

The Transnational Legal Process for REDD+

1.1 THE ORIGINS OF THE TRANSNATIONAL LEGAL PROCESS FOR REDD+

In the first half of the 2000s, numerous developing countries, NGOs, and scientists pressed for the elaboration of mechanisms within the UNFCCC to tackle carbon emissions from forestry-related sources in developing countries.¹⁶² While atmospheric and climate scientists had long recognized the importance of reducing these sources of carbon emissions in developing countries,¹⁶³ they had only been addressed in a limited manner due to political concerns that climate mitigation action should focus on industrialized sources of carbon emissions.¹⁶⁴ In particular, the rules adopted for the clean development mechanism (CDM) under the *Kyoto Protocol*¹⁶⁵ specifically excluded from its purview projects aiming to reduce carbon emissions through the avoidance of deforestation.¹⁶⁶ Nonetheless, the first generation of forest carbon projects pursued through the CDM and private carbon markets laid the technical groundwork and built momentum for future efforts aimed at addressing carbon emissions in developing country forests in global climate governance.¹⁶⁷

¹⁶² Sébastien Jodoin & Sarah Mason-Case, “What Difference Does CBDR Make? A Socio-Legal Analysis of the Role of Differentiation in the Transnational Legal Process for REDD+” (2016) 5(2) *Transnational Environmental Law* 255.

¹⁶³ William Boyd, “Ways of Seeing in Environmental Law: How Deforestation Became an Object of Climate Governance” (2010) 37 *Ecology Law Quarterly* 843 at 880–891.

¹⁶⁴ *Ibid.* at 869–870.

¹⁶⁵ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 10 Dec. 1997, 37 ILM 22 (1998), UN Doc. FCCC/CP/1997/7/Add.1, entered into force 16 Feb. 2005.

¹⁶⁶ Bernhard Schlamadinger *et al.*, “A Synopsis of Land Use, Land-Use Change and Forestry (LULUCF) under the Kyoto Protocol and Marrakech Accords” (2007) 10:4 *Environmental Science & Policy* 271 at 278–279.

¹⁶⁷ Emily Boyd, Esteve Corbera & Manuel Estrada, “UNFCCC Negotiations (pre-Kyoto to COP-9): What the Process Says about the Politics of CDM-sinks” (2008) 8 *International Environmental Agreements* 95 at 108–109.

In December 2005, the governments of Costa Rica and Papua New Guinea, on behalf of the Coalition of Rainforest Nations, proposed that the UNFCCC COP consider developing new mechanisms to reduce emissions from deforestation (RED) in developing countries.¹⁶⁸ As part of the *Bali Action Plan* adopted in December 2007, the UNFCCC COP launched international negotiations for the development of “policy approaches and positive incentives on issues related 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.”¹⁶⁹ In a separate decision focusing specifically on “approaches to stimulate action” on REDD+,¹⁷⁰ the UNFCCC COP affirmed the “urgent need to take meaningful action” to reduce GHG emissions from forest-based sources in developing countries and recognized that doing so could “promote co-benefits” and “complement the aims and objectives of other relevant international conventions and agreements.”¹⁷¹

The concept of REDD+ elicited strong support among a wide coalition of public and private actors from both the North and the South who were variously concerned with climate change, forest governance, and sustainable development.¹⁷² At the time, REDD+ was supported as a win-win-win solution that could not only reduce an estimated 17 percent of global carbon emissions worldwide,¹⁷³ but could also protect forests and their critical ecosystems and help alleviate poverty among forest-dependent and rural communities.¹⁷⁴

¹⁶⁸ See Submission by the Governments of Papua New Guinea & Costa Rica, “Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action” Eleventh Conference of the Parties to the UNFCCC: Agenda Item 6, available at: <http://unfccc.int/resource/docs/2005/cop11/eng/misc01.pdf> (accessed 21 May 2014).

¹⁶⁹ Decision 1/CP.13, “Bali Action Plan,” Report of the Conference of the Parties on its thirteenth session, Part Two: Action taken by the Conference of the Parties, UN Doc. FCCC/CP/2007/6/Add.1 (14 March 2008) para. 1(b)(ii). See Till Pistorius, “From RED to REDD+: The Evolution of a Forest-Based Mitigation Approach for Developing Countries” (2012) 4:6 *Current Opinion in Environmental Sustainability* 638; Jan Willem den Besten, Bas Arts & Patrick Verkooijen, “The Evolution of REDD+: An Analysis of Discursive-Institutional Dynamics” (2014) 35 *Environmental Science & Policy* 40.

¹⁷⁰ Decision 2/CP.13, “Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action” in *Report of the Conference of the Parties on its Thirteenth Session, Part Two: Action Taken by the Conference of the Parties at its Thirteenth Session*, UN Doc. FCCC/CP/2007/6/Add.1 (14 March 2008).

¹⁷¹ *Ibid.*, preamble. ¹⁷² McDermott, Levin & Cashore, *supra* note 5.

¹⁷³ Arild Angelsen & Desmond McNeill, “The Evolution of REDD+” in Arild Angelsen *et al.*, eds., *Analysing REDD+. Challenges and Choices* (Bogor Barat, Indonesia: CIFOR, 2012) 31 at 35.

¹⁷⁴ Marleen Buizer, David Humphreys & Wil de Jong, “Climate Change And Deforestation: The Evolution Of An Intersecting Policy Domain” (2013) 35 *Environmental Science & Policy* 1.

Within the UNFCCC, negotiations on REDD+ progressed at a remarkable pace, especially when compared with the broader set of international negotiations on climate change.¹⁷⁵ In December 2010, the UNFCCC COP adopted the *Cancun Agreements*, in which it defined the scope of jurisdictional REDD+ activities and established the stages and requirements for their implementation in developing countries.¹⁷⁶ The UNFCCC COP has since adopted a series of decisions further clarifying the rules for the pursuit of jurisdictional REDD+ in developing countries,¹⁷⁷ culminating in the integration of jurisdictional REDD+ in the *Paris Agreement* adopted in December 2015.¹⁷⁸ These rules are summarized in Table 1.1.

In the *Bali Action Plan* as well as the *Cancun Agreements*, the UNFCCC COP encouraged developing countries to take voluntary measures to prepare for domestic operationalization of jurisdictional REDD+ and called on developed countries, international organizations, and NGOs to provide finance, capacity-building, and technical assistance to support them in their efforts.¹⁷⁹ In response, an array of developing and developed country governments, international organizations, multilateral development banks, conservation and development NGOs, and corporations have supported the development and implementation of REDD+ activities around the world. They have most notably established knowledge-sharing, capacity-building, and technical assistance programs, mobilized finance, carried out research and analysis, developed rules and guidance, created certification programs, standards, and methodologies, and organized countless policy meetings, networks, and dialogues.

¹⁷⁵ Angelsen & McNeill, *supra* note 4 at 35.

¹⁷⁶ Decision 1/CP.16, “The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention” in Report of the Conference of the Parties on its sixteenth session, Part Two: Action taken by the Conference of the Parties, UN Doc. FCCC/CP/2010/7/Add.1 (15 March 2011) at paras 68–79.

¹⁷⁷ Decision 2/CP.17, *Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, in Report of the Conference of the Parties on its sixteenth session, Part Two: Action taken by the Conference of the Parties, UN Doc. FCCC/CP/2011/9/Add.1 (15 March 2012) at paras 63–73; Decisions 9/CP.19, 10/CP.19, 11/CP.19, 12/CP.19, 13/CP.19, 14/CP.19 and 15/CP.19, in Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013, UN Doc. FCCC/CP/2013/10/Add.1 (31 January 2014); Decisions 16/CP.21, 17/CP.21 and 18/CP.21, in Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Part Two: Action taken by the Conference of the Parties, UN Doc. FCCC/CP/2015/10/Add.3 (29 January 2016).

¹⁷⁸ Decision 1/CP.21, *Adoption of the Paris Agreement*, in Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, UN Doc. FCCC/CP/2015/10/Add.1 (29 January 2016) at article 5(2).

¹⁷⁹ Decision 1/CP.16, paras 68–79.

TABLE 1.1. *The elements of jurisdictional REDD+ under the UNFCCC*¹⁸⁰

Scope of eligible activities	<p>Jurisdictional REDD+ activities should be funded on the basis of <i>results achieved</i> in actually reducing or avoiding carbon emissions through the following activities:</p> <ol style="list-style-type: none"> 1. Reducing emissions from deforestation 2. Reducing emissions from forest degradation 3. Conservation of forest carbon stocks 4. Sustainable management of forests 5. Enhancement of forest carbon stocks
Phases for the implementation of REDD+	<p>The operationalization of jurisdictional REDD+ in a developing country should proceed in three phases:</p> <ol style="list-style-type: none"> 1. Development of national strategies or action plans, policies and measures, and capacity-building (known as the readiness phase) 2. Implementation of the first stage, possibly involving further support and demonstration activities 3. Results-based actions subject to measurement, reporting and verification (MRV) (known as the compliance phase)
Elements of REDD+ readiness	<p>Developing countries must develop the following elements as part of their “readiness” efforts:</p> <ol style="list-style-type: none"> 1. A national strategy or action plan 2. A baseline of forest-related carbon emissions (known as a forest reference emissions or forest reference level) 3. A forest monitoring system for MRV 4. An information system to report on the implementation of social and environmental safeguards

Although these initiatives differ in many respects, they each adhere to the three basic ideas that have come to define the wide range of REDD+ programs, policies, and projects around the world. First, REDD+ initiatives aim to increase carbon sequestration in developing country forests by funding activities that either reduce “negative changes” or enhance “positive changes” in forest carbon stocks.¹⁸¹ Second, they are intended to finance

¹⁸⁰ UNFCCC COP, Decision 2/CP.13 at paras. 1–3, 5, and 9; UNFCCC COP, Decision 1/CP.16 at paras. 71, 74, and 76.

¹⁸¹ Sheila Wertz-Kanounnikoff & Arild Angelsen, “Global and National REDD+ Architecture Linking Institutions and Actions” in Arild Angelsen, ed., *Realising REDD+: National Strategy and Policy Options* (Bogor, Indonesia: CIFOR, 2009) 13 at 16–17.

activities on the basis of results achieved in reducing or avoiding carbon emissions or increasing carbon stocks that are measured, reported, and verified (MRV) on the basis of a pre-existing baseline or reference level.¹⁸² Third, they are meant to take into account other important social or environmental objectives and considerations beyond carbon sequestration by requiring that activities comply with a set of social and environmental safeguards or that they deliver co-benefits such as the reduction of poverty or the preservation of biodiversity.¹⁸³

Beyond these three core ideas, there is significant diversity in the ways in which legal norms for REDD+ have been developed and applied by public and private actors around the world.¹⁸⁴ The most important area of divergence in the transnational legal process for REDD+ relates to the difference between jurisdictional and project-based activities. Jurisdictional REDD+ refers to programs implemented by developing countries that seek to reduce carbon emissions from forest-based sources at a national scale in line with the requirements set by the UNFCCC COP. In contrast, project-based REDD+ generally consists of activities implemented by corporations, NGOs, and communities to reduce forest carbon emissions at the local level. These activities must follow the methodologies and meet the standards established by nongovernmental certification programs in order to generate credits that can be sold and traded on carbon markets.¹⁸⁵ Some REDD+ projects have been implemented by governments or their partners to experiment with new tools and methodologies as part of their jurisdictional readiness efforts at the national or subnational level. Most REDD+ projects have been carried out by NGOs, corporations, or communities, with the aim of sequestering carbon as well as possibly delivering other social and environmental benefits, in order to generate carbon credits that can be sold or traded on voluntary carbon markets.¹⁸⁶ While the pursuit of project-based REDD+ activities can be affected by as well as feed into jurisdictional REDD+ programs implemented

¹⁸² Martin Herold & Margaret M. Skutsch, "Measurement, Reporting and Verification for REDD+: Objectives, Capacities and Institutions" in *ibid.*, 85.

¹⁸³ Anthony Hall, *Forests and Climate Change: The Social Dimensions of REDD in Latin America* (Cheltenham, UK: Edward Elgar, 2012) at 122–143.

¹⁸⁴ McDermott *et al.*, "Operationalizing Social Safeguards," *supra* note 54 at 65.

¹⁸⁵ Eduard Merger, Margaret Dutschke & Louis Verchot, "Options for REDD+ Voluntary Certification to Ensure Net GHG Benefits, Poverty Alleviation, Sustainable Management of Forests and Biodiversity Conservation" (2011) 2 *Forests* 550.

¹⁸⁶ Erin Sills, Erin Myers Madeira, William D. Sunderlin, & Sheila Wertz-Kanounnikoff, "The Evolving Landscape of REDD+ Projects" in Angelsen, *supra* note 4, 265.

at the national level, these two forms of REDD+ are fundamentally different and are ultimately governed by different sites of law.

1.2 LEVELS, SITES, AND FORMS OF LAW IN THE TRANSNATIONAL LEGAL PROCESS FOR REDD+

While the UNFCCC has played an important role in the construction of an initial set of legal norms for REDD+, the proliferation of multilateral, bilateral, and nongovernmental initiatives has meant that the transnational legal process for REDD+ has become increasingly plural over time.¹⁸⁷ As is summarized in Table 1.2, a heterogeneous array of public and private actors has engaged in the construction and conveyance of legal norms for REDD+ within and across multiple sites and forms of law that encompass as well as transcend the decision-making of the UNFCCC.¹⁸⁸ The transnational legal process for REDD+ has become all the more multi-layered because it has evolved at the intersections of two broader domains that also exhibit significant poly-centricity, one being climate change,¹⁸⁹ the other forestry.¹⁹⁰

At the international level, two of the most influential multilateral initiatives established for REDD+ have been the World Bank Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme. Launched at the 13th session of the UNCCC in December 2007 and operational since June 2008, the FCPF is comprised of two funds for which the World Bank serves as trustee and provides a secretariat: a Readiness Fund that supports developing country capacity-building and preparedness for REDD+ activities and a Carbon Fund that tests eventual performance-based payments for emissions reductions generated through REDD+ activities.¹⁹¹ In addition, the FCPF aims to disseminate the tools and knowledge developed as a result of its support for REDD+ readiness and emissions reductions.¹⁹² The UN-REDD Programme

¹⁸⁷ Frances Seymour & Arild Angelsen, "Summary and Conclusions REDD+ without Regrets" in Angelsen *et al.*, *supra* note 4, 317 at 319.

¹⁸⁸ See Harro van Asselt and Constance L. McDermott, "The Institutional Complex for REDD+: a 'Benevolent Jigsaw'?" in Voigt, *supra* note 17, 63.

¹⁸⁹ See, *e.g.*, Abbott, *supra* note 158. ¹⁹⁰ See, *e.g.*, Rayner, Buck & Katila, *supra* note 159.

¹⁹¹ The FCPF has 47 partner countries in Africa, Asia, Latin America, and the Caribbean as well as 17 developed-country, private-sector, and NGO donors, and approximately 1.057 billion US dollars have been pledged to the trust funds under its management. FCPF, "About FCPF" available at: www.forestcarbonpartnership.org/about-fcpf (accessed 5 May 2016).

¹⁹² International Bank for Reconstruction and Development, *Charter Establishing the Forest Carbon Partnership Facility* (8 August 2013), available at: www.forestcarbonpartnership.org/sites/fcpf/files/2013/August2013/FCPF%20Charter%20-%208-13%20clean.pdf (accessed 30 December 2013) at Section 2.1 [FCPF Charter].

TABLE 1.2. *Levels, sites, and forms of law in the transnational legal process for REDD+*

Levels of law	Sites of law	Forms of law
International sites	Multilateral environmental agreements and negotiations (UNFCCC). Multilateral programs (World Bank Forest Carbon Partnership Facility and the UN-REDD Program). Bilateral programs (NICFI).	Decisions of the UNFCCC COP. Instruments and agreements adopted within international organizations. Conditions and rules for accessing funding. Operational safeguards. Guidance materials and methodologies. Laws and policies governing bilateral programs. Bilateral agreements.
Transnational sites	Nongovernmental certification programs (VCS; CCBA).	Certification standards and rules. Guidance materials and methodologies.
National sites	Developing countries participating in the operationalization of REDD+.	REDD+ laws, regulations, and policies. REDD+ strategies.
Subnational sites	REDD+ readiness activities in subnational jurisdictions. REDD+ market-based projects.	REDD+ laws, regulations, and policies. REDD+ strategies. Project design documents. Contracts and protocols with local communities. Licenses from local authorities. Carbon sale agreements.

is a collaborative initiative jointly established in June 2008 by the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), and the Food and Agriculture Organization (FAO).¹⁹³ It provides direct support and technical assistance to developing countries carrying out national REDD+ readiness efforts and seeks to generate and disseminate knowledge, methodologies, tools, and approaches for the development of REDD+ at a global level.¹⁹⁴ These initiatives have generated legal

¹⁹³ FAO, UNDP & UNEP, *UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries Framework Document* (20 June 2008), available at: www.un-redd.org/Portals/15/documents/publications/UN-REDD_FrameworkDocument.pdf (accessed 30 December 2013) [*UN-REDD Framework Document*].

¹⁹⁴ As of June 2016, more than 281 million US dollars have been committed to the UN-REDD Programme, which currently supports national REDD+ readiness programs in 64 partner

norms for REDD+ that have taken on various forms, most notably including the agreements that led to their creation,¹⁹⁵ the rules and conditions they set for accessing funding for REDD+ activities,¹⁹⁶ the operational safeguards that exist for the delivery of activities they finance,¹⁹⁷ and the guidance documents they have developed for the implementation of REDD+ activities.¹⁹⁸

A number of developed country governments have also established bilateral programs to support the implementation of REDD+ around the world. The most important among these is the Norwegian International Climate and Forest Initiative (NICFI) launched in 2007.¹⁹⁹ As part of the NICFI, Norway has pledged 1.6 billion US dollars in funding to support the global advance of REDD+ through contributions to established multilateral programs and funds as well as direct partnerships with seven developing countries: Brazil, Guyana, Ethiopia, Indonesia, Mexico, Tanzania, and Vietnam.²⁰⁰ Through a combination of diplomacy, development aid, research, and technical assistance, the NICFI “seeks to influence the policy process by adding momentum to finalising an international REDD+ agreement, contributing to the detail of the emerging mechanisms and establishing real examples through national-level agreements with key

countries. See Multi-Partner Trust Fund Office, “UN REDD Programme Fund,” available at: <http://mptf.undp.org/factsheet/fund/CCF00> (accessed 5 May 2016); UN-REDD Programme, “Regions and Countries Overview” www.un-redd.org/Partner_Countries/tabid/102663/Default.aspx (accessed 5 May 2016).

¹⁹⁵ See, e.g., *FCPF Charter*, *supra* note 191; *UN-REDD Framework Document*, *supra* note 192.

¹⁹⁶ See, e.g., Readiness Preparation Proposal Template Document, Version 6, (23 November 2011), available at: www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6869&Itemid=53 (accessed 30 December 2013), Annex 4.

¹⁹⁷ See e.g., FCPF, *Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners* (9 August 2012), available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Aug2012/FCPF%20Readiness%20Fund%20Common%20Approach%208-9-12.pdf (accessed 30 December 2013).

¹⁹⁸ See, e.g., R-PP Template Document, *supra* note 195, Annex B, Joint Guidelines for Stakeholder Engagement.

¹⁹⁹ Other important bilateral initiatives supporting the global implementation of REDD+ have also been established by Australia, France, Germany, Japan, the United Kingdom, and the United States. See Liane Schalatek, Alice Caravani, Smita Nakhoda & Charlene Watson, “Climate Finance Thematic Briefing: REDD+ Finance,” available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7912.pdf (accessed 18 July 2014).

²⁰⁰ Norwegian Ministry of Climate and the Environment, “How are the funds being spent?” available at: www.regjeringen.no/en/dep/kld/kampanjer/the-governments-climate-and-tree-project/how-are-the-funds-being-spent.html?id=734170 (accessed 18 July 2014); Norwegian Ministry of Climate and the Environment, “Who are our Collaboration Partners?” available at: www.regjeringen.no/en/dep/kld/kampanjer/the-governments-climate-and-tree-project/who-are-our-collaboration-partners.html?id=733948 (accessed 18 July 2014).

REDD-relevant countries.”²⁰¹ The legal norms for REDD+ have taken on two main forms in bilateral initiatives: the law, policy, or regulation that governs a bilateral REDD+ program²⁰² and the bilateral agreements between the government or agency of a developed country and its developing country partner that provide the terms and conditions for the delivery of REDD+ finance and assistance.²⁰³

At the transnational level, the most significant sites of law for REDD+ are the nongovernmental programs and initiatives that NGOs and corporations have established to guide and support the jurisdictional REDD+ efforts of developing countries and those that aim to sustain and govern the voluntary market for project-based REDD+ activities. To begin with, several large international conservation NGOs,²⁰⁴ major management and consulting firms working on the low-carbon economy,²⁰⁵ and specialized firms active in carbon finance and trading²⁰⁶ have created their own programs of research, capacity-building, training, technical assistance, and finance for REDD+

²⁰¹ NORAD, “Real-Time Evaluation of Norway’s International Climate and Forest Initiative. Contributions to a Global REDD+ Regime 2007–2010,” March 2011, available at: www.regjeringen.no/upload/MD/2011/vedlegg/klima/klima_skogprosjektet/Evalueringsrapportene/Report_12_2010_Global_web.pdf at xiv.

²⁰² See, e.g., Norwegian Ministry of Environment, *Norwegian Climate Policy, Recommendation from the Ministry of the Environment*, 25 April 2012, approved by the Cabinet on the same date (Stoltenberg II Government), Report No. 21 to the Storting (2011–2012), available at: www.regjeringen.no/pages/38117723/PDFS/STM201120120021000EN_PDFS.pdf (accessed 2 September 2014) at 11; Norwegian Ministry of Foreign Affairs, *Climate, Conflict and Capital. Norwegian development policy adapting to change*, Report No. 13 to the Storting (2008–2009), available at: www.regjeringen.no/pages/2171591/PDFS/STM200820090013000EN_PDFS.pdf (accessed 2 September 2014) at 54–56.

²⁰³ See, e.g., Memorandum of Understanding between the Government of the Cooperative Republic of Guyana and the Government of the Kingdom of Norway regarding Cooperation on Issues related to the Fight against Climate Change, the Protection of Biodiversity and the Enhancement of Sustainable Development (November 2009), available at: [www.regjeringen.no/upload/MD/Vedlegg/Klima/klima_skogprosjektet/The%20Memorandum%20of%20Understanding%20Guyana%20Norway%20on%20REDD%20\(081109\)%20signed%20091109.pdf](http://www.regjeringen.no/upload/MD/Vedlegg/Klima/klima_skogprosjektet/The%20Memorandum%20of%20Understanding%20Guyana%20Norway%20on%20REDD%20(081109)%20signed%20091109.pdf) (accessed 18 July 2014).

²⁰⁴ See, e.g., WWF, “Natural Forests Protect against Climate Change,” available at: wwf.panda.org/what_we_do/where_we_work/greatermekong/our_solutions/redd/ (accessed 15 December 2013); and Conservation International, “REDD+,” available at: www.conservation.org/learn/climate/solutions/mitigation/Pages/climate_REDD.aspx (accessed 15 December 2013).

²⁰⁵ See, e.g., McKinsey & Co., “Carbon and Energy Economics,” available at: www.mckinsey.com/client_service/sustainability/expertise/carbon_and_energy_economics (accessed 15 December 2013); Price Waterhouse Coopers, “Forest Carbon and REDD,” available at: www.pwc.co.uk/sustainability-climate-change/issues/can-forests-help-to-solve-climate-challenges.jhtml (accessed 15 December 2013).

²⁰⁶ See, e.g., Climate Focus, “Focus Areas: REDD+,” available at: www.climatefocus.com/pages/redd_plusLTS International (accessed 15 December 2013); LTS International, “Our Services: REDD+,” available at: www.ltsi.co.uk/services/redd/ (accessed 15 December 2013).

activities at multiple levels. These NGOs and corporations have most notably established voluntary initiatives to guide the REDD+ readiness activities carried out by developing country governments. One of the most influential initiatives of this type is the Jurisdictional and Nested REDD+ (JNR) Framework established by the Verified Carbon Standard (VCS) in December 2010 to provide accounting methodologies and rules for the certification of national and sub-national REDD+ activities undertaken by governments.²⁰⁷ Another important transnational initiative is the REDD+ Social and Environmental Safeguards (REDD+ SES), a multi-stakeholder process launched in May 2009 to develop a set of voluntary social and environmental safeguards for government-led jurisdictional REDD+ programs and activities.²⁰⁸

In addition, NGOs and corporations have also supported the formation of a voluntary market for carbon credits generated through REDD+ projects aiming to reduce emissions from forestry-related sources at the subnational level. NGOs and corporations have carried out, brokered, and audited REDD+ activities in line with established methodologies and accounting standards for their development, validation, and certification. The two sets of standards with the greatest share of REDD+ projects worldwide are:²⁰⁹ the Agriculture, Forestry & Land Use (AFOLU) Requirements of the Verified Carbon Standard (VCS)²¹⁰ and the Climate, Community & Biodiversity (CCB) Standards.²¹¹ Both the VCS and the CCB Standards serve as sites of law for the pursuit of project-based REDD+ activities: they set the rules for carrying out, monitoring, and evaluating projects, provide guidance and methodologies for the application of these rules, create a process for the accreditation of third-party auditors for the validation and verification of such projects,

2013); Wildlife Works, "About Us," available at: www.wildlifeworks.com/company/aboutus.php (accessed 15 December 2013).

²⁰⁷ VCS, "Jurisdictional and Nested REDD+ (JNR)," available at: www.v-c-s.org/JNR (accessed 15 December 2013).

²⁰⁸ REDD+ SES, "About the REDD+ SES," available at: www.redd-standards.org (accessed 15 December 2013). Several jurisdictions have thus far voluntarily decided to participate in the development or implementation of the REDD+ SES, most notably the State of Acre in Brazil, the Province of Central Kalimantan in Indonesia, Ecuador, Nepal, and Tanzania.

²⁰⁹ According to the leading industry survey of forest carbon projects, 71 percent of all forest carbon projects and transactions in 2013 obtained certification from both the VCS and the CCB Standards (Molly Peters-Stanley, Allie Goldstein & Gloria Gonzalez, *Turning Over a New Leaf State of the Forest Carbon Markets 2014* (Washington, DC: Ecosystem Marketplace, 2013) at 58).

²¹⁰ VCS, "Agriculture and Forestry Projects," available at: www.v-c-s.org/develop-project/agriculture-forestry-projects (accessed 22 July 2014).

²¹¹ Climate, Community & Biodiversity Alliance, "CCB Standards," available at: www.climate-standards.org/ccb-standards/ (accessed on 22 July 2014).

and establish procedures for addressing disputes and improprieties in the application of the standards.²¹²

At the national level, legal norms for REDD+ have been constructed in and conveyed through the pursuit of jurisdictional REDD+ readiness activities. Over 60 governments throughout the developing world have initiated national multi-year readiness programs to lay the groundwork for the domestic operationalization of jurisdictional REDD+ in accordance with the UNFCCC COP's guidance and with the support and technical assistance provided by bilateral, multilateral, and nongovernmental partners.²¹³ These REDD+ readiness programs involve some combination of strategic planning, policy analysis and development, legal and institutional reform, public consultation and stakeholder engagement, capacity-building and training, and demonstration projects that aim to ensure that a developing country has achieved the conditions required for REDD+ to be implemented on a jurisdictional scale.²¹⁴

There are two main ways in which the pursuit of jurisdictional REDD+ readiness programs may entail the construction and conveyance of legal norms. First, the adoption of a national strategy for jurisdictional REDD+ provides an opportunity for a developing country government to design a tailored framework for the governance of REDD+.²¹⁵ In order to prepare developing countries for the operationalization of REDD+, a national strategy should deal with matters such as the modalities through which international payments for REDD+ will be managed and channeled in a country;²¹⁶ the arrangements for sharing benefits from these payments with stakeholders at multiple levels;²¹⁷ the clarification of land and forest rights and tenure in areas that are targeted for REDD+ policies and measures;²¹⁸ and the participation and engagement of multiple stakeholders.²¹⁹ In turn, the development and

²¹² See Anja Kollmuss, Helge Zink & Clifford Polycarp, *Making Sense of the Voluntary Carbon Market: A Comparison of Carbon Offset Standards* (Berlin, Germany: WWF Germany, 2008).

²¹³ Annex I. Overview of REDD+ Activities in the Developing World.

²¹⁴ Sheila Wertz-Kanounnikoff & Arild Angelsen, "Global and National REDD+ Architecture Linking Institutions and Actions" in Angelsen, *Realising REDD+*, *supra* note 180, 13 at 13–24.

²¹⁵ Charlotte Streck, "Reducing Emissions from Deforestation and Forest Degradation: National Implementation of REDD Schemes – an Editorial Comment" (2010) 3–4 *Climatic Change* 389; John Costenbader, *Legal Frameworks for REDD Design and Implementation at the National Level*, IUCN Environmental Policy and Law Paper 77 (2009).

²¹⁶ Hall, *supra* note 183 at 58–61.

²¹⁷ Cecilia Luttrell *et al.*, "Who Should Benefit from REDD+? Rationales and Realities" (2013) 18:4 *Ecology & Society* 52.

²¹⁸ Anne M. Larson *et al.*, "Land Tenure and REDD+: The Good, the Bad and the Ugly" (2013) 23:3 *Global Environmental Change* 678.

²¹⁹ Tim Forsyth, "Multilevel, Multiactor Governance in REDD+ Participation, Integration and Coordination" in Angelsen, *Realising REDD+*, *supra* note 181, 113.

implementation of national REDD+ strategies entails the interpretation and application of existing laws and regulations in relevant areas (especially forestry, climate change, land-use, property, and human rights).²²⁰

Second, jurisdictional REDD+ readiness efforts may also lead to the development and adoption of new laws and regulations. Some of these new laws and regulations have specifically focused on the regulation of REDD+ activities,²²¹ including project-based ones.²²² Other legal, policy, and regulatory reforms have been developed with the aim of achieving actual reductions in carbon emissions from the forestry and land-use sectors.²²³ For instance, developing countries have imposed a moratorium on the exploitation of forests²²⁴ or adopted reforms aimed at strengthening forest governance through improved land-use planning, land titling, and enforcement measures.²²⁵

At the subnational level, legal norms for REDD+ have been constructed in and conveyed through two types of activities. First, the governments of a number of sub-national jurisdictions, most notably including provincial governments in Brazil, Indonesia, and Mexico, have initiated their own jurisdictional readiness programs.²²⁶ The design and aims of these subnational jurisdictional readiness programs are very similar to the national ones discussed above and are meant to form part of a nested approach to REDD+, in which

²²⁰ UN-REDD Programme, *Legal analysis of cross-cutting issues for REDD+ implementation: Lessons learned from Mexico, Viet Nam and Zambia* (Geneva, Switzerland: UN-REDD Programme, 2013).

²²¹ See the entry for law in the REDD+ Desk, available at: [http://theredddesk.org/countries/sea-rc-h-countries-database?f\[o\]=type%3Alaw&f\[1\]=field_primary_focal_area%3Ared](http://theredddesk.org/countries/sea-rc-h-countries-database?f[o]=type%3Alaw&f[1]=field_primary_focal_area%3Ared) (accessed 2 September 2014).

²²² See, e.g., Government of Indonesia, Ministry of Forestry of the Republic of Indonesia, “Ministerial Regulation P. 20/Menhut-II/2012 on Implementation of Forest Carbon,” available at: http://theredddesk.org/sites/default/files/ministerial_regulation_on_implementation_of_forest_carbon_3.pdf (accessed 9 December 2014).

²²³ Arild Angelsen, “Policy Options to Reduce Deforestation” in Angelsen, *Realising REDD+*, *supra* note 181, 125.

²²⁴ See, e.g., Government of Indonesia, Presidential Instruction no. 10/2011 Regarding Suspension of Granting of New Licenses and Improvement of Governance of Natural Primary Forest and Peat Land, available at: <http://theredddesk.org/countries/policies/presidential-instruction-no-102011-regarding-suspension-granting-new-licenses-and> (accessed 2 September 2014).

²²⁵ See, e.g., Government of Brazil, Ministério do Meio Ambiente, “Plano de Prevenção e Controle do Desmatamento na Amazônia Legal. 3ª Fase (2012-2015)” available at: www.mma.gov.br/images/arquivo/80120/PPCDAm_FINAL_PPCDAM.PDF (accessed 2 September 2014).

²²⁶ Daniel Nepstad *et al.*, *Overview of Subnational Programs to Reduce Emissions from Deforestation and Forest Degradation (REDD) as Part of the Governors’ Climate and Forests Task Force* (Palto Alto, California: Electric Power Research Institute, 2012).

readiness and early demonstration activities may be initiated at the subnational level in lead-up to the establishment of a national REDD+ framework and the pursuit of a related set of jurisdictional interventions at the national level.²²⁷ Legal norms for REDD+ have thus been formally enacted through the adoption of laws, policies, and regulations in these subnational jurisdictions.²²⁸

Second, a multiplicity of public and private actors (including international organizations, national, subnational, and local governments, international and local NGOs and corporations, and local communities) has initiated REDD+ projects that aim to reduce carbon emissions at the subnational level. Close to 350 such projects have been developed in more than 50 developing countries across Africa, Asia, and Latin America and the Caribbean.²²⁹ In 2014, these projects accounted for the largest share of carbon market activity and had a total market value of 94 million US dollars.²³⁰ These market-based projects and transactions generate multiple forms of law, including the project design document that must be submitted to the certification program and validated and verified by third-party auditors; the contracts, protocols, or agreements that must be signed with local communities or other affected stakeholders, the licenses and regulatory approvals that must be obtained from local authorities; and the agreement enabling the sale or trading of carbon credits generated by the project.²³¹

1.3 THE COMPLEXITY OF THE TRANSNATIONAL LEGAL PROCESS FOR REDD+

From its origins as a promising and relatively straightforward UNFCCC mechanism with “triple-win” potential for forests, climate change, and

²²⁷ Lucio Pedroni, Manuel Estrada Porrua & Mariano Colini Cenamo, “The ‘Nested Approach’ to REDD+: How Could it Be Implemented?” in Xianli Zhu *et al.*, eds., *Pathways for Implementing REDD+*. *Experiences from Carbon Markets and Communities* (Nairobi, Kenya: UNEP, 2010) 89.

²²⁸ See, e.g., The Governor of Central Kalimantan, “Regulation of the Governor of the Province of Central Kalimantan Number 10 2012 regarding the Regional Strategy and Action Plan for Reducing Emissions from Deforestation and Forest Degradation – Plus in Central Kalimantan Province,” available at: www.gcftaskforce.org/documents/Central%20Kalimantan%20Governor%20Regulation_10_2012_EN.pdf (accessed 2 September 2014).

²²⁹ Annex I. Overview of REDD+ Activities in the Developing World.

²³⁰ Molly Peters-Stanley & Gloria Gonzalez, *Sharing the Stage: State of the Voluntary Carbon Markets 2014 (Executive Summary)* (Washington, DC: Ecosystem Marketplace, 2014) at xiv.

²³¹ See generally Slayde Hawkins, “Legal Guidance: Legal and Contractual Aspects of Forest Carbon Projects” in Johannes Ebeling & Jacob Olander, eds., *Building Forest Carbon Projects. Step-by-Step Overview and Guide* (Washington, DC: Forest Trends, 2011).

sustainable development, the transnational legal process for REDD+ has evolved to become increasingly complex over time.²³² As various actors have moved forward with the operationalization of REDD+, the challenges, risks, and trade-offs that had been obscured or ignored at an earlier stage in the emergence of REDD+ have begun to resurface.²³³ In particular, the transnational legal process for REDD+ has become intertwined with the conflicting coalitions and agendas that shape the domain of forest governance within developing countries²³⁴ and “entangled in fundamental debates about justice and equity from local to global levels.”²³⁵ To be sure, the involvement of a diverse array of private and civil society actors has also accentuated disagreements about the fundamental purposes and principles of REDD+ within the UNFCCC.²³⁶ This has most notably included civil society actors who are skeptical about its potential benefits for climate mitigation and concerned about its implications for other important social and environmental considerations.²³⁷ Indeed, the research, advocacy, and conservation NGOs that have pressed for the recognition of the rights of Indigenous Peoples and local communities in international law and policy over the last 40 years have brought their energies and efforts to the transnational legal process for REDD+, which has provided a new and significant venue for advancing their agenda.²³⁸ As this book reveals, debates over whether and how to protect the rights of Indigenous Peoples and local communities in the context of REDD+ activities are a cause as well as a reflection of the growing complexity of the transnational legal process for REDD+.

In addition, as REDD+ has spread across multiple sites of law, the transnational legal process for REDD+ has also been characterized by

²³² McDermott *et al.*, “Operationalizing Social Safeguards” *supra* note 54 at 65; Streck & Costenbader, *supra* note 54 at 2; Esteve Corbera & Heike Schroeder, “Governing and Implementing REDD+” (2011) 14:2 *Environmental Science & Policy* 89 at 90–93.

²³³ Okereke & Dooley, *supra* note 9 at 83; Till Pistorius, “From RED to REDD+: The Evolution of a Forest-Based Mitigation Approach for Developing Countries” (2012) 4:6 *Current Opinion in Environmental Sustainability* 638 at 642; McDermott *et al.*, “Operationalizing Social Safeguards” *supra* note 54 at 65.

²³⁴ See Kristen Evans, Laura Murphy & Wil de Jong, “Global versus Local Narratives of REDD: A Case Study from Peru’s Amazon” (2014) 35 *Environmental Science & Policy* 98; Alex Shankland & Leonardo Hasenclever, “Indigenous Peoples and the Regulation of REDD+ in Brazil: Beyond the War of the Worlds?” (2011) 42:3 *IDS Bulletin* 80; Olufunso A. Somorin *et al.*, “The Congo Basin Forests in a Changing Climate: Policy Discourses on Adaptation and Mitigation (REDD+)” (2012) 22:1 *Global Environmental Change* 288.

²³⁵ Okereke & Dooley, *supra* note 9 at 93. See also Schroeder & McDermott *supra* note 11.

²³⁶ den Besten, Arts & Verkooijen, *supra* note 169 at 43–44; Corbera & Schroeder, *supra* note 232 at 92.

²³⁷ See generally Interview 7; Interview 81; Interview 82.

²³⁸ See Sikor & Stahl, *supra* note 11.

TABLE 1.3. *Potential pathways and related causal mechanisms for the conveyance of legal norms in the transnational legal process for REDD+*

Conditions set by international and transnational sites of law for funding jurisdictional and project-based REDD+ activities at the national level and subnational levels	Cost-benefit Adoption Coercion
Opportunities for socialization between actors provided by international, transnational, national, and subnational sites of law	Élite internalization Acculturation
Generation and dissemination of knowledge about experiences with the design and implementation of jurisdictional and project-based REDD+ activities	Instrumental Learning
Opportunities for advocacy provided by international, transnational, national, and subnational sites of law	Mobilization

multidirectionality. From 2007 onward, the construction of legal norms for REDD+ within the UNFCCC contended with, and was influenced by, the legal norms for REDD+ constructed in multiple sites of law.²³⁹ As is often the case with a transnational legal process, the conveyance of legal norms for REDD+ from one site of law to another has given rise to the construction of hybrid legal norms and has created opportunities for their further conveyance across other sites of law. In what follows, I identify four potential pathways and related causal mechanisms through which actors may trigger the conveyance of legal norms to, from, and across sites of law at the international, transnational, national, and local levels (Table 1.3).

A first pathway relates to the conditions that international and transnational sites of law have set for accessing sources of finance for jurisdictional and project-based REDD+ activities and the ways in which these conditions may create incentives for implementing a particular set of legal norms at the national and subnational levels. In order to trigger the conveyance of legal norms, the conditions set by these sites of law would need to provide material or reputational incentives for compliance by actors in another site of law (cost-benefit adoption) as well as opportunities for exogenous actors to detect and sanction instances of noncompliance (coercion). By way of example, the FCPF, the UN-REDD Programme, and NICFI have made the delivery of the funding they provide to developing countries for their jurisdictional REDD+ readiness efforts contingent on respect for social and environmental safeguards and

²³⁹ Seymour & Angelsen, *supra* note 187 at 319; Corbera & Schroeder, *supra* note 132 at 90–93.

other standards.²⁴⁰ The domestic influence of these conditions in the context of REDD+ readiness activities could thus be expected to depend on the credibility and independence of their processes for the monitoring and evaluation of REDD+ readiness finance and their willingness to suspend funding arrangements in case of noncompliance.²⁴¹ Another example relates to the market incentives provided by the CCBA for the design and implementation of REDD+ projects that comply with its social and environmental standards. REDD+ projects certified with the CCB label have indeed attracted a premium on the voluntary carbon market.²⁴² More broadly, given that most of the start-up funding that currently exists for REDD+ projects originates in development aid and that corporate social responsibility is the primary motivation for buyers of REDD+ credits, the CCB label has increasingly become a basic requirement for entry into the voluntary carbon market.²⁴³

A second pathway pertains to the manner in which the transnational legal process for REDD+ has provided opportunities for actors to socialize with one another and convey legal norms across multiple sites of law. As a result of socialization, actors may internalize legal norms because they have been actively convinced of their appropriateness (élite internalization) or because of their desire to adopt norms that have been widely accepted in their broader transnational reference group (acculturation). I will briefly mention two opportunities for socialization that have emerged from the transnational legal process for REDD+. To begin with, actors have socialized with one another as a result of their participation in the construction of legal norms in sites such as the UNFCCC, the FCPF, the UN-REDD Programme, the REDD+ SES, and the CCBA. Each of these sites has emphasized, to varying degrees, the sort of deliberation and inclusion that is generally seen by scholars as facilitating the generation of norms in a site of law.

²⁴⁰ *FCPF Charter*, *supra* note 192 at Section 3.1(d); UN-REDD Programme Framework Document, *supra* note 193 at 12; Memorandum of Understanding between the Government of the Cooperative Republic of Guyana and the Government of the Kingdom of Norway regarding Cooperation on Issues related to the Fight against Climate Change, *supra* note 203.

²⁴¹ There is at least one case involving noncompliance in relation to a complaint made by Indigenous Peoples with respect to the UN-REDD National Programme in Panama. See Fréchette *et al.*, *supra* note 347 at 59 and 62–64; NORAD, *supra* note 423 at 476–477.

²⁴² Kelley Hamrick *et al.*, *Ahead of the Curve: State of the Voluntary Carbon Markets 2015* (Washington, DC: Ecosystem Marketplace, 2015) at 17.

²⁴³ Interview 34 at 1–2; Interview 47 at 7; Interview 73 at 6; Interview 77 at 3; Interview 80 at 1. See also Rachel Godfrey Wood, “Carbon Finance and Pro-Poor Co-Benefits: The Gold Standard and Climate, Community and Biodiversity Standards” (London, UK: IIED, 2011) at 29; Peters-Stanley *et al.*, *supra* note 209 at 16.

In addition, these sites of law may also facilitate interactions between actors situated in or across other levels of law. One important example relates to the process for the review and approval of multilateral REDD+ readiness grants under the FCPF and the UN-REDD Programme. This process begins with the preparation and submission by a developing country government of a Readiness Preparation Proposal (R-PP),²⁴⁴ which must be drafted in accordance with an established template that outlines six necessary components of jurisdictional readiness for REDD+.²⁴⁵ This R-PP requires developing countries to address legal, policy, and governance issues relating to their jurisdictional REDD+ readiness processes and to ensure the full and effective participation of Indigenous Peoples and local communities in the design and implementation of activities.²⁴⁶ The process by which an R-PP is approved for funding has generally followed a lengthy and transparent review process that has enabled multilateral agencies and their governing bodies, bilateral partners, and civil society actors to suggest changes in the first drafts of R-PPs submitted by developing country governments.²⁴⁷

A third pathway is connected to the generation and sharing of knowledge about the enactment and implementation of legal norms within the transnational legal process for REDD+. This knowledge may lead actors in a given site of law to enact or implement an exogenous legal norm based on the evidence that they have acquired about the utility of doing so from the experience of other sites of law (instrumental learning). The transnational legal process for REDD+ has supported instrumental learning through the

²⁴⁴ Readiness Preparation Proposal Template Document, Version 6, (23 November 2011), available at: www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6869&Itemid=53 (accessed 30 December 2013).

²⁴⁵ Namely: (1) management arrangements and stakeholder engagement processes; (2) the preparation of a national REDD+ strategy; (3) the development of a national forest reference emission level or forest reference level; (4) the design of systems for MRV and reporting on safeguards and multiple benefits; (5) a schedule and budget; and (6) the design of a program monitoring and evaluation framework.

²⁴⁶ See, e.g., R-PP Template Document, *supra* note 243 at 4, 6, 9, 10, 15, 16, 20–22, 25–28, 36–37, 40–42, 46–50, 57–58, and 61–62.

²⁴⁷ When the R-PP template document is submitted to the FCPF, it is first reviewed by an independent Technical Advisory Panel (TAP) and submitted for final approval to the FCPF Participants Committee (PC). Likewise, R-PPs submitted to the UN-REDD Programme are first reviewed by experts in the UN-REDD Programme Secretariat, and then submitted for a final decision to the UN-REDD Programme Policy Board, which includes REDD+ country partners and donors, one Indigenous representative, and one a civil society representative. As a result, many R-PPs have undergone at least one round of revisions before they have been approved for funding by the FCPF or the UN-REDD Programme and have frequently incorporated significant changes suggested by other interlocutors, including NGO representatives. See also Independent Evaluation Group, *supra* note 317 at 31.

production and dissemination of knowledge products as well as the provision of training, capacity-building, and technical assistance for the implementation of REDD+. For instance, the FCPF and the UN-REDD Programme have released guidelines, tools, and other knowledge products that have provided developing countries with concrete guidance on how to respect and operationalize the rights of Indigenous Peoples and local communities in the context of their jurisdictional REDD+ readiness activities.²⁴⁸ The REDD+ SES Initiative has also played a key role in developing and disseminating a methodology for the development of a set of social and environmental safeguards.²⁴⁹ Likewise, the CCB Standards and related guidelines that the CCBA has released provide a methodology for the design, planning, and implementation of a REDD+ project.²⁵⁰ Lastly, early experiences with the implementation of jurisdictional REDD+ activities as well as project-based REDD+ activities may also have exerted influence on other sites and levels of law for REDD+. For instance, negotiators within the UNFCCC have drawn on the knowledge generated by the pursuit of REDD+ readiness activities in developing countries and the rules provided by the multilateral, bilateral, and nongovernmental initiatives for REDD+.²⁵¹ Additionally, the implementation of REDD+ pilot projects in developing countries may, to some extent, have fed into their jurisdictional readiness efforts²⁵² as well as influenced other sites and levels of law.²⁵³

A fourth and final pathway relates to the way in which the transnational legal process for REDD+ has provided enhanced opportunities for Indigenous

²⁴⁸ With respect to the FCPF, see NORAD, *supra* note 423 at 437. With respect to the UN-REDD programme, see Fréchette *et al.*, *supra* note 347 at 62–64.

²⁴⁹ REDD+ SES, *Guidelines for the Use of REDD+ Social & Environmental Standards at Country Level*, Version 2, 16 November 2012, available at: www.redd-standards.org/files/pdf/redd-docs/Standards/REDD_SES_Guidelines_Version_2_-_16_November_2012.pdf (accessed 30 December 2013).

²⁵⁰ CCBA, *Rules for the Use of the Climate, Community & Biodiversity Standards*, 2013, available at: https://s3.amazonaws.com/CCBA/Third_Edition/Rules_for_the_Use_of_the_CCB_Standards_December_2013.pdf (accessed 24 September 2014).

²⁵¹ Interview 11 at 11; Interview 21 at 1; Interview 38 at 3; Interview 42 at 7; Interview 44 at 7; Baastel & NORDECO, *First Program Evaluation for the Forest Carbon Partnership Facility (FCPF). Evaluation Commissioned by the Participants Committee of the FCPF* (June 2011), available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2011/5.%20Final%20FCPF_EVALUATION_REPORT_June%2011th.pdf (accessed 27 September 2014) at 30. See also den Besten, Arts & Verkooijen, *supra* note 169 at 46; Sabine Reinecke, Till Pistorius & Michael Pregernig, “UNFCCC and the REDD+ Partnership from a Networked Governance Perspective” (2014) 35 *Environmental Science & Policy* 30 at 36.

²⁵² Frances Seymour & Arild Angelsen, “Summary and Conclusions: REDD Wine in Old Wineskins?” in Angelsen, *Realising REDD+*, *supra* note 181, 293 at 297.

²⁵³ Pamela Jagger, Stibniati Atmadja, Subhrendu K. Pattanayak, Erin Sills & William D. Sunderlin, “Learning While Doing. Evaluating Impacts of REDD+ Projects” in Angelsen, *Realising REDD+*, *supra* note 181, 281 at 281–282.

Peoples and local communities to advocate for the recognition and protection of their rights vis-à-vis international, transnational, national, and local authorities (mobilization). By way of example, the FCPF, the UN-REDD Programme, and the REDD+ SES require that the proponents of jurisdictional REDD+ activities carry out extensive stakeholder engagement and consultation processes at the national level.²⁵⁴ These consultations have provided unique platforms for Indigenous Peoples and Civil Society Organizations (CSOs) to advocate for the recognition and protection of their participatory and substantive rights in the context of jurisdictional REDD+ readiness efforts.²⁵⁵ In addition to providing Indigenous Peoples and local communities with an opportunity for advocacy, international and transnational sites of law have also developed mechanisms to provide them with funding and otherwise support their participation in domestic REDD+ activities, including in the pursuit of project-based REDD+ activities.²⁵⁶ As a result, the pursuit of jurisdictional REDD+ activities may have provided

²⁵⁴ With respect to the FCPF and the UN-REDD Programme, see R-PP Annexes, at 10; R-PP Template Document, at 16. With respect to the REDD+ SES, see REDD+ SES, “REDD+ Social & Environmental Standards” Version 2, 10 September 2012, available at: www.redd-standards.org (accessed 4 April 2016) at Principle 6.

²⁵⁵ Interview 40 at 9; Interview 57 at 6; Interview 58 at 4–5. Observations gathered during participation in GIZ/UN-REDD/FCPF workshop on the full and effective participation of Indigenous Peoples in REDD+ (Weilburg, Germany, September 2013) and GEM/CLUA workshop on the promotion of community forestry (Washington DC, January 2014). In relation to the UN-REDD Programme, see also Fréchette *et al.*, *supra* note 347 at 41 (arguing that the UN-REDD Programme has “effectively provided an unprecedented platform for Indigenous Peoples’ and civil society organizations to voice not only their concerns, needs, and interests, but in fact their rights – whether to free, prior and informed consent, customary or statutory land rights, resource rights, or equity in benefit sharing processes.”); NORAD, *supra* note 423 at 475. In relation to the FCPF, see also Independent Evaluation Group, *supra* note 317 at xix; NORAD, *supra* note 423 at 434.

²⁵⁶ For instance, the FCPF has a program dedicated to funding activities proposed by forest-dependent Indigenous Peoples (IPs) and other forest dwellers, and seeks to enhance their knowledge and capacity with respect to REDD+ and support their engagement in REDD+ activities (Forest Carbon Partnership Facility (FCPF), “Capacity Building Program for Forest-Dependent People on REDD plus” (22 February, 2010), available at: www.forestcarbonpartnership.org/sites/fcp/files/Documents/tagged/FCPF_FMT_Note_2010-8_IP_Capacity_Building_02-22-10%5B1%5D.pdf (accessed 30 December 2013)). The UN-REDD Programme, along with the GEF, has also created a support scheme for community-based REDD+ to enable “communities themselves to initiate activities, build capacities, exchange information, pilot methodologies, develop models of representation and participation, and implement their visions for REDD+ in alignment with national REDD+ goals and objectives.” See UN-REDD Programme, “Concept Note for Support to Community-Based REDD+,” available at: www.unredd.net/index.php?option=com_docman&task=doc_download&gid=10599&Itemid=53 (accessed 6 January 2014) at 2. See UN-REDD Programme, Report of the Tenth Policy Board Meeting, Lombok, Indonesia, 26–27 June 2013 available at: www.unredd.net/index.php?option=com_docman&task=doc_download&gid=10820&Itemid=53 (accessed 6 January 2014) at 5.

Indigenous Peoples Organizations (IPOs) and CSOs with additional resources and new opportunities for mobilizing on issues relating to the recognition and protection of the rights of Indigenous Peoples and local communities. Similarly, the CCB Standards require that the proponents of REDD+ projects conduct consultations with affected communities and other appropriate stakeholders,²⁵⁷ thus providing another opportunity for mobilization and advocacy on the part of Indigenous Peoples and local communities.

To some extent, the plural, heterogeneous, and multidirectional nature of the transnational legal process for REDD+ aligns with the aspirations of many actors to experiment with, and learn from, the implementation of REDD+ across multiple sites of law.²⁵⁸ On the other hand, there have been increasing concerns that the transnational legal process for REDD+ has become fragmented in ways that have created disconnects between different sites of law and related activities. As Corbera and Schroeder argue, REDD+ has evolved into “a slew of unorchestrated, multi-level, multi-purpose and multi-actor projects and initiatives” that “permeates multiple spheres of decision-making and organization, creates contested interests and claims, and translates into multiple implementation actions running ahead of policy processes and state-driven decisions.”²⁵⁹ This sort of fragmentation has complicated efforts to operationalize REDD+ in developing countries and has prompted efforts aimed at enhancing coordination and collaboration across a range of multi-lateral, bilateral, and nongovernmental initiatives.²⁶⁰

²⁵⁷ CCBA, “Climate, Community & Biodiversity Standards. Third Edition” (December 2013), available at: https://s3.amazonaws.com/CCBA/Third_Edition/CCB_Standards_Third_Edition_December_2013.pdf (accessed 24 September 2014) at G3.

²⁵⁸ Reinecke *et al.*, *supra* note 251 at 36. ²⁵⁹ Corbera & Schroeder, *supra* note 232 at 93.

²⁶⁰ For instance, the UNFCCC has addressed issues relating to the coordination of REDD+ finance as part of a work program to improve its effectiveness (UNFCCC COP, Decision 2/CP.17 at paras 65). See also the discussion of the REDD+ partnership in Reinecke *et al.*, *supra* note 251.