

2014

**Public Participation and  
Climate Governance  
Working Paper Series**

**National Legislative Responses to REDD+ and  
Community Safeguards, Co-Benefits and Community  
Participation in Bangladesh**

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## 1 Introduction

Over the last decade, REDD+ has emerged as a potential response to climate change mitigation in the forest sector.<sup>1</sup> The issue of reducing emissions from deforestation and forest degradation was incorporated in the decisions of the Parties of United Nations Framework Convention on Climate Change (UNFCCC) at its 11<sup>th</sup> session of Conference of the Parties (COP 11) in Montreal in 2005. In 2010, at COP 16, Parties further agreed to ensure that environmental and social co-benefits should be delivered through REDD+, and that potential risks should be minimized in implementing REDD+ programmes at the national and sub-national levels.<sup>2</sup>

Community safeguards, co-benefits and community participation in the decision making processor the implementation of REDD+ are amongst the seven safeguards agreed to by Parties at COP 16 in 2010. In order to institute these safeguards in REDD+ programmes at the national level, the national context must be taken into consideration, along with the appropriate policies, and legal and institutional frameworks required for implementation. However, incorporating the notion of “community safeguards, co-benefits and community participation in the decision making process” into a national REDD+ policy, strategy or programme does not always require enactments of new regulatory regimes; instead, it may be accomplished through amendments to, or the enhancement of, existing mechanisms. This paper therefore intends to identify and examine the related legal and institutional approaches to community safeguards, co-benefits and community participation in decision-making processes in the context of REDD+ programmes in Bangladesh, particularly taking into account the safeguards agreed within the UNFCCC policy regime of REDD+.

Bangladesh recently drafted its REDD+ Readiness Roadmap, recognizing the need to revise related policies on community safeguards, co-benefits and community participation in decision-making processes. Indeed, some legal instruments relating to these safeguards already exist in Bangladesh, within the decision-making processes of the country’s environmental, forest and biodiversity protection and conservation regimes. This paper will take an analytical approach to identifying the gaps in these existing legal, policy and institutional frameworks.

## 2 UNFCCC REDD+ Safeguards and Forest Governance in Bangladesh

As a component of international climate policy, REDD+ was considered within the Bali Action Plan at the thirteen session of the Conference of Parties (COP 13) of the UNFCCC, growing from an initial proposal by Papua New Guinea and Costa Rica for a mechanism to reduce emissions from forest deforestation in developing countries at COP 11 in 2005. Further significant policy developments within the UNFCCC policy regime identified risks relating to the implementation of REDD+ and decided to agree

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<sup>1</sup>REDD+ stands for Reducing emissions from deforestation and forest degradation, and fostering the conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries.

<sup>2</sup> UNFCCC, 2010, 1/CP-16, para 70.

on a set of seven safeguards to support REDD+ implementation (hereafter referred to as the UNFCCC REDD+ Safeguards) at COP 16 in 2010.<sup>3</sup>The UNFCCC's REDD+ safeguards aim not only to mitigate the risk of adverse social and environmental impacts from REDD+ activities, but also to actively promote benefits beyond carbon emission reductions, such as increased land tenure security, the enhancement of biodiversity, the improvement of forest governance and the empowerment of relevant stakeholders by ensuring their full and effective participation.<sup>4</sup>

#### **UNFCCC REDD+ Safeguards Decision**

(1/CP.16, *op cit*, Appendix 1, paragraph 2)

- (a) Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of this decision;
- (e) Actions are consistent with the conservation of natural forest and biological diversity, ensuring that action referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits. (Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day).
- (f) Actions to address the risks of reversals; and
- (g) Actions to reduce displacement of emissions.

<sup>3</sup>UNFCCC, 2010, 1/CP-16, para 70

<sup>4</sup> Rey, D., Roberts, J., Korwin, S., Rivera, L., and Ribet, U. (2013) A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards. ClientEarth, London, United Kingdom, Pp. 16

Specifically, the second REDD+ safeguard focuses on national forest governance structures, with regard to transparency and effectiveness, taking into account national legislation and sovereignty while the fourth safeguard seeks to ensure the full and effective participation of relevant stakeholders including indigenous peoples and local communities. In order to be effective, these two safeguards must be incorporated into national forest legislation. Hence, this paper takes these safeguards as a parameter to assess the forest governance structures and participation of relevant stakeholders in Bangladesh, with a view to examining legislative preparedness at the national level.

However, prior to assessing the national legislations, it is important to understand the implications of transparency and effectiveness, and the full and effective participation of relevant stakeholders in the context of forest governance structures. The characteristics of effective governance structures identified in Rey *et al.*'s "Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards" include: (1) the enhancement of laws and regulations relating to governance and sustainable use of forests; (2) public participation in forest-related decision-making; (3) clear rights of ownership and possession (land tenure); (4) equitable benefit sharing; and (5) the enforcement of those laws. This also means having adequate institutions and administrative frameworks in place, including judicial or administrative procedures providing for an effective remedy for infringement of rights, especially for Indigenous peoples. In addition, effective forest governance requires preventing corruption, and providing adequate funds for forest protection and conservation. Furthermore, coordination is needed between sectors affecting forests, as is the integration of social and environmental considerations into decision-making processes.<sup>5</sup>

Transparent national forest governance structures have two main components: (i) the right of access to information, and (ii) accountability mechanisms. The full and effective participation, in accordance with international legal instruments, is generally associated with the recognition and implementation of procedural rights (also known as access rights), such as access to information, participation, and access to justice. In order to implement this safeguard, it will be necessary to create an enabling environment for individuals to exercise their procedural rights. Such an environment includes: (i) the identification and notification of potentially affected persons, individuals and groups as early as possible; (ii) the active dissemination of pertinent information at all levels in a timely, culturally appropriate, and accessible manner; (iii) promotion, awareness-raising and capacity building for participation; (iv) the existence of mechanisms to ensure that views are taken into consideration in the decision making process; and (v) mechanisms to ensure access to justice for instances where participation is not enabled.<sup>6</sup>

## 2. 1. Legislative Approach to Forest Governance in Bangladesh

The Constitution of the Peoples' Republic of Bangladesh, 1972 is the fundamental legal document of Bangladesh. While it does not contain any specific provisions on forest resource management, a

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<sup>5</sup> Ibid, Pp. 36

<sup>6</sup> Ibid

number of its provisions do have implications for forest regulation. The basic laws regulating forestry resources in Bangladesh are the Forests Act, 1927,<sup>7</sup> and the Private Forests Ordinance, 1959<sup>8</sup>. The Act of 1927 was amended in 2000 in order to incorporate a related provision on Social Forestry, and the government has also adopted the Social Forestry Rules, 2004, which was amended in 2010. Moreover, the recently adopted Wildlife (Protection and Safety) Act, 2012, which repealed the Bangladesh Wildlife (Preservation) Order, 1973 has provided some important guidance to forest management in Bangladesh.

In addition, a number of other laws have relevant provisions regarding forest resource management. These include: the Brick manufacturing and Kiln Construction Act, 2013; the Sand Quarry and Soil Management Act, 2010; the Water Act, 2013; the Bangladesh Water and Power Development Boards Order, 1972; and all the laws on local government, namely the City Corporation Laws, the Paurashava Law, the Union Parishad Laws and the Laws on Hill Districts, which have favorable provisions on forest resource management in Bangladesh. The National Forest Policy (1994) and the National Environment Policy (NEP) (1992) have also provided important guidelines for forest resource management in Bangladesh. In addition, the National Adaptation Plan of Action (NAPA) and Bangladesh Climate Change Strategy and Action Plan 2009 include specific guidance for REDD+ schemes.

Laws regulating forests in Bangladesh:

- The Constitution of the People's Republic of Bangladesh, 1972
- The Forests Act, 1927
- The Social Forestry Rules, 2004
- The Wildlife (Protection and Safety) Act, 2012
- The Brick manufacturing and Kiln Construction Act, 2013
- The Sand Quarry and Soil Management Act, 2010
- The Water Act, 2013,
- The Bangladesh Water and Power Development Boards Order, 1972

In Bangladesh, the rights of forest dwellers have frequently been disregarded in implementing forest laws and regulations, and this disregard has often been accompanied by intimidation and violence. In order to constitute Reserve Forests and Protected Forests, as well as in the establishment of National Parks, the government has evicted forest communities, particularly Indigenous people in forest areas, in the name of forest protection and conservation. Therefore, REDD+ programs should take into account these experiences, as well as current forest exploitation policies, in order to avoid the repetition of past forest management mistakes.

It is also worth noting that climate change mitigation and adaptation measures aim to protect all the Earth's inhabitants from the adverse impacts of climate change and that the Cancun Agreements

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<sup>7</sup>Act No. XVI of 1927

<sup>8</sup> Ordinance No. XXXIV of 1959

(1/CP.16, Paragraph 70, Appendix I (b)) call for transparent and effective national forest governance structures, taking into account national legislation and sovereignty. Hence, in the context of REDD+ schemes, there is an opportunity to strengthen existing legislation and regulations, considering the rights of forest dwellers, and the principles of justice and environmental integrity. However, a comprehensive review is necessary before considering the adoption of new legislations or the strengthening of existing laws.

### 3 UNFCCC REDD+ Safeguard Principles: The Context of REDD+ in Bangladesh

Since this paper aims to investigate the legislative preparedness for implementing a REDD+ programme in Bangladesh, with a particular focus on community safeguards, co-benefits and community participation in forest governance, this section of the paper identifies gaps in existing legislation, in line with REDD+ Safeguards (b) and (d).

#### 3.1. Forest Management and Community Safeguards, Participation and Co-Benefits

The Forest Act of 1927 includes provisions for establishing Reserved Forests and Protected Forests, and attributes responsibility to the Forest Department to manage these types of forests. Moreover, the Act delineates the scope of the participatory management approach in the contexts of social forestry and the establishment of the village forest. Chapter II of the Act empowers the government to constitute a special category of lands of reserved forests<sup>9</sup>. The government may establish reserved forests on lands that it owns, administratively adjudicating and possibly acquiring competing legal claims to the land, and preventing new claims in accordance with procedural mechanisms by appointing a Forest Settlement Officer (FSO).<sup>10</sup> Most of the lands under the Forestry Department's management are declared reserve forest in accordance with these provisions. This Act provides options for adopting special rules for the use of these lands. To establish a reserved forest, the government needs to publish a declaration of the reservation in the official Gazette with a description of the forest's boundaries, and to appoint an FSO. The Act also provides scope for appeal to the Divisional Commissioner against a decision passed by the FSO, appointed for the purpose of declaration of reserve forest.<sup>11</sup>

The Act of 1927 further requires the protection of right of way, right of pasture, or rights to forest produce or a watercourse.<sup>12</sup> If it becomes essential to transform such rights, the government must

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<sup>9</sup> Section 3: Power to reserve forests–The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

<sup>10</sup> Sections 4, 5, 6, 7, 8,9, 10,11, 12, 13, 14, 15,16, 16A,

<sup>11</sup> Section 17: Any person who has made a claim under this Act, or any Forest-Officer or other person generally or specially empowered by the Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement- Officer under section 11, section 12, section 15 or section 16, present an appeal, from such order to the Divisional Commissioner concerned.

<sup>12</sup> Sections 12-15, the Forest Act, 1927

compensate the aggrieved persons with a sum of money or grant of land.<sup>13</sup> However, the above rights cannot be alienated, sold or bartered according to section 24. The government can prevent any public or private way or watercourse in a reserved forest subject to providing alternative means. In contrast, notification is required in case of Protected Forests, through settling the rights of the government or private persons. Chapter IV of the Act provides the government with the authority to create “protected forests.” Similar to the process of declaring reserved forests, the government can establish protected forests on government lands by declaration. Unlike reserved forests, the government must inquire into and resolve private rights before publishing the notification creating the protected forest. Once the government establishes a protected forest, the government has extensive authority to limit the forest’s use.<sup>14</sup>

### (a) Village Forests and Social Forestry

Chapter III of the Forest Act, 1927 provides the option for constituting Village Forests. The government may allocate parts of the reserved forests to particular villages for their use and participatory management. Section 28 of the Forest Act authorizes “Village Forests”<sup>15</sup> in reserve forests, authorizing the government to hand over its rights over a reserved forest to any village community to manage and for their use. Despite the existence of this provision in the Forest Act, however, no Village Forests have been established to date. However, amendments made in 2000 to the Forest Act inserted new section, 28A, which sanctions “Social Forestry” on any government land or private land under particular agreement<sup>16</sup> and provides further scope to adopt rules and programs. Section 28 A(4) and (5) of the Forest Act, 1927 provide the option for making rules to establish standards for social forestry agreements and programmes. In accordance with this provision, the government adopted the Social Forestry Rules and a social forestry program in 2004. The Social Forestry Rules were amended in 2010.

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<sup>13</sup> Section 16, *Ibid*

<sup>14</sup> Section 29 (1), Protected forests: The Government may, by notification in the official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary right, or to the whole or any part of the forest-produce to which the Government is entitled.

<sup>15</sup> Section 28: 1. The Government may assign to any village community the right of Government to or over any land that has been constituted reserved forest, and may cancel such assignment. All forest so assigned shall be called village-forest. 2. The Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any assignment is made may be provided with timber or other forest produce or pasture, and their duties for the protection and improvement of such forests. 3. All the provisions of this Act relating to reserved forest shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

<sup>16</sup> 28A. Social Forestry: (1) On any land which is the property of the Government or over which the Government has the proprietary rights, and on any other land assigned to the Government by voluntary written agreement of the owner for the purpose of afforestation, conservation or management through social forestry, the Government may establish a social forestry programme under sub-section (2). (2) A social Forestry programme is established when the Government, by one or more written agreements assigns rights to forest-produce or rights to use the land, for the purposes of social forestry, to persons assisting the Government in management of the land.



The amended Rules define forest villagers and local communities, and describe the selection criteria for beneficiaries, agreement duration and benefit sharing.<sup>17</sup>

The Social Forestry Rules also define the roles of stakeholders involved in Social Forestry. The Social Forestry Wing of the Forest Department was established under the Rules as the main implementing agency of the program at the national level, with District Forest Officers (DFOs) being responsible at the district level. Local participants are encouraged to elect 9-member Social Forestry Management Committees (SFMCs) to manage and protect the plantations. However, SFMCs have no decision-making authority. The Forest Department and DFO identify beneficiaries and appropriate locations for plantations, and the SFMC assists in implementing these decisions. An advisory committee has also been formed in each participating district, comprising the local DFO, an NGO representative, and a representative from the local SFMC. Through these advisory committees, SFMCs can request support and contribute ideas and suggestions for plantation management and benefit distribution. It is worth mentioning that, although the Forest Department started experimenting with social forestry two decades ago, its social forestry projects continue to be undertaken on an *ad hoc* basis.

#### **(b) Forest Ownership and Customary Rights**

Relevant provisions of the Constitution on forest ownership and customary rights include Article 42 under Part III, Fundamental Rights, which provides the right to hold property by citizens of the country, and requires that compensation be paid if such property is acquired by the government.<sup>18</sup> Article 47 provides further guidance for Article 42, specifying that Parliament can pass laws to acquire property in pursuit of national policy goals spelled out in Part II of the Constitution, and in a group of existing laws, including the State Acquisition and Tenancy Act, 1950. Article 84 requires all revenues received by the government to “form part of one fund to be known as the Consolidated Fund.”<sup>19</sup> This Consolidated Fund can be useful for reserving forest revenues for reinvestment in forest management or for payment to participants in community forestry programs.

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<sup>17</sup> In respect of Forest except Sal forest and in case of natural forest, profits of the different participants are as follows: Department of Forest-50%, Beneficiaries-40% and afforestation fund-10%. In case of forestation on the forest department land under the local community initiative: Department of Forest-25% and Beneficiaries-75%. In case of forestation on the land belongs to government, semi-government and autonomous bodies in an effort with the local community: Department of Forest-10% and Beneficiaries-75% and Land Owner bodies-15%.

<sup>18</sup> Article 42. Rights to property: (1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, sold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law (2) A law made under clause (1) shall provide for the acquisition, nationalization or requisition with compensation and shall either fix the amount of compensation or specify the principles on which or the manner in which, the compensation is to be assessed or paid; but no such law shall be called in question in any court on the ground that any provision in respect of such compensation is not adequate.

<sup>19</sup> Article 84 (1): All revenues received by the Government, all loans raised by the Government, and all moneys received by it in repayment of any loan, shall from part of one fund to be known as the Consolidated Fund.

The Constitution of Bangladesh also calls for the removal of inequality between “man and woman” in accordance with Article 19(2). This provision aims to ensure the “equitable distribution of wealth among citizens” and opportunities to attain a uniform level of economic development. Article 23 of the Constitution requires “adopting measures to conserve the cultural traditions and heritage of the people of Bangladesh.”<sup>20</sup> While laws regulating forestry and governing forest tenancy were enacted before the adoption of the 1972 Constitution, the provisions of these laws should be interpreted and applied in line with the Constitution.

Recognition of customary land rights is one of the foundations of the development of tenancy laws in Bangladesh. The Bengal Tenancy Act, 1885, obliged the Courts to consider local custom and values in determining whether a tenant is a tenure holder or *raiyat* (right to hold land for the purposes of cultivation). In accordance with the Tenancy Act, a person who for a period of twelve years had continuously held land as a *raiyat* situated in any village, whether under lease or otherwise, was deemed to have become a settled *raiyat* with a right of occupancy. Therefore, the legal provisions and jurisprudence supported customary and user rights in regulating land tenure issues. Indeed, the rights of many present title-holders of land developed from customary rights or prescriptions that were variably endorsed in numerous modalities by the *zamindars* (known as *landlords*). The State Acquisition and Tenancy (SAT) Act, 1950 did not repeal the 1885 Act, but further divested the tenure rights from landlords to the occupants.

An important provision in the SAT Act recognizing the special tenure status of lands falling within the traditional domain of aboriginal peoples is included in section 97.<sup>21</sup> This section empowers the government to declare by notification any aboriginal castes or tribes as “aboriginal” for the purpose of the section; however, it fails to define the term “aboriginal,” leading to confusion. Nevertheless, these provisions explicitly state that an aboriginal person can only transfer his or her land in favor of another aboriginal “domiciled and permanently residing in Bangladesh.” The law, in this case, recognizes the individual landholding rights of aboriginals, rather than “common property rights.” But the law does not restrict the transfer of land to another tribe or caste coming from other part of Bangladesh, as long as the transferee permanently resides or is domiciled in the country.<sup>22</sup>

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<sup>20</sup> 23. Nation culture: The State shall adopt measures to conserve the cultural tradition and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.

<sup>21</sup> 97. (1) The Government may from time to time, by notification, declare that the provisions of this section shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this section, and the publication of such notification shall be conclusive evidence that the provisions of this section have been duly applied to such castes or tribes, namely:-Santals, Bhuiyas, Bhumijes, Dalus, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dhaka Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Maches, Mundas, Mundais, Oraons and Turis.

<sup>22</sup> However, this provisions of the SAT Act, is not applicable to the Chittagong Hill Tracts where a large number of tribal peoples live under a customary system headed by tribal chiefs. See: *Land and land Law: Forest Legislation*

### (c) Forestry Policy 1994

The Forestry Sector Master Plan (FSMP), 1993, led to the adoption of the Forestry Policy, 1994, with a view to raising the total forest cover of the country to 20% by the year 2015. The FSMP also resulted in the development of the Participatory/Social Forestry' (SPF) programmes. SPF programmes are defined in the FSMP as “programmes implemented on private land, encroached Sal forest land or on underused land under the jurisdiction of government departments other than the Forest Department.” These programmes address afforestation, tree plantation and nursery establishment, development, maintenance and preservation through involving, encouraging and extending co-operation of the community people. They further propose that all State owned forests of natural origin and the plantations of the Hills and Sal forest will be used for producing forest resources, setting aside areas earmarked for conserving soil and water resources, and maintaining biodiversity.

The Forest Policy also recommends protecting inaccessible areas such as the slopes of hills, fragile watersheds, and swamps as protected forests and emphasizes the multiple uses of the forests, water and fish of the Sundarbans through sustained management, keeping the bio-environment of the area intact. To fulfill these targets, the Policy recommends the amendment of laws, rules and regulations in the forestry sector, and the promulgation of new laws and rules if necessary. It proposes the simplification and updating of the rules and procedures regarding transportation of forest produce in the country.

The Wildlife (Protection and Safety) Act, 2012 repealed the Bangladesh Wild Life (Preservation) Order, 1973, and was adopted with a view to providing a comprehensive framework for the protection and conservation of biodiversity, forest and wildlife, with the spirit of the recently incorporated Constitutional provision.<sup>23</sup> This Act initially provided some of the important definitions such as Sanctuary, Eco-park, Eco-tourism, Botanical Garden, Community Conservation Area, Corridor, Core Zone, Wetland, Buffer Zone, Co-management, and Protected Area. It is a vital effort to provide clarity to some definitions that were confusing in previous legislation.

### (d) Protected Area Management

Section 13 of the Wildlife (Protection and Safety) Act, 2012, makes provisions for designating wildlife sanctuaries, taking into account the importance of forest, biodiversity and wildlife protection and preservation within government-owned forests and wetlands. This section also authorizes protection for traditional livelihoods.<sup>24</sup> However, restrictions can be imposed on fishing and boating within the declared sanctuary with due consultation with the co-management committee.<sup>25</sup> The Act also sanctions the co-management of natural resources within declared sanctuaries, ensuring the effective

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*Needs to Reflect Human Values and Culture*, Selected Writings of Mohiuddin Farooque, Environmental Order, The Security of Survival, BELA, 2004, Pp.185

<sup>23</sup> Preamble, the Wildlife (Protection and Safety) Act, 2012

<sup>24</sup> Ibid, Section 13 (3)

<sup>25</sup> Ibid, Section 16 (2)

participation of local communities for the utilization of resources, and their protection and management. It also authorizes the formation of co-management committees.<sup>26</sup>

In accordance with section 17, the government can establish National Park on government forest land, or on any other land with natural worth, in order to protect and conserve the wildlife and environment. Section 18 of the Act also provides for the declaration of Community Conservation Areas, Landscape Zones or Corridors, Buffer Zones, and Core Zones. Finally, this Act allows for the declaration of Special Biodiversity Protection Areas.

Most importantly, this new Act recognizes the co-management by the forest department, forest dwellers and local people of forest resources.<sup>27</sup> However, this provision does not recognize the rights of the Indigenous peoples who have traditional rights over the forest. As a result, the legislation has been criticized by different stakeholders who argue that the newly adopted Wildlife Act would affect the rights of people dependent on forests, including Indigenous peoples. The Act did not ensure the forest people's rights regarding occupations, traditions and livelihoods.<sup>28</sup>

#### (e) REDD+ and Co-Benefits

Forests not only provide livelihoods for forest communities, but they are also important to cultural values and norms. As a result, the depletion of forest resources or barriers to access to forests threatens the right to a livelihood of forest-dependent communities, as well as the right to life. The right to life is a fundamental human right guaranteed by numerous international human rights instruments and recognized in national constitutions around the world, including in Bangladesh. Therefore, ensuring access to forest resources, as well as the equitable sharing of the benefits deriving from these resources, is a fundamental issue in implementing any projects or activities in forests.

The Convention on Biological Diversity provides an opportunity for forest-dwelling and local communities to secure benefits from forests' genetic resources.<sup>29</sup> Ongoing negotiation on REDD+ mechanisms under the UNFCCC also promise economic benefits to forest communities. Northern governments and businesses are investing billions of dollars in the vast, imperiled forests of the South. In a forest carbon project, a developer plants trees to reforest a degraded ecosystem, or preserves a forest that would have otherwise been degraded or felled. The developer can then "sell" the carbon,

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<sup>26</sup> Ibid, Section 21

<sup>27</sup> Ibid, Section 21

<sup>28</sup> See: <http://www.aippnet.org/home/daily-sharing/921-bangladesh-wildlife-act-passed-in-the-parliament-indigenous-leaders-spark-into-reaction>

<sup>29</sup> The Convention on Biological Diversity, 1992 Article 1: The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources.

now sequestered in the trees and underground biomass for a contracted period of time, via the carbon market.<sup>30</sup> Therefore, in this context, carbon rights and entitlements must be clearly defined.

Of course, project proponents (usually the investors) are also entitled to “clear, uncontested title to the carbon rights,” or the investors must “provide legal documentation demonstrating that the project is undertaken on behalf of the carbon owners with their full consent”.<sup>31</sup> However, determining ownership, or substantive use rights to forests, should be the first step in determining the entity most likely to have rights to the carbon sequestered by forests. We might therefore presume that forest owners and rights holders will be the direct beneficiaries of carbon sequestration rights.<sup>32</sup> In light of recent international developments underlining the key role of forest ecosystems in climate change mitigation and adaptation, national governments are increasingly adopting legislation aimed at regulating forest carbon rights.<sup>33</sup>

Article 84 of the Constitution of Bangladesh requires all revenues received by the Government to “form part of one fund to be known as the Consolidated Fund.” This provision of the Constitution might imply that the potential revenues from carbon sequestered by forests through carbon market mechanisms can be shared with forest community participants in REDD+ activities. However, in the context of carbon rights, social forestry mechanisms and practices in Bangladesh warrant further development via a policy framework that could ensure transparent and affordable conflict resolution and grievance mechanisms.

### **3.2. Access to Information and Access to Justice**

Adequate information is necessary for a community to take part in decision-making processes related to REDD+. Without clear and accurate information, neither policymakers nor local communities can participate effectively in REDD+ activities. Therefore, the right to information needs to be guaranteed within the procedural mechanism. Until recently, the legal regime in Bangladesh did not explicitly recognize the right to information.

Article 39 of the Constitution guarantees freedom of thought and conscience. The same article also guarantees freedom of speech. This article is often interpreted as inclusive of right to information; however, this constitutional guarantee can also be used in a restrictive way, rather than facilitating public opinion and wide flow of information. Instead, it may empower the government to curtail freedom of speech on the grounds of the security interests of the State, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation or incitement.

Nevertheless, relying on Article 39 of the Constitution, the Right to Information Act, 2009, was enacted by the government on 6 April 2009. The government has also acknowledged that people are

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<sup>30</sup> David Takacs, Forest Carbon Offsets and International Law: A Deep Equity Legal Analysis, 22 Georgetown International Environmental Law Review 521 (2010)

<sup>31</sup> *Ibid*

<sup>32</sup> Francesca Felicani Robles and Leo Peskett, Carbon Rights in REDD+: The case of Mexico, REDD Net, 2011

<sup>33</sup> *Ibid*

empowered when they are informed, and that an informed public increases transparency and accountability, reduces corruption and promotes good governance. Under the Act, information must be made available to any citizen upon application. Every agency must also prepare and publish reports compiling its decisions, proceedings and activities. However, information relating to the security, sovereignty and integrity of the country, its relationship with foreign countries, secret information obtained from foreign countries, cabinet decisions (although the basis for the decisions may be shared), intellectual property rights, fiduciary and commercial information, enforcement of law, security of the people, personal liberty and related matters may be exempted from disclosure. Every authority shall appoint a responsible officer in its information unit for responding to the applications requesting information.

As per the provisions of the law, a three member Information Commission has been set up to settle disputes relating to the disposal of an application. Since the law has come into force, very few applications have been filed seeking information, and in almost all cases, the request for information has not been responded to. In the absence of notification as to the appointment of responsible officer, a great deal of confusion also exists as to whom to apply. While most of the time applications are being forwarded to the chief of the authority, no single application has been filed to the Information Commission for settlement of unattended or rejected applications. Moreover, an Anti-corruption Commission, formed in accordance with Anti-corruption Commission Act, 2006, may also play an important role in ensuring the transparency and accountability of REDD+ schemes in Bangladesh.

Access to justice is also an important component of procedural guarantees to redress legitimate claims in implementing REDD+ activities. The Constitution of the Bangladesh guarantees justice against inequality, discrimination and exploitation, and equal protection of law is one of the 18 fundamental rights guaranteed under therein. Any violation of these fundamental rights can be challenged before the High Court under the constitutional provisions on writ. Under sectoral laws, the civil and criminal justice system also has jurisdiction to deal with environmental offences, but these laws are limited in terms of jurisdiction. For example, almost all the sectoral laws contain provisions that bar jurisdiction of civil and criminal courts to entertain cases without validation from the concerned authority, a requirement that can rarely be met by ordinary litigants. Sectoral laws dealing with the powers and functions of statutory authorities inevitably bar cases against government officials for acts “done in good faith”. It is thus extremely difficult to collect evidence of *mala fide* actions by officials. As the High Court does not entertain cases involving “disputed questions of facts”, cases that involve allegations against the public officials for breach of environmental duties are cumbersome to establish.

## 4 Key Findings and Ways Forward

This paper has aimed to scrutinize the existing legislative frameworks in Bangladesh, particularly in the context of REDD+ safeguards (b) and (d), with a view to exploring the scope of, and gaps in, existing legislation. Focusing on forest governance mechanisms in Bangladesh, this paper finds that legislative frameworks provide limited scope for community safeguards, participation and benefit sharing from

resource management. There is a growing trend to ensure peoples' participation at the project level, but this is largely occurring on an ad hoc basis, and needs legal recognition with appropriate institutional arrangements. Some sectoral laws do require participation, but lack detailed guidance. While some existing laws provide the foundation for co-management and benefit sharing, these laws require review, and in some cases amendment, and the enactment of new legislation. Finally, there is no recognition of customary land rights or Indigenous peoples' rights in Bangladeshi forest legislation.

Even though specific Environment Courts exist in Bangladesh, an independent Grievance Mechanism for REDD+ is required and a comprehensive study is necessary to propose an independent mechanism. Moreover, the newly enacted Right to Information Act and Anti Corruption Law can be utilized to ensure access to information on REDD+ schemes and to avoid corruption, enhancing the accountability and transparency of various actors. Finally, a national legal framework is needed to recognize the carbon rights of forest communities participating in REDD+ activities. Given these findings, a comprehensive study is needed to review the existing legal, policy and institutional frameworks, to recommend changes, and to provide guidance for amendments or enactments where necessary to implement REDD+ schemes in Bangladesh.

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