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REDD+ and Human Rights: Addressing Synergies between International Regimes

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ABSTRACT. The making of the REDD+ mechanism in the framework of the United Nations Framework Convention on Climate Change (UNFCCC) has raised specific concerns on how to reconcile incentives for forest carbon sequestration with the protection of the rights of the numerous communities that rely upon forests for their livelihood, shelter, and survival. Although the nascent REDD+ mechanism provides an opportunity to provide multiple benefits, the design of a framework to secure such benefits and avoid perverse outcomes has proven complex. I provide an overview of progress toward the establishment of such framework, arguing that concerns over the social impact of REDD+ activities may be addressed by resorting to clearer and stronger links with human rights instruments.

Key Words: *climate change; FLEGT; forests; human rights; Nagoya Protocol; REDD+*

INTRODUCTION

The making of the REDD+ mechanism under the United Nations Framework Convention on Climate Change (UNFCCC) has raised concerns over its potential impact on the rights, interests, and legitimate expectations of the numerous communities that rely upon forests for their livelihood, shelter, and survival (Griffiths 2009, Seymour 2010, Kelly 2010). Such concerns relate specifically to the potential loss of traditional territories and restriction of rights of indigenous and local communities to access to, use of, and/or ownership of land and natural resources; lack of equitable benefit-sharing of REDD+ activities; exclusion of indigenous and local communities from designing and implementation of REDD+ policies and measures; and loss of traditional ecological knowledge.

These concerns are not new and have already been associated with other instruments devised to ensure sustainability in forest and other natural resources uses. This article argues that these matters may at least be partially addressed by taking into better account the human rights obligations that states have already undertaken in connection with the protection of indigenous peoples and other communities inhabiting forests and/or depending upon their resources. Although human rights are no silver bullet, they provide useful guidance to inform and strengthen international and national law and policy making on REDD+. Such guidance has increasingly been incorporated in international processes dealing with development assistance and natural resources, with the aim to avoid conflicts and exploit synergies with states' extant obligations. It is here suggested that the law making process associated with the establishment of the REDD+ mechanism take stock of these experiences. Far from being a mere consideration of opportunity, getting this specific aspect right may hold the key to the success of the mechanism.

To prove this proposition, the article reviews the safeguards and guidelines that have so far been adopted to address concerns over the social impact of REDD+ activities, to then illustrate the approach undertaken in the framework of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) and voluntary partnership agreements stipulated under the European Union (EU) Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. Although these instruments are at an early stage of development, and no doubt perfectible, they encapsulate some human rights considerations. They therefore provide a useful term of reference for the nascent REDD+ mechanism.

HUMAN RIGHTS

Human rights concerns associated with REDD+ activities are particularly conspicuous with regard to matters concerning access to land and forest resources, as well as procedural rights concerning participation to the design and implementation of REDD+ policies. The establishment of incentives to reduce emissions from deforestation and secure the maintenance of forest carbon stocks requires dramatic reforms in access and use of forest resources. Such reforms may have significant human rights consequences, disrupting traditional lifestyles and forest-based livelihood, with implications for the enjoyment of economic social and cultural rights, such as the right to food, as well as civil and political rights, such as the right to property, and the right to respect for private and family life.

Human rights treaties require states to respect, i.e., to refrain from activities infringing upon rights, as well as to take positive measures to fulfill rights and protect subjects within their jurisdiction against violations carried out by third parties. The human rights system has evolved into a sophisticated

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apparatus encompassing bodies in charge to monitor and invigilate upon states' compliance with their obligations, as well as complaint mechanisms with the authority to receive communications from individuals or groups.

Human rights bodies have upheld complaints concerning violations of substantive human rights associated with detrimental environmental conditions, particularly with reference to indigenous peoples and other tribal communities. Procedural rights on access to justice, information and participation have become a paradigm to ascertain adequate involvement of affected communities in activities concerning access and use of natural resources (Human Rights Council 2011).

Violations of both sets of rights are especially likely to affect indigenous peoples and other communities inhabiting forests and/or depending upon forest resources for their livelihood and survival. Human rights bodies have produced a sizeable case law sanctioning the negative impact of forestry and resource extraction activities on such communities (International Law Association 2010). For example, in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Inter-American Court of Human Rights found that Nicaragua had violated the right of the members of the community to use and enjoy their property, by granting logging concessions to third parties to utilize resources located in the area where members of the community lived and carried out their activities. Indigenous peoples enjoy special protection in this regard, pursuant to the International Labour Organization Convention Concerning Indigenous and Tribal Peoples no. 169 (ILO Convention 169).

Inadequate involvement of affected subjects in decision-making processes concerning REDD+ policy and practice could also lead to an infringement of procedural human rights. Public participation and access to justice and information are regarded as a component of several internationally protected human rights. Again ILO Convention 169 provides specific rights for indigenous peoples. A few states eligible to carry out REDD+ activities have ratified ILO Convention 169. Most states, however, supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly. Although the Declaration does not impose legally binding obligations, some of its provisions have been regarded as customary international law (International Law Association 2010) and an expression of "a commitment on the part of the United Nations and Member States to its provisions" (Anaya 2008:41).

UNDRIP prescribes that indigenous peoples may not be forcibly removed from their lands or territories, and that no relocation may take place without their free, prior, and informed consent (FPIC). The Declaration requires FPIC in connection with all legislative or administrative measures that may affect indigenous peoples. States are required to consult

and cooperate in good faith with the indigenous peoples concerned through their own representative institutions to obtain FPIC, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources.

Indigenous peoples' right to FPIC has found recognition in the case law of human rights bodies. In *Maya Indigenous Community of Toledo v. Belize* case, for example, the Inter-American Commission found that the granting of logging and oil concessions to third parties in the absence of effective consultations with, and the informed consent of, the Maya people had breached their right to property. This requirement has also been applied to communities not categorized as indigenous peoples in *Saramaka People v. Suriname*, in which the Inter-American Court enumerated the criteria that must be applied before granting concessions for the exploration and exploitation of natural resources, or implementation of development investment plans or projects on indigenous or tribal lands (Inter-American Commission on Human Rights 2009).

Other international human rights bodies have clarified that FPIC is required in accordance with state obligations under the corresponding treaties (Committee on Economic, Social and Cultural Rights 2009). Regardless of considerations concerning the legal status of UNDRIP, therefore, parties to human rights instruments are expected to abide to FPIC requirements, as they have emerged from interpretation of the relevant treaties.

Decisions rendered by human rights bodies are not always endowed with legally binding force and states retain considerable freedom in the choice of measures they may take to meet their human rights obligations. Nevertheless, the blame-and-shame effect associated with the declaration of human rights violations exerts some influence on states and concurs to make the normative frame of human rights "real" (Nicholson and Chong 2011).

International processes dealing with development and conservation have increasingly embraced rights-based approaches. The UN has adopted a rights-based approach as a tool to integrate human rights norms and principles into development plans, policies, and processes (UN Secretary General 2001). Prominent conservation organizations, such as International Union for Conservation of Nature (IUCN), have endorsed a rights-based approach as a tool to ensure that both conservation processes and their outcomes effectively respect, protect, and fulfill human rights, by taking into account principles of nondiscrimination, participation, and empowerment, and accountability (IUCN 2008, Campese et al. 2009, Shelton 2009).

Although these discourses remain at an early stage of development and have been exposed to some criticism

(Koskenniemi 2010), they have drawn attention to human rights implications associated with access and use of natural resources. The main advantage of this human rights perspective is that it enables us to seize opportunities to promote and fulfill human rights and avoid harms. In addition, human rights may also be used as “benchmarks of acceptable outcomes based on widely agreed principles and legal structure” (Humphreys 2010:23).

These arguments have increasingly been made also with regard to climate change (Caney 2010, Roht-Arriaza 2010) and ultimately gained recognition in the Cancun Agreements, which emphasize that “Parties should, in all climate change related actions, fully respect human rights” (UNFCCC COP 2010:para. 8). The preamble to the agreements also “takes note” of the UN Human Right Council Resolution 10/4, which calls for all relevant human rights special procedures to “give consideration to the issue of climate change within their respective mandates” (Human Rights Council 2009:para. 3). The scope for institutional cooperation remains however limited, because of the fragmented nature of states’ obligations in the human rights field. The Cancun Agreements have also left open the question of how states will take human rights impacts into account in construing, developing, and operationalizing their commitments to combat climate change (Humphreys 2012).

These considerations are particularly salient with reference to the establishment of a REDD+ mechanism. UNFCCC parties are expected to comply with their extant international obligations, including human rights obligations, whenever they undertake REDD+ activities. More controversially, it may be argued that also nonstate actors providing funding for REDD+ activities and/or purchasing REDD-generated offsets may indirectly or directly be liable for the human rights impact of these activities (Takacs 2010). It is therefore paramount to ensure that REDD+ activities do not provide perverse incentives to carry out human rights violations. The need to provide some internationally coordinated guidance on the issue has become increasingly apparent. UNFCCC parties have adopted some safeguards to address the social impact of REDD+ activities. However, these safeguards do not establish a clear link with states’ human rights obligations.

REDD+ SAFEGUARDS

Restrictions over access to forests and their resources are likely to engender human rights concerns analogous to those that have already emerged with regard to forestry and natural resource extraction activities. For example, the UN Committee on the Elimination of Racial Discrimination (CERD) has already urged Indonesia to review its laws, including regulations adopted to carry out REDD+ activities, to ensure that they respect the rights of indigenous peoples to possess, develop, control, and use their communal lands (CERD 2009).

Virtually all UNFCCC parties eligible to undertake REDD+ activities have ratified global, as well as regional human rights treaties (ClientEarth and World Resources Institute 2011). Hence, there are clear areas of overlap between states’ human rights obligations and commitments they may undertake in the framework of the REDD+ mechanism. Some authors have pointed to the potential to address these matters in an integrated fashion (Chhatre et al. 2012, Visseren-Hamakers et al. 2012), for example suggesting that REDD+ safeguards build on existing national approaches for ensuring human rights objectives (ClientEarth and World Resources Institute 2011). Such an approach would have the advantage to avoid duplicating efforts and build upon intergovernmentally agreed standards. In particular, a clearer link with human rights may support the REDD+ mechanism in three ways. First, it would enable parties to rely upon the case law and guidance developed by human rights bodies and institutions. Second, explicit reference to human rights would enable state parties to identify the relevant measures in the domestic legal order, build appropriate links between the two, and avoid duplicating efforts. Third, such an explicit link would enable parties to rely on relevant capacity for monitoring and verification.

Human rights obligations, however, vary depending upon which treaties states have ratified. Adhesion to the REDD+ mechanism may not become a tool to impose upon states obligations they have not undertaken. Building explicit links with human rights instruments may therefore raise the objection of parties that are not signatories to such agreements (Zarin et al. 2009). An alternative may be to design criteria to access funding disbursed by the REDD+ mechanism drawing upon procedural guarantees included in widely ratified human rights instruments, and/or making specific cross-references to states’ extant human rights commitments.

The UNFCCC does not specifically mention human rights. The convention makes only some hortatory references to the issue of public participation in connection with training and public awareness related to climate change (Articles 4.1(e) and 6). As a matter of law, nevertheless, when interpreting obligations in a treaty, any relevant international law rules applicable in the relations between the parties are to be taken into account. So called “conflict avoidance clauses” may further indicate that the treaty at issue “is not to be considered as incompatible with, an earlier or later treaty”, or that “the provisions of that other treaty prevail” (International Law Commission 2006:para. 268).

Although the UNFCCC does not include any such clauses, the Cancun Agreements generally provide that parties fully respect human rights “in all climate change related actions” (UNFCCC COP 2010: para. 8). With specific reference to REDD+, the Agreements require that developing country parties address “land tenure issues, forest governance issues, gender considerations” and ensure “the full and effective

participation of relevant stakeholders” when developing and implementing national strategies or action plans (UNFCCC COP 2010:para. 72). The text also includes specific “safeguards” that parties should address and respect throughout the implementation of REDD+ activities. Safeguards are intended to reduce risks, and enhance multiple benefits of REDD+ activities, thereby supporting their credibility and long-term success. REDD+ activities should “complement” or be “consistent with relevant international conventions and agreements” (UNFCCC 2010:Appendix 1, para. 2[a]). Respect for the knowledge and rights of indigenous peoples and members of local communities, as well as “the full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities” (UNFCCC 2010:Appendix 1, para. 2[d]) should be promoted and supported. The safeguards also incidentally “note” the adoption of the UNDRIP. This language potentially opens the way to the consideration of human rights issues in the framework of REDD+ mechanism, without however establishing a clear link with instruments to which states have already agreed.

UNFCCC parties have instead agreed that developing country parties undertaking REDD+ activities periodically provide a summary of information on how safeguards are being addressed and respected, to be included in national communications pursuant to the UNFCCC (UNFCCC COP 2010). The Subsidiary Body for Scientific and Technological Advice (SBSTA) was entrusted to work out the details of a system for providing such information. Such a system should build upon existing ones “as appropriate” and “while respecting sovereignty” (UNFCCC COP 2010:para 71[d]). These specifications are a reminder of tension between the establishment of an international level playing field, and states’ autonomy in determining their social and environmental law and policies. The SBSTA was asked to consider the need for further guidance to “ensure transparency, consistency, comprehensiveness and effectiveness when informing on how all safeguards are addressed and respected and, if appropriate, to consider additional guidance” (UNFCCC COP 2011a). The SBSTA is expected to conclude its consideration of this matter in 2013. In spite of the fact that the issue had been specifically raised in submissions in preparation for the meeting, the draft text emerging from the eighteenth session of the UNFCCC Conference of the Parties (COP) does not make any reference to human rights (SBSTA 2012). At present, therefore the text on safeguards and the related information system hardly impose legally binding obligations on state parties to the UNFCCC.

In keeping with its responsibility to apply a human-rights based approach and to “uphold UN conventions, treaties and declarations,” the UN Collaborative Programme on REDD (UN-REDD Programme) has adopted principles and criteria to help countries meet their commitments under a number of

international agreements and decisions taken by their treaty bodies (UN-REDD Programme 2012:2). Thus, funded activities are expected to respect and promote the recognition and exercise of the rights of indigenous peoples, local communities, and other vulnerable and marginalized groups to land, territories, and resources. The Programme has drafted specific FPIC Guidelines to be used by partner countries and apply to national-level activities supported by UN agencies partner to the programme (UN-REDD Programme 2013a). FPIC criteria are outlined in great detail, including a step-wise approach detailing what is required from partner countries, building upon by human rights bodies practice, and developments occurred under the Convention on Biological Diversity (CBD) and the Nagoya Protocol regarding benefit-sharing and the protection of traditional knowledge (UN-REDD Programme 2013b). The guidelines distinguish consent from mere consultation, specifying that FPIC is meant to enable communities to participate in decision-making processes, and withhold their consent. These expressions of will must be respected and avenues should be provided also to withdraw consent. In line with the UN-REDD Programme principles and criteria, the guidelines reiterate that no involuntary resettlement should take place as a result of REDD+ activities and/or policies. The UN-REDD Programme is furthermore planning to set up a mechanism to address grievances from individuals and communities, as well as reports of noncompliance with its guidance and policies, which will operate in addition to grievance mechanisms established at the national level.

The UN-REDD Programme has thus attempted to ensure the protection of human rights, building explicitly upon extant instruments and practices. Although the process does not request states to sign up to human rights commitments they have not ratified already, the principles and criteria are specifically designed to help countries meet their extant commitments under a number of international agreements, including ILO Convention 169, UNDRIP, and UNCERD. Nevertheless, the role that UN-REDD Programme may play in this connection remains to be ascertained, because the Programme is presently endowed with little means to scrutinize and demand compliance with the principles and guidelines it has adopted. Although in principle the UN-REDD Programme may withhold funding in cases of lack of compliance with its guidelines, it remains to be seen whether it will be willing to undertake such course of action.

Considerations of a different nature apply to the other main international initiative dealing with REDD-readiness, the Forest Carbon Partnership Facility (FCPF). The Facility is subjected to the World Bank’s operational policies to avoid, mitigate, or minimize adverse impacts of projects supported, and benefits from its established apparatuses and grievance mechanism (World Bank 2010). The Bank’s Operational Policy on Indigenous Peoples asserts the need to “ensure that

the development process fully respects the dignity, human rights, economies, and cultures of indigenous people” (World Bank 2005:1). When avoidance is not feasible, adverse effects on indigenous people should be “minimised, mitigated, or compensated” (World Bank 2005:1). Contrary to the UN-REDD Programme, the Facility has not adopted a rights-based approach. Instead, the FCPF has designed a strategic environmental and social assessment process aimed to assess the impacts of proposed activities, as well as their legal and policy implications (FCPF 2010). This process is expected to result in the development of an environmental and social management framework.

The divergence in safeguards adopted under the FCPF and the UN-REDD Programme has resulted in the fact that the same activities in the same countries may be subjected to different standards, depending on which institution is handling the funding. In this respect, the UNFCCC COP has specified that REDD activities should be consistent with safeguards included in the Cancun Agreements, regardless of the source or type of financing (UNFCCC COP 2011*b*). To address this problem, the FCPF has established that where the fulfilment of its Partnership agreements is delegated to third institutions that deploy more stringent standards, the more stringent standards prevail (FCPF 2011). Although this solution addresses questions associated with conflicts between guidance provided by the FCPF and the UN-REDD Programme, this also means that states that are partners solely to the FCPF can abide to less stringent standards. This outcome seems most unsatisfactory. Incoherence between standards on crucial matters such as FPIC and resettlement is hardly conducive to building a level playing field that the REDD+ readiness process was aimed at establishing.

The approach adopted by the FCPF has attracted some criticism (Dooley et al. 2011). The UN Permanent Forum on Indigenous Issues has cautioned that displacement and exclusion of indigenous peoples from their forests should be avoided at all costs, while the choice not to participate in projects supported by the FCPF should be respected (UN Permanent Forum on Indigenous Issues 2008). An evaluation report has furthermore recommended that the FCPF strengthen coordination with the UN-REDD Programme, and resolve differences concerning advice given to participating countries on implementation of social safeguards (Baastel and NORDECO 2011). There has in other words been some duplication of efforts between these two initiatives, which so far has not been resolved through guidance provided by the UNFCCC COP. As a result, country parties to the UNFCCC that decide to engage with REDD+ activities are left to grapple with multifarious sets of guidance. This fragmentation is hardly conducive to building a level playing field for REDD+ activities. If the REDD+ mechanism is to be established, urgent action is required to harmonize requirements across jurisdictions (Jagger et al. 2012). Human rights could help in

this endeavor, as shown by lessons learned through the Nagoya Protocol and FLEGT.

THE NAGOYA PROTOCOL AND FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE

Designing the REDD+ mechanism building upon synergies with human rights obligations would avoid duplicating efforts and exploit the consensus that already underpins extant human rights instruments. Including express references to these instruments and procedures in criteria to access funding under the REDD+ mechanism may however not be an option because not all parties eligible to carry out REDD+ activities have ratified the same treaties. REDD+ criteria may nevertheless incorporate established rights-based methodologies and procedural tools, such as FPIC. In this connection, the Nagoya Protocol to the CBD and voluntary partnership agreements established in the framework of FLEGT provide useful sources for inspiration.

The CBD has promoted an inclusive approach to natural resource management and conservation. Indigenous and local communities have relied upon CBD provisions to seek recognition of their rights and interests in relation to biological resources and the related traditional knowledge. CBD treaty bodies have also taken some steps to ensure participation of representatives of these communities at negotiations (Morgera and Tsoumani 2010). Arguably the normative activity of the CBD Conference of the Parties already has built “conceptual bridges” with human rights law (Morgera 2013), which provide a useful term of reference for REDD+ policy making.

The Nagoya Protocol was specifically negotiated to promote and safeguard the fair and equitable sharing of benefits arising from the utilization of genetic resources. The Protocol has substantially advanced and refined the provisions in the CBD on the issue, by including references to indigenous and local communities’ rights over genetic resources, and the fair and equitable sharing of benefits deriving from the utilization of the associated traditional knowledge. The Protocol is thus expected to facilitate the assertion of the rights of indigenous and local communities (Bavikatte and Robinson 2011).

Like REDD+, the Nagoya Protocol presents potential overlap with human rights, as most CBD parties have ratified global as well as regional human rights treaties. Although the Protocol does not make any textual reference to human rights, it includes a specific conflict clause asserting that it must be implemented “in a mutually supportive manner with other international instruments” (Article 4.3) that are relevant to its subject matter. Due regard should also be paid to “useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol” (Article 4.2). These provisions arguably endorse a pragmatic case-by-case

approach to mutual supportiveness, requiring that parties disqualify interpretative solutions to tensions between the Nagoya Protocol and other relevant instruments involving the subordination of one to the other (Savaresi 2012a). This approach is set to apply to all parties' obligations, thereby including also the ones enshrined in human rights instruments. The reference to "ongoing work" and "practices" could even be interpreted in a way to encompass not only treaties, but also soft law instruments, like UNDRIP. Thus, in spite of its undetermined legal status, UNDRIP may be viewed as one instrument that parties may need to interpret in a mutually supportive way with the Protocol.

In addition to this explicit interpretative nexus, the notion of prior informed consent embodied in the Nagoya Protocol clearly overlaps with that FPIC. Equally, provisions concerning access to justice, participation, and information may, and arguably should, be read in light of states' existing human rights commitments, which may be used to interpret and fill with content the relevant obligations under the Protocol (Savaresi 2012a). The Nagoya Protocol can therefore be regarded as a step forward in the effort to develop a rights-based approach to the management of natural resources (Morgera 2013). Though it is early to say how this instrument will be implemented, the Nagoya Protocol may shine the path ahead for REDD+ law and policy making.

The CBD COP has also taken steps to influence the development of REDD+ safeguards. In 2012 parties requested the Executive Secretary to collate and summarize information on experiences regarding how the potential effects of REDD+ activities on the traditional way of life and related knowledge and customary practices of indigenous and local communities are being addressed (CBD COP 2012). The CBD COP further emphasized the importance of adequate benefit sharing to ensure the sustainability of REDD+ activities and recalled instruments that have been adopted in the framework of the CBD to guide state parties' in this regard (CBD COP 2012). Parties were furthermore invited to consider incentives to facilitate climate change related activities that take into consideration biodiversity and related social and cultural aspects, in harmony with the CBD and other relevant international obligations. CBD guidance potentially provides parties to the UNFCCC with a way to incorporate human rights into the international climate regime.

Another way to build a bridge with human rights obligations may be to leverage governance reforms drawing upon states' existing human rights commitments. This approach has been adopted in the framework of FLEGT agreements stipulated by the EU to ensure legality verification of timber products imported from third countries. The main incentive for third countries to sign voluntary partnership agreements (VPA) is access to the EU market, as well as the provision of assistance to reform and improve legal and administrative frameworks

on forest management. VPAs have been developed via a multistakeholder negotiation processes. Civil society and forest dependent peoples were represented in the negotiations of the agreement and had a say in defining issues such as what qualifies as legal timber, obtaining provisions for legal review and tenure reform, and defining a role for independent monitoring (Savaresi 2012b). Although the relevant formulations vary from one VPA to the other, all agreements require parties to minimize any potential adverse effects on the indigenous and local communities concerned, and to assess the impact on their way of life. The VPAs largely rely on existing control mechanisms and legislation, and the development of national legality standards remains the responsibility of the government of the country concerned.

Experience accrued through the development and implementation of voluntary partnership agreements may provide a useful platform to build REDD+ endeavors. Explicit links with such agreements could be established, as was done for example in the framework of a Memorandum of Understanding between Norway and Guyana (Savaresi 2012b).

CONCLUSIONS

Parties to the UNFCCC have increasingly sought to ensure that REDD+ activities provide social benefits. Safeguards and the information system adopted so far by the UNFCCC COP do not presently make reference to human rights. The Cancun Agreements generically encourage UNFCCC Parties to comply with human rights instruments, and the annexed safeguards touch upon a series of human rights-related issues. In the meantime, the UN-REDD Programme has undertaken decisive action to bring its standards in line with human rights, by building upon UN-based human rights instruments and practice, as well as institutional collaboration with human rights bodies. However, the FCPF has not followed suit, and incoherence between standards adopted under these processes is in urgent need of increased coordination, to ensure the establishment of a level playing field to enable countries to carry out REDD activities on an equal footing. There are clear limits to what the FCPF and the UN-REDD Programme might realistically achieve in this regard. An overarching regulatory umbrella would provide a firmer legal basis to establish such a level playing field.

Concerns relating to the social impact of REDD+ activities may be addressed by unambiguously anchoring REDD+ safeguards to states' human rights obligations. In this regard, the added value of making reference to human rights does not only lie in legal enforceability, but also in benchmarking and institutional support. UNFCCC parties could draft safeguards concerning the social impact of REDD+ activities building upon relevant human rights instruments, most specifically those pertaining to the rights of indigenous peoples and other vulnerable forest users. Tying REDD+ safeguards to the

existing human rights obligation would offer institutionalized pathways for claimants to seek enforcement of their rights. In addition, the blame-and-shame effect associated with human rights could assist less powerful actors to mobilize behind those rights.

The Nagoya Protocol and FLEGT provide examples of how environmental protection efforts may rely on an explicit appreciation for human rights. The adoption of a mutual supportiveness clause such as that in the Nagoya Protocol would provide an unequivocal legal basis to ensure respect for states' extant human rights obligations. In addition, criteria to access REDD+ funding could require compliance with established rights-based practices, such as those deployed in the framework of FLEGT VPAs. It would seem auspicious that parties to the UNFCCC capitalize upon lessons learned through these processes. Time will tell whether the troubled establishment of the REDD+ mechanism will take stock of this acquired wisdom.

Responses to this article can be read online at:
<http://www.ecologyandsociety.org/issues/responses.php/5549>

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