1

Background to REDD+

A INTRODUCTION

This chapter provides a background to and analysis of REDD+, examining it from multiple angles and across several different registers. The first section traces the history of REDD+ as a *legal agreement* that provides a framework through which activities addressing deforestation and forest degradation can be measured, reported and verified as 'result-based actions' and made legible in the rubric of one tonne of carbon dioxide equivalent ($1tCO_2e$). It describes the gradual and progressive development of norms under the institutional umbrella of the United Nations Framework Convention on Climate Change (UNFCCC), through a series of successive Conferences of the Parties (COPs), subsidiary bodies and expert meetings. The second section examines REDD+ as constituted through experimental practices and preparatory and market-construction activities. It examines 'demonstration activities' that seek to materialise REDD+ 'on the ground' as part of a process of 'learning-by-doing'; and it looks at the multilateral and bilateral 'REDD+-readiness' processes directed towards establishing the necessary background regulatory conditions to operationalise REDD+ in host nation-states. The third section analyses REDD+ as a concept or idea, one that arises from the field of environmental economics, namely, that forest protection can be 'incentivised' through the financial valuation of nature and through payment for environmental services (PES) schemes, including potentially the inclusion of forests in international carbon markets. It provides a brief history and lineage of these ideas about the economic valuation of nature. The fourth section provides an overview of the activities that are promoted through REDD+ and situates both conservation and sustainable forest management (SFM) in the context of their colonial origins. Finally, the fifth section outlines how, in response to concerns that REDD+ might impact the lives of peoples living in and around forested areas, the scope of REDD+ programmes and projects has extended beyond the initial environmental focus, so that REDD+ has now also become a

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social project concerned with 'co-benefits' such as poverty alleviation, tenure reform and rights for forest peoples. It critically evaluates those discourses pertaining to the social impacts of REDD+ and shows how, through safeguards and other mechanisms, the sphere of REDD+ intervention has expanded to encompass developmental agendas that actively reshape the lives and livelihoods of forest peoples.

B REDD+ AS A PART OF THE UNFCCC FRAMEWORK

This section provides a background to the UNFCCC negotiations relevant to REDD+, including its endorsement in the Bali Action Plan (2007), the initial elaboration of a framework in the Cancun Agreements (2011), the Warsaw Framework for REDD+ (2013) and the conclusion of REDD+ agenda items in 2015.[1] The reference to REDD+ in Article 5.2 of the 2015 Paris Agreement confirmed that REDD+ will continue to be a significant element of the post-2020 climate regime,[2] however the Paris Agreement also left key issues unresolved, especially the controversial questions regarding the financing for REDD+.[3] Although negotiators were able to agree on most elements of the 'Paris Rule Book' at COP24 (2018), no decision was reached on guidelines for Article 5 or Article 6, pertaining to international flexibility mechanisms.[4] While a number of different proposals exist about how REDD+ could be included within the Article 6 carbon trading mechanisms, (at the time of writing) no formal decision had yet been reached on these questions.[5]

The institutional narrative of REDD+ generally begins with the decision to exclude 'avoided deforestation' from the Kyoto Protocol's Clean Development Mechanism (CDM).[6] When specific rules for the CDM were developed as part

[1] For an overview, see UNFCCC, *Key Decisions Relevant for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+)*, June 2014, unfccc.int/files/land_use_and_climate_change/redd/application/pdf/compilation_redd_decision_booklet_v1.1.pdf.

[2] *Paris Agreement*, opened for signature on 22 April 2016, UNTS XXVII.7.d (entered into force 4 November 2016), Article 5.

[3] See A. G. M. La Viña and A. de Leon, 'Conserving and enhancing sinks and reservoirs of greenhouse gases, including forests (Article 5)' in D. Klein, M. P. Carazo, M. Doelle, J. Bulmer, and A. Higham (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017) pp. 166–77.

[4] See Decision 8/CMA.1 'Matters relating to Article 6 of the Paris Agreement and paragraphs 36–40 of decision 1/CP.21', FCCC/PA/CMA/2018/3/Add.1 (19 March 2019); for a summary of the 'Paris Rule Book' see M. Yang, 'COP 24 Round-Up Part 1: The Paris Rulebook' *Inside Energy & Environment*, 18 December 2018, www.insideenergyandenvironment.com/2018/12/cop-24-round-up-partone-the-paris-rulebook/; S. Evans and J. Timperley, 'COP24: key outcomes agreed at the UN climate talks in Katowice' *Carbon Brief*, 16 December 2018, www.carbonbrief.org/cop24-key outcomesagreed-at-the-un-climate-talks-in-katowice; see also H. van Asselt, K. Kulovesi, and M. Mehling, 'Editorial · negotiating the Paris Rulebook: introduction to the special issue' (2018) 12(3) *Carbon & Climate Law Review* and the articles in the special issue it introduces.

[5] For a more detailed discussion see Chapter 3.

[6] Decision 17/CP.7 'Modalities and procedures for a Clean Development Mechanism, as defined in Article 12 of the Kyoto Protocol', FCCC/CP/2001/13/Add.2 (21 January 2002), para 7(a) in

of the Marrakech Accords in 2001, offsets from land use, land-use change and forestry (LULUCF) were limited to afforestation and reforestation (A/R) projects – albeit after heated debate.[7] At the time, proposals to include 'avoided deforestation' as an offset scheme were defeated due to concerns about methodological complexity and environmental integrity.[8] These methodological challenges have remained a major concern as REDD+ has developed. They include how to ensure the *permanence* of 'saved' or 'additional' forest carbon sequestration;[9] how to ensure carbon savings are *additional* to what would have otherwise happened;[10] how to establish credible *baselines* or reference levels against which to measure such a change;[11] and how to avoid *leakage*, that is, how to pevent deforestation shifting to other locations.[12] As the framework for REDD+ developed, it built on – but also significantly departed from – earlier efforts to include afforestation and reforestation (A/R) projects under the CDM. Afforestation and reforestation projects in the CDM have remained relatively marginal, as A/R accounts for only approximately 0.8 per cent of CDM projects and approximately 1 per cent of certified emission reductions (CERs) credits issued;[13] but REDD+ is envisioned as operating at a much larger scale. In addition, REDD+ differs from A/R projects in several significant ways. Firstly, while A/R credits accrue from *positive* actions, i.e. planting trees, REDD+ credits can also accrue from *preventing* certain actions, i.e. preventing deforestation and forest degradation that would otherwise take place. Secondly, the temporary credits issued from A/R projects are not strictly fungible with other carbon credits; in

2001. This is then confirmed in Decision 16/CMP.1 'Land use, land-use change and forestry', FCCC/KP/CMP/2005/8/Add.3 (30 March 2006), Annex, para 13 in 2005. 'Afforestation' and 'reforestation' are defined in 16/CMP.1, Annex, para 1.

[7] See Decision 17/CP.7, para 7(a) in 2001. This is then confirmed in Decision 16/CMP.1, Annex, para 13.

[8] For an overview of these debates, see P. Fearnside, 'Environmentalists split over Kyoto and Amazon deforestation' (2001) 28(4) *Environmental Conservation* 295–9.

[9] M. Dutschke and A. Angelsen, 'How do we ensure permanence and assign liability?' in A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications* (Center for International Forestry Research, 2008).

[10] E. Corbera, M. Estrada, and K. Brown, 'Reducing greenhouse gas emissions from deforestation and forest degradation in developing countries: Revisiting the assumptions' (2010) 100 *Climatic Change* 355–88.

[11] A. Angelsen, D. Boucher, S. Brown, V. Merckx, C. Streck, and D. Zarin, *Guidelines for REDD + Reference Levels: Principles and Recommendations* (Meridian Institute, 2011).

[12] The issue of leakage has now been somewhat better addressed due to the universal nature of the Paris Agreement in which all countries have taken on (some form of) climate mitigation or adaptation commitments. In contrast under the Kyoto Protocol and the Clean Development Mechanism the issue of leakage arose much more acutely, as developing countries had no mitigation commitments.

[13] Statistics from 2012, 'CDM projects by type', www.cdmpipeline.org/cdm-projects-type.htm (accessed 12 August 2015). See also S. Thomas, P. Dargusch, S. Harrison, and J. Herbohn, 'Why are there so few afforestation and reforestation Clean Development Mechanism projects?' (2010) 27 *Land Use Policy* 880–7.

contrast, many envision there would be exchangeability between REDD+ and other credits.[14] Thirdly, A/R projects are confined to the perimeters of the project itself, while the scale of REDD+ activities is often at the national or sub-national level. That is, whereas CDM A/R projects are discrete interventions, REDD+ requires a much more complex set of enabling regulatory conditions to be in place within the host nation-state. Sectoral carbon-trading schemes such as REDD+ may therefore facilitate much greater international interventions in REDD+ host states' regulatory environments as part of the process of REDD+-readiness. The possibility that REDD+ may 'incentivise' broader governance reforms in the Global South has been celebrated by some REDD+ proponents and linked to anti-corruption and rule-of-law initiatives.[15] As such, REDD+ raises broader questions of sovereignty and regulatory autonomy more acutely than the more discrete A/R CDM projects. For these reasons, and others, the inclusion of 'avoided deforestation' and 'forest degradation' in the climate regime continues to be controversial.[16]

The discussion paper 'Deforestation and the Kyoto Protocol', by Santilli et al.,[17] released at COP9 (2003) and published in 2005, which proposed 'compensated reductions', is often considered the 'starting point for the REDD proposal'.[18] 'Avoided deforestation' as a climate mitigation strategy was again raised in 2005 by Costa Rica and Papua New Guinea at the Montreal COP. They sought to highlight the 'climatic importance of deforestation' and asked 'how the UNFCCC can be used to draw developing countries toward emission reductions by functioning as a

[14] Market players have asserted that this lack of fungibility has operated to 'discourage carbon investors from acquiring forest credits', thereby leading to lack of demand for such credits, low prices, negative effects on project viability and limited support from carbon finance for forestry projects. Decisions on whether credits will be generated from REDD+ 'result-based actions' or how they will be integrated into global markets are not final, but subject to pressure for greater fungibility than under Kyoto; see *The BioCarbon Fund Experience: Insights from Afforestation/Reforestation Clean Development Mechanism Projects* (The World Bank, 2012) siteresources.worldbank.org/INTCARBONFINANCE/Resources/57853-A_BioCarbon_LOW-RES.pdf, 3.1–3.6. See also A. Karsenty, 'The architecture of proposed REDD schemes after Bali: Facing critical choices' (2008) 10(3) *International Forestry Review* 443.

[15] P. Venning, '"REDD" at the convergence of the environment and development debates – international incentives for national action on avoided deforestation' (2010) 6(1) *Law, Environment and Development Journal* 82–101.

[16] For example, see C. Parker, A. Mitchell, M. Trivedi, and N. Mardas, *The Little REDD+ Book: An Updated Guide to Governmental Proposals for Reducing Emissions from Deforestation and Degradation* (Global Canopy Programme, 2009) for a useful overview of country positions (from 2009). See also UNFCCC Secretariat, *Financing Options for the Full Implementation of Results-Based Actions Relating to the Activities Referred to in Decision 1/CP.16, paragraph 70, Including Related Modalities and Procedures: Technical Paper*, FCCC/TP/2012/3 (26 July 2012), for 2012 positions.

[17] M. Santilli, P. Moutinho, S. Schwartzman, D. Nepstad, L. Curran, and C. Nobre, 'Tropical deforestation and the Kyoto Protocol' (2005) 71(3) *Climatic Change* 267–76.

[18] A. Karsenty, A. Vogel, and F. Castell, '"Carbon rights", REDD+ and payments for environmental services' (2014) 35 *Environmental Science & Policy* 20–29 at 21.

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mechanism to finance environmental sustainability'.[19] Their submission was 'noted' by the COP, and Parties and accredited observers were invited to submit their views on Reducing Emission from Deforestation (RED, as it was then called).[20] A subsidiary body to the Convention – the Subsidiary Body for Scientific and Technological Advice (SBSTA)[21] – was asked to consider this issue and report on it by COP13 in Bali in 2007. Numerous submissions by individual Parties and non-governmental organisations) (NGOs) were received,[22] two expert meetings held[23] and further submissions sought.[24]

In 2007, the Bali Action Plan agreed to at COP13 called for consideration of '[p]olicy 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' as part of 'enhanced national/international action on mitigation of climate change'.[25] By then the actions included within this initiative had expanded beyond just deforestation and forest degradation to also encompass the role of conservation, sustainable management of forests and enhancement of forest carbon sinks. At Bali, the SBSTA, along with the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA), were tasked with developing norms and methodologies for such approaches.

[19] Costa Rica and Papua New Guinea, *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action: Submission from Parties* FCCC/CP/2005/MISC.1 (11 November 2005).

[20] UNFCCC, *Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action: Draft Conclusions Proposed by the President* FCCC/CP/2005/L.2 (6 December 2005).

[21] SBSTA is established by Article 9 of the UNFCCC to provide the COP and other subsidiary bodies, as appropriate 'timely information and advice on scientific and technological matters relating to the Convention'.

[22] UNFCCC, *Issues Relating to Reducing Emissions from Deforestation in Developing Countries and Recommendations on Any Further Process: Submissions from Parties* FCCC/SBSTA/2006/MISC.5 (11 April 2006) and Add.2 (10 May 2006).

[23] A workshop was held by SBSTA in Rome, Italy, 30 August–1 September 2006, see UNFCCC, *Report on a Workshop on Reducing Emissions from Deforestation in Developing Counties: Note by the Secretariat* FCCC/SBSTA/2006/10 (11 October 2006). A second workshop was held in Cairns, Australia, from 7–9 March 2007, see UNFCCC, *Report on the Second Workshop on Reducing Emissions from Deforestation in Developing Countries: Note by the Secretariat* FCCC/SBSTA/2007/3 (17 April 2007).

[24] UNFCCC, *Views on the Range of Topics and Other Relevant Information Relating to Reducing Emissions from Deforestation in Developing Countries: Submissions from Parties*, FCCC/SBSTA/2007/MISC.2 (2 March 2007) and Add.1 (3 April 2007), as well as submissions from intergovernmental organisations FCCC/SBSTA/2007/MISC.3 (2 March 2007) and accredited observer groups, unfccc.int/parties_observers/ngo/submissions/items/3689.php.

[25] Decision 1/CP.13 'Bali Action Plan', FCCC/CP/2007/6/Add.1 (14 March 2008) ('Bali Action Plan'), para 1(b)(iii), see also Decision 2/CP.13 'Reducing emissions from deforestation in developing countries: approaches to stimulate action', FCCC/CP/2007/6/Add.1 (14 March 2008).

At Copenhagen (COP15, 2009), REDD+ received high-level political endorsement. The highly controversial Copenhagen Accord 'noted' by COP15[26] recognised

> the crucial role of reducing emission from deforestation and forest degradation and the need to enhance removals of greenhouse gas emission by forests and agree[d] on the need to provide positive incentives to such actions through the immediate establishment of a mechanism including REDD-plus, to enable the mobilization of financial resources from developed countries.[27]

The Copenhagen Accord further noted that REDD+, as a form of mitigation action, would require 'scaled up, new and additional, predictable and adequate funding' from developed to developing countries,[28] including through the newly established Green Carbon Fund.[29] A separate decision from COP15 provided greater methodological guidance for REDD+.[30] It crucially recognised the 'need for full and effective engagement of indigenous peoples and local communities'[31] and encouraged the development of guidance for their effective engagement.[32]

REDD+ was gaining momentum. The Cancun Agreements (COP16, 2010) established an initial framework for REDD+, which subsequent COP decisions have expanded upon.[33] Specifically, the Cancun Agreements encourage developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities:

(a) reducing emissions from deforestation;
(b) reducing emissions from forest degradation;
(c) conservation of forest carbon stocks;
(d) sustainable management of forests and
(e) enhancement of forest carbon sinks.[34]

[26] The Copenhagen Accord was a last-minute agreement reached by a small group of countries behind closed doors. It was opposed by several countries, and as consensus on the Accord could not be reached, it was simply 'noted' by the COP in Decision 2/CP.15 'Copenhagen Accord' FCCC/CP/2009/11/Add.1 (30 March 2010) ('Copenhagen Accord').

[27] Copenhagen Accord, para 6.

[28] Copenhagen Accord, para 8.

[29] The Copenhagen Accord, para 10, also decided that the 'Copenhagen Green Climate Fund shall be established as an operating entity of the financial mechanism of the Convention to support projects, programme, policies and other activities in developing countries related to mitigation including REDD-plus, adaptation, capacity-building, technology development and transfer.'

[30] Decision 4/CP.15 'Methodological guidance 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', FCCC/CP/2009/11/Add.1 (30 March 2010).

[31] Decision 4/CP.15, preamble.

[32] Decision 4/CP.15, para 3.

[33] Decision 1/CP.16 'The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on the Kyoto Protocol', FCCC/CP/2010/7/Add.1 (15 March 2011) ('Cancun Agreements'), para 68–79.

[34] Decision 1/CP.16, para 70(a)–(e).

The Appendix to the Cancun Agreements stipulates that such activities should contribute to Party commitments and the overall objective of the Convention, be consistent with 'objectives of environmental integrity', promote the sustainable management of forests and recognise the 'multiple functions of forests and other eco-systems', and that implementation should be in 'the context of sustainable development' and poverty eradication.[35] It also affirms the need to 'respect sovereignty' and for REDD+ to be 'country-driven', specifying that REDD+ activities should be undertaken in accordance with host-country national objectives, circumstances, capabilities and development priorities.[36] The role of the international community as envisioned in the Cancun Agreements is to support these activities through the provision of 'adequate and predictable' financial and technological support and capacity building.[37]

The most controversial question in REDD+ negotiations has been how avoided deforestation activities would be financed. The debate has essentially revolved around two models: a fund-based model, whereby developed countries financially support REDD+ activities in the Global South (for example, through aid or overseas development assistance), and a market-based model, where finance comes from global carbon markets. A market model also implies that carbon credits produced from REDD+ activities can be used towards the compliance obligations of purchasing countries.[38] The inclusion of forests in global carbon markets has been strongly opposed by Bolivia,[39] as well as many environmental justice-focused NGOs and social movements.[40] These questions have (at the time of writing) still not been conclusively resolved.

The Cancun Agreements establish a three-phased approach towards 'result-based actions'[41] and call for international public and private funds to support this transition:[42]

- The first phrase is the 'the development of national strategies or action plans, polices and measures and capacity building'.[43]
- The second phrase involves the 'implementation of national policies and measures and national strategies or action plans' as well as 'further

[35] Decision 1/CP.16, Appendix, para 1(a)–(k).
[36] Decision 1/CP.16, Appendix, para 1(c), (e)–(h).
[37] Decision 1/CP.16, para 69 and Annex, para 1.
[38] See UNFCCC Secretariat, *Financing Options for the Full Implementation of Results-Based Actions Relating to the Activities Referred to in Decision 1/CP.16, paragraph 70, Including Related Modalities and Procedures: Technical Paper*, FCCC/TP/2012/3 (26 July 2012).
[39] UNFCCC, *Submission by the Plurinational State of Bolivia to the Ad Hoc Working Group on Long Term Co-operative Action* FCCC/AWGLCA/2010/MISC.2 (30 April 2010).
[40] See 'The Cochabamba Protocol: People's Agreement on Climate Change and the Rights of Mother Earth' (People's Agreement from the World People's Conference on Climate Change in Bolivia, 2010).
[41] Decision 1/CP.16, para 73.
[42] Decision 1/CP.16, para 76.
[43] Decision 1/CP.16, para 73.

capacity-building, technology development and transfer and result-based demonstration activities'.[44]

- The final phrase is the evolution 'into results-based actions that should be fully measured, reported and verified'.[45]

This three-phrase approach echoes *The Eliasch Review*, an influential report commissioned by the UK government that aimed to provide a comprehensive analysis of international financing to reduce forest loss and associated impacts on climate change, which was released in 2008.[46] *The Eliasch Review* also envisioned a staged transition, made up of short, medium and long-term goals, towards a global cap and trade system that includes forests. Although the Cancun Agreements are silent on how eventual 'result-based actions' will be financed, *The Eliasch Review* was explicit that the long-term goal is 'the full inclusion [of forests] in a global carbon market'.[47] Both *The Eliasch Review* and the Cancun Agreements stress the need for public interventions and public funds to enable such a transition and to promote the sort of 'smooth transition path [that] is also important for building confidence in the system'.[48] This understanding of REDD+ as a staged or transitional program that encompasses not just 'result-based actions' but a three-phased 'progression' towards 'result-based actions', where each stage requires 'adequate and predictable' support from developed country Parties, was later confirmed in the 2013 Warsaw Framework.[49] The Warsaw Framework urges developed countries to support these stages of implementation 'through bilateral and multilateral channels' and to ensure the co-ordination of such readiness activities.[50] It further 'encourages' those entities financing such activities, including the Green Climate Fund, to 'collectively channel' resources in a 'fair and balanced manner' with the objective of increasing the number of countries that will be in a position to receive payment for result-based actions.[51]

Thus, even among those who envision of REDD+ as an eventual market-based scheme, there has been a strong focus on the need for initial *public* finance to establish the conditions and regulatory infrastructure for such markets. As such, REDD+ represents not simply a *vision* of the commodification, marketisation and financialisaton of forest mitigation actions, but also the *process* of constituting these markets and constructing the necessary regulatory apparatus through REDD+-readiness. Such an understanding of REDD+ unsettles the simple dichotomies that at times inform

[44] Decision 1/CP.16, para 73.
[45] Decision 1/CP.16, para 73.
[46] J. Eliasch, *Climate Change: Financing Global Forests: The Eliasch Review* (Earthscan, 2008).
[47] Ibid., pp. 126–7.
[48] Ibid., pp. 121–2.
[49] Decision 9/CP.19, 'Work programme on result-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 (31 January 2014), para 2.
[50] Decision 1/CP.16, para 76 and 78.
[51] Decision 9/CP.19, para 5.

debates on financing between public and private funding. It highlights the critical role played by public financing, from bilateral and multilateral sources, including overseas development assistance (ODA), in establishing the enabling conditions of a privatised market regime through the process of REDD+-readiness. As will be discussed in greater detail below, at stake in these processes of REDD+-readiness is not so much the retreat of the state in favour of the market, but rather a re-orientation of the host-state's function and purposes in market-constituting terms, a reorientation that is enabled, incentivised and disciplined by international public funds.

In 2011, Bolivia, due to concerns about the inclusion of forests in carbon markets, put forward a proposal that led to the introduction of non–market-based approaches as a separate agenda item for REDD+ discussions.[52] From then onwards, REDD+ discussions included agenda items on both 'alternative policy approaches' and 'result-based actions', and the wording of COP decisions left open the possibility of both market-based and non-market financing. The Warsaw decision on financing notes the possibility of the COP developing both market-based and non-market approaches,[53] and confirms that 'new additional and predictable' result-based finance could come from 'a wide variety of sources, public and private, bilateral and multilateral'.[54] Article 5.2 of the Paris Agreement is 'framed as a call to Parties to continue – and hopefully scale up' work already done on REDD+.[55] It encourages all Parties to 'take action to implement and support … result-based payments' and the existing framework for REDD+; but it also encourages all Parties to 'take action to implement and support' 'alternative policy approaches, such as joint mitigation and adaptation approaches' and notes the 'non-carbon benefits' associated with such approaches.[56] However, all indicators suggest it is the former that will be the most dominant approach. The discussion below documents the development of frameworks for both 'result-based actions' and 'alternative policy approaches' in relation to REDD+.

1 *Result-Based Actions*

The primary effect of the 'Warsaw Framework for REDD+'[57] is to establish an accounting framework for the monitoring, reporting and verifying (MRV) 'result-based

[52] Submission by the Plurinational State of Bolivia, *Joint mitigation and adaptation mechanism: "Sustainable Forest Life"* (December 2011) unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/submission_bolivia_redd.pdf.

[53] Decision 2/CP.17 'Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention', FCCC/CP/2011/9/Add.1 (15 March 2012), para 66 and 67.

[54] Decision 2/CP.17, para 65, and Decision 9/CP.19, para 1.

[55] La Viña and de Leon, 'Conserving and enhancing sinks and reservoirs of greenhouse gases', p. 172.

[56] *Paris Agreement*, Article 5.2.

[57] Constituted by Decisions 9/CP.19; 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 frequency of presentation of the summary of information on how all the safeguards referred to in Decision 1/CP.16, appendix I,

actions', one that allows the additional carbon sequestered due to policy approaches to reduce deforestation and forest degradation to become legible in terms of $1tCO_2e$. To be eligible to receive international ('results-based') finance, host nation-states are required to establish strategies, plans, reference levels and systems for monitoring, reporting and verifying the effects of forest mitigation activities. That is, countries are required to show results of, not merely steps towards, forest protection, and these results need to be measured in terms of saved emissions (as opposed to hectares of forests protected, for example). The Warsaw Framework is therefore primarily orientated towards establishing an internationally verifiable regime of accounting for carbon 'saved' from avoided deforestation, which renders divergent activities in different places legible as and accounted for as fully certified emission reductions measured in terms of carbon dioxide equivalent (CO_2e), that could be fungible, transferable and exchangeable within carbon compliance markets.[58] Such legibility is the essential precondition for the inclusion of forests in international carbon markets, and thus the current accounting rules create the regulatory conditions that could enable REDD+ credits to be used as offsets by purchasing countries or entities in the future.[59]

The Warsaw Framework did not set up an institutional arrangement for REDD+, but it calls for the 'effective and transparent coordination of support' for forest sector mitigation activities[60] and the transnational sharing of information and 'best practices'.[61] Institutional arrangements were the subject of 'much debate and disagreement during the negotiations';[62] however, no real decision was reached: rather, international co-ordination is to be organised through an 'information hub' on the UNFCCC Web Platform.[63] Countries are 'invited' to designate a 'national entity

are being addressed and respected'; Decision 13/CP.19, 'Guidelines and procedures for the technical assessment of submissions from Parties on proposed forest reference emissions 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', FCCC/CP/2013/10/Add.1 (31 January 2014).

[58] In addition, there is a decision on addressing the drivers of deforestation; however, it is not prescriptive: Decision 15/CP.19, para 1.

[59] K. Dooley and A. Gupta, 'Governing by expertise: The contested politics of (accounting for) land-based mitigation in a new climate agreement' (2017) 17(4) *International Environmental Agreements: Politics, Law and Economics* 483–500 at 448–9.

[60] Decision 10/CP.19, preamble.

[61] Decision 10/CP.19, para 3(a)–(g).

[62] *Briefing note: Unpacking the Warsaw Framework for REDD+: The requirements for implementing REDD+ under the United Nations Framework Convention on Climate Change* (Climate Law and Policy, 2014), 10. At Doha the COP recognised the need to 'improve the coordination of support' for the implementation of REDD+ activities and the need to 'provide adequate and predictable support, including financial resources and technical and technological' for developing countries: Decision 1/CP.18, 'Agreed outcome pursuant to the Bali Action Plan', FCCC/CP/2012/8/Add.1 (28 February 2013), para 34. SBSTA and SBI were requested to initiate a process to 'consider existing institutional arrangements or potential governance alternatives including a body, a board or a committee': Decision 1/CP.18, para 35.

[63] Decision 9/CP.19, paras 9–13.

or focal point' to liaise with the Secretariat and other Convention bodies,[64] and 'encouraged' to meet with other Parties, financing entities and civil society representatives and other stakeholders annually on a voluntary basis.[65]

The Warsaw Framework establishes a decentralised model where responsibility for developing key aspects of the regulatory infrastructure for REDD+ is devolved to host nation-states but is subject to international review and verification. The elements of the framework were initially articulated in the Cancun Agreements that called on developing country Parties to develop:

- a national strategy or action plan;[66]
- a national forest emission reference level and/or forest reference level;[67]
- a 'robust and transparent' national forest monitoring system for monitoring and reporting;[68] and
- a system on providing information on how safeguards are being 'addressed and respected'.[69]

Host nation-states therefore formally establish their regulatory frameworks 'in accordance with national circumstances and respective capabilities', but must in practice do so with reference to internationally determined expectations and requirements. These processes therefore become 'internationalised': subsequent COP agreements have confirmed that many of these elements are subject to international technical verification. Whilst these processes are therefore formally decentralised, verification ensures some standardisation, not necessarily of content, but of in the methodologies, practices and modes of expertise relied upon. In the following section, I will briefly outline these aspects of the REDD+ regulatory framework in greater detail.

(a) Forest Emission Reference Levels and/or Forest Reference Levels

One key component of the carbon-accounting framework is the establishment of a benchmark or forest emission reference level and/or forest reference level (FERL/FRL) (expressed in tonnes of carbon dioxide equivalent per year) against which changes in carbon sequestration from REDD+ activities can be measured.[70]

[64] Decision 10/CP.19, para 1.
[65] Decision 10/CP.19, para 4–8. It calls on the Secretariat to facilitate the organisation of this meeting (para 6).
[66] Decision 1/CP.16, para 71(a).
[67] Decision 1/CP.16, para 71(b). The agreements also allow for sub-national rather than nationally based forest reference emission levels or forest reference level to be developed dependent upon national circumstances.
[68] Decision 1/CP.16, para 71(c).
[69] Decision 1/CP.16, para 71(d).
[70] Decision 12/CP.17 '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', FCCC/CP/2011/9/Add.2 (15 March 2012),

The question of how to define or determine a 'reference level' or 'baseline' has been justifiably controversial, because if baselines are over-inflated, credits could be produced from activities that do not result in 'real' emission reductions. Various approaches have been proposed, including: historical ('based solely on past emissions from each country'), 'stock/average' ('based on current carbon stock or forest area in each country and possibly an international deforestation rate average'), 'projected/modelled' ('based on past deforestation and estimates of future deforestation drivers and key social, economic, political and technological variables') and 'combined' ('based on a formula that combines a measure of individual country performance against their own historic emissions baseline, and performance against a global emission baseline').[71] The Copenhagen decision on methodological guidance states that reference levels should be developed transparently, 'taking into account historic data, and adjust(ed) for national circumstances'.[72] Subsequent COP decisions do not specify how baselines should be calculated, but have focused on procedural requirements. COP decisions have confirmed baselines should be established at the national level (although sub-national reference levels have been allowed as a possible interim measure),[73] and have endorsed an adaptive 'step-by-step' approach in which the sophistication and scale of reference levels will increase over time with improved information, financial resources and technical capacity.[74] The Durban decision invited Parties to submit 'information and rationale' to the COP about the development of their reference levels to allow for technical assessment.[75] The Warsaw Framework provides guidelines for the technical assessments of reference levels by two UNFCCC-approved LULUCF experts.[76] However, any counterfactual reference level – a projection of what would have otherwise

para 7. For the remaining discussions I will refer to both forest emission reference levels and forest reference levels as 'reference levels'. Generally, 'forest reference emission level' is used when LULUCF activities are a net source of GHG emissions, that is, in cases of deforestation and forest degradation. 'Forest reference level' is used where LULUCF activities are a net sink of GHG emissions, that is, the 'plus' activities that are part of REDD+. For my purposes, however 'reference level' captures the fact that what is being constructed, justified and assessed is the creation of a hypothetical baseline against which any additional carbon emissions of carbon sequestration can be compared.

[71] For a more detailed discussion of baselines see: A. Angelsen, 'How do we set the reference levels for REDD payments?' in A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications* (Center for International Forestry Research, 2008) pp. 53–63; Angelsen et al., *Guidelines for REDD+ Reference Levels*. See also UNFCCC, *Report on the Expert Meeting on Forest Reference Emission Levels and Forest Reference Levels for Implementation of REDD-plus Activities*, 14–15 November 2011, FCCC/SBSTA/2011/INF.18 (27 November 2011).

[72] Decision 4/CP.15, para 7.

[73] Decision 1/CP.16, para 71(b).

[74] Decision 12/CP.17, para 10–11.

[75] Decision 12/CP.17, para 9; see also 'Annex: Guidelines for submission of information on reference levels'.

[76] Decision 13/CP.19, 'Annex: Guidelines and procedures for the technical assessment of submissions from parties on proposed forest reference emission levels and/or forest reference levels'.

happened but for the REDD+ activities – remains inherently indeterminate, and thus a danger remains that over-inflated baselines could generate credits that are not 'real'.

(b) Measuring, Reporting and Verification

The Warsaw Framework confirms that 'anthropogenic forest-related emissions by sources and removals by sinks, forest carbon stocks, and forest carbon stock and forest-area changes' resulting from the implementation of REDD+ activities need to be measured, reported and verified (MRV) in terms of tCO_2/year.[77] The MRV processes require host countries to develop 'robust and transparent' (sub)-national forest monitoring systems[78] using a combination of remote sensing and ground-based carbon inventory approaches[79] that take into account COP and IPCC guidelines.[80] Implementing MRV frameworks requires specialised knowledge and equipment, and it is recognised that MRV capacities will need to be developed and continuously improved over time.[81] Host states must provide biannual updates of MRV data and a technical annex to the COP[82] in a form consistent with its methodological guidance[83] and analysed by a technical team of UNFCCC-registered experts, in order to receive 'result-based payments'.[84] These MRV practices are to be consistent with previous methodological guidance on REDD+,[85] and other related or future COP decisions.[86]

(c) Safeguards and Non-carbon Benefits

One of the most fraught areas of REDD+ policy has been the development and verification of safeguards to ensure the environmental integrity of REDD+ and prevent negative social impacts. The Cancun Agreement affirmed social and environmental safeguards that should be 'promoted and supported' in REDD+ implementation:[87]

[77] Decision 14/CP.19, para 1.
[78] Decision 4/CP.15, para 3(d), see also Decision 1/CP.16, para 71(c).
[79] Decision 4/CP.15, para 3(d)(i)–(iii).
[80] Decision 11/CP.19, para 2.
[81] Decision 14/CP.19, para 2 and 5.
[82] Decision 14/CP.19, para 7; additional flexibility is given to the least developed countries and small island states Decision 14/CP.19, para 6.
[83] See Decision 4/CP.15 and 12/CP.17 as well as the guidelines in the Annex to Decision 14/CP.19.
[84] Decision 14/CP.19, para 10.
[85] The previous methodological guidance was set out in Decision 4/CP.15.
[86] Decision 14/CP.19, para 1.
[87] Decision 1/CP.16, para 69. The language of 'promoted and supported' in relation to the safeguards is criticised by environmental and social justice groups as 'too weak' to ensure safeguards are enforced. Note that in the draft Copenhagen text the words 'promoted and supported' in relation to the safeguards were still bracketed text as they were highly contentious

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(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,
(e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions … are not used for the conversion of natural forests, but are instead used to incentive the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;
(f) Actions to address the risks of reversals; [and]
(g) Actions to reduce displacement of emissions.[88]

At Durban it was agreed that REDD+ host countries should provide to the COP a summary of information on how such safeguards are being 'addressed and respected'.[89] The Warsaw Framework invites Parties to provide such summaries to the UNFCCC REDD+ web platform specifically.[90] The Warsaw decision on results-based finance also provides that 'developing countries seeking to obtain and receive results-based payments … should provide the most recent summary of information on how all the safeguards … have been addressed and respected'.[91] However, unlike the carbon accounting aspects of the framework this information is *not* subject to international technical review. The European Union (EU) proposed a scheme of indicators for the achievement of safeguards; however, this was ultimately

(pre-Copenhagen draft used the strong language of 'shall implement'); these brackets have been removed in the Cancun text. Article 71(d) simply requests that countries develop a 'system for providing information on how the safeguards referred to in annex 1 are being addressed and respected'. The pre-Cancun draft text called for 'a system for *monitoring* and informing the Convention on how the safeguards referred to in Annex II … [a]re being addressed and respected …'. An entry on REDD-Monitor alleges it was PNG who proposed the weakened wording on safeguard monitoring. C. Lang, 'How Kevin Conrad dismissed NGO requests not to weaken safeguards in the REDD text in Cancun', *REDD-Monitor*, 5 January 2011.

[88] Decision 1/CP.16, Annex, para 2.
[89] Decision 12/CP.17, para 3.
[90] Decision 12/CP.19, para 3.
[91] Decision 9/CP.19, para 4.

rejected due to concerns about costs and sovereignty.[92] Nonetheless, UN-REDD has issued guidance on how countries can achieve 'transparency, consistency, comprehensiveness and effectiveness' in their information summaries on safeguards.[93] A decision from the Paris COP on safeguards 'strongly encourages' (but does not strictly require) host countries to provide specific information to ensure transparency, consistency, comprehensiveness and effectiveness in reporting on REDD+ safeguards.[94] It also 'strongly encourages' developing country Parties, when providing safeguard information, to include relevant information on national circumstances, a description of each safeguard in accordance with national circumstances, a description of existing systems and processes relevant to addressing and respecting these safeguards, as well as information on how 'each of the safeguards has been addressed and respected, in accordance with national circumstances'.[95] Thus the COP guidance on safeguards was concluded with a decision which encouraged ways to ensure transparency, consistency and comprehensiveness and effectiveness of reporting on information system and processes, but did not mandate such reporting or make it subject to international review.[96]

A further COP decision at Paris also reaffirmed the 'importance of incentivising non-carbon benefits for the long-term sustainability of the implementation' of REDD+ activities and recognised the potential contribution of non-carbon benefits from reducing deforestation and forest degradation.[97] Stressing that such non-carbon benefits are 'unique to countries' national circumstances', the decision allows countries to provide information on 'the nature, scale and importance of the non-carbon benefits' and communicate this to financing entities.[98] However, the decision clarifies that non-carbon benefits 'do not constitute a requirement' in order to receive support for REDD+ activities or for 'result-based payments'; it imposes no obligations on financing entities to support such non-carbon benefits.[99] Thus overall, the framework for 'results-based actions' established the regulatory

[92] M. E. Recio, 'The Warsaw Framework and the future of REDD+' (2014) 24(1) *Yearbook of International Environmental Law* 37–69.

[93] UN-REDD Programme, *Info Brief 5: Summaries of Information: How to Demonstrate REDD+ Safeguards Are Being Addressed and Respected*' (2016), unredd.net/documents/global-programme-191/safeguards-multiple-benefits-297/15299-info-brief-summaries-of-information-1-en.html.

[94] Decision 17/CP.21, '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 address and respected', FCCC/SBSTA/2015/L.5/Add.3 (29 January 2016).

[95] Decision 17/CP.21, para 5.

[96] Decision 17/CP.21, para 8.

[97] Decision 18/CP.21, 'Methodological issues related to non-carbon benefits resulting from the implementation of the activities referred to in Decision 1/CP.16, para 70', FCCC/2015/10/Add.3 (29 January 2016), preambular recitals 2 and 3.

[98] Decision 18/CP.21, para 1–4.

[99] Decision 18/CP.21, para 5.

framework for accounting for carbon 'saved' from avoided deforestation, based on establishing an internationally verifiable regime for establishing forest emission baselines and MRV processes, accompanied by a much more voluntarist, nationally based framework for social and environmental protections.

2 *Alternative Policy Approaches*

Since Bolivia proposed a further REDD+ agenda item on 'alternative policy approaches' in 2011, such non-result-based approaches have also been endorsed by COP decisions, but no real mechanisms have been established to support or incentivise such alternative approaches. The 2011 Durban decision on REDD+ noted that 'joint mitigation and adaptation approaches for the integral and sustainable management of forests as a non-market alternative'[100] and the 2012 Doha decision requested further methodological guidance on how 'non-market-based approaches, such as joint mitigation and adaptation approaches for the sustainable management of forests … could be developed to support the implementation' of REDD activities.[101] The 2013 Warsaw framework for REDD+ likewise encouraged financing entities 'to continue to provide financial resources to alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests'.[102] A 2015 COP decision at Paris explicitly concluded the consideration of alternative policy approaches including joint mitigation and adaptation approaches for the integral and sustainable management of forests.[103] It identified such 'alternative policy approaches' as 'one of the alternatives to result-based payments', noting that such policy approaches may 'contribute to the long-term sustainability of the implementation of [REDD+] activities'.[104] It also clarified that such approaches were subject to the previous methodological guidance and to the guidance on systems and safeguards.[105] This decision encouraged developing country Parties interested in such approaches to prepare national strategies or action plans, to identify their support needs, develop proposals about the potential contribution of such approaches and consider outcomes and areas of improvement.[106] The decision also noted that financing entities are encouraged to provide financial resources for alternative policy approaches.[107] Nevertheless, although the decision encouraged financial support for such activities it did not

[100] Decision 2/CP.17.
[101] Decision 1/CP.18, para 39 and 40.
[102] Decision 9/CP.19, para 8.
[103] Decision 16/CP.21, 'Alterative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests' FCCC/CP/2015/10/Add.3 (29 January 2016) para 8.
[104] Decision 16/CP.21, para 4.
[105] Decision 16/CP.21, para 3.
[106] Decision 16/CP.21, para 5.
[107] Decision 16/CP.21, para 6.

establish any mechanisms to incentivise such approaches to provide international support for their enactment.

The UNFCCC negotiations on REDD+ have therefore developed a regulatory framework that makes it possible for activities to avoid deforestation be made legible as 'result-based actions' measured in terms of one $1tCO_2e$, through an internationally verified process. This framework could therefore enable forest carbon to be incorporated in international carbon markets. Although there was also a separate agenda on 'alternative policy' approaches, the conclusions of this workstream are simply permissive and do not put in place measures to facilitative or mandate that such activities be undertaken or that support for them be provided. Despite extensive debate and deliberation, a number of key issues relating to environmental integrity remain unaddressed by the REDD+ framework. The problem of ensuring *permanence* of carbon sequestration and preventing reversals of carbon sequestration savings has not been properly resolved. As stated in a recent UNFCCC report, it is 'widely accepted that there are risks of reversals associated with … mitigation actions relating to forests'[108] that are inadequately addressed by current safeguards.[109] Although various risk-mitigation techniques to protect against such reversals have been proposed – including REDD+ unit reserves (or buffers) or the creation of an insurance system that requires compensation (financial or of credits) for reversals[110] – these are not required as a part of the Warsaw Framework. The problem of *additionality* – that is, ensuring that any carbon 'savings' attributed to REDD+ are 'additional' to what would otherwise have happened without the REDD+ project – also has not been satisfactorily resolved. Although reference levels are subject to international verification, the establishment of any counterfactual projection remains inherently indeterminate. There are also no real mechanisms in place to prevent *leakage* – the displacement of deforestation from the REDD+ jurisdiction to other jurisdictions sub-nationally or internationally. Although a safeguard calls for 'actions to reduce displacement of emissions',[111] the lack of universal participation as well as the mix of national and sub-national baselines means that leakage remains a real risk. Finally, although the Warsaw Framework talks about the need to address 'drivers of deforestation', REDD+ remains a mechanism that addresses 'supply-side' factors rather than any 'demand' leading to deforestation. REDD+'s narrow focus that locates the problem of deforestation in developing countries means that more structural drivers and internationalised demands for agricultural expansion, pulp,

[108] UNFCCC Secretariat, *Financing Options for the Full Implementation of Results-Based Actions Relating to the Activities Referred to in Decision 1/CP.16, Paragraph 70, including Related Modalities and Procedures: Technical Paper*FCCC/TP/2012/3 (26 July 2012) para 113.

[109] Decision 1/CP.16, Appendix, para 2(f).

[110] See UNFCCC Secretariat, *Financing Options for the Full Implementation of Results-Based Actions Relating to the Activities Referred to in Decision 1/CP.16, paragraph 70, including Related Modalities and Procedures: Technical Paper* FCCC/TP/2012/3 (26 July 2012) for a discussion of these proposals.

[111] Decision 1/CP.16, Appendix, para 2(g).

timber and palm oil remain unaddressed.[112] Therefore, despite the development of a complex accounting system, the inherent uncertainties in any attempt to posit what would have otherwise have happened in the future, to measure 'saved' emissions against that baseline, and then ensure that such 'savings' are permanent, means forest carbon remains an inherently indeterminate commodity.

C REDD+ AS EXPERIMENTAL PRACTICES, PREPARATORY AND MARKET-CONSTRUCTION ACTIVITIES

The preceding discussion outlined the REDD+ legal framework for producing, measuring and verifying REDD+ 'result-based actions', agreed through the UNFCCC process. However, activities carried out under the REDD+ banner are much broader than that framework might suggest. This section discusses the role of experimental practices, preparatory and market-construction activities that are directed towards materialising REDD+ in the world and establishing the broader national and transnational regulatory frameworks that REDD+ depends upon. The discussion shows that such exploratory and preparatory practices are not only directed towards the implementation of REDD+ but that they also play a significant role in the production of norms that complement but also exceed those of the formal UNFCCC framework. This section firstly discusses the role of 'demonstration activities' as critical experimental practices that test key methodologies for REDD+ as well as contributing to building the legitimacy of such projects. It then turns to discuss the various multilateral and bilateral programs – including the World Bank's Forest Carbon Partnership Facility (FCPF), the UN-REDD Programme and the Green Climate Fund (GCF) – and their role in promoting REDD+-readiness activities, and in the case of the FCPF establishing enabling conditions for a privatised market-based regime. Although it is beyond the scope of this book to examine the role of the voluntary markets and the various certification schemes that have been developed to verify forest carbon credits in that space, these voluntary markets – where approximately 42.8 million tonnes of CO_2e of forest carbon was traded in 2018[113] – clearly also constitute critical spaces of experimentation with REDD+ and the development of norms, methodologies and modes of implementation.[114]

[112] See M. A. Young, 'Interacting regimes and experimentation' in M. Tehan et al. (eds.), *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (Cambridge University Press, 2017) pp. 329–45.

[113] K. Hamrick and M. Gallant, *Voluntary Carbon Market Insights: 2018 Outlook and First-Quarter Trends* (Ecosystem Marketplace 2018).

[114] See P. Newell and M. Paterson, *Climate Capitalism: Global Warming and the Transformation of the Global Economy* (Cambridge University Press, 2010).

1 Demonstration Activities

Demonstration activities represent a space of international/local REDD+ experimental 'learning-by-doing' that operate to generate specific knowledges, technologies and practices for REDD+ as well as producing new norms from on-the-ground facts. The REDD+ literature envisions that demonstration activities play a central role in 'build[ing] confidence and ensur[ing] that mechanisms and institutions are fit for purpose',[115] as well as testing approaches to MRV, benefit-sharing and credit transfer amongst others. By September 2016, the International Database on REDD+ Projects identified 454 projects, 344 of which were active, 67 completed prior to 2016 and 43 pending, located across 56 different countries.[116]

At the 2007 Bali COP, a methodological decision invited Parties to 'further strengthen and support ongoing efforts to reduce emissions from deforestation and forest degradation on a voluntary basis,'[117] thereby encouraging action to prepare for the actualisation and implementation of REDD+ in parallel with the ongoing negotiations. The decision encouraged developed country Parties to support capacity-building and provide technical assistance and technology transfer (especially relating to data collection, estimating emissions and monitoring and reporting) and to address the institutional needs of developing countries to support the implementation of REDD+.[118] It also encouraged Parties to 'explore a range of actions, identify options and undertake efforts, including demonstration activities'.[119] Such 'demonstration projects' have become sites of experimental 'learning-by-doing', which not only seek to actualise the legal norms but actively influence their development. For example, the objectives of the Kalimantan Forest Carbon Partnership, an Australian-sponsored 'demonstration project' located in Central Kalimantan, Indonesia, included trialling an 'innovative market-orientated approach to financing and implementing measures for REDD+' in order to provide 'useful and practical lessons to support international efforts to establish a REDD+ mechanism' and 'inform a future climate change agreement'.[120] These practices and processes that are endorsed and encouraged, but are formally outside the official UNFCCC framework, therefore need to be understood as sites of norm construction. These are sites that produce and determine methodologies, processes and visions through

[115] Eliasch, *Climate Change: Financing Global Forest*, p. 121.
[116] These figures are from September 2016, see International Database on REDD+ Projects, ifri.snre.umich.edu/redd/index.html (accessed 15 November 2016).
[117] Decision 2/CP.13, para 1.
[118] Decision 2/CP.13, para 2.
[119] Decision 2/CP.13, para 3.
[120] UNFCCC, *Joint Submission under the Cancun Agreements: Reducing Emissions from Deforestation and Forest Degradation in Developing Countries*, submission by Australia and Indonesia to SBSTA, FCCC/SBSTA/2011/MISC.7/Add.3 (9 December 2011).

which REDD+ is actualised, *even as* these methodologies may be subject to intense contestation and controversy within the deliberative and consensus-driven formal negotiating spaces.

Critically, however, this process of learning-by-doing is not merely preparatory for REDD+ but is a key aspect of how REDD+ is envisioned. In this way REDD+ reflects several principles of 'experimentalist governance' frameworks, especially the concept of continuing iterative development and the need for continuous feedback, flexibility and adaptability.[121] In a different vein, scholars of science and technology studies have described carbon markets as 'on-going collective experiments'.[122] These scholars understand economics as performative, in that it is not simply 'a form of knowledge that depicts an already existing state of affairs but … a set of instruments and practices that contribute to the construction of economic settings, actors, and institutions'.[123] Timothy Mitchell has analysed the ways economic theory, as a method for testing its arguments, is required to conduct experiments in the world constituted as a laboratory.[124] He draws on Michel Callon's insight that economics is best understood 'not as a form of knowledge that pictures the world' but an activity that 'participates in the pre-formation of the worlds to which it belongs, by helping set up socio-technical agencies/arrangements' that are themselves part of a wider process of continuous experimentation.[125] Callon has described the process of establishing carbon markets as itself an economic experiment, writing that 'what is designed, tested and evaluated is a socio-technical *agencement* that combines material, textual and procedural elements'.[126]

When the construction of carbon markets is understood as a 'governance experiment' that operates not as a 'rational device to identify the best solution, but a social process in which a new reality is constructed', a much more complicated relation between vision and implementation in REDD+ becomes evident.[127] Rather than a straightforward relation between constructing a problem and proposing a solution, economic experiments are more ambitious attempts to 'reconfigure the world so that problem and solution works in it'.[128] Voß and Schroth define 'experimentation' as

[121] Young, Interacting regimes and experimentation'.
[122] See M. Callon, 'Civilizing markets: Carbon trading between in vitro and in vivo experiments' (2009) 34(3–4) *Accounting, Organizations and Society* 535–48.
[123] M. Callon cited in D. MacKenzie, F. Muniesa, and L. Siu (eds.), *Do Economists Make Markets?: On the Performativity of Economics* (Princeton University Press, 2005) p. 4; see also T. Mitchell, 'The work of economics: How a discipline makes its world' (2005) 46(2) *European Journal of Sociology* 297–320.
[124] Mitchell, 'The work of economics: How a discipline makes its world'.
[125] Cited in ibid.
[126] M. Callon, 'Civilizing markets: Carbon trading between in vitro and in vivo experiments', 535–48 at 527.
[127] F. Schroth, *The politics of governance experiments: Constructing the Clean Development Mechanism* (Unpublished PhD thesis, Technischen Universität Berlin, 2016) p. 69.
[128] Ibid., p. 69.

the 'deliberate production of experiences for finding out what works'.[129] They note how, in some understandings, experiments are not simply a process of '*adapting to reality*' but rather a process of '*making reality*'.[130] They thus highlight how experimentation is a 'way of deliberately changing the world' that 'enables learning, not about a pre-existing reality, but about the possibilities of knowing and doing reality differently'.[131] This means that experimentation is never a neutral process,[132] especially given that it is always 'deeply embedded in institutional, cultural and material settings and asymmetric power relations'.[133] Given how power shapes experimental practices 'leaving institutional development up to decentralized trials … may not produce the best solutions, but in fact help already powerful actors to assert their vision of collective order against other[s]'.[134]

Demonstration projects, as sites of experimentation within the broader carbon market experiment, can therefore be understood not just as directed towards the *demonstration* of specific outcomes but an investment in the process of creating the conditions necessary for the realisation of carbon markets. 'Demonstration projects' should thus be understood as a 'laboratory' existing in a space of 'non-legality'[135] in that they are promoted by the UNFCCC framework, yet not subject to it. The constant reiteration that such projects are 'experimental' in nature moreover limits the perchance of critiques about their failures or problems, given that all failings can be rationalised as part of a process of 'learning-by-doing'. However, the practices promoted within this space nonetheless create specific realities: they enable the formation of particular expectations in and of different actors and stakeholders; they encourage particular forms of behaviours and interactions; and they require the establishment of particular organisational and institutional structures. These 'produced facts' are then taken as given within the spaces where institutionalised regulatory decisions are being made, where they retrospectively become 'inscribed into a law already prepared to accept it as a practice'.[136]

[129] J.-P. Voß and F. Schroth, 'The politics of innovation and learning in polycentric governance' in A. Jordan, D. Huitema, H. van Asselt, J. Forster (eds.), *Governing Climate Change: Polycentricity in Action?* (Cambridge University Press, 2018) pp. 99–116, 100.
[130] Ibid., p. 102 (emphasis in original).
[131] Ibid.
[132] Ibid.
[133] Ibid., p. 99.
[134] Ibid., pp. 99–100.
[135] See F. Johns, *Non-Legality in International Law: Unruly Law* (Cambridge University Press, 2013).
[136] S. Krasmann, 'Targeted killing and its law: On a mutually constitutive relationship' (2012) 25(3) *Leiden Journal of International Law* 665–82 at 667.

2 *REDD+-Readiness*

The process of 'REDD+-readiness' refers to '[a]ctions aimed at developing technical and institutional capacity in developing countries'.[137] It is broadly recognised that 'the legal framework will be the vehicle through which many of the international requirements for REDD+ will be translated by forest countries into tangible and specific national requirements, according to their unique circumstances'.[138] The Cancun Agreements followed *The Eliasch Review* recommendations in adopting a three-staged approach to REDD+ implementation. While *The Eliasch Review*'s explicit long-term goal is 'the full inclusion [of forests] in a global carbon market', it stresses the need for public interventions and public funds to enable and facilitate such a transition, given that a 'smooth transition path is also important for building confidence in the system'.[139] After reviewing three transition options *The Eliasch Review* recommends a hybrid model in which REDD+ countries would be 'accessing finance under incentive-based schemes from a combination of carbon markets (regional and national emissions trading schemes) and other sources while carbon markets grow smoothly over time'. This hybrid approach was specifically recommended over the alternative possibilities of either immediately moving to a market-based cap-and-trade system or remaining solely with funding from non-market sources.[140]

The process of REDD+-readiness involves preparing the following at the national level:

- REDD+ strategies and action plans;
- national or subnational reference levels;
- a robust and transparent system to measure, report and verify forest change;
- a system to provide information on how safeguards are being addressed and respected;
- a system for the receipt, management and disbursal of REDD+ finance.[141]

The process of REDD+-readiness therefore sits between easy delimitations of the global and the local. It is, as William Boyd describes, the process by which

> local and provincial level structures of forest governance are (re)combining with national and transnational capabilities to create technical, legal and institutional

[137] P. A. Minang, M. Van Noordwijk, L. A. Duguma, D. Alemagi, T. H. Do, F. Bernard, P. Agung, V. Robiglio, D. Catacutan, and S. Suyanto, 'REDD+ readiness progress across countries: Time for reconsideration' (2014) 14(6) *Climate Policy* 685–708 at 686.
[138] Denier et al., *The Little Book of Legal Frameworks for REDD+*, p. 16.
[139] Eliasch, *Climate Change: Financing Global Forests*, pp. 121–2.
[140] Ibid., p. 122.
[141] Denier et al., *The Little Book of Legal Frameworks for REDD+*, p. 22.

> frameworks for generating compliance grade assets and moving them into GHG compliance systems and other pay-for-performance schemes.[142]

Similarly, the process of REDD+-readiness, unsettles distinctions between the public and private. It relies on public financing, but especially in the work of the FCPF, is arguably directed towards establishing the institutional conditions that can enable the expansion of private markets. Therefore, this discussion suggests REDD+-readiness should be understood as part of a process of 'market construction', where public funds are deployed to support the development of regulatory conditions that can enable private contracting and accumulation.

A number of multilateral processes have been established to support REDD+-readiness, including prominently the World Bank's Forest Carbon Partnership Facility (FCPF), the UN-REDD Programme (a collaboration between the FAO, UNDP and UNEP) and the Forest Investment Programme, which is part of the World Bank's Climate Investment Funds. In addition, the Green Climate Fund – the financial mechanism under both the UNFCCC and the Paris Agreement – is providing support and funding for REDD+-readiness. These initiatives are discussed below.

(a) Forest Carbon Partnership Facility

The World Bank's Forest Carbon Partnership Facility (FCPF) has played a key role in developing processes and norms for REDD+-readiness to promote its eventual objective: the inclusion of forest carbon in international markets. The FCPF was approved by the World Bank's Executive Board on 25 September 2007, launched at COP13 in Bali and became operational in June 2008.[143] Initially capitalized at $160 million, and valued at approximately $1.3 billion a decade later,[144] it has over 60 involved countries, including donors and 47 participant countries, as well as NGOs and the private sector.[145] The FCPF is one of 15 carbon initiatives of which the World Bank is trustee, through its Carbon Finance Unit capitalised at US$2.3 billion.[146] The FCPF describes its 'dual objectives' as 'building capacity for REDD in developing countries in tropical and subtropical regions' and 'testing a program of performance-based incentive payments in some pilot countries, on a relatively small

[142] W. Boyd, 'Climate change, fragmentation, and the challenges of global environmental law: Elements of a post-Copenhagen assemblage' (2010) 32 *University of Pennsylvania Journal of International Law* 457–550 at 544.

[143] The World Bank, 'Forest carbon partnership facility launched at Bali Climate Meeting' (Media release, 11 December 2007).

[144] *Forest Carbon Partnership Facility: 2018 Annual Report* (2018) p. 4.

[145] E. Baroudy, 'Why we should be more optimistic about forests and climate change' (2017) *The World Bank* https://blogs.worldbank.org/climatechange/why-we-should-be-more-optimistic-about-forests-and-climate-change, 18 December 2017.

[146] The World Bank, 'The World Bank Carbon Funds and Facilities', www.worldbank.org/en/topic/climatechange/brief/world-bank-carbon-funds-facilities.

scale, in order to set the stage for a much larger system of positive incentives and financing flows in the future'.[147] At its launch, it was explicit that the FCPF's 'ultimate goal' was to 'jump-start a forest carbon market'.[148] The FCPF Charter sets out a number of objectives: to 'pilot a performance-based payment system for Emission Reductions generated from REDD activities, with a view to ensuring equitable benefit-sharing and promoting future large scale positive incentives for REDD'; to provide eligible REDD countries with 'financial and technical assistance in building their capacity to benefit from possible future systems of positive incentives for REDD'; 'to test ways to sustain or enhance livelihoods of local communities and to conserve biodiversity'; and to disseminate broadly the knowledge gained through the Facility's work.[149] The FCPF Charter also specifically requires it to '[s]eek to ensure consistency with the UNFCCC Guidance on REDD',[150] and to '[m]aximize synergies with other bilateral and multilateral programs on REDD'.[151] It is also required to follow a 'learning-by-doing' approach, experimenting with how these international legal frameworks can be actualized in practice.[152] The FCPF has since established itself as a key norm-developer and driver in the field. A 2011 review by civil society organisations found that 'through the FCPF, the World Bank is now setting the post-Cancun agenda in terms of how forests are integrated into a global carbon regime, how the REDD will be implemented and how finance will be sourced'.[153]

The FCPF contains two separate funds: the Readiness Fund, which provides funds for the development of necessary policies and strategies in REDD+ host countries, and the Carbon Fund, which provides payments for verified emission reductions from REDD+ programs.[154] The FCPF has three different categories of participant: REDD+ country participants (to date, 47 developing countries have been selected to join the FCPF, including 18 from Africa, 18 from Latin America and 11 from the Asia–Pacific region),[155] Donor participants (14 developed countries and the European Commission),[156] and Carbon Fund participants (including

[147] The World Bank, 'Forest Carbon Partnership Facility', www.forestcarbonpartnership.org/fcp/node/12 (accessed 18 February 2010).
[148] The World Bank, 'Forest carbon partnership facility takes aim at deforestation,' (Press release, 11 December 2007).
[149] International Bank for Reconstruction and Development, *Charter Establishing the Forest Carbon Partnership Facility* (November 23, 2015), Article 2.1.
[150] Ibid., Article 3.1(c).
[151] Ibid., Article 3.1(f).
[152] Ibid., Article 3.1(b).
[153] K. Dooley, T. Griffiths, F. Martone, and S. Ozinga, *Smoke and Mirrors: A Critical Assessment of the Forest Carbon Partnership Facility* (FERN and Forest Peoples' Programme, 2011).
[154] *Charter Establishing the Forest Carbon Partnership Facility*, Article 2.2, see also 'About us: FPIC', www.forestcarbonpartnership.org/fcpf (accessed 21 October 2013).
[155] 'REDD+ countries', www.forestcarbonpartnership.org/redd-countries-1 (accessed 2 March 2019).
[156] 'Donor participants', www.forestcarbonpartnership.org/donor-participants#overlay-context=donor-participants-0 (access 2 March 2019). These are: European Commission, governments

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governments and private sector entitles who contribute to the Carbon Fund).[157] The Participants Assembly, which meets annually, is made up of all countries and organizations involved in the FCPF, and it elects the Participants Committee, which meets twice a year and is made up of 14 forest countries and 14 donor countries.[158]

The Readiness Fund focuses on assisting countries to prepare for REDD+ implementation by adopting national REDD+ strategies and management arrangements, establishing reference emission levels, and designing measuring, reporting and verification systems and safeguard processes.[159] There are several stages of FCPF involvement in countries' national REDD+-readiness programs: participant countries are first required to submit a formal Readiness Plan Idea Note (R-PIN) to the FCPF. If this is accepted, participant countries can receive Readiness Preparation Grants to provide support for the preparation of a Readiness Preparation Proposal (R-PP), a plan for how the country will approach REDD+-readiness, which is assessed by the FCPF's governing body. At the end of the readiness phase the participant country is required to have completed a Readiness Package (R-Package), which should include a national REDD+ strategy, an implementation framework, a MRV system, a reference level scenario and a monitoring and evaluation framework for safeguards. As of June 2019, the Readiness Fund has US$400 million in funding, of which $314 million has been allocated and $200 million dispersed.[160] Between its 47 participants, 46 Readiness Proposals had been prepared, 44 Readiness Preparation Grant Agreements have been signed and 24 R-Packages have been endorsed.[161]

The Carbon Fund is 'set up to pilot incentive payments for REDD+ efforts in developing countries'.[162] It is focused on providing 'performance-based payments' to participant countries, by 'remunerat[ing] the selected countries in accordance with negotiated contracts for verifiable emission reductions'.[163] Countries '[making] progress towards REDD+ readiness' can apply to the Carbon Fund by submitting an Emission Reduction Program Idea Note (ER PIN). After the ER PIN is reviewed by a Technical Advisory Panel, a legal binding letter of intent between the World

of Australia, Canada, Denmark, Finland, France, Germany, Italy, Japan, Netherland, Norway, Spain, Switzerland, United Kingdom and the United States of America.

[157] 'Carbon Fund participants', www.forestcarbonpartnership.org/carbon-fund-participants (accessed 2 March 2019). These include: European Commission, governments of Australia, Canada, France, Germany, Norway, Switzerland, United Kingdom and the United States of America as well as BP Technology Venture Inc. and The Nature Conservancy.

[158] 'Participants page', www.forestcarbonpartnership.org/participants-page (accessed 2 March 2019).

[159] 'The Readiness Fund', www.forestcarbonpartnership.org/readiness-fund-0 (accessed 2 March 2019).

[160] *Forest Carbon Partnership Facility: 2019 Annual Report* (FCPF, 2019) 14.

[161] Ibid.

[162] 'The Carbon Fund', www.forestcarbonpartnership.org/carbon-fund (accessed 26 November 2019).

[163] 'The Carbon Fund', www.forestcarbonpartnership.org/carbon-fund-0 (accessed 26 November 2019).

Bank and the participating country is signed. The ER PIN is then translated into an Emission Reduction Program Document, which after undergoing a due diligence assessment is then developed into a legally binding Emission Reduction Payment Agreement (ERPA) between the host country and the World Bank (as trustee of the Carbon Fund). REDD+ activities are then implemented in the host country in accordance with the ERPA, and host countries receive payment for verified emission reductions (ERs) generated and these ERs transferred to Carbon Fund participants.[164] The first ERPAs were signed in February 2019 with Mozambique and the Democratic Republic of the Congo.[165] By June 2019, the Carbon Fund had US$900 million and included 19 participants, of whom all had signed letters of intent; 13 were in the process of developing ER Program Documents, and three Emission Reduction Payment Agreements had been signed.[166]

The FCPF has been an influential trend-setter in the REDD+-readiness space. A 2012 review by the World Bank's Independent Evaluation Group described the Fund's key activity as 'knowledge creation and knowledge transfer by defining and developing the modalities for REDD+' through expert meetings, capacity-building initiatives and dissemination of REDD+ lessons globally.[167] Its other major activity is 'capacity building through the Readiness Preparation Proposal (R-PP) process' at the country level.[168] The Review lauded the FCPF as an 'innovative' program 'willing to take risks and pioneer new ways of doing business', whose possibilities were, however, constrained due to uncertainties in the broader legal environment.[169] It also recommended greater alignment between 'country-generated REDD+ strategies' and other World Bank programs such as Country Assistance Strategies and Poverty Reduction Strategy Papers, and the prioritisation of 'no regrets' REDD+ interventions 'such as legal and policy support for land tenure and forest governance reforms that dovetail with the World Bank's wider objectives in the forest sector'.[170]

Civil society assessments, however, present a much more critical picture. A 2008 briefing prepared by the Forest Peoples Programme (FPP) presented a number of concerns of Indigenous peoples and forest-related organisations about the FCPF launch. These included concerns that the FCPF failed to take the United Nations

[164] This summary is primarily based on material in *The FCPF Carbon Fund: Piloting REDD+ Programs at Scale* (Forest Carbon Partnership Fund, June 2013), www.forestcarbonpartnership.org/sites/fcp/files/2013/june2013/CF%20Origination-web_0.pdf.

[165] 'Mozambique and Democratic Republic of Congo sign landmark deals with World Bank to cut emissions and reduce deforestation' (Press release, 19 February 2019), www.worldbank.org/en/news/press-release/2019/02/12/mozambique-and-democratic-republic-of-congo-sign-landmark-deals-with-world-bank-to-cut-carbon-emissions-and-reduce-deforestation.

[166] *Forest Carbon Partnership Facility: 2019 Annual Report* (FCPF, 2019), 15.

[167] *The Forest Carbon Partnership Facility* (Independent Evaluation Group, 2012); see also C. Lang, 'Independent Evaluation Group review of the FCPF: "World Bank needs a high-level strategic discussion on its overall approach to REDD"' *REDD-Monitor*, 22 November 2012.

[168] Independent Evaluation Group, *The Forest Carbon Partnership Facility*, p. xi.

[169] Ibid., p. xix.

[170] Ibid., p. xxi.

Declaration on the Rights of Indigenous Peoples (UNDRIP) into account, that REDD+ activities are contested and often opposed by forest-dwellers, and that the FCPF governance structure privileges the interests of governments and business over those of Indigenous peoples.[171] A 2008 joint report by FERN and the FPP also found that the Fund had been cutting corners, had failed to consult properly and had failed to apply its own internal safeguard policies.[172] Their 2011 updated review found:

> [T]he FCPF is still failing to fulfil its social and environmental commitments, whilst national REDD+ Readiness preparation Proposals (R-PPs) lack sufficient plans for policy and legal reforms that would uphold forest peoples' rights, improve forest governance and reduce deforestation.[173]

In a further 2014 assessment they warned that:

> Unless major changes are made in FCPF planning, design and validation of emissions reduction programmes to ensure alignment with the FCPF Charter and international human rights standards, the FCPF Carbon Fund risks enabling seriously flawed REDD pilots that could generate negative impacts on indigenous peoples and local communities as the FCPF moves towards implementation of activities on the ground.[174]

As it celebrated its tenth birthday, in 2017 the FCPF was described by a lead climate finance specialist at the World Bank as developing 'groundbreaking programs with tremendous potential for mitigating climate change and improving livelihoods.'[175] To mark this anniversary, over a dozen NGOs signed a letter calling for the suspension of the FCPF. They alleged that 'this approach to forest protection simply has not worked' and that the 'FCPF cannot point to a single gram of carbon that it has saved nor any emission reductions payments that have yet been made'.[176] Yet despite the FCPF's limited concrete achievements, it has had considerable influence on shaping how REDD+-readiness is understood and the processes by which it is implemented.

[171] *Briefing: Some views of Indigenous peoples and forest-related organisations on the World Bank's "Forest Carbon Partnership Facility" and proposals for a "Global Forest Partnership"* (Forest Peoples Programme, 2008).

[172] K. Dooley, T. Griffiths, H. Leake, and S. Ozinga, *Cutting Corners: World Bank's Forest and Carbon Fund Fails Forests and People* (FERN and Forest Peoples Programme, 2008).

[173] Dooley et al., *Smoke and Mirrors*, p. 7.

[174] *Implement in Haste, Repent at Leisure: A Call for Rethinking the World Bank's Carbon Fund, Based on an Analysis of the Democratic Republic of Congo Emissions Reduction: Project Idea Note (ER-PIN)* (FERN and Forest Peoples Programme, 2014) p. 5.

[175] Baroudy, 'Why we should be more optimistic about forests and climate change'.

[176] C. Lang, 'NGOs call for suspension of World Bank's REDD programme: "The approach to forest protection simply has not worked"', *REDD-Monitor*, 17 December 2017.

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(b) UN-REDD Programme

The UN-REDD Programme, launched in 2008, seeks to build on the 'convening role' and 'technical expertise' of its member organisations – the UNDP, UNEP and the FAO – and to work in close partnership with other REDD+ initiatives, especially those operated by the World Bank. In its 2011–2015 Strategy the UN-REDD Programme articulated its mission thus:

> To support countries' efforts to reduce emissions from deforestation and forest degradation through national REDD+ strategies that transform their forest sectors so as to contribute to human well-being and meet climate change mitigation and adaptation aspirations.[177]

The 2016–20 strategy document includes an updated mission, namely 'to reduce forest emissions and enhance carbon stocks in forests while contributing to national sustainable development'.[178] The 2016–20 strategy also identifies a number of cross-cutting themes as relevant to the achievement of its intended outcomes and outputs, especially stakeholder engagement, improved forest governance, tenure security and gender equality.

Since its restructure in 2016 the UN-REDD Programme governance structure consists of an executive board, an assembly, national steering committees and a multi-party trust fund office.[179] The Programme provides support through: (i) 'direct support to the design and implementation of National REDD+ Programmes'; (ii) 'complementary tailored support to national REDD+ actions' and (iii) 'technical capacity building through the sharing of expertise'.[180] By early 2019 the UN-REDD Programme was supporting 65 partner countries located in Africa, Asia–Pacific, Latin America and the Caribbean.[181]

A 2014 external review of the UN-REDD Programme raised a number of issues.[182] In particular, it found the likelihood of impact was 'moderately unlikely' given that that while the Programme is 'helping to create enabling conditions for collective action at the country level' it was 'too early to tell what effects the Programme will have in terms of reduced deforestation, sustainable forest resource use, and

[177] UN-REDD Programme, *The UN-REDD Programme Strategy 2011–2015* (February 2011) 6.
[178] UN-REDD Programme, *UN-REDD Programme Strategic Framework 2016–20* (7 May 2015) iv.
[179] Young, 'Interacting regimes and experimentation', pp. 13–47 at p. 34.
[180] UN-REDD Programme, 'How we work', www.un-redd.org/how-we-work (accessed 20 April 2019).
[181] UN-REDD Programme, 'Partner countries', www.un-redd.org/partner-countries (accessed 4 March 2019).
[182] A. Frechette, M. de Bresser, and R. Hofstede, *External Evaluation of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (the UN-REDD Programme)* (2014).

improved socio-economic conditions."[183] It also found that while the UN-REDD Programme helped raise awareness at both national and international levels about the importance of safeguards, it remained 'a challenge to put such principles into practice, notably due to the high number of safeguards and the lack of clear guidance on how to implement, monitor and enforce these."[184] Whilst the UN-REDD Programme positions itself as giving greater focus to 'rights-based' approaches in contrast to the more economic orientation of the World Bank's FCPF, in practice the two initiatives are 'actively coordinating their efforts', have agreed early on to 'coordinate their global analytical work in a manner that builds on and leverages their comparative advantages' and to 'develop harmonised thinking on what constitutes REDD readiness'.[185]

(c) Other Multilateral and Bilateral Channels

There are a number of other multilateral and bilateral funds that are providing support for REDD+ and REDD+-readiness activities. The Forest Investment Programme, which become operational in 2009 and is valued at $8 billion, is a part of the World Bank's Climate Investment Fund. It 'represents one of the first global efforts to invest in a dedicated climate finance vehicle"[186] and supports REDD+ efforts by 'providing scaled-up financing to developing countries for readiness reforms and public and private investments, identified through national REDD readiness or equivalent strategies'.[187]

The World Bank's BioCarbon Funds Initiative for Sustainable Forest Landscape is another multilateral fund that promotes REDD+ as well as sustainable agriculture and 'smarter' land-use policies and practices.[188] It became operational in November 2013 and is currently capitalized at US$350 million, thanks to contributions from Germany, Norway, the United Kingdom (UK) and the United States of America. It focuses on an entire jurisdiction (whether national or sub-national) and adopts a 'landscape' approach, to consider the 'trade-offs and synergies between different sectors that may compete in a jurisdiction for land use – such as forests, agriculture,

[183] Ibid., p. v.
[184] Ibid., p. vi.
[185] UN-REDD Programme, *The UN-REDD Programme and the World Bank's Forest Carbon Partnership Facility: Working Together for Better National and International Coordination* (2009). See also UN-REDD Programme, *Harmonization of Readiness Components: Note by the Secretariat* (October 2009), UN-REDD/PB3/7.
[186] CIF, 'History of the CIF', www.climateinvestmentfunds.org/timeline-cif (accessed 28 March 2019).
[187] Carbon Funds Update, Forest Investment Programme, climatefundsupdate.org/the-funds/forest-investment-program (accessed 28 March 2019).
[188] BioCarbon Fund, Initiative for Sustainable Forest Landscapes, www.biocarbonfund-isfl.org/about-us (accessed 28 March 2019).

energy, mining, and infrastructure' in order to identify 'solutions that serve multiple objectives and influence a variety of sectors'.[189]

The Central African Forest Initiative (CAFI) is a collaborative partnership between Central African countries with high rainforest coverage (Cameroon, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea and Gabon), a coalition of donors (the EU, France, Germany, the Netherlands, Norway, South Korea and the UK) and Brazil.[190] With an initial capitalisation of US$500 million for the 2015–25 period, its objective is to 'recognise and preserve the value of the forests in the region to mitigating climate change, reducing poverty, and contributing to sustainable development'.[191] The CAFI Declaration signed in September 2015 commits to financing one national investment framework per eligible country, following which a Letter of Intent is signed between the forest country and donors: disbursements may then flow, subject to a performance-based approach and agreed targets.[192]

The Green Climate Fund (GCF) 'represents a new kind of funding institution in the emerging field of climate finance governance', as it is directly created by COP decisions, has a mandate to engage directly with the private sector and pursue both mitigation and adaptation, and has a board with equal North–South representation.[193] It was established at COP16 in Cancun as an operating entity of the Convention's financial mechanism,[194] and the Paris Agreement confirmed it would serve as the financial mechanism for the Agreement.[195] Further, the Warsaw Framework on REDD+ recognised the 'key role the Green Climate Fund will play in channelling financial resources to developing countries and catalysing climate finance'.[196] The Warsaw Framework also specifically referred to the 'key role of the GCF, as well as other financing entities, to 'collectively channel adequate and predictable result-based finance in a fair and balanced manner … while working with a view to increasing the number of countries that are in a position to obtain and receive payments for result-based actions'.[197] In doing this, the GCF was requested to apply the methodological guidance from various COP decisions.[198]

[189] BioCarbon Fund, 'Approach', www.biocarbonfund-isfl.org/approach (accessed 28 March 2019).
[190] Central African Forest Initiative, 'Our Work', www.cafi.org/content/cafi/en/home/our-work.html (accessed 28 March 2019).
[191] Central African Forest Initiative, *The CAFI Declaration* (29 September 2015), www.cafi.org/content/cafi/en/home/our-work/governance/the-cafi-declaration.html (accessed 28 March 2019).
[192] Central African Forest Initiative, *The CAFI Declaration* (29 September 2015), www.cafi.org/content/cafi/en/home/our-work/governance/the-cafi-declaration.html (accessed 28 March 2019).
[193] M. Bowman and S. Minas, 'Resilience through interlinkage: The green climate fund and climate finance governance' (2019) 19(3) *Climate Policy* 342–53 at 1.
[194] Decision 1/CP.16, para 102, see also UNFCCC Article 11.
[195] *Paris Agreement*, Article 9.8.
[196] Decision 9/CP.19, preambular recital 5.
[197] Decision 9/CP.19, para 5.
[198] Decision 9/CP.19, para 7.

The GCF provides support for all three phases of REDD+, including considering forests as part of a broader landscape and addressing livelihood issues.[199] The GCF describes itself as providing

> support to maintain and amplify efforts to implement the early phases of REDD-plus in recognition that REDD-plus offers a cross-cutting approach to contribute to global efforts to reduce emissions and contribute to low-emission and climate resilient development pathways in developing countries, while simultaneously generating local benefits, which in some cases could assist with adaptation to climate change.[200]

Through the GCF's Readiness and Preparatory Support Programme countries can access support to establish and strengthen national entities such as National Designation Authorities and Direct Access Entities.[201] The GCF also has a Project Preparation Facility that provides support to accredited entities for project and programme preparation.[202] In 2014 the GCF started developing and subsequently approved a 'logic model and performance measurement framework for ex-post REDD+ result-based payments'.[203] The Fund's support for REDD+ is guided by a number of principles, namely: the degree to which the proposed activity can catalyse a paradigm shift, particularly considering forests as part of a broader 'landscape' than merely the 'forest sector'; the potential of a project/programme to deliver results; serving broader benefits to sustainable development; as well as the needs of the recipient, country-ownership and efficiency and effectiveness.[204] In 2017 the GCF's Board asked the Secretariat to develop 'a request for proposals … for REDD+ results-based payments … including guidance consistent with the Warsaw Framework for REDD+ and other REDD+ decisions under the United Nations Framework Convention on Climate Change (UNFCCC).'[205] In October 2017 the Board approved a pilot programme for REDD+ result-based payments.

[199] Green Climate Fund, 'REDD+ in GCF', www.greenclimate.fund/how-we-work/redd (accessed 28 March 2019); see also *GCF in Brief: REDD+* (Global Climate Fund), www.greenclimate.fund/documents/20182/194568/GCF_in_Brief_REDD_.pdf/16e4f020-da42-42a2-ad52-d18314822710.

[200] Green Climate Fund, *Green Climate Fund Support for the Early Phases of REDD+*, GCF/B.17/16 (2 July 2017), p. 2.

[201] Green Climate Fund, 'Readiness Support', www.greenclimate.fund/gcf101/empowering-countries/readiness-support (accessed 28 March 2019).

[202] Green Climate Fund, 'Project preparation', www.greenclimate.fund/gcf101/funding-projects/project-preparation (access 20 April 2019).

[203] Green Climate Fund, 'Decision B.08/08', *Decisions of the Board – Eighth Meeting of the Board 14–17 October 2014*, GCF/B.08/45 (3 December 2014); see also Green Climate Fund, *Initial Social Model and Performance Measurement Framework for REDD+ Result-based Payments*, GCF/B.08/08/Rev.01 (17 October 2014).

[204] GCF, *Green Climate Fund Support for the Early Phrases of REDD-Plus*.

[205] Green Climate Fund, 'Decision B.14/03', *Decisions of the Board – Fourteenth Meeting of the Board 12–14 October 2016*, GCF/B.14/17 (2 November 2016); Green Climate Fund, *Support for REDD-plus*, GCF/B.14/03 (10 October 2016).

Alongside these multilateral REDD+ funding mechanisms, REDD+ has also been the subject of bilateral agreements. The most significant agreements have been entered with Indonesia and Guyana by Norway's International Climate and Forest Initiative.[206] A central component of these has been moratoriums on licencing forest exploitation and the establishment of forest monitoring systems, including through GPS/GIS satellite land representational systems. The German Federal Ministry for Economic Cooperation and Development launched its REDD+ Early Movers program at Rio+20 in 2012.[207] The fund provides REDD+ with bridging finance, and the KfW Development Bank makes payments for independently verified REDD+ emission reductions achieved by Early Movers. Australia's International Forest Carbon Initiative also supported global REDD+ efforts, including through a bilateral agreement with Indonesia and through demonstration activities such as the Kalimantan Forest Carbon Partnership.[208]

To sum up, the preparatory processes discussed, including demonstration activities and support for REDD+-readiness practices, show the diffuse nature of REDD+ implementation as well as the dispersed processes of REDD+ norm production. Identifying how norms have been developed through these diverse experimental demonstration projects and REDD+-readiness processes highlights how powerful actors have been able to significantly influence REDD+ norm development, outside and beyond the formal UNFCCC decision-making processes.

D REDD+ AS A CONCEPT, IDEA AND WAY OF SEEING

REDD+ also needs to be understood as a deceptively simple *concept* or *idea* emerging from the field of environmental economics, namely that the economic value produced from leaving forests standing should be greater than that produced by their destruction. Understood as a vision or idea, REDD+ exemplifies the broader dominance of the field of environmental economics[209] in producing a neoliberal model of environmentalism, or 'market environmentalism', which has had a significant impact on law and policy-making.[210] Arild Angelsen has noted that REDD+ 'follows textbook recommendations' from the field of environmental economics to

[206] See Norway's International Climate and Forest Initiative, norad.no/en/front/thematic-areas/climate-change-and-environment/norways-international-climate-and-forest-initiative-nicfi (accessed 20 April 2019); on the agreement with Indonesia see F. Seymour, N. Birdsall, and W. Savedoff, *The Indonesia–Norway REDD+ Agreement: A Glass Half-Full* (Center for Global Development, 2015).

[207] 'REDD early movers – Tools and instruments', www.giz.de/en/worldwide/33356.html (accessed 20 April 2019).

[208] See R. Pearse and J. Dehm, *In the REDD: Australia's Carbon Offset Project in Central Kalimantan* (Friends of the Earth International, 2011).

[209] See D. Pearce, 'An intellectual history of environmental economics' (2002) 27 *Annual Review of Energy and Environment* 57–81.

[210] S. Bernstein, *The Compromise of Liberal Environmentalism* (Colombia University Press, 2001).

'create a multilevel . . . system of payments for ecosystem environmental services'.[211] Esteve Corbera likewise suggests that REDD+ is 'the world's largest [payment for ecosystem services] experiment'.[212] Fletcher et al. describe the vision of REDD+ thusly: [It is] conceptualized as a quintessential [market-based instrument] in its aim to incentivize forest conservation by correcting so-called market failure in sustainable forest management through ascribing monetary values to standing forest that would cover the opportunity costs of alternative land use and so make conservation more profitable than destruction.[213] This vision of REDD+ includes, at a minimum, making the 'value' of the carbon sequestration potential of forests legible in economic terms. However, for many key proponents and players in the REDD+ space the vision of REDD+ also includes incorporation of REDD+ as an offset within international carbon markets.

1 *REDD+ As a Vision of Economic Valuation of Forests*

The premise of REDD+ as a concept or idea is this: that making legible in economic terms the 'value' of forests' carbon sequestration potential will provide economic incentives for forest protection by enabling the 'value' of standing forests to be better factored into decision-making; this will thereby shift decision-making practices in ways that lead to better forest protection outcomes. The UN-REDD Programme describes how 'REDD+ . . . creates a financial value for the carbon stored in forests by offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development'.[214] This idea that nature should be valued in economic terms underpins influential policy prescriptions to include forests in global carbon markets such as are found in the English *Stern Review*[215] and *The Eliasch Review*.[216] Eliasch writes that 'as long as forest carbon or other ecosystem services are not reflected in the price of commodities produced from converted forest land, forests will – in financial terms – generally be worth more to landowners cut rather than standing'.[217] He therefore argues that the costs of ecosystem services, including carbon storage and sequestration, need to be valued differently in order to change the current conditions in which it is 'more lucrative to deforest and sell the resulting timber and agricultural produce than to

[211] A. Angelsen, 'The 3 REDD "i's"' (2010) 16 *Journal of Forest Economics* 253–6 at 253.
[212] E. Corbera, 'Problematizing REDD+ as an experiment in payments for ecosystem services' (2012) 4(6) *Current Opinion in Environmental Sustainability* 612–19 at 612.
[213] R. Fletcher, W. Dressler, B. Buscher, and Z. R. Anderson, 'Questioning REDD+ and the future of market-based conservation' (2016) 30(3) *Conservation Biology* 673–5 at 673.
[214] UN-REDD Programme, 'About REDD+', www.un-redd.org/aboutredd/tabid/102614/default.aspx (accessed 19 July 2014).
[215] N. H. Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, 2007).
[216] Eliasch, *Climate Change: Financing Global Forests.*
[217] Ibid., p. 41.

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leave forests standing . . . because the costs of the deforestation are not reflected in the price of the timber or agricultural produce'.[218] In this sense, *The Eliasch Review* conceptualises the costs of deforestation as 'externalities' whose exclusion from the market creates a market failure whereby the 'market will supply more timber and agricultural produce from deforested land than is efficient'.[219] The underlying rationale of this policy prescription is that 'if the costs of deforestation were factored into the price of products, their production would tend to shift to other land where they could be grown without deforestation'.[220] This conceptualisation, however, leaves unaddressed the concrete and material ways in which the demand for forest products drives processes of deforestation. Moreover, it is based on the assumption that there is a supply of available 'other' land, which ignores how such land may already be used for alternative purposes such as subsistence agriculture, which are critically important even if they bring low market returns. The rationality underpinning pricing mechanisms is that decisions about alternative land uses should be determined by relations of supply and demand rather than other – perhaps more deliberative – processes.

This focus on promoting the valuation of nature, including forests, in economic terms, has a longer history. In 1989, the *Blueprint for Green Economy* report commissioned by the UK government argued for the need to economically 'value' the environment and sought to outline mechanisms for that purpose.[221] The development of improved valuation, pricing and incentive mechanisms has been a principle of ecological sustainable development since the early 1990s, based on the assumption that the real costs of polluting activities – and the real value of natural resources – are reflected in the prices paid by industry and consumers.[222] This focus was adopted by the World Bank as the theme of their First Annual International Conference on Environmentally Sustainable Development in 1993.[223] Within the field of forest policy, a key message of the 1999 *Our Forests, Our Future* report produced by the World Commission on Forests and Sustainable Development was the need to value the 'natural capital' of forests.[224] These ideas were transferred into the forest regime through close collaborations between the epistemic community of environmental economic practitioners and those working

[218] Ibid., p. 63.
[219] Ibid.
[220] Ibid.
[221] D. Pearce, A. Markandya, and E. B. Barbier, *Blueprint for a Green Economy* (Earthscan, 1989).
[222] G. Bates, *Environmental Law in Australia*, 9th ed. (LexisNexis, 2016) pp. 321–2.
[223] I. Serageldin and A. Steer (eds.), *Valuing the Environment: Proceedings of the First Annual International Conference on Environmentally Sustainable Development, Held at the World Bank, Washington, D.C., September 30–October 1, 1993* (The World Bank, 1993).
[224] *Our Forests, Our Future: Summary Report of the World Commission on Forests and Sustainable Development* (World Commission on Forests and Sustainable Development, 1999); for a discussion see D. Humphreys, *Forest Politics: The Evolution of International Cooperation* (Earthscan, 1996) Chapter 3.

on forest policy development. As documented by David Humphreys, some materials prepared for the Intergovernmental Panel on Forests (1995–97) for its work on 'methodologies for the proper valuation of the multiple benefits of forests' were in effect directly plagiarised from a report prepared by the International Institute for Environment and Development (IIED) for the UK Overseas Development Administration.[225] Subsequently the World Bank was made the lead agency for the Intergovernmental Forum on Forests (1997–2000) work program on the 'valuation of forest goods and services'.[226] In this role the Bank prepared background papers suggesting five areas where new markets could be established in forest goods and services to provide conservation incentives (including carbon sequestration, biodiversity and hydrological services as well as non-timber products and ecotourism).[227] Again Humphreys notes that 'in several cases, language from the documents was used as a basis for negotiating Intergovernmental Forum on Forests proposals for action … [where in fact] in many cases the wording proposed by the World Bank survived the negotiations intact'.[228] These incidents, Humphreys argues, 'reveal the limits of genuine intellectual debate on environmental valuation' and the strong influence of certain actors that are part of 'a knowledge-based network that shares agreement on the methodologies for environmental valuation in general, and forest valuation in particular".[229]

Approaches focused on economic valuation have remained hegemonic in environmental policy-making, although for many proponents, economic valuation of nature is seen as only the first step in a much broader agenda. The *Millennium Ecosystem Assessment* highlighted that '[t]he mere act of quantifying the value of ecosystem services cannot by itself change the incentives affecting their use or misuse' and that changes to current practices are required to 'take better account of these values'.[230] The UNEP-sponsored *The Economics of Ecosystems and Biodiversity* (TEEB) initiative is perhaps the most prominent expression of this project of valuing nature in order to better factor ecosystem services within policy and decision-making.[231] These practices of 'valuing nature' – and accounting for this value within decision-making and cost benefit analysis – has become a central theme of the 'green economy'.[232] A critical observer of this trend, geographer Sian

[225] D. Humphreys, *Logjam: Deforestation and the Crisis of Global Governance* (Earthscan, 2006) p. 38.
[226] Ibid., p. 67.
[227] Ibid., p. 80.
[228] Ibid., p. 81.
[229] Ibid.
[230] The Millennium Ecosystem Assessment Board, *Ecosystems and Human Well-being: Current State and Trends, Vol 1* (2005) 34.
[231] *The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature: A Synthesis of the Approach, Conclusions and Recommendations of the TEEB* (TEEB, 2010).
[232] C. Allen and S. Clouth, *A Guidebook to the Green Economy – Issue 1: Green Economy, Green Growth and Low-Carbon Development – History, Definitions and a Guide to Recent Publications* (UN-DESA, 2012); for a critique of this paradigm see D. Brockington, 'A radically

Sullivan, describes the development of a growing industry of 'accounting of socio-environmental relations'.[233] She highlights the reductive and repressive effects of an illusion of fixing the 'value of nature' in tradable and substitutable economic terms. Sullivan argues that when the 'messy materiality of life' is rendered 'legible as discrete entities, individualised and abstracted from complex social and ecological entanglements'[234] and standardised, it has the effect of dismissing other logics of evaluation.[235] She further expresses concern 'that diversities are lost in the world-making mission to fashion and fabricate the entire planet as an abstracted plane of (ac)countable, monetizable and potentially substitutable natural capital'.[236]

Thus, in understanding REDD+ as a vision of the economic valuation of forests it is critical to recognise that the underlying economic assumptions, theories and models are not simply a description of how forest conservation *does* work but a prescription of how forest conservation *should* work. Moreover, these models have embedded in them numerous presuppositions about human nature and human motivations. Actualising these prescriptions, or making them real, thus necessarily also entails a micro-politics addressed to altering human behaviour, responses, drives and motivations.

2 *REDD+ As a Vision of an 'Offset' in Transnational Carbon Markets*

For many proponents REDD+ is imagined, not just as a mechanism to 'value' forest carbon, but as a mechanism to incorporate forest carbon as an 'offset' into international carbon markets. The *Stern Review* noted that carbon markets could 'play an important role' in providing incentives for curbing deforestation.[237] Further, *The Eliasch Review* assumes that in order to tackle forest emissions it is necessary to have a 'well-designed mechanism for linking forest abatement to carbon markets', in order to access public and private finance.[238] Charlotte Streck writes that REDD+ was 'originally … conceived of as a market-based system'[239] and others confirm it was

conservative vision? The challenge of UNEP's "Towards a Green Economy"' 43(1) *Development and Change* 409–22; N. Bullard and T. Müller, 'Beyond the "Green Economy": System change, not climate change?' (2012) 55(1) *Development* 54–62.

[233] S. Sullivan, 'The environmentality of "Earth Incorporated": On contemporary primitive accumulation and the financialisation of environmental conservation' (2010), Paper presented at the conference An Environmental History of Neoliberalism, Lund University, 6–8 May 2010; S. Sullivan, 'Banking nature? The Spectacular financialisation of environmental conservation' (2013) 45(1) *Antipode* 198–217.

[234] Prudham cited in Sullivan, 'The environmentality of 'Earth Incorporated", p. 17.

[235] See also A. Robinson and S. Tormey, 'Resisting "Global Justice": Disrupting the colonial "emancipatory" logic of the West' (2009) 30(8) *Third World Quarterly* 1395–409 at 1399.

[236] S. Sullivan, 'On "natural capital", "fairy tales" and ideology' (2017) 48(2) *Development and Change* 397–423 at 398.

[237] Stern, *The Economics of Climate Change: The Stern Review*, p. xxvi.

[238] Eliasch, *Climate Change: Financing Global Forests*, p. 165.

[239] C. Streck, 'In the market: Forest carbon rights: Shedding light on a muddy concept' (2015) 4 *Carbon & Climate Law Review* 342–47.

'originally conceived as a PES [payment for environmental services] system' where it 'was anticipated that the majority of funding would come from carbon markets'.[240]

If REDD+ were to be confirmed as an offset mechanism – whereby purchased 'emission reductions' from countries of the Global South were able to contribute towards the compliance obligations of countries of the Global North – such a mechanism would be structured around the assumption that 'emission reductions' through reducing deforestation and forest degradation are *equivalent to* GHGs emitted elsewhere. Scholars have critically described and elaborated the work – representational, accounting and regulatory – that goes into enabling diverse actions to be presented as equivalent and substitutable,[241] while simultaneously questioning these purported equivalences, especially the claimed equivalence between forest carbon and fossil carbon.[242] However, the present analysis is not primarily concerned with whether such purported equivalences are real or an illusion but is focused on interrogating the productive effects of such *claims to equivalence*: that is, the *effects* of designating the outcomes of these very different practices and processes as equivalent.

This claim of equivalence between carbon emitted in the Global North and additional carbon sequestered in forests in the Global South establishes a *strategic relation* between the practices of resource extraction on one hand and the practices of conservation, preservation, sustainable engagement of forests and management of carbon stocks that make up REDD+ on the other. As such, the offset relation holds together two different ways of governing nature – one directed towards the appropriation of nature and the other towards stewardship of nature – that have historically been viewed as being in *tension* with one another: that is, the offset relation holds together an 'extractive' power over nature alongside a 'productive' power over nature. Resource extraction operates through the form and modality of anthropocentric power over the natural world, in which an absolute human mastery and domination of nature is justified by a divine biblical right.[243] Thus, as a modality of

[240] M.-C. Cordonier Segger, M. Gehring, and A. Wardell, 'REDD+ instruments, international investment rules and sustainable landscapes' in C. Voigt (ed.), *Research Handbook on REDD-Plus and International Law* (Edward Elgar Publishing, 2016) p. 348.

[241] D. MacKenzie, 'Making things the same: Gases, emission rights and the politics of carbon markets' (2009) 34(3) *Accounting, Organizations and Society* 440–55; E. Lövbrand and J. Stripple, 'Making climate change governable: Accounting for carbon as sinks, credits and personal budgets' (2011) 5(2) *Critical Policy Studies* 187–200; L. Lohmann, 'Performative equations and neoliberal commodification: The case of climate' in B. Büscher, W. Dressler and R. Fletcher (eds.) *Nature*^{TM} *Inc.: Environmental Conservation in the Neoliberal Age* (The University of Arizona Press, 2014) 158–80.

[242] See for example L. Lohmann, 'The endless algebra of climate markets' (2011) 22(4) *Capitalism, Nature, Socialism* 93–116; J. Dehm, 'One tonne of carbon dioxide equivalent (1tCO2e)' in J. Hohmann and D. Joyce (eds.), *International Law's Objects* (Oxford University Press, 2018) pp. 305–18.

[243] King James Bible, Genesis 1:28 cited in S. Humphreys and Y. Otomo, 'Theorizing international environmental law' in A. Orford, F. Hoffmann, M. Clark (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) pp. 797–819, 802.

power it exhibits a parallel with a sovereign 'power of life and death' or to '*take* life or *let* live', in which power is exercised primarily through deduction or subtraction and through a claim to a right of appropriation and seizure.[244] This biblical injunction to subdue the earth was, as Yoriko Otomo and Stephen Humphreys note, 'relied upon by the Dominicans in the pre-Reformation era and, most pointedly, the Puritans afterwards',[245] and it is a key organising principle of many legal theories.

Practices of conservation, preservation and scientific management display a different modality of anthropocentric power over the natural world to that of resource exploitation – namely stewardship or a form of pastoral power, whose motif is the shepherd rather than the king. In contrast to a despotic power based on its own absolute claim to sovereignty, stewardship manages its domain 'on the basis of its claim to be operating under the auspices of a higher ethical power that, properly understood, guides the rulers' concern for the well-being of those ruled'.[246] This is a 'beneficent power' whose purpose of doing 'good' manifests itself through a 'power of care'[247] or a 'duty' to undertake its tasks of keeping watch in order to achieve its objective of collective salvation, or salvation as subsistence.[248] Such a 'proper' management of individuals, goods and wealth derives from conceptions of the art of governing a family and the paternal control exercised by a (male) household head over his wife, children and servants. The Greek word *oïkos*, meaning 'home' or household, is the etymological root of both economy and ecology.[249] The strategic relation that REDD+ instigates between these two different modalities of power therefore requires us not to bracket or downplay either one, but to think of them together, and 'to account for and critically engage the integral co-implication and coevalness of "repressive" and "productive" formations' by which life is governed.[250] Moreover, through the offset relation these practices are *co-articulated* and jointly encompassed in a broader framework directed towards maximising the aggregate productivity of nature. The strategic relation produced by the offset generates a rationality of aggregate global resource maximisation that is made concrete through the concept of 'value'. The danger of such an approach, focused on maximising the aggregate 'value' of nature, is that an economic understanding of 'value' increasingly operates as a substitute for, or it displaces, the contestation over competing values.

[244] M. Foucault, *The Will to Knowledge: The History of Sexuality: Volume I* (Penguin, 1998) p. 136.
[245] Humphreys and Otomo, 'Theorizing international environmental law', p. 802.
[246] M. Smith, *Against Ecological Sovereignty: Ethics, Biopolitics, and Saving the Natural World* (University of Minnesota Press, 2011) p. 22.
[247] M. Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978* (Palgrave Macmillan, 2007) p. 127.
[248] Ibid., p. 126.
[249] Angela Mitropoulos notes that the term 'ecology' was coined by zoologist Ernst Haeckel in attempting to 'articulate a nascent behaviourism (that psychology is a branch of physiology) and biopolitics (his infamous phrase: 'politics is applied biology'); see A. Mitropoulos, 'Oikopolitics, and storms' (2009) 3(1) *The Global South* 66–82 at 68.
[250] This quote is taken from J. Butler and A. Athanasiou, *Dispossession: The Performative in the Political* (Polity, 2013) p. 30, where coevalness is discussed in relation to a different context.

What is thereby lost are the 'irreducible contestations over the values underlying and informing ecological science and environmental law'.[251]

E REDD+ AS CO-ARTICULATING VARIOUS FORMS OF ANTHROPOCENTRIC GOVERNANCE

As well as understanding REDD+ as a legal or regulatory framework, as series of practices and processes and as a concept, vision or idea, REDD+ can also be understood as being made up of mechanisms to promote specific activities to avoid deforestation and forest degradation. This section provides an overview of such activities, their origins, history and exclusionary dynamics, focusing primarily on practices of conservation and sustainable forest management (SFM). When REDD+ (or RED, as it then was) was first proposed, the focus was primarily on activities to reduce deforestation and avoid forest degradation; however, this scope expanded over time.[252] The Bali Action Plan extended this initial focus when it called for positive incentives and policy approaches 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 and forest degradation'.[253] However, at that stage a strategically placed semi-colon suggested that the latter activities would not be subject to the same policy approaches and positive incentives as reducing deforestation and forest degradation.[254] The following year at COP14, however, actors who wanted to make conservation and sustainable forest management more prominent in these discussions pushed to change the semi-colon to a comma.[255] At Copenhagen (COP15), the punctuation separating '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' was removed[256] – and the term 'REDD+ was officially born'.[257] The Cancun Agreements clarified that the same polices and incentives were applicable to all of the following activities: reducing emissions from

[251] V. De Lucia, 'Competing narratives and complex genealogies: The ecosystem approach in international environmental law' (2015) 27(1) *Journal of Environmental Law* 91–117 at 99.

[252] A. Wiersema, 'Climate change, forests and international law: REDD's descent into irrelevance' (2014) 47(1) *Vanderbilt Journal of Transnational Law* 1–66 at 25–6.

[253] Decision 1/CP.13, para 1(b)(iii).

[254] I. Fry, 'Reducing emissions from deforestation and forest degradation: Opportunities and pitfalls in developing a new legal regime' (2008) 17(2) *Review of European Community and International Environmental Law* 166–82 at 167.

[255] Wiersema, 'Climate change, forests and international law: REDD's descent into irrelevance', 33–4.

[256] Decision 4/CP.15.

[257] Wiersema, 'Climate change, forests and international law: REDD's descent into irrelevance', 35.

deforestation; reducing emissions from forest degradation; conservation of forest carbon stocks; sustainable management of forests; and enhancement of forest carbon sinks.[258]

Due to the contested histories of such activities, the language adopted to describe them was at times controversial. The use of the phrase 'conservation of forest carbon stocks', which departed from the phrase used in earlier decisions 'the role of conservation', raised concerns that this shift in language suggested forests would be viewed simply in terms of their carbon conservation value, rather than in terms of a broader conception of conservation, which also encompasses biodiversity protection. The semantic distinction between 'sustainable forest management' (SFM) – which has been used in other international forest agreements – and 'sustainable management of forests' – which was adopted in the Cancun Agreements – was also the subject of heated debate. The Bali Action Plan referred to 'sustainable management of forests', but Decision 2/CP.13 on approaches to stimulate action on REDD+ included the term SFM, alongside references to the provisions of the United Nations Forum on Forests, the UN Convention to Combat Desertification and the Convention on Biological Diversity.[259] Both phrases, 'sustainable management of forests' and 'sustainable forest management', were included in parentheses in the pre-Copenhagen texts.[260] Several environmental groups strongly contested the inclusion of the term SFM, concerned it would allow strong vested interests in logging and agribusiness to benefit from REDD+ under the guise of SFM.[261] According to the FAO, the key faultline in the debate was between those who supported the inclusion of the term SFM, who sought 'a comprehensive scope for REDD+ in order to maximise potential greenhouse gas reductions and removals from forests', and those who opposed the inclusion of the term, who were advocating a more 'restrictive' scope 'that [would exempt] forests managed for commercial timber production, due to the concern that REDD+ might subsidise industrial-scale timber extraction at the expense of small-scale local enterprise or non-timber forest values, such as biodiversity'.[262] The fact that the term SFM was not included in the Cancun Agreements was thus celebrated by environmental NGOs.[263] Margaret Young reads this failure to fully endorse the SFM approach from the forest regime in REDD+ as

[258] Decision 1/CP.16, para 70.

[259] Decision 2/CP.13, Annex, para 8.

[260] See K. Dooley and N. Reisch, 'Bonn II: REDD discussions at the June 2009 UNFCCC Climate Meeting', *EU Forest Watch* July 2009, www.redd-monitor.org/wp-content/uploads/2009/07/document_4448_4450.pdf.

[261] *Vested Interests: Industrial Logging and Carbon in Tropical Forests* (Global Witness, 2009) p. 6.

[262] *Sustainable management of forests and REDD+: Negotiations need clear terminology: Information Note* (Food and Agricultural Organization, 2009) p. 1; see also *Trick or Treat? REDD, Development and Sustainable Forest Management* (Global Witness, 2009).

[263] See for example (writing about Copenhagen) Patrick Alley, 'As the dust settles, some cause for optimism' *Global Witness* (blog), 2009, www.globalwitness.org/archive/dust-settles-some-cause-optimism.

potentially constraining '[the way in which] REDD+ would be influenced by, and influence, other regimes', such as the international forest governance regime.[264] While the rejection of the formation of 'sustainable forest management' may reduce the influence of some established practices, the boundaries are probably not so neat: for example, the Global Environmental Facility in its 2010–14 strategy refers to REDD+ and SFM interchangeably.[265]

A brief history of what will probably be the two most common REDD+ activities, conservation and sustainable forest management, is provided below. By making these very different activities subject to the same policy approaches and incentives, REDD+ brings together activities that have arisen from very different imperatives and have very different rationalities. Stephen Humphreys and Yoriko Otomo have demonstrated how international environmental law is constituted by the animating tension between two 'non-negotiable' imperatives, which can be traced to the practices of the scientific management of nature and the ideology of romanticism, respectively.[266] The practices of SFM arise from the former whilst conservation is a key enactment of the latter. Humphreys and Otomo have highlighted the key tension between these practices, given that 'the promise to respect an inherent bound within "nature itself" is destabilised by the necessity of exploiting, developing, applying the non-human as a resource'.[267] They have therefore stressed the 'extraordinary difficulty in achieving any such mediation' because of the inherent irreconcilability of the two: 'what one holds sacred, the other profanes'.[268] The effect of the way REDD+ holds these different activities together and makes them subject to the same policy approaches and incentives therefore deserves further investigation. Thinking about REDD+ as an assemblage that somehow holds together these 'constituent conceptual elements that generate [international environmental law's] specific energy and propel its contradictions'[269] explains some of the contradictions internal to REDD+ and helps make evident the work needed to allow REDD+ (however uneasily) to cohere. However, on a deeper level, despite the inherent tensions and contradictions between these activities and their underlying imperatives, one can also observe a shared coloniality underpinning both these activities, as well as a shared anthropocentric assumption of 'ecological sovereignty'.[270]

[264] M. A. Young, 'REDD+ and interacting legal regimes' in C. Voigt (ed.), *Research Handbook on REDD-plus and International Law* (Edward Elgar Publishing, 2016), pp. 89 and 108.
[265] 'GEF 5 Focal Areas Strategies' (Global Environmental Facility, 2009), www.thegef.org/gef/sites/thegef.org/files/publication/English%20-%20Strategies-may2012-optimized.pdf, 90–98.
[266] Humphreys and Otomo, 'Theorizing international environmental law'.
[267] Ibid., pp. 818–19.
[268] Ibid., p. 819.
[269] Ibid., p. 799.
[270] M. Smith, *Against Ecological Sovereignty: Ethics, Biopolitics, and Saving the Natural World* (University of Minnesota Press, 2011).

1 *Conservation*

Practices of forest conservation or preservation have historically been counterpoised to processes of extraction, appropriation and translation of nature into a 'resource'. Nonetheless, like practices of extraction, practices of conservation and the romanticised wilderness ideology that underpins them are structured by colonialist assumptions, that historically operated to make invisible the practices and histories of peoples living in places imagined as 'wild'.[271] National Parks or 'wilderness areas', whilst not autonomous jurisdictions,[272] nonetheless remain a troubling figure of exclusion/inclusion in the law.[273] The 'nature resource', as Mick Smith argues, exists in a paradoxical legal position whereby it 'is exempted from being a resource, freed from human domination, only by being already and always included within the remit of human domination'.[274] These practices were underpinned by the concept of 'wilderness' as a central theme of Romantic political and artistic movements. This concept, Humphreys and Otomo argue, has 'implanted lasting notions of the beauty of "unspoilt" wilderness, imbued with a profound moral significance, that have endured to the present and provide the ideational backdrop specific to this body of international law'.[275] This fantasy of wilderness as a primitive Eden arose in a specific context, namely that of the nineteenth century colonising and industrialising bourgeoisie;[276] it did so to enable the Romantic bourgeois dreams of 'authentic' self-realisation; and it had dangerous effects, because this idea as 'ideal' sustains itself only through the erasure of people, law and livelihoods from these spaces.[277] As Robert Fletcher shows, the illusion that a wilderness free of human manipulation could engage with Indigenous peoples in only one of two ways: either through their deliberate erasure and making invisible the record of inhabitation and transversion of these spaces by, interventions in and transformation of 'wilderness' spaces by humans for millennia; or by recognising their presence, but 'pronouncing indigenous people sub-human, and therefore incapable of diluting wilderness in the same manner as 'civilized man'.[278]

[271] R. Fletcher, 'Against wilderness' (2009) 5(1) *Green Theory & Praxis: The Journal of Ecopedagogy* 169–79; for a critique of the idea of 'wilderness' see W. Cronon, 'The trouble with wilderness; or, getting back to the wrong nature' in W. Cronon (ed.), *Uncommon Ground: Rethinking the Human Place in Nature* (W. W. Norton & Company, 1995) pp. 69–90; and for an historical overview see R. Guha, *Environmentalism: A Global History* (Oxford University Press, 1999) Chapter 4.

[272] S. Dorsett and S. McVeigh, *Jurisdiction* (Routledge, 2012) p. 46.

[273] For a discussion of nature as 'other' see also L. Godden, 'Preserving natural heritage: Nature as other' (1998) 22(3) *Melbourne University Law Review* 719–42.

[274] Smith, *Against Ecological Sovereignty: Ethics, Biopolitics, and Saving the Natural World*, p. xiii.

[275] Humphreys and Otomo, 'Theorizing international environmental law', p. 799.

[276] Cronon, 'The trouble with wilderness; or, getting back to the wrong nature'.

[277] See Godden, 'Preserving natural heritage: Nature as other'.

[278] See Fletcher, 'Against wilderness', 175.

The establishment of 'protected areas' has been the main vehicle for in-situ conservation for 'the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings',[279] and it is 'deeply embedded in the forest regime and other areas of global environmental governance'.[280] In the contemporary era, the conflicts between nature conservation and local livelihoods remain acute. Anthropologist Nancy Peluso has shown that a Romantic gaze continues to underpin 'coercive conservation' practices,[281] and Mark Dowie has documented how such practices have produced 'conservation refugees'.[282] In the last two decades there has been a strong focus on 'rights-based conservation',[283] since the Durban Accord passed at the fifth International Union for the Conservation of Nature (IUCN) World Parks Congress announced a 'new paradigm' for protected areas that foregrounded the rights of Indigenous peoples and local communities.[284] To facilitate 'rights-based approaches' to conservation various 'soft law' mechanisms have been developed and adopted such as codes of practice, principles and internal policies; nonetheless, the challenges of implementing such 'rights-based approaches' in practice have been considerable.[285] Since 2010 the issue of 'green grabbing', where large conservation projects have led to forced evictions, resettlement or decreased livelihood or subsistence access for local communities, has again come into sharp focus.[286] The UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, highlighted in 2016, how the 'impact that conservation initiatives have on indigenous peoples has been a

[279] *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993), article 8(d).

[280] Humphreys, *Logjam: Deforestation and the Crisis of Global Governance*, p. 194.

[281] N. L. Peluso, 'Coercing conservation? The politics of state resource control' (1993) *Global Environmental Change* 199–217.

[282] M. Dowie, *Conservation Refugees: The Hundred-Year Conflict between Global Conservation and Native Peoples* (MIT Press, 2009).

[283] For a discussion see L. Siegele, D. Roe, A. Giuliani, and N. Winer, 'Conservation and human rights : Who says what? A review of international law and policy' in J. Campese, T. Sunderland, T. Greiber, and G. Oviedo (eds.), *Rights-Based Approaches: Exploring Issues and Opportunities for Conservation* (Center for International Forestry Research and International Union for Conservation of Nature, 2009); T. Greiber, M. Janki, M. Orellana, A. Savaresi, and D. Shelton, *Conservation with Justice: A Rights-Based Approach* (Center for International Forestry Research and International Union for Conservation of Nature, 2009).

[284] IUCN, *The Durban Action Plan*, Revised version, March 2004, cmsdata.iucn.org/downloads/durbanactionen.pdf.

[285] V. Tauli-Corpuz, *Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz*, General Assembly, A/71/229 (29 July 2016), para 39–50.

[286] See J. Fairhead, M. Leach, and I. Scoones, 'Green grabbing: A new appropriation of nature?' (2012) 39 *Journal of Peasant Studies* 237–61 and the article in the special issue it introduces; for some case studies see F. Pearce, *The Land Grabbers: The New Fight Over Who Owns the Earth* (Random House, 2012).

constant and recurring theme'.[287] She noted that conservation measures have resulted in a number of human rights violations, including the expropriation of land, forced displacement, denial of self-governance, lack of access to livelihoods and loss of culture and spiritual sites, non-recognition of Indigenous peoples' own authority over land and resources, and denial of access to justice and reparation, including restitution and compensation.[288] She has noted specific concerns that '[w]hile the conservation community is in the process of adopting conservation measures that respect the human rights of indigenous peoples, considerable implementation gaps remain and new threats to human rights-based conservation are emerging'.[289] It is therefore unsurprising that the provision of further incentives for such activities through the carbon economy has raised concerns about the potential impact on peoples living in and around forested areas, something which will be discussed in greater detail in the next section.

2 *Sustainable Management of Forests*

The concept of 'sustainable forest management' (SFM) has been notoriously difficult to define. The 'deliberately vague' term was included in the 1992 Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (the 'Forest Principles'), which was agreed to at the Rio Earth Summit in 1992.[290] Several regional processes have since attempted to define this term and develop indicators and criteria.[291] As David Humphreys argues, the formulation of the concept of 'sustainable development' had a strong impact on the emergence of 'sustainable forest management' as a legal idea.[292] This concept is central to the International Tropical Timber Agreement (1983, 1994 and 2006),[293] the first

[287] V. Tauli-Corpuz, *Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples* (2016) para 8.

[288] Ibid., para 9.

[289] Ibid., para 11.

[290] *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, A/CONF.151/26 (Vol. III) (14 August 1992) paragraph 8(d) states that 'Sustainable forest management and use should be carried out in accordance with national development priorities and on the basis of environmentally sound national guidelines. In the formation of such guidelines, account should be taken, as appropriate and if applicable, of relevant internationally agreed methodologies and criteria.' For a discussion of these processes see Humphreys, *Logjam: Deforestation and the Crisis of Global Governance* , Chapter 6.

[291] See for example the Montreal Process, the Helsinki Process, the Tarapoto Proposal, and the Lepaterique Process for Central America.

[292] D. Humphreys, *Forest Politics: The Evolution of International Cooperation* (Earthscan, 1996) p. 21.

[293] *International Tropical Timber Agreement, 1983*, opened for signature 18 November 1983, 1393 UNTS 119 (entered into force 1 April 1985); *International Tropical Timber Agreement, 1994*, opened for signature 1 April 1994, 1955 UNTS 81 (entered into force 1 January 1997);

commodity agreement to also include conservation provisions. Subsequent to the articulation of the Forest Principles, the 1995 protocol to the Lomé IV Convention was the first international legal agreement between governments from the North and South on SFM.[294] The concept of SFM is central to the four global objectives that organise the 2007 Non-Legally Binding Instrument on All Types of Forests, especially the first objective – to 'reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation'.[295] This instrument also recognises that SFM, as a 'dynamic and evolving concept, aims to maintain and enhance the economic, social and environmental values of all types of forests, for the benefit of present and future generations'.[296]

However, the concept of SFM has been critiqued for its environmental and social limitations. Global Witness writes that 'SFM is a poorly defined term that in practice has included highly destructive activities such as industrial-scale logging in intact natural (primary) forests'.[297] Similar to how 'sustainable development' has been critiqued as a paradigm that facilitates the sustaining of capitalism rather than promotion of ecological values, SFM has been described as a 'nasty little euphemism', that in practice allows the continuation of destructive logging practices.[298] As Global Witness alleges:

> The lack of clear performance thresholds has allowed high-impact industrial logging companies to call their practices "SFM" without changing those practices at all. These companies were quick to co-opt the term and use it in their communications strategies. As a result, SFM has become strongly associated with industrial forestry, without requiring any changes to status quo logging practices.[299]

The development of forestry science can be traced to seventeenth century European attempts to understand the detrimental consequences of over-utilisation of resources alongside the need to safeguard them for future generations. Eighteenth century German scientific forestry formulated the concept of 'Nachhaltigkeitsprinzip' (sustainability principle) and developed quantitative methods to estimate growing stock and develop a yield-based system directed towards the maximisation of 'sustained yield'.[300]

International Tropical Timber Agreement, 2006, opened for signature 3 April 2006, 2797 UNTS 75 (entered into force 7 December 2011).

[294] Humphreys, *Forest Politics: The Evolution of International Cooperation*, p. 153.

[295] General Assembly Resolution 62/98, *Non-Legally Binding Instrument on All Types of Forests*, UN GAOR 62nd sess, 74th plen mtg, Agenda Item 54, A/RES/62/98 (31 January 2008), para 5.

[296] Ibid.

[297] *Trick or Treat? REDD, Development and Sustainable Forest Management*, p. 1.

[298] C. Lang, 'REDD+ myth: Sustainable forest management' (2014) 207 *World Rainforest Movement Bulletin*; see also *Pandering to the Loggers: Why WWF's Global Forest and Trade Network Isn't Working* (Global Witness, 2011).

[299] *Trick or Treat? REDD, Development and Sustainable Forest Management*, p. 4.

[300] See K. F. Wiersum, '200 years of sustainability in forestry: Lessons from history' (1995) 19 *Environmental Management* 321–9.

In these practices, nature is still fundamentally legible as a resource, extractable for human use, but where the impetus of resource utilisation needs to be tempered with the capacity of the resource to reproduce and regenerate. This ideology of scientific conservation was given impetus through colonial exploitation.[301] When the practices were deployed in the colonies, their 'actual experience' and 'professed aims' often conflicted.[302] .

Governance of forests has tended to assume a highly centralised form, one that depends on development of standardised measures and 'ways of seeing'. These practices have had the effect of strengthening the centralisation of political authority and strengthening state control over forested lands.[303] In anthropologist James Scott's influential account, practices of scientific forest management are emblematic of a specific modernist governance paradigm. He documents the emergence of a specific way of seeing the world that has sought to make phenomena legible in quantifiable terms from a top-down perspective.[304] This model of colonial forestry produced conflict given the reality that areas now delineated as 'forest reserves' were owned, inhabited, managed and used by peoples in those areas: 'curtailing the rights of these peoples inevitably sparked resistance, which either had to be suppressed through forced removals, fines, exactions or worse punishments or accommodated by permitting certain forest-based activities to continue as "privileges" subject to strict controls.'[305] Practices of forest management continue to generate social conflict, as well as excluding and impoverishing local communities. For example, a 2000 World Bank evaluation report describing the impact of 'large-scale commercial interests' in Indonesia found as follows:

> Not only has the use of forest resources been unsustainable, the distribution of the benefits has been highly inequitable. Since the inception of the New Order Regime in 1967, the Indonesian forest policy has subordinated the traditional rights of indigenous forest dwellers and communities dependent on forests for their livelihoods. The denial of access to forest resources has resulted in conflict and created one of the most serious social problems facing Indonesia at present.[306]

[301] R. Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600–1860* (Cambridge University Press, 1996) p. 3.

[302] Guha, *Environmentalism: A Global History* (Oxford University Press, 1999) Chapter 3.

[303] See N. L. Peluso and P. Vandergeest, 'Genealogies of the political forest and customary rights in Indonesia, Malaysia, and Thailand' (2001) 60(3) *The Journal of Asian Studies* 761.

[304] J. C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1998) Chapter 1.

[305] M. Colchester, T. Apte, M. Laforge, A. Mandondo, and N. Pathak, *Learning Lessons from International Community Forestry Networks: Synthesis Report* (Center for International Forestry Research, 2003) p. 8; see also N. L. Peluso, *Rich Forests, Poor People: Resource Control and Resistance in Java* (University of California Press, 1992).

[306] *Indonesia: The Challenges of World Bank Involvement in Forests* (World Bank Operations Evaluation Department, 2000) xvi.

In the mid twentieth century, the concept of 'sustained yield' was progressively broadened from a singular focus on timber, to encompass the multiple uses of forests, and consider social, as well as economic factors. The Collaborative Partnership on Forests, founded in 2000 and made up of 14 intergovernmental organisations[307] in 2008, promoted SFM as 'an effective framework for forest-based climate change mitigation and adaptation'.[308] In recent years there has been increasing attention to the 'multiple benefits' or 'multiple functions' of forests.[309] For example, a report of the United Nation Forum on Forests (UNFF) meeting states:

> Forests provide multiple goods and services that are essential for people worldwide and crucial for sustainable development. Forests make significant contributions to addressing the complex and interconnected global challenges relating to economic and social development, poverty eradication, environmental sustainability, energy, water and mitigation of and adaptation to climate change. Forests are also vital for the livelihoods of local and indigenous peoples, providing a repository for a large portion of the world's terrestrial biodiversity.[310]

This focus on multiple uses suggests that 'the different forest interests were reconcilable and that no intrinsic value conflicts existed between different ideas of future use', and therefore such 'win-win' rhetoric can be 'efficient as a way of holding different agendas together'.[311] However, in practice, this conception of the multiple uses of forests and the optimal yield of a range of different benefits is often quickly narrowed to a focus on the most economically productive uses. In the case of REDD+ such a rhetoric of 'multiple benefits' is arguably in tension with the focus in REDD+ on 'the conservation of forest carbon stocks' and the 'enhancement of forest carbon stocks'.[312] Thus, in many ways, although its focus is carbon rather than timber, REDD+ arguably replicates many of problematic dynamics of SFM. Finally, the recognition that the activities of conservation and sustainable forest management each have conflicted histories highlights the need to be attentive to the social impact of REDD+ programs and how they risk perpetuating dangerous dynamics that consolidate power and inequalities. It is therefore unsurprising that

[307] The Collaborative Partnership on Forests was established in April 2001, based on a recommendation by the UN Economic and Social Council. Its purpose is to support the work of the UNFF and increase cooperation and collaboration on forest governance.

[308] Collaborative Partnership on Forests, *Strategic Framework for Forests and Climate Change*, 2008, www.fao.org/forestry/16639-1-0.pdf.

[309] See United Nations Forum on Forests, *Report of the Tenth Session (4 February 2011 and 8 and 9 April 2013)*, E/2013/42, E/CN.18/2013/18, 42, 'Significance of forests'.

[310] Ibid.

[311] See J. Andersson and E. Westholm, 'Closing the future: Environmental research and the management of conflicting future value orders' (2019) 44(2) *Science, Technology and Human Values* 237–62, 250.

[312] Decision 1/CP.16, para 70(c) and (e).

the potential social impacts of REDD+ have been a key concern, as the next section discusses.

F REDD+ AS A SOCIAL PROJECT

While REDD+ was initially understood primarily as an environmental project, it quickly became evident that it had clear social implications for peoples living in and around forested areas. This section considers how the scope of REDD+ has expanded to additionally become a 'social' project, concerned also with the livelihood and governance of people living in and around forested areas. As Signe Howell notes, 'What was listed in the original REDD documents as one of several co-benefits to the conservation of tropical forests, namely "governance and rights", is rapidly turning into a major preoccupation.'[313] In discussions on REDD+ implementation there is now a broad concern about protecting the rights of people living in and area forested areas,[314] as well as a recognition of the 'rights dimension' of REDD+ and the need to create synergies between human rights instruments and REDD+.[315] This section analyses how social concerns have been discussed in debates on REDD+, tracing the shift from the initial marginalisation of social considerations to the growing consensus that REDD+ must minimise social risks ('do no harm') and promote social benefits ('do good') in order to be both equitable and effective.[316] In particular, the implementation of safeguards, as well as mechanisms of benefit sharing, tenure reform and free, prior and informed consent, have all been seen as key ways to minimise risks and promote benefits to forest peoples. The discussion shows how the manner in which REDD+ debates have taken up social concerns marginalised more radical voices opposed to REDD+, and the question of *whether* REDD+ should proceed has been increasingly obscured by a focus on *how* REDD+ should be implemented.

1 *Debates in the UNFCCC and by NGOs*

It is important to recognise the background conditions under which the push for REDD+ safeguards has gained particular traction, namely the intensification of processes that restructure land relations and promote human dispossession in the

[313] S. Howell, '"No RIGHTS–No REDD": Some implications of a turn towards co-benefits' (2014) 41(2) *Forum for Development Studies* 253–72 at 254.

[314] Ibid., 257.

[315] See A. Savaresi, 'The human rights dimension of REDD' (2012) 21(2) *Review of European Community & International Environmental Law* 102–13; A. Savaresi, 'REDD+ and human rights: Addressing synergies between international regimes' (2013) 18(3) *Ecology and Society*.

[316] E. O. Sills (ed.), *REDD+ on the Ground: A Case Book of Subnational Initiatives across the Globe* (Center for International Forestry Research, 2014) p. 430; see also the discussion in Chapter 6.

Global South. A key characteristic of the present era is the 'explosion' of (trans) national commercial land transactions and speculation ('land grabbing') driven by large-scale, export-orientated agricultural production (including biofuels), as well as extractive industries and conservation practices.[317] The LandMatrix database documented over 1000 large-scale land concluded deals (over 200 hectares) affecting almost 40 million hectares of land, an area over 4,300 times the size of Manhattan, between 2000 and 2015.[318] These new forms of 'accumulation by dispossession'[319] have produced, as Saskia Sassen documents, a new global logic of expulsion.[320] The expulsion of life deemed 'superfluous'[321] or 'disposable',[322] she argues, is not accidental. Rather, such expulsions are produced by a 'systemic logic at work' in 'predatory formations' that are part of 'larger assemblage of elements, conditions and mutually reinforcing dynamics'.[323] This global context has made concerns that REDD+ could represent a form of 'green grabbing' particularly acute.[324]

The first major report to address the potential social impacts of REDD+ was *Seeing 'RED'? Forests, Climate Change Mitigation and the Rights of Indigenous Peoples*', written by Tom Griffiths for the Forest Peoples' Program and launched to coincide with COP13 (Bali, 2007).[325] It highlighted that implementing such projects

[317] For a discussion of 'land grabbing', see N. L. Peluso and C. Lund, 'New frontiers of land control: Introduction' (2011) 38(4) *The Journal of Peasant Studies* 667–81 and the Special Edition of which it is an introduction; for a discussion of the methods of land grabbing see I. Scoones, R. Hall, S. M. Borras, Jr., B. White, and W. Wolford, 'The politics of evidence: Methodologies for understanding the global land rush' (2013) 40(3) *The Journal of Peasant Studies* 469–83 and the remainder of the Special Edition; for a discussion of biofuels see S. M. Borras, Jr., P. McMichael, and I. Scoones, 'The politics of biofuels, land and agrarian change: Editors' introduction' (2010) 37(4) *The Journal of Peasant Studies* 575–92 and the remainder of the Special Issue; for a discussion of 'green grabbing' see Fairhead et al., 'Green grabbing: A new appropriation of nature?' and the remainder of the Special Issue.

[318] 'Land Matrix' website, www.landmatrix.org/en (accessed 6 February 2015).

[319] D. Harvey, *The New Imperialism* (Oxford University Press, 2005).

[320] S. Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Harvard University Press, 2014); see also S. Sassen, 'A savage sorting of winners and losers: Contemporary versions of primitive accumulation' (2010) 7(1) *Globalisations* 23–50.

[321] J. Biehl and T. Eskerod, *Vita: Life in a Zone of Social Abandonment* (University of California Press, 2013).

[322] See M. Duffield, *Development, Security and Unending War: Governing the World of Peoples* (Polity, 2007).

[323] Sassen, *Expulsions: Brutality and Complexity in the Global Economy*, pp. 77–8.

[324] Fairhead et al., 'Green grabbing: A new appropriation of nature?'.

[325] T. Griffiths, *Seeing 'RED'?: Avoided Deforestation' and the Rights of Indigenous Peoples and Local Communities* (Forest Peoples Programme, 2007). Revised and updated versions of this report were released in December 2008, see T. Griffiths, *Seeing 'REDD'?: Forests, Climate Change Mitigation and the Rights of Indigenous Peoples and Local Communities – Update for Poznań* (UNFCCC COP14) (Forest Peoples Programme, 2008); and in May 2009, see T. Griffiths, *Seeing 'REDD'?: Forest, Climate Change Mitigation and the Rights of Indigenous Peoples and Local Communities – Updated Version* (Forest Peoples Programme, 2009).

without proper regard for rights and social and livelihood issues could give rise to the following risks:

- renewed and even increased state and 'expert' control over forests;
- overzealous government support for anti-people and exclusionary models of forest conservation (evictions, expropriation) to protect lucrative forest carbon 'reservoirs';
- unjust targeting of indigenous and marginal peoples as the 'drivers' of deforestation;
- violations of customary land and territorial rights;
- state and NGO zoning of forest lands without the informed participation of forest dwellers;
- unequal imposition of the costs of forest protection on indigenous peoples and local communities;
- unequal and abusive community contracts;
- land speculation, land grabbing and land conflicts (competing claims on [avoided deforestation] compensation);
- corruption and embezzlement of international funds by national elites;
- increasing inequality and potential conflict between recipients and non-recipients of [avoided deforestation] funds;
- potential conflict among indigenous communities (over acceptance or rejection of [avoided deforestation] schemes)[.][326]

The report argued that any effective policy 'on forests and climate change mitigation must be based on the recognition of rights, respect for the principle of free, prior and informed consent (FPIC) and requirements for progressive forests sector tenure and governance reforms', otherwise it would perpetuate injustices.[327] These concerns were quickly taken up by human rights advocates and civil society actors. At the launch of the World Bank's Forest Carbon Partnership Facility at the Bali COP in 2007 the (then) Chair of the United Nations Permanent Forum on Indigenous Peoples (UNPFII), Victoria Tauli-Corpuz, strongly condemned the World Bank's failure to consult properly with Indigenous peoples prior to the Facility's launch.[328]

By 2008, questions concerning the social impacts of REDD+ had permeated into UNFCCC processes. The report from a June 2008 SBSTA workshop on methodological issues associated with REDD+ noted:

[326] Griffiths, *Seeing 'RED'? Avoided Deforestation' and the Rights of Indigenous Peoples and Local Communities*, p. 1.
[327] Ibid.
[328] V. Tauli-Corpuz, 'Statement on the Announcement of the World Bank Forest Carbon Partnership Facility' 11 December 2007, www.un.org/esa/socdev/unpfii/documents/statement_vtc_toWB11dec.2007.doc.

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> Some participants stressed the importance of involving local communities in the sustainable management of forests. It has been shown that training these communities enables them to manage their forest resources on a more sustainable basis.
>
> It was noted that social implications, particularly for indigenous people and local communities, associated with any system for reducing emissions from deforestation and forest degradation in developing countries should be taken into consideration.[329]

Simultaneously, social mobilisation around the potential social implications of REDD+ continued. The 'Accra Briefing' (August 2008) by NGOs stressed the need for the 'recognition and enforcement of customary and territorial land rights' and reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in any REDD+ policy.[330] More critically, Director of the Global Forest Coalition Simone Lovera described REDD+ as 'another disaster in the making' and a 'fairy-tale about a simple solution to climate change'.[331] In November 2008 the Friends of the Earth International (FoEI) report *REDD Myths* concluded that if REDD+ were to significantly increase the value of forests 'it is likely [would have] extremely detrimental impacts on some of the poorest people in the world'.[332] It argued that REDD+ implementation could potentially displace millions, and that there were no guarantees that Indigenous peoples would benefit from its implementation unless secure land rights were ensured.[333] The report also cited additional risks of REDD+ such as 'conflict between and within communities (especially where land rights are unclear), changes to local power structures and shifts in social and traditional values and behaviours'.[334] Survival International's *The Most Inconvenient Truth of All: Climate Change and Indigenous Peoples* (2009) likewise suggested REDD+ could make recognition of land rights more difficult and undermine existing recognition as well as potentially restrict traditional land use activities.[335]

Alongside this focus on the risks REDD+ could present to forest peoples, a distinct but related discourse emerged that emphasised potential benefits REDD+ could provide to peoples living in and around forest areas. A 2008 report by Overseas Development Initiative (ODI) canvassed design and policy options for how REDD+

[329] UNFCCC Secretariat, *Report on the Workshop on Methodological Issues Relating to Reducing Emissions from Deforestation and Forest Degradation in Developing Countries: A Note from the Secretariat*, FCCC/SBSTA/2008/11 (8 September 2008) paras 71–72.

[330] C. Lang, 'FoEI: Forests are more than carbon' *REDD-Monitor* 29 October 2008.

[331] See C. Lang, 'Global Forest Coalition attacks REDD' *REDD-Monitor* 6 October 2008.

[332] R. Hall, *REDD Myths: A Critical Review of Proposed Mechanisms to Reduce Emissions from Deforestation and Degradation in Developing Countries* (Friends of the Earth International, 2008) p. 16.

[333] Ibid.

[334] Ibid., p. 16.

[335] *The Most Inconvenient Truth of All: Climate Change and Indigenous People* (Survival International, 2009).

could be made to 'work for the poor'.[336] It identified that there were pragmatic as well as moral reasons for a 'pro-poor' approach to REDD+, including improved long-term project sustainability, reduced risks for investors and buyers, the potential for increased returns or 'niche' market opportunities as well as donor contractual and legal obligations.[337] These discussions highlighted REDD+ as a potential opportunity to promote co-benefits and stressed that the viability of REDD+ depended upon it being perceived as not causing harm and in fact as having positive impacts. A report by the Center for International Forestry Research (CIFOR) highlighted that REDD+ 'deriv(es) much of its legitimacy and potential effectiveness from its ability to improve the welfare of the forest-dependent poor and foster development in some of the poorest regions of the world'.[338] Similar conclusions were reached by the influential *Eliasch Review* that recognised the potential risks REDD+ could pose to those living in and around forest areas. For Eliasch, participation was key to mitigating these risks: 'the full participation of forest communities will make reforms more likely to succeed and benefit the poor.'[339]

This emphasis on 'rights-based' or 'pro-poor' REDD+ has become central to the mandate of the UN-REDD Programme, whose *Framework Document* articulates the Programme's guiding principles as a 'human-rights-based approach', 'gender equity', 'environmental sustainability', 'results-based management' and 'capacity development'.[340] At the Programme's launch in September 2008, participation and benefit-sharing were emphasised, with UN Under-Secretary-General and UNEP Executive Director Achim Steiner stating, 'REDD must benefit local communities and indigenous peoples as much as it benefits national economies and the global environment. If that is done the prospects are exciting and potentially far reaching.'[341]

The importance of participation was reiterated in Global Witness' report *Honest Engagement: Transparency and Civil Society Participation in REDD* (February 2009) that stressed 'enhancing transparency and understanding of the process, and ensuring broad engagement of civil society organizations and indigenous groups, must move to the top of the agenda if REDD is to avoid failure.'[342] Other civil society reports, such as FERN's *An Overview of Selected REDD+ Proposals*

[336] L. Peskett, D. Huberman, E. B. Jones, G. Edwards, and J. Brown, *Making REDD Work for the Poor* (Poverty Environmental Partnership, 2008).

[337] Ibid.

[338] D. Brown, F. Seymour, and L. Peskett, 'How do we achieve REDD co-benefits and avoid doing harm?' in A. Angelsen (ed.), *Moving Ahead with REDD: Issues, Options and Implications*, (Center for International Forestry Research, 2008) pp. 107–18, 109.

[339] Eliasch, *Climate Change: Financing Global Forests*, p. xiii.

[340] UN-REDD Programme, *Framework Document* (2008) p. 7.

[341] United Nations, '"REDD"-letter day for forests: United Nations, Norway unite to combat climate change from deforestation, spearheading new programme' (Press release, 24 September 2008), www.un.org/press/en/2008/envdev1005.doc.htm.

[342] *Honest Engagement: Transparency and Civil Society Participation in REDD* (Global Witness, 2008) p. 1.

(November 2008), similarly focused on the centrality of rights as 'crucial to forest conservation' and the imperatives of tenure reform, warning that without clearly defined property rights REDD+ would fail.[343] Released in May 2009, the International Institute for Environment and Development (IIED) report *Tenure in REDD: Start-point or Afterthought?* foregrounded the issues of tenure and forest governance, and emphasised that questions of land and resource tenure needed to be given greater attention in REDD+ implementation to ensure both the equity and effectiveness of REDD+.[344] A subsequent consensus quickly developed that tenure clarification was a precondition for, and potentially co-benefit arising from, REDD+ activities.

A 2009 report by CIFOR and IUCN lists potential benefits that REDD+ for people living in and around forest areas, including:

- encouraging government action to secure and formalize land tenure for forest dwellers;
- generating revenue that governments could direct to social services in rural areas (health care centres, schools, water systems, etc.);
- creating new income streams for forest-dwellers;
- maintaining forests' regulating ecosystem services … which may enhance adaptive capacity in a changing climate; and
- maintaining forests' provisioning ecosystem services … which may also help buffer communities from the shocks of [climate related] reduced agricultural yields.[345]

A further IUCN briefing document noted that REDD+ projects may improve livelihoods and provide opportunities to strengthen capacity of Indigenous peoples' organisations and communities, whilst an increased awareness of Indigenous peoples' role in forest management may contribute to further recognition to Indigenous peoples' traditional knowledge systems.[346] It concluded that *if* rights are recognised REDD+ is more likely to achieve mitigation and sustainable development objectives.[347]

The discussions on the social impacts of REDD+ increasingly came to be structured in accordance with two dominant frames: firstly, one focused on the *risks*

[343] K. Dooley, *An Overview of Selected REDD Proposals* (FERN and Forest Peoples Programme, 2008) p. 10.

[344] L. Cotula and J. Mayers, *Tenure in REDD – Start-Point or Afterthought?* (International Institute for Environment and Development, 2009).

[345] K. Lawlor and D. Huberman, 'Reduced emissions from deforestation and forest degradation (REDD) and human rights' in J. Campese et al. (eds.), *Rights-Based Approaches: Exploring Issues and Opportunities for Conservation*, (Bogor, Indonesia: CIFOR and IUCN, 2009), pp. 269–85, 269 and 272.

[346] *Briefing Document: Indigenous Peoples and Climate Change/REDD: An Overview of Current Discussions and Main Issues* (IUCN, 2010).

[347] Ibid., p. 9.

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REDD+ projects might present to people living in and around forested areas that emphasises the need to *manage* these risks; and secondly, one focused on *benefits* REDD+ projects might present to people living in and around forested areas that emphasised the need to put in place measures to ensure that such benefits were *realised*. Both these discourses, around risks and around benefits, focused on *how* REDD+ could be carried out, rather than *whether* it should be. That is, the two dominant positions taken in debates over social impacts both seemed to accept the existence or rolling out of REDD+ as a given, and primarily focused on ways in which REDD+ could be implemented in order to either minimise risks or materialise potential benefits for forest people. Thus, the dominant framing of social debates increasingly foreclosed critiques of REDD+ *as a project* and instead directed attention to its *mode of implementation*.[348]

2 *Debates within the UN Permanent Forum on Indigenous Issues*

This section turns to consider how a similar grammar of argumentation, as that analysed in civil society debates above, was adopted in discussions about REDD+ at the UNPFII between 2008 and 2013. It shows how within the UNPFII debates, individuals and organisations that were critical of the idea of REDD+ were increasingly sidelined, and the institutional focus shifted to addressing how REDD+ should be implemented in order to best manage risks and realise potential benefits for people living in forested areas.

'We want to speak' was the collective call from a caucus in the back of the room on 2 May 2008, the concluding day of the Seventh Session of the UNPFII. Initially, the Chair of the session, Victoria Tauli-Corpuz, attempted to continue through the agenda, but she was prevented from doing so as the clapping and chanting from the back of the room intensified in speed and volume. Delegates in the two back rows were on their feet calling out: 'We want to make a statement!', 'You have to listen to us — we want that you hear us.', 'Indigenous peoples want to make a statement!' 'Madame Chair — we want to speak.' The Chair offered to give the interjectors the floor once 'business' had been finished, but the protests continued and security personnel were called into the session. It was only when the situation risked spiralling out of control, after Indigenous delegates were almost forcefully evicted from the United Nations space that claimed to represent and facilitate their voices, that the Chair requested security staff to leave and reorganised proceedings to allow time to listen to a statement prepared by the Caucus Indigenas de Abya Yala.[349]

[348] This argument is made in the context of debates on land grabbing here: S. Borras and J. Franco, 'From threat to opportunity? Problems with the idea of a "code of conduct" for land-grabbing' (2010) 13 *Yale Human Rights and Development Law Journal* 507–23.

[349] See 'PROTEST: Indigenous peoples "2nd MAY REVOLT" at the UNPFII', *Carbon Trade Watch*, 12 May 2008, www.carbontradewatch.org/video/protest-indigenous-peoples-2nd-may-revolt-at-the-unpfii-4.html.

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The commotion was sparked by recommendations that had been presented to the UNPFII on carbon market 'offset' mechanisms under the CDM and REDD+.[350] One of the recommendations described the CDM as a 'good example of the kind of partnership that will become increasingly important',[351] and called for greater engagement with Indigenous peoples in the process of designing and implementing such programs. Another recommendation called on World Bank carbon funds to centrally involve Indigenous peoples in their project design, implementation and evaluation.[352] These recommendations calling for more Indigenous *participation and voice in* REDD+ projects ran counter to the *opposition to* REDD+ articulated by some Indigenous groups and their representatives in the UNPFII, who saw the commodification of nature as fundamentally incompatible with their worldview and cosmology. Tom Goldtooth, executive director of the Indigenous Environment Network, recalls that throughout the Seventh Session 'intervention after intervention of our Indigenous brothers and sisters from the Global South said, "This is wrong, we do not support REDD, we do not support these offset initiatives."'[353] He recounts that 'despite this overwhelming opposition [to carbon trading] we got [a report] from the permanent forum members promoting ... these World Bank initiatives'.[354]

After the commotion subsided, a petition addressed to the UNPFII expressing opposition to REDD+ was read out, which asserted that '[t]he vast majority of indigenous peoples feel that the REDD will not benefit Indigenous Peoples, but in fact will result in [further] violations of Indigenous Peoples' rights'.[355] In response, some amendments were made to the recommendations, and the Permanent Forum recommended that REDD+ and the 'renewed political focus on forests' should be '*used towards securing the rights* of indigenous peoples living in forests'.[356] The Permanent Forum also noted that

> [The] current framework for REDD is not supported by most indigenous peoples [and that all] new proposals for avoided deforestation or reduced emissions from

[350] V. Tauli-Corpuz and A. Lynge, *Impact of Climate Change Mitigation Measures on Indigenous Peoples and Their Territories and Lands*, UNPFII, Seventh Session, E/C.19/2008/10 (20 March 2008).

[351] Draft recommendations E/C.19/2008/L.3, para 5, reflected in Economic and Social Council, *Permanent Forum on Indigenous Issues: Report on the Seventh Session (21 April–2 May 2008)* E/2008/43, E/C.19/2008/13 (14 May 2008) para 8.

[352] Ibid., para 88. Note, the recommendation also stated: 'Those who opt not to participate in reduction of emissions from deforestation in developing countries or in the Forest Carbon Partnership Facility-supported projects should be respected.'

[353] Transcribed by author from 'PROTEST: Indigenous peoples "2nd MAY REVOLT" at the UNPFII'.

[354] Ibid.

[355] Ibid.

[356] Economic and Social Council, Permanent Forum on Indigenous Issues: Report on the Seventh Session (21 April–2 May 2008) E/2008/43, E/C.19/2008/13 (14 May 2008) para 44 (emphasis added).

> deforestation must address the need for global and national policy reforms and be guided by the United Nations Declaration on the Rights of Indigenous Peoples, respecting rights to land, territories and resources; and the rights of self-determination and the free, prior and informed consent of the indigenous peoples concerned.[357]

Since this incident several reports by Special Rapporteurs appointed by the UNPFII have addressed the impacts of carbon-offset mechanisms on Indigenous peoples.[358] The 2013 report, by Paul Kanyinke Sena, Myrna Cunningham and Bertie Xavier, briefly reviews the experiences and positions of Indigenous organisations and communities around the world in relation to REDD+. It acknowledges the

> numerous reported cases of REDD-plus projects involving indigenous communities that appear to have signed highly disadvantageous agreements as a consequence of a lack of understanding of the implications, a lack of access to advice or information, bad faith on the part of the REDD-plus developer and in some cases, a breakdown in community governance arrangements or corruption on the part of local officials. Terms of such purported contracts have included, for example, "agreements" that the community will cease to use its forests for any production purposes, including subsistence, hunting and gathering activities. Notwithstanding the fact that the community (or certain members of the community claiming to act on its behalf) may have signed an agreement, clearly the free, prior informed consent of the community has not been given, nor are the terms mutually agreed by any reasonable definition of the terms. In some cases, the document has been prepared in the language of the developer with no faithfully translated version provided to the community. Such cases have been observed in many regions, including the Amazon and the Congo Basin countries and in the Asia–Pacific region.[359]

[357] Ibid., para 45.

[358] These include the report by Tauli-Corpuz and Lynge, *Impact of Climate Change Mitigation Measures on Indigenous Peoples and Their Territories and Lands*, UNPFII, Seventh Session, E/C.19/2008/10 (20 March 2008); V. Tauli-Corpuz and L.-A. Baer, *Results of the Copenhagen meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change; Implications for Indigenous Peoples' Local Adaptation and Mitigation Measures*, Permanent Forum on Indigenous Issues, 9th session, E/C.19/2010/18 (2 March 2010); H. Id Balkassm and P. Hasteh, *Study on the Extent to which Climate Change Policies and Project Adhere to the Standards Set Forth in the United Nations Declaration on the Rights of Indigenous Peoples: Note by the Secretariat*, UNPFII, Ninth Session, E/C.19/2010/7 (2 February 2010) and the background concept note, *The Extent to which Climate Change Policies and Projects Adhere to the Standards Set Forth in the United Nations Declaration on the Rights of Indigenous Peoples: Concept Note Submitted by the Permanent Forum Special Rapporteurs*, UNPFII, Eighth Session, E/C.19/2009/5 (25 March 2009); and P. Kanyinke Sena, M. Cunningham, and B. Xavier, *Indigenous People's Rights and Safeguards in Projects Related to Reducing Emissions from Deforestation and Forest Degradation: Note by the Secretariat*, UN ESCOR, Permanent Forum on Indigenous Issues, 12th sess, Agenda Item 5, UN Doc E/C.19/2013/7 (5 February 2013).

[359] Kanyinke Sena et al., *Indigenous People's Rights and Safeguards in Projects Related to Reducing Emissions from Deforestation and Forest Degradation*, para 26.

This passage speaks to critical 'on the ground' realities about how REDD+ is being implemented and the abuses of power evident in some REDD+ schemes – echoing similar documentation of abuses in REDD+ implementation that have been confirmed in other NGO reports.[360] However, the UNPFII report positions these examples as at one end of a 'wide spectrum', and also highlights opposite cases, 'where the initiative for a project springs from a community decision, perhaps as a way of funding its own previously determined territorial management and community development aspirations.'[361] The report thereby implies that the problems associated with REDD+ are not inherent to the scheme but are instead produced by a lack of good governance, information or understanding, or are the product of corruption or bad faith. The report further positions properly implemented REDD+ schemes as an opportunity for Indigenous peoples to consolidate their rights.[362] It therefore reflects the growing convergence between rights discourses and REDD+ imperatives evident both at a rhetorical level but also in a proliferation of reports on rights in REDD+ and 'best practice' guidelines.

The report acknowledged that there are at least two divergent positions adopted by Indigenous groups in relation to REDD+, but it failed to acknowledge the deeper ontological and normative reasons why some groups might have rejected REDD+. It described 'two different scenarios', namely:

> (a) Organizations radically oppose REDD-plus owing mainly to insecurity as to the rights of indigenous peoples, the weakness of existing national legal frameworks to protect those rights and the uncertainties of the Framework Convention negotiations on REDD-plus. Those organizations are strongly opposed to the carbon market.
> (b) Organizations consider the REDD-plus model as [offering] opportunities for indigenous peoples. Although they share reservations about the risks that this model offers if indigenous peoples' rights are not fully recognized and strong safeguards are not in place, some organizations are open to the voluntary carbon market.[363]

Despite acknowledging many reports of communities signing 'highly disadvantageous agreements',[364] the report engages only minimally with the former position,

[360] See for example J. Kill, *REDD: A Gallery of Conflicts, Contradictions and Lies* (World Rainforest Movement, 2014); cf. the more optimistic accounts provided in E. O. Sills (ed.), *REDD+ on the Ground: A Case Book of Subnational Initiatives across the Globe* (Center for International Forestry Research, 2014).

[361] P. K. Sena, M. Cunningham and B. Xavier, *Indigenous People's Rights and Safeguards in Projects Related to Reducing Emissions from Deforestation and Forest Degradation: Note by the Secretariat*, UN ESCOR, Permanent Forum on Indigenous Issues, 12th sess, Agenda Item 5, UN Doc E/C.19/2013/7 (5 February 2013), para 25.

[362] Ibid., para 59.

[363] Ibid., para 58.

[364] Ibid., para 24.

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and concludes that 'REDD-plus offers opportunities for indigenous peoples to consolidate their rights, including tenure of their territories and the implementation of community-led livelihood strategies.'[365] It thus focuses on 'the nature of potential benefits to indigenous peoples and how those benefits could be secured through the various safeguard mechanisms being developed'.[366] As in the discussions of safeguards described above, this focus eludes the normative question of whether REDD+ *should* be implemented. Instead, the attention is directed to questions of REDD+'s implementation: how to manage the potential risks of REDD+ and how to promote benefits through REDD+.

3 *The Gradual Elaboration of Safeguards*

As discussions about the social impacts on REDD+ progressed, a consensus developed that the implementation of social safeguards is a key means to minimise risks and promote benefits to forest peoples. The road towards the elaboration of safeguards in the UNFCCC was, however, far from smooth. At Poznań (COP14, 2008), Parties and observers were invited 'to submit . . . their views on issues relating to indigenous people and local communities for the development and application of methodologies'.[367] This wording was the subject of intense dispute: initial draft wording had also included 'noting the rights and importance of engaging indigenous peoples and other local communities'. However, this reference to 'rights' was removed after lobbying by the US, Canada, New Zealand and Australia,[368] sparking civil society protests[369] that demanded 'an unequivocal reference to rights and the UN Declaration on the Rights of Indigenous peoples be reinserted into the draft COP14 Decision text on REDD.'[370] The language used by SBSTA also ignored the earlier address to the session by UNPFII Chair Victoria Tauli-Corpuz, who had called for the UNDRIP to 'be used as an overarching framework for the design, methodologies, implementation and monitoring and evolution of REDD+' and had stated that no projects should occur on Indigenous lands without free, prior and

[365] Ibid., para 59.
[366] Ibid., summary.
[367] UNFCCC, *Report of the Subsidiary Body for Scientific and Technological Advice on Its Twenty-Ninth Session, Held in Poznań from 1 to 10 December 2008*, FCCC/SBSTA/2008/13 (17 February 2009), para 45.
[368] Australia, New Zealand, Canada and the United States all voted against the United Nations Declaration on the Rights of Indigenous People when it was adopted by the General Assembly on 13 September 2007. However, all four of these settler-colonial states have since endorsed the Declaration: Australia on 3 April 2009, New Zealand on 19 April 2010, Canada on 12 November 2010 and the United States on 16 December 2010.
[369] Third World Network, 'Indigenous Peoples outraged at removal of rights in REDD outcome, Poznań news update 12' (December 2008).
[370] C. Lang, 'Rights struck from draft text on REDD', *REDD-Monitor* 9 December 2008.

informed consent.[371] At the final SBSTA session, a representative from the International Indigenous Peoples' Forum on Climate Change sought to speak to express profound disappointment over the removal of 'rights' language and the use of the singular rather than the collective term 'indigenous peoples'.[372] The Chair prevented her from speaking by saying:

> I'm sorry, I'm going to have to stop you there because you [civil society groups] have exceeded the two minutes allocated to you for the statement and in the interests of time we are going to have to move on and close the meeting.[373]

Although the UNFCCC COP process allows for more civil society participation and inclusion of Indigenous voices than many other international legal institutions,[374] this incident highlights how there are still broader institutional failings to provide space and meaningful participation for diverse and oppositional voices. Moreover, this incident reveals the limitations of calls for participation and the broader issue of to what extent these institutional spaces are able to hear and take on board such voices, even if they are allowed to speak.

Subsequent to the Poznań COP14 multiple submissions from Parties and observer groups were received by SBSTA.[375] Many submissions stressed the need to fully involve local communities in monitoring and implementation and the necessity for safeguards and tenure clarification; many submissions also stressed the necessity of a rights-based approach, including provisions for consultation towards free, prior and informed consent and other rights articulated in the UNDRIP. At Copenhagen a methodological decision on REDD+ recognised the 'need for full and effective engagement of indigenous peoples and local communities in, and the potential contribution of their knowledge to, monitoring and reporting of activities',[376] although a separate draft text on safeguards could not be agreed upon.[377]

As discussed previously, the 2010 Cancun Agreements listed seven safeguards that should be 'promoted and supported', and also requested that countries, 'when

[371] C. Lang, 'UN Permanent Forum on Indigenous Issues intervenes on REDD in Poznań' *REDD-Monitor* 2 December 2008.

[372] C. Lang, 'Indigenous Peoples censored at Poznań' *REDD-Monitor* 15 December 2008.

[373] *REDD: Indigenous Peoples Not Allowed to Speak at UNFCCC* (2008), www.youtube.com/watch?v=brsqUgbBHuo.

[374] C. Betzold and A. Flesken, 'Indigenous peoples in international environmental negotiations: Evidence from biodiversity and climate change' in T. Kaime (ed.), *International Climate Change Law and Policy: Cultural Legitimacy in Adaptation and Mitigation* (Routledge, 2014), pp. 63–83.

[375] UNFCCC, *Issues Relating to Indigenous Peoples and Local Communities for the Development and Application of Methodologies: Submissions from Parties*, FCCC/SBSTA/2009/MISC.1 (10 March 2009), Add.1 (17 April 2009) and Add.2 (27 June 2009).

[376] Decision 4/CP.15, preamble.

[377] Draft Decision -/CP.15 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 sinks in developing countries' FCCC/AWGLCA/2009/L.7/Add.6 (15 December 2009).

preparing national REDD+ strategies or plans … ensur[e] the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities'.[378] Debates about the processes by which the implementation of safeguards is verified in order to ensure environmental integrity and to prevent negative social impacts has been one of the most fraught areas of REDD+ policy and there has been significant criticism of the fact that the extent to which safeguards are realised is not subject to international review.[379] While the safeguards, as expressed in UNFCCC agreements on REDD+, lack clear legal enforcement, they nonetheless have had a significant a normative impact. Several guides have been prepared on how to actualise safeguards within national REDD+ projects,[380] and it is assumed 'host' governments of REDD+ projects should develop capacity to implement and enforce safeguards as part of REDD+-readiness programs.[381] Further, the language, style and approach of the UNFCCC safeguards is reflected in social and environmental safeguard provisions that have been adopted by other agencies involved in REDD+-readiness or the regulation of carbon markets in more tangible ways. As Margaret Young argues, there is an entire 'plethora of informal or soft-law processes which have developed outside of the UNFCCC negotiations but which influence and draw upon these negotiations', predominately arising out of bilateral and multilateral processes engaged in supporting REDD+-readiness activities.[382] Safeguards have also been promoted through an emerging transnational governance network that includes the internal guidelines and procedures governing donors' activities (such as international development agencies of countries, including Australia, Norway and Germany, and multilateral development banks) and policies or voluntary Codes of Conduct of implementing agencies (transnational conservation or aid bodies such as The Nature Conservancy, Flora and Fauna International, World Wide Fund for Nature (WWF), Wetlands International or CARE) alongside market-based certification schemes.[383]

UN-REDD and the FCPF have developed harmonised *Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities*, defining stakeholders broadly as 'those groups that have a stake/interest/right in the forest and those that will be affected either negatively or positively by REDD+ activities', but

[378] Cancun Agreements, para 72.

[379] See for example C. Lang, 'REDD safeguards: What are they?', *REDD-Monitor*, 20 March 2015.

[380] D. Rey and S. Swan, *A Country-Led Safeguards Approach: Guidelines for National REDD+ Programmes* (SNV–The Netherlands Development Organisation, REDD+ Programme, 2014); F. Daviet and G. Larsen, *Safeguarding Forests and People: A Framework for Designing a National System to Implement REDD+ Safeguards* (World Resources Initiative, 2012).

[381] See for example, Pillar Five of Indonesia REDD+ Strategy, 'REDD+ National Stategy' (Indonesian REDD+ Task Force, 2012), www.satgasreddplus.orgon the inclusion of stakeholders.

[382] Young, 'REDD+ and interacting legal regimes', p. 93.

[383] See for example *REDD+ Social & Environmental Standards, Version 2* (10 September 2012).

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focusing primarily on 'indigenous peoples and other forest-dependent communities'.[384] It refers to further applicable standards, which for the FCPF includes the FCPF Charter and the World Bank Operational Policies, and for the UN-REDD Programme includes international instruments on human rights and Indigenous peoples' rights. The UN-REDD Programme has additionally prepared its own *UN-REDD Programme Guidelines on Free, Prior and Informed Consent* (January 2013) and its complementing legal companion.[385] In August 2016, the World Bank adopted a new Environmental and Social Framework (ESF)[386] made up of ten standards, including Environmental and Social Standard 7 (ESS7) on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (IP/SSAHUTLCs).[387] The adoption of these standards was preceded by a major consultation with civil society and contentious debates,[388] given that these standards are 'likely to give rise to new norms and/or trigger reinterpretation of existing rules in international law more generally'.[389] Although the ESF 'symbolically' invokes international human rights norms in its vision, as María Victoria Cabrera Ormaza and Franz Christian Ebert have shown, the World Bank's operationalisation of it entails 'a form of discourse-content-decoupling'.[390] That is, although the World Bank 'symbolically' refers to human rights concepts in order to suggest coherence and build legitimacy, its discourse on human rights does not 'fully correspond to the actual content of the ESF'.[391] Although ESS7 aims to 'foster full respect for the human rights' of Indigenous Peoples and Sub-Saharan African Historically Underserved Traditional Local Communities, it does not refer to the UNDRIP or ILO 169, the major international instruments concerned with such rights.[392] Further, although ESS7

[384] UN-REDD Programme and FCPF, *Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities* (20 April 2012).

[385] UN-REDD Programme, *Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): International Law and Jurisprudence Affirming the Requirement of FPIC* (January 2013).

[386] The World Bank, *Environmental and Social Framework* (2017), pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf.

[387] The World Bank, *ESS7: Indigenous Peoples/Sub-Sahara African Historically Underserved Traditional Local Communities*; see also G. Jokubauskaite, 'The World Bank Environmental and Social Framework in a wider realm of public international law' (2019) 32(3) *Leiden Journal of International Law* 457–63.

[388] R. Houghton, 'Looking at the World Bank's safeguard reform through the lens of deliberative democracy' (2019) 32(3) *Leiden Journal of International Law* 465–82.

[389] Jokubauskaite, 'The World Bank Environmental and Social Framework in a wider realm of public international law', 458.

[390] M. V. C. Ormaza and F. C. Ebert, 'The World Bank, human rights, and organizational legitimacy strategies: The case of the 2016 Environmental and Social Framework' (2019) 32(3) *Leiden Journal of International Law* 483–500 at 488.

[391] Ibid.

[392] Ibid., 491–2.

requires 'meaningful consultation' in ways that are 'culturally appropriate',[393] it also 'appears to distance itself from relevant human rights standards in different ways'.[394] However, a positive development is that it departs from the World Bank's earlier Operational Directive 4.20 (1991) and Operational Policy 4.10 (2005), which only provided for free, prior and informed *consultation*. ESS7 now requires *consent* in three situations: where a project will 'have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation'; where a project will cause 'relocation'; and where a project will have 'significant impacts' on 'cultural heritage that is material to their identity and/or cultural, ceremonial, or spiritual aspects'.[395] Although this inclusion was widely welcomed, a detailed analysis of how the World Bank has defined and articulated FPIC suggests that '[t]he scope of application of FPIC under the ESF appears to be narrower than under the UNDRIP'.[396] Ormaza and Ebert therefore warn that consultation and FPIC might 'turn out to be legitimation tools to validate Bank-sponsored projects and not primarily consensus-building devices and safeguards for indigenous peoples'.[397]

When evaluating safeguards it is critical to examine not just their limitations but also their productive effects. Safeguard mechanisms are key sites through which REDD+ implementation interacts with and engages other legal regimes as well as broader development objectives.[398] As Feja Lesniewska argues, 'Since Cancun, safeguards have been seen as the opportunity through which the interactions between these different law making processes could be more formally co-ordinated.'[399] Safeguards thereby operate as a 'missing link' that connects REDD+ with other fields of law; they 'provide formal justification [for] the increasing cross-fertilization and collaboration between forest law and governance processes beyond the UNFCCC'.[400] In this way they facilitate the integration of REDD+ with broader development objectives, including those relating to improved forest governance, tenure reform and livelihood interventions. Such agendas are not politically neutral in either their conceptualisation or implementation and have long and often contentious histories.[401] The promotion of social safeguards has therefore also

[393] ESS7, para 23.
[394] Ormaza and Ebert, 'The World Bank, human rights, and organizational legitimacy strategies, 492.
[395] ESS, para 24.
[396] Ormaza and Ebert, 'The World Bank, human rights, and organizational legitimacy strategies', 493.
[397] Ibid., 495.
[398] Young, 'REDD+ and interacting legal regimes', pp. 89–125.
[399] F. Lesniewska, 'UNFCCC REDD+ COP Decisions: The cumulative effect on forest related law processes' (2013) 15 *International Community Law Review* 103–21 at 121.
[400] Ibid., 119–20.
[401] In relation to tenure reform see A. Manji, *The Politics of Land Reform in Africa: From Communal Tenure to Free Markets* (Zed Books, 2006).

operated to expand the sphere of authorised intervention by international financial institutions and other bilateral and multilateral bodies into the lives of peoples living in and around forested areas as part of REDD+-readiness and REDD+ implementation processes. The effects of key mechanisms promoted to address social concerns – especially tenure reform and benefit sharing – go beyond merely minimising risks or promoting benefits to people living in and around forested areas: they represent an active transformation of lives and livelihoods.[402]

G CONCLUSION

This chapter has analysed REDD+ from a number of different standpoints. It has provided a critical overview of REDD+ as a legal framework under the UNFCCC directed towards measuring, monitoring and verifying 'savings' from sequestered carbon as 'result-based actions' expressed in terms of $1tCO_2e$. REDD+ was also analysed as a series of practices and programmes to implement REDD+ on the ground, including 'demonstration activities' and REDD+-readiness programs, and to reduce deforestation and forest degradation. On a different register, this chapter scrutinised REDD+ as a concept or idea promoting the economic valuation of nature. It also provided an analysis and history of the key activities that are likely to be promoted through REDD+, namely, conservation and sustainable management of forests. Finally, this chapter analysed REDD+ as a social project concerned with safeguards, rights, participation and governance at the local level. Understanding REDD+ as both a vision or idea and a project to actualise this vision requires engaging with REDD+ on all these registers. It is, as the subsequent chapters of this book illustrate, only by examining all these different aspects of REDD+ as part of an integrated analysis that more complex understandings of its operations and effects can emerge.

[402] See Chapter 6 for a more detailed discussion.

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