outside reserves as established by section 16 of the Concession Act, 1962. However, a planter holds exclusive rights over the trees (access/use, management, alienation, exclusion) as espoused in the Timber Resources Management (Amendment) Act.¹⁹

Furthermore, the constitutional benefit-sharing arrangement excludes farmers and forest-dependent communities whose involvement is critical in reducing the rates of degradation.²⁰ The law does not recognise farmers as beneficiaries, a development which excludes them from harvesting revenue. Also, their consultation by the Stool in the off-reserves when concessions are being given over the trees on their farms, hardly happens.²¹ This situation is a disincentive to people to manage lands and contribute to REDD+ since efforts are not generally recognised.

2.2 *Deficit of Carbon Rights Protection*

According to Streck, ‘governments, indigenous and local communities, as well as private landowners can all earn carbon income for managing their land sustainably, but the carbon rights that they transact vary widely depending on the legal context’.²² Contrary to this, the existence of carbon rights in Ghana remains a myth. Carbon rights seem to be of less concern to authorities. The National REDD+ Secretariat has commissioned a working paper to assist the parliament with the legislation on carbon rights coupled with the efforts of the Ministry of Environment, Science, Technology and Innovation to address carbon rights as part of the National Climate Change Policy,²³ however, there is presently ‘no legislation in Ghana which pertains directly to carbon, meaning that ownership rights or exploitation rights cannot be stated with any level of certainty’.²⁴ Generally, the law does not specify rights that are associated with REDD+ projects including the rights of those who

¹⁸ Asare et al. (2013).

¹⁹ Timber Resources Management (Amendment) Act, 2002; Asare et al. (2013), p. 12.

²⁰ Osafo (2012) <<https://openknowledge.worldbank.org/handle/10986/27165>> (accessed on 18 February 2021), pp. 3–4.

²¹ Osafo (2012), p. 4.

²² Streck ‘Shades of REED+, The Right to Carbon, the Right to Land, the Right to Decide’ <<https://www.ecosystemmarketplace.com/articles/the-right-to-carbon-the-right-to-land-the-right-to-decide/>> (accessed on 17 February 2023).

²³ Ghana REED+ Strategy (2016-2035), p. 64.

²⁴ Asare (2013), <[http://www.itto.int/files/itto_project_db_input/3046/Technical/RED-PD093-12_Rev.3\(F\)_Progress-Report%2031-Jan-2014%20Annex2-Carbon-Rights-Ghana.pdf](http://www.itto.int/files/itto_project_db_input/3046/Technical/RED-PD093-12_Rev.3(F)_Progress-Report%2031-Jan-2014%20Annex2-Carbon-Rights-Ghana.pdf)> (accessed on 11 February 2023).

may be eligible for incentives for forest conservation or restoration.²⁵ Rights in this context can only be inferred from the law on land, forests and natural resources.²⁶ In this case, claiming the right to carbon in Ghana raises the question of carbon ownership which by law entitles the state with this right. The state owns public lands, and resources from both public and private lands (naturally occurred) belonging to it. By this, the rights to forest resources especially the deriving commercial rights and their effective management are entitled to the state.²⁷ Despite the distinction between naturally occurring trees and planted trees, the state is entitled to commercial rights on the former. It remains, however, a statutory offence to harvest in the reserves or off-reserves without the state's authorisation. On the other hand, there has been a reform on the rights to planted trees to ensure afforestation, reforestation and private plantations.²⁸ Moreover, the amendment of section 4(3) of the Timber Resource Management (Amendment) Act, 2002 (Act 617) has scrapped the timber rights of the state over privately owned forest plantations and land with grown trees.²⁹ For a successful implementation of REDD+, such benefits should be extended to indigenous communities and farmers whose buy-in is critical to the success of REDD+ implementation in Ghana.

2.3 *Weak Enforcement of Laws*

Weak enforcement remains a key challenge that hinders the implementation of REDD+ in Ghana. In fact, there is 'weak enforcement of forest policy and governance, including poor regulatory mechanisms, excessive central control, rights regimes and conflicting government policies'.³⁰ In the case of REDD+ implementation, the role of the Ghana Forestry Commission appears crucial. It is tasked with regulating the utilisation of forest and timber resources, managing forest reserves and protected areas, providing assistance to the private sector; developing forest plantations to help restore degraded forests and expanding national forest cover and increased production of industrial timber.³¹ Indeed, these core functions of the Commission are critical to help reduce emissions from deforestation and degradation, emissions through the role of conservation, sustainable forest management and enhancement of carbon stock.³² Regrettably, deforestation and degradation are

²⁵ Agidee (2011).

²⁶ Ibid.; see also Ghana REED+ Strategy (2016–2035), p. 64.

²⁷ Osafo (2012).

²⁸ Osafo (2012).

²⁹ Timber Resources Management Act 617 (Amendment) Act, 2002.

³⁰ Ministry of Environment, Science, Technology and Innovation 'Ghana National Climate Change Policy' (2013), pp. 4–8.

³¹ Ayine (2008); Section 2(2) (a)–(d) Forestry Commission Act.

³² Asare and Kwakye (2013).

caused by low enforcement of regulations on off-reserve timber harvesting, farmers' rights as well as farmers' share of financial benefits.³³ According to Bamfo, the failure of logging companies to adequately compensate owners of farms make the latter illegally fell the trees before they are harvested by the former who also damage their farms.³⁴ This runs parallel with the view of Magdy Martínez-Solimán, the Assistant Secretary-General of the United Nations who posits that the provision of incentives, including fiscal incentives, can positively influence behavioural change to address systemic challenges caused by drivers of deforestation and forest degradation.³⁵ Besides, the legal requirement by the state through the Social Responsibility Agreement which enjoins logging companies to allocate 5% of the revenue accrued from harvested timber for the provision of social amenities such as schools, clinics and facilities for the concerned communities,³⁶ has not been fully and effectively enforced.³⁷ This does not discourage farmers from illegally felling trees since they receive no incentives. In instances where funds were given to Stools for the above provisions, they were misused by the Stool and not spent on the communities.³⁸ Moreover, the consultation of farmers by the Stool in the off-reserves when concessions are being given over the trees on their farms, rarely takes place.³⁹ Besides, proceeds from exploiting natural resources from state managed forest reserves as well as the off-reserve forests are distributed between the state and beneficiaries, namely the Stools and the Traditional Authorities, Office of the Administrator of Stool Lands (OASL) and the District Assemblies.⁴⁰ The monopoly of the state over the commercial rights from harvesting natural resources does not only increase carbon emission but discourages individuals whose actions can cause more degradation. This state of affairs coupled with the failure of logging companies to honour their contractual obligations and provide the needed social amenities by way of incentivising farmers and indigenous communities is tantamount to the failure of the Forestry Commission which is mandated to ensure that the above obligations are met.

³³ Hansen et al. (2009), p. 439.

³⁴ Osafo (2012), p. 4.

³⁵ Opening Remarks by Magdy Martínez-Solimán: Launch of National REDD+ Strategies for Ghana, Nigeria and Uganda, COP23, November 17, 2017 <<https://www.undp.org/content/undp/en/home/news-centre/speeches/2017/launch-of-national-redd%2D%2Dstrategies-for-ghana%2D%2Dnigeria-and-ugand.html>> (accessed on 23 February 2021).

³⁶ Section 13(1) (b), Timber Resource Management Regulation, 1998.

³⁷ Osafo (2012), p. 4.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Article 267(6), Constitution of Ghana.

3 The Parliament as a REDD+ Agency

Parliaments play a key role in democracies. They are governmental bodies in which the will of the citizens is metamorphosed into the will of the state through laws with greater legal force next to the Constitution.⁴¹ By this, the parliament translates the demands of the citizens into authoritative laws/statutes. Central to the functions of the parliament are lawmaking, representation, budgetary control and executive oversight which sustain the life of a democracy.⁴² While these functions are crucial to the functioning of democracy, this chapter focuses on the lawmaking and oversight functions of the parliament and the extent to which they can help implement REDD+ in Ghana.

3.1 *The Lawmaking Powers of the Parliament and REDD+*

Lawmaking is a process through which the parliament attempts to find solution to societal problems. Indeed, the parliament weeds out social problems and issues, examines them, considers views from experts and the general public which help them formulate or approve policies, which policies are implemented within the framework of the law designed to solve the problems.⁴³ By virtue of its lawmaking functions, the Parliament of Ghana can make legislation on natural resources rights to encourage communities, individuals or entities whose actions and inactions can help reduce emissions from deforestation and forest degradation. This will not only end illegal logging but help preserve forest reserves to reduce emission of carbon and mitigate climate change. This ability of the parliament is critical to the realisation of REDD+ in Ghana since it will allow legislators to come up with natural resources rights including carbon rights for the best interest of their constituents and the entire country. Such a law should be accompanied by a clear-cut benefit-sharing formula which will empower beneficiaries of this right to know and claim what would be due to them.

Legislating on natural resources rights will therefore compel the state to determine whether carbon is a natural resource or an ecosystem service of storage. The parliament can in this case legislate on carbon rights for massive participation of farmers and communities to ensure effective implementation of REDD+ in Ghana. The parliament may consider the views of scholars who think that the lack of legal and regulatory clarity will jeopardise any REDD+ activity or transaction. To them, ‘clarifying carbon and the rights attached to carbon-based assets is critically

⁴¹ Bogdanovskaia ‘The Legislative Bodies in the Law-Making Process’ <<https://www.nato.int/acad/fellow/97-99/bogdanovskaia.pdf>> (accessed on 28 January 2023).

⁴² Beetham (2006); Nxele et al. (2014) Hudson & Wren (2007).

⁴³ Saiegh (2005) <https://www.researchgate.net/publication/228471685_The_Role_of_Legislatures_in_the_Policymaking_Process> (accessed on 25 January 2021); Sebastian (2005).

important to the implementation of REDD+'.⁴⁴ For instance, Osafo and Abrokwa propose two ways by which carbon can be potentially characterised, namely as an ecosystem service of storage or sequestration or a natural resource.⁴⁵ According to the authors, qualifying carbon as an ecosystem service gives value to the carbon stored in the forest and tree biomass or sequestered from the atmosphere through photosynthesis (sequestration). In this register, the state could vest the right to carbon in the owners of the trees that generated the carbon to encourage afforestation and forest conservation.⁴⁶ The right to carbon may be associated with the right to the tree and allocate to either the landowner or to the tree owner, depending on whether it naturally occurred or was planted.⁴⁷ On the other hand, carbon can be defined as a natural resource where it will be treated like commodities such timber or minerals and benefit from rules on ownership and benefit-sharing.⁴⁸ Although as a natural resource the state would be vested with the rights to carbon, since it enjoys commercial rights of natural resources on both public and private lands, other stakeholders such as farmers and land users will support the REDD+ project. Passing a legislation of this nature will increase the rights of the beneficiaries to their natural resources. In fact, this can be championed by the Parliamentary Sub-committee on Natural Resources which is well acquainted with matters of natural resources rights that may be associated to them.

However, not only should there be a new legislation which ensures carbon rights but enforcing agencies particularly the Forestry Commission should be strengthened. This, according to Hansen et al., will help protect farmers' rights and their resource claims.⁴⁹ In performing its lawmaking duty, the parliament can ensure that bills or legislation on forest management that enter the House for review and approval reflect the interest and wishes of Ghanaians in general and particularly their constituents to elicit their contributions for the implementation of REDD+.

In this case, the parliament can make the lawmaking process participatory by engaging their constituencies or the public in the consideration and review of draft laws that are before the House for consideration.⁵⁰ Since a draft law within the parliament normally goes through many stages of review including 'readings' or debates within the plenary sessions of the House, parliamentary committees may organise a public hearing for interested people, stakeholders, subject experts and civil society to make inputs on specific aspects of the entire content of a draft law.⁵¹

⁴⁴ Asare (2013), p. 10.

⁴⁵ Osafo and Abrokwa (2012).

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Hansen et al. (2009), p. 439.

⁵⁰ Deveaux and Rodrigues 'Parliament's Role in Implementing the Sustainable Development Goals' 48. <<http://www.cpahq.org/cpahq/cpadocs/SB%20Session%204%20Parliament%20and%20SDGS.pdf>> (accessed on 5 February 2021).

⁵¹ Deveaux and Rodrigues.

This process demonstrates the participation of Ghanaians in decisions that affect their lives which can facilitate the implementation of REDD+ in Ghana. It will allow communities whose actions can cause deforestation and forest degradation and who can also support REDD+ implementation express their concerns. This unique and critical ability of the parliament is postulated as a means to support the implementation of REDD+ project in Ghana for it permits the House to amend laws that are unclear particularly natural resources rights and specifically carbon rights. This critical ability of parliament is complemented by its oversight powers.

3.2 The Oversight Powers of the Parliament and REDD+

The exercise of executive oversight is another critical role of the parliament which can be used to make significant impact on society especially with the implementation of the REDD+ project in Ghana. Pelizzo and Stapenhurst distinguish between effective oversight and oversight potential. The former denotes the ability of the parliament to oversee the government's actions and activities to impact not only the political system but the government's behaviour while the latter points out the formal existence of powers and tools of the parliament to undertake its oversight functions.⁵² This makes parliamentary oversight an 'eye witness' of the executive's actions outside of their discretion. The Parliament of Ghana does not only have potential oversight but effective oversight as well. An effective use of oversight tools would therefore help implement the REDD+ project in Ghana.

The oversight powers of the parliament can, therefore, be used to ensure that the laws of Ghana related to the management of forests, the rights of farming communities and land users are respected and their due benefits given to them and the associated rights protected. Second, the parliament can put in place an accountability mechanism through its oversight powers. This will keep the Forestry Commission on its toes as far as management of any forest in Ghana is concerned. The relevant parliamentary committee can also monitor the work of the Forestry Commission and ensure that their constitutional duties are discharged to ensure the benefits of the state without affecting the interests and benefits of the people.

The oversight of the parliament over the Executive appears crucial in realising REDD+ project. Given that the implementation of policies and legislation remains a prerogative of the Executive, the parliament in its oversight role is to ensure that the monies released to Ministries, Departments and Agencies (MDAs) for the implementation of REDD+ projects are spent on the intended projects to fight climate change. In addition, the parliament can monitor and evaluate the financial activities of the MDAs in relation to REDD+ and ensure that projects and programmes undertaken by the MDAs towards promoting REDD+ are done within the law.

⁵²Pelizzo and Stapenhurst (2006) <http://ink.library.smu.edu.sg/sooss_research/130> (accessed on 5 February 2021).

Furthermore, the parliament can see to it that farmers are consulted by the Stool in the off reserves when concessions are being given over the trees on their farms. They can also monitor and ensure that logging companies comply with the Social Responsibility Agreement (SPA) which enjoins them to allocate 5% of the revenue accrued from harvested timber for the provision of social amenities such as schools, clinics and facilities for the concerned communities. This intervention of the parliament appears critical in realising REDD+ in that, it can ensure that the projects for which funds have been approved and released to promote REDD+ and climate change are physically executed to create a safe and conducive environment. Besides, Members of Parliaments (MPs) can undertake site visits to monitor the progress of activities of the MDAs regarding REDD+ and ascertain that all actors whose actions promote REDD+ are treated fairly.

4 Conclusion

This chapter sought to explore the role that can be played by the Parliament of Ghana in the implementation of REDD+. It argued that by means of its legislative and oversight powers, the lawmaking institution can significantly help implement this initiative to mitigate the effect of climate change in Ghana. It was evidenced by the fact that the lack of natural resources rights particularly carbon rights and the weak enforcement of forest laws in Ghana are problems that can be solved by the parliament through their above-mentioned powers. As far as its legislative power is concerned, it exclusively falls under the purview of the parliament to make new or amend existing laws. Thus, by its lawmaking powers, the parliament can make legislation on carbon rights or amend existing laws on forest management in Ghana to include these rights. This power of the parliament is critical to the implementation process of REDD+ because it allows the institution to legislate on natural resources rights which will not only clarify eligibility criteria to benefits or incentives associated with these rights but will encourage farming communities and land users to help reduce carbon emission and preserve forest reserves. To this end, it can be precise whether carbon is a natural resource or an ecosystem service of storage by clearly making a distinction between naturally occurring trees and planted trees. On the other hand, the parliament's oversight power allows the institution to complement government's efforts to strengthen forest laws and protect natural resources rights. By means of its oversight powers, the parliament can use its relevant committee to monitor the work of the Forestry Commission, hold the Commission accountable to ensure an effective implementation of forest laws in Ghana.

The role of the Parliament of Ghana cannot be underestimated. It is therefore recommended that the parliament be included as one of the key stakeholders in charge of the implementation of REDD+. The parliament should therefore be proactive regarding what it can do to facilitate REDD+ implementation. First, the parliament in the performance of its legislative function should make provision for

carbon rights to ensure that all benefits due to farmers and land users are given to them. This will discourage them from illegally using the forest. Second, the relevant parliamentary committee should serve as an accountability mechanism to check on the work of the Forestry Commission and ensure that their constitutional mandate is discharged within the law. Third, parliament should create an avenue for land users, farmers and other potential beneficiaries of carbon rights to channel any complaints.

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Clement Agyemang is currently an Academic Tutor and Doctoral Candidate at the Centre for Human Rights, Faculty of Law, University of Pretoria. He holds an MPhil Human Rights and Democratisation in Africa from the University of Pretoria, South Africa; and a Bachelor of Arts in Political Studies from Kwame Nkrumah University of Science and Technology, Ghana. His research interests are human rights, right to development, constitutionalism, parliament and democratisation.

REDD+ and the Rights and Forest Crimes Mix in Nigeria



Olaoluwatofunmi Tabitha Bamgbose and Ademola Oluborode Jegede

Abbreviations

| | |
|--------|--|
| CCA | Climate Change Act |
| EIA | Environmental Impact Assessment |
| FEPA | Federal Environmental Protection Agency |
| LFTZ | Lekki Free Trade Zone |
| LUA | Land Use Act |
| NAPP | Nigeria Agricultural Promotion Policy |
| NECBFO | National Environmental Control of Bush, Forest Fire and Open Burning |
| NESREA | National Environmental Standard and Regulations Enforcement Agency |
| NFAP | National Forestry Action Programme |
| NPSA | National Park Service Act |
| UNFCCC | United Nations Framework Convention on Climate Change |

O. T. Bamgbose (✉)

Department of Public Law, Faculty of Law, University of Lagos, Lagos, Nigeria

e-mail: otbamgbose@unilag.edu.ng

A. O. Jegede

Ismail Mahomed Centre for Human and Peoples' Rights, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa

e-mail: ademola.jegede@univen.ac.za

1 Introduction

Reducing Emissions from Deforestation and forest Degradation, the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) is an initiative of the United Nations Framework Convention on Climate Change (UNFCCC).¹ Forest preservation and management is the crux of the REDD+ campaign because next to the energy sector, deforestation and forest degradation contribute the largest to greenhouse emission.² The REDD+ initiative encourages conservation and includes compensation for lowering greenhouse emissions.³

Nigeria is one of the developing nations involved in the REDD+ agenda and thus far, progress has been made.⁴ Cross River State was selected as the pilot state in the planning and implementation of the REDD+ agenda, paving the way for other states to follow suit.⁵ The idea of extending the REDD+ agenda to other states within the country is a wheel in the right direction.⁶ However, there are many setbacks to its successful implementation. These include, urban expansion, infrastructural development, mining and oil explorations, charcoal production, animal grazing and other agricultural activities, among other socio-political challenges.⁷ There are also socio-political factors such as gaps in the relevant laws, criminal activities such as illegal wood logging,⁸ kidnapping and terrorism, which have contributed to the loss of forest resources in Nigeria.⁹ The government in the past few years has battled with insecurity issues in the country as criminals use the forest as hideouts.¹⁰ Illegal sale of woods, construction of shelter as hideouts, and destruction of forest environment by weapons of war, amongst other criminal activities, pose an enormous threat to the preservation of forest resources in Nigeria.¹¹ This chapter examines key developments in relation to the implementation of REDD+ in the context of how existing legal framework relating to key rights of forest dependent populations and crimes may apply in Nigeria.

¹ UN-REDD Programme Collaborative Workspace *about REDD+* (2016).

² Ibid. See also Jegede 'Climate Change Regulatory Framework'.

³ UN-REDD Programme Collaborative Workspace *about REDD+* (2016).

⁴ Matakala (2016).

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ See the ICCA Consortium on *Alert: Ekuri Community Confronts Illegal Logging in Their Customary Forest in Nigeria* (2021); World Rainforest Movement on *Forests to the highest bidder in Nigeria: how REDD proves unable to stop deforestation* (2016); Daily Post on Nnimmo Bassey: *Halt the assault on the Ekuri Community and other forests* (2016).

⁹ Ikuomola et al. (2016), pp. 141–153.

¹⁰ Ladan (2014), pp. 12–142; see The Conversation on *How poor management of Nigerian forests led to exploitation by criminals* (2018).

¹¹ Ibid.

2 Implementing REDD+ and Projected Benefits

Nigeria has one of the highest rates of deforestation in the world, with more than half of its forest lands destroyed.¹² The REDD+ initiative commenced in Nigeria with Cross River State as the pilot state in 2009, with the view of addressing this trend and contribute to global efforts in mitigating climate change.¹³ Cross River State was chosen as the pilot state because it has the largest expanse of forest reserve in Nigeria, which has been threatened by the high level of exploitation by drivers of deforestation.¹⁴ The Cross River State government showed interest and willingness to introduce the REDD+ initiative because of its win-win approach.¹⁵ The introduction of the REDD+ initiative is to generate financial support in the preservation and management of forest resources and improve the standard of living by providing environmentally sustainable practices for the local community who depend on the forest.¹⁶ One of the visions of Conference of Parties (COP) for the REDD+ initiative is to ensure that all forest management stakeholders are involved, especially, the local community where the REDD+ project is being executed. It is mandated that any developing country embarking on the REDD+ project must provide evidence that the local community is carried along and no form of human right violation is involved in the implementation of the REDD+ goals.¹⁷ Hence, REDD+ is conceived as a tool of climate mitigation within which the interests and benefits of local populations should enjoin substantial consideration.

At the planning stage which is the first step in integrating the REDD+ goals in Nigeria, stakeholders were consulted, a target location was also identified,¹⁸ while the department of climate change under the Federal Ministry of Environment in Nigeria was saddled with the responsibility of implementation.¹⁹ However, deforestation is still a major challenge because of the fast growing demand for agricultural produce in the country.²⁰ Apart from the energy sector, the agricultural sector plays a significant role in the economy of Nigeria, which unfortunately is a key driver of

¹²Ibid. See also The Federal Republic of Nigeria's REDD+ Readiness Preparation Proposal (2013).

¹³UN-REDD Programme Collaborative Workspace Nigeria (2011).

¹⁴United Nations Development Group *Nigeria REDD+ Readiness Programme* (2018).

¹⁵Ibid.

¹⁶Ibid. See also Kukharave, *Latest FREL Submission Shows Nigeria's Progress on Monitoring Forest Resources* UN-REDD Programme Collaborative Workspace (2019); The Global Legislators Organisation, '*REDD+: The Nigerian Experience*'.

¹⁷Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (Framework Convention on Climate Change, Report of the Conference of the Parties on its sixteenth session, held in Cancun (2010).

¹⁸Federal Ministry of Environment, Nation REDD+ Programme, National Strategy for Nigeria REDD+ Programme.

¹⁹Ibid.

²⁰See Vanguard by Abubakar on *World Environment Day: Nigeria's Deforestation Rate Alarming – Environment Minister* (2021).

forest degradation.²¹ Other drivers of deforestation include overpopulation, infrastructural development, forest crimes, poverty, and urban movement.²² Overpopulation leads to a higher demand for food, electricity, and shelter, which indirectly affects land use and forests.²³ Urbanisation leads to infrastructural development and expansion. The government responds to the socio-economic needs of its citizens by expanding the various means of transportation, new roads, airports, railways to better serve the citizens.²⁴ Low standard of living contributes to the high reliance on forest resources leading to deforestation and forest degradation.²⁵ About half of the Nigerian population lives below the average standard of living and cannot afford to use environmentally friendly technologies to survive.²⁶ They rely on forest resources for their livelihood.²⁷

An effective implementation of REDD+ is dependent on the protection of the populations who are dependent on forests for livelihood and the safety of the forests for live sustaining activities. The extent to which these are recognised in the implementation of REDD+ in Nigeria is the focus of the next section.

3 Factors Inhibiting REDD+

This section of the chapter discusses salient issues that are impeding the successful execution of the REDD+ initiative in Nigeria. Generally, concerns have been raised regarding the violation of rights of local populations in the context of REDD+.²⁸ In addition, the high level of insecurity in Nigeria, and the use of forest areas to perpetuate crime may affect the Nigerian government's plans in conserving and managing what is left of Nigeria's forests. The ensuing sections engage with these issues.

²¹ See the Guardian by Falaju on *FAO Raises Concern Over Deforestation in Nigeria* (2020).

²² Matakala (2016).

²³ Food and Agriculture Organisation of the United Nations, *The Future of Food and Agriculture: Trends and Challenges* (2017); Hannes and Sciubba (2018).

²⁴ Ibid.

²⁵ Ladan (2014); A Survey Report by the Nigerian National Bureau of Statistics (in collaboration with the World Bank) 2018/2019 report; Nigeria Multidimensional Poverty Index (2022).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Barletti and Larson (2017); Friends of the Earth International (2017) *REDD+: The Carbon Market and California-Acre-Chiapas Cooperation: Legalizing Mechanisms of Dispossession*.

3.1 *Local Populations' Rights*

The REDD+ initiative was borne out of good intention to mitigate the high level of green gas emission into the atmosphere with its focus on developing countries. REDD+ programme is, however, implemented in developing countries where large populations live below the average standard of living, rely extensively on forest resources to survive and suffer weak land laws that are not favourable to the local communities.²⁹ Nigeria is a developing nation and report shows that a large percentage of its populations live in poverty and depend on forest resources to provide food, shelter and other domestic items,³⁰ and in rural areas surrounded by forests.³¹ Implementing the REDD+ initiative would require the government to respect the right of communities to the use of forest resources which they depend on. Ignoring the interests of such populations to explore specific lands raises the issue of violation of citizen's right to acquire and own immovable property anywhere in Nigeria, under Section 43 of the 1999 Constitution of the Federal Republic of Nigeria, as amended (the Constitution). The enjoyment of this right may be trumped by the application of Section 44 of the Constitution which provides instances and the process in which the government may acquire land already owned by citizens. Section 44(2) (f) of the Constitution specifically gives the government the right to take over land where the safety of humans, plants or animals is being threatened. The revocation of the right to land of those who depend on forest resources for their means of livelihood without proper compensation, may not only violate their rights to acquire and own immovable property anywhere in Nigeria, but ultimately undermine their rights to life.³²

The possibility of displacing local populations or forest dependent communities is real in the context of REDD+ as there is evidence of such approach in previous projects unrelated to forests. For instance, the Nigerian government has been accused in many cases of taking over land without adequately compensating the communities affected while creating the Lekki Free Trade Zone (LFTZ),³³ The communities affected were promised alternative land for their use but for many years the government failed to properly settle them.³⁴ In the course of demanding for compensation to be made by the Lagos state government and the developers of the repossessed land, conflict arose resulting in the loss of life of one of the key players

²⁹ Ibid.

³⁰ See footnote 25.

³¹ See footnote 25.

³² Right to life provided for in Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended).

³³ See Nigerian Tribune on *Lagos communities protest non-compensation for Lekki Free Trade Zone lands* (2016); See Sahara Reporter on *Ibeju-Lekki Land Grab: Community Accuses Companies Of Illegal Trespassing, Brutalization of Land Owners* (2015).

³⁴ See The Nation on *Lagos Communities Seek Compensation For Lekki Free Trade Zone Land* (2016).

of the acquiring company.³⁵ Earlier, when the military government took over power in 1985, it repossessed the land of a community in Shangisha Magodo on the ground of public interest, but did not develop the public interest project, for which it was set aside.³⁶ The affected communities were not adequately compensated. The aggrieved parties took the matter to the court of law, and judgement was given in their favour, over 30 years later.³⁷ The issues of Nigerian state government acquisition of land, is not only a problem in Lagos state, reports show that communities in other states have faced similar issues.³⁸ As a result of the above trend, the possibility of dispossessing communities of their land in a bid to ensure REDD+ project raises a very huge concern.

3.2 *Forest Crimes as a Challenge*

Under Section 1 of the Land Use Act (LUA), all land including forests within a state is under the control of the government. By implication, the Nigerian state governments are saddled with the responsibility to put the necessary machineries in place to ensure that the forest areas within their states are preserved and secured. Many of these forests were originally reserved by the Nigerian government as national parks and game reserves and conservation centres; however, for many years these forests were not managed properly resulting in such areas being ungoverned.³⁹ It is argued that ungoverned areas are likely targets for insurgent takeovers and criminal activities, and this is a regular feature in Nigeria forests.⁴⁰ Forest resources which have contributed to the wealth and means of livelihood for people in Nigeria are currently the ‘safe haven’ for insurgent groups, criminal herdsmen, armed robbers, drug dealer and kidnappers.⁴¹ Forests are used as shelter, hideouts, and detention camps for kidnapped victims by nefarious individuals and entities. A major reason that criminal activities have thrived in forests is the lack of security presence and neglect of

³⁵ See Sahara Reporter on *Lekki Free Trade Zone MD Killed In Land Fracas In Lagos* (2015).

³⁶ See Channels by Idowu on *Magodo Dispute: Lagos Military Gov Took Over, Allotted Our Lands To Eminent Citizens – Landlords* (2022).

³⁷ See Premium Times by Adelagun on *Magodo: Lagos govt to compensate Shangisha landlords with 549 plots* (2022).

³⁸ See Amnesty International on *Nigeria: Just move them: Forced evictions in Port Harcourt* (2010); Ebeku (2002), pp. 201–231.

³⁹ See the Punch by Hanafi on *Criminals Invasion of Nigeria’s Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021).

⁴⁰ Olaniyan (2017), pp. 2–5; Brand Spur on *Forests of Violence: Ungoverned Spaces* (2021).

⁴¹ Ibid. See also Hanafi, *Criminals Invasion of Nigeria’s Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021).

forest areas by the state governments.⁴² The forest guards who are meant to protect the forests are very few and ill-equipped to fight these non-state criminal actors who have taken over the forests and many have retired without new members being recruited, thereby resulting in shortage of staff.⁴³ The invasion of the forests by criminals is a problem ravaging the six geo-political zones in Nigeria which has led to loss of lives, property, displacement of communities living near these forest areas, deforestation and forest degradation.⁴⁴ Many of the forests in Northern Nigeria such as Sambisa, Birnin Gwari, Balmo, Falgore, Kabakawa forest reserves, Idu and Gwagwa forest reserves, Kagoro, Kamuku and Rumah/Kukar Jangarai forest reserves, have been at some point occupied by the Boko Haram insurgent group, cattle rustlers, criminal herdsmen and other criminal gangs that have taken advantage of the high insecurity in the region.⁴⁵ The deplorable state of security in Nigeria and the high rate of crime experienced by those who live around affected forests, led to the meeting of state governors in the South-South, South-West and South-East to discuss immediate solutions for their different states.⁴⁶

The insurgent groups and other criminals take advantage of the fact that the forests are very vast and state security does not have sufficient data on the demography of the terrain.⁴⁷ It has become very difficult for the government to tackle suspected criminals who over the years have mastered the terrains of the forest and lay ambush for security personnels who venture into the forest to chase them out.⁴⁸ The presence of suspected criminals in the forest has great adverse effect on the forest reserves. Deforestation activities are carried out to expose these criminal hideouts and camps.⁴⁹ Deforestation becomes a repeated cycle because forest crime suspects from time to time have to change location in the forest due to the hot pursuit by state security personnel. Forest resources are exploited to fund insurgency and other criminal activities in the forests through illegal wood logging, open grazing of abducted cattle's obtained from cattle rustling activities, clearing of land to grow illegal marijuana and cannabis.⁵⁰ In some instances, the government is forced to engage in deforestation activities and degazetting of forest reserve to expose the hideouts.⁵¹ Deforestation has been suggested to be a method of

⁴²Olaniyan (2017), pp. 2–5; Brand Spur on *Forests of Violence: Ungoverned Spaces* (2021); Hanafi, *Criminals Invasion of Nigeria's Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021); Godwin et al. (2021).

⁴³Ibid. See also Ikuomola et al. (2016), p. 150; Ladan (2014).

⁴⁴Daily Trust on *Inside Nigeria's Forest of Death* (2016).

⁴⁵Ibid. See also Ladan (2014), p. 132.

⁴⁶Premium Times by Oyenji on *Insecurity: Enugu recruits 1,700 forest guards* (2019); Punch by Oyeleke, on *South-West Govs Meet in Lagos Over Insecurity, Others* (2021).

⁴⁷Hanafi, *Criminals Invasion of Nigeria's Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021); Ladan (2014), p. 133.

⁴⁸Ibid.

⁴⁹Ladan (2014), p. 137.

⁵⁰Olaniyan (2017), p. 4.

⁵¹Ladan (2014), p. 133.

discouraging suspected criminals lurking in the forest while further suggestions have been made to the government to establish Nigerian Army stations in these forests.⁵² The above suggestion of clearing out a part of the forest areas, may appear logical to combat the insecurity ravaging the nation, however, the environmental implications will be very grave in the long run. The high prevalence of forest crimes in Nigeria raises concern on a number of human right issues such as right to life,⁵³ right to dignity of human persons,⁵⁴ right to personal liberty⁵⁵ amongst other rights. As a result of the criminal activities being perpetuated in that sector, many lives are being lost.⁵⁶ There are reports of the inhuman treatments experienced by the captives of kidnapers and bandits.⁵⁷ Victims of forest crimes are tortured, raped, married-off, or sold as slaves.⁵⁸ Furthermore, forest crimes have caused a setback in the efforts of the Nigerian government to ensure its reduction in carbon emissions and preservation of the already depleted forests.

With the current high rate of forest crimes in all regions in Nigeria, the implementation of the REDD+ initiative has been a huge task. Not only due to the persistent degradation of the forest reserve but also due to the insecurity for stakeholders who will need to venture into the forest at intervals to assess compliance with the REDD+ vision. One of the objectives of REDD+ is the participation of the local community members in the implementation of its initiative, however, many of these communities have been displaced because of the incessant raids, kidnapping, and killing of their people by the insurgency groups and other criminal groups.⁵⁹ Nigerian government officials struggle to navigate through the forests without the help of the local people who are familiar with the terrain.⁶⁰

⁵² Vanguard on *Army to set up new base in Kano deadly forest* (2017); Premium Trust on *Boko Haram: Nigerian military begins road construction in Sambisa Forest* (2018); Vanguard by Ewepu on *Kidnap of 40 Zamfara Farmers: AFAN President Calls for Bulldozing of Forest* (2020); Ewepu, *AFAN President Calls for Defoliation of Forests to Reduce Banditry* (2021); Hanafi, *Criminals Invasion of Nigeria's Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021).

⁵³ See Section 33, 1999 Constitution of the Federal Republic of Nigeria as Amended.

⁵⁴ *Ibid.*, Section 34.

⁵⁵ *Ibid.*, Section 35.

⁵⁶ Vanguard by Johnson on *Tortured Ondo kidnap victim dies two weeks after release* (2022); The Cable by Owolabi *INSIDE STORY: Raped, shot, tortured – the scarred survivors of banditry in northern Nigeria* (2022).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Vanguard on *10,000 N/East hunters gather, seek clearance to fight Boko Haram in Sambisa Forest* (2016).

4 Legal Framework on REDD+

This section examines the adequacy or otherwise of the existing legal framework for the protection of populations in the implementation of REDD+ Project. Before venturing to the discussion of the legal framework, it is important to note from the onset of the discussion that there are key institutions established by relevant laws that have role in the implementation of REDD+. Pursuant to the Fundamental Objectives and Directive Principles of State Policy in the Constitution, a number of bodies have been established with mandates on the protection of the environment. For instance, the National Environmental Standard and Regulations Enforcement Agency (NESREA)⁶¹ was established under Federal Ministry of the Environment to replace the Federal Environmental Protection Agency (FEPA). NESREA is empowered to enforce compliance with the provisions of international agreements, protocol, conventions, and treaties on environment.⁶² NESREA has the duty to protect and develop the environment, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology.⁶³ NESREA is anticipated to implement the environmental standards covering water quality, air quality, noise control and atmospheric protection.⁶⁴ NESREA also has authority to conduct public investigations on pollution and the degradation of natural resources and to submit proposals for the evolution and review of existing guidelines, regulations and standards on the environment to the Minister of the Environment for approval.⁶⁵ The law further enables the agency to serve as mobile court for environmental defaulter.⁶⁶ It provides the legal framework for REDD+ to work with as it has been empowered by Sections 7 & 8 of the NESREA Act to oversee matters relating to the preservation of the environment and enforcement against defaulters. However, the foreseeable problem that can impede the successful implementation of the REDD + initiative is in the enforcement of the provisions of the NESREA Act. The Act is weak in terms of enforcement. For instance, Section 26 of the Act provides that 'a person who violates the regulations commits an offence and shall on conviction, be liable to a fine not exceeding N200,00, or to imprisonment for a term not exceeding one year, for individuals, and N1,000,000 fine, for corporate institutions'. This is an avenue for the corporate institutions to violate environmental law with impunity, as

⁶¹ Act No. 25 of 2007.

⁶² Federal Ministry of Environment (Special Climate Change Unit) National Environmental, Economic and Development Study (NEEDS) for Climate Change in Nigeria (2010).; Section 7 and Section 8 of the National Environmental Standards Regulations Enforcement Agency (Establishment) Act No. 25 2007 CAPE 12 LFN, 2014.

⁶³ Ladan (2012), p. 116.

⁶⁴ S.1.9 of 1991.

⁶⁵ Section 8(g)(h).

⁶⁶ Section 8 (f), National Environmental Standards Regulations Enforcement Agency (Establishment) Act No. 25 2007 CAPE 12 LFN, 2014.

they can easily afford to do so in pursuit on activities that recklessly deplete environmental resources.

The Climate Change Act (CCA) provides for the basis of climate action to achieve Nigeria's short, medium, and long-term goals on climate mitigation and adaptation. Mostly applicable are the duties placed on public and private entities to encourage low carbon economy and sustainable livelihood, as well as the responsibility of the Council and its Secretariat to partner with relevant stakeholders, especially civil society organisations.⁶⁷ The Council is empowered to implement nature-based solutions to lessening GHG emissions and mitigating climate change matter in Nigeria.⁶⁸ The Federal Ministry responsible for the environment is required to set up a registry with sub-national nodes for capturing REDD+ activities in Nigeria.⁶⁹ Section 28 of CCA recognises REDD+ as it requires the National Council on Climate Change to offer fiscal support to REDD+. The CCA is, however, still new and it is not certain what the application of fiscal support may mean for populations in forests where REDD+ is implemented.

4.1 Constitutional Framework

In Nigeria there is no treaty between other countries and the federation that would be enforced without first being passed into law by the National Assembly.⁷⁰ Therefore without the legislative arm of government consolidating its current laws on forestry and the environment and if need be, creating new laws to align with the REDD+ initiative, and ultimately the Paris Agreement of 2015 in which Nigeria is a signatory, relevant treaties on REDD+ may not have the force of law.⁷¹ The state provides for the protection and improvement of environment and safeguarding of Nigeria's water, air, land, forest and wildlife,⁷² under Chapter II of the Constitution which are not legally enforceable in the event that the government fails to adhere.⁷³ Section 6 (6)(c) restricts judicial authorities from entertaining issues relating to Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution. The provision is no substitute for the right of local population to reside in a healthy forest as there is no constitutional guarantee on the right to healthy environment. Except for the environmental objectives which are explicitly stated and

⁶⁷ A Review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation | IUCN.

⁶⁸ Section 27.

⁶⁹ Section 28.

⁷⁰ Section 12, 1999 Constitution of the Federal Republic of Nigeria, as amended.

⁷¹ Section 12, 1999 Constitution of the Federal Republic of Nigeria, as amended.

⁷² UN-REDD Programme Collaborative Workspace *about REDD*.

⁷³ Okonkwo (2015), p. 178.

constitutional measures which are provided for their legal sanction, it is problematic to achieve the objectives of the state on the protection of the interests of populations who are forest dependents.⁷⁴

Section 34 of the Constitution confers the right to dignity of human person. The provision is highly significant in that it presupposes that the dignity of forest dependent populations ought to be a primary consideration in the implementation of REDD+. Section 20 of the Constitution provides that the government must ‘protect and improve’ the environment and makes further provision to ‘safeguard’ the forests in Nigeria. It is opined that forest crimes are a threat to the right of population to life and their socio-economic livelihood. Nigeria is a party to the African Charter on Human and Peoples’ Right 1981 (African Charter), which guarantees everyone the right to a favourable environment for existence. While it is not yet tested in relation to the protection of forests, the special nature of the African Charter is acknowledged in the popular case of *Gani Fawehinmi v Abacha*.⁷⁵

4.2 *Legislative and Policy Framework*

While there is a dedicated policy on forestry, the legal environment of REDD+ remains fragmented. An effective implementation of the initiative will require the harmonisation of the forestry content in the existing framework to enable local populations optimise their benefits from REDD+ in Nigeria. A number of legislation and policies are applicable to the governance of REDD+ in Nigeria. These are the Land Use Act,⁷⁶ National Forest Policy,⁷⁷ and National Environmental (Desertification Control and Drought Mitigation),⁷⁸ National Environment (Bush/Forest Fire and Opening burning),⁷⁹ Climate Change Act,⁸⁰ National Park Service Act,⁸¹ Environment Impact Assessment Act,⁸² Nigeria’s Agricultural Promotion Policy.⁸³

⁷⁴Ibid., p. 183.

⁷⁵(1996) 9NWLR, Part 475, p. 710.

⁷⁶Land Use Act, 1978.

⁷⁷National Forest Policy, 2020.

⁷⁸National Environmental (Desertification Control and Drought Mitigation) Regulations, SJ. No. 13, Gazette. No. 40. Vol. 98 of 3 May 2011.

⁷⁹National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, SI. No. 15 Gazette No. 42. Vol. 98 of 6th May, 2011.

⁸⁰Climate Change Act, 2021.

⁸¹National Park Service Act N65 LFN, 2004.

⁸²Environmental Impact Assessment Act, 1992.

⁸³Nigeria’s Agriculture Promotion Policy, 2016–2020.

The provisions of the Land Use Act (LUA) are sometimes used as the tool in depriving members of communities of their lands.⁸⁴ There are instances whereby the right to land may be bypassed without compensation on the ground of public interest.⁸⁵ A site-based project such as REDD+ may involve the revocation of right to land in the interest of the public and raise violation of fundamental human right concerns because of past experiences of populations affected by government sponsored projects. Also under the LUA which governs ownership and possession of lands, all legal rights to lands in Nigeria are vested in the states government.⁸⁶ However, before the enactment of the LUA, there was the customary land law in different regions of Nigeria that guided people on ownership and possession of lands in their communities.⁸⁷ The customary land law enables individuals, families and communities to own land.⁸⁸ These laws are recognised under Section 28 of LUA which does not only cover revocation of a statutory right of occupancy, but also a customary right of occupancy.⁸⁹ From the provision it can be inferred that it is not impossible for the government to revoke the customary right of occupancy of land of those occupying forest areas in the interest of the Public. In the case of *Aderonpe v Eleran*,⁹⁰ the Supreme Court held that the government empowered by Section 28 has the power to *revoke* a person's legal right to possess land in the interest of the public. Consequently, it may be argued that the Nigerian government have the right to acquire lands occupied by communities residing in forest areas in the interest of preserving forest reserves and ultimately creating a healthier environment. Under Section 28 of the LUA, there is no clear definition of public purpose. The lack of a definition has given the government the liberty to acquire lands at will.

Section 29 of the LUA provides that the government must compensate affected communities whose right to land has been revoked.⁹¹ Section 29 of the LUA has the backing of the Constitution in Section 44 which provides that anyone who has

⁸⁴ See Section 28 of the Land Use Act, 1978 which gives the government the power to revoke a statutory right of occupancy or a customary right of occupancy on the ground of public interests, amongst others.

⁸⁵ *Lagos communities protest non-compensation for Lekki Free Trade Zone lands* (2016); *Ibeju-Lekki Land Grab: Community Accuses Companies Of Illegal Trespassing, Brutalization of Land Owners* (2015); *Lagos Communities Seek Compensation For Lekki Free Trade Zone Land* (2016); *Lekki Free Trade Zone MD Killed In Land Fracas In Lagos* (2015); *Idowu Magodo Dispute: Lagos Military Gov Took Over, Allotted Our Lands To Eminent Citizens – Landlords* (2022); *Adelagun Magodo: Lagos govt to compensate Shangisha landlords with 549 plots* (2022); See 'Nigeria: Just move them': *Forced evictions in Port Harcourt* (2010); *Ebeku* (2002), pp. 201–231.

⁸⁶ Section 1, Land Use Act, 1978.

⁸⁷ Taiwo (2011), pp. 152–154.

⁸⁸ *Ibid.*

⁸⁹ See Section 28 (3), Land Use Act, 1978.

⁹⁰ (2019) 4 NWLR (PT 1661) (PARASE-F) P 163. S.C: See also *Lateju v Fabayo* [2012] 9 NWLR (PT1304) P177 PARA, D.

⁹¹ Section 29, Land Use Act, 1978. See also, Section 44 of the Constitution of the Federal Republic of Nigeria, 1991.

interest in immovable property must be compensated.⁹² A striking statement used in Section 44 (1) (a) is . . . *prompt payment of compensation*, which in reality, is never the case.⁹³ The provisions of the LUA are sometimes used as the tool in depriving members of communities of their lands.⁹⁴ It provides that any person whose right of possession has been revoked is entitled to the market value of the interest taking as at the date of revocation.⁹⁵ This provision does great disservice to persons whose interest in land has being revoked by the government, because of the delay in compensation.⁹⁶ REDD+ communities value forest use rights, because households or communities can benefit from having forest use rights in their areas, as it can provide incentives for them to protect forests and help to stop encroachment. However, Nigeria's REDD+ is organised around strict protection of forest by the state.⁹⁷ Rights of forest dependent populations cannot be achieved where the ownership of such resources largely rests in the state as the custodian and regulators of forest resources.

The National Forest Policy of 2006 facilitates and ensures conservation of the forests.⁹⁸ The implementation of this policy was influenced by the awareness that poor management of forest and forest resources can result in an increase of the concentration of greenhouse gases in the atmosphere, consequently causing increased global warming and climate change.⁹⁹ The National Forestry Policy (the Policy) encourages forest communities as stakeholders with the distinguished forest management efforts just like the new Cross River State forestry law.¹⁰⁰ The Policy covers issues such as livelihood and lessening poverty, food security, biodiversity conservation and environmental services.¹⁰¹ There is the National Forestry Action Programme (NFAP) adopted by the Policy which ensures the long-term sustainability and protection of forest management, while promoting collaborative and participatory development process, propelling private sector forestry development, including implementing an organised approach to forestry development. Programmes of forest industries, social forestry and forest management, promote Nigeria's forest cover growth for the varying climate mitigation and adaptation.¹⁰²

⁹² See Section 44 (1) (a).

⁹³ See footnote 85.

⁹⁴ See Section 28 of the Land Use Act, 1978 which gives the government the power to revoke a statutory right of occupancy or a customary right of occupancy on the ground of public interests, amongst others. See footnote 86.

⁹⁵ Land Use Act, 1978.

⁹⁶ See footnote 85.

⁹⁷ Asiyambi et al. (2017), p. 78.

⁹⁸ Obasa (2021).

⁹⁹ National Forest Policy (2006). Federal Ministry of Environment.

¹⁰⁰ Asiyambi (2016), pp. 146–156.

¹⁰¹ Federal Ministry of Environment (2010) Draft National Guidelines on CBFM, as a Policy Instrument for Sustainable Forest Management in Nigeria. Prepared by ODEE EN – Consultancy Services, Abuja.

¹⁰² Raimi et al. (2021).

The Regulations on Desertification Control and Drought Mitigation is aimed at creating an effective and practical regulatory framework for the sustainable use of all areas affected by desertification and the protection of susceptible lands,¹⁰³ through reforestation, reseeding, afforestation, conservation of areas under desertification or vulnerable to same, and rehabilitation of degraded lands.¹⁰⁴ The Regulations on Desertification Control and Drought Mitigation, however, provides for the felling of trees or cutting of branches, land clearing, earth disturbing activities, bush burning, grazing, cultivation of marginal land, amongst other degrading activities, with a permit,¹⁰⁵ and prescribes penalties for violation.¹⁰⁶ The provision of the law raises a big concern, due to the high level of poverty among forest dependent communities.¹⁰⁷ It seems unfair and a violation of the human rights of those affected, if alternative means of surviving are not provided.

The National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations, 2011 (NECBFO), aims at 'preventing and minimising the destruction of ecosystem through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants'.¹⁰⁸ Bush/forest burning and farmland clearing are some of the agricultural practices engaged in by farmers and hunters, and are known causes of forest degradation and deforestation in Nigeria.¹⁰⁹ The instrument appears to have provided for better ways of burning bush/forest (with permit),¹¹⁰ although there are penalties for noncompliance.¹¹¹ NESREA is the agency given the mandate to enforce the provisions of NECBFO as its focus aligns with an objective of the REDD+ initiatives on forest degradation and deforestation. Section 20 of NECBFO mandates an enforcement officer to make a report of all bush or forest burning incidences in the jurisdiction and transmit to the NESREA headquarters. However, there is no evidence of such linkage in Nigeria.

Section 28 of CCA provides the legal backing of the Nigerian government in the REDD+, therefore giving the initiative the legitimacy it needs to thrive in Nigeria. The enactment of the CCA appears to be a response of the state to climate change. It

¹⁰³S 2 (a) National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹⁰⁴S 2 (e) National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹⁰⁵S 7.

¹⁰⁶S 21 National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹⁰⁷See footnote 25.

¹⁰⁸S 1 National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011.

¹⁰⁹'Environmental Implication of Bush Burning in Nigeria' https://gfmc.online/media/2012-media/03-2012-media/news_20120303_ng.html.

¹¹⁰S 3(1 & 2) National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011.

¹¹¹*Ibid.*, S 21(3, 4, 5).

has been adjudged as a huge response in fighting the global effects of climate change. Also, the enactment of the CCA may have the potential to achieve the REDD+ initiative to mitigate the effect of climate change on our environment.¹¹² However, its few provisions on REDD+ need more amplification to set out its relevance to local populations.

National Park Service Act (NPSA) aims at sustainable wildlife management as it sets the restrictions for protection and use of wild animals.¹¹³ Park officials must have knowledge about laws regarding the park and the wild resources it holds because they have the duty to protect the parks' wild resources. Since park officials were previously poachers or rural dwellers of host communities having little or no formal education, it is essential to educate them on the existing conservation/wildlife laws.¹¹⁴ National Park Services Act (NPSA) makes provision for the conservation and protection of natural resources and plants in national parks.¹¹⁵ Report states that the national parks in Nigeria are being exploited by surrounding communities and other criminals, who use the resources in the parks for their own gain.¹¹⁶ Illegal wood logging activities are a regular rive in these national parks.¹¹⁷ The NPSA provides a legal framework for the preservation of Nigeria's national park, however, in reality, the law does not serve as a deterrence to its exploiters. The national parks are reported to be mismanaged due to lack of funding to better equip staff to protect the resources from exploiters.¹¹⁸ Also, remuneration of staff at national parks is too low to encourage diligence in the work, therefore yielding little or no enforcement of the law.¹¹⁹ The penalties in Section 37 of the NPSA is also weak to deter natural persons or corporate bodies from exploiting national park resources. The proper management of the national parks can generate income not only for the parks, but the communities living around it. The safeguarding of the national parks is one of the key interests of REDD+, as one of its financial incentives is that a participating country that has successfully implemented REDD+ objectives, is able to trade its carbon stock.¹²⁰ Similar to the objects of NPSA, it is the goal of the REDD+ initiative to improve the lives of communities that rely on forest resources, by introducing more sustainable environmental practices and educate them on the climate change and its effect on quality of life.

¹¹² See Section 1 of the Nigerian Climate Change Act, 2021: Food and Agricultural Organisation of the United Nations *REDD+ Reducing Emissions from Deforestation and Forest Degradation*; UNFCCC Decision 1/CP.16.

¹¹³ Morgera (2011).

¹¹⁴ Coker et al. (2020), pp. 37–43.

¹¹⁵ Mustapha (2022).

¹¹⁶ Ogunjinmi et al. (2017), pp. 25–30.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ *Cardamoms National Park Achieves Sustainable Financing from ReDD+ Carbon Offsets.*

Environmental Impact Assessment (EIA) Act is a recognised instrument of environmental law and policy intended to safeguard human activities that will cause adverse environmental impacts.¹²¹ EIA Act and its related policies tend to emphasise the impacts of plans/projects on the environment without examining the impacts of the environment on proposed plans/projects.¹²² EIA Act is usually utilised for projects and activities with capacity or potential to cause environmental impacts within the boundaries of a state, but environmental impact of projects are not limited to the boundaries of a state. It can go beyond the boundaries of an independent state to affect another state and when this happens it becomes trans-boundary environmental impact.¹²³ The main goal of the EIA Act is to ensure that possible environmental impacts are foreseen at the proper stage of project design and tackled before any decision is taken on the project.¹²⁴ The importance of EIA was endorsed in *Baytide Nigeria Limited v Aderinokun & Ors.*, where an issue raised by the respondent at the trial court was whether the claimant complied with the EIA Act while obtaining its approval to build a petrol station.¹²⁵ Section 12(1) of the EIA Act provides that agricultural projects covering more than a land mass of 500 hectares or displaces more than 100 households require an environmental impact assessment. Section 7 of the EIA Act envisages multi-stakeholder inputs for EIAs, giving room for stakeholder comments whilst Section 24 prescribes that the public will be notified of the availability of the report, and where it may be obtained.¹²⁶ The requirement of the EIA for projects that may heavily impact the environment serves as a legal tool to ensure that both government and its citizens maintain a healthy environment. If applied in the context of REDD+, there should be little or no doubt that illegal logging and other industrial projects which negatively impact on the forests may be preventable through the agency of EIA. However, the reality that activities which negatively impact forests continue signifies that the potentials in the EIA Act for forests conservation are not being maximised.

Nigeria Agricultural Promotion Policy (NAPP) is a policy intervention scheme for the agricultural sector. The policy is placed to increase the input and output to enhance the market of agriculture both locally and internationally.¹²⁷ The policy is governed by commitment of marketplace participants, farmers, states, investors, financial institutions, and communities.¹²⁸ The NAPP's vision is to be realised through a three-pronged method: (i) productivity improvement especially on the access to land, soil fertility enhancement, access to information and knowledge, production management, storage, processing, marketing and trade, (ii) private investment

¹²¹ Bastmeijer and Koivurova (2008), p. 1.

¹²² Xia et al. (2011), pp. 1–12.

¹²³ Akpoghome and Akpoghome (2022).

¹²⁴ Nwoko (2013).

¹²⁵ [2013] LPELR-19956 (CA).

¹²⁶ Ojo et al. (2017).

¹²⁷ Agricultural Promotion Policy in Nigeria: 10 Big Lessons (brickstone.africa).

¹²⁸ Aturamu (2021), pp. 60–66.

expansion with emphasis on access to finance and agribusiness investment development and (iii) institutional realignment for improved service delivery and development outcomes with emphasis on greater inclusiveness, participation of youth and women, infrastructure, research and innovation, climate change as well as food and nutrition security.¹²⁹ The NAPP's proposals comprise of development domestic value chains for commodities such as rice, wheat, maize, and soya beans; strengthening agricultural export markets for products including cocoa, cassava and oil palm; providing a better enabling environment for agricultural development by improving infrastructure, designing clearer policies, and improving working relationships between the tiers of government; and providing better inputs, tools, and training that allow farmers to increase their yields.¹³⁰ Agriculture is one of the drivers of Nigeria's economy, but a driver of deforestation. The effect of unhealthy farm practices raises for climate change makes effective implementation of REDD+ quite important to the sector. For instance, it is reported that agricultural practices in Nigeria aid deforestation and a disruption of the ecosystem in general.¹³¹ Therefore, the NAPP may play an important role in the implementation of REDD+ considering the level of greenhouse gas emission generated as a result of agricultural activities in Nigeria. A reduction of greenhouse gas emission is one of the objectives of REDD+. Without the Nigerian government ensuring that its policies are environmentally friendly, continuing implementation of REDD+ will face challenges.

5 Conclusion and Recommendations

The implementation of the REDD+ initiative in Nigeria is ongoing, however, emerging human right issues and forest crimes are challenging. Degradation and pursuit of agricultural goals have negative impact on forests and dependents. Evidence exists on the possibility that forest dependent communities may be displaced in the context of REDD+ implementation. Forest crimes also pose serious threat in that insurgent groups and other suspected criminals take cover under forest to perpetrate illicit activities ranging from kidnapping to hostage taking. They take advantage of the fact that forests are very vast and state security do not have sufficient data on the demography of the terrain. These developments have negative implications on the right to life and socio-economic rights of forest dependent communities in Nigeria. There is a considerable comprehensive legal framework by which the REDD+ initiative may thrive for long in Nigeria; however,

¹²⁹ Olomola and Nwafor (2018).

¹³⁰ Downie (2019).

¹³¹ Oku and Guveya (2016); A paper presentation by Moses Ama (National Co-ordinator Nigeria REDD+ Programme) on 'Addressing Deforestation from Agriculture and Livelihood Challenges' at the National Workshop on Applications of Juncao Technology and its Contribution to the Achievement of Sustainable Agriculture and the Sustainable Development Goals in Nigeria (2022).

enforcement of instruments for the benefit of local communities remains a concern. It may be concluded that unless the welfare of communities living around the forests takes the front burner, rights will be undermined, and forest reserve will continue to deplete.

Consequently, for the successful implementation of the REDD+ initiative across Nigeria, it is important that international standards are adhered to. This requires transparency across all levels, and proper compliance with applicable laws. The rights of the communities affected in the bid to preserve forest resources must be protected. The government must realise that the welfare of the people is as important as the project to preserve the environment. Violation of human rights may lead to conflicts, loss of lives and property and ultimately defeat the good purpose for which the REDD+ initiative was established. In the interest of the REDD+ projects, landowners must be engaged regularly in the process and their land tenureship should be protected. This may build trust and eliminate misconceptions about the project.

On forest crimes, the government both at the federal and states level should partner to bring an end to the heightened insecurity. Forest crimes do not only cause socio-political instability, but also have an adverse effect on the environment. The government of Nigeria has to own up to their responsibility under Section 20 of the Constitution to protect and improve the environment and safeguard the forest. Suspected criminals gained access into these forests due to lack of proper managements by the state governments. To reclaim and maintain the forest territories already taken over by suspected criminals, the government have to be more intentional about protecting the lives of the citizens, particularly the forest dependents. Government must beef up security and protect lives and forest resources. In relation to gaps in the legal framework, implementation is key while some amendments are also necessary. Section 28 of the LUA should be amended to define what *public purpose* is and modified to affirm that compensation should align with international standards. Compensation should not only consider the monetary value lost, but also the social, religious and cultural impacts of forceful acquisition on forest dependent communities in Nigeria.

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Olaoluwatofunmi Tabitha Bamgbose is a PhD candidate at University of Lagos, Nigeria, and holds an LLM degree in International Corporate Governance and Financial regulations from University of Warwick, United Kingdom. She obtained her LLB degree from University of Ibadan, Nigeria. She is presently a law teacher at the Department of Public Law, Faculty of Law, University of Lagos, Nigeria. Olaoluwatofunmi's PhD thesis focuses on evaluating the basis of corporate criminal responsibility for manslaughter in Nigeria. Her field of research and teaching interest includes criminal law, criminology, human rights, social justice and compliance.

Ademola Oluborode Jegede (PhD) is Professor of Law and an NRF-rated researcher in the Ismail Mahomed Centre for Human and Peoples' Rights, School of Law, Faculty of Management Commerce and Law, University of Venda, Thohoyandou, South Africa. He holds degrees from Obafemi Awolowo University Ile-Ife (LLB), University of Ibadan (MPH), and the Centre for Human Rights, Faculty of Law, University of Pretoria (LLM & LLD Human Rights). He has been a research visitor to the Centre for International Environmental Law, USA, Human Rights Institute at Abo Akademi, Finland, and he is a fellow of Salzburg Global Seminar, Austria. His research principally focuses on the interface of climate change and biodiversity loss with human rights of vulnerable groups and general international human rights law. His writings on these themes include the co-edited books *Climate Change Justice and Human Rights: An African Perspective* (Pretoria University Law Press, 2022); *Human Rights and the Environment under African Union Law* (Palgrave, 2020); and the book: *The Climate Change Regulatory Framework and Indigenous Peoples' Lands in Africa: Human Rights Implications* (Pretoria University Law Press, 2016). He is the Initiator and Convening Editor of the *African Journal of Climate Law and Justice (AJCLJ)*, and an external expert to the Working Group of Children and Climate Change established by the African Committee of Experts on the Rights and Welfare of the Child.

Legal and Institutional Frameworks on the Implementation of REDD+ in South Sudan



Justin Monyping Ater Malok

Abbreviations

| | |
|--------|--|
| ACCNNR | African Convention on the Conservation of Nature and Natural Resources |
| ACHPRs | African Charter on Human and Peoples' Rights |
| ADBSPE | African Development Bank Safeguards Policies on Environment |
| CBD | Convention on Biological Diversity |
| CNA | Country Need Assessments |
| COP | Conference of Parties |
| INC | Initial National Communication |
| RCW | Ramsar Convention on Wetlands |
| REDD+ | Reducing Emissions from Deforestation and Forest Degradation |
| UN | United Nations |
| UNFCCC | United Nations Framework Convention on Climate Change |

1 Introduction

South Sudan is one of the leading countries in the entire world most vulnerable to climate change.¹ It is also, one of those countries gifted with forest resources. It contributes globally to climate change through burning forest products for charcoal.² As a result, the country has joined the REDD+ programme to salvage the climate

¹'A Climate Crisis in Africa: The Case of South Sudan'.

²'South Sudan cracks down on charcoal trade' (*UNEP*, 2 August 2018) <<http://www.unep.org/news-and-stories/story/south-sudan-cracks-down-charcoal-trade>> (accessed on 12 August 2022).

J. M. A. Malok (✉)
The University of Juba, Juba, South Sudan

situation.³ REDD+ is an instrument that was created by the United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP).⁴ The instrument seeks to push national governments to ‘reduce human pressure on the forests’ because human pressure on forests contributes to greenhouse emissions that cause climate change.⁵ However, the framework is not mandatory. The framework mainly encourages developing countries to implement REDD+ frameworks with financial support in place.⁶ The REDD+ programme requires states to develop legislation, policy, and action plans that would ensure that the objective of the framework is met.⁷ It further obligates states to ensure the implementation of those legislation, policy, or action plans they have adopted.⁸ Additionally, for countries that have developed legal and policy frameworks to get financial support, they must show first that the steps above are achieved and the ‘results’ are seen.⁹

Following this introduction, the chapter analyses the international, regional, and national frameworks applicable to REDD+. The analysis is followed by a discussion of challenges that clearly impede the implementation of REDD+ in South Sudan. The chapter then concludes and recommends the way forward in ensuring the effective realisation of REDD+ frameworks.

2 International, Regional and National Frameworks on REDD+

This section describes the international, regional, and national instruments related to the implementation of REDD+ in South Sudan. It focuses on the international and regional treaties ratified by South Sudan to ensure the effective implementation of the REDD+ initiative.

³ Adkins (2016).

⁴ ‘What is REDD+? | UNFCCC’ <<https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd>> (accessed on 1 August 2022).

⁵ Abidin (2015), pp. c2–3.

⁶ Isenberg and Potvin (2010), p. 216; Watson et al. (2022), p. 4.

⁷ United Nations Framework Convention on Climate Change (UNFCCC), adopted on 5 May 1992 and entered into force on 21 March 1994, Article 3.3.

⁸ UNFCCC, Article 4.8.

⁹ Ibid.

2.1 *International Instruments*

South Sudan has ratified the UNFCCC,¹⁰ presided over by its highest political organ: UNFCCC-COP, which is involved in initiating the REDD+ project.¹¹ Under Article 4 of the UNFCCC, measures such as REDD+ help in achieving the objective of reducing global warming underlying climate change by protecting forests from human activities that contribute to greenhouse emissions. REDD+ is particularly meant for developing countries such as South Sudan, which is a member state of the UNFCCC, a treaty that gives basis to REDD+. The other treaty which offers the basis for REDD+ is the Paris Agreement 2015,¹² also ratified by South Sudan.¹³ Article 5 of the Paris Agreement provides that:

Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.¹⁴

The Paris Agreement clearly encourages state parties to adopt policy that would be crucial in climate adaptation and mitigation. The concern is to weigh the fight against deforestation and forest degradation, as these are the ways of contributing to greenhouse emissions in South Sudan. If these two pressing issues are defeated or reduced, there would be reduction of emissions resulting from forests. The framework does not sanction a blank ban on forest activities without proposing certain steps. It urges states to make ‘positive incentives’ for the REDD+ to be effectively implemented. This is clearly the obstacle in countries such as South Sudan as shall be discussed further in the following section. South Sudan is a country mostly dependent on oil production.¹⁵ The reliance on oil production has been disrupted by the civil war and this resulted in the majority of South Sudanese citizens turning

¹⁰‘South Sudan | UNFCCC’ <<https://unfccc.int/node/61202>> (accessed on 12 August 2022). South Sudan ratified this Convention on 17 February 2014.

¹¹UNFCCC (Decision 1/CP.13) Bali Action Plan. FCCC/CP/2007/6/Add.1.

¹²The Paris Agreement adopted on 12 December 2015 and entered into force on 4 November 2016, Article 5.

¹³‘UNDP, UNEP, South Sudan Gov’t sign USD 9M project to deal with Climate Change | United Nations Development Programme’ <<https://www.undp.org/south-sudan/news/undp-unesp-south-sudan-gov%E2%80%99t-sign-usd-9m-project-deal-climate-change>> (accessed on 12 August 2022). The Paris Agreement was ratified by South Sudan on 23 February 2021.

¹⁴Paris Agreement 2015, Article 5(2).

¹⁵‘Oil or Nothing: Dealing with South Sudan’s Bleeding Finances | Crisis Group’ <<https://www.crisisgroup.org/africa/horn-africa/south-sudan/305-oil-or-nothing-dealing-south-sudans-bleeding-finances>> (accessed on 12 August 2022).

to charcoal making for various activities that were previously aided by fuel.¹⁶ REDD + may curtail such activities only where an alternative way of living is encouraged. South Sudan has also ratified the Convention on Biological Diversity (CBD) 1992.¹⁷ This treaty advocates for the ‘conservation and restoration’ of the ‘ecosystem’.¹⁸ It further encourages the sustainable use of biodiversity.¹⁹ In addition, the treaty is clear when it comes to encouraging states in undertaking environmental and social impact assessments for any activity to prevent activities that could negatively affect biodiversity.²⁰ The treaty calls for the states to finance activities that would lead to the realisation of the treaty and further calls for developed countries to aid developing countries in this respect.²¹ REDD+ rewards those countries that have taken the steps to implement it with the financial assistance of course with proof of results. The CBD may be useful in this regard because it ensures the ‘fair and equitable’ distribution of resources from the activities related to biodiversity. The resources that are generated as a result of the implementation of REDD+ should be shared equally and equitably to encourage continuous implementation of the REDD+.

South Sudan has acceded to the United Nations (UN) Convention to Combat Desertification (CCD).²² The convention aims to protect forests as a way of avoiding desertification. The treaty calls for the parties to adopt policy and legislation to safeguard their citizens from the effects that result from desertification that causes climate change or vice versa.²³ It is a great ambition that is necessary for human survival and can only be achieved when member states implement their obligations to the fullest extent. Also, South Sudan is a state party to the Ramsar Convention on Wetlands (RCW).²⁴ The RCW urges state parties to conserve wetlands and further requires member states to use the wetlands wisely and sustainably. South Sudan Wetlands are largely the lifeline of the forests that are close to it. A loss of wetlands is equally a potential loss to the forests that are close by. The treaty has influenced state choice as evident, for example, when in 2022 the government of South Sudan was pressured to back down from dredging the Sudd Wetlands after the cabinet of

¹⁶‘South Sudan cracks down on charcoal trade’.

¹⁷‘South Sudan Becomes 194th Party to CBD | News | SDG Knowledge Hub | IISD’ <<http://sdg.iisd.org/news/south-sudan-becomes-194th-party-to-cbd/>> (accessed on 12 August 2022).

¹⁸The Convention on Biological Diversity (CBD) was adopted on 5 June 1992 and entered into force on 29 December 1993, Article 8.

¹⁹CBD, Article 10.

²⁰CBD, Article 14.

²¹CBD, Article 20.

²²‘United Nations Treaty Collection’ <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en> (accessed on 8 August 2022).

²³United Nations Convention to Combat Desertification 1994, Article 3.

²⁴‘Instrument of Accession by the State of South Sudan to the Convention on Wetlands of International Importance especially as Waterfowl Habitat - UNESCO Archives AtoM catalogue’ <<https://atom.archives.unesco.org/instrument-of-accession-by-state-of-south-sudan-to-convention-on-wetlands-of-international-importance-especially-as-waterfowl-habitat>> (accessed on 12 August 2022).

ministers had passed a resolution to dredge the Sudd areas.²⁵ The advocacy for the government to reconsider its decision in dredging the wetland was based on the suspicion that dredging the Sudd wetlands would lead to its drying up as the flow of water would increase from the wetland to the River Nile and eventually to the Mediterranean Sea.²⁶

2.2 *Regional Instruments*

South Sudan is a state party to the African Charter on Human and Peoples' Rights (ACHPRs). Article 24 of the ACHPR entitles everyone to live in 'a satisfactory environment favourable' for one's 'development'. This entails that individuals that live in a given environment must respect and protect the environment that they live in. It is important to note that practicing activities that lead to deforestation and forest degradation does not favour the environment nor the development of the people that live in it. Additionally, Article 21(5) of the ACHPRs requires state parties to adopt measures that safeguard people from the activities of third parties such as international organisations that 'exploit' the resources to the point where this exploitation results in negative outcomes for example resulting in deforestation and forest degradation that leads to other concerning issues, for instance, climate change. Therefore, for South Sudan to ensure full implementation of REDD+, it must be guided by the above provisions in designing and adopting legislation and policy relevant to REDD+.

South Sudan has ratified the African Convention on the Conservation of Nature and Natural Resources (ACCNNR).²⁷ The aim of this convention is very clear. It is to 'protect and preserve the flora and fauna'. The convention links human survival to the protection of natural flora and fauna.²⁸ It argues that if the natural flora and fauna are destroyed, that human survival cannot be guaranteed and in unequivocal fact would as well die with nature. This argument is acceptable as humans mainly survive on nature for food and if nature is destroyed then the answer is obvious in this regard. The convention, therefore, is another useful tool supplementing the need for the states to carry out their obligations enshrined in the REDD+ framework. This convention if domesticated by South Sudan would prove beneficial in ensuring

²⁵ 'Public consultation calls for credible feasibility studies before river dredging - Eye Radio' <<https://www.eyeradio.org/public-consultation-calls-for-credible-feasibility-studies-before-dredging/>> (accessed on 12 August 2022).

²⁶ 'Prof. Akec fires Egypt against Naam river dredging - One Citizen Daily' <<https://onecitizendaily.com/index.php/2022/10/21/prof-akec-fires-egypt-against-naam-river-dredging-2/>> (accessed on 2 December 2022).

²⁷ 'Revised African Convention on the Conservation of Nature and Natural Resources | African Union' <<https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version>> (accessed on 12 August 2022).

²⁸ Revised African Convention on the Conservation of Nature and Natural Resources, Article X.

REDD+. The convention reiterates and displays the need to eliminate or reduce greenhouse emissions from nature as a result of human activities. It further reinforces the aim to conserve forestry.

Furthermore, the Republic of South Sudan has adopted the African Development Bank Safeguard Policies on Environment (ADBSPE).²⁹ This policy is concerned with both development and sustainable use of the environment. It points out that state parties must ‘adopt and implement measures’ that would ensure that both the present and the future generation are not affected in relation to the use of the environment.³⁰ The ADBSPE identifies human activities that are detrimental to the environment. It argues that activities such as ‘overgrazing’ and other human activities such as cultivation cause desertification and soil loss. The document in providing solutions views conservation and sustainable use of the environment as the way forward. The ADBSPE carries objectives similar to that of the REDD+ and can be useful in implementing the REDD+ objectives. For instance, REDD+ has objectives such as financing activities related to implementation,³¹ which is similar to financing activities concerning the conservation of the environment and its sustainable use for the above-mentioned policy framework.³²

2.3 Legal and Institutional National Frameworks

This section uncovers the legal and institutional frameworks that are applicable and/or can be employed or interpreted progressively in advancing REDD+ activities in South Sudan. The section reviews these legal and institutional frameworks to test their inadequacy or otherwise for implementing REDD+ in South Sudan. From the outset, it should be noted that a range of rule-making is being processed which may or may not be relevant to REDD+. Such regulatory measures in the draft phases include the South Sudan Forest Policy, National Environmental Policy, the Wildlife Conservation and Protected Areas, Land Policy. Apart from being unavailable for analysis, the instruments are still being developed, hence, fragile for rigorous analysis. The focus of this section is therefore on established instruments and institutions.

²⁹African Development Bank (2019).

³⁰Environmental Safeguards Policy, Article IV.

³¹‘Warsaw Framework for REDD-plus | UNFCCC’ <<https://unfccc.int/topics/land-use/resources/warsaw-framework-for-redd-plus>> (accessed on 29 November 2022).

³²‘10000027-EN-BANK-GROUP-POLICY-ON-THE-ENVIRONMENT.pdf’ <<https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000027-EN-BANK-GROUP-POLICY-ON-THE-ENVIRONMENT.PDF>> (accessed on 8 August 2022).

2.3.1 The Transitional Constitution of the Republic of South Sudan 2011

The Constitution under Section 41 provides general protection for the environment.³³ It indicates that all citizens are entitled to a 'healthy and clean environment'. It requires everyone including both citizens and government the duty of ensuring the protection of the environment for both 'present and future generations'. The government in particular is required to protect the environment by developing laws and policies that best:

Prevent pollution and ecological degradation, promote conservation secure ecologically sustainable development and use of natural resources while promoting rational economic and social development to protect genetic stability and bio-diversity.³⁴

The above provision is, however, enshrined in a chapter of the Constitution that deals with Fundamental Directive Principles of State Policy, which is non justiciable. A provision of this nature may allow government to take policy decisions on environmental matters such as REDD+ that may not be challenged successfully in the Court.

The Constitution is explicit in providing that the South Sudan communities own the land.³⁵ The only role of the government is to regulate it on behalf of the people. One of the key issues in implementing REDD+ is the meaningful involvement of local communities and measure of control in the project. There are only broad provisions on environmental protection that could be interpreted to include forest protection, for example Sections 41, 170 and 171 of the South Sudan Constitution. Sections 170 and 171 articulate the ownership and use of the land. It is not certain that forest ownership or use can be read into these provisions since forest resources are clearly hosted by the land. The participation of local communities should play a key role in enhancing the implementation of REDD+ and enhancing available knowledge on forest management. However, this is doubtful as there is no specific link of land to the forest management in existing framework.

2.3.2 The Revitalised Peace Agreement

This agreement supplements the Transitional Constitution. The agreement has a provision that clearly states that in case of contradiction between the agreement and the Constitution, the former should prevail.³⁶ This pose questions such as whether the agreement is the 'grandnorm' or not. While the agreement of this nature should be useful in supporting REDD+ and ensuring that the interests of local communities

³³Constitution of the Republic of South Sudan 2011 as amended, Section 41.

³⁴Ibid.

³⁵Ibid., Section 170.

³⁶The Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018, Article 8.3.

are protected, it does not address the gap in the Constitution in relation to justiciable protection of the environment as a human right.³⁷

The Peace Agreement may however be relevant to the success of REDD+. For example, it mandates the government to ‘comprehensively review legal and establish institutional frameworks for the preservation, conservation and sustainable use of the environment’.³⁸ The agreement recommends the establishment of institutions such as the Environmental Management Authority, Research, and Development Centres for natural disasters, and strategic studies and scientific research. It provides that projects are to be licensed by issuing an environmental impact certificate before any activity is initiated by the Ministry of Environment and Forestry. In advancing for the review of legislation, the agreement provides a window of opportunity for formulating an appropriate legislation and establishing institution to manage the implementation of REDD+. Additionally, the agreement calls for the writing of a new constitution.³⁹ While the time to undertake such project is not certain, the formulation of a new constitution provides two opportunities for climate change and REDD+. First, it provides the opportunity of including provisions on climate change and REDD+. Second, it affords the opportunity to push environmental protection from the Fundamental Directive Principles of State Policy chapter to the Bill of Rights chapter in the Constitution, and thereby making it a justiciable right in South Sudan.

Furthermore, the agreement has ensured that the country is relatively at peace now by bringing the leading opposition leaders and the government together. Peace is important in the implementation of REDD+ as it increases the chances of participation by local communities in different phases of REDD+. Forests resources are more likely to be well protected in peace than in war. This also has implications on budgeting as the government budget will not entirely be on buying weapons rather on taking measures which may include the protection of the environment and the funding of REDD+ activities.

2.3.3 The Petroleum Act 2012

This is another key legislation in protecting the environment. The Petroleum Act has many provisions for environmental protection.⁴⁰ The legislation requires for a ‘strategic environmental assessment’, before any activity is conducted.⁴¹

³⁷ ‘The Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) - South Sudan | ReliefWeb’ <<https://reliefweb.int/report/south-sudan/revitalised-agreement-resolution-conflict-republic-south-sudan-r-arcss>> (accessed on 12 August 2022).

³⁸ The Revitalised Agreement on the Resolution of the Conflict, Articles 4.6 and 4.7.

³⁹ *Ibid.*, Article 6.

⁴⁰ The South Sudan Petroleum Act 2012, Sections 43, 58–62.

⁴¹ The Revitalised Agreement on the Resolution of the Conflict, Section 59.

Environmental and social impact assessments are to be carried out to ensure maximum protection of the environment.⁴² Also, licensed contractors are required by the legislation to carry out studies on the state of the environment before projects are undertaken.⁴³ The impact assessment will inform both the government and the contractors about the possible consequences of the prospective activities and what international best practices to employ in diligently implementing petroleum projects without affecting the environment. The legislation also requires the findings to be made public for public reaction.⁴⁴ Thereafter, the government through the Ministry of Petroleum and that of Environment would make final approval. It is important to note that the impact assessment does not stop after final approval has been made. It continues in another form commonly referred to in the Petroleum Act as Environmental Management. The law through Environmental Management requires contractors to present their environmental management plans. The management plan must contain the following:⁴⁵

- (a) be based on the relevant environmental and social impact assessments for the area;
- (b) provide a summary of the studies undertaken to identify environmental hazards and to evaluate environmental risks relating to the proposed activity; (c) provide a description of the hazards that were identified and the results of the risk evaluation; (d) provide details of the activity and measures that will be implemented to manage the hazards and risks identified and described under paragraphs b) and (c) of this subsection and measures for mitigating and remedying any pollution and pollution damage including measures for environmental protection and compensation of any affected persons; provide a list of all structures, facilities, equipment and systems critical to environmental protection and a summary of the system in place for their inspection, testing and maintenance; establish and implement effective and safe systems for disposal and treatment of waste and prevention of pollution resulting from petroleum activities in accordance with best petroleum industry practice; establish a system to track the source, transport and destination of potential hazardous waste from petroleum activities; establish review and audit systems to assess the state of the environment at intervals of time specified in the plan and institute the necessary remedial and improvement measures as a result of the review or audit; and identify the person responsible within the licensee's or contractor's organisation for implementation and compliance with the plan.

The plan after it is developed is to be shared with the ministry concerned with the environment for 'review'.⁴⁶ Furthermore, the legislation requires contractors to inform the public, particularly the communities living in the midst or close to where the activities will take place. They are to debate and educate these communities about how the project is going to affect them and if there would be a change of plans thereof. Additionally, reports are required to be submitted to the ministry on the plan.⁴⁷

⁴²Ibid.

⁴³Ibid.

⁴⁴Ibid.

⁴⁵Ibid., Section 60.

⁴⁶Ibid.

⁴⁷Ibid.

The above provisions are relevant to different aspects of REDD+. First, the law makes provision for the impact assessment. The provision could be interpreted progressively to extend to forest resources not solely to the environment. This is because the damage caused to the environment would also extend to forest resources close to where oil activities take place. The reports that come from the assessment could also be used in addressing the potential risk to both environmental and forest resources. Second, the provision is useful in guiding and regulating which equipment cause damage in order to prevent environmental damage. Third, as consultation is a necessary component in the assessment process, the legislation could be utilised in engaging with the communities to educate them about REDD+ and how to avoid generating emissions from forest activities. Furthermore, the legislation provides that in the unlikely case that the contractors' activities and management plan do not go as expected and in practice, damage arises, then in this regard, contractors will be held accountable. Since oil exploration often touches on forest resources in South Sudan, the provisions are necessary for accountability purposes to ensure that activities of non-state actors do not endanger the forests and undermine the purpose of REDD+.

2.3.4 The Land Act 2009

The Land Act has a section on environmental, economic, and social impact assessment.⁴⁸ The legislation states that any investment that is to be carried out in South Sudan must go through a social and environmental impact assessment.⁴⁹ If the activities are likely to affect biodiversity, then such activities or investment in such activities should be stopped.⁵⁰ This assessment is to be done by both public and private actors. This is because the legislation gives obligations to everyone whether individuals or community members to ensure adequate protection of the environment from activities that could lead to land degradation. Local community members, and government both national and subnational have an obligation to 'restore' lands that have been degraded or misused.⁵¹

It could be argued that Article 170 of the Constitution is problematic in implementing some of these obligations. This is because the provision of the law states that land is owned by the people of South Sudan and only regulated by the government – a statement also echoed by the Land Act. This may generate the tension over who makes decision concerning the land and its resources. The implications of this possibility may be mixed for the implementation of REDD+. The ownership tension could prove to be a hindrance when implementing REDD+ as communities could at some point assume it is within their rights to dictate how

⁴⁸The South Sudan Land Act 2009, Section 70.

⁴⁹Ibid.

⁵⁰Ibid., Sections 69–72.

⁵¹Ibid., Section 71.

REDD+ is implemented. Also, the government may formulate regulations or exercise control in a manner that ignores the consensus of peoples on the subject matter of REDD+.

2.3.5 Ministry of Environment and Forestry

The law that established the Ministry of Environment and Forestry is not clear since there is no Environmental and Forestry Act or known policies in place. However, the Initial National Communication (INC) to the UNFCCC provides the mandate of this ministry.⁵² The mandate of the ministry is to ‘sustainably manage the environment and forest’ resources. Therefore, the ministry can be very instrumental in using this mandate to promote and realise REDD+ activities. Additionally, the ministry is vested with the power to design legislation and policies relevant to environmental and forestry protection. To this end, the ministry in exercising its power can design and adopt REDD+ strategies. The ministry’s power equally extends to the creation of institutions within to actualise their overarching aim, which is to ‘sustainably manage’ South Sudan’s ‘environment and forest resources’. It is clearly undeniable that these mandates are relevant to the implementation of REDD+ in South Sudan. For example, the authority of the ministry to create institutions could be utilised in creating bodies concerned with REDD+ activities.

2.3.6 The Ministry of Petroleum

The Ministry of Petroleum is the implementing body in South Sudan’s oil and gas sector.⁵³ The ministry is tasked with ‘formulating strategies, plans, and programmes for the management and development of the oil sector’.⁵⁴ The ministry can be instrumental in developing strategies, plans, and programmes on REDD+. The provision should form the basis for the ministry to incorporate REDD+ concerns in the activities of the oil sector operating in forested areas. Additionally, the ministry may make the inclusion of REDD+ requirements in the prerequisite documents such as those related to environmental and social impact assessment. To this end, the ministry can ensure the avoidance of deforestation and forest degradation resulting in emissions before any damage is manifested through the incorporation of REDD+ due diligence into environmental and social impact assessment.

Furthermore, the ministry has the power to ‘negotiate agreements’ with oil companies and has the authority to ‘terminate’ where possible contracts with the

⁵²Government of South Sudan, Ministry of Environment and Forestry ‘Initial National Communication to the United Nations Framework Convention on Climate Change, 2018’.

⁵³South Sudan Petroleum Act 2012, Section 12.

⁵⁴Ibid.

companies.⁵⁵ One would expect that where contracted and licensed oil companies do not comply with REDD+ strategies and policies, the ministry should have the authority to invoke this provision and terminate contracts as a consequence. The ministry is also vested with the power to train personnel responsible for the oil sector and where necessary provide the expertise.⁵⁶ Arguably, the provision should extend to a situation where the ministry provides expertise and trains personnel about the implementation of REDD+ in the oil-drilling forested areas.

2.3.7 Ministry of Mining

This is another instrumental institution in the fight against deforestation and in reducing emissions from forests. The ministry was initially merged with the Ministry of Petroleum forming the then ‘Ministry of Petroleum and Mining’.⁵⁷ However, the ministry is currently a stand-alone entity. The ministry is concerned with the formulation and regulation of the mining sector.⁵⁸ Section 5 of the Mining Act 2012 defines mining as:

As a mode, method or process whereby soil or earth, rock, stratum or a mineral bearing substance is disturbed, removed, crushed, washed, sifted, dried, reduced, oxidized, leached, roasted, smelted, refined, or otherwise dealt with for the purpose of extracting a mineral or metal from it.

The above processes when carried out in forested areas may clearly lead to deforestation and/or cause forest degradation. The Ministry of Mining has the authority to formulate and approve the exploration and exploitation of mining resources. As such, the ministry through the minister is crucial in ensuring that REDD+ policies or strategies are considered before, during, and after mining.

Additionally, the mining law establishes within the ministry a directorate that deals with the training and dissemination of mining knowledge and information to the ministry’s personnel.⁵⁹ The directorate is crucial in undertaking ‘studies’ to assess the potential risk associated with any mining endeavour to the environment and in relation to pollution or any other health-related issue that might or has resulted from the undertaking. It is argued that the training of the ministry’s personnel on areas related to mining should extend to REDD+ since mining as indicated above causes deforestation and forest degradation through mining activities such as ‘land use’.⁶⁰ These mining activities clearly ‘damage the land’ and forest resources close to the mining sites, hence, contributing to forest deforestation and degradation.⁶¹

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Deng et al. (2013).

⁵⁸ South Sudan Mining Act 2012, Section 8.

⁵⁹ Ibid., Section 10.

⁶⁰ Bradley (2022).

⁶¹ Ibid.

Also, the studies that are undertaken should be comprehensive to include how to ensure REDD+ in areas where mining is conducted. This is because mining causes deforestation and forest degradation and further pollutes the environment hence contributing to greenhouse emissions.

2.3.8 Ministry of Humanitarian Affairs and Disaster Management

The ministry's mandate is to intervene in issues relating to disasters caused by nature and support communities affected by these disasters.⁶² Of course, deforestation and environmental degradation are considered drivers of climate change.⁶³ Climate change in South Sudan has oftentimes caused natural disasters such as flooding and drought, hence, a concern for this ministry. For example, in 2022, the country experienced the most devastating flooding that displaced more than one million people and destroyed their properties.⁶⁴ In that context, the mandate of the ministry includes the designing of policy responses in relation to natural disasters such as flooding and drought. To this end, one would expect the ministry to be mindful of intersections of its mandate with the REDD+ strategies. Particularly, this is necessary as failure to attend to humanitarian crises will have its adverse toll on forest resources, by contributing to their degradation and depletion. Such development will undermine the purpose of REDD+ in South Sudan.

3 Challenges in Implementing REDD+ in South Sudan

Existing framework as has been shown have possibilities which may be helpful in ensuring the effective implementation of REDD+ in South Sudan. Both the international and regional frameworks to which South Sudan is a state party when complemented with domestic legislation may help in ensuring effective implementation if properly applied. However, they are by no means adequate as much uncertainty remains around the frameworks of REDD+ in South Sudan. Unambiguous legislative and institutional choices must be made in South Sudan to guide all stakeholders' engagement with the REDD+ project. On legislative intervention, South Sudan has not developed and adopted specific legislation and strategy on REDD+. A possible reason for this might be that the country has only been peaceful for 2 years since its independence in 2011. As a result, the country has been busy stabilising the security situation and focusing much on how to defeat rebels.

⁶²'South Sudan: MHADM strategic plan 2018-2020' <<https://www.preventionweb.net/publication/south-sudan-mhadm-strategic-plan-2018-2020>> (accessed on 2 December 2022).

⁶³Freer-Smith et al. (2007).

⁶⁴United Nations High Commissioner for Refugees (n.d.).

Developing and adopting legislation and measures on REDD+ have been the least addressed issue by the state.

Furthermore, the few legislations and policies that have been developed and adopted are not being implemented. While it is not impossible to apply the existing legislation for the purpose of implementing REDD+, this is impossible without well-trained and competent administrators or judges in the relevant institutions. The reality is that South Sudan still suffers from lack of capacity and competence in technical areas necessary to implement REDD+ such as measurement, verification and reporting of carbon emission reduction or outputs associated with the project. Additionally, inadequate funding is an issue. The government of South Sudan is clearly restrained from undertaking measures that would address other pressing issues such as climate change because of lack of finances. The revenues that the government of South Sudan generates are largely donor-based and only target projects linked to civil war and peace.⁶⁵ As such, activities related to the implementation of REDD+ in any way are not prioritised by the government of South Sudan. A large amount of revenues goes to the military which takes allegedly 60% of the national budget.⁶⁶

There is also a lack of necessary institutional support for the implementation of REDD+. For example, South Sudan has no National Monitoring System (NMS) in the forest sector. It is difficult to imagine how to ensure that forests are monitored continuously and that communities and the government maintain the conservation of forest resources without such a system. The NMS will ensure that government determines the forest reference emission levels and records them. This still is not the case in South Sudan. There is no institution created and mandated with this intervention. Existing national institutions are not well equipped with the required technology and competencies necessary for effective implementation of REDD+ in South Sudan.

Finally, there is also the general problem of corruption from which the forest sector is not free. South Sudan is one of the most corrupt countries in Africa,⁶⁷ and eleventh in the world.⁶⁸ With this worrying situation, the funding associated with the implementation may be misused. A development which may undermine the purpose of REDD+ and prevent local communities from maximising its opportunities. For instance, it would mean that local communities living in forested areas may not be incentivised for their efforts in conserving the forests or where they receive incentives, such may be too meagre to sustain continuing interest in forest conservation.

⁶⁵United Nations Development Programme, 'Government of Sweden commits to funding an additional \$3.4 million USD to support peacebuilding in South Sudan'; M Anderson and M Gibb, 'As South Sudan seeks funds for peace, a bill dollar spending spree'.

⁶⁶Anadolu Agency, 'South Sudan denies big military spending despite famine'.

⁶⁷'2021 Corruption Perceptions Index - Explore the results' (*Transparency.org*) <<https://www.transparency.org/en/cpi/2021>> (accessed on 12 August 2022).

⁶⁸2021 Corruption Perceptions Index.

4 Conclusion and Recommendations

As has been shown, there are windows of opportunities for effective implementation of REDD+ in South Sudan in international, regional instruments to which South Sudan is a state party. However, as demonstrated through the review of the legislative and institutional frameworks, it was indicated that there are no specific laws or measures developed to implement REDD+ in South Sudan. Based on the uncertainty in the existing frameworks, new regulations may be made and institutions formed to advance the purpose of REDD+. Despite the foregoing, no specific institution has been created. Nor is REDD+ specific legislation put in place since the involvement of South Sudan in the project. The chapter uncovers other challenges that may hinder the implementation of REDD+. These challenges include lack of funding, instability in the country because of civil war, and lack of capacity and technology.

Based on the foregoing, this chapter recommends the followings. First, South Sudan should develop new legislation, policy, institutional and other measures on REDD+. The government should take the opportunity provided by the agreement to review legal, policy, and institutional frameworks to address issues related to REDD+. It should prioritise the implementation of REDD+ by directing resources into the endeavor as mere development and adoption of legislation and policy would not suffice without the implementation element. The government should take initiatives to invest and cooperate with regional and international entities in providing technologies and building necessary capacities for the implementation of REDD+. In addition to fostering cooperation, the government of South Sudan should prioritise the development of human resources through the recruitment of more personnel and training on the development and implementation of REDD+ activities.

Others

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‘A Climate Crisis in Africa: The Case of South Sudan’ (The Cairo Review of Global Affairs, 17 November 2021) <<https://www.thecaireview.com/essays/a-climate-crisis-in-africa-the-case-of-south-sudan/>> accessed on 24 August 2022

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- ‘South Sudan cracks down on charcoal trade’ (UNEP, 2 August 2018) <<http://www.unep.org/news-and-stories/story/south-sudan-cracks-down-charcoal-trade>> accessed on 12 August 2022
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- ‘Uncertainty Over Laws Fuel Land Grabs in South Sudan’ (Pulitzer Center) <<https://pulitzercenter.org/stories/uncertainty-over-laws-fuel-land-grabs-south-sudan>> accessed on 1 December 2022
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Justin Monyiping Ater Malok, LLM (University of Pretoria); LLB (Hons) (University of Juba); LP (South Sudan Bar Association). He is a lecturer in the University of Juba with research interests in general human rights law.

Part IV
Sustainable Development, REDD+ and New
Grounds

REDD+ and Agenda 2030 in Africa: A Green Criminology and Rights-Based Perspective



Malayna Raftopoulos

Abbreviations

| | |
|------------------------|--|
| AFOLU | Agriculture forestry and other land use sector |
| Agenda 2030 | 2030 Agenda for Sustainable Development |
| FPIC | Free Prior Informed Consent |
| HRBA | Human Rights-based Approach |
| ILO Convention No. 169 | Indigenous and Tribal Peoples Convention |
| MRV | Monitoring, Reporting and Verification |
| NCCSC | National Climate Change Steering Committee |
| NCCTC | National Climate Change Technical Committee |
| NRTF | National REDD Task Force |
| SDGs | Sustainable Development Goals |
| SMP | Simple management plan |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| UNFCCC | United Nations Framework for Climate Change |
| WWF | World Wide Fund for Nature |

M. Raftopoulos (✉)
Aalborg Universitet, Aalborg, Denmark
e-mail: raftopoulos@dps.aau.dk

1 Introduction

With around 23% of total net anthropogenic emissions of greenhouse gases deriving from activities in the agriculture, forestry, and other land use sector (AFOLU),¹ increasing emphasis has been placed on land-related climate change mitigation, particularly improved stewardship of forests through reduction or avoidance of deforestation and forest degradation, and the enhancement of forest carbon stocks. Africa is home to some of the world's most important forests, with forests covering 43.6% of land area in Central Africa, 31% in Southern Africa, 20.8% in East Africa, 14.3% in West Africa and 7.2% in North Africa.² However, as Moon and Solomon argue, 'the combination of unsustainable management and uncoordinated externally driven resource extractive with the additional influence of foreign direct investment and infrastructures are influencing the forest cover'.³ As a consequence of the aforementioned, Africa is losing more than 4 million hectares of forest every year.⁴ The World Wide Fund for Nature (WWF) have identified eight deforestation fronts, or places at imminent risk of largescale deforestation on the continent of Africa. These consist of the West Africa front (Liberia, the Ivory Coast, and Ghana), four Central African Fronts (Cameroon/Gabon, the Republic of Congo and Cameroon/the Democratic Republic of Congo and the Central Africa Republic/Angola) and three East African fronts (Zambia/Mozambique/Madagascar).⁵ Throughout the eight deforestation fronts in Africa, small-scale agriculture remains the main driver of deforestation. In Zambia, Mozambique and Angola, large-scale agriculture is playing an increasingly significant role in the deforestation of the Miombo forests and is also growing in the Congo Basin.⁶ While fuelwood and charcoal can also be considered key drivers due to expanding urban markets, they mainly cause degradation rather than complete forest loss.⁷ Furthermore, logging is a problem across all eight fronts but considerably worse in Cameroon and Angola, however, small-scale logging and chainsaw milling remains a problem throughout the Central African countries.⁸ Although transport infrastructure is currently not considered to be a driver of deforestation on the continent, it is expected to become a more significant cause in the future due to rapidly developing economies.⁹

Since the mechanism Reducing Emissions from Deforestation and Forest Degradation plus Conservation and Sustainable Development (REDD+) emerged as a key pillar of the international climate change regime and a potentially effective

¹ IPCC (2020).

² Moon and Solomon (2008), p. 16357.

³ Ibid.

⁴ Ibid.

⁵ WWF (2021), p. 11.

⁶ Ibid., p. 9.

⁷ Ibid., p. 30.

⁸ Ibid.

⁹ Ibid.

pathway for sustainable development, it has been increasingly recognised by policy makers, civil society groups and scholars that for REDD+ to be implemented successfully and deliver its objectives it must adopt a rights-based approach.¹⁰ This position has further been cemented by the global acceptance and adoption of the United Nations 2030 Agenda for Sustainable Development as a normative framework, actualised through the Sustainable Development Goals (SDGs).¹¹ Adopting a green criminological perspective which allows scholars to analyse discourses related to environmental harm, laws and regulations within a model of environmental justice that places human beings and their well-being at the centre,¹² this chapter examines the linkages and synergies between REDD+ and the SDG and discusses the opportunities and challenges African states face in advancing a rights-based approach to REDD+ alongside the 2030 Agenda and fulfilling their human rights obligations.

2 Green Criminology and Human Rights

Despite the fact that there are a wide variety of environmental harms associated with climate change which impinge on humans, non-human species and the natural environment, criminology's traditional concern with crime per se meant that discussions on environmental crimes, laws and harms were largely absent until the relatively recent development of 'green criminology'.¹³ Furthermore, as Borrás argues 'traditionally, legal systems have considered nature as "property" and have promoted laws to guarantee the property rights of individuals, corporations and other legal entities. Therefore, environmental laws and regulations, despite their preventive approach, have developed so as to legalise and legitimate environmental harm'.¹⁴ Green criminology, developed by Lynch in 1990, recognises the plundering of the earth's resources and the degradation of the environment as 'activities that might be considered criminal or at least seriously harmful with intergenerational consequences and transnational impacts'.¹⁵ Considered to be 'the most pressing and important international issue facing humanity today',¹⁶ White argues that the issue of climate change has raised a number of existing and potential problems that need to be considered from a green criminological perspective including conflicts over environmental resources, conflicts linked to global warming, conflicts over differential exploitation of resources, conflicts over transference of harm and the

¹⁰Raftopoulos (2016), p. 509; Raftopoulos and Short (2017).

¹¹United Nations (n.d.).

¹²Hall et al. (2017); Lynch and Stretsky (2003), p. 238.

¹³O'Brien and Yar (2003).

¹⁴Borrás (2016), pp. 113–114.

¹⁵Higgins et al. (2016), p. 255.

¹⁶White (2010), p. 11.

criminalisation and regulation of activities relating to carbon emissions.¹⁷ Although climate change is a transnational problem, there is a general consensus that its harmful effects will be unevenly distributed and exacerbate social inequality and environmental injustice in the coming years particularly in the global South.¹⁸ However, the climate change crisis has also provided an opportunity for contemporary capitalism to incorporate nature through mainstream neoclassical economics into the global economy by focusing on carbon reductionism and the further commodification of nature through payments for ecosystem services schemes such as REDD+.¹⁹ The schemes focus on the standardisation and quantification of carbon rather than the human and environmental rights implications.²⁰ Furthermore, despite the clear links between human rights and environmental issues, REDD+ has a ‘conceptual apparatus of domination and exploitation, which subverts the extent to which they will be ever able to protect both vulnerable elements of forest ecosystems and marginalised communities’.²¹

Concerns have been raised over the potential loss of forest people’s territories to large-scale commercial forest operations, the restriction of access and use of natural resources by these communities, the lack of equitable benefit-sharing of REDD+ activities, exclusion of forest communities from the design and implementation of REDD+ policies and the increase in carbon piracy.²² Moreover, other observers have highlighted REDD+ poor track record, with rising deforestation rates in REDD+ model countries such as Brazil and Indonesia, and its failure to address the root causes of deforestation as well as its poor implementation at the national level.²³ Therefore, incorporating human rights institutions, practices and discourses into debates on environmental harm, laws and regulations is essential to ensure that the most vulnerable members of society do not bare the negative costs of REDD+.²⁴

The development of a green perspective in criminology has played a critical role in rethinking human legal systems and developing alternative ‘benchmarks’ to legal definitions of crime, including, human rights abuses and social harm as advocated by Potter.²⁵ As Potter further points out, ‘some have argued that we should think of crime differently – in terms of human rights abuses or in terms of social harm [...] Green criminologists make the point that most, if not all, environmental harms incorporate harms to individuals and social groups and that many entail human rights abuses.’²⁶ Taking Potter’s observation further, Raftopoulos and Short have

¹⁷ *Ibid.*, pp. 12–13.

¹⁸ Brisman (2015), p. 178.

¹⁹ Raftopoulos (2016).

²⁰ *Ibid.*

²¹ Wilkinson (2014), p. 171.

²² Raftopoulos (2016).

²³ Hein et al. (2018), p. 7.

²⁴ Raftopoulos and Short (2017).

²⁵ Potter (2016), p. 8.

²⁶ Potter (2016), p. 11.

argued for multi-disciplinary approaches to the study of environmental harm and the incorporation of a variety of rights-based analytical and methodological tools such as the Human Rights Impact Assessment as ‘a useful benchmark sitting somewhere between legally codified, national and internationally defined “crime” and the much more nebulous notion of “harm”’.²⁷

Despite these emerging critical perspectives in criminology over recent years, traditional legal understandings of ‘crime’ and ‘just’ responses still dominate criminological research. Taking the latter insight as a core ontological assumption, green and critical criminologists argue that ‘many conventional, and legal, forms of human production and interaction do far worse things to the natural environment than those activities which are deemed illegal’.²⁸ Consequently, social and/or ecological harm is worthy of criminological research and analysis even if the state does not acknowledge the phenomenon as illegal, while some would argue that such analysis is needed *precisely* because of that fact.²⁹ Furthermore, the development of the 2030 Agenda, which provides a universal normative framework for the realisation of economic, social and environmental sustainability across a range of issues, provides an important lens for green criminologists to critique discourses related to environmental harm, laws and regulation within a model of human rights and sustainable development. As Blaustein et al. argue, there are two principal ways that criminologists can support the 2030 Agenda. First, they can play a supportive role by actively ‘contributing to the the design, implementation and evaluation of projects that support safe, just and environmentally sustainable societies’.³⁰ Second, they can assume a critical role by ‘helping development actors and their intended beneficiaries including domestic policy makers, criminal justice practitioners and citizens of the Global South identify and resist attempts by international organizations, sovereign donors, national governments and other empowered stakeholders to politicize criminological elements of this agenda for self-interested strategic and political purposes’.³¹ With environmental sustainability at the core of the SDG’s and the increasingly apparent implications of climate change, it is critical to consider the impact of mitigation policies and mechanisms such as REDD+ within the global framework of sustainable development to place human-beings and their well-being at the centre of analysis. A green criminology and rights-based perspective provides a useful lens to understand and respond to REDD+ within a model of environmental justice that places human beings and their well-being at the centre both in terms of human rights abuses and social harm.

²⁷ Raftopoulos and Short (2017), p. 166.

²⁸ White (2013), p. 12.

²⁹ Opsal and Shelley (2014), p. 561.

³⁰ Blaustein (2018), p. 768.

³¹ Ibid.

3 The 2030 Agenda for Sustainable Development and REDD+

In 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development (Agenda 2030). At its core are 17 Goals and 169 related targets that capture a range of economic, social, and environmental issues. Widely accepted as the current global development agenda by governments, the normative framework addresses ending poverty and hunger, promising to leave no one behind. Moreover, recognising planetary boundaries and explicitly incorporating the commitments expressed in the Paris Climate Agreement, Agenda 30 aims to protect the planet from degradation through the promotion of sustainable consumption and production practices, the sustainable management of natural resources and climate change measures.³² Explicitly grounded in and underpinned by human rights norms and standards, more than 92% of SDG targets are linked to specific provisions of international human rights instruments.³³ Furthermore, the four basic objectives of a good society—economic prosperity, social inclusion and cohesion, environmental sustainability and good governance—which are promoted alongside Agenda 2030 are centred on Human Rights-based Approach (HRBA) and encompass the principles of universality, inalienability, indivisibility, inter-dependence, inter-relatedness, equality and non-discrimination and also participation and inclusion.

Since its conception, REDD+ has become an important policy tool for mainstreaming international agreements, conventions, and strategic action plans—including Agenda 30, the Paris Agreement, and the Aichi Biodiversity Targets—providing a practical means of adapting international mechanisms to national contexts and into national development plans and planning processes through both vertical and horizontal policy coherence. The alignment of the vision and strategic goals of REDD+ plays a critical role in enhancing and accelerating progress towards the SDGs targets and supporting trans-boundary actions in climate change mitigation and adaptation efforts, the sustainable use of ecosystems and management and maintenance of biodiversity. This is particularly relevant in Africa, which despite serving as a major carbon sink, biodiversity continues to decline, with ongoing losses of species and habitats, and deforestation and forest degradation continues to increase, threatening the flow of environment goods and services.³⁴ While most African countries involved with REDD+ programmes are in the readiness and implementation stage, in 2020, Uganda became the first African country to submit results for REDD+. Seen as a significant development on REDD+ for Africa, the results produced by the National Forest Authority showed that deforestation had reduced to 28,095 hectares (ha) per year over a 2-year result period (2015–2017) from a 50,147 ha per year average over a 15-year reference period (2000–2015),

³²Raftopoulos and Morley (2020), p. 1616.

³³Danish Institute for Human Rights, ‘A Human Rights Based Approach to the Means of Implementation of the Sustainable Development Goals’ (Danish Institute for Human Rights 2020), p. 11.

³⁴United Nation Environmental Programme (2016).

leading to a 44% reduction in the country's rate of deforestation annually between 2015 and 2017.³⁵

REDD+ is increasingly recognised as an instrument to help achieve the objectives of Agenda 30, the SDGs which through their mutually supportive linkages, provide further institutional incentives for effective implementation, cross-sectoral coordination, coherent and inclusive outcomes of REDD+ activities.³⁶ However, as Milbank et al. contend, 'both REDD+ and the SDGs represent aspirational ambitions for the global community, but much of their potential depends on the ways in which these goals are translated into meaningful (and verifiable) local actions'.³⁷ Although REDD+ is most closely related to SDG 13 (take urgent action to combat climate change and its impacts) and SDG 15 (protect, restore and promote sustainable use of terrestrial ecosystems), as Table 1 shows, there are significant synergies between REDD+ objectives and the SDGs.

4 Advancing a Rights-Based Approach Within a Green Criminology Framework

To deliver meaningful environmental and social benefits, REDD+ initiatives must consider the environmental and social harms connected to the programme and manage the risks by considering the wider socio, political, economic and legal context attributed to the harms including regulations and mechanism as well as the limits of the law as discussed below. With many environmentally destructive development practices taking place on traditional lands and severely impacting on native and indigenous communities', the struggle to conserve the environment is very often intertwined with social and ecological justice, including the protection and promotion of both human and environmental rights. Factors such as geographical location, natural-resource dependency, historical marginalisation from decision-making and public policies, insecurity of rights to lands, territories and resources, low income, and institutions and customary laws that are not respected by dominant governance systems, make Indigenous People and forest communities highly vulnerable to mitigation strategies like REDD+. If designed and governed well, REDD+ has the potential to positively affect the livelihoods of forest dwellers as well as preserve or enhance their fundamental rights. However, its success will largely rely on (1) the acknowledgment of the connected social and environmental harms and (2) the incorporation of a HRBA and the alignment with the SDGs into the design and implementation scheme to act as an alternative benchmark to legal definitions of crime in counteracting these harms. As Hunter notes, 'the rights-based approach brings perspective and expertise that holds the promise of setting

³⁵Pandey (2020).

³⁶Milbank et al. (2018), p. 589.

³⁷Ibid.

Table 1 Significant synergies between REDD+ objectives and the SDGs

| Relevant SDGs goals and targets | Synergies with REDD+ |
|--|---|
| Goal 1: End poverty in all its forms everywhere | <p>1.1: Eradicate extreme poverty 1.2: Reduce at least by half the proportion living in poverty 1.4. Ensure all men and women have equal rights to economic resources, access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services</p> |
| Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture | <p>2.1 End hunger and ensure access to safe, nutritious, and sufficient food 2.4: Ensure sustainable food production systems and implement resilient agricultural practices</p> |
| Goal 5: Achieve gender equality and empower all women and girls | <p>5.a: Give women equal rights to economic resources, access to ownership, control over land and other forms of property, financial services, inheritance, and natural resources in accordance with national laws</p> |
| Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work | <p>8.1: Sustain per capita economic growth in accordance with national circumstances 8.4: Improve global resource efficiency in consumption and</p> |

(continued)

Table 1 (continued)

| Relevant SDGs goals and targets | | Synergies with REDD+ |
|---|---|--|
| | production and decouple economic growth from environmental degradation | multiple benefits from forests, including economic development, was agreed in the Cancun Agreements and the Convention on Biological Diversity. REDD+ activities can help sustain economic growth through its support of small and medium enterprises by revitalising forest industries, improving the output of cultivated land, and developing new 'green industries' |
| Goal 10: Reduced inequalities | <p>10.1: Progressively achieve and sustain income growth of the bottom 40% of the population at a rate higher than the national average</p> <p>10.2: Empower and promote the social, economic, and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status</p> <p>10.3: Ensure equal opportunity and reduce inequalities of outcome</p> | Land tenure is a central feature of REDD+ readiness. REDD+ activities involve large areas of land often in countries where the statutory laws and customary norms that define rights are often poorly defined or weakly enforced. The Cancun Agreements request developing country parties to address land-tenure issues and adopt equitable land-tenure policy when developing and implementing their national strategies. The clarification and provision of equitable tenure rights can provide motivation and incentives to sustainably manage forest resources, strengthen accountability and contribute to empowerment and promotion of the social inclusion of vulnerable people, local communities, and Indigenous Peoples |
| Goal 12: Ensure sustainable consumption and production patterns | <p>12.2: Achieve the sustainable management and efficient use of natural resources</p> <p>12.a: Support developing countries to strengthen their scientific and technological capacity to move towards more sustainable patterns of consumption and production</p> | The importance of promoting maintenance and restoration of forest biodiversity is set out in Convention on Biological Diversity. REDD+ can play an important role towards responsible consumption and production by educating local communities on environmental conservation practices, |

(continued)

Table 1 (continued)

| Relevant SDGs goals and targets | | Synergies with REDD+ |
|---|--|---|
| | | provide training on improved production practices that prevent the destruction of natural resources, support communities to adopt viable alternatives to improve and diversify income and enhance access to technologies that can help reduce community impact on the environment. Furthermore, REDD+ can significantly increase the area of sustainably managed forests and support sustainable management and efficient use of natural resources |
| Goal 13: Take urgent action to combat climate change and its impacts | <p>13.1: Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters</p> <p>13.2: Integrate climate change measures into national policies, strategies, and planning</p> <p>13.3: Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning</p> <p>13.a: Implement UNFCCC commitments to mobilise finance for mitigation in developing countries</p> <p>13.b: Promote mechanisms for raising capacities for effective climate change-related planning and management</p> | REDD+ is recognised the Paris Agreement as a climate change mitigation action and the activity with the largest potential for reducing AFOLU emissions. REDD+ activities have become integral to countries National Determined Contributions and are increasingly promoted in national climate change policies and strategies. REDD+ involves the development of national strategies, mitigation actions, capacity building, and the establishment of national forest monitoring systems. Furthermore, international funding mechanisms have been established to help countries prepare for and implement REDD+ |
| Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss | <p>15.1: Ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services</p> <p>15.2: Promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally</p> | A key aspect of REDD+ is the sustainable management of forests and the halting of deforestation. The Cancun Agreements consider broader environmental impacts and concerns and encourage countries to integrate forest-related activities that can contribute to mitigation into national and local planning and poverty reduction |

(continued)

Table 1 (continued)

| Relevant SDGs goals and targets | | Synergies with REDD+ |
|--|--|--|
| | <p>15.4: Ensure the conservation of mountain ecosystems, including their biodiversity, to enhance their capacity to provide benefits that are essential for sustainable development</p> <p>15.5: Reduce the degradation of natural habitats</p> <p>15.9: Integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts</p> <p>15.a: Mobilise and significantly increase financial resources from all sources to conserve and sustainably use biodiversity and ecosystems</p> <p>15.b: Mobilise significant resources from all sources and at all levels to finance sustainable forest management and provide adequate incentives to developing countries to advance such management</p> | <p>strategies. REDD+ activities can contribute to the conservation and sustainable use of terrestrial and inland freshwater ecosystems, reduce habitat degradation and tackle biodiversity loss by prioritising areas for sustainable forest management interventions. Furthermore, international funding mechanisms have been established to help countries prepare for and implement REDD+. Results-based payments are meant to provide financial incentives to developing countries to reduce deforestation rates and adopt good forest stewardship by making forest conservation profitable for forest-dependent communities</p> |
| <p>Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice or all and build effective, accountable and inclusive institutions at all levels</p> | <p>16.6: Develop effective, accountable, and transparent institutions at all levels</p> <p>16.7: Ensure responsive, inclusive, participatory, and representative decision-making at all levels</p> <p>16.b: Promote and enforce non-discriminatory laws and policies for sustainable development</p> | <p>REDD+ policy interventions such as the development and adoption of equitable land-tenure policy can help ensure participatory and representative decision-making at all levels and encourage community-led groups to coordinate REDD+ activities. Furthermore, through its emphasis on institutional building (National Forest Monitoring Systems, Safeguard Information Systems, Monitoring, Reporting and Verification (MRV) etc.) REDD+ has the potential to reduce corruption and develop effective, accountable, and transparent institutions at all levels</p> |
| <p>Goal 17: Strengthen the means of implementation and</p> | <p>17.3: Mobilise additional financial resources for developing countries from multiple</p> | <p>Global partnerships and multi-stakeholder participation are a critical aspect of</p> |

(continued)

Table 1 (continued)

| Relevant SDGs goals and targets | | Synergies with REDD+ |
|---|---|--|
| revitalize the global partnership for sustainable development | sources 17.16: Enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilise and share knowledge, expertise, technology, and financial resources, to support the achievement of the sustainable development goals in all countries, particularly developing countries | REDD+ both in terms of financial resources, technical assistance, capacity building and governance. REDD+ implementation and projects involve a wide range of stakeholders, including multilateral agencies, donors, governments, communities, the private sector, Indigenous Peoples and civil society. Acknowledging the importance of partnerships, the Interim REDD+ Partnership was set up in 2010 to share information and experiences, and to develop tools to ensure coherence and effectiveness |

adaptation priorities in a way that meets the twin goals of reducing climate change impacts while progressively fulfilling economic, social, and cultural rights'.³⁸ To date, few African countries, the exceptions being Cote d'Ivoire, DRC, Ethiopia, Ghana, Republic of Congo, Tanzania, Uganda, and Zambia, have anchored their REDD+ strategies on a rights-based approach. To follow and incorporate a HRBA into REDD+ alongside Agenda 2030, REDD+ needs to address several critical challenges.

4.1 Political and Institutional Challenges

Although REDD+ presents an opportunity to clarify and strengthen individual and communal land rights, tenure security and forest user rights as well as address inequality in land ownership in Africa, the protection of forest communities and Indigenous Peoples' substantive rights remains one of the biggest challenges for the programme. REDD+ risks exacerbating issues related to unsecured rights and pre-existing conflicts such as the dispossession of marginalised people, exclusion of forest dwellers from the planning and implementation, as well as corruption and land grabbing either by national elites or foreign investors.³⁹ To secure substantive rights, effective and equitable local property rights are needed as well as a review of current land tenure reforms in order for local communities to claim property or

³⁸Hunter (2009), p. 33.

³⁹NoREDDinAfricaNetwork (2015); Chomba (2016), p. 202.

collective tenure rights on the forest land and its resources. However, within the context of REDD+ in Africa, this is particularly difficult given that prevailing land tenure is characterised by various overlapping forms which simultaneously allocates various levels of legal land titles to the state, community, and the individual, making it incompatible with the conventional concept property rights. Furthermore, many African states have built political systems in which politics and land are heavily intertwined. Therefore, many governments are likely to find land reform an 'unacceptable trade-off between their political interests in land and the benefits of REDD+ for local communities'.⁴⁰ Although land remains the most important resource for development on the continent, with sub-Saharan Africa home to over 202 million hectares or around half the world's total holdings of useable uncultivated fertile land, only 10% of Africa's rural land is registered, with the remaining 90% undocumented and informally administered.⁴¹ As Gizachew et al. note, 'in most African countries, the state claims legal title over land, especially forested-land, but often appears to have weak control over the forests themselves. On the other hand, a great majority of the rural population, including both individuals and communities, depends on forests that they do not legally own'.⁴²

While African countries such as Tanzania have undertaken policy reforms to improve land governance and forest management practices over the last two decades,⁴³ landownership inequalities and land tenure security remain an issue. Although provisions for tenure rights remain vague, Cameroon, which has been engaged in developing REDD+ since 2005, has explicitly included community forestry, adopted as part of its 1994 decentralised forestry law 94/01, as one of its strategies in its REDD+ readiness preparations.⁴⁴ This involves 'reserving a community forest area, allocating the forest to the local community after the preparation of a simple management plan (SMP), and sustainably exploiting the forest resources for the benefit of the community on the basis of a management agreement'.⁴⁵ While community forestry has gone some way to addressing forest user rights, covering around 1364.203 ha or 9% of the national forest estate,⁴⁶ securing and enforcing nondiscretionary forest tenure rights remains an issue in Cameroon.⁴⁷ Moving away from top-down approaches by strengthening national and sub-national institutional capacity and performance as well as implementing a cross-sectoral and inter-ministerial approach to REDD+ through the coordination and cooperation among multiple government agencies is critical to developing truly inclusive forest management programmes and to enforcing forest laws. However, among African

⁴⁰Gizachew et al. (2017), p. 98.

⁴¹Byamugisha (2013), p. xv.

⁴²Gizachew et al. (2017), p. 96.

⁴³Jodoin (2017).

⁴⁴Berhard and Minang (2019), p. 14.

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷Ibid.

countries, REDD+ planning and decision-making processes tend to be highly centralised and the capacity of different stakeholder groups to engage in governance processes is limited. In Kenya, preparation of national REDD+ strategies were coordinated by the Kenyan forestry sector.⁴⁸ The lack of consultation with other key sectors such as land and agriculture as well as sectoral competition for climate finance led to a negative vertical policy interplay which impeded the implementation of policies and participatory forest management.⁴⁹ Tanzania on the other hand has adopted a multilevel governance approach. To facilitate multilevel and multi-sector REDD+ processes, the National REDD Task Force (NRTF) was set up to oversee the implementation of technical and operational issues in relation to REDD+ readiness in 2009. This was later replaced by the National Climate Change Technical Committee (NCCTC) and National Climate Change Steering Committee (NCCSC).⁵⁰ Despite opening up, new opportunities for civil society to participate and influence the national REDD+ strategy, the process was still largely dominated by government representatives.⁵¹

4.2 *Social and Economic Challenges*

As REDD+ projects continue to gather momentum across Africa its success will largely depend on whether Indigenous Peoples and local communities' interests are integrated into policy deliberations and decision-making processes and if their participatory rights, including their right to give or withhold Free Prior Informed Consent (FPIC) as well as respect for customary land rights, are respected. Although the legal status of FPIC has been strengthened through the adoption of the UNDRIP in 2007 and the ILO Convention No. 169, its application has proved to be extremely difficult. Currently, only the Central African Republic (2010) has ratified ILO 169, however, only three of the 53 African states abstained from the UNDRIP vote, despite being under substantial pressure from the United States and Canada to join the anti-UNDRIP vote.⁵² Furthermore, in 2009, the African Commission adopted a Resolution on Climate Change and Indigenous Peoples which called upon African states to pay particular attention to the vulnerability of indigenous communities to climate change. While some countries such as the Republic of Congo, the Central African Republic, and Cameroon have begun to introduce legal or policy frameworks dealing specifically with Indigenous Peoples and engage in dialogue over indigenous issues, Indigenous Peoples are still yet to be recognised in many African states and are often referred to as forest dependent, forest adjacent people or

⁴⁸ Atela et al. (2019), p. 37.

⁴⁹ Ibid.

⁵⁰ Kijazi et al. (2017).

⁵¹ Jodoin (2017).

⁵² Crawhall (2011), p. 12.

marginalised groups. Although the implementation of FPIC remains a key challenge,⁵³ it is also an opportunity to enhance support for the recognition and compliance of indigenous rights and their incorporation into legal norms within Africa.

In the context of REDD+, FPIC is addressed indirectly though the text on safeguards in Annex 1 of the Cancun Agreements which notes that the General Assembly has adopted UNDRIP and requires REDD+ partner countries to promote and support ‘the knowledge and rights of Indigenous Peoples and members of local communities’ and ensure ‘the full and effective participation of relevant stakeholders, inter alia, Indigenous Peoples and local communities’.⁵⁴ In the absence of a legal land title, indigenous communities face an uphill struggle to assert FPIC and the run the risk that land could be taken away from them by governments to capture REDD+ revenues. Indigenous Peoples and local communities in Africa, regardless of gender, age or standing, must be informed, consulted and able participate in decision-making at all levels and phases of the REDD+ process free from coercion, bias, conditions, bribery, or rewards. However, increasing evidence demonstrates the lack of effective actions to ensure the rights of Indigenous Peoples in the planning and implementation of REDD+ projects as well as access to information and transparency about the processes and outcomes of REDD+.⁵⁵

In their study of the TFCG/Mjumba REDD+ project in Lindi, Tanzania, Schebaa and Rakotonarivo reported that REDD+ project staff had used the issue of rainwater, whereby it was ‘emphasised to villagers that protecting trees could “drag and pull in clouds” and therefore attract rain’ to create a sense of urgency for farmers who were reliant on rain-fed agriculture to sell the project. Furthermore, false expectations over future carbon income and other development benefits such as tenure security, agricultural improvements and increased production were raised among the villagers and played a substantial role in incentivising the community to approve the project.⁵⁶ In instances when consultations have taken place, communities have complained that the consultation periods were too short, lasting as little as one hour as in the case of the Amerindian community of Chenapou in Guyana and preventing residents from actively participating and having their opinions heard.⁵⁷

Although REDD+ can potentially provide new opportunities for generating income and enhance resilience of vulnerable livelihoods, ensuring equitable benefits and shared growth alongside reducing deforestation and degradation remains a key challenge. Despite recognition that it is important to include local communities and customary practices and values in efforts to sustainably manage forests, decentralise forest management rights and responsibilities and align the SDGs with the interests of local groups, the increase in the value of forests due to REDD+ has led to an increase in the number and size of forest reserves and national parks by

⁵³ Raftopoulos (2016).

⁵⁴ UN-REDD (2012).

⁵⁵ NoREDDinAfricaNetwork (2015).

⁵⁶ Schebaa and Rakotonarivo (2016), p. 629.

⁵⁷ Airey and Krause (2017), p. 51.

governments.⁵⁸ This has caused a growing number of conflicts between conservation policies and communities' rights and concerns have been raised over equitable access to forests and how different communities and households can benefit equally from the financial payouts.⁵⁹ As the case of Kenya demonstrates, although the design of projects may be attentive to equity concerns, REDD+ can reinforce inequality because of existing land tenure regimes. Consequently, benefits tend to be concentrated in the hands of a few, namely ranch owners and private companies, while local people only benefit from the revenue allocated to their community and are negatively impacted by the restrictions imposed on access to land for cultivation, hunting, charcoal production, and firewood collection.⁶⁰

The failure of REDD+ to clarify the nature of carbon rights in legal terms has raised questions about who holds the rights to emissions reductions and the associated benefits, whether carbon rights should be considered as a land interest separate from the land upon which the carbon is situated and how rights should be assigned in countries that allow private and community forest ownership as well as state ownership of forest resources. The issue of carbon rights questions the established common-law presumption that the carbon contained within those trees is a natural part of the land and therefore belongs to the landowner.⁶¹ Currently, there are very few countries which have developed laws relating to carbon sequestration as an environmental service or as a resource produced by forests, one of the few exceptions being Australia.⁶² Furthermore, only a few cap-and-trade systems cover the land sector with New Zealand's emission trading system being one.⁶³ Although the establishment of carbon rights is requirement to access results-based finance, few African states have yet addressed the controversial issue of carbon rights and there is little guidance on benefit sharing. In Kenya for example, carbon rights are linked to ownership of land.⁶⁴ While in the DRC, following the passing of a Homologation Decree in 2018, the national government has the primary right to all carbon units although rights can be transferred to private project developers through a Homologation Certificate. Mozambique has followed a similar approach to the DRC while Madagascar has gone further by proposing in a draft REDD+ decree that the government hold all the rights to the emission reductions and the right to commercialise such rights.⁶⁵ The lack of clarity on carbon rights has made REDD+ more susceptible to unfair practices such as carbon piracy, which has been compounded by the fact that land tenure systems tend to be unclear, contested or poorly enforced. Parties have entered and continue to enter into carbon rights agreements without a

⁵⁸ Adrien et al. (2018), p. 251.

⁵⁹ Ibid.

⁶⁰ Chomba et al. (2016), p. 41.

⁶¹ Karsenty et al. (2014), p. 20.

⁶² Karsenty et al. (2014), p. 20.

⁶³ Streck (2020), p. 959.

⁶⁴ Chomba et al. (2016), p. 41.

⁶⁵ Streck (2020), p. 959.

legal framework or independent support in place to safeguard against the exploitation of those parties involved. Therefore, to ensure equitable and transparent sharing of benefits and prevent carbon contracts from being signed without guaranteeing and safeguarding fundamental rights, forest communities need to be established as legal owners of carbon credits generated from within their lands.

5 Conclusion

This chapter has highlighted concerns over the harmful impacts of REDD+ activities at a local level on the protection and promotion of indigenous and forest peoples' rights and welfare whose livelihoods, culture and way of life rely on forests. The insights of green criminology can be invaluable in framing such assessments and addressing the environmental and social harms connected to REDD+, the current legal duties and safeguards placed on African states and developing appropriate safeguards and incorporating procedural standards into the rhetoric of REDD+ in the future. To deal successfully with existing and emerging social and environmental harms related to REDD+, a regulatory approach that recognises all stakeholders and is intertwined with social and environmental justice and operationally engaged in the promotion of human and environmental rights is critical. Concerns about the social impact of REDD+ demonstrate the urgent need to incorporate HRBA into its design and implementation and strengthen the programmes alignment with the SDGs with which it shares clear synergies. While human rights are socially constructed, they are codified legal norms and relatively universal in acceptance and widely endorsed. Therefore, when thinking of environmental harm, human rights can act as an alternative benchmark to legal definitions of crime, offering both an important means for analysing REDD+ and tools for acting on that analysis. As human rights move into new areas such as the environment and development, the human rights discourse must move beyond identifying the problem and make a greater contribution to the solution. Therefore, adopting such an approach is critical to identifying the harms of REDD+ and developing effective policies and measures to prevent such harms, measuring human rights standards and the gap between those standards and the reality on the ground for REDD+ to contribute to achieving the SDGs and fulfilling human rights, ensuring the participation of marginalised groups, fostering strategies that empower rights-holders as well as holding systems and duty-bearers accountable.

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Malayna Raftopoulos (PhD) is an Associate Professor in Development Studies and International Relations at Aalborg University, Denmark. She is also an associate research fellow at the Centre of Latin American and Caribbean Studies, University of London, the Human Rights Consortium, and the Centro Latino Americano de Ecología Social, Uruguay. Her research interests focus on environmental governance and politics, and includes climate change mitigation and adaptation, natural resource development and human rights. Her publications include *Provincialising Nature: Multidisciplinary Approaches to the Politics of Nature in Latin America* (ILAS, University of London Press); *Natural Resource Development and Human Rights in Latin America: State and Non-State Actors in the Promotion and Opposition to Extractivism Activities* (HRC, University of London Press); and *Social-Environmental Conflicts, Extractivism and Human Rights in Latin America* (Routledge). Her forthcoming co-authored book is on *Anti-Fracking Movements and Environmental Justice: State Responses and Social Resistance* (Bloomsbury Academic). She is also one of the coordinators of the Network for Global Justice and the Environmental Humanities: Transformative Engagements between Academia and Civil Society which is funded by the Independent Research Fund Denmark.

Leveraging SFM-REDD+ Synergies Towards Sustainable Development in African Small Island Developing States



Mansha Mohee

Abbreviations

| | |
|-----------|--|
| AFECONECT | Africa Forest Enterprises Connect Network |
| AFF | African Forest Forum |
| AFWC | African Forestry and Wildlife Commission |
| AMCEN | African Ministerial Conference on the Environment |
| AOSIS | Alliance of Small Island States |
| ART | Architecture for REDD+ Transactions |
| AU | African Union |
| BPOA | Barbados Programme of Action for the Sustainable Development of Small Island Developing States |
| CAADP | Comprehensive Africa Agriculture Development Programme |
| COFO | FAO Committee on Forestry |
| COMESA | Common Market for Eastern and Southern Africa |
| COP | Conference of Parties of the UNFCCC |
| CPF | Collaborative Partnership on Forests |
| CSA | Climate Smart Agriculture |
| CSD | United Nations Commission on Sustainable Development |
| EAC | East African Community |
| ECOSOC | Economic and Social Council of the United Nations |
| ECOWAS | Economic Community of West African States |
| ECREE | ECOWAS Centre for Renewable Energy and Energy Efficiency |
| FAO | Food and Agriculture Organization of the United Nations |
| FLEGT | Forest law Enforcement, Governance and Trade |
| FOSA | Forestry Outlook Study for Africa |

M. Mohee (✉)

The Governance and Shareholder Relations Section of the Office of the Secretary General of the African Development Bank Group, Abidjan, Côte d'Ivoire

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|---------|--|
| GFEP | Global Forest Expert Panels |
| GGSSWI | Great Green Wall for the Sahara and the Sahel Initiative |
| IFF | Intergovernmental Forum on Forests |
| IOC | Indian Ocean Commission |
| IORA | Indian Ocean Rim Association |
| IPF | Intergovernmental Panel on Forests |
| ITTO | International Tropical Timber Organization |
| IUCN | International Union for Conservation of Nature and Natural Resources |
| IUFRO | International Union of Forest Research Organizations |
| MRV | Monitoring, Reporting and Verification |
| MSI | Mauritius Strategy for the further Implementation of the BPOA |
| NDC | Nationally Determined Contribution |
| NEPAD | New Partnership for Africa's Development |
| REC | Regional Economic Community |
| REDD+ | Reducing Emissions from Deforestation and Forest Degradation |
| REFACOF | African Women's Network for Community Management of Forests |
| SADC | Southern African Development Community |
| SAMOA | Small Island Developing States Accelerated Modalities of Action |
| SFM | Sustainable Forest Management |
| SIDS | Small Island Developing States |
| SIS | Safeguards Information System |
| UNCCD | United Nations Convention to Combat Desertification |
| UNCED | United Nations Conference on Environment and Development |
| UNEP | United Nations Environment Programme |
| UNFCCC | United Nations Framework Convention on Climate Change |
| UNFF | United Nations Forum on Forests |
| UN-REDD | United Nations Collaborative Programme on REDD |

1 Introduction

Sustainable development, a prime policy goal of the new millennium, strives to reconcile economic development, environmental protection and social equity.¹ As a normative framework guiding state legal obligations to protect and promote human rights, it gives credence to third-generation rights to development, environment and

¹See the three pillars of sustainable development: Report of the World Commission on Environment and Development: Our Common Future (Brundtland Report) (1987) UN Doc. A/42/427 (Annex), p. 46.

democracy.² Small Island Developing States (SIDS)³ are recognised as a ‘special case’ for sustainable development, meeting intrinsic challenges in its implementation as a result of their insularity and manifold vulnerabilities to external shocks.⁴ Climate change adaptation and mitigation and the sustainable management of natural resources have recurrently been identified as key priority areas for sustainable development in SIDS.⁵ Particularly, the management of forests and forest resources has consistently been underscored as a component of their sustainable development, notably in furtherance of food security, agricultural productivity and social development.⁶ This has been reaffirmed more recently, during the Mid-Term Review of the SAMOA Pathway, the overarching framework on the sustainable development priorities of SIDS, whereby further action was called for in the development of policies for sustainable forest management to prevent and address desertification, land degradation and drought.⁷ Although the extent of forest cover varies among SIDS and is insignificant in global terms, empirical research has illustrated their

²See Leib (2011), pp. 109–156. On sustainable development as a norm in international law, see Barral (2012), pp. 377–400 and on the interplay of sustainable development and international human rights law, see McGoldrick (1996), pp. 796–818 and Savić (2020), pp. 319–335.

³SIDS are a distinct group of over 40 heterogeneous island nations across the Caribbean, Atlantic, Indian Ocean and Pacific, sharing common features, such as their small size, remoteness, narrow resource base, economic volatility, dependence on international trade and exposure to shocks, and special vulnerability to the adverse effects of climate change, demonstrated to cause significant setbacks to their socioeconomic development. There are six SIDS on the African continent, namely Cabo Verde, Comoros, Guinea-Bissau, Mauritius, Sao Tome and Principe and Seychelles.

⁴First highlighted in Chapter 17g of Agenda 21, adopted at the UN Conference on Environment and Development (UNCED), Rio de Janeiro, 3–14 June 1992, UN Doc. A/CONF.151/26, Vol.II (Annex II). It was further reaffirmed in subsequent global instruments on the sustainable development of SIDS: see Barbados Programme of Action for the Sustainable Development of Small Island Developing States (BPOA), adopted at the UN Global Conference on the Sustainable Development of SIDS, Barbados, 25 April–6 May 1994, UN Doc. A/CONF.167/9 (Annex II); Mauritius Strategy (MSI) for the Further Implementation of the BPOA, adopted by the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, Mauritius, 10–14 January 2005, UN Doc. A/CONF. 207/11; UN General Assembly Resolution 66/288 ‘The Future We Want’, adopted at its 66th session, 11 September 2012, paras 178–180 and UN General Assembly Resolution 69/15 ‘Small Island Developing States Accelerated Modalities of Action (SAMOA Pathway)’, Samoa, 14 November 2014.

⁵See Chapter I (Climate Change and Sea Level Rise) & Chapters IV–IX (Coastal and Marine Resources, Freshwater Resources, Land Resources, Energy Resources, Tourism Resources, Biodiversity Resources of BPOA and paras 31–46 (Climate Change); 53–58 (Oceans and Seas); 89–94 (Biodiversity) of SAMOA Pathway.

⁶See Plan of Action on Agriculture in Small Island Developing States, adopted by the 116th session of the Food and Agriculture Organization (FAO) Council, Rome, 14–19 June 1999, Doc. CL 116/18; UN General Assembly Resolution 65/2, ‘Outcome document of the High-level Review Meeting on the Implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing State’, adopted at its 65th session, 25 September 2010, para 19 and para 94 of SAMOA Pathway.

⁷UN General Assembly, Political Declaration of the High-Level Meeting to Review Progress Made in Addressing the Priorities of Small Island Developing States Through the Implementation of the

crucial role for soil and water conservation, coastal protection, the conservation of wildlife and biodiversity and the promotion of ecotourism.⁸

The Reducing Emissions from Deforestation and Forest Degradation, Conservation, Sustainable Management of Forests, and Enhancement of Forest Carbon Stocks in Developing Countries (REDD+)⁹ mechanism can be a valuable instrument for sustainable development in SIDS, as a nature-based solution for climate change, marrying climate change mitigation and the conservation, management and expansion of forests. Sustainable forest management (SFM) is recognised as one of five core mitigation activities under REDD+, along with reducing emissions from deforestation and forest degradation, and the conservation and enhancement of forest carbon stocks.¹⁰ In addition, all of the mitigation activities under REDD+ are required to promote the sustainable management of forests.¹¹ Despite the prominence of SIDS in international climate change negotiations in the face of their pronounced susceptibility to climate change impacts,¹² REDD+ readiness and implementation by SIDS seem scarce, in contrast with the rest of the continent.¹³ Guinea-Bissau is the only African SIDS that has engaged with REDD+. It is also a partner country in the UN-REDD programme which is intended to assist countries in

SIDS Accelerated Modalities of Action (SAMOA) Pathway, 10 October 2019, UN Doc. A/RES/74/3, para 30.

⁸See notably Wilkie et al. (2002), pp. 257–267.

⁹REDD+ was established through international negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) (1994), adopted by UN General Assembly Resolution 48/189 of 20 January 1994, 31 ILM 849. Whereas the negotiations first focused on incentives for developing countries to ‘Reduce Emissions From Deforestation and Forest Degradation’ (REDD), these incentives were extended to include the conservation of existing forest carbon stocks, sustainable forest management and the enhancement of forest carbon stocks. The negotiations culminated in the Warsaw Framework for REDD+ (2013) adopted by the UNFCCC COP, Warsaw, 11–13 November 2013, which provides the rules for the implementation of REDD+ by countries in 7 decisions, namely Decisions 9/CP.19; 10/CP.19; 11/CP.19; 12/CP.19; 13/CP.19; 14/CP.19 and 15/CP.19. See the Warsaw Framework for REDD+ and other key decisions in UNFCCC Secretariat ‘Key decisions relevant for reducing emissions from deforestation and forest degradation in developing countries (Decision Booklet REDD+)’ February 2016 <https://unfccc.int/files/land_use_and_climate_change/redd/application/pdf/compilation_redd_decision_booklet_v1.2.pdf> (last accessed on 30 September 2022) and Voigt and Ferreira (2015).

¹⁰UNFCCC Conference of the Parties (COP) Decision 1/CP.16 ‘The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention’ Cancun, 29 November–10 December 2010, UN Doc. FCCC/CP/2010/7/Add.1, para 70.

¹¹Appendix I of Cancun Agreements (n 10) ‘Guidance and safeguards for policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries’, para 1(k).

¹²See Ourbak and Magnan (2018), pp. 2201–2207 and Thomas et al. (2020).

¹³Arhin and Atela (2015), pp. 43–57 and Nhamo (2011).

REDD+ readiness and implementation.¹⁴ The latter is undertaken in stages. The readiness stage entails the development of a national strategy or action plan for implementing REDD+ and an institutional framework which includes the development of national forest monitoring systems, the establishment of national forest reference emission levels, the establishment of systems for measurement, reporting and verification (MRV) and the establishment of safeguards and grievance mechanisms.¹⁵ In their implementation of national policies and measures, countries are required to address the direct and indirect drivers of deforestation and forest degradation as well as land tenure and forest governance, while pursuing capacity-building, technology development and transfer and results-based demonstration activities.¹⁶ In the results-based payments phase, REDD+ activities are measured and verified each year.

SFM refers to the practice of conservation and use of forest lands and resources to meet the social, economic, ecological, cultural and spiritual needs of present and future generations.¹⁷ SFM is inherent in the international environmental governance regime, including the 1992 UN Convention on Biological Diversity,¹⁸ the 1994 UN Convention to Combat Desertification,¹⁹ the 1994 UN Framework Convention on Climate Change,²⁰ and the Paris Agreement.²¹ It is increasingly integrated in

¹⁴The other island state (though not a SIDS) is Madagascar. See UN-REDD partner countries, <<https://www.un-redd.org/partner-countries#:~:text=The%20UN-REDD%20Programme%20currently%20supports%2065%20partner%20countries,news%20from%20our%20partners.%20Become%20a%20partner%20country>> (last accessed on 20 August 2022).

¹⁵Cancun Agreements (n 10), para 71.

¹⁶Cancun Agreements (n 10), paras 72 and 73.

¹⁷For early references, see Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (Rio Forest Principles) (1992) adopted by the UN Conference on Environment and Development, 14 June 1992, UN Doc. A/CONF.151/26, Principle 2(b). SFM was defined by the UN in the Non-legally Binding Instrument on All Types of Forests (UN Forest Instrument) (2007), adopted by UN General Assembly Resolution 62/98 of 31 January 2008, para 4. Several other overlapping and complementary forest-related expressions are used to refer to SFM and the need for a common understanding of the concept of SFM has been highlighted, in view of enhancing forest policy coherence: UN Secretariat, *Enhancing Global Forest Policy Coherence and a Common International Understanding of Sustainable Forest Management* (2019) UN Doc. E/CN.18/2019/5.

¹⁸UN Convention on Biological Diversity (CBD) (1992) adopted by the 5th session of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity, Nairobi, 5 June 1992, 31 ILM 818, Preamble, Articles 1 and 6.

¹⁹UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD) (1994) adopted by the Intergovernmental Negotiating Committee for the elaboration for an international convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, Paris, on 17 June 1994, 33 ILM 1328, Annex I, Article 8(3)(b).

²⁰UNFCCC (n 9).

²¹Paris Agreement to the UN Framework Convention on Climate Change (2015), adopted by the 21st session of the UNFCCC Conference of Parties, Paris, 12 December 2015, UN Doc. FCCC/CP/2015/10/Add.1, Article 5.

regional and national policies and mechanisms in Africa.²² The 2013 Revised African Convention on the Conservation of Nature and Natural Resources requires state parties to introduce sustainable forestry measures in the context of the prevention of land degradation, the protection, conservation and sustainable use of vegetation cover and the maintenance and enhancement of genetic diversity.²³ The 2002 Southern African Development Community (SADC) Protocol on Forestry,²⁴ and the 2010 SADC Forestry Strategy provide a comprehensive framework on SFM and include climate change mitigation and adaptation as a strategic programme area.²⁵ The 2012 Economic Community of West African States (ECOWAS) Convergence Plan for the Sustainable Management and Utilization of Forest Ecosystems in West Africa addresses the growing decline in forest cover and promotes SFM in view of the transboundary impact of deforestation on the environment.²⁶ The Common Market for Eastern and Southern Africa (COMESA) also adopted a Forest Strategy in 2009.²⁷ While the New Partnership for Africa's Development (NEPAD) Comprehensive Africa Agriculture Development Programme (CAADP) elaborated strategies for interventions in SFM in the context of agricultural productivity and lasting poverty reduction,²⁸ the African Union (AU) launched the first continental SFM Framework in 2020.²⁹ Moreover, over 90% of African countries have adopted

²²For an overview of regional policies and initiatives, see Kojang and Larwanou (2015), pp. 92, 93–97.

²³Revised African Convention on the Conservation of Nature and Natural Resources (2013) adopted by the 2nd Ordinary Session of the African Union Assembly of Heads of State and Government, Maputo, 11 July 2003 <<https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version>> (last accessed on 30 September 2022) Articles (IV) (3), VIII and IX. See also Erinoshio (2013), pp. 378–397.

²⁴SADC Protocol on Forestry (2002) adopted by the SADC Heads of State or Government, Luanda, 3 October 2002 <https://www.sadc.int/sites/default/files/2021-08/Protocol_on_Forestry_2002.pdf> (last accessed on 30 September 2021).

²⁵SADC Forestry Strategy 2010–2020: Making Forests Work for the Economic Development of the Region (2010) <<https://www.sadc.int/document/sadc-forestry-strategy-2010-2020-english>> (last accessed on 30 September 2022).

²⁶The Convergence Plan for the Sustainable Management and Utilization of Forest Ecosystems in West Africa (2012) adopted by the ECOWAS Council of Ministers in charge of forests, wildlife and the environment, Abidjan, 12 September 2013.

²⁷COMESA Strategy on Forestry (2009), Forestry Strategy Validation Workshop, Victoria Falls Town, 28–29 August 2009.

²⁸NEPAD Comprehensive Africa Agriculture Development Programme (2003) <<https://library.farafrica.org/wp-content/uploads/2019/11/Comprehensive-Africa-Agriculture-Development-Programme.pdf>> (last accessed on 30 September 2022). See also Companion Document to CAADP: Integrating livestock, forestry and fisheries subsectors into the CAADP (2006) <http://pubs.iclarm.net/resource_centre/NEPAD.pdf> (last accessed on 30 September 2022).

²⁹The Sustainable Forest Management Framework for Africa 2020–2030 (2020) launched at the 33rd Ordinary AU Summit, Addis Ababa, 21 January–10 February 2020 <<https://afforum.org/publication/the-sustainable-forest-management-framework-for-africa-2020-2030/>> (last accessed on 25 August 2021).

forestry-related policies establishing institutional and financial arrangements for SFM.³⁰

While SFM is emphasised under REDD+ and offers best practices for securing forest adaptation,³¹ interactions between the two regimes are scarce in the African context,³² which is characterised by a dearth of policy coordination and coherence across forestry-related initiatives.³³ In fact, forest policy coherence has been eminently deplored, despite its stark potential.³⁴ UN Agenda 2030 has stressed the need for enhancing policy coherence for sustainable development.³⁵ The call for improving cooperation, coordination, coherence and synergies on forest-related issues, has been underscored within the post-2015 global development agenda.³⁶ This chapter seeks to explore the potential for enhanced synergies between the SFM and REDD+ frameworks towards sustainable development in SIDS in the African context, where the implementation of forestry frameworks and policies is under-researched compared with other regions.³⁷ Following the introduction, the second Section describes the interactions between the REDD+ and SFM frameworks and sustainable development, from a rights-based approach. It provides an analysis of the relevant global, regional and sub-regional instruments informing REDD+ and SFM and the complementarity of the frameworks with the post-2015 development agenda. The third Section provides an overview of the state of implementation of REDD+ and SFM in African SIDS drawing from country reports under the UNFF, UNFCCC and UN Agenda 2030. The fourth Section underlines opportunities and challenges for enhanced REDD+ readiness and implementation by African SIDS, particularly by using extant SFM instruments and mechanisms. In Section five the chapter concludes with perspectives on optimising REDD+ readiness and implementation by African SIDS for catalysing their sustainable development.

³⁰MacDicken et al. (2015), p. 50. For a database of relevant national legislation and policies, see Food and Agriculture Organization (FAO) *TimberLex* <<https://timberlex.apps.fao.org/>> (last accessed on 30 September 2022).

³¹Long (2013), pp. 384–408.

³²Interlinkages between forest regimes are typically limited by domestic political processes, institutional silos and vested interests of powerful actors. See Tegegne (2016).

³³The Sustainable Forest Management Framework for Africa 2020–2030 (n 29), pp. 6–7.

³⁴See notably Tegegne et al. (2018), pp. 4841–4863; Broekhoven and Marieke (2014); Gupta et al. (2016), pp. 355–374.

³⁵The 2030 Agenda for Sustainable Development (UN Agenda 2030), adopted by the UN General Assembly Resolution 70/1. 21 October 2015, SDG Target 17.14.

³⁶UN Economic and Social Council Resolution 2015/33 ‘International Arrangement on Forests Beyond 2015’ (5 October 2015), para 1(d)(iii). See also UN Secretariat, ‘Enhancing Global Forest Policy Coherence and a Common International Understanding of Sustainable Forest Management’ (2019) UN Doc. E/CN.18/2019/5.

³⁷See studies of REDD+ in SIDS in other regions: notably Mohan (2022), p. 102844; Brimacombe (2020); Carodenuto et al. (2022), pp. 220–241.

2 REDD+, SFM and Sustainable Development

As natural resource management frameworks, REDD+ and SFM are critical enablers of sustainable development.³⁸ SFM is identified under sustainable development goal (SDG) 15 of the UN Agenda 2030 ‘Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss’ and is captured under Target 15.2.³⁹ Likewise, Aspiration 1 of AU Agenda 2063, ‘A Prosperous Africa based on inclusive growth and sustainable development’ highlights the need for forests to be conserved and their resources used sustainably towards ending food insecurity and hunger, the conservation of biodiversity and climate adaptation.⁴⁰ In addition, the contributions of SFM to the achievement of SDG 1 ‘To end poverty in all its forms, everywhere’ are also increasingly well-established, notably in supporting livelihoods and well-being.⁴¹ In a similar vein, REDD+ is intrinsically linked to the global development agenda,⁴² notably to SDG 13 ‘Take urgent action to combat climate change and its impacts’.⁴³ AU Agenda 2063 also underscores the reduction of deforestation by 90% as a target under climate resilience.⁴⁴ Furthermore, significantly, both frameworks have increasingly emphasised rights-based approaches.⁴⁵ In guiding states in identifying and implementing REDD+ actions, the Cancun Agreements stress that ‘parties should, in all climate change related actions, fully respect human rights’.⁴⁶ Human rights considerations are reflected under the Rio Forest Principles which require the integration of the rights of Indigenous Peoples, local communities and women in the development, planning and implementation of national policies on SFM.⁴⁷ This section further examines the linkages between REDD+ and SFM, and sustainable development, from a rights-based perspective. It outlines the governance frameworks underlying REDD+ and SFM at the global, regional and SIDS levels, before exploring areas of convergence with sustainable development.

³⁸See notably Bastos Lima et al. (2017), pp. 589–606; Milbank et al. (2018), pp. 589–611; Janetschek et al. (2020), pp. 430–442; Baumgartner (2019), pp. 152–162. For an overview of the interactions of the SDGs with forests, see Katila et al. (2019).

³⁹UN Agenda 2030 (n 35), paras 6.1–6.6.

⁴⁰African Union Commission (AUC) ‘African Union Agenda 2063: A Shared Strategic Framework for Inclusive Growth and Sustainable Development’ (AU Agenda 2063) Addis Ababa, September 2015, pp. 35 and 70.

⁴¹The Preamble of the UN Forest Instrument (n 17), highlights that ‘sustainable forest management contributes significantly to sustainable development and poverty eradication’. See also Miller et al. (2020).

⁴²Bastos Lima et al. (2017).

⁴³UN Agenda 2030 (n 35), paras 13.1–13.3.

⁴⁴AU Agenda 2063 (n 40), p. 148.

⁴⁵See Savaresi (2013), pp. 5–13.

⁴⁶Cancun Agreements (n 10), para 8.

⁴⁷Rio Forest Principles (n 17), Principles 2, 3 and 5.

2.1 *Institutional Interlinkages*

As SFM cuts across the mitigation activities under REDD+, the two regimes are guided by interrelated and overlapping norms, albeit they derive from distinct and separate instruments and mechanisms.

2.1.1 **Global Initiatives**

Since the emergence of multilateral policy dialogue on the conservation and the sustainable management of forests at the United Nations Conference on Environment and Development (UNCED) in Rio in 1992, a number of entities were established to facilitate cooperation on forest-related issues.⁴⁸ The ad hoc Intergovernmental Panel on Forests (IPF) and Intergovernmental Forum on Forests (IFF) set up under the United Nations Commission on Sustainable Development (CSD),⁴⁹ charted the first comprehensive proposals on SFM.⁵⁰ The United Nations Forum on Forests (UNFF), created in 2000 as a permanent subsidiary body of the Economic and Social Council of the United Nations (ECOSOC), is mandated to promote the implementation of SFM.⁵¹ The Collaborative Partnership on Forests (CPF), a voluntary inter-agency collective of international organisations, formed in 2001, supports the work of the UNFF and its member countries by enhancing cooperation and coordination in forest issues.⁵²

The UN Forest Instrument, the foremost international instrument on SFM, was adopted in 2007.⁵³ Reaffirming the Rio Forest Principles adopted at the Rio Conference in 1992, it centres on four global objectives, including reversing the loss of forest cover worldwide through SFM, enhancing forest-based economic, social and environmental benefits, increasing the area of protected forests worldwide and sustainably managed forests as well as the proportion of forest products from sustainably managed forests, and reversing the decline in official development assistance for SFM.⁵⁴ It identifies seven thematic elements, as indicators for SFM,

⁴⁸For an overview of the international policy framework on forestry, see Sotirov et al. (2020), pp. 7010–7035. For a historical account of global instruments, see McDermott (2007).

⁴⁹UN Economic and Social Council Decision 1995/226 ‘Establishment of an open-ended ad hoc intergovernmental panel on forests of the Commission on Sustainable Development’ (1 June 1995) and Resolution 1997/65 ‘Establishment of an ad hoc open-ended Intergovernmental Forum on Forests’ (25 July 1997).

⁵⁰‘Report of the Ad Hoc Intergovernmental Panel on Forests on its fourth session’, endorsed by the UN Economic and Social Council (19 February 1997) UN Doc. E/CN.17/IPF/1997/L.1 and ‘Report on the fourth session of the Intergovernmental Forum on Forests’, endorsed by the United Nations Economic and Social Council (28 July 2000) Resolution 2000/35.

⁵¹UN Economic and Social Council Resolution 2000/35 (n 50).

⁵²Ibid.

⁵³UN Forest Instrument (n 17).

⁵⁴Ibid., para 5.

namely the extent of forest resources, forest biological diversity, forest health and vitality, productive functions of forest resources, protective functions of forest resources, socio-economic functions of forests and legal, policy and institutional framework.⁵⁵ The global architecture on SFM, including the key functions of its main organs have been reaffirmed, and their links to the SDGs reinforced in 2015.⁵⁶ In this vein, the UNFF developed the UN Strategic Plan for Forests 2030 in 2017, which includes a target to increase forest area by 3% worldwide by 2030 as well as six voluntary Global Forest Goals and 26 associated targets.⁵⁷ Member countries are required to monitor and assess progress towards the UN Forest Instrument and the UN Strategic Plan for Forests and submit national reports on a voluntary basis to the UNFF.⁵⁸

Besides the international arrangements on forests, various programmes assist countries in SFM policy implementation. The Food and Agriculture Organization of the United Nations (FAO) Forestry Programme, guided by the FAO Committee on Forestry (COFO), focuses on SFM as one of its priority areas.⁵⁹ The International Tropical Timber Organization (ITTO), an intergovernmental organisation promoting SFM and sustainable tropical timber industries and trade, assists member countries in tropical forestry policy implementation.⁶⁰ The United Nations Environment Programme (UNEP) also runs programmes relating to SFM, including the Financing Sustainable Land Use for People and the Planet Programme which seeks to scale up and direct private finance to sustainable land use including SFM.⁶¹ The Global Forest Expert Panels (GFEP) Programme of the International Union of Forest Research Organizations (IUFRO) supports international policy processes and informed decision-making at the regional and global level through independent scientific assessments of key forest-related issues of high concern, including global assessments, follow-up studies and regional activities.⁶² The World Resources Institute (WRI) Forest Programme is focused on partnerships and research to

⁵⁵Ibid., para 6(b).

⁵⁶International Arrangement on Forests Beyond 2015 (n 36).

⁵⁷UN Economic and Social Council Resolution 2017/4 'United Nations Strategic Plan for Forests 2017–2030 and quadrennial programme of work of the United Nations Forum on Forests for the period 2017–2020' (20 April 2017).

⁵⁸UN Forest Instrument (n 17), paras 8–9.

⁵⁹See 'Moving Forward: Selected Achievements of the FAO Forestry Programme in 2018–2019' (FAO 2020) <<http://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1314680/>> (last accessed on 30 September 2022).

⁶⁰ITTO Focus Areas <https://www.itto.int/focus_areas/> (last accessed on 30 September 2022).

⁶¹UNEP 'Financing Sustainable Land Use for People and Planet' Programme <<https://wedocs.unep.org/bitstream/handle/20.500.11822/31216/FSLU.pdf?sequence=1&isAllowed=y>> (last accessed on 30 September 2022).

⁶²Global Forest Expert Panels (GFEP) Programme <<https://www.iufro.org/science/gfep/>> (last accessed on 30 September 2022).

advance SFM, and includes the Global Forest Watch initiative, a global forest monitoring tool.⁶³

The Warsaw Framework for REDD+ provides the institutional framework for REDD+ implementation under the UNFCCC.⁶⁴ REDD+ is also recognised as an integral part of the Paris Agreement.⁶⁵ State parties to REDD+ are required to report on relevant activities through biennial update reports to the UNFCCC, and national forest levels through the REDD+ Web Platform, which also hosts information submitted by relevant non-governmental organisations and stakeholders.⁶⁶ They are also required to submit social safeguards in their Nationally Determined Contributions (NDCs) under the Paris Agreement or through the REDD+ Web Platform. The United Nations Collaborative Programme on REDD+ (UN-REDD) led by UNEP, FAO and the United Nations Development Programme (UNDP) supports country-level REDD+ processes, including the participation of all relevant stakeholders as well as national REDD+ readiness efforts.⁶⁷ The Forest Carbon Partnership Facility (FCPF), a global partnership of governments, businesses and civil society organisations, supports REDD+ efforts in developing countries.⁶⁸ Other initiatives such as the Green Climate Fund (GCF),⁶⁹ the Forest Peoples Programme⁷⁰ and the Architecture for REDD+ Transactions (ART)⁷¹ also support REDD+ readiness and implementation in countries.

Multiple interlinkages can be drawn from the global institutional arrangements on REDD+ and SFM. Notably the measuring, reporting and verification (MRV) functions under REDD+ contribute to enhanced access to forest-related data and information as highlighted in the UN Forest Instrument.⁷² Biodiversity is a thematic element of SFM and a Cancun safeguard under REDD+. Similarly, the reduction of forest degradation and rehabilitation, activities under REDD+, are central to the SFM thematic element of forest health and vitality.⁷³ Furthermore, economic development, which is an SFM thematic element, is also a critical aspect of REDD+, as a financial mechanism rewarding efforts to reduce emissions from deforestation and to

⁶³ Global Forest Watch <<https://globalforestwatch.org/>> (last accessed on 30 September 2022).

⁶⁴ Warsaw Framework (n 9).

⁶⁵ Paris Agreement (n 21), Article 5.

⁶⁶ The Platform was mandated in UNFCCC COP Decision 2/CP.13 'Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action', para 10.

⁶⁷ See UN-REDD Programme <<https://www.un-redd.org/>> (last accessed on 30 September 2022).

⁶⁸ About the Forest Carbon Partnership Facility <<https://www.forestcarbonpartnership.org/about>> (last accessed on 30 September 2022).

⁶⁹ About the Green Climate Fund <<https://www.greenclimate.fund/about>> (last accessed on 30 September 2022).

⁷⁰ About the Forest Peoples Programme <<https://www.forestpeoples.org/en/about>> (last accessed on 30 September 2022).

⁷¹ About the Architecture for REDD+ Transactions <<https://www.artredd.org>> (last accessed on 30 September 2022).

⁷² UN Forest Instrument (n 17), para 7(o).

⁷³ Cancun Agreements (n 10).

conserve forests. Likewise, both regimes call for the respect of the rights of Indigenous Peoples and members of local communities as well as traditional knowledge and use. They also both lay emphasis on transparency, public participation and capacity transfer from developed to developing countries.

2.1.2 Regional Initiatives

The institutional frameworks supporting SFM in Africa span the African Union, the Regional Economic Communities (RECs) and civil society organisations. The African Union's Specialized Technical Committee (STC) on Agriculture, Rural Development, Water and Environment (ARDWE) provides the overall policy direction on forest-related issues on the continent.⁷⁴ The African Ministerial Conference on the Environment (AMCEN), set up in 1985 to promote advocacy for environmental protection in Africa and formulating common positions in international negotiations, has highlighted forest issues since its first session.⁷⁵ The SADC Regional Forest Law Enforcement, Governance and Trade (FLEGT) Programme, coordinated by the SADC Food, Agriculture and Natural Resources (FANR) Directorate, is mandated to address forest law enforcement and governance as well as legal harvesting and trade in forest products in the region.⁷⁶ In addition, the FAO African Forestry and Wildlife Commission (AFWC), established in 1959, provides a policy and technical forum for countries within the continent to discuss and address forest issues.⁷⁷ It meets every two years. In the past, the AFWC endorsed the seminal Forestry Outlook Study for Africa (FOSA), a programme to study the future of forestry in Africa from 1998 to 2020.⁷⁸

A myriad of civil society organisations and regional networks support SFM policy development and implementation in the continent. The African Forest Forum (AFF) is the leading stakeholder platform for African forestry issues and SFM.⁷⁹ The Africa Forest Enterprises Connect Network (AFECONNECT) is a knowledge network committed to the development of locally controlled forest enterprises for livelihood improvement in Africa.⁸⁰ The Global Forest and Trade Network (GFTN) project, Forest & Trade Networks for Legal and Sustainable Forest

⁷⁴AU Specialized Technical Committees <<https://au.int/en/stc#>> (last accessed on 30 September 2022).

⁷⁵AMCEN Resolution adopted by the Conference at its First Session, Doc. UNEP/AEC 1/2 (Annex I).

⁷⁶SADC Forestry Programmes <<https://www.sadc.int/pillars/forests>> (last accessed on 30 September 2022).

⁷⁷AFWC <<https://www.fao.org/policy-support/mechanisms/mechanisms-details/en/c/417074/>> (last accessed on 30 September 2022).

⁷⁸FOSA Process Information Note <<http://www.fao.org/3/X6640E/X6640E03.htm>> (last accessed on 30 September 2022).

⁷⁹About AFF <<https://afforum.org/about/>> (last accessed on 30 September 2022).

⁸⁰Forest Connect <<https://www.iied.org/forest-connect>> (last accessed on 30 September 2022).

Management in Africa and Asia, promotes the conservation and sustainable management of tropical forests by assisting developing countries to improve forest governance.⁸¹ The African Women's Network for Community Management of Forests (REFACOF), established in 2010, is involved in sustainable forest resource management in Africa.⁸² The African Community Forestry Network, launched in 2015, brings together community-led organisations working in agroforestry and forestry across Africa.⁸³

Similarly, REDD+ is supported through a wide range of initiatives. The NEPAD Climate Smart Agriculture (CSA) Programme supports progress towards the 2014 Africa Climate Smart Agriculture Vision 25X25.⁸⁴ The Africa CSA Alliance Forum, established in 2015, provides the platform for cooperation towards the attainment of the goals of Vision 25x25. The ECOWAS Centre for Renewable Energy and Energy Efficiency (ECREE) runs a Programme of REDD+ activities, assisting countries in REDD+ readiness.⁸⁵ The Great Green Wall for the Sahara and the Sahel Initiative (GGWSSI) launched in 2008 by the UNCCD and the AU also addresses land degradation and desertification in the Sahel and Sahara, in view of boosting food security and supporting local communities to adapt to climate change.⁸⁶ The Africa NDC Hub, established by the Climate Change and Green Growth Department of the African Development Bank, provides an opportunity for stakeholder engagement on climate action policies and supports African countries in mobilising finance to support sustainable development priorities.⁸⁷

Regional initiatives have highlighted the connectedness between SFM and REDD+. The AU SFM Framework underlines the role of SFM in climate change mitigation while also identifying REDD+ as an opportunity to increase resources and action for SFM.⁸⁸ The SADC Forestry Strategy also highlights the role of SFM in climate regulation and calls upon the creation of regional mechanisms to enable

⁸¹The Global Forest and Trade Network <<https://www.wwf.org/la/projects/gftn/>> (last accessed on 30 September 2022).

⁸²The African Women's Network for Community Management of Forests <<https://www.wocan.org/partner/refacof/>> (last accessed on 30 September 2022).

⁸³The African Community Forestry Network <<https://www.wocan.org/partner/refacof/>> (last accessed on 30 September 2022).

⁸⁴NEPAD, Africa CSA Vision 25x25: Africa's Strategic Approach for Food Security and Nutrition in the Face of Climate Change (2014) <<https://www.nepad.org/publication/africa-csa-vision-25x25-africas-strategic-approach-food-security-and-nutrition>> (last accessed on 30 September 2022).

⁸⁵ECOWAS Centre for Renewable Energy and Energy Efficiency, ECOWAS Sustainable Biomass Actions: REDD+ Mechanism <<http://www.ecreee.org/project/reddplus>> (last accessed on 30 September 2022).

⁸⁶The Great Green Wall <<https://www.greatgreenwall.org/about-great-green-wall>> (last accessed on 30 September 2022).

⁸⁷Africa NDC Hub <<https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/africa-ndc-hub>> (last accessed on 30 September 2022).

⁸⁸The Sustainable Forest Management Framework for Africa (n 29), Part IV.

protection, sustainable management and restoration of forests, toward climate resilience and mitigation.⁸⁹

2.1.3 SIDS Initiatives

There is no specialised SIDS organ dedicated to forestry and forest-related issues. The International Conferences on SIDS are the primary SIDS forum for discussion on SFM and climate-related forestry issues. In this respect, the Alliance of Small Island States (AOSIS), the coalition of island states representing the interests of SIDS in international climate change negotiations and sustainable development processes, is involved in the implementation of the SAMOA Pathway.⁹⁰ Biodiversity and the sustainable management of marine and coastal areas as well as climate adaptation are strategic areas of the Indian Ocean Commission (IOC), an intergovernmental organisation regrouping Comoros, Madagascar, Mauritius, Reunion and Seychelles.⁹¹ The Indian Ocean Rim Association (IORA), an international organisation consisting of 23 member countries bordering the Indian Ocean, runs the IORA Sustainable Development Program (ISDP), focused on strengthening regional cooperation on sustainable development issues.⁹² In addition, civil society organisations aimed at the promotion of environmental conservation and climate action such as Eco-Sud and EPCO in Mauritius, Nature Seychelles in Seychelles and BioGuinea Foundation in Guinea Bissau also support SFM and REDD+.

Frameworks on the sustainable development of SIDS have underlined the interlinkages between the objectives of SFM and REDD+. The SAMOA Pathway underlines the need for enhancing coherence of the issues related to SIDS in UN processes, at national, regional and global levels.⁹³

2.2 *Synergies with Sustainable Development*

Sustainable development rests at the intersection of the rights to development, environment and participation.⁹⁴ While linkages between the SFM and REDD+ paradigms and the rights to development and environment are more palpable, their

⁸⁹SADC Forestry Strategy (n 25), Strategic Area 4.

⁹⁰About the Alliance of Small Island States <<https://www.aosis.org/about/chair-of-aosis/>> (last accessed on 30 September 2022).

⁹¹About the Indian Ocean Commission <<https://www.commissionoceanindien.org/presentation-coi/>> (last accessed on 30 September 2022).

⁹²About the IORA Sustainable Development Program <<https://www.iora.int/en/flagship-projects/the-iora-sustainable-development-program-isdip>> (last accessed on 30 September 2022).

⁹³SAMOA Pathway (n 4), para 120.

⁹⁴Leib (2011).

correlation with democratic tenets is reflected in the concepts of inclusive participation, accountability and transparency embedded in the frameworks.

2.2.1 Right to Development

The right to development⁹⁵ is defined as ‘an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized’.⁹⁶ Article 22 of the African Charter on Human and Peoples’ Rights (African Charter) recognises the right to development as follows:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.⁹⁷

It was more recently recognised that the implementation of the right to development should be guided by international frameworks on climate change, financing for development and sustainable development.⁹⁸ The substantive content and standards of the right to development draw from a number of international human rights law instruments,⁹⁹ establishing the principles for the promotion of higher standards of living, conditions of economic and social progress, development, and peace and stability. Both the SFM and REDD+ frameworks have salient links to the right to development. SFM is geared to the promotion of sustainable patterns of production and consumption of forest resources, poverty reduction, rural livelihoods and food security.¹⁰⁰ A key component of Africa’s agricultural sector, it is underscored in various regional development strategies, including the New Partnership for Africa’s Development (NEPAD) Comprehensive Africa Agriculture Development

⁹⁵For an introduction to the right to development, see Sengupta (2002), pp. 837–889 and Arts and Tamo (2016), pp. 221–249.

⁹⁶The Declaration on the Right to Development (1986) adopted by the UN General Assembly Resolution 41/128 of 4 December 1986, UN Doc. A/Res/41/128 Annex.

⁹⁷African Charter on Human and Peoples’ Rights (1982) adopted by the 18th Assembly of the OAU Heads of State and Government, Nairobi, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, Article 22.

⁹⁸UN Special Rapporteur on the Right to Development ‘Guidelines and Recommendations on the Practical Implementation of the Right to Development’ presented to the Human Rights Council at its 42nd session, September 2019, UN Doc. A/HRC/42/38, para 7.

⁹⁹For an overview, see ‘International standards on the right to development’ <<https://www.ohchr.org/EN/Issues/Development/Pages/InternationalStandards.aspx>> (last accessed on 30 September 2022).

¹⁰⁰See Rio Forest Principles (n 17), para 7.

Programme (CAADP) Pillar 1 Framework on Sustainable Land and Water Management,¹⁰¹ and the African Development Bank ‘Feed Africa’ Strategy.¹⁰² REDD+ urges actions to address the drivers of deforestation and reduce human pressure on forests.¹⁰³ The right to development also infers the right of peoples’ to self-determination, including full sovereignty over all their natural wealth and resources. The elaboration of REDD+ national strategies is required to address forest tenure issues, forest governance, gender considerations and ensure the full participation of Indigenous Peoples and local communities.¹⁰⁴ Along with tenure reform, some countries have defined carbon rights in national policies and provided for the enhancement of transparency and accountability in the distribution of benefits.¹⁰⁵ Secure ownership and long-term property rights are considered prerequisites for SFM.¹⁰⁶

2.2.2 Right to Environment

The links between human rights and the environment are increasingly well established, with environmental rights being incorporated into regional treaties, constitutions and soft law.¹⁰⁷ Article 24 of the African Charter, enshrines the right to a satisfactory environment as follows:

All peoples shall have the right to a general satisfactory environment favorable to their development.¹⁰⁸

The substantive elements of the right to a clean, healthy and sustainable environment span from clean air and water, adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play,

¹⁰¹ See NEPAD ‘The CAADP Pillar 1 Framework for Sustainable Land and Water Management’ (September 2009) <<https://www.nepad.org/publication/sustainable-land-and-water-management-caadp-pillar-i-framework>> (last accessed on 30 September 2022).

¹⁰² AfDB ‘Feed Africa: Strategy for Agricultural Transformation in Africa 2016–2025’ (May 2016) <<https://www.tralac.org/documents/resources/africa/1750-afdb-feed-africa-strategy-for-agricultural-transformation-in-africa-2016-2025/file.html>> (last accessed on 30 September 2022).

¹⁰³ Cancun Agreements (n 10), para 72.

¹⁰⁴ *Ibid.*

¹⁰⁵ Bradley and Fortuna (2021), p. 5.

¹⁰⁶ Rio Forest Principles (n 17), para 5(a) and the Sustainable Forest Management Framework for Africa 2020–2030 (n 29), p. 9.

¹⁰⁷ See Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (19 July 2018) UN Doc. A/73/188; Framework Principles on Human Rights and the Environment (24 January 2018) UN Doc. A/HRC/37/59 (Annex) and Shelton (2010), pp. 89–120.

¹⁰⁸ African Charter (n 97), Article 24.

healthy biodiversity and ecosystems to a safe climate.¹⁰⁹ As a climate mitigation mechanism, REDD+ is closely linked to the promotion of environmental rights. The implementation of REDD+ is also required to address environmental safeguards. SFM also plays a key role in the enjoyment of the right to environment as a result of its implications for the climate, biological diversity, sustainable food production and livelihoods.

2.2.3 Right to Participation

The right to participation and its derivative rights have been increasingly defined and reinforced in international human rights law.¹¹⁰ The African Charter on Democracy, Elections and Governance requires that states ‘promote democracy, the principle of the rule of law and human rights’.¹¹¹ Notably, amongst other relevant duties, it recognises the promotion of good governance, including transparency and accountability¹¹² as well as citizen participation in the development process.¹¹³ REDD+ and SFM both place special emphasis on the participation of forest communities and marginalised groups in decision-making and their implementation. REDD+ requires states to address forest governance issues, gender considerations and social safeguards,¹¹⁴ which include transparent and effective governance structures, respect for indigenous rights and knowledge and the full and effective participation of all stakeholders, particularly indigenous and local communities, when developing and implementing national strategies.¹¹⁵ States are also required to periodically report on these safeguards through the development of national Safeguards Information Systems (SIS).¹¹⁶ SFM also requires the provision of opportunities for participation of women, indigenous communities, non-governmental organisations and forest dwellers,¹¹⁷ and the recognition and knowledge of indigenous knowledge and capacity.¹¹⁸

¹⁰⁹Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (15 July 2019) UN Doc. A/74/161 and Rajamani (2010), pp. 391–429.

¹¹⁰Steiner (2008), pp. 445–476.

¹¹¹The African Charter on Democracy, Elections and Governance, adopted by the 8th Ordinary Session of the AU Assembly of Heads of State and Government, Addis Ababa, 30 January 2007, Article 4.

¹¹²Ibid., Article 12.

¹¹³Ibid., Article 30.

¹¹⁴See notably Duchelle and Jagger (2014).

¹¹⁵Cancun Agreements (n 10), Appendix I.

¹¹⁶Ibid.

¹¹⁷Rio Forest Principles (n 17), paras 2(d) and 5(b).

¹¹⁸Ibid., para 12(d).

3 SFM and REDD+ Implementation in African SIDS

Drawing upon national country reports to the UNFF, the NDCs to the UNFCCC, the Voluntary National Reviews (VNRs) on the implementation of UN Agenda 2030 and reports on mitigation activities under REDD+, this section reviews SFM and REDD+ implementation in African SIDS.

3.1 *Cabo Verde*

About 11% of Cabo Verde's land area is currently forested.¹¹⁹ Cabo Verde was the first African country to ratify the UN Convention to Combat Desertification,¹²⁰ which calls for the sustainable management of forests.¹²¹ It ratified the UN Convention on Biological Diversity¹²² and the UN Framework Convention on Climate Change¹²³ in 1995. Forest cover on the island has increased by 10% in the last 30 years as a result of afforestation and reforestation measures.¹²⁴ Forest products constitute an important part of local economies, with an estimated 268,000 tonnes of fuelwood produced per year.¹²⁵ Forests are also recognised to contribute significantly to climate adaptation, notably the protection of soil and regeneration of water.¹²⁶ Cabo Verde introduced forest legislation in 1998 which regulates forestry activity within the country.¹²⁷ It has been strongly committed to enhancing climate resilience and capacities in adaptation, an important part of its sustainable development strategy 'Cabo Verde Ambition 2030'.¹²⁸ From 2014 to 2021, the Ministry of

¹¹⁹The World Bank Data, 'Forest area (% of land area) – Cabo Verde' <<https://data.worldbank.org/indicator/AG.LND.FRST.ZS?locations=CV>> (last accessed on 30 September 2022).

¹²⁰See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en> (last accessed on 30 September 2022).

¹²¹United Nations Convention to Combat Desertification (n 19).

¹²²United Nations Convention on Biological Diversity (n 18). See United Nations Treaty Collection https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27 (last accessed on 30 September 2022).

¹²³UN Framework Convention on Climate Change (n 9). See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

¹²⁴Cabo Verde, Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development (2021) <https://sustainabledevelopment.un.org/content/documents/282392021_VNR_Report_Cabo_Verde.pdf> (last accessed on 30 September 2022).

¹²⁵Cabo Verde, Update to the First Nationally Determined Contribution (2021) <<https://unfccc.int/documents/497420>> (last accessed 30 September 2022), p. 30.

¹²⁶Ibid.

¹²⁷Law No. 48/V/98 regulating forest activity <<https://www.fao.org/faolex/results/details/en/c/LEX-FAOC013213/>> (last accessed on 30 September 2022).

¹²⁸Cabo Verde Update to the First Nationally Determined Contributions (n 125), p. 159.

Agriculture and Environment and FAO ran the ‘Building Adaptive Capacity and Resilience of the Forestry Sector in Cabo Verde’, aimed at the development of a gender responsive, climate resilient and sustainable forest management strategic plan, capacity building of national stakeholders and the promotion of policy dialogue. In its last NDC, it has underlined enduring challenges in data gathering on forestry emissions and removals.¹²⁹ Whereas it has not yet introduced climate-related forest policies, Cabo Verde set broad targets for 2030, including to further pursue afforestation and reforestation measures, to formulate forest management plans and forest fire prevention plans and enhance the collection and management of data in the land sector including forest, current forest, wetlands and soil inventory from 2012.¹³⁰ It has also committed to improve access to and sharing of data and methodologies, integrate forest, wetlands and soil information into municipal development plans and capacity building in forestry, conservationism and entrepreneurship in the sustainably and locally sourced products business.¹³¹ It is worth noting that Cabo Verde has not submitted a report to UNFF.

3.2 Comoros

Comoros has one of the highest rates of deforestation in the world, as a result of growing population pressure, dependence on agriculture and forest fires.¹³² From 2001 to 2021, it lost 4.3% of tree cover, equivalent to 2.67 Mt of CO₂ emissions.¹³³ This has led to the extinction of plant species, endangered fauna and flora and land degradation.¹³⁴ Currently, around 18% of its land area is forested.¹³⁵ Comoros ratified the UN Framework Convention on Climate Change¹³⁶ and the UN

¹²⁹ *Ibid.*, p. 46.

¹³⁰ *Ibid.*, p. 30.

¹³¹ Cabo Verde Update to the First Nationally Determined Contributions (n 125), p. 30.

¹³² FAO ‘Comoros and FAO: Partnering for Sustainable Agricultural Development and Food and Nutrition Security’ <<http://www.fao.org/3/ax422e/AX422E.pdf>> (last accessed on 25 August 2021).

¹³³ Global Forest Watch – Comoros <<https://www.globalforestwatch.org/dashboards/country/COM/>>.

¹³⁴ Union des Comores ‘Rapport National Volontaire de l’Union des Comores au Forum Politique de Haut Niveau sur le Développement Durable’ (2020) <https://www.arabdevelopmentportal.com/sites/default/files/publication/comoros_report.pdf> (last accessed on 30 September 2022), p. 87.

¹³⁵ The World Bank Data, ‘Forest area (% of land area) – Comoros’ <<https://data.worldbank.org/indicator/AG.LND.FRST.ZS?locations=KM>> (last accessed on 30 September 2022).

¹³⁶ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

Convention on Biological Diversity¹³⁷ in 1994, and the UN Convention to Combat Desertification in 1998.¹³⁸ Forest legislation introduced in 1988 provided the legal framework for reforestation and forest management.¹³⁹ Its 1995 Framework Law on the Environment regulates activities related to the sustainable management and conservation of land biodiversity.¹⁴⁰ The 2012 Law on Forest Management governs forest management activities.¹⁴¹ Forestry has been identified as one of the most vulnerable sectors to the adverse effects of climate change in Comoros, alongside agriculture, fisheries, water resources and health, in its last NDC.¹⁴² The state has undertaken various reforestation programmes.¹⁴³ It has committed to conduct further afforestation and reforestation measures and establish protected areas of forest domain.¹⁴⁴ The management of forests and the strengthening of capacity in climate change adaptation for food security is part of the 2018–2021 FAO Country Programming Framework for Comoros.¹⁴⁵ Comoros submitted a national report to the 11th session of the UNFF.¹⁴⁶

3.3 *Guinea Bissau*

Guinea Bissau is host to rich tropical forests, extending over 70% of its land area.¹⁴⁷ Forestry represents one of the three key sectors of the economy, alongside agriculture and fisheries, altogether constituting 44% of GDP for most of the last two

¹³⁷ See United Nations Treaty Collection https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27 (last accessed on 30 September 2022).

¹³⁸ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en> (last accessed on 30 September 2022).

¹³⁹ Law No. 88-006/PR of 1988.

¹⁴⁰ Law No. 94-018/AF of 1995.

¹⁴¹ Law No. 12-001/AU of 2012.

¹⁴² Union des Comores, ‘Contribution Déterminée au Niveau National (CDN actualisée)’ (2020) <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022), p. 9.

¹⁴³ Union des Comores ‘Rapport National Volontaire’ (n 134), p. 86.

¹⁴⁴ Ibid.

¹⁴⁵ FAO ‘Comoros and FAO’ <<https://www.fao.org/3/ax422e/ax422e.pdf>> (last accessed on 30 September 2022).

¹⁴⁶ Union des Comores, ‘Rapport National Volontaire à la Onzième Session du Forum des Nations Unies sur les Forêts’ (2014) <https://www.un.org/esa/forests/wp-content/uploads/bsk-pdf-manager/158_COMORES.PDF> (last accessed on 30 September 2022).

¹⁴⁷ The World Bank Data, ‘Forest area (% of land area) – Guinea Bissau’ <<https://data.worldbank.org/indicator/AG.LND.FRST.ZS?locations=GW>> (last accessed on 30 September 2022).

decades.¹⁴⁸ Deforestation is driven by the increase in demand for timber, biomass needs and the illegal logging of hardwoods, leading Guinea Bissau to become a net CO₂ emitter from a carbon sink, since 2013.¹⁴⁹ It ratified the UN Convention on Biological Diversity,¹⁵⁰ the UN Convention to Combat Desertification¹⁵¹ and the UN Framework Convention on Climate Change¹⁵² in 1995. It introduced forest legislation in 1991¹⁵³ which was repealed and superseded by a new forest law in 2011¹⁵⁴ which promotes SFM, and also included a five-year moratorium to ban the felling and export of timber. Its national forest policy has been revised in 2015 to integrate the SDGs. Guinea Bissau however has a fairly comprehensive institutional and financial framework on SFM, which includes a national forestry plan, national plan on agricultural investment and the national investment plan in forestry. It highlights institutional issues, conflicts between national actors and the dearth of public funding as challenges to the implementation of SFM policies.¹⁵⁵ Furthermore, it stresses the need to better integrate climate change in forest management plans. In its last NDC, it highlighted the need for strengthening enforcement, monitoring, inspection, and regulatory measures as well as the creation of incentives for SFM.¹⁵⁶ It committed to develop a national forest land restoration and reforestation programme, establish a new forestry policy which would enhance socioeconomic balance and account for the needs of communities and conduct a nationwide forest inventory.¹⁵⁷ Guinea Bissau has engaged with REDD+. It established a Working

¹⁴⁸ Republic of Guinea-Bissau, Updated Nationally Determined Contribution in the Framework of the Paris Climate Agreement (2021) <<https://www.undp.org/guinea-bissau/publications/updated-nationally-determined-contribution-framework-paris-climate-agreement>> (last accessed on 30 September 2022), p. 9.

¹⁴⁹ Ibid, p. 10.

¹⁵⁰ See United Nations Treaty Collection https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mdsg_no=XXVII-8&chapter=27 (last accessed on 30 September 2022).

¹⁵¹ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mdsg_no=XXVII-10&chapter=27&clang=_en> (last accessed on 30 September 2022).

¹⁵² See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mdsg_no=XXVII-7&chapter=27&Temp=mdsg3&clang=_en> (last accessed on 30 September 2022).

¹⁵³ Decree-Law No. 4-A/91 approving the Forestry Act <<https://www.fao.org/faolex/results/details/en/c/LEX-FAOC016708/>> (last accessed on 30 September 2022).

¹⁵⁴ Decree-Law No. 5/2011 approving the New Forestry Law <<https://www.fao.org/faolex/results/details/en/c/LEX-FAOC118220/>> (last accessed on 30 September 2022).

¹⁵⁵ Guinea Bissau ‘Rapport National De Guinée-Bissau : Progrès Réalisés dans la Mise en Oeuvre de l’UNSPF 2017-2030 Forum des Nations Unies sur les Forêts (UNFF)’ (2019) <<https://www.un.org/esa/forests/wp-content/uploads/2019/12/Guinea-Bissau.pdf>> (last accessed on 30 September 2022).

¹⁵⁶ Republic of Guinea-Bissau ‘Updated Nationally Determined Contribution’ (n 148), p. 12.

¹⁵⁷ Ibid, p. 19.

Group on REDD+, tasked with running REDD+ readiness activities which developed the Roadmap of Preparation to REDD+ 2016–2020.¹⁵⁸ In 2019, it submitted a Forest Reference Emission Level towards results-based payments.¹⁵⁹ Guinea Bissau has also submitted a national report on progress on the UN Strategic Plan for Forests to the UNFF in 2019.¹⁶⁰

3.4 *Mauritius*

Forest cover constitutes 19% of Mauritian territory.¹⁶¹ Mauritius ratified the UN Convention on Biological Diversity,¹⁶² the UN Framework Convention on Climate Change¹⁶³ in 1992, and the UN Convention to Combat Desertification¹⁶⁴ in 1996. Mauritius also has a fairly intricate legal and institutional framework on SFM, which includes the Forests & Reserves Act 1983,¹⁶⁵ the 2006 National Forest Policy,¹⁶⁶ the 2016 Strategic Plan for Food crops, Livestock and Forestry Sector (2016–2020),¹⁶⁷ and the 2017 National Biodiversity Strategy and Action Plan 2017–2025.¹⁶⁸ It has underlined implementation challenges as a result of insufficient financial resources, inadequate capacity building on SFM and climate change, fragmented institutional and legal arrangements and the lack of protection of private forest lands in forest

¹⁵⁸ Republic of Guinea Bissau ‘Proposed Forest Reference Emission Level for the National System of Protected Areas of Guinea Bissau’ (2019) <https://redd.unfccc.int/files/2019_submission_frel_guinea-bissau.pdf> (last accessed on 30 September 2022), p. 7.

¹⁵⁹ *Ibid.*

¹⁶⁰ Guinea Bissau ‘Rapport National De Guinée-Bissau : Progrès réalisés dans la mise en œuvre de l’UNSPF 2017–2030’ (n 155).

¹⁶¹ The World Bank Data, ‘Forest area (% of land area) – Mauritius’ <<https://data.worldbank.org/indicator/AG.LND.FRST.ZS?locations=MU>> (last accessed on 30 September 2022).

¹⁶² See United Nations Treaty Collection https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27 (last accessed on 30 September 2022).

¹⁶³ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

¹⁶⁴ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en> (last accessed on 30 September 2022).

¹⁶⁵ The Forest and Reserves Act 41 of 1983 <<https://forestry.govmu.org/Pages/Legislation/The-Forest-and-Reserves-Act-41-of-1983.aspx>> (last accessed on 30 September 2022).

¹⁶⁶ Republic of Mauritius National Forestry Policy (2006) <<https://forestry.govmu.org/Documents/National%20Forestry%20Policy.pdf>> (last accessed on 30 September 2022).

¹⁶⁷ Republic of Mauritius Strategic Plan for the Food Crop, Livestock and Forestry Sectors 2016–2020 (2016) <<https://www.greengrowthknowledge.org/national-documents/mauritius-strategic-plan-2016-02020-food-crops-livestock-and-forestry-sectors>> (last accessed on 30 September 2022).

¹⁶⁸ Republic of Mauritius National Biodiversity Strategy and Action Plan 2017–2025 (2017) <<https://www.cbd.int/doc/world/mu/mu-nbsap-v2-en.pdf>> (last accessed on 30 September 2022).

legislation. In this view, it is undertaking wide-ranging institutional reforms, supported by FAO.¹⁶⁹ It has also benefitted from the SADC Project for Forest Conservation and Sustainable Management of Forest Resources in Southern African Development Community, which aims at improving national policies and programmes on forest information systems, forest fire management and participatory forest management.¹⁷⁰ Mauritius introduced climate legislation in 2021 which provides for mitigation in the forestry sector.¹⁷¹ In its last NDC, it highlighted efforts to integrate climate adaptation in forestry¹⁷² and pursue reforestation efforts through the National Tree Planting Campaign.¹⁷³ It has committed to promoting agroforestry development sites.¹⁷⁴ Mauritius submitted a national report to UNFF-11.¹⁷⁵

3.5 *Sao Tome and Principe*

Sao Tome and Principe is home to one of the most diverse forest ecosystems globally. Most of its forests have been transformed into shade plantations and agro-forestry systems for coffee and cocoa production and to meet growing food demand.¹⁷⁶ It ratified the UN Convention to Combat Desertification¹⁷⁷ in 1998, and the UN Convention on Biological Diversity¹⁷⁸ and the UN Framework Convention

¹⁶⁹FAO TCP/MAR/3602 'Project support to Forest Code Revision (2016–2018) for Institutional & Legal Reform of the Forestry Sector'.

¹⁷⁰SADC Project for Forest Conservation and Sustainable Management of Forest Resources in Southern African Development Community <<https://amis-fis.jp>> (last accessed on 30 September 2022).

¹⁷¹The Climate Change Act 2020 (Act No. 11 of 2020) <http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=111988&p_country=MUS&p_count=667> (last accessed on 30 September 2022).

¹⁷²Republic of Mauritius 'Update of the Nationally Determined Contribution' (2021) <<https://unfccc.int/NDCREG>> (last accessed on 30 September 2022), p. 4.

¹⁷³Republic of Mauritius 'Voluntary National Review Report' (2019) <https://sdgs.un.org/sites/default/files/documents/23462Mauritius_VNR_Report_2019.pdf> (last accessed on 30 September 2022), p. 130.

¹⁷⁴Republic of Mauritius 'Voluntary National Report to UNFF' (2019) <<https://www.un.org/esa/forests/wp-content/uploads/2019/12/Mauritius.pdf>> (last accessed on 30 September 2022).

¹⁷⁵Ibid.

¹⁷⁶Democratic Republic of Sao Tome and Principe 'Sixth National Diversity Report' (2019) <<https://www.cbd.int/doc/nr/nr-06/st-nr-06-en.pdf>> (last accessed on 30 September 2022), p. 10.

¹⁷⁷See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en> (last accessed on 30 September 2022).

¹⁷⁸See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

on Climate Change¹⁷⁹ in 1999. It introduced forest legislation in 2001.¹⁸⁰ The FAO Project ‘Supporting Landscape and Livelihoods Resilience in Sao Tome and Principe’ is geared to promote forest restoration and SFM in the country to reduce carbon emissions from deforestation and reverse forest and soil degradation.¹⁸¹ Sao Tome and Principe is one of 30 participating countries in the AfDB Project ‘Support to Reducing Emissions from Deforestation and Forest Degradation (REDD+) investments in Africa’, seeking to strengthen the capacity of African countries in resource mobilisation for REDD+ projects and SFM,¹⁸² further to the Abidjan Resolution on REDD+ in Africa.¹⁸³ In its updated NDC, it commits to the development of a national programme for the sustainable management of forest and managed forest ecosystems by 2025.¹⁸⁴ It has also pointed to the development of a National Strategy for Forest Communication, and a National Platform of Forests.¹⁸⁵ Sao Tome and Principe has not submitted a national report to UNFF.

3.6 Seychelles

Over 70% of Seychelles is forested,¹⁸⁶ of which 50% constitute protected forests. It ratified the UN Convention on Biological Diversity¹⁸⁷ and the UN Framework

¹⁷⁹ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

¹⁸⁰ Forestry Law No.5/2001 <<https://www.fao.org/faolex/results/details/fr/c/LEX-FAOC072017/>> (last accessed on 30 September 2022).

¹⁸¹ FAO Project ‘Supporting Landscape and Livelihoods Resilience in Sao Tome and Principe’ <<https://www.fao.org/gef/projects/detail/en/c/1113261/>> (last accessed on 30 September 2022).

¹⁸² AfDB Project ‘Support to Reducing Emissions from Deforestation and Forest Degradation (REDD+) investments in Africa’ <<https://www.greenclimate.fund/document/support-reducing-emissions-deforestation-and-forest-degradation-redd-investments-africa>> (last accessed on 30 September 2022).

¹⁸³ Abidjan Resolution on REDD+ in Africa (2019) <<https://archive.pfbc-cbfp.org/docs/news/Aout%202019/Resolution%20REDD+%20in%20Africa%20Ang.pdf>> (last accessed on 30 September 2022).

¹⁸⁴ Sao Tome and Principe, Updated Nationally Determined Contributions (2021) <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Sao%20Tome%20and%20Principe%20First/Updated_NDC_STP_2021_EN_.pdf> (last accessed on 30 September 2022).

¹⁸⁵ Democratic Republic of Sao Tome and Principe ‘Sixth National Diversity Report’ (2019), pp. 41 and 46.

¹⁸⁶ The World Bank Data, ‘Forest area (% of land area) – Seychelles’ <<https://data.worldbank.org/indicator/AG.LND.FRST.ZS?locations=SC>> (last accessed on 30 September 2022).

¹⁸⁷ See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

Convention on Climate Change¹⁸⁸ in 1992 and the UN Convention to Combat Desertification¹⁸⁹ in 1997. In 2019, it initiated an FAO-funded project to establish a national forestry policy and legal framework, which will include SFM.¹⁹⁰ As part of its climate adaptation efforts, it has undertaken forest restoration work programmes under the Project ‘Ecosystem Based Adaptation to Climate Change in Seychelles’ in collaboration with the UNDP and the Global Environment Facility Programme Coordination Unit.¹⁹¹ In its last NDC, it committed to pursue the promotion of agroforestry.¹⁹² Seychelles has not submitted a national report to UNFF.

4 Enhancing REDD+ Readiness and Implementation across African SIDS

An inquiry into the state of REDD+ readiness and implementation across African SIDS highlights that forests and the forestry sector constitute an important part of local economies and livelihoods while also having critical environmental functions. This is eminently recognised by African SIDS in their national sustainable development agendas and consistently highlighted in their reports on progress towards sustainable development and climate action. Most African SIDS have a relatively comprehensive national legal and institutional framework on forestry, although these instruments do not currently adequately integrate climate adaptation and mitigation. This corroborates the missed opportunity highlighted in research, of tackling the twin crises of climate change and biodiversity conservation more generally across other SIDS.¹⁹³ African SIDS have mostly committed to remedy this gap in their latest NDCs. While only half of the African SIDS have submitted reports to the UNFF, these reports provide more detailed insight into the distinct challenges they face in meeting standards in SFM and REDD+ readiness and implementation. These reflect the broader challenges met by developing countries and Africa states in particular, including most importantly financial and technical shortcomings in data

¹⁸⁸See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> (last accessed on 30 September 2022).

¹⁸⁹See United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en> (last accessed on 30 September 2022).

¹⁹⁰Republic of Seychelles ‘Voluntary National Review’ (2020) <https://sustainabledevelopment.un.org/content/documents/26382VNR_2020_Seychelles_Report.pdf> (last accessed on 30 September 2022), p. 89.

¹⁹¹Republic of Seychelles ‘Voluntary National Review’ (2020).

¹⁹²Republic of Seychelles, ‘Updated Nationally Determined Contribution’ (2021) <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Seychelles%20First/Seychelles%20-%20NDC_Jul30th%202021%20_Final.pdf> (last accessed on 30 September 2022).

¹⁹³Strauß et al. (2022), pp. 216–227.

gathering and sharing as well as the development of monitoring and reporting processes coupled with a lack of policy coordination and coherence across sectors and governance frameworks.¹⁹⁴ This echoes key constraints identified in implementing biodiversity conservation more broadly by SIDS, including challenges in concessional financing, resource mobilisation, capacity-building and development, notably in environmental governance, scientific cooperation, technology transfer and knowledge management and conducting public awareness.¹⁹⁵

Scarce reporting to the UNFF and limited reporting on SFM within other inter-governmental processes by African SIDS hint at the dearth of political impetus and interest by policymakers and other national stakeholders into forest-related issues. Insufficient political strategies for promoting monitoring and reporting typically lead to inadequate funding, lack of expertise and low data availability.¹⁹⁶ These processes, however, are vital for facilitating transparency and evidence-based decision-making, enhanced forest-related dialogue and communication and the inclusion and participation of a broad range of national stakeholders, including civil society.¹⁹⁷ In this view, political will and capacities on SFM and the climate benefits of forests should be further consolidated in African SIDS. REDD+ promotes the role of relevant organisations and stakeholders in supporting efforts, notably by addressing drivers of deforestation and forest degradation, sharing experiences, supporting capacity-building, providing technical assistance and mobilising resources. It can be noted nonetheless, from an analysis of its written submissions and statements, that at the global level, AOSIS has engaged sparingly on forests and climate-related forest issues. An inquiry into the position of AOSIS and its individual members over the span of 1995 to 2011 underlines the lack of consensus on forestry, notably REDD+.¹⁹⁸ In the past, AOSIS notably stressed forest conservation as a long-standing practice of SIDS, and called for more conducive incentives:

The international community must better assist us to increase the awareness, creation and enforcement of national legislation to ensure sustainable rotational logging practices and replanting initiatives, as well as stakeholder participation, and action plans to address deforestation and sustainable forestry.

¹⁹⁴ Atela et al. (2016a) and Atela et al. (2016b).

¹⁹⁵ United Nations Department of Economic and Social Affairs (UNDESA) ‘Small Island Developing States: Gaps, Challenges and Constraints in Means of Implementing Biodiversity Objectives’ (2022) <https://sdgs.un.org/sites/default/files/2022-02/SIDS_Biodiversity_and_Means_of_Implementation-Gap_Assessment.pdf> (last accessed on 30 September 2022), pp. 72–78.

¹⁹⁶ Linser (2018a), p. 530.

¹⁹⁷ Linser (2018b), pp. 578–599.

¹⁹⁸ See Betzold et al. (2012), pp. 591–613.

We note that the Kyoto Protocol rewards countries that re-forest and afforest after degrading their forests, but potentially penalizes countries that have encouraged conservation or sustainable forestry. We call for increased international recognition of the long-standing conservation practices of many of our member states.¹⁹⁹

In 2009, it further stated that:

Robust environmental integrity will need to be maintained if a REDD mechanism is linked to the international carbon markets.²⁰⁰

It has also highlighted the critical role of indigenous communities in furthering forestry protection in the context of efforts to combat climate change.²⁰¹

More recently, it has been acknowledged that there is an urgent need for responsive interventions in biodiversity conservation in SIDS and a case to raise the profile of SIDS concerns in the global arena.²⁰² SIDS highlighted the need for a SIDS-based approach in implementation, which would help in providing better suited means of implementation to the specific vulnerabilities in SIDS, in pushing the biodiversity agenda at the national level and in supporting alignment and synergies with other global processes.²⁰³ In this vein, stronger advocacy on SFM and an enhanced integration of forestry in climate action plans and legislation is critical for advancing a SIDS-based approach in the international arena and for enabling implementation in SIDS. AOSIS should leverage momentum in climate talks to shed more light on forest policy coherence and synergies across various sectors for achieving overall global biodiversity and sustainable development gains. In so doing, it should ensure further account of regional contexts. This would entail coordination with regional SIDS organisations such as IORA and IOC. Moreover, leveraging the potential engagement of RECs in the continent, as drivers of African integration, and central to the implementation of the New Partnership for Africa's Development and sustainable development, would contribute in harmonising SFM policy and steering REDD+ readiness and implementation.

¹⁹⁹ Statement of H.E Ambassador Collin Beck of the Solomon Islands, on behalf of the Alliance of Small Island States (AOSIS), regarding Land at the 16th Meeting of the Commission on Sustainable Development, 7 May 2008, <https://sdgs.un.org/sites/default/files/statements/aosis_7may_land.pdf> (last accessed on 30 September 2022).

²⁰⁰ Alliance of Small Island States (AOSIS) Declaration on Climate Change 2009, <<https://sustainabledevelopment.un.org/content/documents/1566AOSISSummitDeclarationSept21FINAL.pdf>> (last accessed on 30 September 2022).

²⁰¹ Submission by Belize on behalf of the Alliance of Small Island States, Calls for Submissions with Respect to the Initial Two-Year Workplan (2020–2021) of the Local Communities and Indigenous Peoples Platform of the United Nations Framework Convention on Climate Change, [https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202009091306%2D%2D-AOSIS%20submission%20on%20activities%207%20and%2010%20of%20the%20LCIPP%20initial%20two-year%20workplan%20FINAL%20\(2020-09-05\).pdf](https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202009091306%2D%2D-AOSIS%20submission%20on%20activities%207%20and%2010%20of%20the%20LCIPP%20initial%20two-year%20workplan%20FINAL%20(2020-09-05).pdf) (last accessed on 30 September 2022).

²⁰² UNDESA 'Small Island Developing States: Gaps, Challenges and Constraints' (n 194), p. 73.

²⁰³ Republic of Mauritius 'Voluntary National Report to UNFF' (n 174).

As there is also a stark shortage of empirical evidence on the experiences and challenges in the implementation of forestry and SFM frameworks by African SIDS, further research would also be vital to help to shape adapted solutions for enhancing REDD+ readiness and implementation.

5 Conclusion

This chapter sought to explore the scope for enhanced REDD+ readiness and implementation in African SIDS by leveraging its synergies with SFM. It highlighted the nexus between SFM, REDD+ and sustainable development from a rights-based approach. The SFM and REDD+ frameworks tie closely with the rights to development and environment. The requirements for participation of indigenous and local communities as well as MRV in these processes also ensure their alignment with the right to participation. The international institutional framework supporting SFM and REDD+ is intricate. A review of SFM and REDD+ implementation in African SIDS through national reports to the UNFF as well as NDCs, VNRs and mitigation activities under REDD+ reveals that whilst most African SIDS dispose of relatively comprehensive policy and institutional frameworks for SFM, which can be further leveraged toward REDD+ readiness and implementation, these should be further integrated with climate mitigation and adaptation. It suggests that the extant regional framework supporting SFM in Africa should be further leveraged for the benefit of African SIDS by enhancing partnerships with SIDS-led networks and intergovernmental organisations. It also highlights the need for further engagement by AOSIS on the linkages between SFM and REDD+ in international climate change negotiations and sustainable development processes.

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Mansha Mohee holds an LLM International Law from University College London, an LLM Human Rights and Democratisation in Africa from the Centre for Human Rights, University of Pretoria and an LLB Law with French Law (Hons) from the University of Birmingham. She is a Research consultant at the Governance and Shareholder Relations Section of the Office of the Secretary General of the African Development Bank Group. She has previous research experience from the Pan African Affairs Division of the European External Action Service and the Human Rights Unit of the Attorney General’s Office in Mauritius. Her research interests include public international law, international human rights law, international development law and African regional integration.

Balancing Interests: The Right to Development and the National REDD+ Strategy in Mozambique



Almeida Zacarias Machava

Abbreviations

| | |
|--------|--|
| CEAGRE | Centro de Estudos Agropecuários e Gestão de Recursos Naturais (Centre of Farming Studies and Natural Resources Management) |
| COP | Conference of the Parties |
| FCPF | Forest Carbon Partnership Mechanism |
| GDP | Gross Domestic Product |
| GNR | Gilé National Park |
| MICOA | Ministério para a Coordenação e Acção Ambiental (Ministry of Coordination and Environmental Action) |
| MozDGM | Mozambique Dedicated Grant Mechanism |
| MozFIP | Mozambique Forest Investment Project |
| UNCHR | United Nations Commission on Human Rights |

1 Introduction

Development and environmental protection in the developing countries, like Mozambique, is problematic considering the struggle with factors such as poverty and illiteracy. It is true that less developed countries can achieve sustainable development without harming the environment, by using their resources in a sustainable way, through good practices and, of course, an effectively applied policy and legislative base. As highlighted by Araújo, the relation between economic development and environment has not been faced in the same way by developing and developed countries. In fact, if the developed countries define the sustainable

A. Z. Machava (✉)

Faculty of Law of the University Eduardo Mondlane, Maputo, Mozambique

development of the economy as their socio-economic development strategy, the developing countries are reticent in adopting the same strategy, although in some, as in Mozambique, the sustainable development concept is largely widespread. This different approach was clearly evidenced in the 1972 Stockholm Conference,¹ although the arguments to explain the weak interest of developing countries on environmental issues are different from those presented in the 1970s. In recent times, the major argument centers on the high rates of illiteracy in the developing countries, which makes it difficult to implement the environmental education policies or, in some cases, very expensive.²

The interaction between development and environmental protection in the local communities is of great significance when the Reducing Emissions from Deforestation and Degradation, Conservation and Increase of Reserves of Carbon (REDD+) initiative is involved. Considering the pressures of an anthropic nature that exist in developing countries—where Mozambique stands, REDD+ is configured as a legal tool of inestimable usefulness, as it proceeds with innovation through instruments that aim to contain deforestation. However, the REDD+ by itself is incapable of producing the results for which it was designed, except if each state put in practice several actions toward its effective implementation. Mozambique is not an alien to this mandate, and the Mozambican government designed and approved the 2016–2030 REDD+ Strategy and the Regulation for the Implementation of Projects related to the REDD+ Regulation.³

The formulation of a legislative base for the REDD+ is an important step, but the major concern is how it can be useful to guarantee the environmental protection through reduction of emissions, prevention of deforestation and forest degradation. On the other hand, concerns are related to the realisation of the right to development, especially of the local communities. The main object of this chapter is to assess whether the implementation of REDD+ allows for the development of the local communities in Mozambique. This is important as literature is scanty in this area of law and policy in Mozambique

2 Development and Environmental Protection Tension

From a historical perspective, the 1960s was the milestone in the sprouting of the right to development, particularly the context of national liberation movements. The context was characterised by the conflict, on the one hand, between socio-economic

¹UN General Assembly, *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994; for an analysis see Araújo (2000), pp. 9–13.

²Machava (2012), p. 360.

³Decree (No. 23/2018) concerning the Regulation for the Implementation of Projects to Reduce Emission from Deforestation and Forest Degradation, Conservation and Increased Carbon Reserves (REDD+ Regulation).

and cultural rights, and on the other, by civil and political rights.⁴ The right to development is inherent in several international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights;⁵ the International Covenant on Civil and Political Rights;⁶ and the 1993 Vienna Declaration and Program of Actions.⁷ However, the United Nations Commission on Human Rights (UNCHR) expressly referred to the right to development in 1977, which played a great role in the proclamation of the right to development.⁸ Two years after, the UNCHR confirmed the existence of the right to development and equal opportunity as a prerogative of both nations and individuals. However, the content of the right to development was vague.⁹ Later, in 1986, the General Assembly of the United Nations, adopted a resolution on the Declaration on the Right to Development,¹⁰ making this Declaration the first normative legal manifestation of development as a human right.^{11,12} According to the Declaration, the right to development is presented as ‘an inalienable human right by virtue of which all human beings and all peoples have the right to participate, contribute and enjoy economic, social, cultural and political development, in which all human rights and freedoms fundamentals can be fully realized’.¹³ It implies the full realisation of the right of people to self-determination, which includes, without prejudice to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their wealth and natural resources.¹⁴ However, this right is also presented as a right-duty in the sense that paragraph 3 of Article 2 of the Declaration asserts that states have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals. This provision signifies that states are to take economic and social measures to offer equal opportunities to all to have access to basic resources, education, health services, food, housing, employment and

⁴See Ferraro and Peixinho (2008), p. 6959.

⁵International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

⁶International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 9 U.N.T.S. 171.

⁷Vienna Declaration and Programme of Action, UN doc.A/CONF.157/23, adopted at World Conference on Human Rights in Vienna 1993.

⁸United Nations Commission on Human Rights Resolution No. 4, XXXIII; also see Bunn (2000), p. 1433.

⁹See again Ferraro and Peixinho (2008), p. 6959.

¹⁰Read Resolution n° 41/128, of 4 December concerning the Declaration on the Right to Development.

¹¹See Marques et al. (2015), p. 3.

¹²Declaration on the Right to Development Resolution 41/128.

¹³See para 1, Article 1 of the Declaration on the Right to Development.

¹⁴Ibid., para 2.

equitable distribution of wealth, so that the development can benefit the recipients.¹⁵ In turn, the African Charter on Human and Peoples' Rights (ACHPR) guarantees the right to development. Article 22 of the ACHPR states that 'all peoples have the right to their economic, social and cultural development, in strict respect for their freedom and their identity, and to the equal enjoyment of the common heritage of humanity.' In such a way that the states part to this charter '(...) have the duty, separately or in cooperation, to ensure the exercise of the right to development'.

At the domestic level, under the Mozambican Constitution, one of the state's (fundamental) objectives is to promote balanced, economic, social and regional development.¹⁶ In the recent decades the notion of the right to development has undergone a profound expansion.¹⁷ With considerable innovations and discoveries in the scientific and technological field, there has been an exponential growth in the economic sphere, which has brought many benefits to society. Despite the prospects to attain economic growth in the normative content of the right to development,¹⁸ its realisation cannot be separated from the realisation of other fundamental rights, particularly the right to environment. It is impossible to focus on development without reflecting on the right to healthy environment because the latter entails the management of the environmental resources on which depends the realisation of the former.

It is in this context that Article 90 paragraph 2 of the Mozambican Constitution enjoins the state and local authorities, in collaboration with NGOs to adopt policies and develop programs to protect the environment and ensure the rational use of all natural resources. The REDD+ is part of the different actions the state had put in place to conciliate development and environmental protection. Adverse environmental impacts result from the exploitation of natural resources. Hence, the normative context of the existing law aims at preventing the degradation of the environment, which is an essential requirement for the promotion of sustainable development.¹⁹ In Mozambique, the legal framework on environmental protection includes several and dispersed legal instruments, among which can be highlighted the Environment Law,²⁰ the Regulation on Environmental Impact Assessment,²¹ the REDD+ Regulation,²² as well as the National Environment Policy,²³ which seeks to ensure the sustainable development in Mozambique, considering its specific conditions, through acceptable and realistic commitment between socio-economic development and environmental protection.

¹⁵Wolkmer and Wolkmer (2005).

¹⁶See Article 11, subparagraph d.

¹⁷See, among others, Dos Anjos Filho (2017); Trindade (1993), p. 521; Delgado (2001).

¹⁸See Sousa (2010), p. 72.

¹⁹See Lopes et al. (2015), p. 25.

²⁰See Law N 20/97, of 1 October on the Translation of Environmental law Approved 28/7/1997/ JAG.

²¹See Decree 54/2015.

²²See Decree (No. 23/2018).

²³Resolution of the Council of Minister No. 5/95 concerning the Approval of the National Policy on the Environment.

The possibility of the existence of a conflict between development and environmental protection is nothing but a utopia. It is totally possible to align both realities as they are by no means mutually exclusive. It is fully possible to respect environmental integrity, thus ensuring the needs of future generations and, at the same time, providing the current generation with the benefits and advantages of full development. The REDD+ program is an example of the possibility of conciliation between the pursuit of development and preservation of environmental integrity. The idea that development and environmental protection can coexist peacefully, shows that it is necessary to invoke the principle of recognition and valuing of traditions and knowledge of local communities. Principle XXII of the Rio Declaration on the environment and development provides that:

Indigenous peoples and their local communities play a fundamental role in environmental ordering and development due to their traditional knowledge and practices. States should recognize and provide support because of their identity, culture and interests and look to those who will effectively participate in achieving sustainable development.

In the Mozambican legal system, this principle is sheltered in Section 4 (b) of the Environment Law, as one of the fundamental principles of the environment and supports the idea that environmental management must guarantee all citizens the right to live in an ecologically balanced environment, conducive to their health and physical and mental well-being.

3 REDD+ Initiative and Local Communities

The interaction between development and environmental protection in the local communities is of great significance in the REDD+ initiative. From an economic perspective, the forest and its respective resources are seen as a factor that contributes to the growth of the Gross Domestic Product (GDP). This is the 'traditional role of forests in the economy', given that 'for many years, the role of forests was limited to providing wood and non-wood products for direct consumption by rural and urban communities and generating income. Generally, these outputs are used as key macroeconomic indicators to assess sector performance and contribution to Gross Domestic Product (GDP) and employment.'²⁴ But the protection of forests is also necessary for: (1) the sustenance of biodiversity; (2) the conservation of water resources; (3) the fight against desertification. Above all, in the context of climate change, forests are a resource of such importance in capturing carbon dioxide (CO_2).²⁵ It is in the above perspective that Angelsen states that:

(...) recently, forests have become an asset to be protected, given the almost immeasurable value of sequestered carbon to humanity. Forests play an important role in mitigating the effect of climate change, especially in reducing the possible rise in temperature. Studies

²⁴See Nhantumbo (2012), p. 7.

²⁵Fundo do Ambiente (2015), p. 5.

show that an increase above 2°C could cause catastrophes such as the rise in sea level and the consequent flooding of low-lying areas, including some cities like the Mozambican City of Beira. . . which is below sea level. Droughts and floods can become more severe, change the cycle of agricultural crops, and may even generate food insecurity, due to the lack of crops adapted to the new hydrological regime.²⁶

The foregoing reality underscores the necessity for the introduction of REDD+ in climate change mitigation and adaptation discourse.²⁷ An essential aspect of REDD+ is based on the protector-receiver principle, according to which ‘the public or private agent that protects a natural asset for the benefit of the community must receive financial compensation as an incentive for the environmental protection service provided’.²⁸ REDD+ raises issues around the socio-environmental inclusion of marginalised population in the discussions and decision-making on the conservation of a set of plant and animal species that live in a particular region. In addition, REDD+ focuses on the preservation/conservation of native vegetation and other instruments are stripped of this characteristic.²⁹

Mozambique has a vast forest area with more than 50 million hectares; however, there is a significant pressure on such area to respond to the eminently economic and survival aspirations of local communities. It is in this perspective that studies reveal that Mozambique loses around 219 hectares of forests each year.³⁰ Agricultural activities of an eminently itinerant nature are identified as the main cause of deforestation in Mozambique. From 2000 to 2012 it was responsible for 65% of deforestation. Urban expansion also contributes to the main causes of deforestation, accounting for 12% of deforestation, the extraction of wood products, accounting for 8% of the aforementioned phenomenon, and the production of firewood and charcoal, on a scale of 7%.³¹ The situations vary from region to region, and from province to province. For instance, the CEAGRE and Winrock International assert that:

(. . .) the main causes vary by province, according to the economic, social and natural characteristics of each province. In southern Mozambique (Maputo, Gaza and Inhambane provinces), urban sprawl has a much greater impact on deforestation (23%) than in other regions of the country (7% in the North and 11% in the Center). In the northern provinces (Cabo Delgado, Nampula and Niassa), shifting agriculture has a greater impact on emissions (72%) than in the center (60%) or in the south (59%) of the country. an impact on the rate of deforestation. For example, Mopane forests are hardest hit by charcoal production, logging, and grazing, while Miombo forests are hardest hit by agriculture.³²

Also a 2012 report from the then MICOA (Ministry of Coordination and Environmental Action) predicts that Mozambique would be one of the countries in the

²⁶See *Apud* Nhantumbo (2012), p. 7.

²⁷See Neto (2017), para 1.

²⁸Ribeiro (2005), para 2.

²⁹United Nations Decision 2009/4/CP.15, FCCC/CP/L.7.

³⁰Nhantumbo (2012), p. 8.

³¹Ministério da Terra Ambiente e Desenvolvimento Rural (2018a), p. 16.

³²See again Ministério da Terra Ambiente e Desenvolvimento Rural (2018a), p. 17.

world to be affected by climate change. The prediction pointed at (1) a recrudescence of temperature between 1.5 °C and 3 °C in 2050 compared to the pattern of the beginning of the century; (2) increase in the ocean level; (3) ecosystem allocation; (4) reduced precipitation with more irregular patterns; (5) increased frequency of extreme winds (droughts, floods and cyclones), among many others. Consequently, climate change will bring negative impacts with greater incidence to the Mozambican economic sphere, especially in the agricultural and forestry sectors.³³

Considering the negative impacts that could and can still result from climate change, the Government of Mozambique took care to proceed with the approval of an important instrument that became known as the National Strategy for Adaptation and Mitigation of Climate Change 2013–2025.³⁴ The goal of the instrument is to ‘reduce vulnerability to climate change and improve the living conditions of Mozambicans through the implementation of concrete adaptation and mitigation measures, with the active participation of all social, environmental and economic sectors.’ The instrument also sees forests as one of the strategic areas of action with the recommended action of ‘promoting mechanisms for planting trees and establishing forests for local use’, with the aim of fighting deforestation and forest degradation.³⁵

The implementation of the 2016–2030 REDD+ Strategy in Mozambique represents a further commitment of the government to address climate change without undermining development. It clarifies the state’s ‘Strategy for Reducing Emissions from Deforestation and Forest Degradation, Forest Conservation, Sustainable Management and Increase of Carbon Reserves through Planted Forests’.³⁶ The strategy aims to promote within Mozambican society the appreciation of natural capital and the recognition of the contribution of environmental services to the socio-economic and environmental welfare of present and future generations at three essential levels, namely: local, regional and global. It is from this perspective that the strategy in reference here presents as a general strategic objective to promote integrated multi-sector interventions with a view of reducing carbon emission related to the use and changes in land use and coverage through adherence to the principles of sustainable administration of forest ecosystems—both natural and artificial—contributing to global efforts of mitigating and adjusting to climate change and integrated and sustainable rural development.³⁷

As a matter of coherence, the vision and general strategic objective of the REDD+ Strategy must maintain a complementary relationship with its mission, therefore, it is configured as that strategy’s mission to promote the reduction of emissions from

³³Fundo do Ambiente (2015), p. 9.

³⁴Approved by the Council of Ministers on 13 November 2012.

³⁵See National Strategy for Adaptation and Mitigation of Climate Change 2013–2025.

³⁶See Ministério da Terra Ambiente e Desenvolvimento Rural (2016), p. 1.

³⁷Ministério da Terra Ambiente e Desenvolvimento Rural (2016), p. 17.

deforestation and forest degradation, to improve the preservation of forest ecosystems and increase the forest carbon reserves, thus limiting the emission of '170MTCO₂/year' till 2030.³⁸ The initiative of the Forest Carbon Partnership Mechanism (FCPF) of the World Bank allowed Mozambique to participate in REDD+, in such a way that the Government of Mozambique had the onus of proceeding with the approval of the REDD+ Proposal Preparation. It was in this context that the Mozambican government, in 2013, received a grant corresponding to US \$3.8 million, and an additional grant of US \$5 million in 2016, in order to establish a legal and institutional basis for effective implementation of REDD+.³⁹ Several factors contributed to the selection of Mozambique for its participation in REDD+, however, two factors are worth mentioning: (1) Mozambique has a vast territorial area of forest and other types of vegetation: (a) 51% of forest area, with about 40.6 million hectares; and 19% of other vegetation types; (2) High annual rate of deforestation and deforestation, with approximately 0.58%, 219,000 hectares.⁴⁰

REDD+ in Mozambique involves five fundamental activities: (1) reducing emissions from deforestation; (2) reduce emissions from forest degradation; (3) conservation of forest carbon stocks; (4) forest management; and (5) increase in carbon stocks. Certainly, these activities do not dispense the afforestation process for their implementation—a process through which non-forest lands are converted to forest, including new forest plantations, as well as the regeneration of native forests in agricultural areas or old grasslands. Furthermore, combating forest degradation⁴¹ will also be crucial for those activities to be successful. With a view to implementing REDD+, the government further approved Decree 23/2018, it is the Regulation for Programs and Projects inherent to the Reduction of Emissions from Deforestation and Forest Degradation, Conservation and Increase of Carbon Reserves (REDD+ Regulation).

The effect of REDD+ on local communities is not disputed. A large percentage of the population, especially those located in rural areas in Mozambique depends on natural resources for their livelihood. This scenario is closely linked to the high rate of poverty in the country, with a higher incidence in the provinces of Niassa, Nampula and Zambézia.⁴² The practice of agricultural activity—essentially subsistence agriculture—has been the main source of livelihood and income for local communities. The agricultural surplus, when it exists, is used for the practice of commercial activity. Food preparation and water heating are based on firewood

³⁸Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. ix.

³⁹Ministério da Terra Ambiente e Desenvolvimento Rural (2017b), p. xv; Fundo do Ambiente (2015), p. vii.

⁴⁰See Fundo do Ambiente (2015), p. 9.

⁴¹In the Mozambican legal system, the definition of forest degradation is presented in paragraph 9 of the glossary of the Regulation for Programs and Projects related to Reducing Emissions from Deforestation and Forest Degradation and Increasing Carbon Reserves (REDD+) and should be understood as change of a forest area from a high carbon reserve forest category to another low carbon reserve forest category.

⁴²Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. 33.

collected in the forest or on the basis of charcoal produced, so that the consumption of this type of energy in the country corresponds to 85%. The forest area has been a potential source of collection of various products for subsistence, without leaving out wood and non-wood resources.⁴³ The forest, in addition to being used as a source of fuel wood and charcoal—or, on the other hand, as a source of energy is used as a source of construction material. In most rural areas, local communities use resources such as wood, stakes to secure the structure of houses and grass for the roof. Furthermore, it is a source of raw material for the manifestation of artistic values through the production of wooden sculptures and to produce household items for sale.⁴⁴ This shows the significance of natural resources for the economic development of local communities in Mozambique.

The exploitation of the forest is not limited to the search for timber resources; it means that there are many other non-timber resources that can be extracted from the forest. For instance, the practice of beekeeping is closely linked to forests as it allows the extraction of the resources. This is an important activity of local communities which advances commercial and medicinal interests. In the context of honey production, two types of hives are used: (1) beehives with an eminently traditional nature, made from tree bark, and which in some way contribute to forest degradation; and (2) modernised beehives, made based on the financial support that local communities receive from some public programs like the REDD+, based on the protector-receiver principle. Such a reality is likely to produce positive impacts on local communities, as it can provide well-being and food security, and above all the sustainable development of local communities.⁴⁵

Forests are also fundamental to cultural development and traditional values of local populations. For example, it has been highlighted that:

Certain Forest formations have special value for local communities. There are several cultural assets along the Coastal Forests. The Chirindezene and Licuati sacred groves in the south are some of the well-protected sacred groves by local custom and used for ceremonies and celebrations. In Catuane the forest inventory for a local community identified four cultural areas in the forest, normally used for meeting (Banjas) and other community activities. These cultural site assets are equally important compared with sacred groves. Many local cemeteries are also found in the Coastal Forests and communities treat them as cultural and spiritual values.

There are at least two types of sacred coastal forests in southern Mozambique: the *gwendzelo* and *phahlelo* (ceremony act/place). The *gwendzelo* is made on places or sites where the graves of the ancestors (“régulo”) are located. The local communities use these forests for sacrifice ceremonies. The *phahlelo* are the ceremonies made at the household level for the wellbeing of a restricted family. The family headmen or a traditional medicine practitioner performs the ceremonies. The *phahlelo* can also be undertaken under a sacred tree. The most common sacred trees in the coastal areas of southern Mozambique includes *Sclerocarya*

⁴³ Ibid.

⁴⁴ Ministério da Terra Ambiente e Desenvolvimento Rural (2018b), p. 40.

⁴⁵ Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. 34. See also, Kaechele and Olojoba (2021).

birrea, *Garcinia livingstonei* and *Manilkara discolor*. In northern Mozambique, local communities use *baobab* (*Adansonia digitata*) tree for the ceremonies.⁴⁶

In view of the above, it is hardly possible that the sustainability of forests will be effective without the direct and active participation of communities, valuing and using their traditions and experiences. In a way, this presupposes a substantial deviation from the traditional concept of legal personality provided for in civil law.⁴⁷ Consequently, the REDD+ Regulation embodies principles that guarantee the rights of peoples and local communities,⁴⁸ including the valuing and respecting the knowledge, rights and ways of life of local communities.⁴⁹

It is precisely because they hold the aforementioned rights that local communities involved in REDD+ must be consulted and informed in time about REDD+ activities to ensure their active participation.⁵⁰ It is in this perspective that the United Nations Declaration on the Rights of Indigenous Peoples establishes that '(...) peoples have the right to self-determination and to free, prior and informed consent'. This is not, however, always followed in the implementation of REDD+.⁵¹

The implementation of REDD+ must avert the risk that local communities will lose access to their lands. The strategy on the implementation of REDD+ considers that this is a possibility and provides for key measures to be taken. It calls upon stakeholders for the following interventions:

(i) updating inventories of land and forests resources; (ii) delimitating and zoning the areas for different interventions including specifying what is permitted and what is not, where, how, when and by whom, etc.; (iii) land titling to provide security over land to all actors and particularly to the communities; (iv) capacity building and empowerment including development of a stronger sense of ownership, especially at community level and among men and women and the youth. Women and the youth are identified as having a strong role to play in reversing negative trends. This will be followed by (i) agreements between the various actors including between communities/government and MSMEs; (ii) activities design, screening encompassing compliance with the environment and social requirements; (iii) approval, implementation and monitoring of each activity under this program.⁵²

Local communities are likely to be subjected to the risk of losing access or assets except if these measures are respected.⁵³ However, proper implementation of REDD+ can bring positive impacts, as is the case of encouraging private investment in forests and in the agriculture sector and other various sectors, especially in the tourism sector, with greater incidence in the interior and surroundings of the conservation area. This can contribute to the empowerment of local populations if

⁴⁶Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. 34.

⁴⁷Cunha and Serra (2004), p. 68.

⁴⁸See Section 4, para. 1(e) of REDD+ Regulation.

⁴⁹Section 4, para. 1(g) of REDD+ Regulation.

⁵⁰Read Section 4, para. 1(i) of REDD+ Regulation.

⁵¹See Bofante et al. (2010).

⁵²Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. 99.

⁵³Ibid., p. 123.

the resources are properly channeled and there is better management of natural resources and land administration, with the inclusion of land tenure systems.⁵⁴

4 REDD+ Initiative as a Window to Development

The 2016–2030 REDD+ Strategy recognises the principles enshrined in the Forestry Law, such as ‘principles of sustainable forest management’. This is of paramount importance to guarantee the right to development in local communities. The REDD+ Strategy is a true reflection of added value and is likely to be a potential source of opportunities aimed at financing and promoting processes classified as being crucial for integrated development of local populations. It is known that local communities mostly practise itinerant agriculture, simultaneously with the collection of seafood, fishing and small-scale trade, and in most cases the practice of such activities has contributed to the deforestation and forest degradation and therefore no guarantee of sustainable development. However, the REDD+ Strategy brings with it opportunities that ensure sustainable development among local communities, including ‘(…) promotion of conservation agriculture, use of tree crops, orientation of commercial agriculture to areas with low coverage forestry, promotion of tree planting for energy purposes, production and efficient use of energy from biomass, sustainable management of the forest concession system (...)’, as well as ‘to promote sustainable alternative practices to shifting agriculture, which ensure increased productivity of subsistence and cash crops’.⁵⁵

From a general perspective, it must be stated that the spread of agricultural activity and the consequent production in the Mozambican territory is based on the resurgence of cultivated areas, essentially resulting from deforestation and degradation. It is in this context that the proposal presented by the REDD+ Strategy seeks to change the model of the eminently itinerant agricultural activity developed by local communities through actions aimed at making land a potentially beneficial production factor without losing fertility using existing technological know-how, and without jeopardising the forests. As a result, one may agree that the effective implementation of the REDD+ Strategy has the potential to reduce rural poverty and promote the improvement of living conditions for local communities, as it may bring the following results:⁵⁶

- Increased agricultural productivity and the production of tree crops can generally improve food security and provide surpluses for marketing, increasing family income;

⁵⁴Ibid., p. 108.

⁵⁵Mozambican REDD+ Strategy.

⁵⁶Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. 108.

- Efficient use of biomass energy as well as the use of alternative energy has the potential to reduce energy (coal) costs for urban households while reducing the incidence of lung diseases associated with the use of charcoal;
- Promoting the timber industry, harnessing non-timber forest products, and nature conservation have the potential to create employment opportunities and increase income generation for the rural economy and increase the sector's contribution to national revenue and development.

The results predicted above are of socio-economic nature. However, results of an environmental nature may also be achieved, which consist of the preservation of the environment and biodiversity, protection against soil erosion, hydrological cycle erosion, among several other results. REDD+ may provide a solution to different environmental problems that plague local communities and that jeopardise their sustainable development.

The right to development would be inefficient in an environment plagued by different environmental problems, namely: (1) pollution, which is reflected in the contamination of air, land and water by harmful substances capable of endangering public health, without excluding other living beings, therefore, from all biodiversity in general; (2) erosion, which consists in the detachment of the soil surface by the natural action of wind or water, intensified by human practices (*'construction in inappropriate places, interruption of water courses, among other inappropriate practices'*) of removal of vegetation; (3) uncontrolled fires; (4) forest degradation resulting from the immoderate felling of trees in order to obtain wood resources, firewood and charcoal; (5) irrational exploitation of resources that result in the extinction of species, and which is characterised by the depletion or shortage of different terrestrial and aquatic species, which are extremely important for the substance of local communities.⁵⁷

Consequently, for a successful implementation of the REDD+ Strategy to ensure the right to development of local communities, they (local communities) must be made aware of their role in protecting the environment. This understanding is based mostly on the reasoning that environmental problems may undermine development. Formal and informal environmental education, that is, promoting education and exchange of experiences between local communities is necessary to forge this understanding of mutual relationship between REDD+ and development. Also, local communities' participation is reflected in its strategic pillars, especially the Fifth Pillar of the REDD+ National Strategy. The Strategy seeks to promote the system of forest concessions, community management and strengthening forest governance,⁵⁸ and it was later established as the guiding principle for the application of the REDD+ Regulation.⁵⁹

⁵⁷See Alfredo and Berta (2020), p. 8.

⁵⁸Mozambique REDD+ National Strategy 2016–2030.

⁵⁹Section 4, para 1 (f) and (i) of the REDD+ Regulation.

The Mozambique Forest Investment Project,⁶⁰ and the Mozambique Dedicated Grant Mechanism for local communities,⁶¹ are the two main projects under the REDD+ Initiative that directly represent the effectiveness of local communities' participation in REDD+ projects in Mozambique.⁶² Thus far, it is evident in the implementation of Gilé National Reserve REDD+ Project which will end by 2031. In various communities around the Gilé National Reserve (GNR), some local committees for the management of natural resources in the Reserve and in the buffer zone were created, and they are involved in decision-making dealing with the implementation of the Reserve management plan.⁶³ This is in line with the REDD+ National Strategy regarding the institutional arrangements for REDD+ implementation in Mozambique, according to which there will be an area of multi-stakeholder landscape forum, a consultative body on the sustainable development process at the province level, formed by civil society organisations, public and private institutions, academies and local communities. The forum plays an important role in bringing together stakeholders around relevant issues in the landscape, including land-use trade-offs, Natural Resources Management, and agriculture management, and fostering cooperation and coordination across actors.⁶⁴

The GNR REDD Project has a strong social component as it seeks to increase the participation of stakeholders in order to reduce poverty around the GNR. It was coherent with the strategic goals of the Forest Policy and Strategy (2016–2020), particularly for its objectives of ensuring (1) social participation and equitable benefit sharing mechanisms; (2) environmental sustainability on the use of forest resources and (3) increase of the economic contribution of forests to the country's development.⁶⁵ Local communities' participation in the implementation of GNR REDD+ Project has been reported to help in promoting alternative activities, such as conservation agriculture or the development of cashew nut value chains, to reduce deforestation in the area, caused by the slash and burn agriculture also interlinked with charcoal production.⁶⁶ In so doing, one may argue that it has helped in realising the local community's right to development.

A similar approach has been applied in another REDD+ Project within the Quirimbas National Park.⁶⁷ The local communities were directly involved in the reforestation by planting trees and taking good care of trees. This is aimed at reducing deforestation and degradation in the area, as proper management of bush fires is one of the key things that would help to reduce not only the environmental but

⁶⁰MozFIP P160033, effective in August (2017).

⁶¹See MozDGM P161241, effective in February (2018).

⁶²For detailed information about the two projects, see <https://www.fnds.gov.mz/index.php/pt/documentos/salvaguuardas-artigos>, last accessed on 17 December 2022.

⁶³Etc Terra (2017), p. 15.

⁶⁴Ministério da Terra Ambiente e Desenvolvimento Rural (2017a), p. 71.

⁶⁵See Etc Terra (2017), p. 30.

⁶⁶Ibid., p. 29.

⁶⁷See Ministério da Terra Ambiente e Desenvolvimento Rural (2017b), p. 109.

also social problems they face as a community.⁶⁸ In sum, reports show that local communities' participation in the implementation of REDD+ National Strategy and in REDD+ Projects in Mozambique may help in the realisation of the right to development.⁶⁹ In addition to increasing land and resource tenure rights, the expected impacts will be: improved food security, reducing the risk of hunger, improving nutrition and increased protein intake, and the creation of new and development of forests and agricultural employment (reduction of unemployment and the exodus of young people), the creation of local employment opportunities, improved living conditions'.⁷⁰

5 Conclusion

The experience of Mozambique in implementing REDD+ shows that effective concrete policies and strategies may be useful in ensuring that REDD+ delivers development in the local communities, where it is most needed. High levels of poverty and illiteracy make environmental consciousness in Mozambique not a common reality among the population, and this is even much worse in the rural areas. This scenario makes pro-environmental protection measures and choices a bit challenging. Yet, the REDD+ projects are of great importance to the realisation of general environmental consciousness. The protector-receiver principle promoted by the REDD+ Initiative allows us to believe that this program, more than promoting the protection of the environment through reduction of deforestation, degradation and promotion of carbon enrichment, is an important tool to promote development, mainly in the rural areas. In other words, the REDD+ Initiative plays a significant role in the promotion of the right to development in the local communities. By developing the REDD+ Strategy, the Mozambican government has moved forward towards the realisation of the objectives behind the REDD+ Initiative because it is believed that concrete actions will be developed and, therefore, promote the protection of the environment and the realisation of the right to development of the local communities, since it is also designed to increase the income and quality of life of rural populations. If effectively implemented the REDD+ Strategy will help in mediating the tension between environmental protection and the right to development in Mozambique.

⁶⁸Ibid., pp. 107–109.

⁶⁹For more details, see Fundo Nacional de Desenvolvimento Sustentável (2020), pp. 23 ff.

⁷⁰See Ministério da Terra Ambiente e Desenvolvimento Rural (2017b), p. 127.

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Almeida Zacarias Machava (PhD) is Assistant Professor at Faculty of Law, University Eduardo Mondlane in Mozambique, where he teaches SADC Law and International Economic Law, and is also a Researcher at the Centre of Studies on Regional Integration and SADC Law of the University Eduardo Mondlane, Mozambique. He holds a PhD and a Master Degree in International Business Law by the University of Macau. His research areas include the interface of investment with environmental law.

A Case for the Participation in the REDD+ to Address the Natural Resources Use and Governance in Botswana



Onthatile Olerile Moeti, Goemeone E. J. Mogomotsi,
and Patricia Kefilwe Mogomotsi

Abbreviations

| | |
|----------|--|
| CAMPFIRE | Communal Areas Management Programme for Indigenous Resources |
| CBFM | Community-Based Forest management |
| CBNRM | Community-Based Natural Resources Management |
| CKGR | Central Kalahari Game Reserve |
| JFM | Joint Forest Management |
| NDC | Nationally Determined Contributions |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |

1 Introduction

The traditionally hunter-gatherer indigenous community of the San in Botswana who are at times referred to as the Bushmen or Basarwa have suffered land dispossession and limitation to access natural resource-rights since in pre-colonial

O. O. Moeti (✉)
University of Glasgow, Glasgow, Scotland, UK

G. E. J. Mogomotsi
The Department of Law, Faculty of Social Sciences, University of Botswana, Gaborone, Botswana

P. K. Mogomotsi
The Department of Economics, Faculty of Social Science, University of Botswana, Gaborone, Botswana

times.¹ The land and natural resource issues of the San eventually ended as one of the highly publicised litigations in the history of Botswana. In the *Sesana and Others v Attorney General* case,² the San occupants of the Central Kalahari Game Reserve (CKGR) challenged the decision of the Government of Botswana to relocate them to the newly established villages adjacent to the CKGR. It has generally been the thinking within the corridors of government that in order to develop, the San must modernise and adopt living arrangement similar to predominant tribes in Tswana type of villages.³ Prior to the CKGR saga, the San communities had been relocated from their ancestral lands which were subsequently declared game reserves to newly created villages of Mababe and Phuduhudu.⁴ The process of relocating the San to villages is referred in the literature as ‘villagisation’.⁵

Through the process of ‘villagisation’, the San communities were discouraged from practising hunting and gathering in exchange of handouts in the form of social welfare baskets.⁶ Throughout this process, Botswana adopted a paternalistic approach and allowed little to no representation of the San in the decision. The policy approach of excluding Basarwa from decision-making regarding their present and future, including the development of social services in their communities has had a devastating effect in becoming totally dependent on the government.⁷ The overall finding of the *Sesana* case clothed the San with the status of indigeneity as the majority of justices of the High Court ruled that this community are ‘Indigenous Peoples’ as defined in international law.⁸ The conferment of the status of indigeneity the San community brings about an interesting dimension to land and resource use rights. This is because at international law, indigenous communities are often clothed with a special type of protection and rights especially with respect to the use or management of natural resources. This might explain the general reluctance of the government of Botswana since independence to accept the indigeneity of San and the insistence that all Batswana are indigenous to Botswana.⁹ The contentions on the San’s indigeneity have equally been heightened on their development. This is because at international law there are rules that states ought to conform to in their endeavour to develop Indigenous Peoples.¹⁰ Some of the rules constitute emerging customary international law and as such are binding on Botswana.¹¹

¹For the Recognition of the Indigeneity of Basarwa in Botswana and Panacea against their Marginalisation and Realisation of Land Rights, see Mogomotsi and Mogomotsi (2020), p. 555.

²*Sesana and Others v Attorney General* 2006 (2) BLR 633; (2006) AHRLR 663 (BwHC).

³See Knoetze and Hambira (2018), p. 1 on the role of perceptions and name giving by other population groups in enduring poverty.

⁴For details, see Magole (2009), p. 597.

⁵See Magole (2009).

⁶See Nthomang (2004), p. 415.

⁷Read further the same page of Nthomang (2004).

⁸See Mogomotsi and Mogomotsi (2020).

⁹*Ibid.*, p. 572.

¹⁰See the United Nations Declaration on the Rights of Indigenous Peoples (2007).

¹¹For details, see Phillips (2015), p. 120.

Due to their historical legacy, the San are dependent on land and natural resources. The extraction of natural resources today is different from the colonial era as there is acknowledgement that natural resources are becoming depleted and thus sustainable use is of paramount importance.¹² The natural resources depletion has been attributed to various causes including climate change and exclusion of local communities in the sustainable resource governance.¹³ The impact of climate change and natural resources depletion is more pronounced on Indigenous Peoples. The impact of climate change and its effect on access to natural resources for Indigenous Peoples has been adequately highlighted by the International Labour Organization which effectively identifies six characteristics that are shared by Indigenous Peoples in the context of climate policies and impacts, which, in combination, are not present in any other group, thereby posing unique risks.¹⁴ It posits that:

First, indigenous peoples are among the poorest of the poor, the stratum most vulnerable to climate change. Second, they depend on renewable natural resources most at risk to climate variability and extremes for their economic activities and livelihoods. Third, they live in geographical regions and ecosystems that are most exposed to the impacts of climate change, while also sharing a complex cultural relationship with such ecosystems. Fourth, high levels of exposure and vulnerability to climate change force indigenous peoples to migrate, which in most cases is not a solution and can instead exacerbate social and economic vulnerabilities. Fifth, gender inequality, a key factor in the deprivation suffered by indigenous women, is magnified by climate change. Sixth, and lastly, many indigenous communities continue to face exclusion from decision-making processes, often lacking recognition and institutional support. This limits their access to remedies, increases their vulnerability to climate change, undermines their ability to mitigate and adapt to climate change, and consequently poses a threat to the advances made in securing their rights.¹⁵

The San in Botswana generally inhabits environments endowed with natural and forestry resources. Generally, the San choose land 'based on the types and numbers of resources it contains, which (at least theoretically) should meet the needs of a group of San in a normal year'.¹⁶ Due to their relationship with natural and forestry resources, Indigenous Peoples in the Central Kalahari have elaborate knowledge on specific groves of trees or patches of valuable plants (e.g. *morama*, *Tylosema esculentum* and melons) and one of their livelihood activities is gathering wild plant products such as Devil's Claw and *Harpagophytum procumbens* to be used domestically or sold commercially.¹⁷ This dependency on forests prompts the need for ensuring and promoting sustainability of forest resources by both communities and the country.

This chapter makes a case for the participation of Botswana in the REDD+ initiative. REDD+ as an international policy aimed at incentivising forest

¹²See Lange et al. (2006), p. 1412.

¹³For details, see Allen et al. (2009), p. 259.

¹⁴International Labour Organisation (2017).

¹⁵Ibid., p. 7.

¹⁶See Hitchcock (2020), pp. 2–4.

¹⁷Ibid., pp. 2–7.

conservation, management and the improvement of forest governance posits itself as an ideal starting point for addressing negative impacts of both human and climate change on natural resources in Botswana.¹⁸ It argues that the REDD+ initiative in substance is not novel or alien to Botswana. The Community-Based Natural Resources Management (CBNRM) policy conceptualised and implemented by the Government of Botswana is comparable to the REDD+ initiative. In that regard, the participation of Botswana in REDD+ fits in perfectly with the existing environmental conservation policies. REDD+ initiative is a dramatic manifestation of the sustainable solutions required by the San in management of natural resources. Sustainable management of natural resources is imperative for the San as their livelihoods are dependent on natural resources. Moreover, REDD+ encompasses sustainable use and conservation which are cardinal principles in the use of natural resources amongst the San in Botswana. Similarly, Indigenous Peoples' ownership over natural resources is a much-contested terrain in Botswana as is elsewhere. The challenges inhibiting Indigenous Peoples from enjoying ownership over their natural resources are compounded by the nation states' permanent sovereignty over natural resources. Nation states such as Botswana often deploy policies intended to enforce their sovereignty over natural resources to the detriment of Indigenous Peoples. Legislation targeted at improving Indigenous Peoples' use and enjoyment of natural resources is one of the many intended end goals of REDD+. The chapter begins with this introduction, followed by a discussion on the meaning and content of permanent sovereignty over natural resources and its implications for the San. It then contextualises the implementation of REDD+ in Botswana and provides a conclusion.

2 Permanent Sovereignty Over Natural Resources

The sovereign rights of nation-states over natural resources within their territories is recognised by the United Nations General Assembly Resolution 1803 on the Permanent Sovereignty over Natural Resources.¹⁹ These sovereign rights entail the rights of extraction of natural resources by the state in pursuit of social and economic development.²⁰ Therefore, states have an unlimited right to access and develop their natural resources into equitable gains for the national polity or specific communities.²¹ The doctrine of sovereignty over natural resources developed into a principle

¹⁸Satyral et al. (2019), p. 1.

¹⁹Read on the permanent sovereignty over natural resources and the sanctity of contracts, from the angle of *Lucrum Cessans* by Ng'ambi (2015), p. 153.

²⁰Ng'ambi (2015), p. 153.

²¹On the role of International Law in Intrastate Natural Resource Allocation: Sovereignty, Human Rights, and Peoples-Based Development, see Miranda (2012), p. 785.

of international law and has gained international recognition as a mechanism for developing countries to utilise and manage domestic natural resources.²² It complements the general doctrine of state sovereignty and reiterates the supremacy that the state has over the people, resources, and all other authorities within the territory it controls.²³ Some of the sub-rights of states that devolve or flow from this doctrine are the rights of states to determine and control resource use; and conservation and management of natural resources.²⁴

Each state retains internal jurisdiction over conflicts between governments and their people(s) about the exploitation and distribution of resource wealth.²⁵ Further, it is accepted at international law that the permanent sovereignty over natural resources among other duties, imposes the duty to use resources sustainably.²⁶ Therefore, it is the duty of the state to ensure sustainable use of natural resources, which entails the involvement of local communities and Indigenous Peoples in the sustainable governance of natural resources. The state's claim to sovereignty over natural resources is usually challenged by local communities, especially Indigenous Peoples claiming special rights of ownership to the same natural resource rights.²⁷ This is because for most Indigenous Peoples, natural resources have fundamental spiritual, social, cultural, economic and political significance that is integrally linked to both their identity and continued survival.²⁸ The notion of permanent sovereignty over natural resources was initially conceptualised to clothe legitimacy of use and access to newly developing states after the fall of colonialism. Permanent sovereignty over natural resources can be a legal basis for claims of Indigenous Peoples in defining ownership and usage rights over the natural resources within a state.²⁹ The sovereignty over natural resources has over the years been instrumental in negotiations relating to both forest and climate change negotiations, and also served an important role in contextualising the development of REDD+.³⁰ The REDD+ is a clear acknowledgment of the sovereignty nation states enjoy over their natural resources as it bestows some responsibility on them to minimise human pressure on the forest on voluntary basis.

In an endeavour to actualise REDD+, states are to develop a national strategy, a national forest reference emission level, a robust and transparent national forest monitoring system and a system for providing information on how the safeguards are being addressed in implementation. This provides an opportunity for Indigenous

²²See Chekera and Nmehielle (2013), p. 69.

²³Makinda (1966), p. 149 on the Sovereignty and International Security Challenges for the United Nations.

²⁴Enyew (2017), p. 222.

²⁵See Augenstein (2016), p. 669.

²⁶See Armstrong (2015), p. 129.

²⁷Pereira and Gough (2013), p. 451.

²⁸Northcott (2012), pp. 73–99.

²⁹Northcott (2012).

³⁰Long (2013), p. 384.

Peoples to participate in REDD+ national strategies as much as it presents a platform for exchange of information between Indigenous Peoples and others. Indigenous Peoples may also infuse their indigenous knowledge in coming up with sustainable strategies. States are therefore tasked with the responsibilities of ensuring that the REDD+ aspirations are not only implemented, but sustainably so and with the participation of different stakeholders.

Within the domestic circumstances of Botswana following the relatively recent judicial declaration of the San as an Indigenous People, the doctrine of sovereignty over natural resources can arguably be extended to them in their long journey to self-determination as a people. The right to self-determination refers to the freedom of indigenous communities to make their own decisions relating to their developmental, cultural, economic, and political lives.³¹ This communal right is contained in various international and regional human rights law instruments. In that regard, Article 8(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) urges states to provide effective mechanisms for prevention of, and redress for, any action which has the aim or effect of dispossessing certain groups of their lands, territories, or resources. Indigenous communities have an inherent and inalienable right to their traditional lands and natural resources therein as a core element of their right to self-determination.³² This right is derived from traditional occupation and use and from pre-contact customary laws. Further, under Article 12 of the African Convention on the Conservation of Nature and Natural Resources, state parties have a duty to enable the active participation of local communities in the planning and management of natural resources to create incentives for the conservation and sustainable use of such resources.³³ This provision is similar with Article 3 of UNDRIP in that they both protect the Indigenous Peoples in the quest for self-determination and to freely determine their political status and freely pursue their economic, social and cultural development.

The right to self-determination entails the autonomy of indigenous communities to make their own decisions relating to their cultural, economic, and political lives.³⁴ The liberal application of various international hard and soft law instruments can be useful in addressing the quest of San in Botswana to contribute to the sustainable management and utilisation of natural resources. Various governments have implemented co-management mechanisms of natural resources and ceded to a certain degree the governance of resource use to local communities. Some of that is done under the auspices of the REDD+ initiative while some governments such as that of Botswana are implementing similar measures notwithstanding not being members of the REDD+. The existence of mechanisms comparable to REDD+ may be used to easily persuade the Government of Botswana to consider

³¹ On the Indigenous Land Rights and Self-Determination in Botswana, see Flaherty (2016), p. 1.

³² See Northcott (2012), pp. 73–99.

³³ See Article 12 of the African Union *African Convention on the Conservation of Nature and Natural Resources* (2017).

³⁴ Flaherty (2016).

participating in the REDD+ initiative. This is because the existing frameworks and lessons therefrom can serve as a springboard for the conceptualisation and implementation of REDD+ in Botswana and help improve the existing mechanisms and aid in the achievement of intended outcomes.

The next section discusses the prevailing community resources management framework applicable in Botswana. The section further demonstrates the similarities between the existing mechanisms and the REDD+ initiative.

3 Contextualising REDD+ in CBNRM

As the international legal framework for REDD+ continues to evolve, there has been good progress yet parallel attempts to operationalise national priorities for REDD+ at a domestic level.³⁵ Institutional setting and policy arena affect the direction of REDD+ policies and their implementation.³⁶ On that note, the achievement of REDD+ outcomes require certain key elements of a sound legal forestry framework. Equally, effective enforcement mechanisms are critical for the achievement of the REDD+ outcomes.³⁷ In that regard, necessary legislative and institutional framework at a national level domesticating key REDD+ elements should be in place to achieve positive outcomes. As enshrined in the United Nations Framework Convention on Climate Change (Paris Agreement), REDD+ implementation focuses on jurisdictional scales (national with subnational in the interim) as part of countries' Nationally Determined Contributions (NDCs) for climate change mitigation.³⁸

The interlinkages between REDD+ and the Paris Agreement make it possible for non-REDD+ member states such as Botswana to implement some of the key expected outcomes of the REDD+ programme. For example, both the Paris Agreement and REDD+ emphasise forest conservation as a climate intervention measure. In the preamble, the Paris Agreement articulates the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity. Moreover, Article 12 of the Paris Agreement compels parties to cooperate in taking appropriate measures to enhance climate change education, training, public awareness, public participation, and public access to information in order to enhance action. Education, access to information and participation are the cornerstones of REDD+. Thus, Botswana can indirectly implement most of the REDD+ objectives through the domestication of the Paris Agreement which Botswana is a member of. One of the expected co-benefits of REDD+ is clearer tenure and more secure land access, particularly for vulnerable groups.³⁹ This is particularly important for

³⁵ Ituarte-Lima and McDermott (2017), p. 505.

³⁶ Andoh and Lee (2018).

³⁷ Korhonen-Kurki (2019), p. 315.

³⁸ Wunder et al. (2020).

³⁹ Milne et al. (2019), p. 84.

Indigenous Peoples given their colonial history of dispossession of land which legacy lives on and formed the basis of the lawsuit in the *Sesana* case. In policy and planning circles, community-centred safeguards have focused on questions of tenure security, stakeholder participation, and the need for free, prior, and informed consent.⁴⁰ In that context, the Government of Botswana adopted the CBNRM policy in the 1990s as a governance framework of ensuring community participation in the tourism sector.

Over the years, CBNRM has emerged as a useful mechanism for facilitating and encouraging community participation in the management of natural resources in Botswana.⁴¹ The CBNRM is mostly hinged on the concept of sustainability pursued through three segments. These segments are economic, social, and environmental sustainability.⁴² This policy recognises the rights of local people to manage and benefit from natural resources and wildlife.⁴³ The CBNRM exists in other forms in various countries. For example, in Zimbabwe, CBNRM is known as Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). CBNRM and other similar programmes in different parts of the world are integral elements of sustainable rural development, natural resource management and conservation.⁴⁴ CBNRM is generally an incentive-based conservation tool which attempts to create a link between the preservation of natural resources and rural development.⁴⁵ This programme is implemented in such a way that the management of natural resources is decentralised to local communities. It has been argued that CBNRM has the potential to achieve nature conservation and rural development.⁴⁶ CBNRM offers local communities the opportunity to participate in tourism development and natural resource conservation.⁴⁷ Effectively, CBNRM is an opportunity for local communities to take charge over their natural resources, creating a sense of responsibility towards sustainable use of natural resources and proceeds from the natural resources.

CBNRM is a policy response to the realisation that administration and control through repression by governments was not saving wildlife.⁴⁸ In the assessment of exclusionary resource management programme, the idea of shared wealth from the sustainable use of resources with rural people came about in the form of CBNRM.⁴⁹ Initially, this policy framework promised to bring the benefits of wildlife back to the local communities to compensate for the costs they incurred by living adjacent to

⁴⁰Felke et al. (2017).

⁴¹Chirenje et al. (2013), p. 10.

⁴²Kgathi and Ngwenya (2005), p. 61.

⁴³Chevallier and Harvey (2016).

⁴⁴Mogomotsi et al. (2020) on the discussion of the 'Factors Influencing Community Participation in Wildlife Conservation'.

⁴⁵Mbaiwa and Stronza (2010), p. 635.

⁴⁶Mbaiwa (2015), pp. 59–80.

⁴⁷Ibid.

⁴⁸Mbaiwa (2015).

⁴⁹DeGeorges and Reilly (2009), p. 734.

wildlife areas.⁵⁰ Notwithstanding that the CBNRM in Botswana in its current form is commonly known to be in respect to the management or benefiting from wildlife, this chapter posits that it is equally applicable to management of forest resources in Botswana.

Consistent to the foregoing, community-based forest management (CBFM) which is essentially another variant of CBNRM, was implemented as a REDD pilot project by the Tanzania Forest Conservation Group.⁵¹ In the Tanzania pilot project, payments were made to villages that have the rights to forest carbon. In exchange, the villages were expected to demonstrably reduce deforestation at the village level.⁵² Similarly, another Southern African country which implemented REDD+ initiative is Zambia which did so through the Joint Forest Management (JFM). The JFM is a form of CBNRM which represented a shift towards conservation within an inhabited landscape to deliver conservation and development simultaneously.⁵³ These safeguards include requirements for full and effective participation of relevant stakeholders, including communities, and for measures to incentivise protection and conservation while enhancing social and environmental benefits.⁵⁴ Relative to Botswana, other Southern African countries are advanced in the involvement of communities in the management of forest resources. This, therefore, provides an opportunity for Botswana to benchmark and devise best practices. Since independence, Botswana has established or gazetted only forest reserves which are solely state managed without citizen participation.⁵⁵ This is besides the fact that there is a close relationship that local communities in various parts of Botswana have with forests and forest products for domestic use such as household energy, building materials, agricultural inputs, food and health products among others.⁵⁶ This is also despite the fact that the San, like other Indigenous Peoples, have a special relationship with their land and the natural resources therefrom and would be better placed to manage the use of the forest sustainably.

The exclusion of local communities and Indigenous Peoples in the development of forest governance institutional framework and daily management in areas where there is intensive use of both timber and non-timber forest products open the possibility of overuse and overharvesting. This poses a grave risk of natural resources depletion which would in turn disproportionately affect the San. It is therefore imperative for the Government of Botswana to provide an incentive to local communities and Indigenous Peoples to practice participatory forest

⁵⁰Cassidy (2021).

⁵¹Robinson et al. (2013), p. 141.

⁵²Robinson et al. (2013).

⁵³Leventon (2014), p. 10.

⁵⁴UNFCCC (2011). Decision 1/CP.16 the Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Co-operative Action under the Convention. In: UNFCCC (Ed.), UNFCCC/CP/2010/7/Add.1.

⁵⁵Garekae et al. (2020b), p. 692.

⁵⁶Garekae et al. (2020a), p. 22.

management through the adoption and domestication of the REDD+ initiative. There is an undoubted governance gap in Botswana in the form of non-involvement of communities and Indigenous Peoples in the management of forest resources which is important for the sustainable use and conservation.⁵⁷ The extent to which the San are excluded in the management of forest resources is more pronounced and has historical underpinnings. Since time immemorial, Tswana groups dominated decision making platforms and made it a habit to make decisions for Indigenous Peoples.⁵⁸ This has translated into the natural resources management initiatives in that by design, the San are excluded from policy making platforms and decision-making fora. This effectively means that the San are in no position to make representation on their preferred natural resources management strategies or influence policies. REDD+ presents an opportunity to rectify the San's exclusion as alluded to above.

The San as Indigenous Peoples of Botswana have a crucial role to play in forest conservation and the conceptualisation and implementation of REDD+ initiative in Botswana must factor that. Botswana is equally presented with an opportunity to foster the San's participation in policy making and decision making in the ongoing CBNRM policy review. The existing CBNRM policy is currently under review with the intention of passing it as a binding legislative enactment. In addition to presenting an opportunity for the San's inclusion in natural resource management, this is an opportune for Botswana to encompass forest management in the revised framework.

Botswana has both the policy, legislative and implementation opportunities to participate in the REDD+ initiative. Thus, Botswana has an opportunity to incorporate the REDD+ initiative with minimal work. As a way forward, it is advisable for the CBNRM Bill, which is still at drafting stage, to be designed in a manner that is not narrowly focused on the use and management of wildlife resources but to be openly applicable to various forms of natural resources. Forest management plays a key role in climate change management. Therefore, it is imperative that the proposed law domesticates the REDD+ to empower the local communities and the Indigenous Peoples in particular. Furthermore, as a signatory of the Paris Agreement on Climate Change, there is no reason for Botswana not to be actively participating in REDD+. Given its intended purpose, REDD+ initiative is a necessity in Botswana to find ways to minimise the impact of climate change, facilitate access to natural use and management thereof by the San. As a semi-arid country, it is important for the Government of Botswana to involve local communities in climate change adaptation strategies. There is a direct correlation between deforestation, desertification and climate change.⁵⁹ The Government of Botswana needs to prioritise the adoption of any measure that seeks to reduce or prevent the overuse of natural resources and use that encourage replenishing of forests to reverse desertification. REDD+ is such an

⁵⁷See Garekae et al. (2020a).

⁵⁸Molosi-France and Dipholo (2017), p. 181.

⁵⁹Khaine and Woo (2015), p. 11.

important multilateral framework that its objectives converge with that of any country in the ecological state of Botswana. Botswana equally has an added advantage of an existing initiative that can be expanded to incorporate REDD+ initiatives. Botswana also has neighbours to draw lessons from and formulating a far much better initiative that will yield the desired outcome.

The San have historically exhibited enviable indigenous knowledge on sustainable use of natural resource and co-existence with wildlife. This coupled with the San's general believe about the land and its sacrosanct nature make them a critical player in the conceptualisation and implementation of REDD+ initiative in Botswana. Some notable thoughts on the relationship the San have with their land are derived from Roy Sesana wherein he posited:

I was trained as a healer. You have to read the plants and the sand. You have to dig the roots and become fit. You put some of the root back for tomorrow, so one day your grandchildren can find it and eat. You learn what the land tells you.⁶⁰

There is no doubt that the San's effective involvement in the co-management of forest resources (and all other natural resources) in their traditional lands is likely to result in harness forest conservation. The proposed participation of Botswana in REDD+ and the eventual roll out of community-based forest management requested meaningful consultation of relevant communities, in the context of this article the San communities. It has been succinctly observed that the effective participation requires the full involvement of people when priorities and objectives are set and designed, it is only then that projects can be locally relevant as well as locally owned.⁶¹ The same principles are applicable in environmental policy formulation as envisaged in Principle 10 of the Rio Declaration which promotes the enhanced public involvement in environmental matters.⁶² Both participation of Botswana in REDD+ and the involvement of the San in formulation, conceptualisation and implementation of REDD+ in Botswana are imperatives if any progress is to be made to minimise climate change and improve access to and use of natural resources for Indigenous Peoples. REDD+ initiative is one of the many initiatives that may fit neatly with, are envisaged by and are manifestations of UNDRIP. This is because the REDD+ initiative provides an opportunity to breathe life into the UNDRIP.

4 Conclusion

Botswana has adopted and implemented community-based management of natural resources for over three decades now. The weakness of the existing framework is its skewness towards co-management of wildlife while forest resources remain state

⁶⁰Roy Sesana Right Livelihood Award Address, Stockholm (2005).

⁶¹Twyman (2000), p. 323.

⁶²Mogomotsi et al. (2018), p. 171.

managed. The engagement of local communities and indigenous communities is required to provide a balanced participatory management of natural resources. Sustainable management of forests resources play an important role in the reversal of global warming and climate change. The participation of Botswana in the REDD+ programme will enhance its ability to implement a successful co-manage of forest resources by piggy bagging in existing international framework to complement its tried and tested CBNRM. The proposed participation on REDD+ is complementary to the domestic initiatives of community-focus sustainable management of natural resources that Botswana is known of. The REDD+ provides a unique opportunity for Botswana and other countries in the global south to benefit from international legal mechanisms and financing to combat climate change, deforestation, and desertification through the involvement of indigenous communities and local communities. The participation of Botswana in the REDD+ programme will provide a springboard for cooperation between the government and the San, an opportunity that is much needed given the estranged relationship between the state and this Indigenous Peoples. The restoration of this relationship is a necessity to found functional and beneficial relationship between the Botswana and the San.

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Onthatile Olerile Moeti is a PhD candidate at the University of Glasgow in Scotland and her thesis is on *The Impact of the Modern Development Agenda on the Indigenous Peoples' Rights in Botswana: The Case of the San*. She holds an LLM in Human Rights and Democratisation in Africa from the University of Pretoria and a Master of Arts (Politics and International Relations) from the University of Botswana. Her degree of Bachelor of Laws (LLB) was obtained from the University of Botswana where she is currently employed as a Lecturer in the Department of Law, Faculty of Social Sciences.

Goemeone E. J. Mogomotsi (PhD) is currently the Director, Legal Services and Secretary to Council at Botswana University of Agriculture and Natural Resources. Further, he has a substantive appointment as an Associate Professor (International Environmental Law and Policy) in the Department of Law, Faculty of Social Sciences, University of Botswana, Botswana. Prior to joining the Department of Law, he was with the Okavango Research Institute, University of Botswana. Professor Mogomotsi holds PhD in Law from the University of the Witwatersrand, LLM in Commercial Law from the University of South Africa, LLM in International Trade, Business & Investment Law, University of the Western Cape, Master of Arts (Development Studies), Master of Public Administration (Public Policy & Administration) and Bachelor of Laws (LLB) from the University of Botswana. He also holds Bachelor of Financial and Investment Analysis and Master of Financial Management from Amity University, Uttar Pradesh, India. He has published widely in indigenous peoples' rights, international water law and diplomacy, natural resources use law and policy. Professor Mogomotsi is an admitted attorney, conveyancer and notary public the Courts of Botswana.

Patricia Kefilwe Mogomotsi (PhD) is an Associate Professor of Economics in the Department of Economics, Faculty of Social Science, University of Botswana. Prior to that, she served as research Associate Professor (Natural Resources Economics) at the Okavango Research Institute, University of Botswana. She holds a PhD in Economic and Management Sciences from North West University, Potchefstroom Campus. She also holds Master of Economics from Rhodes University, Master

of Financial Management from Amity University, Uttar Pradesh, a postgraduate Bcom (Hons) in Economics from Stellenbosch University and BA (Economics) from University of Botswana. Professor Mogomotsi has published extensively in environmental and natural resources economics, tourism management, water institutions and regulation, waste management, tourism economics, climate change adaptation, natural resources management.

Towards Implementing REDD+ in South Africa: A Human Rights Perspective



Untalimile Crystal Mokoena

Abbreviations

| | |
|--------|--|
| FAO | Food and Agriculture Organization |
| ILO | International Labour Organisation |
| IRCTT | Informal REDD+ Consultative Task Team |
| MRV | Measurement, reporting and verification |
| NCCAS | National Climate Change Adaptation |
| NEMA | National Environmental Management Act |
| NFA | National Forest Act |
| NTFPs | Non-Timber Forest Products |
| NVFFA | National Veld and Forest Fire Act |
| REDD+ | Reducing emissions from deforestation and forest degradation |
| SPLUM | Spatial Planning and Land Use Management Act |
| UDHR | Universal Declaration of Human Rights |
| UNFCCC | United Nations Framework Convention on Climate Change |

1 Introduction

Although South Africa's forests only make up a small percentage,¹ their protection and preservation greatly contribute towards the global goal of reducing global warming. Forests absorb greenhouse gases thereby greatly assisting in climate

¹South Africa's forests occupy about 1.5% of the country's land mass, see Forestry South Africa's Forestry in focus (2022).

U. C. Mokoena (✉)
Department of Public Law, University of Venda, Thohoyandou, South Africa
e-mail: Crystal.Mokoena@univen.ac.za

change mitigation.² Deforestation thus negatively affects the climate and currently stands as the second highest after the energy industry sector.³ With these factors considered, the United Nations Framework Convention on Climate Change (UNFCCC)⁴ initiated a strategy for Reducing Emissions from Deforestation and Forest Degradation (REDD+). As suggested by its name, REDD+ has been defined as ‘reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries’.⁵ REDD+ strategy remunerates developing states for complying with its mandate. Simply put, REDD+’s fundamental concept is that developing nations should receive compensation for reducing deforestation and forest degradation rates or sequestering carbon by implementing forest and land-use management policies, which are practical in combating climate change.⁶

As attractive as this may sound, South Africa is not yet a participant in the REDD+ initiative.⁷ This may be due to a variety of factors along with, political, institutional and socio-economic challenges. To illustrate this, implementing REDD+ requires states to bolster their capacity for upholding forest laws as well as addressing the needs of forest-dependent communities.⁸ However, these have not been realised by South Africa. Despite this, South Africa is a party to the Paris Agreement. Article 5 of the Paris Agreement urges its state parties to implement policies towards reducing emissions.⁹ While questions may emerge as to South Africa’s status towards REDD+ implementation, it is pertinent to interrogate the possible effects of REDD+ in South Africa, if implemented. Just like in any jurisdiction around the globe, the impact of REDD+ would be experienced more by those communities dependent on forests, whether positive or negative. This chapter focuses on the perceived human rights impact of REDD+ on the forest-dependent in South Africa. After this introduction is Sect. 2 of the study which outlines the forest situation in South Africa. Section 3 is an analysis of the national legal framework on deforestation. A human rights inquiry on the situation of communities that depend on forests in South Africa is provided in Sect. 4. Lastly, the chapter offers its concluding remarks in Sect. 5.

²Brack (2019); Jin et al. (2020), p. 201.

³Rahlao et al. (2012), p. 26.

⁴Article 4 of the UN General Assembly, *United Nations Framework Convention on Climate Change: resolution* (2011).

⁵REDD+ United Nations Climate Change.

⁶Hickmann et al. (2017), p. 5.

⁷Rahlao et al. (2012), p. 28.

⁸Read REDD+ in Africa: Context, challenges and next steps of REDD+ mechanisms in the continent.

⁹Article 5 of the Paris Agreement.

2 The Forest Situation in South Africa

South Africa's forests are a combination of natural forests, plantation forests and woodlands which are also known as savannas.¹⁰ The greatest of these are the woodlands, followed by plantation forests and the natural forests being the least.¹¹ Notwithstanding the different types of forests, the government has the mandate to protect all these forests.¹² In this way, entrance into natural forests is controlled through the National Forests Act.¹³ Woodlands which are mostly in communal lands are also protected, although their extent and vastness make it difficult for them to be adequately protected.¹⁴ Despite this, woodlands are the most easily accessible forest resource for the impoverished communities.¹⁵ In addition to the natural/indigenous forests being the smallest among South African forests, they are scattered throughout the country.¹⁶ These natural forests are not only owned by the state but there is an assortment of ownership or custodianship. While records indicate that only approximately 0.5% of South Africa's land comprises of natural forests, only half of that belongs to the state.¹⁷ Despite this, South African forests offer among other benefits, social and cultural ones. Nevertheless, forests in private spheres are also conserved through different private forestry companies.

South Africa's forests play a significant role in climate change mitigation. Like many other forests throughout the world, they are crucial carbon storage areas.¹⁸ They control ecosystems and safeguard biodiversity. In addition to their role in reducing the effects of climate change, South African forests are essential to the nation's economy and development objectives as well as for communities living adjacent to them. In this vein, the discussion which follows zooms into the nature and extent of forest dependence in South Africa.

2.1 *South Africa's Dependence on Forests*

A general consensus has been established both in South Africa and around the globe that forests offer numerous benefits to communities, especially those adjacent to them.¹⁹ Consumptive demands, employment, medicinal, spiritual and aesthetic

¹⁰Fisheries and the Environment, State of the Forests Report (2018); Forestry.

¹¹See Forestry.

¹²See Part 2 of the National Forest Act 84 of 1998.

¹³Section 17(2) of the National Forests.

¹⁴Fisheries and the Environment, State of the Forests Report (2018).

¹⁵Ofoegbu and Speranza (2021a), p. 171.

¹⁶Knowles et al. (2020).

¹⁷See Forestry.

¹⁸Odebiri et al. (2022), p. 359.

¹⁹Nerfa et al. (2020), p. 1; Shackleton et al. (2007), p. 558.

needs are just but examples of these benefits.²⁰ Since most of the forests are in rural areas, this involuntarily makes those predominantly dependent on forests to be rural dwellers. These are usually the poor and marginalised who oftentimes do not receive sufficient service delivery from the government.²¹ This compels rural communities to depend on forests, either directly or indirectly.²² Direct methods of dependence on forests include harvesting timber and non-timber forest products, whereas indirect methods include being compensated for participating in projects that require working in forests, such as participants receiving vouchers in exchange for collecting seeds and growing trees.²³ These mechanisms become key sources of basic needs for the majority of the impoverished rural communities.

Forests in Africa and South Africa are homes to and provide a source of income to a significant population.²⁴ In the words of Ofoegbu et al., ‘rural households often depend on forests either as sources of income or to meet their consumption requirements’.²⁵ Forest-dependent communities also heavily rely on forests for energy as they largely use firewood and charcoal. A study conducted in Limpopo Province, South Africa, demonstrates that the province which has a large population residing in the rural areas depends on firewood as a source of energy.²⁶ For these communities, deforestation, to acquire among other necessities, firewood, is essential for their lives.

In South Africa, the use of natural forests as a source for construction materials, food, fuel wood, and medicine is expanding, with approximately 80% of the population relying on medicinal herbs, most of which are produced in natural forests.²⁷ Forests also play a critical role in food security and the country’s socio-economy in general.²⁸ Along with contributing a variety of forest products to local communities, forests also assist the manufacturing sector with the production of goods such as paper and sawmilling.²⁹ They are a great source of medicine globally and South Africa provides the majority of these from its indigenous forests.³⁰ It further assists with the creation of jobs. It is not only the people directly employed by forests who benefit from them, but also those dependent on the forest-employed. The 2018 State of Forests Report indicates that over 654,000 people are dependent on commercial plantations.³¹ This number becomes even higher when natural and

²⁰Ibid.

²¹Kosec and Wantchekon (2020), p. 2; also, see Reddy (2016), p. 3.

²²Kaoma and Shackleton (2015), p. 111; also, see Nerfa et al. (2020), p. 5.

²³Wale et al. (2022), p. 2.

²⁴Shackleton et al. (2015), p. 82; Shackleton et al. (2007), p. 566.

²⁵Ofoegbu et al. (2017), p. 109.

²⁶Uhunamure et al. (2017), p. 26.

²⁷Fisheries and the Environment, State of the Forests Report (2018).

²⁸Ibid.

²⁹FAO (2015), p. 45.

³⁰Van Wyk and Prinsloo (2018), p. 335.

³¹Fisheries and the Environment, State of the Forests Report (2018).

woodlands forests dependents are added. The forest industry is also among the leading exporters in the country with an export value of above R38.4 billion.³² As such, taking advantage of forests' products and services contribute to the improvement of people's lives. As mentioned, woodlands take up the greatest forest space in South Africa, and are the ones greatly relied on for livelihood. These are often used for building materials, fuel, craft timber, fruit, fodder, and so on.³³ Woodlands are also relied upon by more than 800,000 people who are involved in the craft industry.³⁴ This resonates with the recognition of forests by the African Agenda 2063 as vital to Africa's economy.³⁵

In addition to forest-dependent communities, a significant portion of South Africans depend on subsistence farming. Such farming requires that land be cleared in order to be undertaken, thereby leading to deforestation. The rationale behind households' reliance on forests is their comparatively low cost of utilisation.³⁶ A dichotomy, however, exists as on one hand, the lifestyle of forest-dependent communities often necessitates that they cut down trees. On the other hand, it is the poor who suffer the most when deforestation and forest degradation occurs. On its face, these challenges seem to be those which REDD+ professes to address. As such, it becomes apparent to examine the conceivable consequences of REDD+ in South Africa.

2.2 The Possible Effect of REDD+ in South Africa

Given the importance of forests in climate change mitigation and other spheres of life, REDD+ requires measures to manage the forests as well as to combat deforestation. It offers financial compensation for the protection of forests with the aim of using them for climate change mitigation.³⁷ Unlike other mechanisms, REDD+'s implementation is in three phases. These are: the development of national strategies to ensure readiness; implementation of national strategies; and results-based actions which include payment for results.³⁸ It is clear that South Africa has not yet satisfied all three phases. This signifies that it has not yet formally become part of REDD+. However, it is without doubt that the country has shown interest in the project. This is seen in its policies and legislation which incorporates REDD+ strategies. It is thus expected to join other developing countries in formalising its strategies for conserving and managing forests through REDD+. States intending to participate in REDD+

³²Forestry South Africa/Forestry Explained (2020).

³³See Forestry.

³⁴Fisheries and the Environment, State of the Forests Report (2018).

³⁵Agenda 2063: The Africa We Want (2015).

³⁶Ofoegbu et al. (2017), p. 113.

³⁷Legesse et al. (2022), p. 218.

³⁸United Nations Climate Change, What is REDD+.

should have a measurement, reporting and verification (MRV) system in place to evaluate emission reductions and removals.³⁹ This is affirmed by Rahlao et al. who indicate that host institutions within states participating in REDD+ have the mandate to enhance their capacity for MRV.⁴⁰

African forests are said to be under a huge threat due to deforestation and degradation, and this includes South African forests. In the view of Wale, Nkoana and Mkuna, 'the declining resilience of forests and agricultural sectors particularly in South Africa is concerning and a real public policy challenge'.⁴¹ This is due to inter alia, the high rate of forest-dependent communities. A burden therefore exists to ensure forests are well managed for the benefit of those directly depending on them as well as for climate change mitigation. Initiatives to mitigate climate change through the use of forests have the potential to offer host communities significant co-benefits such as employment, opportunities for income production, the preservation of forests, and the provision of forest products.⁴² As already demonstrated, REDD+ is among those mechanisms intended to conserve and manage forests. According to Gizachew et al., REDD+ is 'expected to provide Africa with a range of environmental and socio-economic benefits'.⁴³ South Africa is no exception to these expectations.

South Africa's work towards reducing emissions commenced in 2015 with the setting up of the Informal REDD+ Consultative Task Team (IRCTT). Since then, some frameworks relating to REDD+ have been drafted.⁴⁴ Some of these include the Spatial Planning and Land Use Management Act (SPLUM),⁴⁵ which may assist with better planning and zoning. However, following the 2030 emissions reduction target released in 2021, South Africa's climate policies and actions were flagged as insufficient to lower the emissions to the set 1.5 °C.⁴⁶ Different factors need to be considered in implementing REDD+ in South Africa, these include diverse land custodians, land tenure and forest conservation management.⁴⁷ Although REDD+'s intention is on climate change mitigation, it also guarantees socio-economic advancement, as well as poverty reduction and sustainable means of subsistence.⁴⁸ Given the situation of forest-dependent communities in South Africa, REDD+ offers attractive solutions to the socio-economic challenges faced by those relying on forests. This is supported by scholars who expound that the attraction of REDD+

³⁹The Decision 14/CP.19 Warsaw Framework for REDD+.

⁴⁰Rahlao et al. (2012), p. 30.

⁴¹Wale et al. (2022), p. 1.

⁴²Ofoegbu et al. (2017), p. 110.

⁴³Gizachew et al. (2017), p. 1.

⁴⁴Knowles et al. (2020), p. 2.

⁴⁵See Act No. 16 of 2013.

⁴⁶See Climate Action Tracker, South Africa (2009).

⁴⁷Knowles et al. (2020), p. 17.

⁴⁸Somorin et al. (2014), p. 88; Gizachew et al. (2017), p. 1.

for African countries is mainly for economic gain than climate change.⁴⁹ This financial benefit from REDD+ would help the country support its sustainable development while preserving its forests. The monetary benefit would come in handy for South Africa as it is troubled by poverty and inequality.

Given all the valuable contributions that forests make, it is without a doubt that they need to be maintained and safeguarded. Therefore, the country has come up with several legal frameworks to help in that regard. These include legislation and policies against deforestation. Below is an examination of the South African legal framework on deforestation.

3 Potential in the National Legal Framework for REDD+

South Africa has put in place different mechanisms to conserve and manage forests. Currently, the majority of South African forests are under some form of protection. Although this comes in handy for the REDD+ project, it was largely done as a response to the country's domestic and international obligations. The discussion on analysing the framework regulating forest protection is divided into three sub-sections, namely the constitutional framework, legislative framework and policy framework.

3.1 The Constitutional Framework

The South African Constitution (the Constitution),⁵⁰ which is the apex law of the country pronounces on the conservation and management of forests. Section 24 of the Constitution states that 'everyone has the right to have the environment protected for the benefit of present and future generations'.⁵¹ Several constitutions around the globe refer to safeguarding the 'environment' rather than the 'forest'. For instance, the Portugal Constitution, being the first Constitution to safeguard such rights, makes reference to 'the right to a healthy and ecologically balanced human living environment'.⁵² The Kenyan Constitution aligns with the South African Constitution. It provides for 'the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations'.⁵³ Evident in the Kenyan provision which also is highlighted in the South African Constitution is the use of the concept 'environment' rather than

⁴⁹Gizachew et al. (2017), p. 2.

⁵⁰The South African Constitution, Act No. 108 of 1996.

⁵¹Section 24(b) of the Constitution, 1996.

⁵²Article 66(1) of the Constitution of the Portuguese Republic.

⁵³See Article 42 of the Kenya's Constitution of 2010.

forests, as well as the need to not only safeguard the environment for the present generation but also for future generations.⁵⁴

An environment may be simply understood to include ‘water, air, soil, flora and fauna’.⁵⁵ Flora refers to all plants and vegetation. This therefore entails that forests are encompassed within the environment. In this vein, the protection of forests adds to the protection of the environment and the other way around. Therefore, the constitutional call for the protection of the environment for future generations has in it the protection of forests. Pronouncing on the Chilean Constitution in the case of *Pedro Flores v. Codelco*,⁵⁶ the Supreme Court in Chile held that ‘[T]he environment, environmental heritage and preservation of nature, of which the Constitution speaks and which it secures and protects, is everything which naturally surrounds us and that permits the development of life, and it refers to the atmosphere as it does to the land and its waters, to the flora and fauna, all of which comprise nature, with its ecological systems of balance between organisms and the environment in which they live’. This affirms that the protection of the environment is generally understood to include forests. Failure to expressly include the term ‘forest’ in the Constitution does not mean that they are not protected. The constitutional mandate to conserve the environment therefore aligns with the REDD+ initiatives.

Hence, the mandate to have the environment safeguarded is not solely for the present generation but also for the advantage of upcoming generations. A considerable emphasis on protecting and preserving the environment for future generations is highlighted in the constitutional framework. Pawar and Rothkar identify sustainability and benefit for future generations as some of the core reasons behind the need to protect forests.⁵⁷ Their significance to human life⁵⁸ necessitates that forests be safeguarded for future generations. This resonates with the obligation for protecting the environment as enunciated by the Constitution. Generally, forests and environments are meant to be publicly and infinitely enjoyed. Deforestation is thus a bruise on the right protected by Section 24 of the Constitution because it does not advance the promotion and conservation of the environment.

⁵⁴ See Article 42(a) of the Kenya’s Constitution of 2010; Section 24(b) of the Constitution of South Africa.

⁵⁵ See Larsson (n.d.).

⁵⁶ *Pedro Flores v Corporacion del Cobre Codelco, Division Salvador, ROL.12.753. FS.641* (Supreme Court of Chile, 1988).

⁵⁷ Pawar and Rothkar (2015), p. 212.

⁵⁸ See Sect. 4 of this chapter.

3.2 *Legislative Framework*

Various legislation has been enacted to safeguard forests in South Africa. Some of the key ones include the National Forests Act,⁵⁹ National Veld and Forest Fire Act,⁶⁰ and National Environmental Management Act.⁶¹

3.2.1 National Forests Act

By stating that forests are an essential part of the environment and should be protected in accordance with the principles of sustainable management,⁶² the National Forest Act (NFA) places an emphasis on sustainable forest management.⁶³ It further provides in its preamble that ‘natural forests and woodlands form an important part of that environment and need to be conserved and developed according to the principles of sustainable management’. This call aligns with the principles of REDD+ which are embedded in conserving and ensuring a sustainable environment.⁶⁴ While sustainable management of forests is an integral part of REDD+ project, conserving natural forests and woodlands as mandated by the National Forest Act leads to automatic compliance with the project. This is because conserving forests as required by the NFA would include among other measures limiting deforestation and forest degradation which resonates with REDD+ initiatives.

The National Forests Act protects South African forests and prohibits any cutting of natural forests and indigenous trees without a valid permit.⁶⁵ The legislation condemns deforestation. Section 4 thereof is dedicated to measures to reduce and manage deforestation. The Minister is given the mandate to take immediate action to stop deforestation and restore deforested regions.⁶⁶ This includes prohibiting any action that may lead to deforestation.⁶⁷ While deforestation may be defined in several ways, the Food and Agriculture Organization of the United Nations (FAO) defines it as ‘the removal of forest cover to an extent that allows for alternative land use’.⁶⁸ This includes the cutting down of trees for a multitude of reasons, including

⁵⁹National Forests Act 84 of 1998.

⁶⁰National Veld and Forest Fire Act 101 of 1998.

⁶¹National Environmental Management Act 107 of 1998.

⁶²See Part 1 of the National Forest Act (1998).

⁶³Part 1 of the National Forest Act (1998).

⁶⁴United Nations Climate Change, What is REDD+ states that REDD+ was created ‘to guide activities in the forest sector that reduces emissions from deforestation and forest degradation, as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks in developing countries’.

⁶⁵Section 12 and 7 of the National Forests Act (1998).

⁶⁶Part 4 of the National Forests Act (1998).

⁶⁷Section 17(4)(c) of the National Forests Act (1998).

⁶⁸Tejasmi (2007), p. 5.

building materials and firewood.⁶⁹ Given the uncontested prohibition of deforestation, it is evident that most of the activities of the rural forest-dependent people clash with the NFA. However, the NFA does not define deforestation. It simply prohibits it without first mapping out what the act entails. This, according to this study, is an oversight as a conduct or an act must first be clearly outlined before it is prohibited to avoid ambiguity. The protection of the forests, which is unequivocally highlighted in the NFA entails that:⁷⁰

No person may—

- (a) cut, disturb, damage, destroy or remove any protected tree; or
- (b) collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, except under a licence granted by the Minister.

While elaborating on what the protection of trees entails, the clause is indicative of the paradox presented by the necessity to protect forests and the safeguarding of the livelihood of those depending on forests. The literature demonstrates that a significant amount of forests are harvested by nearby local communities that depend on forests for food, medicine, and timber for both household use and income.⁷¹ The subsistence of such communities would definitely be affected by laws restricting access to or protecting forests. Conflicting needs and obligations are thus presented. The protection of trees outlaws the cutting down of trees whereas the needs of the forest-dependent compel them to dispose of trees. In this way, the combating of deforestation may negatively impact on forest-dependent communities.

3.2.2 The National Veld and Forest Fire Act

The National Veld and Forest Fire Act (NVFFA) is dedicated to combating fire in the veld and forests of South Africa.⁷² The rationale behind the legislation is to address forests and veld fires which negatively affect the economy of the country.⁷³ Its promulgation was essential as fire is destructive to the South African forests and veld, among other jurisdictions. Although the NVFFA does not condemn deforestation per se, its purpose aligns with it as it sets out to protect trees, despite its focus being on destruction by fire. Reducing and preventing fires assist in maintaining forest carbon.⁷⁴ In this way, the NVFFA resonates with the principles of REDD+. Failure to manage forest fires triggers ‘reversibility’ of the carbon benefits⁷⁵ as it takes away possible climate mitigation role from forests.⁷⁶

⁶⁹Sithole and Agholor (2021), p. 2.

⁷⁰Section 15(1) of the National Protection Act.

⁷¹See Opperman et al. (2018), p. 1; also, see McElwee (2010), p. 114.

⁷²Read Section 1(1) of the National Veld and Forest Fire Act 101 of 1998.

⁷³Fisheries and the Environment, State of the Forests Report (2018).

⁷⁴Prichard et al. (2021), p. 2; Stephens et al. (2020), p. 4.

⁷⁵Cosslett (2013), p. 29.

⁷⁶Keenan (2015), p. 146; Wotton et al. (2010), p. 269.

For populations depending on forests, the legislation on the prevention of fires presents both advantages and disadvantages. Since fires may destroy the lives and properties of people living adjacent to forests, legislation preventing fires is beneficial to them. Forsyth et al. indicate that untimely fires may wipe off crops as well as leave local residents without essential resources such as thatch grass.⁷⁷ Thus, NVFFA protects communities relying on forests from possible losses brought by wildfires. On the contrary, the prevention of fires may negatively affect the ecosystem. Wildfires are said to be advantageous for preserving ecological services and safeguarding biodiversity.⁷⁸ Laws preventing fires, such as the NVFFA, may rob local dwellers of the opportunity to use fires for their benefit such as killing diseases and insects on their trees and cleaning forest floors of unwanted waste.⁷⁹ In this way, NVFFA gives rise to conflicting results for the forest-dependent.

3.2.3 The National Environmental Management Act

The protection of the environment, which includes forests, in South Africa is evident in the National Environmental Management Act (NEMA).⁸⁰ This is a legislation that advocates for good and sustainable management of the environment. It highlights the need to protect not just everyone's environment but to do so for the purposes of the present and future generations.⁸¹ Sustainable development, according to NEMA, refers to 'the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations'.⁸² NEMA infuses economic development and the protection of the environment. The widespread goal of consolidated environmental management is inter alia to identify the impact of various activities on the environment, socio-economic conditions, and cultural heritage as well as the risks they pose.⁸³ Although deforestation is not mentioned in NEMA, it is part of the activities whose impact on the environment and economy should be monitored and managed as provided by Section 23 of the Act. In this regard, provisions of NEMA is useful in advancing effective REDD+ governance although it was enacted way before the establishment of REDD+.

⁷⁷ Forsyth et al. (2010), p. 30.

⁷⁸ Ibid.

⁷⁹ Benefits of Fire.

⁸⁰ The National Environmental Management Act 107 of 1998, Preamble.

⁸¹ Ibid.

⁸² Ibid., Section 1.

⁸³ Ibid., Section 23 (2)(b).

3.3 Policy Framework

Along with the constitutional and legislative framework, South Africa has policies to the effect of forest management. Below is a brief overview of some of the policies.

3.3.1 White Paper on Sustainable Forest Development in South Africa

The government, according to the Sustainable Forest Development in South Africa White Paper, aims to ‘promote a thriving forest sector, utilised to the lasting and sustained benefit of the total community, and developed and managed to protect and to improve the environment’.⁸⁴ This aspiration resonates with the constitutional mandate to conserve the environment for the current and future generations. The policy rightfully views forests not just as the act of managing forested land but as centred in the relationship between humans and resources provided by forests.⁸⁵ This kind of perception recognises the important role played by forests in people’s lives. In other ways, forests might not be separated from their role in sustaining human life. That is, despite South Africa not being rich in forests, these provide a significant income to rural households.

3.3.2 White Paper on Climate Change

South Africa’s White Paper on climate change encourages climate mitigation and mentions afforestation to be essential as trees or forests are great for carbon sequestration.⁸⁶ However, it unequivocally highlights that the country has few options of reducing emissions by addressing deforestation.⁸⁷ This is because of its very limited forest space⁸⁸ and its high level of carbon emissions.⁸⁹ South Africa directs its great emission reduction potential to be on energy generation and use instead. This open disclaimer on the country’s main focus of emission reduction may be detrimental to its possibilities of partaking in the REDD+ project. Although this may not look good for South Africa at a global level, the country is perhaps being realistic on its challenges of high inequality and poverty rate. Such sad realities are behind the significant population of those dependent on forests in the country. Hence, South Africa is not giving unfeasible promises of reducing deforestation when it

⁸⁴Sustainable Forest Development in South Africa White Paper (1996).

⁸⁵Ibid.

⁸⁶National Climate Change Response White Paper (2011), p. 26.

⁸⁷Ibid.

⁸⁸See South Africa’s afforested area is about 1.27 million ha which is about 1% of the total South African land area of 122.3 million ha, see Forestry.

⁸⁹Salahuddin et al. (2019), p. 2; Bekun et al. (2019), p. 760.

still has people making a livelihood from the forests until such a time that alternative measures are in place for such communities.

The White Paper mentions, however, that South Africa's climate change mitigation rests on two factors which are its role in halting global emissions and 'successful management of the development and poverty eradication'.⁹⁰ These two speak to the goals of REDD+ directly and indirectly. While curbing global emissions is REDD+'s core objective, poverty eradication is among the positive results of abiding by REDD+ mechanisms as such compliance would yield monetary benefits. Although these financial benefits would be of great asset in South Africa, they are not without potential challenges. One of these relates to governance. As poor governance is identified to be a challenge in Africa, South Africa is not immune from this setback. Corruption is common in South African governance,⁹¹ making the possibility very high that if South Africa fully partakes in the REDD+ project, the poor, forest-dependent communities may not get their rightful dues. REDD+ necessitates that states facilitate inter alia benefit sharing.⁹² In a corrupt state, benefit sharing is likely to benefit only the powerful who in most cases are the wealthy leaving out the poor and powerless. Rahlao et al.⁹³ expound that small-scale landowners may find it challenging to acquire carbon earnings because of the generally high transaction costs and perceived complexity in getting remunerated for climate change mitigation. Important to note is that most of the subsistence farmers are small-scale land owners, thus, REDD+ may not be advantageous for them.

3.3.3 The National Climate Change Adaptation Strategy

The National Climate Change Adaptation (NCCAS) strategy expands on previous legislation and policies which safeguard the right to a safe and healthy environment.⁹⁴ It, among others, endeavours to identify adaptation strategies to handle climate change. By so doing, these would help advance a safe and healthy environment for everyone. Incorporating ecosystem-based approaches and climate-smart techniques into forestry practises is largely encouraged by the NCCAS.⁹⁵ This is due to the great influence forests have on tackling climate change in South Africa and across the globe. As such, it is crucial for forest management measures to be considered and married with mechanisms for mitigating climate change. Scholars affirm that forest management is helpful in climate change.⁹⁶ For a nation such as South Africa, where land ownership is complicated, such management of forests can

⁹⁰National Climate Change Response White Paper (2011), p. 25.

⁹¹Mbandlwa et al. (2020), p. 1645; Pillay (2004), p. 588.

⁹²Phelps et al. (2010), p. 312.

⁹³Rahlao et al. (2012), p. 29.

⁹⁴National Climate Change Adaptation Strategy Republic of South Africa (2019).

⁹⁵Ibid.

⁹⁶Ofoegbu and Speranza (2021b), p. 279. Halofsky et al. (2018), p. 84.

provide a problem and delay REDD+ adoption. The South African history of apartheid still has its effect on the country's land tenure. About 70% of South Africa's forest is privately owned with only 30% belonging to the state.⁹⁷ This therefore means that implementing REDD+ in privately owned forests would necessitate engagement with different stakeholders who may be reluctant to yield to REDD+ mechanisms. The problem is made worse by the fact that communities without legal land tenure rights occupy around one-third of forested lands.⁹⁸ With the woodlands being the largest type of forest in South Africa, it therefore implies that the chances of properly implementing REDD+ in the country are more frustrated. This is owing not only to the fact that protecting woodlands is difficult, but also that the rate of degradation and deforestation of these forests is not yet known in South Africa.⁹⁹

4 The Potential in a Human Rights Approach to REDD+

Forest-dependent communities, just like other communities deserve to have their rights safeguarded. It is, therefore, necessary to explore how the existing legislation impacts on their rights while highlighting how a REDD+ preparedness legal framework may address the gaps in the current laws. Although South Africa is not a participant to the REDD+ project, different laws are dedicated to forest affairs. While these may be relevant in accomplishing some of the principles envisaged by REDD+, they may be detrimental on human rights. Implementing REDD+ without reforming the existing frameworks will thus result in a violation of several rights of the forest-dependent. Due to the close link to the subject matter herein, this section discusses the right to culture, self-determination and social security.

4.1 *Right to Culture*

Forests play a significant role in people's cultural identity.¹⁰⁰ Some trees in Africa are believed to have a strong cultural and medicinal significance,¹⁰¹ thus essential to the enjoyment of people's cultural rights. The right to culture is constitutionally protected in South Africa.¹⁰² Section 30 of the Constitution of South Africa (the Constitution) affords everyone the right to 'participate in the cultural life of their

⁹⁷ Rahlao et al. (2012), p. 27.

⁹⁸ Hickmann et al. (2017), p. 12.

⁹⁹ Department of Forestry, Fisheries and the Environment, State of the Forests Report (2018).

¹⁰⁰ Seymour (2009), p. 214.

¹⁰¹ FAO (2015), p. 5.

¹⁰² Sections 30 and 31 of the Constitution of South Africa, 1996.

choice'. The Universal Declaration of Human Rights (UDHR) also safeguards everyone's 'right freely to participate in the cultural life of the community'.¹⁰³ Being a diverse nation, South Africa has some cultural groups whose identity is linked to the forest. For instance, the Xhosas place a high value on the utilisation of wild plants in cultural and religious rituals.¹⁰⁴ The Venda people also attach great cultural importance to forests. They consider them as residence to the spirits of their deceased.¹⁰⁵ However, concerns have been expressed by rural dwellers about access and protection afforded to their sacred forests.¹⁰⁶ There are incompatible forest interests between the government and forest-dependent communities. For example, the government may have commercial interests (timber and tourism) in a forest considered sacred by rural communities adjacent to it. Such irreconcilable value is an indication of how the right to culture may be violated.

In this regard, it is important to note that various cultures, unique histories, and experiences of peoples and communities place different values and demands on forests. Some of these require the cutting of trees while others necessitate conservation. As such, the need to protect people's cultural rights should not be disregarded at the expense of environmental laws and policies. It is in this vein that this chapter advocates for a REDD+ legal framework that considers the realities of the forest-dependent people. This entails the current laws which were drafted pre-REDD+ and were intended to fulfil various other purposes which had nothing to do with REDD+. While the suggested framework should consider the shortcomings left by adhering to laws enacted before its commencement, it should acknowledge the ground-breaking role they played.

4.2 *Right to Self-Determination*

Although not included alongside other rights in the Bill of Rights,¹⁰⁷ the right to self-determination is acknowledged by the Constitution.¹⁰⁸ It provides for 'the right of self-determination of any community sharing a common cultural and language heritage; within a territorial entity in the Republic or in any other way, determined by national legislation'.¹⁰⁹ This provision which aligns with the right to culture calls for a legal framework to determine the right to self-determination of a particular community. International instruments also attempt to give meaning to the right to

¹⁰³ Article 27 of the Universal Declaration of Human Rights, 1948.

¹⁰⁴ Cocks et al. (2012), p. 2.

¹⁰⁵ Constant and Taylor (2020), p. 6.

¹⁰⁶ Ibid.

¹⁰⁷ Chapter 2 of the Constitution.

¹⁰⁸ Section 235 of the Constitution.

¹⁰⁹ Ibid.

self-determination. The International Covenant on Civil and Political Rights is among those instruments. It provides that:¹¹⁰

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The forest-dependent communities are one such group that should not be denied the right to collectively enjoy and profess their own way of living. As already indicated in this study,¹¹¹ some of the rural forest-dependent communities perceive forests to be sacred dwelling places of their gods. Therefore, such common beliefs by these communities deserve to be protected as envisaged by the right to self-determination. Any REDD+ legal framework in South Africa should bear in mind the cultural pluralistic nature of the country and protect the rights of those whose heritage and self-determination is based in forests.

4.3 *Social Security*

Social security is about socio-economic protection. The International Labour Organisation (ILO) defines it as the protection which society¹¹²

...provides for its members, through a series of public measures against the economic and social distress which may be caused by the stoppage or substantial reduction of earnings resulting from; sickness, maternity, employment injury, unemployment, invalidity, old age and death.

What is apparent from this ILO definition which has acquired a universal acceptance is that social assistance is a provision from the society/government to its members to curb against economic vulnerability. Important to note is that social security is a human right recognised by both international and domestic law. The apex law of South Africa provides that ‘everyone has the right. . . to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance’.¹¹³ This implies that everyone in South Africa, including those living in rural areas and dependent on forests, have the right to be provided, ‘through a series of public measures against the economic and social distress’. Poverty is the main driver into forest dependence. Literature confirms the interlink between poverty and forest-dwelling/dependence.¹¹⁴ People in rural economies primarily rely on

¹¹⁰ Article 27 of the International Covenant on Civil and Political Rights (1996).

¹¹¹ Section 4.1 of this chapter.

¹¹² International Labour Organization (ILO)(2019), *Convention Concerning Minimum Standards of Social Security* (1952).

¹¹³ See Section 27 (1) (c) of the Constitution.

¹¹⁴ Nerfa et al. (2020), p. 1; Dalu et al. (2021), p. 8.

Non-Timber Forest Products (NTFPs) to meet their household requirements. Forests have in turn proven to satisfy the financially distressed with daily essentials such as food, shelter, energy, medicine, and others.¹¹⁵ Acquiring most of these necessitates the cutting down of trees, thereby leading to deforestation. Some rural households do not have electricity and rely on cutting wood for energy. It appears that forest-dependence is usually for the poor with no other means of survival. Dependence on forests is therefore mainly driven by socio-economic needs. Wale et al. expound that households would not invest money in low-yield forest activities if they had more lucrative possibilities for deploying their human capital.¹¹⁶ Laws protecting forests as well as REDD+ initiatives are more likely to clash with the livelihood of forest-dependent communities. An example of these laws is the NFA which requires a permit for cutting any natural forest and indigenous trees.¹¹⁷ While this may be necessary for the preservation of forests, such a provision may indirectly hinder the realisation of the right to social security for those dependent on forests. A South African REDD+ inspired legal framework should thus factor in possible ways of addressing such challenges. These may include an explicit clause on the compensation of forest dependent communities. In other words, if South Africa is to become part of the REDD+ project, it has to consider the needs and interests of such communities. This is because effective forest management calls for consideration of forest dwellers' means of subsistence.¹¹⁸ Any attempt to conserve forests or halt deforestation should thus begin by comprehending the socio-economic situation of those reliant on forests. As clearly articulated by Ratsimbazafy, Harada and Yamamura, it should be borne in mind that forests should first be understood as a key source of livelihood 'before being targeted for carbon enhancement'.¹¹⁹ Alternative means of survival should be made available for the population depending on forests. It is essential to ensure their right to social security is taken care of. This may be done using part of the remuneration which the country would be getting for reducing emissions through the REDD+ project.

5 Conclusion

Forests are crucial for carbon storage as well as other life-giving activities. A global call to reduce deforestation and forest degradation is made to states with an offer to compensate developing states for their efforts in conserving forests. Although South Africa is not a forest-rich state, it is also called upon to join in the drive to limit deforestation. Although not yet a REDD+ participant, South Africa has a legal

¹¹⁵Dalu et al. (2021), p. 8; Leaver and Cherry (2020), p. 1.

¹¹⁶Wale et al. (2022), p. 7.

¹¹⁷See Sections 12 and 7 of the National Forests Act.

¹¹⁸See Sunderlin et al. (2005), p. 1385.

¹¹⁹Ratsimbazafy et al. (2012), p. 322.

framework which resonates with some of the principles of REDD+. However, it is important to note that South Africa has a significant population relying on forests. This presents some paradoxes for South African forest laws. While forest laws support forests management and conservation, some of the livelihood activities of the forest dependent communities require accessing and cutting of trees. A dichotomy further exists in circumstances where the need to protect forests clashes with the rights of those dependent on forests. This study thus brought to light some of the rights of the forest dependent communities which may be threatened by implementing REDD+ without reforming existing framework. Hence, the chapter suggests that the reformation of forests laws for REDD+ preparedness should consider inter alia the rights of forest-dependent communities.

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Untalimile Crystal Mokoena is a lecturer in the Department of Public Law, University of Venda, South Africa. Her research interests are in human rights and social security law. As an emerging researcher, Crystal has written and co-authored various book chapters and journal articles. Among these are publications on climate change and its intersection with social security. She is currently a doctoral student at the University of Pretoria and holds an LLB and LLM degrees from the University of Venda.

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