Policy, Legal and Institutional Framework

Technical Annex F

Final Report

Consulting Services Contract For the Development of A National REDD+ Strategy for Liberia

November 2016

Technical Annex A – Draft REDD+ Strategy

Technical Annex B – REDD+ Roadmap

Technical Annex C – Forest cover and land use analysis

Technical Annex D – REDD+ Strategy Options

Technical Annex E – Cost-benefit analysis

Technical Annex F – Policy, Legal and Institutional Framework

Technical Annex G – Consultation Report

This Technical Annex is part of a set of reports produced by LTS & NIRAS as part of the 'Consulting Services Contract For the Development of A National REDD+ Strategy for Liberia' commissioned by the Forestry Development Authority as part of its Readiness Preparation Proposal (R-PP) Implementation Grant from the Forest Carbon Partnership Facility.

The complete set of reports can be found here:
http://www.ltsi.co.uk/projects/liberia-national-redd-strategy-consultation/

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Executive Summary

Liberia is currently in the process of drafting a national strategy for Reducing Emissions from Deforestation and forest Degradation (REDD+). As part of the preparation for this Strategy, the government commissioned LTS International and NIRAS to prepare a draft national REDD+ strategy and roadmap based on an assessment of: i) land use and forest cover which indicates the main causes of forest loss; ii) strategic priorities and options for addressing the main drivers of deforestation and forest degradation, including a cost-benefit analysis of the strategy options and analysis of the barriers to implementation; and iii) a review of the legal, policy and institutional framework, which is the subject of this report.

Legal and policy framework

The analysis in this report provides a preliminary review of existing Liberian policies, legislation, and regulations to help ascertain Liberia's legal preparedness to proceed on the road to a full-fledged REDD+ program more broadly, and to implement the Strategic Options proposed in the draft REDD+ Strategy specifically. Currently, Liberian law does not address REDD+, nor has any such law been proposed. Thus, this assessment broadly asks the questions: can a REDD+ program – or key elements of such a program – be enacted under the existing Liberian legislative framework? If not, what are the key gaps, overlaps and challenges that must be addressed to enable Liberia to achieve its REDD+ goals?

This assessment concludes that certain aspects of REDD+ can, consistent with Liberian law, be implemented administratively without the need for new legislation. Other aspects of REDD+ will require either legal or regulatory amendments, and several of the issues identified also require policy direction. A REDD+ program enacted by way of a new law or legislative amendments would enable Liberia to design a comprehensive program and allow lawmakers to give clear guidance to implementing agencies, affected communities, the private sector, and other stakeholders. It would also provide greater confidence to donors and international investors. However, the legislative process is slow and resource-intensive and requires high levels of political support. Regulatory reforms could provide a sound legal basis on a somewhat shorter timeframe, but will require harmonization among key pieces of legislation and their implementing regulations. Finally, direction in the form of new policies, operational guidelines or codes of conduct, as enabled under existing regulations, could fill some critical gaps in existing planning criteria and processes. Ultimately, it will be a political decision whether there is sufficient support to conclude new REDD+ legislation or to address the gaps and overlaps in the existing frameworks to provide legislative backing for REDD+ implementation in Liberia.

It is important to note that detailed review and revision of laws and regulations is being carried out through the European Union Voluntary Partnership Agreement (VPA) project and is planned as a component of the Liberia Forest Sector Project (LFSP).

Additional issues relate to the capacity of key institutions to support effective implementation and enforcement of existing and proposed legal provisions. While this assessment does not provide a comprehensive analysis of capacity needs, it does recognize the constraints that these needs can place on options for policy and legal reform and tries to propose options that take these constraints into account.

Carbon rights

There is currently no clear or commonly accepted definition of carbon rights under international law or the international United Nations Framework Convention on Climate Change (UNFCCC) policy framework for REDD+. While the current UNFCCC framework for REDD+ makes no specific mention of carbon rights, it does 'request' State Parties to address land tenure issues when developing their national REDD+ strategies, and it does establish some other guiding principles that are relevant to the way that countries will develop their framework for carbon rights (e.g. safeguards).

Carbon is deemed included in the broad definition of 'forest resources' in the Forestry Reform Law and covered under the Community Based Forest Management (CBFM) agreement. Also, new categorization of land under the Land Rights Policy and draft Land Rights Act will have significant implications for how carbon rights are defined in the existing legal framework.

Some policy and legal options are presented on addressing gaps related to the definition of carbon rights:

1. **Policy options:** The Government may develop a Carbon Policy that is consistent with the international standards on REDD+. Alternatively, the Government could opt to integrate a Carbon Policy into the broader natural resource management policy framework.
2. **Legal options:** Legal reforms may be in the form of: i) enactment of new legislation that is specific to REDD+ and carbon rights; ii) amendment to existing legislation with a view to accommodate provisions relating to carbon, carbon ownership and carbon rights within existing legislation; iii) development of regulations under existing law such as the Forestry Reform Law to further define carbon rights and carbon ownership.

These options are assessed against criteria like efficiency, equity, transaction costs, political/legal feasibility and expected timelines.

Benefit sharing mechanism

While the term 'benefits' is broadly used, it is crucial for REDD+ stakeholders in Liberia to understand that if REDD+ benefits do not exceed real costs, there is no net positive benefit. The 'benefits' distributed through benefit sharing mechanisms may not always involve a direct monetary payment, and the total benefit delivered may be a combination of many different forms of benefits.

Lessons from other REDD+ countries – namely Indonesia, Guyana and Ghana – include: i) steering benefit sharing instruments from passive disbursement mechanisms towards 'strategic investments' to ensure sustainability; ii) funding windows to a benefit sharing arrangement provide flexibility in diversifying its beneficiaries (i.e. small grants mechanism for small-scale community level activities); iii) benefit sharing will have conflicting views in terms of who has the right share and what constitutes equitable and fair distribution of benefits; and iv) setting up a Trust Fund with a multilateral institution as the Trustee can be the first step in capitalizing a national REDD+ fund while maintaining confidence from donors in high fiduciary standards.

Important benefit sharing arrangement lessons can be drawn from experience in Liberia, for example with agricultural, mining and logging concessions issued by the Government: i) there is a risk of fragmentation of institutions and overlapping roles; ii) Liberian institutions will need to meet high fiduciary standards from major climate funds such as the Green Climate Fund; and iii) coordinating mechanisms need on-going funding in order to be effective and also need to meet on a regular basis.

Three options for benefit sharing arrangements are presented:

- **Option 1 – Nested Approach**
  A combination of sub-national input-based and sub-national performance-based benefit sharing using either existing benefit sharing mechanisms (e.g. National Benefit Sharing Trust) or create new ones at sub-national level (e.g. Conservation Funds for specific PA/PPAs like East Nimba Nature Reserve and/or Wonegizi).
- **Option 2 – National REDD+ Fund**
  Entails the creation of a National REDD+ Fund for Liberia – similar to other countries like the DRC REDD+ Fund, GRIF (Guyana) and FREDDI (Indonesia) – by legal decree such as a Presidential Executive Order or Regulation. A Memorandum of Understanding could then be signed between the Government of Liberia and, initially, an interim Administrative Agent (e.g. multi-donor trust fund) that would act as the Trustee for the fund.
- **Option 3 – Combined Approach**
  A third option to consider is a phased combination of Option 1 (sub-national approach) and Option 2 (creation of a national REDD+ fund). First, benefit sharing

mechanisms and models are tested at sub-national level with activities like the Liberia Forest Sector Project and the NICFI-funded FFI REDD+ pilot project. As lessons from these experiences are being generated, the initial steps to establish a national REDD+ fund – namely the development of a fund investment plan and operational manual – is put in place to eventually migrate nested BSMs into the national fund.

Option 3 could be considered the preferred option because it combines the benefits of 'hitting the ground running' in the short-term, with taking the time to design a national REDD+ benefit sharing mechanism that ensures an effective, efficient and equitable distribution of benefits. It will be important for this funding instrument to be designed in a way that captures other opportunities beyond the Letter of Intent with Norway, and any future non-market based results-based payments once a global REDD+ mechanism is in place and operational.

Institutional arrangements

Countries participating in REDD+ are required to set up a national REDD+ entity and designate a REDD+ Focal Point to communicate with the UNFCCC Secretariat and other relevant bodies. Liberia has done this, through the REDD+ Implementation Unit (RIU) which coordinates and oversees REDD+ readiness and implementation. The RIU sits in the FDA and is being strengthened in staff numbers and capacity through the Liberia Forest Sector Project (LFSP).

Successful coordination between forestry and other sectors is a critical component of REDD+. Many of the drivers of deforestation and forest degradation emanate from sectors outside of forestry, including agriculture, mining, and energy. These other sectors all have activities and policy, legal and institutional frameworks that significantly affect land use, forest cover and the success of REDD+ activities.

Liberia's climate change and REDD+ institutions have been designed to include different land-use sectors, different government ministries and a wide range of non-government interests. Nonetheless, with the National Climate Change Steering Committee (NCCSC) being a young body and with a strong agenda for economic development through exploitation of natural resources, there remains a challenge to truly integrate REDD+ into national policy making. It is therefore relevant to consider the policy and coordination structures that exist for national development planning.

Prior to 2016, the institutional arrangements have been for national REDD+ readiness policy and coordination work. From 2016, national arrangements for the implementation of REDD+ interventions will be put into action through the LFSP, which represents the main program for implementation of REDD+. It adopts the national REDD+ policy and

coordination arrangements described above and adds implementation arrangements for the program at national and landscape level.

Beyond the LFSP there are a variety of other projects with activities that are directly relevant to the implementation of REDD+. There are three types:

i) **Biodiversity conservation projects**, typically led by international non-governmental organizations (NGO), with Liberia NGO partners, and with international donor funding (e.g. FFI Wonegizi REDD+ Pilot; CI and FFI projects to develop conservation agreements and Protected Area management plans in East Nimba Nature Reserve; SNCL/Birdlife in the Gola-Foya conservation corridor)

ii) **Community forestry projects**: (e.g. PROSPER and the successor project FIFES. Community forestry projects usually have a conservation component and conversely biodiversity conservation projects also usually have a community forestry component)

iii) **Zero-deforestation commodity projects**: Typically public-private partnerships, focused on large concession-holding companies (e.g. IDH/FDA Production-Protection project, with NICFI funding, with Arcelor Mittal, Golden Veroleum Liberia and Sime Darby Plantations Liberia)

It is clear that Liberia has well-established arrangements for REDD+ preparation and these have been adopted by the LFSP for implementation. Institutional arrangements for REDD+ are therefore, for the time being, settled and several years of implementing the LFSP are required before there is evidence on whether alternative or institutions are required. The immediate issue confronting the existing institutions with a role to play in implementing REDD+ concerns their effectiveness rather than their design.

An elaborate and new national architecture just for REDD would be complex and expensive to set up and it would distract effort away from local projects. Instead, the need for institutional development should be revisited once there is better evidence on what works and when there is greater clarity from the international community about what REDD+ financing will be available to Liberia, beyond that coming from the bilateral agreement with Norway and the Readiness investment by FCPF.

Acronyms

AfT	Agenda for Transformation
AML	Arcelor-Mittal Liberia
BSM	Benefit Sharing Mechanism
CA	Community Assembly
CBNRM	Community-Based Natural Resource Management
CDF	County Development Fund
CDSC	County Development Steering Committee
CSDF	County Social Development Fund
CFDC	Community Forestry Development Committees
CFMA	Community Forest Management Agreements
CFMB	Community Forestry Management Body
CLDMA	Community Land Development and Management Authority
COP	Conference of Parties
CRL	Community Rights Law
CSO	Civil Society Organization
DFC	Dedicated Funds Committee
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
ESMF	Environmental and Social Management Framework
FAPS	Food and Agriculture Policy and Strategy
FCPF	Forest Carbon Partnership Facility
FDA	Forestry Development Authority
FFI	Fauna and Flora International
FGRM	Feedback and Grievance Redress Mechanism
FLEGT	Forest Law Enforcement, Governance and Trade
FMC	Forest Management Contracts

FMAC	Forestry Management Advisory Committee
FPIC	Free, prior and informed consent
FREDDI	Fund for REDD+ in Indonesia
GHG	Greenhouse Gas
GoL	Government of Liberia
GRIF	Guyana REDD+ Investment Fund
HCS	High Carbon Stock
HCV	High Conservation Value
IPCC	Inter-governmental Panel on Climate Change
JFM	Joint Forest Management
LCDS	Low Carbon Development Strategy
LDA	Liberian Development Alliance
LEITI	Liberia Extractive Industries Transparency Initiative
LFSP	Liberia Forest Sector Project
LISGIS	Liberia Institute of Statistics and Geo-Information Services
LRA	Land Rights Act
MRV	Measurement, Reporting and Verification
NBSTF	National Benefit Sharing Trust Fund
NCCSC	National Climate Change Steering Committee
NEPC	National Environmental Policy Council
NFMS	National Forest Monitoring System
NFRL	National Forestry Reform Law
NS/AP	National Strategy / Action Plan
NTFP	Non-Timber Forest Products
PAN	Protected Area Network
PROSPER	People, Rules, Organizations Supporting the Protection of Ecosystem Resources
REDD+	Reducing Emission from Deforestation and Forest Degradation (with sustainable management of forests, conservation of forest carbon stocks and enhancement of forest carbon stocks)
REL/RL	Reference Emissions Level / Reference Level

RIU	REDD+ Implementation Unit
R-PIN	Readiness Program Idea Note
R-PP	Readiness Preparation Proposal
RSPO	Roundtable on Sustainable Palm Oil
RTWG	REDD+ Technical Working Group
SESA	Strategic Environmental and Social Assessment
SFMP	Strategic Forest Management Plan
SIS	Safeguard Information System
TSC	Timber Sale Contracts
UNFCCC	United Nations Framework Convention on Climate Change
VPA	Voluntary Partnership Agreement

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1. Context of REDD+ in Liberia

1.1 Liberia's REDD+ readiness preparations

Liberia first became engaged in the REDD+ readiness process in 2007 when the national REDD+ Technical Working Group (RTWG) was established. The RTWG was the institutional platform for stakeholders to engage in the preparation of the Readiness Program Idea Note (R-PIN), which was submitted to the World Bank-led Forest Carbon Partnership Facility (FCPF) in May 2008[1]. This was followed by the drafting of a REDD+ Readiness Preparation Proposal (R-PP), which was submitted in 2011 and finalized in April 2012.

Since 2012, the Forestry Development Authority (FDA) and the Environmental Protection Agency (EPA) have led Liberia's work to develop and complete the REDD+-Readiness phase of the FCPF process. The preparation of a REDD+ strategy is one of several required outputs from the readiness phase, the others being[2]:

- Definition of a Reference Emissions Level/Reference level (REL/RL);
- Design of a Monitoring, Reporting and verification system (MRV);
- Preparation of a Strategic Environmental and Social Assessment (SESA) and Environmental and Social Management Framework (ESMF); and
- Establishment of a Feedback and Grievance Redress Mechanism (FGRM).

1.2 Drivers of deforestation and strategic priorities

Land use, forest cover change and drivers of deforestation are examined in a separate report. Although data on deforestation rates, and the causes of deforestation in Liberia are limited,

[1] Details and documents on Liberia´s engagement in the REDD+ process may be found on the FCPF website, which also provides materials, guides, publications and other resources: https://www.forestcarbonpartnership.org/liberia

[2] FCPF (2013) A guide to the FCPF readiness assessment framework. June 2013

the evidence on some key points is clear enough to shape priorities for a national REDD+ Strategy[3]:

- An estimated 20% of Liberia's forested area was lost between 2000 and 2014.
- The principal drivers of this deforestation are small-scale commercial and subsistence land uses; particularly chainsaw milling of timber (pit sawing), charcoal production, and shifting agriculture.
- The threat from these land uses will increase dramatically as population[4] and consumption increases and the amount of land available to communities is roughly halved as large areas of land have been designated as concessions.
- Approximately 37% of all forested land in Liberia is contained within commercial concessions. Concessions for palm oil are likely to be the most significant source of emissions from deforestation in the short term. More than 150,000 ha of land is likely be cleared for plantations in the next decade and the overall threats from commercial concessions (including mining) are substantial.
- The opportunities for conserving the carbon stocks in concessions are substantial. The proposed network of Protected Areas (PA) could, if established and managed well, conserve an additional 15-30% of the total forested area.
- Forestry (logging) concessions cover almost 30% of the total forest area. If managed sustainably, as national law intends, much of the carbon held by this forest will be retained. Together, the land designated as Protected Areas and as Forest Management Contracts contains approximately 50% of the densest and most biodiverse forest.
- Further opportunities for supporting REDD+ lie in commercial concessions. For example, more than 40% of the land in the palm oil concessions is high carbon stock and high conservation value forest which should be conserved and not cleared, if international standards are followed.[5]

The strategic priorities for REDD+ that emerge from this evidence are:

1. Reduce emissions from deforestation and forest degradation by supporting the sustainable use of forest resources by communities, addressing shifting agriculture, charcoal production, pit sawing, in particular.

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[3] This evidence is set out in the LTS/NIRAS report REDD+ Strategy Options - DR 2b. March 2016.

[4] Population is expected to double by 2050.

[5] The Roundtable on Sustainable Palm Oil (RSPO) includes a standard for zero net deforestation.

2. Sustainably manage commercial forestry to reduce impact of logging in areas conceded (or proposed) as Forest Management Contracts (FMC), Community Forest Management Agreements (CFMA), or other designations where commercial forestry may occur.
3. Conserve forest carbon stocks by completing and managing a network of Protected Areas, including existing and Proposed Protected Areas (PPA) and proposed conservation priority areas.
4. Reduce emissions from deforestation and forest degradation by identifying and protecting high carbon stock and high conservation value forest in agricultural and mining concessions.

The vital role of forest as a source of food and income for the majority of Liberians, and the potential for conflict over rights to forest resources, means that great care must be taken to safeguard social interests. Thus a fifth strategic priority is:

5. Fair and sustainable benefits from REDD+. This is primarily about distributing the benefits from emission reductions fairly and investing REDD+ income in activities that can become self-sustaining.

1.3 Scope of this report

Liberia is currently in the process of drafting a national REDD+ strategy. As part of the preparation for this Strategy, the government commissioned LTS International and NIRAS to prepare a draft national REDD+ strategy and roadmap based on an assessment of: i) land use and forest cover which indicates the main causes of forest loss; ii) strategic priorities and options for addressing the main drivers of deforestation and forest degradation, including a cost-benefit analysis of the strategy options and analysis of the barriers to implementation; and iii) a review of the legal, policy and institutional framework, which is the subject of this report.

Section 2 summarizes the legal and policy framework related to REDD+ in Liberia.

Section 3 provides a more detailed examination of the legal and policy context for the strategy options.

Section 4 presents a summary of the existing legal framework related to carbon rights.

Section 5 presents a summary and options of benefit sharing mechanisms, both in other REDD+ countries and existing ones in Liberia.

Section 6 considers institutional arrangements for the national REDD+ strategy.

2. Current policy, legal and institutional framework relevant to REDD+

The purpose of Sections 2 and 3 is to describe the legal and policy frameworks relevant to the REDD+ strategy, and to highlight which aspects of these frameworks are supportive of the strategic priorities for REDD+ and where there may be gaps, overlaps or contradictions that may present challenges to implementing a REDD+ strategy. A detailed table of REDD+ relevant provisions for Liberia's policy and legal instruments can be found in Annex 1.

The analysis in this report provides a preliminary review of existing Liberian policies, legislation, and regulations to help ascertain Liberia's legal preparedness to proceed on the road to a full-fledged REDD+ program more broadly, and to implement the Strategic Options proposed in the draft REDD+ Strategy specifically. Currently, Liberian law does not address REDD+, nor has any such law been proposed. Thus, this assessment broadly asks the questions: can a REDD+ program – or key elements of such a program – be enacted under the existing Liberian legislative framework? If not, what are the key gaps, overlaps and challenges that must be addressed to enable Liberia to achieve its REDD+ goals?

This assessment concludes that certain aspects of REDD+ can, consistent with Liberian law, be implemented administratively without the need for new legislation. Other aspects of REDD+ will require either legal or regulatory amendments, and several of the issues identified also require policy direction. A REDD+ program enacted by way of a new law or legislative amendments would enable Liberia to design a comprehensive program and allow lawmakers to give clear guidance to implementing agencies, affected communities, the private sector, and other stakeholders. It would also provide greater confidence to donors and international investors. However, the legislative process is slow and resource-intensive and requires high levels of political support. Regulatory reforms could provide a sound legal basis on a somewhat shorter timeframe, but will require harmonization among key pieces of legislation and their implementing regulations. Finally, direction in the form of new policies, operational guidelines or codes of conduct, as enabled under existing regulations, could fill some critical gaps in existing planning criteria and processes. Ultimately, it will be a political decision whether there is sufficient support to

conclude new REDD+ legislation or to address the gaps and overlaps in the existing frameworks to provide legislative backing for REDD+ implementation in Liberia.

It is important to note that detailed review and revision of laws and regulations is being carried out through the EU Voluntary Partnership Agreement (VPA) project and is planned as a component of the Liberia Forest Sector Project (LFSP).

Additional issues relate to the capacity of key institutions to support effective implementation and enforcement of existing and proposed legal provisions. While this assessment does not provide a comprehensive analysis of capacity needs, it does recognize the constraints that these needs can place on options for policy and legal reform and tries to propose options that take these constraints into account.

2.1 International requirements for REDD+ readiness[6]

REDD+ is a voluntary initiative established under the United Nations Framework Convention on Climate Change (UNFCCC) with a number of operationally significant, but non-legally binding decisions that have been adopted by the Conference of Parties (COP). Despite the fact that the decisions are non-binding, it is clear that the requirements of these decisions do have some normative force. Ultimately, the framework developed under the UNFCCC provides the requirements that developing countries are expected to meet in order to qualify for results-based payments under an international REDD+ mechanism. Thus, in practice, these obligations will determine which countries are able to access funds, providing a strong incentive for compliance.

Box 1 - The '4 pillars' of REDD+ Readiness under the Warsaw Framework

1) A National Strategy or Action Plan for REDD+
2) Mechanisms for promoting and supporting the Cancun Safeguards and establishing a Safeguards Information System (SIS) for monitoring and reporting on compliance with the safeguards;
3) A National Forest Monitoring System (NFMS), including measures for complying with requirements on measurement, verification and reporting (MRV); and
4) A national forest reference emission level (FREL) and/or forest reference level (FRL).

[6] This section and the categories identified as relevant to domestic REDD+ implementation draws upon previous work of the author in: Troell, J. and Banda, G. (2016). *Legal and Policy Frameworks Assessment for REDD+ in Malawi*.

At COP 19 in 2013, a series of nine decisions were taken on institutional arrangements, methodological guidance, and REDD+ finance to guide the implementation of REDD+ at the domestic level. Taken together, these decisions are now commonly known as the "Warsaw Framework" on REDD+.[7] The Warsaw Framework builds on decisions adopted at previous COPs.

In addition to the four "pillars" listed above, the Warsaw Framework also recognizes the need to establish effective institutional arrangements for implementing REDD+ and to address the drivers of deforestation and forest degradation with a view to reducing emissions and enhancing forest carbon stocks due to sustainable management of forests.[8] Each of these elements of the Warsaw Framework is described briefly below.

2.1.1 National REDD+ Strategy or Action Plan

While there are no detailed prescriptions for what a National Strategy or Action Plan (NS/AP) must contain, UNFCCC Decision 1/CP.16 requests that, when developing and implementing their NS/AP, developing country Parties address:

- Drivers of deforestation and forest degradation;
- Land tenure issues;
- Forest governance issues;
- Gender considerations;
- The Cancun Safeguards; and
- Mechanisms for ensuring the full and effective participation of relevant stakeholders, including indigenous peoples and local communities.

The quality of the contents of an NS/AP also relies greatly on a sound cross-sectoral and multi-stakeholder process for its development.[9] The development of an NS/AP provides a unique opportunity to garner political, financial, and stakeholder support for its implementation. It is also a living document, which will need to be able to respond to

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[7] This section and the categories identified as relevant to domestic REDD+ implementation draws upon previous work of the author in: Troell, J. and Banda, G. (2016). *Legal and Policy Frameworks Assessment for REDD+ in Malawi*.

[8] UNFCCC Decision 1/CP.16; Climate Law & Policy (2015). Unpacking the UNFCCC Framework for REDD+: the Requirements for Implementing REDD+ under the UNFCCC Climate Law & Policy Briefing Note, available at http://www.climatelawandpolicy.com/files/Unpacking_the__UNFCCC__Framework_for__REDD.pdf

[9] UN-REDD (2015). "REDD+ National Strategies/Action Plans." Information Note: UN-REDD Asia/Pacific Region, available at http://www.unredd.net/index.php?view=document&alias=14858-information-note-national-stratgies-and-action-plans&category_slug=asia-pacific-un-redd-regional-exchange-event-on-redd-national-strategy-and-action-plan-july-2015&layout=default&option=com_docman&Itemid=134.

changes in policies, laws, and institutional mandates over time. Thus, the UNFCCC supports an iterative approach that expands as REDD+ evolves and such an approach should be reflected in the NS/AP design process.[10] Such a step-wise approach in Liberia could facilitate the transition from sub-national REDD+ implementation from pilot projects to a national REDD+ Program.

Liberian policy and legal framework

Liberia is being supported by the Forest Carbon Partnership Facility's Readiness Fund and its progress with developing the required planning and management tools will be guided by the Readiness Assessment Framework. This framework looks for the following attributes in a national REDD+ strategy:

- The REDD+ strategy should form the basis for the development of a set of policies and programs to reduce emissions from deforestation and/or forest degradation, and to enhance carbon uptake from other REDD+ activities;
- The national strategy should support national priorities for sustainable development, be informed by a SESA, ESMF, and be consistent with relevant UNFCCC guidance;
- An explicit assessment of risks, feasibility, and cross-sector inconsistencies of the REDD+ strategy options should be undertaken and a timeline and process to integrate strategy options with broader development policies identified;
- The rationale for countries to have engaged in any or all of the five eligible REDD+ activities must be clear; and
- Strategic options have been identified and analyzed during preparation to ascertain that actions taken on REDD+ are beneficial, feasible and cost-effective.

The REDD+ strategy options identified for Liberia will form the basis of the national REDD+ strategy. This policy and legal assessment provides a targeted analysis of the key policy and legal challenges related to each of the strategic priorities and, as far as possible, to the options for their implementation. The national strategy will provide an implementation framework that addresses, *inter alia*: the legal and policy framework for implementation; governance mechanisms for implementing the REDD+ strategy and benefit sharing mechanisms. It will

Box 2 – Eligible activities under REDD+

- Reducing emissions from deforestation;
- Reducing emissions from forest degradation;
- Conservation of forest carbon stocks;
- Sustainable management of forests;
- Enhancement of forest carbon stock.

[10] UNFCCC Decision 1/CP.16

additionally address the needs for ensuring an effective safeguards system and the development of a Safeguards Information System (SIS) identified through the SESA, as well as how the systems to measure, report, and verify (MRV) emissions reductions from REDD+ activities will be put into place.

2.1.2 Measurement, reporting, and verification

In order to obtain results-based financing, countries must be able to measure, report, and verify "anthropogenic forest-related emissions by sources and removals by sinks, forest carbon stocks, and forest carbon stock and area changes" resulting from the implementation of REDD+ activities.[11] Countries must use the most recent guidance from the Intergovernmental Panel on Climate Change (IPCC) as the basis for estimating forest related emissions, removals, forest carbon stocks, and forest area changes.[12] This includes using data that is transparent and consistent over time with an established REL/RL, to undertake monitoring as part of a National Forest Monitoring System (NFMS), and submit the data as part of the Party's biennial update report to the UNFCCC.[13] Moreover, in order to qualify for payments, countries must have data verified by a team of technical experts to ensure the accuracy, consistency, completeness, and transparency of the results.[14]

Liberia's current legal framework will form the basis for building an MRV program and the primary responsibility for monitoring and reporting will likely lie with the FDA, in partnership with the Liberia Institute of Statistics and Geo-Information Services (LISGIS).

Under the 2006 National Forest Reform Law (NFRL), license holders for forestry activities must report annually (§18.13) and the FDA is required to monitor land to ensure that the use of forest resources is lawful (§8.2(a)). The FDA is also required to establish and maintain a forest land use database containing all available socio-economic, biological, and physical data on forest land in Liberia.[15] The EPA has the mandate for monitoring compliance with environmental impact assessment (EIA) plans and mitigation strategies in partnership with line Ministries.[16] This includes commercial timber operations where FDA is the relevant agency, and could provide additional data to be mainstreamed into an MRV framework. Finally, the 2009 Community Rights Law (CRL) requires communities to report and account

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[11] UNFCCC Decision 2/CP.17 paragraph 64, Decision 9/CP.19 paragraph 3.

[12] UNFCCC Decision 4/CP.15 paragraph 1(c).

[13] UNFCCC Decision 14/CP.19.

[14] UNFCCC Decision 14/CP.19, para. 11.

[15] FDA Regulation 102-07, §22(d).

[16] GoL, An Act Adopting the Environmental Protection and Management Law of the Republic of Liberia (Nov. 26, 2002), §24.

to FDA on the management of community forests, and under the NFRL communities also have a role in monitoring commercial forest activities (§20.10). Such local monitoring could contribute to verification efforts, particularly for forest degradation, while helping build support for REDD+ among communities.[17]

The development of a comprehensive MRV framework is envisioned under the World Bank-supported Liberia Forest Sector Project. As specific mandates and requirements evolve under this framework, it will be necessary to reassess whether there is a need to revise existing regulations to ensure that MRV activities have the necessary legal basis, that mandates and implementation are coordinated among the relevant agencies, and that the legal requirements are in line with international standards.

2.1.3 Safeguards and Safeguards Information Systems

The Warsaw Framework recognizes the Cancun Safeguards adopted at COP 16 as a central part of the REDD+ framework that all countries must strive to promote and support. Indeed, regardless of the source of funding, all REDD+ activities should be consistent with the Cancun safeguards.[18] Non-Annex 1 Parties are also required to develop a system for providing information on how they are addressing and respecting the safeguards. This Safeguards Information System (SIS) should then be summarized and reported as a requirement to access results-based payments for REDD+.

In support of the development of the REDD+ Strategy, a SESA was undertaken to identify environmental and social issues that could influence, or be influenced (positively or negatively) by the REDD+ strategy. The SESA also validated these issues and prioritized them with stakeholders. This assessment builds on the findings of the SESA and the issues it raises with respect to the need for policies and measures to safeguard against potential environmental and social risks for each of the REDD+ strategy options will be addressed fully in the national strategy. The development of an SIS is planned under the Liberia Forest Sector Project.

[17] Environmental Law Institute (2010). Legal and Policy Considerations for Developing a REDD Program in Liberia.

[18] UNFCCC decision 2/CP. 17, para. 63.

Box 3 - UNFCCC REDD+ safeguards

1) REDD+ actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
2) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
3) Respect for the knowledge and rights of indigenous peoples and local communities;
4) Full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities;
5) Actions are consistent with the conservation of natural forests and biological diversity, ensuring that REDD+ actions do not result in the conversion of natural forest, 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;
6) Actions to address the risk of reversals ('permanence'); and
7) Actions to reduce displacement of emissions ('leakage').

2.1.4 Drivers of deforestation and forest degradation

Parties are encouraged to address the drivers of deforestation and forest degradation with a view to reducing emissions and enhancing forest carbon stocks due to sustainable management of forests. This is in line with decisions taken at COP 13 in Bali and subsequent work by the Subsidiary Body for Scientific and Technical Advice on identifying land use, land use change and forestry activities linked to drivers.

The strategic priorities and REDD+ Strategy Options for the national REDD+ strategy are focused on addressing the major drivers of deforestation and forest degradation in Liberia. The policy and legal issues related to those drivers are therefore analyzed in Section 3 of this assessment.

2.2 Domestic legal frameworks for implementing REDD+

Domestic governance frameworks set the 'rules of the game' for REDD+ implementation.[19] **Policies set forth goals and objectives, laws create mandates and grant authority to execute those mandates, and institutional frameworks create the enabling environment for implementation and enforcement.** In the context of REDD+, Liberia's

[19] For the purposes of this assessment, 'governance' is defined to include policies, laws, regulations, institutions and processes for implementation and enforcement.

policy and legal frameworks will be the vehicle through which many of the international requirements for REDD+ will be translated into tangible and specific national requirements.[20] The successful implementation of REDD+ will also depend on the existence of legal and policy frameworks that address broader governance challenges, such as corruption and meaningful stakeholder participation. These broader enabling frameworks will safeguard against negative social, environmental and economic impacts from REDD+. Moreover, well-designed legal frameworks for REDD+ have the potential to produce co-benefits in multiple sectors by creating more effective, accountable, and equitable governance approaches to natural resource management and promoting sustainable ecosystem-based approaches.

While REDD+ is still in its formative stages in most countries, there is an increasing wealth of experience in assessing the types of governance challenges and opportunities that are associated with its implementation. UN-REDD and FCPF have gathered much of this information in their partner countries and independent scholarship has documented these challenges and options for addressing them, as well. Taken together, these national experiences addressing the legal aspects of REDD+ indicate specific areas of domestic law that are relevant to REDD+ implementation.[21]

2.2.1 Legal definition of forests and REDD+ terminology

How forests and other forest-related concepts are defined in national laws, regulations, and policies is central to the operation of effective REDD+ programs.[22] Depending on how such terms are framed, forest loss and conversion may not officially be considered deforestation and effective monitoring of forest loss and conversion can be undermined.

The definition of 'forest land' provided in Liberia's 2006 National Forest Reform Law is extremely general: "A tract of land, including its flora and fauna, capable of producing Forest Resources, not including land in urban areas, land in permanent settlements, and land that has been in long-term use for non-shifting cultivation of crops or livestock in a manner that precludes producing Forest Resources."

This definition does not account for the density or diversity of tree species and thus changes to the structural composition of the forest under this definition cannot be measured. As it

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[20] Denier, L., et al. (2014), supra n. 15.

[21] These areas of domestic law were drawn from review of a number of scholarly papers on national experiences, as well as the following guidance documents: Costenbader (ed.) (2009). Legal Frameworks for REDD. Design and Implementation at the National Level. IUCN: Gland, Switzerland; Denier, L., et al. (2014), supra n. 32; UNEP (2015), supra n. 19; UN-REDD (2013). Legal Analysis of Cross-cutting Issues for REDD+ Implementation: Lessons Learned from Mexico, Viet Nam, and Zambia. FAO: Rome, Italy

[22] UNEP, 2015, supra n.19.

stands, the definition precludes the possibility of classifying 'Forest Lands' into sub-types based on physical attributes and species composition, as well as rigorous monitoring and measurement of changes to Forest Lands across management types. While UNFCCC decisions have not provided a definition of 'forest' or related REDD+ concepts, the IPCC guidance on reporting national greenhouse gas (GHG) inventories provides a description of Forest Lands that includes three variables: [23]

- Minimum crown cover (expressed in percentage);
- Minimum tree height (expressed in meters); and
- Minimum area (expressed in hectares).

These variables may impact the assessment of what constitutes forest cover, the assessment of forest area change, and identification of nationally appropriate REDD+ activities to implement.[24] When determining a national definition for forests, it is also important to consider the availability and access to consistent or comparable data over time and the capacity to monitor small forest changes.

In January 2016, Liberia adopted the following forest definition:[25]

- Minimum area: 1 hectare;
- Minimum canopy cover: 30%;
- Minimum height at maturity: 5 meters; and
- Industrial agricultural plantations are not considered as forest.

This follows the definition proposed in Liberia's R-PP. It is the narrowest definition of forest that is available within the UNFCCC guidance and hence creates the maximum area of 'non-forest' land on which forest can be removed without it counting as a loss of forest cover as measured for REDD+.

2.2.2 Stakeholder Engagement and Free, Prior and Informed Consent (FPIC)

A critical aspect of REDD+ is how the rights of forest-dependent communities and other stakeholders will be protected. In order to understand how these rights might be affected by

[23] IPCC 2006 Guidelines for National Greenhouse Gas Inventories, Vol. I: General Guidance and Reporting.

[24] UNREDD, Technical Considerations for Forest Reference Emission Levels and/or Forest Reference Level Construction for REDD+ under the UNFCCC (2015).

[25] Adopted by consent amongst participants at the FDA-organized "forest definitions" conference in Lofa County, Liberia, January 25-29 2016.

REDD+, it is necessary to have meaningful mechanisms for engaging stakeholders in decision-making around its structuring and implementation. Stakeholders are defined as those individuals and organizations having a 'stake' or interest in forests and/or REDD+ and who may be positively or negatively affected by REDD+ decisions or activities. This includes government agencies, forest-dependent communities, private sector entities, civil society, research institutions, and others.

The costs and benefits of REDD+ will likely be felt most strongly by forest-dependent communities, as they rely on forests and their resources for their subsistence and livelihoods. In Liberia, where poverty and resource dependence are pervasive and inter-linked, forest-dependent communities must be allowed to actively participate in the decisions that will impact their rights to access and use those resources and shape the mechanisms employed to share the benefits that may accrue from REDD+.

The move to integrate stakeholders into forest resource management reflects a broader international recognition of the public's fundamental right to be involved in decisions about the environment that have the potential to impact public health and well-being. This concept was clearly articulated in the 1992 Rio Declaration on Environment and Development, which outlines what were to become the three 'pillars' of stakeholder or public engagement in environmental decision-making: access to information, access to decision-making, and access to justice. The three pillars operate synergistically. Public access to information allows for more informed and effective public participation. Public participation improves the information available to decision-makers and among stakeholders, and also provides a means for resolving disputes before they escalate. Access to justice ensures that governments and other decision-making bodies respect the procedural rights of access to information and public participation as well as the substantive interests of the various affected parties. Together, the three pillars provide the essential elements for a robust framework for forest governance.

In recognition of these rights, the UNFCCC Cancun Safeguards specifically emphasize the need to respect the knowledge and rights of local communities and to promote and support the "full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities."[26] In certain circumstances, the UNFCCC requires that countries go beyond engagement to require that communities have the right not only to participate in decision-making but also to consent to or withhold consent for a proposed action.[27] FPIC

[26] UNFCCC, Cancun Decision 1/CP.16.

[27] Id.

applies to REDD+ when decisions relate to resource uses that could significantly impact the rights of indigenous people and, where relevant, other forest-dependent communities.

Although there is no universally accepted definition of FPIC, it is generally considered as the right to make free and informed choices about the development and management of their lands and resources. The basic principles of FPIC are to ensure that indigenous peoples and communities are not coerced or intimidated, that their consent is sought and freely given prior to the authorization or start of any activities, that they have access to information about the scope and impacts of any proposed developments, and that ultimately their choices to give or withhold consent are respected.[28]

Liberian policy and legal framework

Liberia's forestry policies and laws contain extensive requirements related to access to information and stakeholder engagement. The National Forestry Policy and Implementation Strategy includes among its objectives, "to ensure that all stakeholders participate in the formulation of forestry policies and in the conservation and management of the forest resource". Similarly, Section 3.1 of the 2006 National Forest Reform Law states that FDA shall manage forest resources "with the participation of and for the benefit of all Liberians." There is thus a clear commitment to broad engagement with all stakeholders in the management of Liberia's forests, reflecting the Constitutional guarantee of the greatest feasible public participation in the management of Liberia's natural resources (§7).

These commitments are operationalized through a number of regulatory requirements. FDA Regulation 101-07 sets out the requirements and procedure for public participation in developing and amending regulations, codes and manuals for forestry management, including substantial public engagement in the form of notice and comment procedures, public hearings, and requirements for justification for inclusion or rejection of public comments. The Regulation additionally requires FDA to maintain complete and accurate records of all legal, regulatory and guidance documents and make them freely available to the public (§§41-2). The Regulation thus sets up a robust mechanism for broad participation in the development and amendment of forest regulatory mechanisms. The NFRL also gives 'teeth' to its procedural requirements by broadening legal standing and authorizing citizens to bring suits to hold the FDA and holders of Forest Management Contracts (FMCs) and Timber Sales Contracts (TSCs) accountable to the NFRL, its regulations and the stipulations of the contracts (§20.10)

[28] Ward, T. (2011). The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law, 10 NW J. Int'l Hum. Rts. 54.

With respect to commercial forestry activities, FDA Regulation 102-07 on Forest Land Use Planning requires the FDA to secure FPIC from 'affected communities' in writing prior to designating a commercial logging area (§61(c)(3)). Regulation 104 also requires FPIC from Community Forestry Development Committees of all affected communities to negotiate social agreements with the winning bidder (§22(j)(1). **A notable gap is the failure to define FPIC in either the legislation or the regulations, leaving the procedural requirements for obtaining consent open to interpretation.**

In addition to these requirements, the Public Procurement and Concessions Act (2010, as amended) also mandates stakeholder engagement by concessionaires prior to the finalization of a bid.[29] Unfortunately, a 2013 audit by the Liberia Extractive Industries Transparency Initiative (LEITI) found that none of the FDA concessions had complied with this requirement, indicating a lack of capacity for enforcement on the part of FDA.[30]

At the national level, the NFRL established a Forestry Management Advisory Committee (FMAC), made of seven to 12 stakeholders representing different interests that can advise the FDA on policy (§3.1).[31] The FMAC must review and approve new regulations, providing another layer of stakeholder engagement.[32]

The 2008 Community Rights Law is premised on the full engagement of communities in the sustainable management of forests (§2,1). Its Guiding Principles include "active participation of all members of the society" (§2.3) and the Law requires communities to ensure "full (individual, segmental, collective) membership participation in the management of community forest resources" and "transparency and accountability in community forest resource management" (§3.2). FPIC (again, undefined) is required for "any decision, agreement, or activity affecting the status or use of community forest resources" (§2.2(c)).

The institutional frameworks that must be created to support community forest management provide an additional mechanism for continuous stakeholder engagement in forestry management. These include a Community Assembly that shall be "broad based

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[29] Public Procurement and Concessions Act (2010, as amended), §90.

[30] LEITI (2013). Post Award Process Audit: Final Report.

[31] In making appointments to the Committee, the Authority shall: Select at least one member from among nominees advanced by each of the following types of stakeholders within the Republic: registered civil society organizations (local, regional, or national); professional forester associations; forest labor organizations; logger associations; universities or other academic institutions; and the Environmental Protection Agency; and ensure that the interests of women and youth are fairly represented (NFRL §4.2(b)).

[32] Due to the fact that the FMAC never approved the Chainsaw Regulation, there is currently confusion over its status and it has never been implemented; FDA is currently in the process of re-drafting this regulation. CIFOR, Governance Assessment. P.34; personal communication.

including men, women, and youths [...] in a multi-settlement community, all sub-divisions of the community shall be represented in the Assembly;"[33] and a Community Forestry Management Body (CFMB), whose five members must include at least one woman.[34] The CFMB is meant to represent the community in all matters related to community forestry. Under the CRL Regulations, all activities of these bodies must "operate with openness, inclusiveness and accountability."[35]

In addition to the forestry sector laws, there are requirements for public and stakeholder engagement in the environmental impact assessment process required under Part III of the 2002 Environmental Protection and Management Law. As a tool for assessing potential environmental impacts and developing alternatives and mitigation measures, EIA provides a critical mechanism for identifying potential impacts of projects and developments that could undermine REDD+ activities, such as infrastructure development.

In addition to EIA requirements, Liberia also has a Freedom of Information Act that grants the all Liberians the right of access to information generated, received, and/or held by public bodies, subject to limited exemptions (§1.4). The Act also applies to private entities that receive public resources and benefits, engage in public functions, and or provide public services (§1.6). The Information Act elaborates on the types of information covered and established an independent Information Commissioner to oversee implementation, enforcement and dispute resolution, creating a substantial mechanism for compelling transparency and accountability across government sectors, including forestry.

An additional mechanism for ensuring transparency and accountability of commercial timber operations is the LEITI, which was established by law in 2009 to assist in ensuring that all benefits due the Government and people of Liberia on account of the exploitation and/or extraction of the country's extractive resources are: i) verifiably paid or provided; ii) duly accounted for; and iii) prudently utilized for the benefits of all Liberians and on the basis of equity and sustainability (§3.1). LEITI specifically requires and oversees transparency of payments, promotes participation of civil society in all extractive related activities and decision-making, and promotes public disclosure of concessions, among other activities.

[33] Community Rights Law Regulations, Ch. 3, §3.

[34] Community Rights Law, §4.2.

[35] CRL Regulations, Ch.1, §7.

While the current mandate of LEITI only covers commercial logging, it could be expanded to cover forest carbon revenue flows.[36]

Despite the solid legal foundation for transparency and the pervasive mandates for public participation and representivity in decision-making and management throughout the forestry sector legislation and regulations, communities and government stakeholders have expressed dissatisfaction with the implementation of public involvement in forest decision-making and management. Similarly, in auditing forestry concessions, LEITI has noted a consistent failure to undertake effective stakeholder engagement processes.

The recently conducted SESA for REDD+ in Liberia noted that several stakeholders throughout the country raised concerns regarding the inability of local leaders to effectively represent their constituencies in consultative processes.[37] According to the SESA Priorities Report, stakeholders pointed to social agreements signed by affected communities in FMC areas as an indication of the lack of knowledge and information held by community leaders. Apparently, these agreements were so similar in content that they appeared to be taken from a template. They also lacked sufficient benefits allocated to communities relative to the value of the resources, and failed to specify promised investments in community development. Stakeholders felt that the consultations relied on templates for the agreements, that discussions with community leaders was limited, and that the level of understanding regarding the value of the resources was not well understood by leaders representing community interests.[38] This raises the question of how to ensure the representivity of community forestry institutions required under the CRL, the composition of which are largely left to the discretion of the community. It also demonstrates the need for effective capacity building of community members and leaders with respect to the value of forest resources and the rights of communities under the existing legal framework.

Representatives of FDA and other stakeholders consulted for this Assessment also highlighted the capacity constraints of FDA as a critical challenge to effective engagement. FDA has the legal mandate to support communities in developing community forestry institutions, but lacks the personnel and technical capacity to do this effectively. One legal aspect of this issue is the question of whether third parties should be allowed to support communities and help build their capacity to participate effectively in creating and implementing community forest management institutions and plans. While it would appear

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[36] GoL (2014). National REDD+ R-PP Implementation Mid-term Progress Report. Available at https://www.forestcarbonpartnership.org/sites/fcp/files/2014/september/LIBERIA%20FCPF%20MID%20TERM%20REPORT.pdf.

[37] SESA Priorities Report (2016)

[38] Id.

to make sense to enable such support given the limitations on FDA's capacity, this might also make it easier for commercial interests to gain undue influence in the process and take advantage of communities' lack of capacity in negotiating favorable contracts through the process.[39]

Experience through the USAID-supported People, Rules, Organizations Supporting the Protection of Ecosystem Resources (PROSPER) project has also highlighted that there are risks to establishing community forests when not based on sufficient and effective consultation with marginalized populations within communities. In particular, PROSPER has noted that there needs to be additional support for women's engagement in forest decision-making and management. Even with project support, women make up less than 25% of participants in forest governance activities.[40] The current regulations, while calling for inclusivity and mandating at least one women participate in community forest governance structures, provide little guidance that would facilitate improvements in engaging with women and other marginalized stakeholders.

2.2.3 Forest, land, and carbon tenure

Clearly defined and secure tenure rights for land, forests, and carbon are critical enabling conditions for REDD+ readiness. Tenure systems determine who can access and use which resources, under what conditions, and for how long.[41] Poorly defined forest tenure can undermine incentives for protection of forest resources and drive their over-exploitation.[42] Moreover, the quality of tenure rights – whether they are contested, enforceable, and long lasting – influence incentives for sustainable management of forest landscapes.[43]

REDD+ is premised on providing benefits to those who maintain or enhance forest carbon stocks in order to compensate for lost opportunities and incentivize good forest stewardship. This requires a clear understanding of who owns the land and resources in question (including carbon) and the ability of rights holders to exclude others from accessing and changing forest cover.[44] Rights holders must be able to be held accountable when they

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[39] USAID/PROSPER (2015). The Role of Third Parties in Establishing Community Forests. Policy Brief # 1 (June 1 2015).

[40] USAID/PROSPER (2015). Participation of Women in Community Forests. Policy Brief #3 (June 2015).

[41] VGGT.

[42] Bolin et al., 2013.

[43] USAID (2012). Tenure, Governance, and Natural Resource Management. USAID Issue Brief, available at http://www.usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Natural_Resource_Management_Issue_Brief_0.pdf

[44] Larson et al., 2013.

fail to fulfil the obligations under this results-based payment system. Moreover, a clear understanding of who holds which rights is the only way to ensure that all legitimate rights holders are included in REDD+ decision-making processes. If tenure is insecure, unclear, or in conflict, there is a real risk that powerful actors will usurp the rights and the resulting benefits. This is of particular concern on community-held lands, where informal rights holders can be accidentally or deliberately overlooked or convinced to cede their rights without a full understanding of the consequences.

Conversely, where REDD+ policies clarify, promote, and support improvements in forest tenure and forest management institutions, they can complement and enforce ongoing national reform processes for more sustainable and equitable outcomes for REDD+. It is important to note, however, that clear and secure tenure rights do not *per se* lead to such improvement, and much depends on the reform process itself.[45]

Land tenure

Historically, land tenure in Liberia was divided between the urban elites (descendants of freed slaves from the United States of America and the Caribbean), who utilized a Western statutory system of land ownership based on titles, and the indigenous population, who used customary systems based on collective or community ownership under the leadership of traditional authorities.[46] Initially, the state recognized customary tenure as inclusive of full ownership rights, whether or not a community had title to the land, but later legal developments reduced these rights to "use and ownership," vastly diminishing the legal tenure rights of the majority of Liberians.[47] From that point forward, all lands not formally titled were treated as public land, paving the way for the government to grant large concessions on customary land.[48] From a legal perspective, there was no clear definition of public land or its relationship to pre-existing customary land rights.

As Liberia entered into the long period of instability and civil war (1989-2003), land tenure issues increasingly became a flashpoint, complicated by the fact that tens of thousands of Liberians were displaced. The lack of documentation on customary land led to multiple sales

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[45] Bluffstone and Robinson, 2015.

[46] USAID (n.d.). Property Rights and Resource Governance: Liberia Country Profile.

[47] Id. At the turn of the 20th century, new laws were passed to enable "civilized" aborigines to own land under an "Aborigines Land" entitlement.47 These were collective deeds in the name of a community member, ordinarily a traditional leader. In 1956, most of the content of the Hinterlands Law was entered into the Liberia Code of Laws as Title 1, Aborigines Law where the language was changed to include only rights to use and possession.

[48] USAID, supra n. 41.

of the same land and many fraudulent land-related documents were registered so that people returning following the conflict often found their land occupied.[49]

To redress past inequities and confront the critical need for increased tenure clarity and security, a Land Commission was formed in 2009 to develop a comprehensive governance system for land allocation, use and management.[50] The Commission has proceeded with developing policy in four clusters: land rights, land administration, land use/management, and land dispute resolution. The Land Rights Policy was passed in 2013 and has formed the basis for a draft Land Rights Act (2014), which is still under review by the legislature. While the Land Rights Policy provides a strong foundation for clarifying and securing land tenure in Liberia, the legal basis for operationalizing tenure reforms must come from new legislation.

The **2013 Land Rights Policy** establishes that the Government of Liberia is responsible for administering and managing land in the public interest. The Policy highlights the principle of tenure security as the basis for sustainable economic growth and development and defines four categories of land tenure: Public Land, Government Land, Customary Land, and Private Land. The Policy also recognizes the need for a cross-cutting Protected Areas category that can be established across land categories to conserve resources for the benefit of all Liberians. (§1.0). Perhaps most critically, the Policy clarifies and provides mechanisms for securing customary land and resource tenure. The clarification of customary tenure rights has significant implications for REDD+ implementation.

Most of the land that will be subject to customary ownership was previously considered state forest land. The rights to manage, use and benefit from those forest lands will now accrue directly to communities, necessitating administrative and accountability mechanisms to effectively "nest" those rights and benefit flows within the national REDD+ Program. Box 4 highlights the major innovations related to customary tenure.

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[49] IRIN, "The Changing Face of Land Disputes in Liberia," 20May, 2013, available at: http://www.irinnews.org/report/98070/changing-face-land-disputes-liberia

[50] Land Commission, Land Rights Policy, approved May 21, 2013.

Box 4 - The Land Rights Policy: Clarifying and securing customary land and resource tenure

The Policy recognizes and protects Customary Land rights as ownership rights that are equal to Private Land rights (§§6.1.1; 6.2.2). Historically, Customary Land rights have not been given the same legal status as private land rights. The Land Rights Policy abolishes any preference for private land rights and clarifies that ownership of customary land comprises the full "bundle of rights" normally associated with freehold tenure, including: use and possession, exclusion of others, own natural resources on the land (including forest resources), and transfer the rights through sale, lease, concession, gift, will, or other legal means (§6.2.2).

Deeds will be issued for customary land in the name of the community, but no deed is required to prove customary ownership (§6.3.1). The Policy emphasizes that Customary Land is owned by a community, "whether or not the community has self-identified, established a legal entity, or been issued a deed" (§6.2.1). This enables the protection of customary rights immediately and addresses the past issues of needing documentation to prove formal ownership. Ultimately, the process envisioned for provision of deeds in the name of the community will further strengthen tenure clarity and security.

Communities are responsible for self-identification and demarcating their boundaries through a participatory process (§§6.2.4;6.4.1). This process will further clarify and secure customary ownership by formalizing boundaries and requiring communities to create representative and accountable management entities for land management (§6.4). This will also support the national policy for decentralization by promoting local governance within a "framework of shared responsibility with the Government" (Id).

Customary Land Ownership includes ownership of natural resources on the land, including forests, carbon credits, and water (§6.3.2). This is particularly relevant to REDD+, as the Policy clarifies who owns forests and carbon credits and thus enables communities to engage in and benefit from REDD+ activities, although it leaves open the question of carbon ownership.

The Land Policy also clarifies the distinction between Public and Government Land, a grey area that has historically contributed to mismanagement of land under Government control and ineffective administration.[51] Pursuant to the Policy's recommendations, all Government Land and Public Land will be owned by the Republic of Liberia and used or managed on behalf of the Republic and its people (§5.1.1). Government Land is limited to land owned by Government and used for buildings, projects, or activities of Government. This excludes land leased by the Government from private entities (including communities) but includes Government Protected Areas, which are conserved and managed for the benefit of all and may not be sold, leased or granted as a concession (§5.1.4).

[51] Land Policy, §5.1.

Public Land is defined in the Policy as land: designated for future use; managed in the public interest; and which is not Government Land or owned by a community or privately owned (§5.1.7). Public Land may be leased, sold, granted as a concession, or otherwise transferred to another category of land. Government is responsible for managing concessions on Public Land in the public interest (§5.1.8). To increase transparency and accountability of sales and transfers of Public and Government Lands, these transactions must be done through a public, consultative, competitive bidding process overseen by the entity that manages the land and automatic renewal of leases is prohibited (§5.2.1).

Protected Areas (PAs) comprise the fifth category of land in the Land Rights Policy. Customary Protected Areas, including forest set asides, are owned by the community but must be conserved and managed for the benefit of all Liberians. Customary PAs cannot be sold, leased or granted as a concession, but may be subject to limited use rights consistent with the land's conservation and management (§§6.2.5-6). Similarly, Government Protected Areas can only be converted to other categories of Land through legislation, but limited use rights may be granted consistent with the conservation of the land (§5.2.2).

Government acquisition of land has also historically been undertaken without equitable compensation and consultation. The Land Policy thus recommends four mechanisms for Government land acquisition, based on the broad powers of the Constitution: 1) eminent domain; 2) donation; 3) reversion; and 4) non-payment of taxes. In particular, the Policy elaborates on the allowable contexts and procedural requirements for the Government's exercise of eminent domain and stresses the need for just and prompt compensation for owners of Customary and Private Land based on fair market value (§5.3).

Private Land is land owned by and individual or private entity in which management and used decisions are made solely based on formal law (§7.1.1). Private Protected Area may be designated by the Government in accordance with due process (eminent domain) and subsequently limit the right of the owner to ensure it is conserved and managed appropriately. Only Liberia citizens may own Private Land (§7.2.2). Private Land may be acquired from Customary Land only after the community has self-defined, been issued a deed and established as a legal entity (§7.4). Gender discrimination is not allowed (§7.4.3).

The **draft Land Rights Act** (LRA) adopts the same four categories of land as the Policy and expands upon the rights, responsibilities and procedures for acquiring and alienating each category. Notably, Customary Land is not acquired from any person or Government, but arises "by operation of law based on the proven longstanding relationship of possession and protection between the individual community and the subject land" (Art. 32(5)). No deed or other written documentation is necessary to validate customary ownership, although the Act takes up the recommendation in the Policy to facilitate tenure security and clarity (and ease of administration) by requiring communities to self-identify and create a representative and

accountable Community Land Development and Management Authority (CLDMA) to act as the body for land governance at the community level (Arts. 35-6).

Consistent with the Policy, the draft LRA also stipulates that a community's claim of ownership shall be established by "competent evidence include oral testimonies of Community Members, and as documented in community-made participatory maps and signed agreements between neighboring communities" (Art.37(1)). A nation-wide Confirmatory Survey of Customary Land will be conducted by the Land Commission (or its successor) within 36 months of the Act's effective date for the purpose of confirming boundaries and resolving outstanding disputes and confirmed boundaries will be probated and registered and shall serve in lieu of a deed (Art.37). While the lack of deed or Confirmatory Survey will not negate the existence or enforceability of customary ownership, it is a condition precedent for encumbrance or transfer of customary land that is contested.

Also notable is that the bundle of customary tenure rights adopts the Policy's formulation that explicitly guarantees customary rights to manage and improve the land, including harvesting forest products and the right to use and alienate all non-mineral natural resources on the land, such as "forest resources, carbon credits and water" (Art. 33(3)). As noted above, this is particularly relevant to REDD+, as it would clearly grant the necessary tenure to communities to engage in and benefit from REDD+ activities, although at what stage of the process outlined in the draft LRA remains an open question, particularly where areas of customary forest land are contested. Additionally, a formal legal definition of carbon or carbon tenure is not provided either here or in the forestry legislation.

Within Customary Land, the draft LRA delineates a number of sub-categories of land, including Forest Land and Protected Areas that should be created "based on customary practices" (Art. 38). Any land established as a Protected Area on Customary Land without the consent of the community constitutes a taking and must comply with the requirements for eminent domain (Art.42). Forest Lands are areas that are not residential, agricultural or protected and have timber as the primary cover (Art.43). Communities are entitled to harvest all timber and non-timber products thereon, in keeping with the NFRL and CRL.

This last provision is important, as it harmonizes the approach to community use and management with the forest legislation. However, there are a number of issues that may arise from the potential for parallel implementation of these pieces of legislation.

Forest tenure

Pursuant to the 2006 NFRL and 2009 CRL, Liberia's forest resources are vested in the state to manage and regulate in trust for the people of Liberia, save for: i) forest resources located in community forests; and ii) forest resources that have been developed on private or deeded

land through artificial regeneration.[52] The CRL also clarifies that communities own the forest resources within Community Forests (§2.2). The classification of customary land as Community Forests, however, requires the completion of a process that entails: i) submission of an application to FDA; ii) socio-economic and resource surveys; iii) demarcation of the land with FDA; and iv) adjudication of conflicts before conclusion of a CFMA between the FDA and the community. To complete this process, the community must also establish a representative forest governance institutional framework, including the election of a Council Assembly (CA) with an Executive Committee that oversees an appointed, five-member Community Forest Management Body (CFMB) that oversees day-to-day implementation of community forest management and represents the community in all negotiations and activities surrounding forest management.[53]

One overarching consideration is the careful balancing that the CRL attempts to ensure that communities maintain ownership (i.e., secure tenure) of their forest resources, but are still required to conform to regulations issued by the FDA. Under the Land Rights Policy and draft Land Rights Act, full ownership of forest resources is supported, which begs the question of how far the FDA may go in imposing regulatory requirements on those resources. This tension is highlighted by the inconsistencies between the CRL and its implementing regulations, which attempt to provide stricter guidance for communities entering into commercial agreements than was envisioned in the statute.

Overlaps between Land and Forest Tenure Legislation

A potential challenge related to the governance of community forests under the proposed Land Rights Act will be aligning the institutional mechanisms and mandates proposed for local land and resource management with those created under the CRL. Specifically, the LRA proposes the creation of a CLDMA to govern all land management, while the CRL mandates the creation of the CA/CFMB to manage Community Forests. If the draft LRA comes into effect, it would then be possible for a community to form a CLDMA and register community forest land without undergoing the required process under the CRL. The community would have the equivalent of fee simple ownership of the forests and thus the ability to manage them without the need for a CFMB. The role of a CFMA would be limited to conclusion of commercial forestry contracts, which must be approved by the FDA.[54] Failure to undergo the process outlined in the CRL could undermine the potential for communities to undertake and benefit from REDD+ activities because no comprehensive forest management planning

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[52] NFRL, §2.1; CRL, §2.2.

[53] Two members of the legislature from the relevant County are required to sit on the CA, but no elected officials are able to sit on the Executive Committee (CRL, Ch.3).

[54] USAID/PROSPER (2015). Customary Land Governance: Options for Community Forests.

process would be required. Pursuant to the CRL, communities have rights to full management of forest resources "having met management and technical specifications based on regulations and guidelines issues by the Authority" (§3.1). This includes establishing the Community Forest for "sustainable use of the forest resources to maintain their forest ecosystems" (CRL Regs. §4), surveying and mapping the forest cover of the proposed forest area (§8), creation of forest management institutions (Ch.3) and developing a Community Forest Management Plan that is approved by FDA (Ch. 8). FDA also has power to revoke authorized status of community forests if the forest resources are being damaged or if practices are breaching approved planning and policy documents or the CFA. This set of protections provides a sound basis for communities to qualify for REDD+ activities, which will require proof of sustainable management of forest resources and/or reduction of emissions through community management practices. The CRL and its regulations also provide a basis for nesting community-based REDD+ activities within a national REDD+ Program. It should be noted, however, that no specific requirements have yet been developed to encourage planning for REDD+ on Community Forest Lands, such as identification of High Conservation Value areas, or mechanisms for preserving high carbon value forest stands. Official forest management planning guidelines are currently limited to FMCs.

Without such a process, and without the monitoring and assistance provided from FDA pursuant to the CRL, it would be challenging for communities to establish the qualifications for REDD+. REDD+ activities could still be possible through the establishment of Customary Protected Areas, but the scope for REDD+ in the absence of a comprehensive forest management planning process would be significantly diminished. No specific guidance has yet been provided by FDA on the content and process for concluding Community Forest Management Plans as required under the Community Rights Law.[55] **The completion of such guidance could provide a window of opportunity to integrate REDD+ considerations into community forest management planning**.

The real challenge would arise where both a CLDMA and a CA/CFMB were established in the same community. The managerial and jurisdiction overlaps between the two institutions could present issues, particularly where several community forests are located within one community or where a community forest comprises more than one community's land under the LRA. Communities under the CRL define boundaries around the management of common forest resources, which often is based along clan lines or around clusters of

[55] Pursuant to Chapter 5 of the CRL, the FDA has the duty to "provide minimum standards for" community forest management plans, as well as other technical documents (forest agreements, forest rules) required for use by CFMBs. CRL, Ch. 5.

villages.[56] In contrast, communities may define themselves differently under the Land Rights Law when organizing around customary boundaries that include farmland, forests, and other customary land uses.[57]

As the CLDMA has a larger mandate, one potential mechanism that has been suggested for avoiding confusion and potential conflicts related to how a Community Forest is established and managed and where benefits from forest activities accrue would be to organize the CFMB as a sub-committee within the CLDMA.[58] The responsibilities of the CA could be taken over by the CLDMA, essentially integrating forest management responsibility as part of land use management, which would enable a more integrated and coordinated approach to planning and decision-making and provide an opportunity for aligning customary practices with legislative requirements, particularly as the CLDMA is meant to be integrated into the broader local governance structures. This would require an amendment to the CRL and the draft LRA to ensure clear lines of responsibility and accountability between the different government agencies involved, as well as coordination and alignment of specific requirements for each institution.[59] For example, the CLDMA does not allow elected officials as members while the CA requires representation of local elected officials.

Overlapping Tenure Claims: Community Forests on Concessions

Another key set of issues related to land and forest tenure is the potential for conflict between communities claiming rights to forest land where those claims overlap with existing concessions, protected areas (PAs) or proposed protected areas. Approximately 37% of the forest land in Liberia is allocated for commercial concessions.[60] Forestry (logging) concessions cover almost 30% of the total forest area and together, the land designated as Protected Areas and as Forest Management Contracts contains approximately 50% of the most dense and most biodiverse forest.[61] Given the breadth of coverage of these areas, there is a high likelihood that several community forests will overlap with concessions and PAs (and proposed PAs).

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[56] Pursuant to Chapter 5 of the CRL, the FDA has the duty to "provide minimum standards for" community forest management plans, as well as other technical documents (forest agreements, forest rules) required for use by CFMBs. CRL, Ch. 5.

[57] Id.

[58] Id.

[59] Id.

[60] LTSI (2016). REDD+ Strategy Options DR-2b Report submitted to FDA, March 2016.

[61] Id.

As customary rights are recognized through the establishment of a Community Forestry Management Agreements and/or through delineation under the draft LRA, it will be important to clarify legal relationship between those claims and existing concessions that have been ratified by the legislature. Similarly, as plans move forward to extend the national Protected Area Network (PAN), it will be important to clarify how this will impact the ability of communities to exert claims to those lands.

In the case of concessions, the draft Land Rights Act addresses these potential conflicts by clarifying that:

> "[…] all concessions, contracts, permits, or other documented licenses executed by the Government in favor of any person and on Customary Land prior to the Effective Date of this Act shall remain valid and enforceable in keeping with their existing terms and conditions, provided that the Community which owns the Customary Land on which the Concessions exist shall, as of the Effective Date of this Act, have the right to and be entitled to participate as owner of the Concessions Area in every scheduled review of the Concession." (Art. 33(4)).

Additionally, the draft Act specifies that concessions given on Customary Land prior to the effective date of the Act "does not make the land Government Land, but the Land remains owned by the Community and reverts automatically to the community upon the expiration of the specified term of the concession" (Art.2(13)).

Thus, if and when the Land Rights Act is passed, communities must be consulted and are enabled to participate as owners of concessions lands to ensure their interests are represented in decision-making with respect to the concession. Once the term of the concession ends, the land reverts to the community, regardless of its status prior to the effective date of the Act.

The Public Procurement and Concessions Act requires stakeholder consultation as part of the concessions allocations process (PPCA §90). However, as noted above, this has frequently failed to take place with resulting conflicts arising between concessionaires and communities over land and resource rights. This leaves open the question of the rights of the communities related to that concession with respect to payments for economic losses incurred by the loss of forest resources. The legal question will be whether the provision in the LRA that concessions maintain their validity and enforceability in keeping with their existing terms precludes any such payments, or whether the subsequent establishment of a Community Forest entitles the community to re-open the question. Moreover, where there was a failure to consult with communities under the PPCA during the allocation of the concession, could this trigger the right to consultation upon establishment of a Community Forest (or

declaration as Customary Land under the LRA)? Finally, where concessions have exempted companies from paying royalties to the Government, would that exemption extend to communities?[62] These remain open questions that will require clarification as the Land Rights Act is finalized.

In the absence of any clear legal provisions to guide these situations, the USAID-supported PROSPER project has worked to mitigate conflicts by facilitating negotiations between communities and the concessionaires. In the case of Arcelor-Mittal Liberia (AML), which holds a Mineral Development Agreement over 500 square kilometers in Nimba County, the Gba Community has customary land almost entirely within the concession.[63] In this case, the 2005 concession was exempted from royalties for timber harvest and use, in line with the Mining Law since, at the time, the land was considered Public Land. The Gba Community signed a Forestry Management Agreement with the FDA in 2011, providing them the ownership rights to all community forest lands covered in the agreement. The Community Forest Management Body entered into negotiations with AML with assistance from the FDA and brokered a Definitive Compensation Agreement (DCA) recognizing both parties' claims to the forest resources and providing the Gba Community with an opportunity to receive benefits from the loss of forest resources in their Forest Lands based on the commercial value of timber species found on the affected area.[64] AML also agreed to provide an access route to enable the Gba Community and the FDA to fell and haul all merchantable timber out of the area for commercial exploitation. In turn, the Government is not requiring the Gba Community to pay royalties on the value of these species.[65]

A similar process could enable communities with lands overlapping concessions to negotiate their rights. It should be noted, however, that the assistance provided by FDA and PROSPER to the community in this case was a major factor in achieving an equitable outcome. Communities, particularly those that were not consulted in the concessions allocation process in line with the PPCA, should be afforded an opportunity to work with FDA to understand their rights and make appropriate legal arrangements to ensure such equitable outcomes. While the negotiation of such agreements would not require new legislation, to ensure that negotiations are triggered and adequate support is provided to communities,

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[62] Some of these questions were raised in the case study on Arcelor-Mittal Liberia and the Gba Community as part of PROSPER's support to that community in establishing a Community Forest. USAID/PROSPER (2015). Forest Resource Rights in an Evolving Policy Environment. Policy Brief, PROSPER: Monrovia, Liberia.

[63] Id.

[64] Id.

[65] Id.

FDA would need to legally formalize this requirement and process, likely in the form of a regulation.

Overlapping Tenure Claims: Community Forests on Protected Areas and Proposed Protected Areas

The 2006 NFRL made a commitment to placing 30% of Liberia's forest estate under protected area status (§9.1(a)). More recently, the 2014 Letter of Intent signed between the Governments of Liberia and Norway includes in its agenda the operationalization of this commitment by 2020.[66] Existing PAs are considered Government land. This is reinforced by the provision in the draft LRA that includes conversion of any Private or Customary Land to PA status is considered a 'taking', or exercise of the Government's eminent domain powers, and triggers the requirements for negotiation and compensation (Art. 42.5). The potential for conflict is where the expansion of the Protected Area Network essentially removes large tracts of forest lands from the possibility of being claimed as Community Forests. Even if these lands could be claimed as Community Forests pursuant to the CRL, their status as Protected Area could limit the range of ownership, use and management rights available to communities.

The draft LRA proposes that Protected Areas may be established on Customary Land at the instance of the community or the Government, following good faith negotiations and a favorable vote by 2/3 of the community. Such areas remain 'owned' by the community but are conserved and managed for the benefit of all and cannot be sold, leased or granted as a concession. A legal taking occurs (and trigger the requirements for eminent domain) when the community fails to consent.

One option for addressing the issue of communities claiming rights within PAs would be to ensure that community consultations during the establishment of the PA (either through the EIA process or additional consultations required under a Protected Forest Areas Network Law) enabled communities to understand the implications of the process. If the community agrees to enter into the process for establishing the CF pursuant to the CRL (if they haven't already), these consultations could provide a mechanism for gaining the community's FPIC with respect to the restrictions they are willing to put into place to qualify for a specific type of Protected Area status. Otherwise, if they do not agree, there could be a contingent arrangement for the community to receive compensation once they achieve Community Forest status pursuant to the CRL as if this were a case of eminent domain. Similarly, where communities claim ownership of forest areas on existing PAs, a consultation process could

[66] Letter of Intent between the Government of the Republic of Liberia and the Government of the Kingdom of Norway on "Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation (REDD+) and developing Liberia's agriculture sector" (signed Sept. 23, 2014).

be triggered to enable agreement on the terms of the use and management of the area or to agree to compensation under eminent domain. To ensure these processes were uniform and equitable, the Protected Forest Areas Network Law would either need to be amended or a new regulation created to specify these requirements and to ensure that community forests being managed to achieve the goals of various categories of PAs are legally considered part of the Protected Areas Network.

Carbon tenure

There is currently no clear or commonly accepted definition of carbon rights under international law or the international UNFCCC policy framework for REDD+. While the current UNFCCC framework for REDD+ makes no specific mention of carbon rights, it does 'request' State Parties to address land tenure issues when developing their national REDD+ strategies, and it does establish some other guiding principles that are relevant to the way that countries will develop their framework for carbon rights (e.g. safeguards).[67] Only a few countries have introduced a legislative scheme defining carbon rights.[68] The term 'carbon rights' is generally used to refer to the right of a person or group to the legal, commercial or other benefit, whether present or future, generated by exploiting the forest carbon.

Carbon rights could be vested in governments, land owners, forest users, or exist as separate property (where a carbon right is 'detached' from other land and resource rights to facilitate carbon trading). The ownership of carbon rights can affect how carbon benefits are managed and shared between stakeholders.

Carbon is deemed included in the broad definition of 'forest resources' in the Forestry Reform Law and covered under the CBFM agreement. Forest resources is defined as "all natural resources, whether biomass such as plants and animals or non-biomass such as soil and water, as well as the intangible services and values present in forestlands or other lands devoted for forest purposes".

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[67] Conference of Parties, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, COP Decision 1/CP.16, UNFCCC, 9th plenary meeting, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011) [72].

[68] For example, each State and Territory in Australia has introduced legislation clarifying the ownership of carbon rights. There is also a national scheme which enables the generation of forest carbon offsets which can be used within Australia's Emissions Trading Scheme which commenced on 1 July 2012: *Carbon Credits (Carbon Farming Initiative) Act* 2011. Vanuatu also has carbon rights legislation in the form of the *Forestry Rights Registration and Timber Harvest Guarantee Act* 2000 (also known as "The Plantation Act"), although this legislation only applies to leased land. It is understood that Vanuatu is considering repealing the Act to replace it with a more comprehensive framework for carbon rights due to the fact that it appears to have been introduced without sufficient community or national consultation and does not appear to have been used.

2.2.4 Community forestry and REDD+

Over three decades of implementing community forest management approaches worldwide have shown that, on balance, forests under community ownership and management have better ecological outcomes than state-managed forests.[69] Livelihoods outcomes are also generally more positive under community ownership, but the correlation is less definitive.[70]

It is also important to note that REDD+ presents a potential incentive for Government to recentralize control of forests and this maintain total access to the results-based payments. While this would require a major reversal of national policy in Liberia, it is something to consider in terms of the underlying motivation to effectuate existing decentralization and community forestry on the ground. Conversely, REDD+ could provide Liberia with the financial and political resources necessary to support appropriate tenure and institutional reforms.[71]

Liberian policy and legal framework

Community forestry is at the heart of the Liberian legal framework governing forest resources. In recognition of the high level of dependence of the majority of Liberians on forests and their products and services, the 2009 Community Rights Law (CRL) grants full ownership rights of community forests to local communities (§2.2). As noted above, the CRL also establishes that the FDA has regulatory oversight of these forests and sets out a series of institutional and planning requirements for communities to officially establish their tenure claim to Community Forests. The Regulations to the CRL further elaborate these requirements into a 9-step process for completing a Community Forestry Agreement with the FDA as a prerequisite to taking over the use, management and control of community forests pursuant to a management plan approved by the FDA.

One issue that was raised consistently by stakeholders interviewed for this Assessment and throughout the literature is the complexity of this process and the burden in terms of time and resources that the process places on both the FDA and forest communities. The requirements were developed during the post-conflict period in Liberia and were a prerequisite to the lifting of UN sanctions on timber exports. There was thus a premium on strict and detailed procedural requirements that would provide every protection for communities and enable capacity building through a longer process. In retrospect, some

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[69] USAID (2012). Devolution of Forest Rights and Sustainable Forest Management Volume I: A Review of Policies and Programs in 16 Developing Countries. USAID: Washington, DC, USA.

[70] Id.

[71] Cotula, L. & Mayers, J. (2009). Tenure in REDD: Start-point or Afterthought? Natural Resources Issues No. 15, International Institute for Environment and Development: London, UK.

stakeholders feel the burden is too high and that the CRL and its regulations should be streamlined to more closely reflect the support role that FDA should be playing and minimize the regulatory requirements on land that is 'owned' by the communities as stated in the CRL.[72]

Box 5 - The 9 steps to completion of a Community Forest Agreement

Step 1: submission of a written request for Authorized Forest Community Status by the Community to the Authority along with payment of $250.

Step 2: FDA provides 30-day notice to the community and adjacent communities that a socio-economic survey and resource reconnaissance will take place.

Step 3: FDA conducts the socio-economic survey and resource reconnaissance in collaboration with the consent and involvement of the applicant community.

Step 4: FDA provides 30-day notice to the applicant community and adjacent communities for a survey, demarcation and mapping of the proposed community forest area.

Step 5: The FDA surveys and demarcates the community forest area with the collaboration of the community (and, in some cases, of other government agencies).

Step 6: FDA presents the results of the surveys and demarcation and allows for third parties to lodge objections.

Step 7: Any conflicts that arise are resolved by the community, the FDA and other relevant agencies.

Step 8: Once all disputes are resolved, the FDA confirms that the community may organize itself into an Authorized Forest Community. This requires establishment of a Council Assembly with an Executive Committee and a Community Forest Management Body, as well as the creation of an FDA-approved Community Forest Management Plan.

Step 9: The FDA and the Community sign the Community Forestry Agreement.

Broadly speaking, most stakeholders appear to agree that the '9 steps' should be maintained, but that there is a strong need for support to FDA and communities to facilitate and expedite the process of establishing Community Forests. This raises the question of

[72] An initial assessment of the CRL Regulations noted that the ability of the FDA to regulate access, management and use rights was contrary to the spirit of the CRL itself. The CRL states that community ownership rights exist based on historic occupation and practice, and the process introduced in the Regulations undermines that statement. USAID (2011). LCRFP Final Evaluation.

whether third parties should be allowed to support communities and, if so, what restrictions on such assistance should be put into place to prevent undue influence by private sector actors seeking to benefit from profitable commercial contracts on community forest lands.[73]

The USAID-supported PROSPER project has been working with communities to facilitate the process of establishing viable community-based forest management that leads to more sustainable forest management practices and reduces threats to biodiversity.[74] Activities under this project seek to "build the institutional and human capacity of communities, FDA and civil society organizations (CSO) to implement sustainable forest management (inclusive of biodiversity conservation) while developing and refining the enabling legal framework through inputs from stakeholder implementation experience."[75] This includes providing direct support to FDA to build the necessary capacity and create the guidance materials necessary to meet the demand for the expansion of community forests. This could provide a critical window of opportunity to introduce REDD+-relevant considerations into the forest management process, such as representivity of local management institutions and prioritization of conservation of carbon-dense and biodiverse forest areas.

Other relevant legal issues that could impact the ability of communities to effectively engage in and benefit from REDD+ are those related to the potential conflicts in tenure rights where community forests are located within concessions, protected areas, or proposed protected areas. There are also potential issues related to inconsistencies and overlaps between the CRL and the draft Land Rights Act.

Another key legal issue related to community forestry is the apparent disparity between the CRL and its implementing regulations. As noted above, there are some concerns that the Regulations extend FDA's regulatory authority too far and undermine the CRL's assertion that communities have ownership rights to community forest lands. The counter-argument, at least with respect to the regulatory requirements for concluding a Community Forestry Agreement, is that the FDA is only regulating how forest resources on community forest lands are managed. Once the Community Forest Management Plan is approved for meeting "technical specifications based on regulations and guidelines," the community gains full

[73] USAID/PROSPER (2015). The Role of Third Parties in Establishing Community Forests. Policy Brief # 1 (June 1 2015).

[74] USAID/PROSPER, "Annual Work Plan 2014." Available at http://pdf.usaid.gov/pdf_docs/PA00JKPD.pdf.

[75] Id.

management rights and the FDA is limited to monitoring and enforcement of the Management Plan.[76]

Additional inconsistencies between the CRL and its regulations relate to the provisions regarding commercial activities on Community Forest Lands. For example, the CRL provides that contracts with other parties to engage small-scale (>5,000 ha) commercial enterprises in timber and/or non-timber forest products (§6.1). The Regulations, however, limit small-scale commercial activities to members of the community, in support of livelihoods, and for sale in the domestic market (§1.0). Similarly, for medium-scale commercial enterprises, the CRL provides that communities may enter into contracts with third parties on a non-competitive basis (§6.2). The Regulations require such contracts to be subject to the requirements of the Public Procurement and Concessions Act, and do not provide communities the choice of whether to enter into these agreements on a non-competitive basis as allowed in the CRL (§2.0).

The Regulations appear to be introducing an additional layer of protection both for the forests and for the communities. At the small-scale level (<5,000 ha), if only communities are allowed to undertake commercial activities, the scale of impact is likely to be much lower. At the medium-scale level (5,001-49,999 ha), the additional level of scrutiny applied by the PPCA's required process for competitive bidding would likely result in more favorable contracts for communities. Companies would no longer be able to approach communities directly and negotiate with community leaders, potentially bribing them in exchange for contracts.[77] This would, in turn, provide a safeguard for communities to protect their ability to engage in and benefit from REDD+ activities.

While the Regulations arguably provide an important additional layer of protection, they are also in direct conflict with the provisions of the CRL, which could provide grounds for declaring those portions of the regulations unenforceable and invalidating agreements made pursuant to them. The most straightforward solution from a legal perspective would be to amend the CRL to conform to the higher level of protections, but this would also run the risk of opening the whole law to reconsideration. It was a highly contentious process the first time around and it may not be worth risking the hard-won protections of community forest tenure.

Another possibility raised by the PROSPER project would be to amend Chapter 9, Section 5 of the Regulations, which currently require third-party agreements in small- and medium-

[76] USAID/PROSPER (2015). "Addressing the Shortfalls of the Community Rights Law: Amend or Adapt?" Policy Brief No. 2.

[77] USAID/PROSPER (2015). "Addressing the Shortfalls of the Community Rights Law: Amend or Adapt?" Policy Brief No. 2.

scale commercial activities to be made with the "advice and consent" of the FDA. While this may extend the authority of the FDA beyond what the CRL permits, the Regulation could be amended to provide that such contracts must be concluded with the 'advice' of the FDA.[78] This would provide a layer of protection for communities and of accountability for the companies and community decision-makers, albeit far less than the PPCA process would provide. For REDD+ implementation, higher levels of accountability and transparency would provide more assurance against reversals.

2.3 Enforcement

The success of REDD+ implementation is contingent on the ability of the sectors involved to enforce the relevant legal and regulatory requirements that form the governance basis for REDD+ activities, for avoiding leakage and risks of reversal. This includes, for example, the capacity and political will to enforce protected forest areas and other regulatory requirements, to ensure compliance with community based forest management agreements, and to enforce legitimate tenure rights. Moreover, it requires the capacity of other sectors to enforce land use regulations.

Liberian policy and legal framework

Compliance and enforcement is a critical challenge in Liberia. This is due not only to technical and financial capacity constraints, but also to the lack of sufficient guidance on how to operationalize and coordinate the provisions of the legal frameworks to ensure accountability of enforcement actions. Additionally, there are serious issues of corruption that prevent effective enforcement.[79] This cross cutting issue is addressed throughout the Assessment and recommendations are provided for increasing the capacity and improving the legal framework for compliance and enforcement.

Broadly speaking, the FDA has significant legal authority "to enforce all laws and regulations for the conservation of forests and the development of their resources" (FDA Act §4). Forest Officers are empowered to arrest any person "reasonably suspected of violating any of the provisions of the statutes or regulations relating to the conservation of forests" and under the NFRL, the FDA is obligated to monitor forest lands to ensure all use, harvest, and transport of forest resources is lawful and based on sustainable yield (§ 8.2).

The NFRL clearly provides investigative authority to ensure compliance with the law and its regulations, permits Forest Officers to conduct visits, searches, and seizures, and empowers

[78] Id.

[79] PROFOR/FCPF (2013)

courts to issue injunctions to enforce any provision of the NFRL (including against the FDA) (§§3.2; 20.1). Any person harmed by a violation of any provision of this Law or when a holder violates a condition or requirement of an FMC or TSC may bring an action against any responsible person except the Government and its employees, and in response a court may award civil damages and injunctive relief, as the court deems appropriate (§ 20.10).

In addition to the numerous enforceable provisions in the NFRL, the Act also explicitly states that holders of permits or licenses are liable for acts that contravene the law committed by themselves, their employees, Operators, agents, contractors or sub-contractors (§20.3). The FDA may include provisions for appropriate resolution of disputes in Forest Management Contracts and Timber Sale Contracts and may, by regulation, establish additional procedures for dispute resolution with respect to the management of Forest Resources (§ 17.1). Moreover, the NFRL explicitly states that no one on public or private land shall conduct activities in violation of the Forest Management Guidelines or the Code of Forest Harvesting Practices, making those documents enforceable.

The CRL also provides enforcement authority at the local level to a duly established Community Assembly (CA) and Community Forest Management Body (CFMB). The CRL states that "any person or operator" who violates forest rules or applicable by-laws established by a CFMB are subject to penalties as set forth in the by-laws and constitutions of said community (Ch.7). The Executive Committees of CAs, with support of the FDA, are empowered to investigate alleged mismanagement, misconduct or misappropriation of funds by the CFMB, prepare recommendations for remedying the situation and to ask the FDA to take over management if those recommendations are not followed within 90 days (§7.3).

From a practical perspective, the FDA relies on field staff to monitor activities in forested areas across the country and to detect forest crime.[80] There is a dedicated Law Enforcement Unit within the FDA, which should ultimately law enforcement officers in each of the fifteen counties.[81] At present, there are only law enforcement officers in four counties, supported by a small team based in FDA headquarters and the Unit has very limited resources. Ultimately, the goal is to have the Unit act as a clearinghouse for reports of any suspected illegal activities, which it will then investigate and report back to FDA management team so that further action (by FDA, or referral to Ministry of Justice for prosecution) can be taken. To date, very few cases have been reported to the MOJ, even where it is apparent that they qualify for prosecution. Due to limited resources and capacities, FDA has generally dealt with

[80] PROFOR/FCPF (2013). Liberia: Assessment of Key Governance Issues for REDD+ Implementation Through the Application of the PROFOR Forest Governance Tool. FCPF, Washington, DC: USA.

[81] Id.

crimes by issuing administrative fines and the collaboration between FDA and law enforcement agencies (for example, the Liberia National Police) is limited. This is mainly due to a lack of guidance in the existing regulations, coupled with a lack of knowledge on the part of the police with respect to the content of the forestry laws.

According to the recent SESA Priorities Report, while legal provisions for compliance and enforcement in the forestry sector are generally quite strong, limited resources related to training and implementation of the law were identified as the biggest obstacles to implementation of the forest law.[82] This is supported by the focus on strengthening enforcement capacity of FDA, EPA and the Ministry of Justice being taken under the VPA. It is important to note that, while these three agencies are the primary targets for such training, the court system in Liberia also has limited capacity and is often over-stretched. Judges often lack a full understanding of the relevant sector legislation, so the creation of a strong Alternative Dispute Resolution (ADR) process, as an alternative to going through the formal court mechanisms, is a valuable option for addressing violations relevant to REDD+.[83] An additional issue is clarification of the roles and responsibilities for all of the relevant stakeholders with enforcement responsibilities in the forest sector, including the FDA, EPA, Ministries of Mines and Agriculture, and the National Concessions Bureau.

2.3.1 Benefit sharing

The concept of benefit sharing in natural resources management was first introduced under the Convention on Biological Diversity in 1992. The concept has since evolved not only to encompass financial benefits, but also broader forms of social accountability and responsibility.[84] In the REDD+ context, benefit sharing includes: i) benefits from the implementation of a REDD+ project, program, or policy (financial benefits); ii) benefits from changes in forest use (e.g., improved ecosystem services); and iii) indirect and non-monetary from REDD+ implementation, such as improved forest governance, tenure security, or enhanced participation in forest management.[85] Benefit sharing mechanisms for REDD+ are meant to address compensation for the opportunity costs of deforestation and incentives to

[82] TetraTech, "Strategic Environmental and Social Assessment for the REDD+ Readiness Preparation Activities of the Liberian Environmental Protection Agency."

[83] PROFOR/FCPF, supra n.

[84] Pham, T.T., et al. (2013). Approaches to Benefit-sharing: A Preliminary Comparative Analysis of 13 REDD+ Countries. CIFOR Working Paper No. 18, CIFOR: Bogor, Indonesia.

[85] Id.

induce positive choices or behavior by those individuals and communities implementing REDD+ activities.[86]

Conditional payments may be made under REDD+ to national governments on verification of reduced emissions, and these payments are often used to fund the actors (sub-national governments, communities, NGOs) who are undertaking the actions to reduce emissions or demonstrate sustainable forest management practices.[87] Alternatively, payments may be made directly to projects or communities undertaking the management activity or land use changes.

Approaches for benefit sharing in REDD+ countries tend to build on existing mechanisms, which can reduce costs and enhance political willingness to accept the arrangements. However, the equity, efficiency, and effectiveness of these approaches rely on the accountability and transparency of the state, all of which are challenges in Liberia. Both the vertical (from central to local actors) and horizontal (across sectors or local actors) aspects of a REDD+ benefit−sharing mechanism need to be designed to: i) maximize equity among the actors responsible for the reduction of deforestation and forest degradation; ii) improve the effectiveness of forest management; and iii) increase the efficiency of national and sub-national programs (largely by minimizing transaction and implementation costs).[88] This, in turn, requires a careful balancing of interests and expectations in structuring the requirements for sharing of REDD+ benefits.

Liberia's benefit sharing arrangements and the needs moving forward are discussed in depth in Section 5.

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[86] Pham, T.T., et al. (2013). Approaches to Benefit-sharing: A Preliminary Comparative Analysis of 13 REDD+ Countries. CIFOR Working Paper No. 18, CIFOR: Bogor, Indonesia.

[87] PROFOR 2014.

[88] Brockhouse et al., 2013.

3. Policy, legal, and regulatory gaps

Analysis of the strategic options for Liberia's National REDD+ Strategy

Liberia's national REDD+ strategy will be based on a number of strategic priorities and options for addressing those priorities. While REDD+ implementation will require attention to the diverse set of policy and legal issues discussed in Chapter 2 of this assessment, it is also important to understand what specific policy and legal issues need to be addressed immediately to enable the implementation of the national strategy priorities and options. This section draws on the analysis from the earlier sections and provides a more focused discussion of the potential gaps, overlaps and other challenges to implementing the Priorities and, where possible, the specific REDD+ strategy options, which are set out in Table 1, below.

In addition to the specific regulatory issues addressed in this Section, many of the policy and legal issues discussed in Chapter 2 are also relevant for the implementation of the Strategic Priorities. In particular, the need for an integrated approach to land use planning and management will play a critical role in providing practical options for individuals and communities relying on these currently unsustainable livelihoods options. This, in turn, will be impacted by the evolving land tenure and land use policies and laws that must be aligned more closely with forestry laws and regulations to ensure a comprehensive and sustainable approach is taken to managing forests on community lands. Throughout the development of the regulations, it will also be critical to ensure active and meaningful participation of the stakeholders who depend on these activities for livelihoods to address the challenges that will otherwise present obstacles to implementation and enforcement. Finally, while policies across the relevant sectors are rarely in conflict, there is great room for improvement in coordination and need for workable mechanisms for joint implementation of policy goals between agriculture, energy, mining and forestry sectors.

Table 1 - REDD+ strategic priorities and options for Liberia

Objective: Reduce emissions from deforestation and forest degradation and increased benefit sharing					
Strategic priorities	**1. Reduce forest loss from pitsawing, charcoal production and shifting agriculture.**	**2. Reduce impact of commercial logging**	**3. Complete and manage a network of Protected Areas.**	**4. Prevent or offset clearance of high carbon stock and high conservation value forest in agricultural and mining concessions.**	**5. Fair and sustainable benefits from REDD+**
Strategy Options	1.1 Manage pitsawing (chain saw logging) to reduce loss of forest. 1.2 Reduce impact of charcoal industry on forest through better regulation, improved efficiency and the development of alternatives energy sources. 1.3 Increase area and productivity of non-forest land under permanent food and cash crops, to reduce the expansion of shifting agriculture. 1.4 Locate services and new infrastructure development in non-forest	2.1 Ensure that all industrial logging is practiced to high conservation standards[2], so that loss of forest and biodiversity is minimized. 2.2 Conserve and maintain areas of high conservation value within commercial forestry concessions, such as important wildlife corridors. 2.3 Review Timber Sales Contracts to ensure compliance with forestry laws and EIA standards and establish a strong presumption against further TSC contracts on	3.1 Complete the Protected Areas Network and strengthen management to prevent forest degradation 3.2 Expand the Protected Areas Network to conserve 30% of forest land. 3.3 Reduce pressure on Protected Areas from surrounding communities (using priority 1 measures). 3.4 Develop and implement land use plans at landscape scale, to integrate production and conservation.	4.1 Conserve HCS-HCV forest within agricultural concession areas, including developing and implementing a policy for the sustainable management of these conserved areas (using priority 1 measures) 4.2 Apply policy of conserving HCS-HCV forest to all agricultural concessions, including private farms larger than 1,000 hectares. 4.3 Ensure that mining result in zero-net deforestation, through	5.1 Define carbon rights and develop policies and regulations for upholding these. 5.2 Establish benefit sharing mechanisms for REDD+, in harmony with those operating in the forestry, mining, agriculture and other relevant sectors. 5.3 Operate a robust monitoring, reporting and verification system for demonstrating reductions in emissions achieved through REDD+ policies.

and less-dense forest areas[1]. 1.5 Integrate hunting, artisanal mining and forest restoration into community-led livelihood and sustainable forest management practices.	dense forest and within 3 km of Protected Area. 2.4 Prevent unregulated pitsawing and charcoal production in forestry concessions. 2.5 Manage commercial forestry in community forests larger than 1,000 ha. to achieve sustainable logging standards as apply to FMCs.		mechanisms such as biodiversity offsets. 4.4 Locate future large-scale agriculture and mining concessions in less dense and non-forest areas.	

3.1 Strategic Priority 1: Reduce forest loss from pit sawing, charcoal production and shifting agriculture.

The first strategic priority focuses on regulating key drivers of deforestation and forest degradation: pit sawing, charcoal and shifting cultivation. All three of these drivers also are important aspects of current livelihoods strategies for many Liberians, so a careful balance needs to be struck between regulation of these activities to avoid deforestation and forest degradation, and providing options for entering a more formalized market, as well as for alternative livelihoods/income options. The Liberian Government has recognized the need to formalize and manage the impacts of these sectors, and is currently drafting regulations to govern charcoal and pit sawing.

3.1.1 Shifting Cultivation

Shifting cultivation is the primary livelihood activity of the majority of rural population and often takes place in high canopy forests, as these areas are preferred due to soil fertility. While the practice rarely provides for more than subsistence livelihoods, alternatives are limited by a number of factors, including: poor infrastructure, limited expertise, costs of inputs, access to markets and long-standing cultural practices.[89] As noted in the REDD+ Strategy Options, one mechanism for reducing the impact of shifting cultivation would be to increase area and productivity of non-forest land under permanent food and cash crops. In addition to the challenges noted above facing all alternative livelihoods options, numerous studies point to the lack of information available and the limited research into the viability of permanent agriculture. In particular, tree crops and agroforestry may be more suitable alternatives given the quality of soils in some areas of Liberia.

To facilitate the implementation of this strategic priority, it will be critical to facilitate closer coordination between the FDA and the Ministry of Agriculture to identify realistic, equitable and data-driven policies that account for forest sustainability, livelihoods and food security priorities. The current Food and Agriculture Policy and Strategy (FAPS) has a number of provisions that are relevant to these goals, and specifically promotes the establishment and enforcement of appropriate policy instruments to ensure environmental protection from

[89] SESA Priorities Report, *supra* n.

agricultural and related land use activities. One of the key strategies of the FAPS is to ensure sustainable use and management of natural resources, including:

- Inclusive, partner-based approaches for form and implement effective policies, laws and access rights;
- Promotion of establishment of forests for watershed protection, conservation of biodiversity and stabilization of the global climate;
- Supporting participatory EIA in agricultural and forestry concessions;
- Giving priority to tenure arrangements that adapt sustainable and inclusive land management practices;
- Promoting sustainable cropping systems to conserve the natural resource base;
- Establishing an Environment Unit in the MOA to collaborate with the Environmental Protection Agency (EPA) and supporting the establishment of similar units in other agriculturally related institutions;
- Supporting the development of environmental legislations and guidelines for agricultural practice; and
- Supporting measures to subject all sector policies and plans to Strategic Environmental Assessments and projects to Environmental Impact Assessments.

Specifically, the Policy promotes closer linkages with the forestry sector and, "ensuring that policy options to reduce emissions from deforestation and forest degradation and their associated benefits do not compromise economic and cultural values throughout the agricultural sector".

In addition, the FAPS promotes the development of a 'policy and strategy framework' that supports the transition from shifting cultivation to sedentary farming in a manner that ensures sustainable resource use, realization of benefits and social development. Specific mechanisms to support such a framework include subsidies for inputs and awareness raising on conservation agriculture and forest resources.

A specific coordination mechanism between the EPA, FDA and Ministry of Agriculture could help further these policy goals and develop integrated approaches to achieving them. This could either be done under the auspices of an existing mechanism, such as the Environmental Policy Council, or take the form of a more focused and specialized coordination mechanism that would engage policymakers from the sectors under the auspices of the REDD+ Implementation Unit. It will also require meaningful participation of communities or their legitimate representatives (e.g., CFMBs, where they exist) in these discussions to ensure both the monetary and non-monetary values of forests to communities are accounted for and that options for alternative livelihoods take into account the priorities and preferences of, as well as the challenges facing communities who are often struggling with food security and extreme poverty.

3.1.2 Charcoal

Charcoal represents a significant driver of deforestation and forest degradation in Liberia, but the informal nature of the sector means that its precise impacts are difficult to quantify. An estimated 95% of Liberia's population relies on fuelwood and charcoal for cooking and heating and it provides a significant source of income through its decentralized, informal, and mostly unregulated value chain.[90] The lack of accessible and affordable alternatives to charcoal means that, at least for the foreseeable future, the main mechanisms for managing the forest impacts of the industry will need to stem from: i) greater understanding of the precise extent, nature and impacts of the charcoal value chain; and ii) targeted regulatory oversight to minimize negative impacts and encourage more sustainable practices.

There is little regulation of charcoal currently, aside from an inconsistently enforced collection of L$ 2.50 (Liberian Dollars) by the FDA at the entry checkpoints to Monrovia.[91] A draft regulation, however, is currently being prepared by the Legal Department at the FDA.[92] Studies have noted the lack of data on household charcoal consumption and on the charcoal production situation or trends that would need to inform the drafting of such a regulation, so it is necessary to ensure that the regulation is reviewed and revised as new information becomes available.[93] This could be achieved partially though regulating to require data collection from charcoal transporters at checkpoints. Additionally, it will be important to regulate and provide incentives that not only target end users (i.e., improved cookstoves) but also on more efficient production methods (e.g., high efficiency kilns), delineation of allowable harvesting areas, and requirements for replanting harvested areas.

It will also be important to recognize that, from what data is available, it appears that many charcoal producers do not own the land where production takes place.[94] This can lower the incentives to replant and adhere to any land use regulations. As land tenure evolves and rights are clarified under the new Land Rights Policy and proposed Land Rights Act, it may

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[90] USAID (2015). "Gap Analysis of Targeted Domestic Natural Resource Markets in Liberia," available at https://rmportal.net/library/content/gap-analysis-of-targeted-domestic-natural-resource-markets-in-liberia/at_download/file

[91] Id.

[92] While requests were made, the draft Regulation was not able to be shared with the authors for this Assessment.

[93] Id.; Jones, B. (2015). "Social and Environmental Impacts of Charcoal Production in Liberia," Master's Thesis for University of Michigan, available at https://deepblue.lib.umich.edu/handle/2027.42/110987.

[94] Jones, B. (2015), supra n. 93.

be possible to regulate charcoal through the creation of easements or other legal arrangements that clearly assign these responsibilities to producers.

The National Energy Policy recognizes the need for expanding access to electricity while recognizing that the vast majority of rural Liberians will need to have efficient, non-electric sources of energy until they are connected to the grid. These could include high efficiency charcoal, solar power, and micro and mini-hydroelectric schemes. It will be important for FDA and the Rural Renewable Energy Agency of the Ministry of Lands, Mines and Energy to coordinate efforts to align policies, incentives and create enforceable regulations.

3.1.3 Chainsaw Milling (pit sawing)

With the ban on export timber in 2003, the chainsaw milling, or pit sawing industry in Liberia expanded to fill the vacuum left in the domestic market by commercial logging operations. The vast majority of domestic timber comes from this largely unregulated activity.[95] The practice is widely dispersed, including in Proposed Protected Areas.[96] Based on some estimates, the potential impact from pit sawing is actually more significant a cause of deforestation and forest degradation than logging on forestry concessions.[97]

In 2012, an attempt to regulate pit sawing was made with the drafting of the Chainsaw Milling Regulation #115-11 by the FDA. The Regulation recognizes the need to formally regulate chain sawing as a means for maximizing the socio-economic benefits while addressing and mitigating the negative ecological and environmental impacts of the practice. To achieve this balance, the Regulation created a permit system that would allow pit sawing in Community Forests or Private Forest Land, if the land was suitable for commercial use and registered with the FDA for chain sawing (§2(a); §6(d)). Permits would be limited to 1,000 ha and only in areas that are unsuitable for sustainable forest management (§2(c)&(e)). On Community Forest Land, permit holders would be required to obtain FPIC from communities. Equipment was also to be registered and permit holders required to prepare a tree registration scheme that would log all trees cut and include in the application the location, ownership, number of trees, species and diameter, and conduct a field investigation (§11). All chain sawing must be in line with the Code of Forest Harvesting Practices for Chain Sawing Operations, including environmental protections (§12). Finally,

[95] LTSI (2016) Forest and land use change analysis (Task 2 report)

[96] Id.

[97] Id.

30% of stumpage fees would be collected and distributed to affected communities through the National Benefit Sharing Trust (§16).

As noted above, the Regulation has faced opposition and its legality questioned on the basis that it was not reviewed by the Forest Management Advisory Committee as required under the NFRL. A revised version of the Regulation is currently being drafted by FDA.[98] **One major consideration in reviewing the detailed provisions in the existing Regulation is the capacity of FDA to implement and enforce this new permitting system.** One proposal to mitigate the additional burden would be to issue permits to communities enable them to grant rights for pit sawing in certain areas. In this way, communities could be engaged for complementary enforcement.

The above drivers are all inter-related. Degraded areas are generally more susceptible to extraction for charcoal and when most woody materials are cleared, to shifting cultivation.[99] This demonstrates the linkages between pit sawing, charcoal and shifting cultivation and highlights the need for integrated policies and approaches to addressing the inter-related nature of these livelihoods. Similarly, the impacts of roads on making areas accessible for clearing imply the need for coordination and policy integration with the Ministry of Transport. It will be critical for FDA to note the existing policy linkages (and gaps) to build support for more effective coordination under the REDD+ Implementation Unit.

3.1.4 Roads infrastructure

Roads correlate strongly with the exploitation and degradation of forest resources, acting as both an enabling mechanism that increases accessibility to markets and urban centers, and an indicator of land use conversion from forest to infrastructure when new roads are built.[100] Most of the road network in Liberia, and all in some rural areas, was built by logging companies to extract timber. These play a vital role in opening up the land for pit sawing, agriculture, settlement expansion, charcoal production, hunting, artisanal mining and other activities that lead to deforestation and forest degradation.[101]

The regulation of forestry roads is addressed in the 2007 Code of Harvesting Practices. The Code provides guidance on road planning to ensure that it minimizes the impact to the

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[98] No copy of the draft Chainsaw Regulation was made available to the authors. At time of writing it was being revised.

[99] Id.

[100] LTSI (2016) Forest and land use change analysis (Task 2 report)

[101] Id.

environment. While this process ensures that roads have minimal impacts on protected areas and take account of direct environmental impacts, no mention is made of potential cumulative or secondary impacts of forest roads, including opening the area to the destructive activities listed above. The Code does require a field inspection by the FDA, which could allow consideration of secondary impacts, but this would need to be specifically elaborated to ensure that these potential impacts were considered. EIAs are also required under the Environmental Management and Protection Law (and the FDA's EIA Regulation) as part of the FMS and TSC allocation process. The impact assessment must include identification of "direct, indirect, cumulative, short-term and long-term effects on both the natural and built environments" and measures for avoiding, mitigating, minimizing and monitoring such impacts (EPML, §14(1)). This definition should incorporate a comprehensive assessment of the secondary and cumulative impacts of proposed road construction on natural forests. The FDA's EIA Regulation also specifies that both direct and indirect impacts should be assessed, including "predicted changes to forest resources, ecological systems, environmental quality and physical processes attributed to the project if implemented," as well as socio-economic impacts. Again, the potential for impacts on secondary activities that could follow roads (and carbon sequestration more broadly) should be covered under these requirements, as should the potential for undermining the possibility for communities and individuals to benefit from REDD+. However, without a more specific reference to REDD+-relevant considerations, there is no guarantee that they will be taken into account. Additionally, while EIAs are a promising mechanism for identifying areas of REDD+ potential in proposed forest concessions, they do not dictate management outcomes, nor do they apply to roads that are built or refurbished that are not related to forestry projects or concessions. To ensure that EIAs consider the primary and secondary or cumulative impact potential of roads, there would need to be an amendment to the NFRL, its regulations, or in EIA provisions of the EPML, to have legal enforceability.

The National Transport Master Plan provides overall guidance with respect to road development, rehabilitation, and maintenance in Liberia. It notably lacks a significant focus on environmental sustainability, although it does refer to the need to manage environmental and social impacts.

3.2 Strategic Priority 2: Reduce Impacts from Commercial Logging

While there is a solid policy and legal foundation for requiring high conservation standards across the various allowable commercial logging activities, there is no clear definition of what such standards should entail in the Liberian context, nor are there procedural

requirements for ensuring that such a standard will guide the EIA, forest management planning, or even the identification of suitable forest land for commercial activities.

As noted in the REDD+ Strategy Options draft report (Task 3), "high conservation standards" is used as a general term because the appropriate standard needs to be defined, based on a review of the existing harvesting codes and the applicability in Liberia of the various standards for achieving protection of High Conservation Value (HCV) and/or High Carbon Stock (HCS) areas. The HCV approach was first developed by the Forest Stewardship Council (FSC) and was adopted in 1999.[102] It is now used by a range of certification schemes, including the Roundtable on Sustainable Palm Oil (RSPO).[103] The HCV Resource Network (HCVRN) was established in 2006 to promote the consistent application of the HCV approach across sectors and geographic regions and in 2012, Fauna and Flora International (FFI) and Proforest drafted a National Interpretation for Liberia of the HCV approach, which could provide a starting point for additional activities to define the standards in the context of Liberia and its forests.

The HCS approach was developed within the palm oil industry as a mechanism for achieving a 'no deforestation' approach for plantations.[104] The HCS approach is its methodology separates HCS areas (natural forest) from non-HCS areas (degraded land), defining a threshold between natural forest and degraded land using six vegetation classifications that

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[102] The Forest Stewardship Council's Principles include Principle 9 on maintaining and/or enhancing High Conservation Values (HCVs) in all forest management units. HCV criteria include: (1) Species diversity. Concentrations of biological diversity* including endemic species, and rare, threatened or endangered species, that are significant at global, regional or national levels; (2) Landscape-level ecosystems and mosaics. Intact forest landscapes and large landscape-level ecosystems and ecosystem mosaics that are significant at global, regional or national levels, and that contain viable populations of the great majority of the naturally occurring species in natural patterns of distribution and abundance; (3) Ecosystems and habitats. Rare, threatened, or endangered ecosystems, habitats, or refugia; (4) Critical ecosystem services. Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes; (5) Community needs. Sites and resources fundamental for satisfying the basic necessities of local communities or Indigenous Peoples (for livelihoods, health, nutrition, water, etc.), identified through engagement with these communities or Indigenous Peoples; and (6) Cultural values. Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or Indigenous Peoples, identified through engagement with these local communities or Indigenous Peoples. Forest Stewardship Council (2015). FSC Principles and Criteria. FSC-STD-01-001 V5-2 EN, FSC: Bonn, Germany.

[103] Proforest (2014). "A Technical Comparison of HCV and HCS Approaches," available at http://www.proforest.net/en/files/hcv-and-hcs-compared

[104] Id.

can be identified using satellite imagery and field plot measurements.[105] A HCS Convergence Working Group has been formed of several private sector (palm oil) and non-governmental conservation groups to develop the methodology, create a toolkit, and provide guidance on integration of HCS and HCV approaches, include FPIC and ensure the methodology to be complimentary to existing processes, including REDD+.[106] This guidance could provide a strong basis for tailoring an approach to the Liberian context.

From the legal perspective, Liberia has a strong foundation for requiring the protection of these areas and a framework for incorporating assessment and identification of HCV and HCS areas to be protected and managed within concessions. NFRL Regulation 102-07 on Forest Land Use Planning requires a National Forest Management Strategy (NFMS), which was created in 2007 to "outline the FDA approach to forest management, its long-term end-states, or goals, and the Authority's major forest management objectives for the following two years." The NFMS is based on the 2006 Forest Suitability Study, which categorized forest areas into either a) multiple sustainable use where both community and industrial management may be practiced, or b) conservation. The FDA have yet to update the NFMS, but such a process could integrate considerations of HCV/HCS to inform conservation suitability within commercial areas and provide new categories for management of those areas.

This, in turn, could provide the basis for revising the Code on Harvesting Practices and the Management Plan Guidelines for concessions and commercial activities on community forest lands. The Code of Harvesting Practices was developed in 2007 to provide a clear set of guidelines for harvesting operations under FMCs and TSCs.[107] While the planning requirements for these two types of commercial forest contracts differ somewhat, the Code provides a uniform code to which all timber harvesters must adhere to meet the legally required standard of sustainable forest management.

The Code was developed based on the FAO Model Code of Forest Harvesting Practice and Regional Code of Practice for Reduced-Impact Forest Harvesting in Tropical Moist Forests of West and Central Africa.[108] Three levels of management planning are required for FMCs, and to inform the planning process, harvesters are required to undertake a general inventory of

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[105] Proforest (2014). "A Technical Comparison of HCV and HCS Approaches," available at http://www.proforest.net/en/files/hcv-and-hcs-compared

[106] See http://highcarbonstock.org/what-is-the-hcs-approach-steering-group

[107] Forestry Development Authority (2007). "Code of Forest Harvesting Practices," available at http://www.fao.org/wairdocs/i3564e/i3564e.pdf

[108] Id.

the entire contract area and more specific pre-harvesting enumerations that define harvestable trees for the annual plan.[109] Exclusion areas are also to be identified, including i) Protected Areas, ii) protected animal species habitat iii) protected tree species, iv) sites that are especially susceptible to degradation v) watercourses and vi) cultural and customary tenure areas. Buffer strips of different widths will be used to protect such areas.[110] The types of protected areas includes not only declared protected areas under national legislation, but also conservation areas (e.g., biodiversity reserves).[111]

Within exclusion areas and their buffer strips (minimum width of 50 meters for conservation and protected areas), the following rules apply:

- No trees can be felled (except merchantable species that grow in the wetland areas upon approval from the Authority per tree harvested and only during dry season when wetlands are dry);
- Machine access within exclusion areas and their buffer strips is not allowed, except at designated watercourse crossing points, which should be by the shortest possible distance.
- No earthworks, or spoils from earthworks, shall end up in an exclusion area or its buffer strip.
- No harvesting debris shall be pushed into exclusion areas or their buffer strips.
- Trees shall be felled away from buffer strips and watercourses. If it is not possible to fell the tree away from the buffer strip or watercourse it shall not be harvested.

To facilitate REDD+ implementation, the HCV/HCS areas could be integrated into this identification process and count as exclusion areas or be managed according to certain requirements. This would require an amendment to the Code, but such an amendment could ensure that REDD+-relevant considerations informed the entire process, such as road building (see Section 3.1 above).

In addition to the Code, for FMCs, the FDA has also developed *Guidelines for Forest Management Planning*.[112] These also focus on the ability of commercial concessions to achieve "sustainable forestry" which is defined in the Guidelines as focusing on a "balanced, constant and sustainable production of forest products, especially in timber wood products,"

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[109] Forestry Development Authority (2007). "Code of Forest Harvesting Practices," available at http://www.fao.org/wairdocs/i3564e/i3564e.pdf

[110] Id, at §3.1.

[111] Id., at §3.1.1.

[112] FDA (2009). Guidelines for Forest Management Planning.

and includes measures to guarantee the long-term social and environmental integrity of the forest.[113] The Guidelines focus solely on FMCs and provide instructions on how to prepare forest management plans and Annual Operation Plans. They are meant to be reviewed and improved on by the FDA on a regular basis in consultation with diverse stakeholders.

The Guidelines elaborate on the three types of management plans required for an FMC: i) a 25-year Strategic Forest Management Plan (SFMP); ii) a 5-year Forest Management Plan focused on management of each 'Forest Compartment'; and iii) a one-year Annual Operational Plan. In preparation for the SFMP, a description of the managed forest environment must be provided, many component of which are useful to identifying areas appropriate for REDD+ including: identification of land use permits in the area; ecological factors; forest and non-forest vegetation; wildlife; and economic activities. All of this information is meant to inform where 'conservation units' (and other units of management) should be located. Additionally, a multi-resource inventory is required that, among other things, assesses the local biodiversity, forest ecosystems and Non-Timber Forest Products (NTFP).

The Guidelines could be revised to include provisions on identification and management (or exclusion) of HCV/HCS areas. Additional guidelines are under development for community forest management plans that could include the specification of managing commercial forestry in community forests larger than 1,000 ha to achieve sustainable logging standards as apply to FMCs. This specification would also likely require an amendment to the CRL and its regulations to provide the legal basis for FDA taking this regulatory measure. Additionally, TSCs should also have specific guidance that incorporates these priorities and limits the scope of allocation of TSCs near Protected and Proposed Protected Areas.

3.3 Strategic Priority 3: Complete and manage a network of Protected Areas.

The selection and application of standards for HCV/HCS areas to the proposed PAN would also ensure that these areas qualify for REDD+. The requirements would need to be incorporated into an amended Protected Areas Network Law, or into the draft Protected Areas Management Law (2014).

Additional legal considerations surrounding completion of the PAN relate to the potential for overlapping land tenure claims, as discussed in Chapter 2 of this assessment. As noted,

[113] Id. at §1.

existing Protected Areas (PAs) are considered Government land, raising a potential for conflict where the expansion of the PAN essentially removes large tracts of forest lands from the possibility of being claimed as Community Forests. Even if these lands could be claimed as Community Forests pursuant to the CRL, their status as Protected Area could limit the range of ownership, use and management rights available to communities.

The draft Land Rights Act proposes that Protected Areas may be established Customary Land at the instance of the community or the Government, following good faith negotiations and a vote of with and a vote of 2/3 of the community. Such areas remain 'owned' by the community but are conserved and managed for the benefit of all and cannot be sold, leased or granted as a concession. A taking occurs when the community fails to consent.

One option for addressing the issue of communities claiming rights within PAs would be to ensure that community consultations during the establishment of the PA – either through the EIA process or additional consultations required under the PFAN Law – enabled communities to understand the implications of the process. If the community agrees to enter into the process for establishing the CF pursuant to the CRL, these consultations could provide a mechanism for gaining the community's free, prior and informed consent with respect to the restrictions they are willing to put into place to qualify for a specific type of Protected Area status. Otherwise, if they do not agree, there could be a contingent arrangement for the community to receive compensation once they achieve Community Forest status pursuant to the CRL as if this were a case of eminent domain. Similarly, where communities claim ownership of forest areas on existing PAs, a consultation process could be triggered to enable agreement on the terms of the use and management of the area or to agree to compensation under eminent domain. To ensure these processes were uniform and equitable, a Protected Forest Areas Network Law would either need to be amended or a new regulation created to specify these requirements and to ensure that community forests being managed to achieve the goals of various categories of PAs are legally considered part of the PAN.

3.3.1 Land use planning at landscape scale

A major challenge to forest resource sustainability stems from the lack of integrated approach to land use planning and management across relevant sectors, including forestry, agriculture, infrastructure, and mining. This is in the process of being addressed as part of the policy and legal reforms being undertaken by the Land Commission, which is focusing first on land rights, then land administration and finally on land use planning and management. It will be critical for the FDA to be intimately involved in this process to ensure that REDD+ considerations (including the concepts of HCV and HCS areas), protected areas, community forest management planning, and commercial forest planning regimes are

aligned with the new policy and legislation. This provides an important window of opportunity to undertake critical reforms and introduce a landscape approach to planning, but this will require advocacy and political support from FDA and EPA.

3.4 Strategic Priority 4: Prevent or offset clearance of high carbon stock and high conservation value forest in agricultural and mining concessions

In addition to forest concessions (and commercial activities on community forest land), it will be critical to conserve HCS/HCV forests within agricultural and to conserve or offset within mining concessions. As noted in Section 3.2, in order to implement this Strategic Priority, Liberia will need to review the various types of standards and mechanisms for the application of HCS/HCV standards in the Liberian context, and then provide both policy direction and a regulatory framework for implementation.

Palm oil production is considered to be a high priority industry for agricultural concessions in Liberia. Since 2009, 620,000 ha of land have been granted to four companies[114]. The majority of that land is >80% forest cover. Under the Roundtable on Sustainable Palm Oil (RSPO), companies are not allowed to clear HCV areas – which should include the most densely forested areas – but the thresholds for HCV and HCS need to be defined and given legal status to ensure that they apply consistently across agricultural concessions. As discussed above, this may require an amendment to existing NFRL regulations to create a new classification of forests and the necessary procedural guidance for their application. The FDA has broad legal authority to regulate forest resources under the NFRL, which could provide the basis for a new regulation without amending the existing legislation.[115] This could include new priorities and criteria for location of future large-scale agriculture and mining concessions in relation to HCV/HCS areas.

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[114] LTS (2016) Strategy Options DR-2b. Report to FDA March 2016

[115] "The Authority may by Regulation require permission for non-commercial forest uses and may by Regulation control any activity involving Forest Land, Forest Resources, or Forest Products." NFRL, §5.1(d).

3.4.1 Zero-net deforestation from mining

The Mineral Policy of Liberia (2010) provides that the mining sector should strive to, "put in place a mechanism for the evaluation of competing land use options" and "eliminate environmental degradation due to mining activities." Currently, the 2000 Minerals and Mining Law is being updated to include much higher standards of environmental protection, including taking into account competing land use priorities in consultation with other government agencies, as well as considering conservation needs prior to granting mining licenses.

A zero-net deforestation policy or legal requirement could be incorporated into the draft legislation. In 2015, the World Bank commissioned a Roadmap for creating a national system for biodiversity offsets in the mining sector, which could provide a sound basis for implementing this policy. Key legal considerations will include the establishment of criteria that reflect HCV and HCS areas, ensuring that FDA has the legal authority and requisite capacity to implement such a system in partnership with the Ministry of Lands, Mines, and Energy, and the National Concessions Bureau, clarification of the existing and potential overlaps in forest tenure between communities and proposed protected areas that would be incorporated into the offset scheme, and aligning any requirements with the Protected Areas Management Act.

4. Carbon rights

This section introduces the concept of carbon rights, then presents a summary of the existing legal and policy framework related to carbon rights in Liberia followed by the options for defining carbon rights.

4.1 What are carbon rights?

Carbon rights are an emerging form of property in forest ecosystems that have potential value linked to the implementation of REDD+.[116] They can be defined as intangible assets, created by regulations or contracts that allow the recognition of separate benefits arising from the sequestration of carbon in the forests.[117] This includes two concepts: i) **property rights to sequestered carbon** (contained in land, trees, or soil); and ii) the **rights to benefits that arise from the transfer of these rights** (e.g. in emissions trading schemes). Due to the intangible nature of carbon, identification of land or forest ownership is not always sufficient to ensure ownership of the carbon stock in a forest.[118] There is thus a need to clearly define carbon rights and their relationship to land and forest tenure to ensure the alignment of incentives for forest protection with the potential for receiving benefits under REDD+.

There is currently no clear or commonly accepted definition of carbon rights under international law or the international UNFCCC policy framework for REDD+. While the UNFCCC framework for REDD+ makes no specific mention of carbon rights, it does request State Parties to address land tenure issues when developing their national REDD+ strategies and establish guiding principles that are relevant to the way that countries will develop their framework for carbon rights, such as safeguards requirements related to equitable benefit

[116] Peskett, L. & Brodnig, G. (2011). Carbon Rights in REDD+: Exploring the Implications for Poor and Vulnerable People. World Bank and REDDnet.

[117] Feliciano-Robles, F. (2013). "Carbon rights: a central tenure consideration for REDD+." Presentation to Expert Meeting on Tenure in REDD+, FAO, Rome.

[118] Id.

sharing.[119] Only a few countries have introduced a legislative scheme defining carbon rights.[120]

4.2 Why define carbon rights?

Just as land and forest tenure rights define who can access and benefit from forest land and resources, defining carbon rights provides clarity and security surrounding their ownership and rights to benefit from their management and protection. The clarity and security of carbon rights, is contingent on a clear delineation of how those rights relate to existing land and forest tenure regimes. Provisions relating to land tenure, tree tenure, forest governance, environmental protection and indigenous rights can all affect how carbon rights are conferred and governed.[121] Under REDD+, it will also be necessary to define how individual or community rights to carbon relate to the national scheme for benefit sharing and the processes and responsibilities associated with this integration.

While it is thus possible to create rights to carbon as a 'new' resource to be regulated under REDD+, it is important to recognize that such an approach presents new complexities for implementation and enforcement to an already burdened forest administration. Additionally, stakeholders – particularly communities – likely have expectations that rights to the benefits from forest carbon will be directly linked to the ownership of the forests themselves. Understanding existing and evolving forest tenure rights and their implications for carbon rights as an ecosystem service that is linked to sustainable forest management will likely provide the most straightforward and equitable approach to ensuring that REDD+

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[119] Conference of Parties, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, COP Decision 1/CP.16, UNFCCC, 9th plenary meeting, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011) [72].

[120] For example, each State and Territory in Australia has introduced legislation clarifying the ownership of carbon rights. There is also a national scheme which enables the generation of forest carbon offsets which can be used within Australia's Emissions Trading Scheme which commenced on 1 July 2012: *Carbon Credits (Carbon Farming Initiative) Act* 2011. Vanuatu also has carbon rights legislation in the form of the *Forestry Rights Registration and Timber Harvest Guarantee Act* 2000 (also known as "The Plantation Act"), although this legislation only applies to leased land. It is understood that Vanuatu is considering repealing the Act to replace it with a more comprehensive framework for carbon rights due to the fact that it appears to have been introduced without sufficient community or national consultation and does not appear to have been used.

[121] Norton Rose Group, "Forest Carbon Rights in REDD+ Countries: a snapshot of Africa." Available at http://www.nortonrosefulbright.com/files/forest-carbon-rights-in-redd-countries-a-snapshot-of-africa-pdf-994-kb-32479.pdf.

is effectively implemented in Liberia. This is in line with the national Land Rights Policy, which states that the ownership of customary land should extend to ownership of natural resources on the land, including forests, carbon credits, and water (§6.3.2).

4.3 Carbon ownership in Liberia

As discussed in Chapter 2 of this assessment, Liberia is undergoing a period of great change related to both land and forest tenure. Community rights in forest lands are currently being established under the Community Rights Law (CRL) and the draft Land Rights Act (LRA) is also creating new mechanisms for broader assertion of community rights in land, including forest land. New categorization of land under the Land Rights Policy and draft LRA will therefore have significant implications for how carbon rights are defined in the existing legal framework.

Although carbon is not defined under existing legislation, the NFRL definition of "forest resources" is comprehensive and could be interpreted to include carbon. Forest resources are defined as "anything of practical, commercial…scientific, subsistence or other potential use to humans that exists in the forest Environment, including but not limited to flora, fauna, and microorganisms." If the government of Liberia determines that carbon should be considered a forest ecosystem service or simply to vest with ownership of the forest resource, simply clarifying that carbon falls under this definition could suffice. As noted above, however, issues related to forest and land tenure would still require clarification.

4.3.1 Location of ownership

In determining location of ownership, different scenarios will be used to determine carbon ownership. By Location of ownership we mean where the carbon right vests, whether in public, private or communal forest or land.

Carbon in Private Land

The most obvious criteria for carbon ownership are to assign it to the owner of the forest or the land. A first possibility may be that the owner of the forest or the land owns the carbon and that this entitlement does not exist as a separate property right. As a result, the forest owner or landowner is not able to sell or give the carbon away independently of the forest or the land.

If the carbon stock is subject to a separate, alienable property right, independent of the property of the forest or land, the owner may sell that right without conveying forest or land ownership. This may happen through the sale of a usufruct right or *profit-à-prendre*, governed under the laws concerning land ownership or under general property rules. In this

respect, the ability to obtain a property interest (as distinct from a contractual right) may grant the owner of the carbon right a title that is more clearly enforceable against future landowners. When the ownership of the carbon stock is transferred, new owners may or may not have the right to affect the use of the forest to protect or enhance its existing potential.

Carbon in Public Land

Alternatively, we can treat the carbon sequestered in forests as a publicly owned asset, regardless of forest and land ownership. Even where forests or land are largely private, the state could manage carbon absorption as a public asset and distribute the benefits to the forest or landowners or users. In this context, the carbon stock may be owned by the National Government, or by subnational or local governments. The National Government may own the carbon according to different schemes. The National Government may take credit for carbon sequestration and hold it in trust for the benefit of forest or landowners or of the public. However, there will be questions about how much regulation of private ownership is politically or constitutionally acceptable, and about the share of benefits that needs to be returned to forest or landowners.

4.3.2 Ownership of carbon rights by the State

An alternative to forest carbon being owned by landowners is for the State to assume ownership of forest carbon property rights. Under this option, the rights in carbon would be reserved exclusively for use by the State, in a similar way in which the rights to mineral resources for example, are reserved to the State. This 'nationalization' of carbon rights could raise issues related to takings, as the current legislation incorporates anything of "practical, commercial…or other potential use to humans that exists in the forest Environment" as part of the definition of forest resources and the Land Rights Bill would assign all such resources to land owners. A national program that vests carbon rights in the Government could compensate landowners under the terms of a national REDD+ benefit sharing plan, assuming that the provisions of the scheme effect fair and equitable payments. It may be possible for the State to acquire forest areas on the basis that this is for a public purpose, although to do this adequate compensation must be paid.

The advantages and disadvantages of the nationalization option are as follows:

Advantages	Disadvantages
The Government w control of all the carbon rights, which could facilitate monitoring, verification and accounting.	The rights of communities and private investors to engage in REDD+ directly are taken away.
The Government will have control of the programs such as reforestation and ecosystem restoration.	This will be inconsistent with the customary rights on community land rights.
The Government could manage REDD+ funding for national benefits and create "nested" benefit-sharing approaches as appropriate.	Land owners have an obligation to maintain and sustainably manage the forests for the life of the REDD+ program without the control over the carbon rights, which could lead to issues of reversal.

4.3.3 Ownership of carbon rights by communities

The right of communities to their ancestral domains and ancestral lands emanates from their time immemorial claim. These rights to ancestral domains of the local communities by virtue of native title exist regardless of paper Certificate of Ancestral Lands Title. This right includes the right to develop lands and natural resources.[122] It also includes, among others, "the right to benefit and share the profits from allocation and utilization of the natural resources found therein" and "the right to negotiate the terms and conditions for the exploitation of natural resources in the areas".[123]

4.3.4 Ownership of carbon rights by third parties

A further discussion on ownership in carbon rights is whether third parties, for instance, non-landowners, such as local or foreign companies, or foreign individuals, can control or buy carbon property rights from landowners? Should Liberia wish to allow third parties, such as logging companies, REDD+ project developers or carbon brokers, to hold or own forest carbon rights, a legislative amendment will be required. Creating a separate property right be of use because mere contractual right without legislative support might not provide the

[122] Community Land Rights Act

[123] Community Land Rights Act

purchaser with a right that is sufficiently enforceable, compared with a property right that amounts to an interest in the land and is enforceable against future owners.

4.4 Options for defining carbon rights and ownership in Liberia

4.4.1 Option 1 – Policy reform

The Government could develop a Carbon Policy that is consistent with the international standards on REDD+ and clarifies that existing legislation and regulations govern rights to carbon and the benefits emanating from REDD+. Policies are the general principles that guide government in its management of public affairs. Thus, while a carbon policy could clarify how existing legislation should be applied to guarantee the rights as interpreted under the policy, policies are not legally enforceable instruments and must be implemented through enforceable legislation or regulations. Clarification that carbon is included within the NFRL's definition of "forest resources" and the ways in which this definition should be interpreted in light of the pending land rights legislation could be extremely useful, but again will not be legally enforceable.

Additional existing policies would also require adaptation to align how forest carbon is addressed in the land, agriculture and mining sectors, for example.

4.4.2 Option 2 – Legal reforms

As it has been earlier stated, prior to any significant national REDD+ developments there is need to clarify carbon ownership. This will therefore require that carbon rights are clearly set out in the relevant law, whether as an amendment to the NFRL and CRL or as a separate piece of legislation or new regulation. The law will also establish criteria that will determine if carbon rights are associated with rights to land, trees or other forest resources and whether these rights are automatically acquired when those rights are transferred. These legal reforms may be in the form of:

(i) Enactment of new legislation that is specific to REDD+ and carbon rights
(ii) Amendment to existing legislation with a view to accommodate provisions relating to carbon, carbon ownership and carbon rights within existing legislation.
(iii) Development of regulations under existing law such as the Forestry Reform Law to further define carbon rights and carbon ownership.

(a) Create new carbon rights legislation

Under this option, the Government would propose legislation that could, in principle, proceed on a clean slate, distinct from existing legal frameworks and institutions. The process of enacting carbon rights legislation is to develop a draft Bill through stakeholder consultation and based on a clear policy response. Following drafting, three readings occur in Parliament with debate by the Committee of the whole house and finally assent by the President is required. This process is generally protracted and time consuming, at times lasting multiple years.

Unlike traditional regulatory approaches, which typically focus on a limited set of problems, creating new legislation has the opportunity to adopt a broad scope that cuts across multiple sectors. Such an approach may be particularly necessary given the necessity of mainstreaming as well as vertical and horizontal policy integration. Accordingly, through the establishment of a new overarching legal framework, there is potential for increased breadth of coverage, facilitating the integration and a coordinated implementation of carbon rights in related legislation such as the Land Law, Mining Law, Agriculture Law and Forest Law. Further, standalone legislation offers Liberia the opportunity to address gaps and overlap in a more coherent manner.

Table 2 – Strengths and weaknesses of creating new carbon rights legislation.

Strengths	Weaknesses

• Increased breadth of coverage. • Ability to mainstream carbon rights across sectors and achieve vertical and horizontal alignment and coordination. • Integrated policy responses and implementation mechanisms more easily facilitated. • New institutions and financial arrangements can be readily established. • Standalone legislation can more easily respond to the challenging constitutional considerations that arise with devolved Government. • Carbon Rights is an emerging political issue both internationally and nationally making the adoption of standalone legislation more likely.	• If standalone legislation is too generalized and broad in scope, it may lack clear direction and translating statutory aspirations into actual achievement may prove challenging. • Exclusive reliance on one institution, if established as such, may lead to overburdening and resource constraints. • Political will for standalone legislation may be difficult to garner. • The consultation, drafting, debate and enactment processes are often lengthy and could reverse gains made in existing legislation with respect to forest rights. • As the current parliament will most likely end its term towards the end of 2017, if standalone legislation cannot be passed before then a new political reality will have to negotiated, potentially delaying the enactment of any bill.

(b) Legislative amendments

An alternative option to establish a carbon rights legislative framework is to amend existing laws. Amendments to the NFRL and CRL could be undertaken in concert and any additional changes to other sectoral legislation to ensure alignment with REDD+ provisions would also be necessary.

(d) Combined Approach

A fourth option to achieve an enabling legislative framework for carbon rights is a combined approach, which involves creating a new carbon rights law accompanied with amendments to existing legislation either through the law or through a Miscellaneous Amendments Bill. As outlined above, creating legislation has benefits such as: i) broadly reaching provisions that support vertical and horizontal policy integration; ii) high-level coordination and coherence of response actions that target gaps and overlaps in jurisdictions; and iii) the ease of establishing new institutions with designated financial resources. However, even should standalone legislation be enacted, any effective inclusion and definition of carbon rights will require sector-specific legal frameworks. For instance, new legislation for climate change could conflict with, or go beyond, existing legal and institutional frameworks in any given sector. Therefore, taking into account the potential impact of standalone legislation on existing sectoral frameworks, a dual approach should ideally be considered whereby an overarching legal framework is established taking account of all necessary institutional and finance considerations, and a series of sector specific legislative and regulatory amendments are passed to establish specific carbon related issues.

Table 3 - Strengths and weaknesses of a combined approach

Strengths	Weaknesses

• A combined approach has potential to draw on the best aspects of the options identified and cover all necessary aspects to achieve an enabling legislative framework carbon rights • Standalone legislation would establish the overarching framework, new institutions and finance mechanisms. This would be complimented with sectoral amendments that would put in place the legal framework to implement carbon rights. • At present there is a no legal architecture to address carbon rights in Liberia. As such, there is opportunity to initiate ambitious reform to establish a best practice framework. • Awareness of the importance of sectoral legislative reforms through a mechanism such as a miscellaneous amendments bill is low, so if efforts are made to inform policy makers and legislators, political support for a combined approach may be more forthcoming.	• A coordinated approach is required to ensure standalone legislation is synchronized and consistent with sectoral reforms. If a miscellaneous amendments bill is drafted separately, ensuring both laws pass parliament as designed poses challenges. However, this can be mitigated by integrating any sectoral miscellaneous amendments into the standalone climate law. • Such an approach may be to too ambitious given current parliamentary priorities and the time available. • Significant political will be required to institute such far reaching reform.

(e) Drafting REDD+ or Carbon Rights Regulations

Legal reforms may be achieved by establishing regulations under the existing laws such as the Forestry Reform Law which gives the FDA the mandate to establish enabling regulations to implement the Forestry Reform Law. The advantage of establishing these reforms through regulations is that regulations are signed by the Director and do not necessarily need to be laid in the Assembly. Thus the period within which this can be done is short as compared to enacting legislation. However, a disadvantage of using regulations is that they can only be used in so far as they are provided for and do not contradict existing legislation. The NFRL grants broad authority to the FDA to regulate "any measure that needs to be efficiently regulated under this law," which is broad enough to allow for a carbon rights regulation.

4.4.3 Assessment of the Options

The Four options are assessed against the following criteria:

- **Efficiency:** is the approach cost-efficient?
- **Equity:** do all stakeholders participate in the process?
- **Transaction costs:** how costly is the approach?

- **Political/legal feasibility:** how feasible is it, considering the political and legal barriers?

- **Expected timeline:** how much time is it expected to take?

Option	Efficiency	Equity	Transaction cost	Political/ Legal Feasibility	Expected timeline
Option 1 Create new Carbon Rights Law	Enacting new law is time consuming and costly. It involves bringing together relevant stakeholders and agreeing on issues.	The process of making a new law requires the participation of all relevant stakeholders.	The process of enactment of new legislation is costly as it involves a rigorous consultative process. The operationalization of the new law may also be costly as it may propose the creation of new institutions.	It is feasible to make a new law where there is political good will.	The process of enacting new legislation is usually lengthy and may take several years before the law is eventually passed. After enactment, it may again take some time before it takes effect, as it may need to be made operational by notice in the gazette

Option	Efficiency	Equity	Transaction cost	Political/ Legal Feasibility	Expected timeline
Option 2 Legislative Amendment	An amendment has the same effect as making new legislation. It is therefore time consuming and not necessarily cost effective.	Like a new law, it needs the involvement of all relevant stakeholders	Depending on the scope of the amendment, the transaction cost may be minimal if the amendment is minimal. Where the amendment may involve several other laws, accumulative the transaction cost may be high. Should the amendment also suggest the creation of new institutions the transaction cost will	It may require amendment to other laws that may be affected by the slight amendment to one law.	An amendment to a law has the same procedure of getting it enacted. It may take several years before it is eventually passed into law. After enactment, it may again take some time before it takes effect, as it may need to be made operational by notice in the gazette

Option	Efficiency	Equity	Transaction cost	Political/ Legal Feasibility	Expected timeline
Regulation	Regulations are quick to develop and do not necessarily require much resources to develop them. The technocrats in the agencies mainly do them in house and therefore costs are kept at a minimum.	The initiation and development of regulations are mainly undertaken by the agencies, in this case it will be the FDA, who may develop the regulation and have it signed and gazetted without necessarily involving the relevant stakeholders	Transaction costs are minimum as this is usually an internal arrangement and may not upset the entire system.	Legally feasible as a regulation must be within the context of the existing law. It may also be limiting where the existing law did not substantively provide for the subject hence introducing it by way of regulation might mean that it is ultra vires the substantive law.	Quick to develop, sign and publish. Does not require to be laid in the National Assembly. Once gazetted they become operational
Policy	They are time consuming and costly as they require the involvement of several stakeholders. Legal amendments or new regulations would still be required to provide enforceable rights.	It is multi-sectoral and participatory	The transaction cost may be in the involvement of the stakeholders and the implementation of the Policy.	It is mainly Government initiated and driven hence the political will is there.	Once adopted by the Cabinet it may become operational as it awaits further adoption by the National Assembly. It is easily developed if Government driven may be done within a year.

5. Benefit sharing options

5.1 The basics of Benefit Sharing Mechanisms

5.1.1 What are REDD+ 'benefits'?

The 'benefits' distributed through benefit sharing mechanisms may not always involve a direct monetary payment, and the total benefit delivered may be a combination of many different forms of benefits (Table 4). There is also a need to understand the distinction between compensation and net positive benefits. In other words, compensation for opportunity costs (or other costs) is typically described as a 'benefit' to help ensure that REDD+ does no harm in addressing drivers of deforestation and forest degradation. While the term 'benefits' is broadly used, it is crucial for REDD+ stakeholders in Liberia to understand that if REDD+ benefits do not exceed real costs, there is no net positive benefit.[124]

[124] Campese, J. (2012). Equitable Benefit Sharing: Exploring Experiences and Lessons for REDD+ in Tanzania.

Table 4 - Types of benefits under a national REDD+ program.

Benefit Type	Relevant Strategic Pillar(s)	Monetary or Non-Monetary	Examples of distribution mechanisms
Forest rent *(direct profit from the sale of timber or NTFP)*	All	Monetary	• Cash payments
		Non-Monetary	Not applicable
Compensation for opportunity costs *(e.g. forest landowners protect forest rather than convert to crop production and in return receive compensation equal to the per hectare commercial value of the crop)*	1,3,4	Monetary	• Cash payments • Tax relief
		Non-Monetary	• Goods & materials • Capacity building and training (e.g. forest management) • Infrastructure (e.g. schools, small-scale irrigation) • Access to concessional loans and micro-finance
Incentives and support for sustainable land use and livelihoods *(e.g. funding and capacity building for the establishment of tree crops for smallholder farmers)*	1	Monetary	• Salaries • Cash payments • Tax relief
		Non-Monetary	• Formal land titles • Formal access or concession rights • Goods and materials (e.g. seedlings, fertilizer) • Capacity building and training • Increased market access for promoted cash crops • Price guarantees • Cost-sharing arrangements with smallholder farmers • Access to concessional loans and micro-finance
Support for forest governance and institutional development *(e.g. provision of training to County-level FDA staff to improve extension services and/or enforcement of Community Forestry Act)*	1,2,3	Monetary	• Improved salaries and benefits for Government staff, NGOs and community groups to increase retention and motivate
		Non-Monetary	• Professional and skills development for FDA and EPA (e.g. organizational development, financial management, anti-corruption measures, community support) • Equipment and facilities for law enforcement (e.g. vehicles) • Support to graduate and technical colleges in Liberia

Source: Adapted from PwC (2012)

5.1.2 What are REDD+ 'costs'?

In order to obtain the benefits listed above, REDD+ requires investments by the range of stakeholders, which are typically categorized as opportunity, implementation and transaction costs.

Table 5 – Types of costs related to REDD+

Cost Type	Examples of potential REDD+ costs
Opportunity costs *(value of benefits foregone in refraining from land use changes that will result in GHG emissions)*	Value of foregone: • Physical or economic access to natural resources for livelihoods, subsistence use • Physical or economic access to natural resources for value-added activities (e.g. oil palm, rubber, timber harvesting) • Tax revenues
Implementation costs *(direct costs of implementing measures and policies to address drivers of deforestation and forest degradation)*	Activities across the REDD+ Strategy Pillars: • Land use planning • Land tenure reform • Governance reform • Forest protection, improved forest and agriculture management • Capacity building
Transaction costs *(costs incurred in complying with REDD+ requirements by the UNFCCC and the entity issuing results-based payments)*	• REDD+ program development • Measurement, Reporting and Verification (MRV) • Project design and development • Negotiating agreements (bilateral, multilateral) for input-based and/or results-based payments

Source: Adapted from Campese (2012)

5.1.3 Who participates in Benefit Sharing Mechanisms?

Examples of the roles for organizations involved in a BSM include:

- **Funder:** Source of funding can come from bilateral partnerships (e.g. Liberia-Norway Letter of Intent) and/or carbon markets (voluntary or regulated).[125]
- **Fund manager:** Normally a multi-donor trust fund (short-term) or national REDD+ fund (long-term) that disburses input-based or results-based payments, under the supervision of a multi-stakeholder governing body (with a financial management committee and technical committee).
- **Administrator:** Responsible for the administration, monitoring and operational management of the distribution of funds, and coordinating with the REDD+ Registry to avoid double-counting.
- **Implementation agencies:** At sub-national or project level, they are NGOs and groups that implement pilot REDD+ projects within a defined project/program area.
- **Beneficiaries:** Communities, households, individuals, NGOs, companies.
- **Third-party verifier:** An independent monitoring and audit group that is responsible for ensuring that the BSM is adhering to its mandate. Particularly important to verify compliance with established safeguards to ensure fair distribution of benefits.

5.1.4 How do we define types of Benefit Sharing Mechanisms?

Benefit Sharing Mechanisms can be classified based on the **scale** (national or sub-national) and the conditionality of the **disbursement** (input-based or performance-based).[126,127] Each combination can be relevant and applicable to the implementation of REDD+ in Liberia; for example, a sub-national input-based benefit sharing mechanism can allow pilot projects to demonstrate proof of concept of certain REDD+ activities, MRV (e.g. forest inventory, allometric equations, and forest monitoring systems) and benefit sharing arrangements.

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[125] It remains unclear whether REDD+ will be included in Emissions Trading Schemes in the future, although the International Civil Aviation Organisation has recently announced that it is considering REDD+ credits in their carbon offsetting scheme under development.

[126] Peskett, L. (2011). Benefit Sharing in REDD+: exploring the implications for poor and vulnerable people. REDD-Net. Retrieved from http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:Benefit+Sharing+in+REDD++#5

[127] PwC. (2012). Assessing Options for Effective Mechanisms to Share Benefits for REDD+ Initiatives. Washington, DC, USA.

5.1.5 Who should benefit from REDD+?

The objectives of REDD+ are often characterized in terms of the '3E' criteria of effectiveness, efficiency, and equity outcomes. In the REDD+ context, effectiveness is a measure of "the amount of emissions reduced or removals increased by REDD+ actions".[128] Efficiency measures the outputs – qualitative and quantitative – in relation to the inputs. It is an economic term which signifies that the aid uses the least costly resources possible in order to achieve the desired results. Equity, on the other hand, is subject of a more complex debate, but is commonly related to notions of fairness, justice and distributional consequences.[129,130]

[128] Angelsen et al (2012). Analysing REDD+: Challenges and choices. Bogor, Indonesia. doi:10.17528/cifor/003805

[129] Luttrell, C., Loft, L., Gebara, M. F., Kweka, D., Brockhaus, M., Angelsen, A., & Sunderlin, W. D. (2013). Who should benefit from REDD+? Rationales and realities. Ecology and Society, 18(4). doi:10.5751/ES-05834-180452

[130] Mohammed, E. Y. (2011). Pro-poor benefit distribution in REDD+: Who gets what and why does it matter? REDD Working Paper. London.

A typology of benefit sharing rationales

Luttrell et al. (2013) analysed current practices in REDD+ countries and identified six rationales for the distribution and sharing of benefits that cut across the 3E's.

1. Benefits should go to actors with legal rights ("legal rights" rationale)
2. Benefits should go to those actors achieving emissions reductions ("emissions reductions" rationale)
3. Benefits should go to low-emitting forest stewards ("stewardship" rationale)
4. Those actors incurring costs should be compensated ("cost compensation" rationale)
5. Benefits should go to effective facilitators of REDD+ implementation ("facilitation" rationale)
6. Benefits should go to the poorest ("pro-poor" rationale).

Choosing one of these objectives as the design principle for BSM has strong implications for which type of safeguard is required, in terms of governance, rights, social benefits, etc. In turn, social safeguards would bring in legal grounds for the support of some of those rationales, such as the pro-poor rationale. For example environmental safeguards and safeguards protecting the rights of indigenous people could support the stewardship rationale.

Table 6 - Types of benefit sharing mechanism for a national REDD+ program.

		Description
Scale	National	Benefits distributed from a national to sub-national or project level, either directly to the end recipient (e.g. community groups) or through a sub-national intermediary (e.g. County Development Steering Committees).
	Sub-national	Benefits distributed from a sub-national to project level (e.g. CDSC to community groups) or between sub-national actors (e.g. benefits disbursed from County to Clan level).
Conditionality	Input-based	Beneficiaries agree to carry out specified actions, or refrain from certain actions, in return for up-front monetary (e.g. grants) or non-monetary (e.g. equipment, training) inputs from the benefit sharing mechanism.
	Performance-based	Distribute benefits on the condition that the partners receiving the benefits have achieved a predefined, measurable, and verifiable standard of performance against a baseline (e.g. have restored or protected X hectares of forest).

Adapted from PwC (2012)

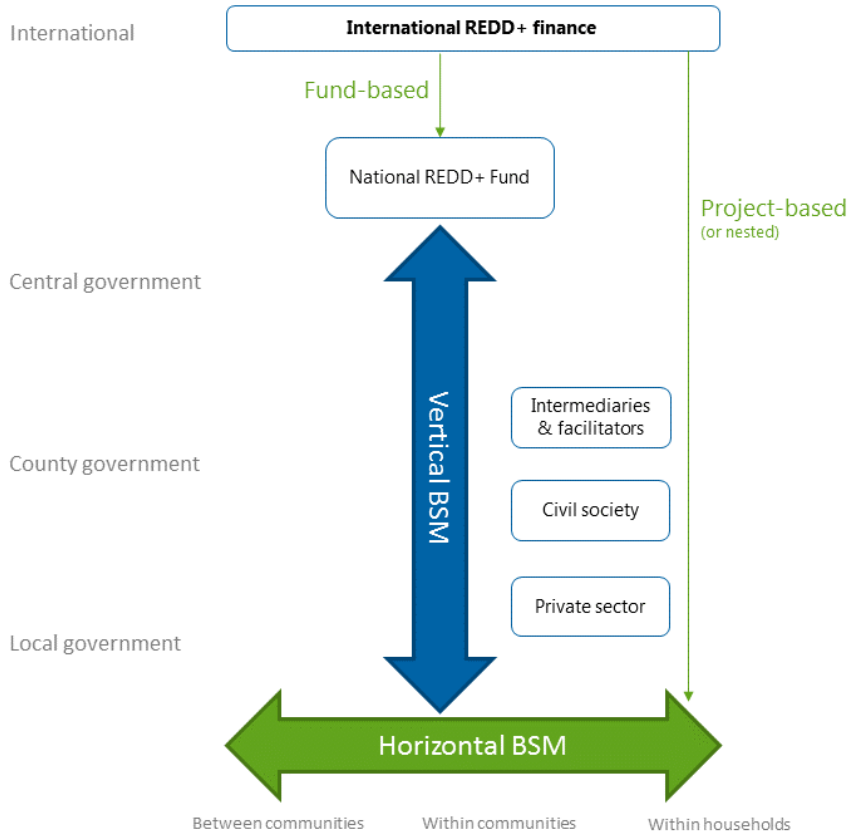
5.1.6 How can benefits be distributed?

The distribution of benefits from a national REDD+ program can be based on one, or a combination, of three approaches: i) vertical allocation; ii) horizontal allocation; and iii) direct allocation.[131]

The broad **vertical** arrow in Figure 1 illustrates the sharing of benefits between national level Government and non-governmental stakeholders down via regional government and intermediaries to the local level. Sharing benefits between and within communities and households and other local level stakeholders is called **horizontal** benefit sharing. This illustrates an important concern with a national REDD fund: if too many stakeholders demand a share of the benefits on the way down to the local level, incentives for local actions will be weakened.

[131] Lindhjem et al (2010). Experiences with benefit sharing: issues and options for REDD-Plus.

Figure 1 - Vertical and horizontal national benefit sharing distribution mechanisms for REDD+



Source: Adapted from Lindhjem et al. (2010)

Vertical allocation

In order to get an effective use of resources in vertical distribution of REDD+ benefits, it is important to strike the appropriate balance between a centralization of revenues that would help finance national policies and a sufficient level of devolution that would appease social demands in the areas with REDD+ activities (e.g. nested pilot projects).

One example in Liberia is in the form of tax base assignments, where income sharing from the forest resources is converted to authority for sub-national entities over tax bases. Such assignments can entail an increase of the share of taxes in the sub-national entity, additional transfers from the central Government or special purpose grants or transfers. For instance, the Forestry Reform Law allocated 30 percent of the land rental fees to the counties. The National Government collects this amount and the thirty percent is further divided and distributed to each of the 15 counties of Liberia.

Horizontal allocation

A key discussion around horizontal distribution focuses on whether to redistribute the resources solely to the forested areas or not, and whether the National Government should distribute the resources discretionarily or through institutionalized rules such as using proportionality formula.

The National Government uses different models for the distribution of resources from the National Government across the County Governments. The various methods include:

(a) **Direct allocation** to the counties from the National Government. This may be in the normal budgetary allocations, usually transferred annually.

(b) **Formula-based participation** where sub-national governments receive a pre-determined share of the revenue raised nationally. Usually the formula is set by law to determine both the amount to be allocated and the obligation of the National Government to transfer those resources to both priority landscapes and other areas. For instance, the County Social Development Fund is disbursed based on certain criteria, including population, poverty level, economic viability and the level of self-development.

(c) **Derivation/Devolution** involves the transfer of revenue, or a proportion of it, to the jurisdiction where the income has been generated.

Direct distribution

A third method of distributing REDD+ benefits entails direct payments to the communities in the intervention areas. Therefore the REDD+ revenues accrue directly to the county level and the revenue is shared through direct payments to the communities.

5.1.7 What are the risks to benefit sharing?

Lack of established policy guidelines

The establishment of a national REDD+ fund would need to be preceded by a well thought out policy. The Ebola Fund for instance, was created out of emergency. The creation of the fund as a stand-alone mechanism without anchoring it in law poses several challenges including misappropriation and lack of accountability. Where there is no clear laid down guidelines on the objectives and purposes of the funds, those managing the fund are likely to arbitrarily use the funds for purposes it was not intended for.

Lack of managerial capacity

One of the effects of the civil crises that Liberia has faced is the disruption of human capital formation. Clearly, the lack of management capacity is a serious constraint to achieving the national development agenda. The lack of capacity therefore may lead to mismanagement of the funds and therefore not being able to achieve the implementation of the REDD+ strategy.

The oversight mechanism not put to test

Though both the Ebola Fund and the National Benefit sharing Trust Fund (see section 5.3 below) have spelt out the mechanism for monitoring their respective funds, there have not been any reports from the oversight mechanism established within the guidelines. The oversight mechanisms are therefore yet to be tested so as to establish any gaps or capacities that may need to be strengthened.

No decentralization mechanism

For the fund to be effectively and equitably managed, strong local structures have to be in place and aligned to those at the national level. With the exception of the Social Development Fund, other funds do not seem to have mechanisms at the county level, thus posing a challenge to effective management including monitoring and reporting.

5.2 Benefit sharing mechanisms in REDD+ countries

5.2.1 Lessons learned from other REDD+ countries

Indonesia

A key component of the Indonesia-Norway bilateral agreement is the requirement for Indonesia to develop, establish and operationalize a national REDD+ financing mechanism. As a result, the Fund for REDD+ in Indonesia (FREDDI) was developed by Indonesia's National REDD+ Agency as a national trust fund with mechanisms to manage, mobilize and disburse funds through performance-based and input-based disbursements. The UNDP Country Office in Indonesia was initially assigned as the interim fund manager until FREDDI was established. On independent verification of results achieved, Norway transfers the funds

to UNDP, which then disburses to projects.[132] Although the REDD+ context and governance architecture differs to Liberia's, there are still valuable and well-documented lessons to be learned from Indonesia's experience in establishing a benefit sharing mechanism.

Challenges to implementation of FREDDI have a financial cost that must be factored into any calculation of net benefits. While certainly not unique to Indonesia, we must be cognizant of the complexity of government and international stakeholder consultation, as well as barriers to speedy implementation, the excessive costs of verification and monitoring, the complexity of budgeting processes and financing mechanisms and the barriers to the transfer of knowledge and expertise.[133]

A longer-term vision of a benefit sharing arrangement should steer towards 'strategic investments'. For the most part, FREDDI is mainly a passive disbursement mechanism to channel funds from a source of funding – like the Letter of Intent signed with the Government of Norway – and input-based or performance-based disbursements. However, UNORCID argues that there is an opportunity for FREDDI to become an active investor and build the role of the domestic private sector in its financial portfolio as a 'strategic investment fund'.[134]

Funding windows to a benefit sharing arrangement provide flexibility in diversifying the 'mechanisms' used in FREDDI. Four windows have been defined to organize the long list of initiatives the FREDDI project pipeline: i) strategic programs, which is essentially national REDD+ readiness processes; ii) sub-national initiatives; iii) competitively-selected initiatives; and iv) small-scale community based initiatives.[135] Such windows could be applied to the Liberian REDD+ context so that the range or initiatives would be covered.

Ghana

Benefit sharing is one of the major issues in the policy discourse in Ghana, and there are conflicting views and opinions about who has the right to share in benefits and what constitutes the equitable or fair distribution of benefits. Many of the existing benefit sharing schemes are widely perceived to be inadequate to address the benefit

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[132] LTS International. (2014). Evaluation of Norway's International Climate and Forest Initiative: Synthesising Report 2007-2013

[133] UNORCID. (2015). The Funding Instrument for REDD+ in Indonesia: Making the Case for Financial Innovation. Jakarta, Indonesia. Retrieved from http://www.unorcid.org/index.php/unorcid-publications/research-studies/387-funding-redd

[134] Sari, A. P. (2014). FREDDI: Financing Instruments for REDD+ in Indonesia. Jakarta, Indonesia.

[135] Ibid.

sharing needs for REDD+.[136,137] For instance the natural resources (timber and mineral resources) revenue sharing is deemed inequitable as it alienates farmers from the benefits shared even though they are de facto managers of timber resources outside forest reserves.

IUCN-Ghana has proposed three benefit sharing frameworks being adopted by the Cocoa Forest REDD+ Program (under the FCPF Carbon Fund):

> **Individual payment scheme**: individuals would be paid for the projects they undertake under the REDD-plus program based on performance. The arguments for this form of benefit sharing stems from the fact that individuals involved in REDD+ activities will receive direct benefits for the work done.
>
> **Community managed revolving credit scheme**: revenues accruing from REDD+ activities will be put in a fund and managed by trustees decided on by the communities themselves. It is argued that the scheme has the potential to ensure the welfare of the wider community, and engender wider support and ownership for projects/activities executed by communities.
>
> **Hybrid scheme**: a higher percentage of revenue generated from REDD+ activities is paid to individuals and a smaller percentage to the revolving fund for the community. It is argued that the scheme takes into consideration the fact that there are different forms of land ownership in Ghana.

The management and administration of a national REDD+ fund in Ghana should be transparent, effective and efficient. As much as possible, national REDD+ funds should be: i) be independent from Government; ii) managed by an independent body/set of managers; iii) apply international accounting standards and meet international fiduciary criteria; iv) focused on funding activities that contribute directly to the goals of the National REDD+ Strategy v) be anchored in transparent processes.[138]

Guyana

In 2009, the Government of Guyana signed a Memorandum of Understanding with the Government of Norway to provide up to approximately USD $250 million in support of performance-based payments to implement activities from Guyana's Low Carbon

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[136] Dumenu, W. K., Derkyi, M. A., Samar, S. B., Oduro, K. A., Mensah, J. K., Pentsil, S., Obeng, E. A. (2014). Benefit sharing mechanism for REDD+ implementation in Ghana. Accra, Ghana.

[137] Ghana ER-PIN. (2014). Emission Reductions Program Idea Note - Cocoa Forest REDD+ Program.

[138] Dumenu, W. K., Derkyi, M. A., Samar, S. B., Oduro, K. A., Mensah, J. K., Pentsil, S., Obeng, E. A. (2014). Benefit sharing mechanism for REDD+ implementation in Ghana. Accra, Ghana.

Development Strategy (LCDS). The funds are being managed through the Guyana REDD+ Investment Fund (GRIF), with the objective to provide results-based payments to be re-invested in projects which support the implementation of the LCDS.

The World Bank's International Development Association acts as Trustee and is responsible for receiving payments from contributors, managing the funds' assets and investments, transferring funds to partner entities for projects approved by the Steering Committee, and submitting regular financial reports.

5.3 Benefit sharing mechanisms in Liberia

Important benefit sharing arrangement lessons can be drawn from experience in Liberia, for example with agricultural, mining and logging concessions issued by the Government. This section will draw comparisons from the agricultural and mining concession agreements made between the Government of Liberia and the concessionaires. Other lessons may be drawn from the Forest Management Contracts. The section considers the existing architecture and identifies the challenges faced by the existing structures and finally offers policy options for a benefit sharing system for Liberia.

In Liberia, concessions have generated economic rent and it is from these that benefits are shared between the concessionaires and the affected communities. There are three main types of concessions granted in Liberia: agricultural, mining and forestry. Under these concessions, various forms of monetary and non-monetary benefits have been developed and applied.

5.3.1 Existing forms of monetary benefits in Liberia

Revenue sharing

Because exact measurement of the economic rent from the mineral resources or the natural resources is difficult, revenue sharing through taxes on revenues or royalty regimes have often been used to attempt to capture some of the rent, without explicitly measuring it. Such mechanisms may be the result of negotiations between local or county authorities and the promoter or may be defined in the legislation. In the latter case, the percentages of revenues that must be transferred to County or local beneficiaries and the destination of the proceeds are generally specified.

The Government of Liberia, for instance appropriates $3 million annually to the County Development Fund (CDF). This amount is then shared equally among the fifteen Counties, each county receiving USD $200,000 annually for development. On the other hand, forest revenue collected by the Ministry of Finance and the FDA is shared between the Central

Government and the FDA. The Ministry of Finance collects stumpage charges and rental fees. Executive Order No. 4 (2000) stipulates that 50 percent of the rental fees collected is transferred to the FDA to cover operational costs such as salaries and other recurrent expenditure and 50 percent is retained by the Ministry of Finance for use by the Central Government.

Surface rent

Surface rent is rent payable to the Government every year for the surface area allotted to a permit holder or a lessee of a forest, quarry, mine, agricultural land. Section 604 of the Revenue Law provides that every contractor is to pay an annual surface rent of USD $2 per acre for developed land and USD $1 per acre for undeveloped land, irrespective of the values of the assets contained on the land. For instance, under the Forestry Reform Law section 14.2(e) the Government is to allocate and distribute fees collected annually (stumpage, land rental and forest product fees) pursuant to the Section as follows:

(i) Ten percent of stumpage fees to support operational costs for the Protected Forest Areas Network established by Chapter 9 of the forest Reform Law.

(ii) Thirty percent of land rental fees to communities entitled to benefit sharing under Forest Resources Licenses; thirty percent of land rental fees to Counties; and forty percent of land rental fees to the Ministry of Finance to hold as part of the general revenues of the Republic in accordance with Section 7 of the Reform Tax Code.

(iii) Ten percent of Forest Product fees to support operational costs for the Protected Forest Areas Network established by Chapter 9 of this Law.

The FDA is further mandated and required to establish by Regulation a fair and transparent procedure for allocating fees to communities and to Counties.

Royalties

A royalty is a payment made by one party to another that owns a particular asset for the right to ongoing use of that asset. Royalties are typically agreed upon as a percentage of gross or net revenues derived from the use of an asset or a fixed price per unit sold of an item of such.

For mining operations, Section 703 of the Liberia Revenue Code (2000) provides that a royalty is due and payable to the Government of Liberia at the time of shipment in the amount of the stated percent of the commercially shipped mineral.

For carbon credits, Section 604(b) of the Revenue Law requires a contractor who has entered into a renewable resource contract and who obtains carbon credits to pay a carbon credit royalty equal to 10 percent of the value of the credits.

Development funds

Developments funds financed from sales and charges may be established to provide seed money for fostering economic development in the buffer area of a concession. For example, the Mineral Development Fund is established under section 18.3 of the Minerals and Mining Law and its purpose is to finance various activities such as the Government's equity in a mining operation, financing education and training for operators engaged in small scale mining. The source of funding for the Mineral Development Fund consists of $50,000 paid by Class A mining licensees, 25 percent of royalties paid pursuant to the Minerals and Mining Law and the fines imposed and collected for offences under the Act.

The mining and agricultural concession agreements also have a built-in mechanism for Social Development Funds. The funds are to offer programs and work in a way that will empower communities and will improve the economic and social life of the communities even after the concessionaire has gone. Social Development Funds are established in fulfillment of agreements such as the Mineral Development Agreement between the Government of Liberia and the concessionaire. Under the agreement the Concessionaire agrees to establish a fund and is obliged to allocate a certain amount of money on an annual basis to the counties where the concessionaire will operate during the entire period of the concession. Furthermore, each county's allocation is to be spent annually in communities that are directly affected by the concessionaires operations. The process is to be facilitated by the Concessionaire and the Government of Liberia through a Dedicated Funds Committee.

The following are some of the existing national funds with various sources and with national distribution from which the benefit sharing mechanism may pick valuable lessons.

5.3.2 National Benefit Sharing Trust

The National Benefit Sharing Trust Fund is established under the Forestry Reform Regulations 106-107. The Fund is managed by a Board that consists of 14 members representing government, civil society, private sector and donor organizations. They are mandated to: i) hold in trust, manage, and supervise the land rental fee funds received for the benefit of Affected Communities; ii) receive and review applications for funds needed by Community Forestry Development Committees (CFDC) on behalf of Affected Communities; iii) disburse funds to Community Forestry Development Committees for projects/programs approved for the Affected Communities.

The Board has further developed criteria for the disbursement of funds to the CFDCs. Each CFDC receives a share of the Trust based on the number of hectares of land the affected community covers. The affected communities' funds in the Trust for projects that have been identified and agreed upon by the community. The Board is mandated to establish a Monitoring and Evaluation Committee and a Project Technical Review Committee to address accountability and adaptive management. The Monitoring and Evaluation Committee is further mandated to develop a Monitoring and Evaluation Plan for the Trust in order to determine the effectiveness of the trust and of the community use of funds. The committee is further required to provide a report to all CFDCs detailing the financial status of the Fund. This includes the Trust's Income and Expenditure for the respective quarter.

5.3.3 Ebola Trust Fund

The Ebola Trust Fund was established as a response mechanism to the Ebola outbreak that hit Liberia in 2014. The President requested emergency spending from the National Legislature to intensify the Government's effort to contain the outbreak. The Legislature approved an allocation of USD $20 million and the Ministry of Finance was requested to establish the modality for the execution of the spending Authority. The Minister for Finance thus established the Ebola Trust Fund to pool resources from the Government, development partners and other interest groups.

In order to ensure that the funds are used effectively and that the goal is achieved, the President authorized the Minister of Finance & Development Planning to appoint a Special Comptroller General and a small team of accounting, internal audit and procurement specialists to manage the Fund.

The Ebola Trust Fund was not established in the general manner or structure of funds in Liberia. Generally, legislation will establish a Fund under a legal framework, although the instrument to set up the Ebola Trust Fund is not clear on these provisions.

5.3.4 Conservation Trust Fund

Working with the Global Conservation Fund and the Government of Liberia, Conservation International (CI) is currently developing a trust fund for conservation in Liberia. The first fund of its kind in Liberia, it will initially focus on the East Nimba Nature Reserve, and only the investment earnings on the funds held in trust will be used. The initial target for the endowment is US$6.75 million, to support annual costs of US$220,000 per year for management of the reserve and US$120,000 per year for community development. The ultimate goal of the Government of Liberia and her partners is to ensure long-term financing for all of Liberia's protected areas. Completing the ENNR trust fund will be an important first

step toward this goal, as the partners are designing this fund so that it can be built on to develop a national mechanism.[139]

Other conservation NGOs are piloting sustainable financing mechanisms within Protected Areas and community forests, and have published a Joint Document[140] to demonstrate how current efforts can provide valuable sub-national lessons learned on benefit sharing mechanisms applicable to Strategic Priority 3 (Complete and manage a network of Protected Areas).

5.3.5 Existing forms of non-monetary benefits in Liberia

Other benefits accruing from the use of natural or mineral resources in Liberia may be non-monetary, with examples also being drawn from concessions.

First priority on sales and service contracts

Common business opportunities may arise out of the operations of the concessions. The social agreements between the concessionaire and the affected communities or the agreement between the concessionaire and the Government can be done in a manner to ensure that the community or Liberia at large is given first priority in the bid for businesses arising from the concessions. Specific service contracts can be tailored to match the capacity of the affected community or Liberians. This kind of collaborative structure can also provide for the company to provide specific training, start up or other financial support to Liberian businesses so that they may maximize contract opportunities. This may be in the form of grants or advance payments or letters of intent to enable the local company secure a loan or financial facility.

In the mining and agricultural concessions in Liberia, the agreements contain provisions for business linkages that require the concessionaire to give Liberian and Liberian-owned businesses first priority.

Equity shares

In other instances the Government of Liberia has part ownership in the concession. As a shareholder the Government therefore expects to receive dividends from the company depending on the profits made. For instance, in the case of the concession granted to the

[139] CI, FFI, RSPB/SCNL, WCF & ACDI/VOCA (2016) Working together for conservation in Liberia

[140] Ibid.

Bea Mountain for gold mining in the Grant Cape Mount County, the Government of Liberia acquired 10 percent share in the company's operations.

Employment opportunities

Employment opportunities may be important benefits not only to the community but to the concessionaire as well. For the concessionaire, employment opportunities provide access to a readily available labor force especially in an otherwise remote area. For the community, these are direct benefits. For instance in the mining and agricultural concessions, the agreement is that the intention is for the Liberians to manage the companies as soon as Liberians are able to do the work. The companies are therefore supposed to employ Liberians to fill at least 50 percent of the ten most senior management positions within the five years after the signing of the agreement, and 75 percent of Liberians to fill the ten most senior management positions within 10 years after signing the agreement.

The outgrower program under the agricultural concessions is an example that REDD benefit sharing framework may emulate. In this program, the concessionaire is supposed to help the farmers to grow rubber/oil palm trees and later on, the farmer will pay back by selling the rubber, oil etc. to the concessionaire. The Government plays a role by providing additional land to the concessionaire.

Community infrastructure

Funding contributions by the concessionaire may be channeled to the construction of basic infrastructure or facilities for communities, such as housing, roads, hospitals and schools. The agricultural and the mining concessions have these provisions within their agreements and such provisions may be borrowed for REDD+ benefit sharing mechanisms.

5.4 Existing institutional arrangements in Liberia

Robust institutional framework with sound financial management practices, governance and oversight are essential for the effective implementation of REDD+ and equity in benefit sharing. At the national level the FDA is the highest Forestry sector authority mandated for the sustainable management of Liberia's forests. The FDA strives to promote participatory approaches in forestry management and contributes to reduce poverty through the promotion of forest-based enterprises and job creation

The existing institutional arrangement may be viewed in the light of those administratively set up and those that are set up by Law. The following section will look at the existing institutional arrangements and their adequacy against the above stated factors. The existing

institutions may be classified as those that are administratively set up and those that are established by a legislative instrument.

5.4.1 Institutions administratively set up

Exercising its administrative power, the Government of Liberia has the mandate to establish committees and other administrative bodies to carry out particular tasks. These include:

- Inter-sectoral, involving actors across all sectors including Government, non-governmental organizations, civil society and the wider public; or
- Inter-ministerial, involving various government departments and agencies.

Examples of administratively set up institutions

The following are therefore the institutions that have been administratively set up to develop and implement REDD+ in Liberia:

- **National Climate Change Steering Committee (NCCSC):** Established under the Environment Protection Agency, the NCCSC was established to steer the implementation of the Climate Change Strategy in Liberia.
- **REDD+ Technical Working Group (RTWG):** Established to play a technical advisory role for the NCCSC and to peer review work undertaken under the R-PP Implementation Grant and other REDD+ related studies.
- **REDD+ Implementation Unit:** Established to contract, coordinate and implement REDD+ readiness activities in Liberia.

Pros and cons of administratively set up institutions

Institutions that have been administratively set up have their advantages as well as their disadvantages. The advantages are:

- They are easier to establish. The responsible Minister may simply appoint the committee or task force by letter or notice in the official Gazette.
- The membership may be adjusted to suit the need for which they are established. The appointing authority may constitute a team with wide representation if need be as the number is not cast on stone.
- They may be established for a specific term and therefore they are able to expeditiously dispense the matter for which they were established.

The disadvantages of the administratively established institutions include:

(a) since they are mainly *ad hoc*, the funds allocated to them for their operations are not directly appropriated by the Legislature. Many a time they rely heavily on

donor funding or the Ministry hosting the Committee has to find funds for its operations from the allocation given to the Ministry;

(b) it is easy to disband them and may change or cease to function if there is a change or regime or appointing authority;

(c) their decisions may not be binding and may only be advisory hence enforcement of the decision is usually an upheaval task. For some committees, the recommendations that they make while submitting their reports are rarely implemented or taken into consideration.

5.4.2 Institutions established by law

There exists several institutions that are relevant to the implementation of REDD+ and equitable benefit sharing that are established by law.

Examples of institutions established by Law

The following are the institutions relevant to benefit sharing of carbon resources in Liberia.

- **National Bureau of Concessions**: Established for two purposes, namely to monitor and evaluate compliance with concession agreements in collaboration with concession entities; and to provide technical assistance to concession entities and other organs of Government involved with the implementation of concessions in compliance with the Public Procurement and Concessions Act.
- **National Benefit Sharing Trust Fund:** Established to hold in trust, manage, and supervise the land rental fee funds received; Receive and review applications for funds needed by CFDCs; Disburse funds to CFDCs for projects/programs approved for the Affected Communities.
- **Forestry Development Authority:** Mandated to enforce all laws and regulations for the conservation of forests and the development of their resources, the FDA is therefore the custodian of the National Forestry Reform Law.
- **Environmental Protection Agency:** Mandated to coordinate, monitor, supervise and consult with relevant stakeholders on all activities in the protection of the environment and sustainable use of natural resources.

Pros and cons of institutions established by law

The advantage of institutions established by law over those that are administratively set up include:

(a) these institutions are legal persons and have the capacity to enter into contracts, to sue and be sued;

(b) these institutions receive funding, appropriated by the Legislature in the national budgeting arrangements;
(c) The decisions made by the institutions are binding and are enforceable

The disadvantage of institutions established by law is that since their mandate is spelt out in law, they tend not to take directions from other institutions thus making activities that need joint effort difficult to implement.

5.4.3 Institutional challenges for benefit sharing

Having considered the architecture of institutions for equitable benefit sharing of carbon resources, the section identifies the following as issues or challenges to the effective governance of benefit sharing.

Fragmentation of institutions and overlapping roles

There are several institutions, many of them at the same level in the hierarchy of things, each geared towards the same role, therefore causing overlapping of roles. The existing institutions were established for specific functions. None of them may be said to have the combined capacity and sound financial management practices, governance and oversight role for effective and equitable benefit sharing. Coordination is therefore needed both within and across issue areas.

Lack of fiduciary capacity

It has been a challenge for institutions in developing countries, including Liberia, to meet the National Implementing Entity criteria for fiduciary safeguards required by institutions like the Adaptation Fund and Green Climate Fund[141]. Fiduciary capacity entails receiving funds from various sources, disbursing funds to each participating entity, investing and providing financial reporting. The different elements of fiduciary capacity may be seen in individual institutions and collectively this can be achieved. None of the existing institutions can be said to have been established for the sole purpose of managing the collection and disbursements of REDD+ finance as well as ensuring equitable distribution of the benefits.

Insufficient funding

Some of the institutions are poorly resourced in terms of funding. It has been noted that merely establishing an inter-ministerial coordination mechanism does not necessarily lead to

[141] Bugler & Rivard (2012) Direct access to the Adaptation Fund: Lessons from accrediting NIEs in Jamaica and Senegal. Climate and Development Knowledge Network (CDKN). Available here: http://cdkn.org/wp-content/uploads/2012/09/NIE_Jamaica-Senegal_InsideStory_final_WEB.pdf

a change in behavior. In the absence of sufficient incentives to collaborate, such mechanisms can find it difficult to gain traction or sustain momentum. The incentive framework is arguably especially critical in the implementation of REDD+ where response strategies generally involve a greater shift away from business-as-usual for other ministries than for the Environment Ministry, which is often where such strategies are developed. The sitting allowance paid to the members of the National Climate Change Steering Committee, for instance, is a paltry sum hence making commitment to meetings difficult. The Government also needs to address structural issues of the NCCSC such as the sitting allowances, salaries for the staff of the secretariat and other entitlements, these are often hidden but powerful issues that determine the capacity of the NCCSC to move issues.

Decentralization of the national level institutions

Whereas some institutions are decentralized to the County level, others do not have structures at the county level. The EPA for instance has environment officers and environmental committees at the different levels of government. The National Bureau of Concessions on the other hand does not have staff at the county level and has to rely on other agencies for implementation. This makes implementation and reporting very difficult because the national level may require to travel through the vast Counties either for information or to undertake activities. The administrative arrangement of the National Climate Change Steering Committee and the REDD+ Technical Working Group, for example, is not decentralized to the county level and to the grassroots.

5.5 Proposed options for REDD+ benefit sharing mechanism in Liberia

5.5.1 Option 1 – Nested approach

Option 1 would be a combination of sub-national input-based and sub-national performance-based benefit sharing using either existing benefit sharing mechanisms (e.g. National Benefit Sharing Trust) or create new ones at sub-national level (e.g. Conservation Funds for specific PA/PPAs like East Nimba Nature Reserve and/or Wonegizi).

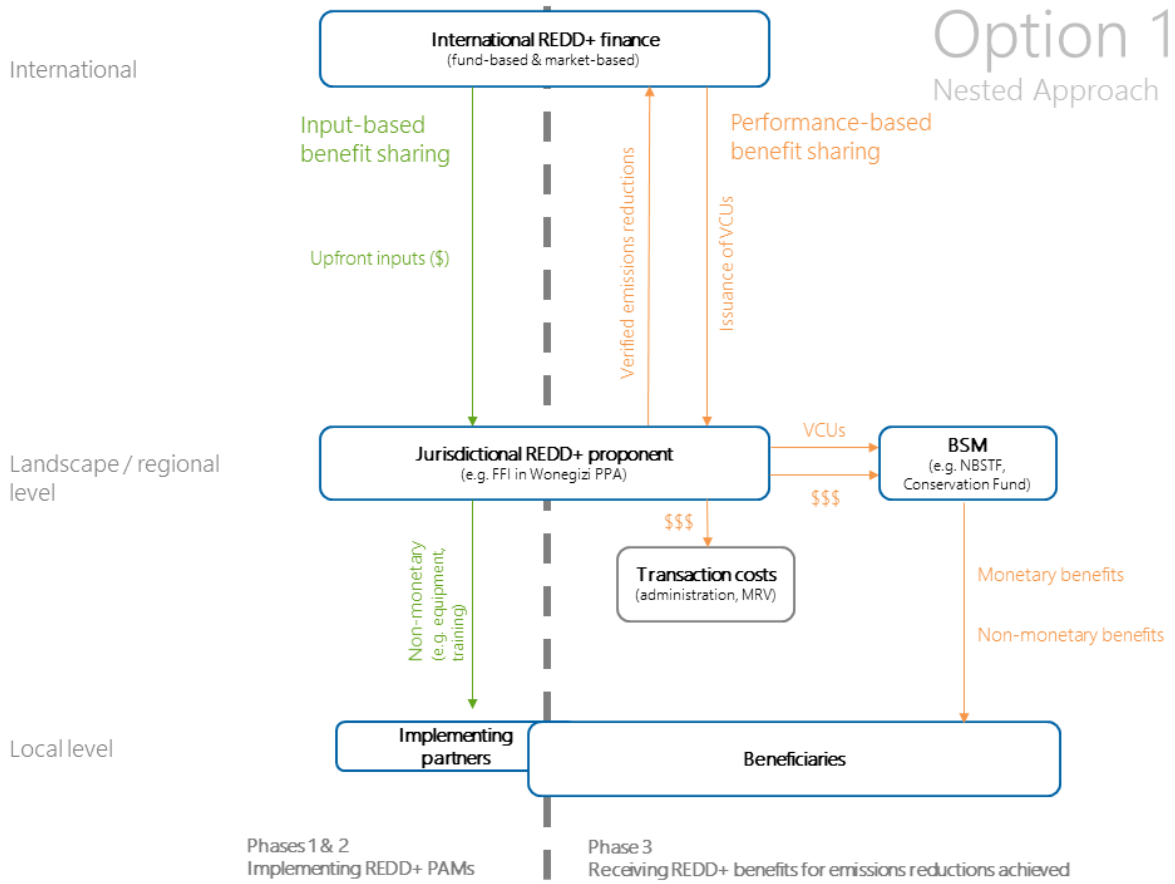
Under a 'nested' or 'jurisdictional' approach to implementing REDD+ activities, each landscape/jurisdiction could choose their preferred approach to allocating benefits based on types of activities, beneficiaries/stakeholders, existing mechanisms, institutional capacity and scale of activities. For example, the FFI REDD+ pilot project in Wonegizi PPA will develop a

participatory design and development of a benefit sharing mechanism within its project area as part of the VCS-CCB project design requirements.

Initially, beneficiaries agree to carry out specified actions, or refrain from certain actions, in return for up-front monetary (e.g. grants) or non-monetary (e.g. equipment, training) inputs from the benefit sharing mechanism. The Liberia Forest Sector Project and NICFI-funded FFI project are two examples of up-front input-based benefit sharing.

As policies and measures are implemented (Phases 1 & 2) – and emissions reductions are measured, reported and verified (Phase 3) – the jurisdictional REDD+ proponent receives performance-based benefits likely in the form of payments per unit of emissions reductions (e.g. ton of CO_2 equivalent). A portion of that revenue will cover the transaction costs (administration, management, MRV) while the rest is channeled through one or many financial instruments, such as a Conservation Fund dedicated to one Protected Area or PPA, or existing mechanisms like the National Benefit Sharing Trust.

Figure 2 – Diagram of Option 1 with a nested approach at sub-national level.



5.5.2 Option 2 – National REDD+ Fund approach

Option 2 would entail the creation of a National REDD+ Fund for Liberia – similar to other countries like the DRC REDD+ Fund, GRIF (Guyana) and FREDDI (Indonesia) – by legal decree such as a Presidential Regulation. A Memorandum of Understanding could then be signed between the Government of Liberia and, initially, an interim Administrative Agent (e.g. multi-donor trust fund) that would act as the Trustee for the fund.

A **fund investment plan** would be developed based on the priorities of the national REDD+ strategy (e.g. what activities to be funded? Where are the priority areas?). Then, an **operations manual** would be developed to clarify how funds are disbursed, including governance structures, legal arrangements and fiduciary measures.

The National REDD+ Fund would need to be linked to a national system that measures, reports and verifies emissions reductions, and act as the financial instrument for receiving performance-based payments and disbursing them according to pre-determined criteria. The disbursement mechanism could be organized into four 'Funding Windows' (FW) based on the various levels of REDD+ activities being implemented:

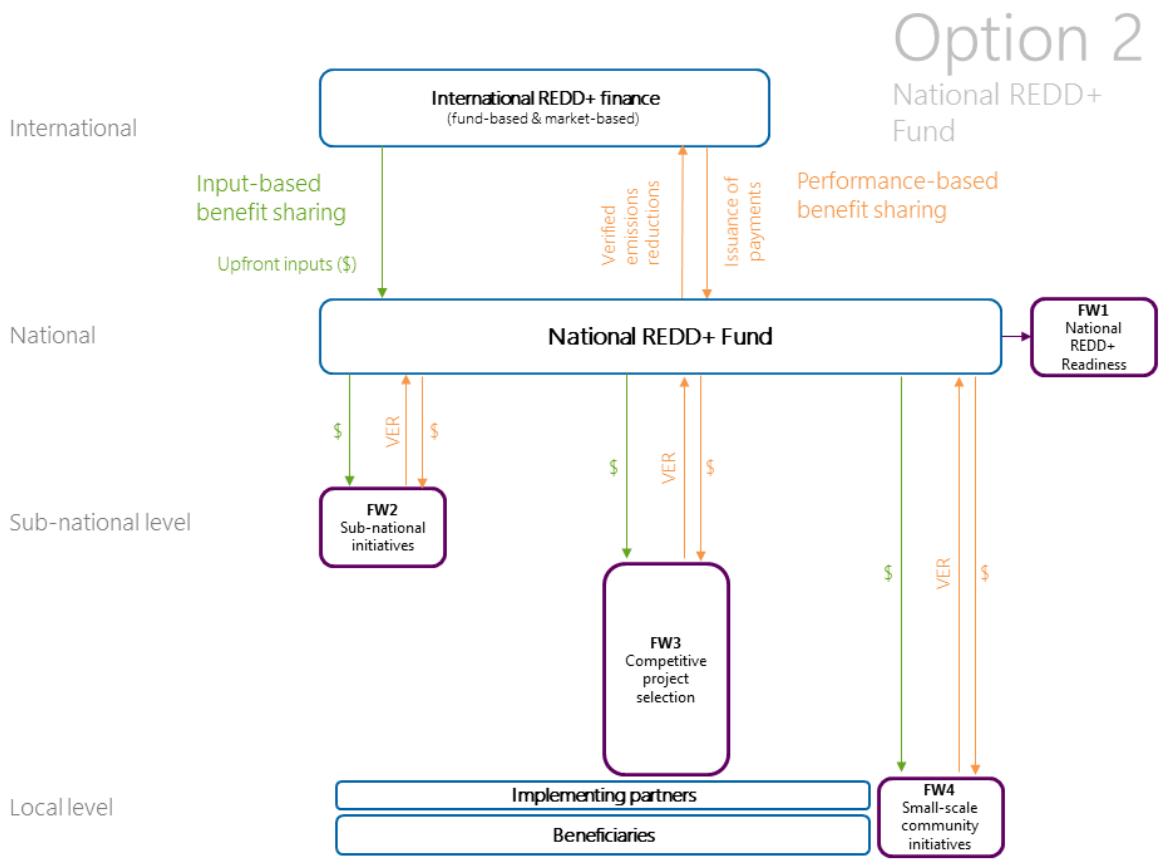
Funding Window 1: strategic programs on REDD+ readiness and national level policy and legal reform.

Funding Window 2: sub-national initiatives at landscape/jurisdictional REDD+ scale, similar to the three priority landscapes identified by LFSP.

Funding Window 3: competitive selection process for funding REDD+ initiatives.

Funding Window 4: funding targeted for small-scale community-based initiatives who may not have the capacity to compete in terms of capacity and scale.

Figure 3 - Diagram of Option 2 with a National REDD+ Fund approach.



5.5.3 Option 3 – Combined approach

A third option to consider is a phased combination of Option 1 (sub-national approach) and Option 2 (creation of a national REDD+ fund). First, benefit sharing mechanisms and models are tested at sub-national level with activities like the Liberia Forest Sector Project and the NICFI-funded FFI REDD+ pilot project. As lessons from these experiences are being generated, the initial steps to establish a national REDD+ fund – namely the development of a fund investment plan and operational manual – is put in place to eventually migrate nested BSMs into the national fund.

Experiences from other REDD+ countries like Indonesia and DRC have shown that Option 2 is a long process that requires extensive stakeholder consultations and negotiations within government ministries. Therefore, Option 1 would be focused on testing different models with the ultimate purpose of ensuring that a national REDD+ fund in Liberia is based on practical experiences to understand what works and what does not.

5.5.4 Assessment of REDD+ benefit sharing mechanism options

The three options are assessed against the following basic criteria:

- **Efficiency**: is the approach cost-efficient?
- **Equity**: do all stakeholders benefit? Are the benefits reaching the poorest and most vulnerable?
- **Transaction costs**: how costly is the administration of the funds? How decentralized is the distribution?
- **Political/legal feasibility**: how feasible is it, considering the political and legal barriers?
- **Expected timeline**: how much time is it expected to take?

Option	Efficiency	Equity	Transaction costs	Political & legal feasibility	Expected timeline
Option 1 – Nested approach	BSM can be designed to meet different sub-national REDD+ needs/drivers, and therefore be more efficient at targeting/rewarding the right actors. Risks of inefficiency if lessons learned from various jurisdictions are not being shared, and/or if there is lack of coordination (e.g. consistent use of spatial data, forest	Operating closer to community level may make it easier to ensure that all stakeholders benefit from REDD+ activities.	Each jurisdiction is required to develop its own reference level, MRV, safeguards, BSM, etc. Leakage monitoring may also be considered an additional cost compared to option 2.	Use of existing BSMs such as NBSTF and Conservation Funds is 'path of least resistance' compared to option 2. Existing political support for Liberia Forest Sector Project and other donor-led initiatives will allow for smaller-scale BSMs to be established and tested.	Jurisdictions with higher MRV capacity can move forward to Phase 3 more quickly (with proper leakage safeguards in place).

Option	Efficiency	Equity	Transaction costs	Political & legal feasibility	Expected timeline
	inventory methodologies, etc).				
Option 2 – National REDD+ Fund	Linked to a national MRV system, this option is more efficient for reporting emissions reductions and receiving results-based payments from international REDD+ financial mechanisms.	Linking funding to verifiable proxy measures of carbon abatement can provide beneficiaries with a clear target (and criterion for distribution). Risk of inequitable distribution of REDD+ benefits if national systems are too costly and safeguards are not monitored/enforced.	Administrative costs could be lower if BSM is centralized and uses efficient systems. MRV system linked to calculation of results-based payments can be costly to maintain (e.g. national forest inventory, national forest monitoring system).	Less certain on political support, which is essential for this option. Legal barriers also exist, depending on the route taken for establishing a national REDD+ trust fund.	At least 3-4 years away from being a reality, which will strongly depend on political and donor support.
Option 3 - Combined	Linking both options allows for scaling up from pilot project activities to national systems (MRV, BSM) in the most efficient way.	Jurisdictional BSMs can test various models to inform policy when designing a national mechanism.	Cost savings can be achieved during the transition from nested activities to a centralized national fund.	More realistic to use existing BSMs in the short term, with the medium-long term objective of consolidating BSMs into a national one focused on REDD+.	Allows for more immediate testing and learning.

Concluding remarks on assessment of options

Option 1 has the benefit of taking a pragmatic approach to developing a REDD+ benefit sharing mechanism by 'starting small' in terms of scale of area and number of actors, either by using existing BSMs or by creating project-scale ones (i.e. Conservation Fund created for East Nimba Nature Reserve). The main premise of Option 1 is that it is by implementing demonstration projects that one can show 'proof of concept' and address stakeholder concerns. With that, however, comes the risk of pilot activities operating in silos and never amounting to being greater than the sum of its parts. In other words, demonstration projects need to have the right tools and channels for communicating lessons learned from experiences in their respective jurisdictions, with the ultimate aim of influencing national level REDD+ policies and regulations.

Option 2 requires a longer term perspective by embedding the systems for the REDD+ 'cycle' of: i) establishing a reference level; ii) implementing policies and measures that reduce emissions; iii) measuring, reporting and verifying those emissions reductions; iv) receiving results-based payments as a result of those emissions reductions achieved, either from a fund-based or market-based REDD+ mechanism; and v) distributing the REDD+ benefits in an effective, efficient and equitable way, with appropriate social, environmental and fiduciary safeguards. However, the establishment of a national REDD+ fund – as experience from other REDD+ countries has shown – takes many years and requires strong political backing. Consultations with REDD+ stakeholders in Liberia indicate that Option 1 is the preferred option, likely because REDD+ readiness processes are still taking place and implementation of demonstration projects is in early stages.

Option 3 could be considered the preferred option because it combines the benefits of 'hitting the ground running' in the short-term, with taking the time to design a national REDD+ benefit sharing mechanism that ensures an effective, efficient and equitable distribution of benefits. It will be important for this funding instrument to be designed in a way that captures other opportunities beyond the Letter of Intent with Norway, and any future non-market based results-based payments once a global REDD+ mechanism is in place and operational.

6. Institutional arrangements for implementing REDD+

6.1 Policy development and coordination institutions

Countries participating in REDD+ are required to set up a national REDD+ entity and designate a REDD+ Focal Point to communicate with the UNFCCC Secretariat and other relevant bodies[142].

Liberia has done this, through the REDD+ Implementation Unit (RIU) which coordinates and oversees REDD+ readiness and implementation. The RIU sits in the FDA and is being strengthened in staff numbers and capacity through the LFSP.

Currently, the RIU is one of three institutions for national implementation of REDD+. It sits under the NCCSC and it is supported by the REDD+ Technical Working Group (RTWG).

6.1.1 National Climate Change Steering Committee

For policy and coordination, the FDA works in formal partnership with the Environmental Protection Agency. The EPA is the lead Government agency for climate change and the Designated National Authority for the Clean Development Mechanism of the UNFCCC/Kyoto Protocol. It has produced Liberia's Country Adaptation Plan for example, and in 2015 prepared Liberia's Intended Nationally Determined Contributions[143].

The EPA acts as secretariat to the National Climate Change Steering Committee. The NCCSC is a high-level, inter-ministerial body responsible for climate change policy formulation.

The NCCSC reports site within the Office of the President and is chaired by the Minister of Finance and Development Planning. It consists of 15 members from relevant agencies,

[142] Based on the Warsaw Framework

[143] Republic of Liberia (2015) Intended Nationally Determined Contributions (INDC). EPA Monrovia.

including the FDA, the EPA, and the Ministry of Lands, Mines and Energy, as well as donors and civil society organizations.

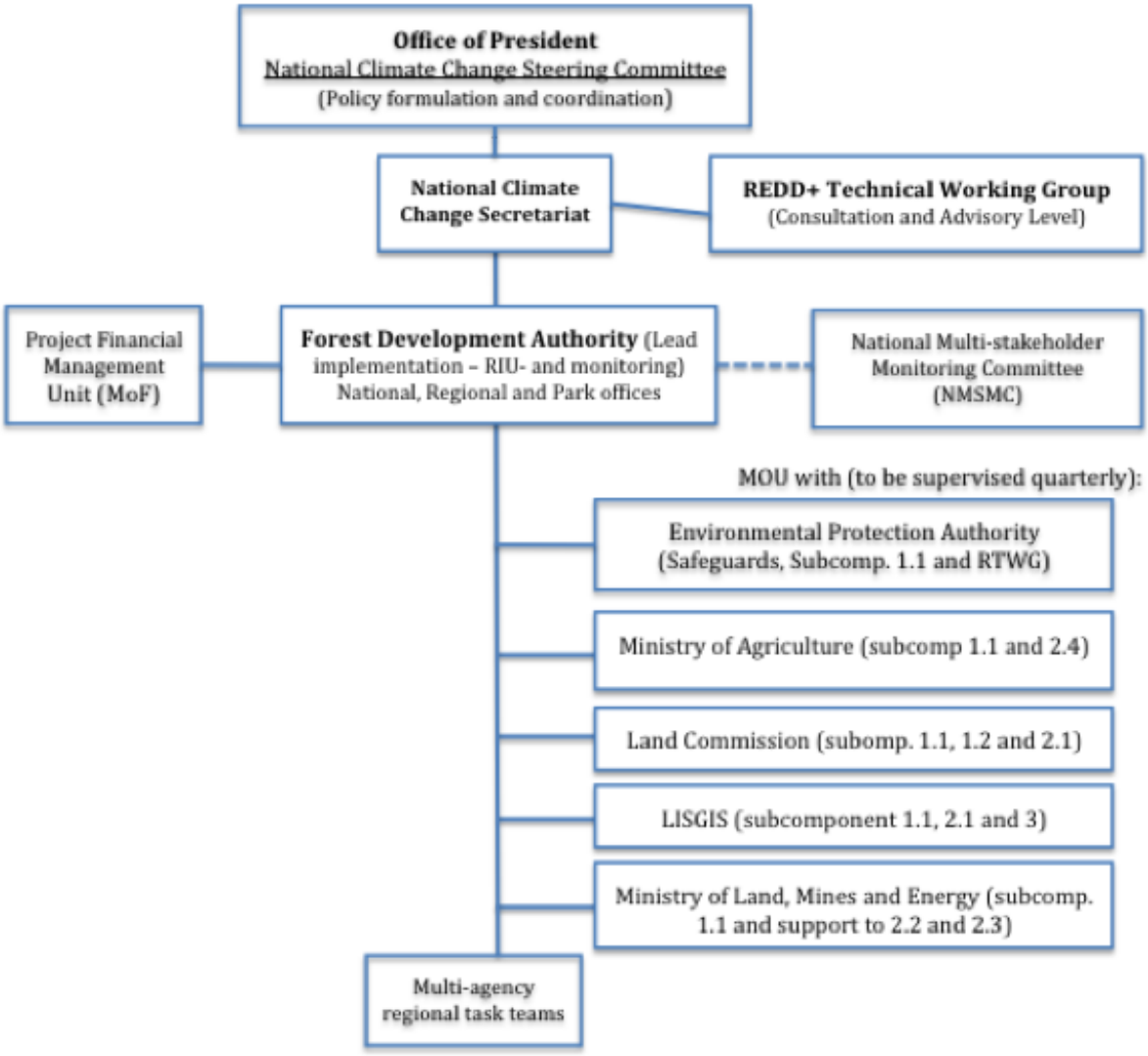
Although launched in 2010, The NCCSC has yet to become established as a decision-making body with regular meetings. This reflects the reality that climate change is less of a priority than other national development and security issues in the day-to-day business of Government. There are also difficulties inherent in establishing such high-level, cross-sectoral coordination institutions. REDD+ is providing the main catalyst for re-activating the NCCSC, which is due to meet in 2016 to consider the Liberia Forestry Sector Project and the REDD+ Strategy.

6.1.2 REDD Readiness institutions

The FDA leads the forestry component of Liberia's climate change agenda and managed the preparation of the R-PP with the EPA. These two institutions continue to work jointly on finalizing the REDD Readiness 'R-Package', with EPA leading on the environmental and social impacts assessment and monitoring (the SESA and ESMF)and FDA leading on the Strategy and Implementation Plan.

Liberia therefore has well-established institutional arrangements for managing the Forest Carbon Partnership Facility REDD+ readiness process. These are centered on the FDA and specifically the RIU within (See Figure 4).

Figure 4 - Institutional arrangements for REDD+



Source: Reproduced from LFSP Project Appraisal Document 2016

Coordination and consultation of these technical activities with relevant Government and non-government organizations is arranged through a RTWG. This is co-chaired by FDA and EPA and the membership includes ministries, agencies, civil society, development partners, academia, and the private sector. Meetings are held quarterly or more frequently if required.

There is additionally a Civil Society REDD+ Forum which was established during the first phase of REDD+ readiness in 2010 and has continued to offer an avenue to engage with stakeholders in civil society.

6.1.3 Integration of REDD+ with national coordination arrangements for development and environment

Successful coordination between forestry and other sectors is a critical component of REDD+. Many of the drivers of deforestation and forest degradation emanate from sectors outside of forestry, including agriculture, mining, and energy. These other sectors all have activities and policy, legal and institutional frameworks that significantly affect land use, forest cover and the success of REDD+ activities.

Liberia's climate change and REDD+ institutions have been designed to include different land-use sectors, different government ministries and a wide range of non-government interests. Nonetheless, with the NCCCS being a young body and with the general tendency for climate change issues to be lower priority, there remains a challenge to truly integrate REDD+ into national policy making. It is therefore relevant to consider the policy and coordination structures that exist for national development planning.

Liberian Development Alliance

The Liberian Development Alliance (LDA) is the steering committee for the national Development agenda. It is the Government's most strategic forum for engaging the private sector, civil society and development partners in making progress towards the goals in Liberia's 2013-2018 *Agenda for Transformation*, the long-term development strategy *Vision 2030: Liberia Rising* and major donor initiatives such as the *New Deal for Fragile and Post-Conflict States*.[144]

The LDA is chaired by the president and led by The Ministry of Finance and Development Planning, with the Planning Coordination Unit at MFDP acting as secretariat. Under the LDA there are sub-committees for each pillar of the Agenda for Transformation (AfT). Forestry sits under pillar 2, *Economic transformation*.

This structure for monitoring and implementing the AfT is repeated at county level with County Development Steering Committees and pillar sub-committees.

National Environmental Policy Council

Potentially, there is overlap between the functions of the NCCSC and the National Environmental Policy Council (NEPC), but in practice this does not arise because the NEPC is inactive.

[144] UNDP (2013) text from program document for support to the LDA.

The NEPC is a broad mechanism for inter-sectoral coordination among natural resource-related Government institutions. It was established by the 2002 Environmental Protection and Management Law (EPML) as the "ultimate policy-making body on the environment" (§7). Its members are appointed by the President from across relevant Ministries and authorities and its mandate is to, "promote cooperation among Line Ministries, local authorities, the private sector, non-governmental organizations engaged in environmental protection programs and the public"(§8).

At a functional level, regular coordination meetings of the environmental focal points in various ministries and agencies were convened by the EPA's Department of Inter-sectoral Coordination. These meetings served to raise issues but lack of funding has prevented the meetings from taking place recently. Furthermore, the lack of senior representation at meetings prevented it from being an effective decision-making body.[145]

6.2 REDD+ Implementation

Prior to 2016, the institutional arrangements have been for national REDD+ readiness policy and coordination work. From 2016, national arrangements for the implementation of REDD+ interventions will be put into action through the LFSP, which represents the main program for implementation of REDD. It adopts the national REDD+ policy and coordination arrangements described above and adds implementation arrangements for the program at national and landscape level.

6.2.1 Liberia Forest Sector Project (LFSP)

At national level, the FDA-RIU is the lead implementing body. It will act through the technical departments of the FDA, particularly the Commercial, Conservation, Community Departments.

Implementation then divides up into the sectors corresponding to the interventions and the sectoral Ministries and Agencies. There are also crosscutting implementation requirements and institutions. Implementation is managed through partnerships between FDA and other Government bodies (See Figure 5).

[145] Based on stakeholder consultations during a review of legal & policy aspects of the REDD+ Strategy

Figure 5: Implementation arrangements for LFSP REDD+ interventions

	FDA-RIU			
Sectors	Forestry	Environmental Protection	Agriculture	Mining
Sectoral Ministries & Agencies	Forestry Development Authority	Environmental Protection Agency	Ministry of Agriculture	Ministry of Land, Mines & Energy
REDD+ Interventions	Commercial forestry Community forestry Forest conservation	Environmental and social impact assessment and monitoring	Agro-forestry Agricultural concession on forest land Sustainable agriculture	Mining concessions on forest land Artisanal mining
Cross-cutting Ministries & Agencies	Ministry of Finance and Development Planning Financial Management Unit for LFSP Revenue support for FDA Land use planning Rural and urban development			
	Land Authority Resolution of Land ownership & rights issues Land administration			
	LISGIS Data management and GI for monitoring forest cover and land use change			
	National Bureau of Concessions Monitoring and oversight of concessions agreements			

At regional and landscape level the FDA has regional and district staff in a network of regional offices. The LFSP will introduce Interagency Task Teams, which combine the relevant ministries/agencies (FDA, MoA, EPA, MLME) with service delivery partners (the private sector or NGOs, CBOs, CSOs responsible for the delivery of projects).

At project level, interventions are delivered by private sector and non-governmental organizations and are focused geographically on the LFSP priority landscapes in west and south-east Liberia.

6.2.2 Other REDD+ Implementation projects

Beyond the LFSP there are a variety of other projects with activities that are directly relevant to the implementation of REDD+. These projects are connected to the existing institutional arrangements for policy and coordination through partnership arrangements with FDA and/or EPA. They will all benefit from the institutional strengthening that is planned in the LFSP. These are of three main types:

- Biodiversity Conservation projects: Typically led by international NGOs, with Liberia NGO partners, and with international donor funding. Focused in and around conservation areas (e.g. FFI Wonegizi REDD+ Pilot; CI and FFI projects to develop conservation agreements and Protected Area management plans in East Nimba Nature Reserve; SNCL/Birdlife in the Gola-Foya conservation corridor).
- Community forestry projects: (e.g. PROSPER and the successor project FIFES. Community forestry projects usually have a conservation component and conversely biodiversity conservation projects also usually have a community forestry component)
- Zero-deforestation commodity projects: Typically public-private partnerships, focused on large concession-holding companies (e.g. IDH/FDA Production-Protection project, with NICFI funding, with Arcelor Mittal, Golden Veroleum Liberia and Sime Darby Plantations Liberia)

6.2.3 Institutions for FLEGT-VPA

Since 2011, Liberia has been developing institutions to manage a Forest Law Enforcement, Governance and Trade (FLEGT) initiative for sustainable logging. The measures required to fulfill this VPA with the EU are highly complementary with the REDD+ strategy priority on sustainable logging.

The VPA project, which runs to 2018, addresses similar challenges to those involved in the introduction of REDD+: the strengthening of forest laws and regulations, the introduction of complex monitoring, verification and reporting procedures and the strengthening of Liberian institutions so they progressively take over the management and implementation of these procedures.

The national institutions established for VPA are the Liberian Implementation Committee, a National Multi-stakeholder Monitoring Committee (chaired by the FDA), and an Inter-Agency Coordinating Committee. The FDA is responsible for both VPA and REDD+ and so unites the two agendas. Outside of the FDA, there is currently no multi-agency institution that directly links VPA the REDD+, they have parallel arrangements, but the LFSP project will start to do this by sharing progress reports and key findings with the VPA National Multi-stakeholder Monitoring Committee, as a way to coordinate donors and engage sector partners in the objectives of project[146].

[146] LFSP Project Appraisal Document April 19 2016. Annex 3 Implementation arrangements, p.71.

Sub-nationally, there will be overlap in the FDA staff who manage both VPA and REDD+ activities and geographic overlap between the FDA regional offices managing the VPA process and the Interagency Task Teams established by LFSP in the targeted landscapes.

6.3 Assessment of institutional arrangements

From the description of existing institutions above it is clear that Liberia has well-established arrangements for REDD+ preparation and these have been adopted by the LFSP for implementation. Institutional arrangements for REDD+ are therefore, for the time being, settled and several years of implementing the LFSP are required before there is evidence on whether alternative or institutions are required.

The immediate issue confronting the existing institutions with a role to play in implementing REDD+ concerns their effectiveness rather than their design. Serious limitations in the capacity to implement activities or enforce laws and regulations have been very well documented; in the consultations and feasibility analysis conducted for the REDD+ strategy preparation highlighted weaknesses, in the SESA and in previous studies of forest governance (see for example the assessment of key government issues for REDD+ implementation conducted by PROFOREST in 2013)[147] These challenges are recognized in the LFSP and in the VPA project, and in other projects contributing to REDD+ implementation. The results of the measures to strengthen the FDA, community forestry institutions, etc. contained in the these projects will determine the effectiveness of the NCCCSC, RIU, RTWG and other REDD+ institutions and whether these need to be revised or added to.

An assessment of institutional needs and strengths/weaknesses should therefore form an important part of the mid-term review of the LFSP as well as reviews of progress with VPA and other REDD+ related projects. Suitable criteria for this assessment are suggested below.[148]

[147] Halton et al (2013) Liberia: Assessment of key governance issues for REDD+ implementation through application of PROFOR forest governance tool. PROFOR/FCPF.

[148] Assessment criteria based on those used by CIFOR in a global comparison of emerging REDD+ structures: Pagiola, S., Bosquet, B. (2009) Estimating the Costs of REDD at the Country Level. Forest Carbon Partnership Facility.

Criteria	Indicators
Political legitimacy	How acceptable the structure is for national authorities, civil society, local communities, donors and other international organizations engaged in REDD+. Legitimacy also concerns transparency and accountability, distribution of power and wealth of REDD+ financial flows.
Effectiveness	Capacity to raise funds and deliver on reduced emissions, that is, address the drivers of deforestation and forest degradation thus avoiding leakage and ensuring permanence
Efficiency	Ability to deliver cost-efficient REDD+ results. This involves all costs of REDD, including implementation, transaction and opportunity costs
Capacity to deliver co-benefits	Effects on poverty reduction and biodiversity preservation

Based on experience in the 'investment' phase, it will be possible to address the longer term question of whether new or additional institutions will be necessary, to manage national carbon accounting and benefit sharing for example.

6.3.1 Anticipating future requirements for REDD+ institutions

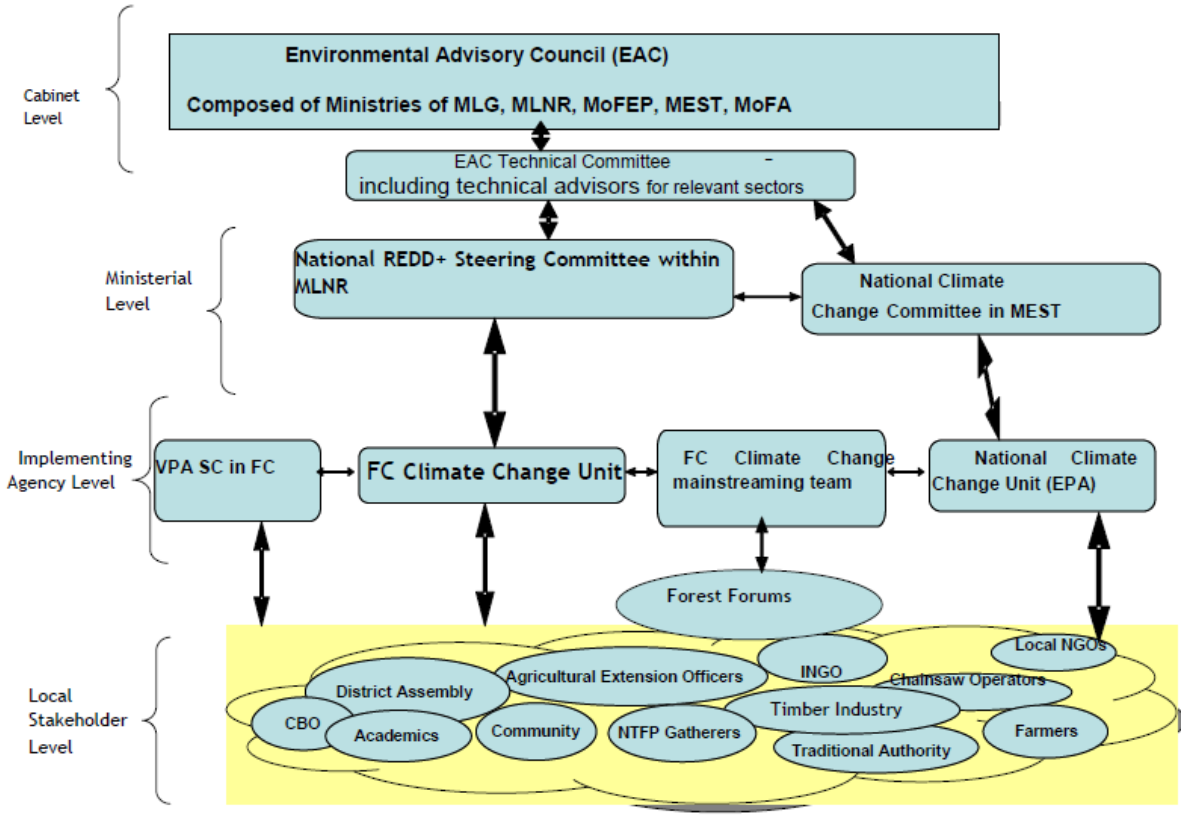
Liberia is following a pragmatic and incremental approach to REDD+, starting with projects and landscape-level interventions that are about testing and demonstrating effective approaches to land use change and forest governance. These will provide evidence of what works, at the same time as improvements are made to the governance and implementation capacity of Liberian institutions.

This is a realistic and necessary approach and in terms of institutional arrangements it results in the use of existing institutions (such as the NCCSC) rather than the creation of a dedicated REDD+ committee at cabinet or ministerial level. In this respect it differs from the institutional arrangements for REDD+ adopted by other countries.

Ghana is similar to Liberia in that it has opted to use a strategic environmental coordination body for managing REDD+ at Cabinet level. However at Ministerial level it has a national REDD+ Steering Committee, housed in the Ministry of land and Natural Resources and

serviced by the climate change unit within one the MLNRs Commissions, the Forestry Commissions[149,150].

Figure 5 - Example of REDD+ Management institutions from Ghana



Côte d'Ivoire has a top-level National REDD+ Committee chaired by the Prime Minister, plus a REDD-plus Interdepartmental Technical Committee responsible for sector coordination, and a REDD-plus Permanent Executive Secretariat in charge of implementation[151]. Likewise, neighboring Sierra Leone had a national REDD+ Steering committee to oversee its readiness program[152]. The Democratic Republic of Congo has a dedicated high-level REDD+ committee[153].

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[149] Forestry Commission (2015) Ghana national REDD+ Strategy.

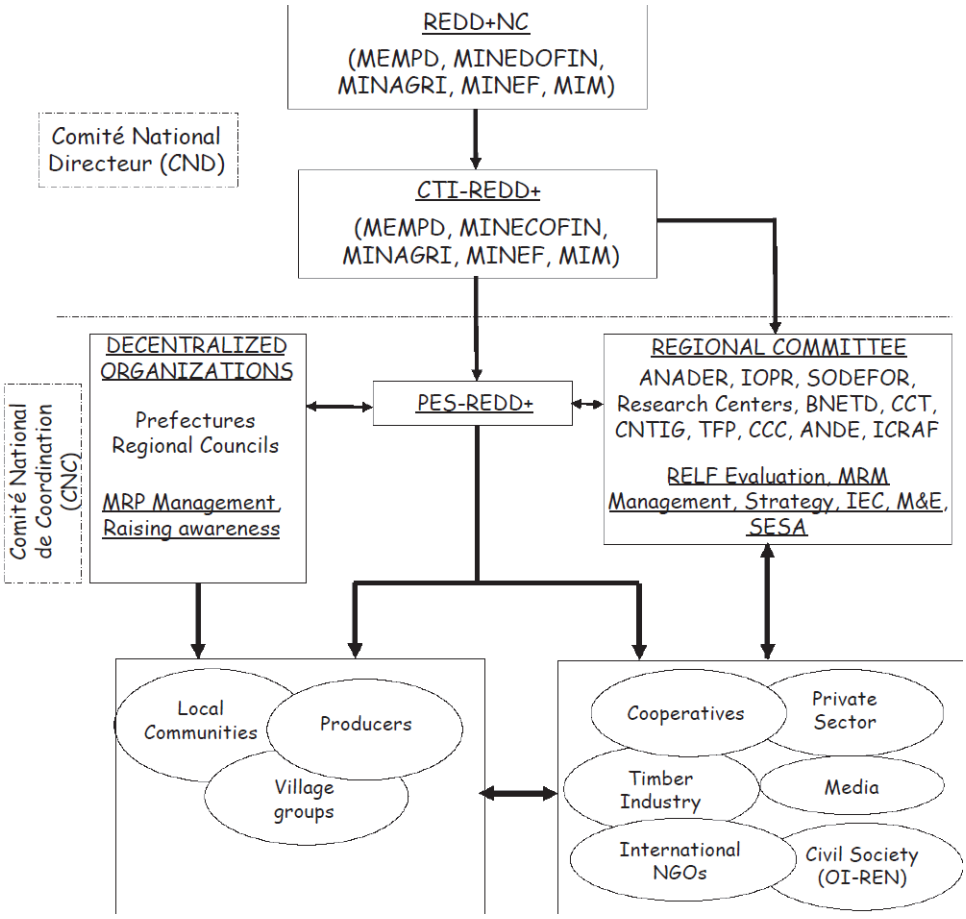
[150] Chagas et al (2010) Consolidating national REDD+ accounting and sub-national activities in Ghana. Report by Forest Trends and Climate Focus, November 2010

[151] Readiness Preparation Proposal: Republic of Côte d'Ivoire. May 2014.

[152] RSPB (2015) The Gola REDD Project monitoring and implementation report. Gola Rainforest Conservation LG, September 2015.

[153] Aquino, A., Guay, B., Implementing REDD+in the Democratic Republic of Congo: An analysis of the emerging national REDD+ governance structure, Forest Policy and Economics (2013), http://dx.doi.org/10.1016/j.forpol.2013.04.003

Figure 6 - Example of REDD+ Management institutions from Côte d'Ivoire



Compared to these examples, the institutional arrangement adopted in Liberia has some pros and cons (Table 7).

Table 7 - Pros and cons of existing institutional arrangement in Liberia.

Criteria	Pros	Cons
Legitimacy	RIU, RWTG and related institutions are strong on multi-stakeholder participation and consultation/communication.	REDD may be marginalized as a 'climate change' or 'forestry' issue because of the use of the NCCSC and because FDA (and EPA) have a leading role over other (larger) ministries. NCCSC is not currently recognised by other ministries as an important cross-sectoral coordination body. Highly centralised governance arrangements in Liberia generally may create a large gap between national and local institutions.
Effectiveness	RTWG and RIU have served so far as effective institutions for REDD+ readiness, with donor support	Effectiveness of NCCSC in unproven and effectiveness of institutions essential for implementation of REDD+ measures and national and sub-national level are known to have serious capacity constraints
Efficiency	Avoids creating new and possibly underused institutions which add to complexity and costs of REDD.	Sub-national arrangements for managing and benefit sharing at local level are complex with distinct sectoral systems.
Capacity to deliver co-benefits	Constitution and structure of FDA encourages it to balance commercial and conservation goals.	NCCCS will have to extend its remit to act as a sustainable development committee rather than just a climate change body, because of the importance of developing REDD as a development tool, not just a forest conservation tool, and because of the likely reality that climate change/REDD+ funding will just be one part of a wider package of funds for sustainable forest management.

Despite the weaknesses identified above, an alternative institutional structure dedicated to REDD+ as has been adopted in other countries is unlikely to be advantageous for Liberia.

Indeed an elaborate and new national architecture just for REDD would be complex and expensive to set up and it would distract effort away from local projects. Instead, the need for institutional development should be revisited once there is better evidence on what works and when there is greater clarity from the international community about what REDD+ financing will be available to Liberia, beyond that coming from the bilateral agreement with Norway and the Readiness investment by FCPF.

Annex 1 – REDD+ relevant provisions for Liberia's policy and legal instruments

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
Forestry	National Forestry Policy and Implementation Strategy (2006)	**Aim:** to conserve and sustainably manage all forest areas, so that they will continue to produce a complete range of goods and services for the benefit of all Liberians and contribute to poverty alleviation in the nation, while maintaining environmental stability. **Objectives include:** • Integration and balance of the "3 Cs" to optimize economic, social and environmental benefits • Conserve a representative sample of forest ecosystems so that important environmental functions are maintained • Contribute to national development goals, including poverty alleviation and food security through opportunities for forest-based income generation • Equitable access to forest resources • Stakeholder participation in forestry policy making and in conservation and management of forest resource • Multi-sector approach to forest management **Strategy for commercial forestry:** • Increase transparency and efficiency of concessions to ensure sustainable forest management by: ○ Developing and implementing a set of regulations and rules for forest management in concessions

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		○ Demarcating concessions and implementing transparent allocation systems ○ Effective monitoring ○ Developing and implementing benefit sharing mechanisms between Government, communities and the private sector ○ Developing and implementing process for local communities to obtain concessions/licenses for small-scale forest enterprise **Reforestation and plantation development:** • Develop and implement a national reforestation program, including agroforestry • Develop mechanisms and incentives to involve private sector and communities **Community Forestry:** • Framework established for CF to maximize benefits from all potential forest uses • Grant user and management rights and responsibilities to communities • Empower local communities to identify opportunities, set objectives and liaise with GoL and others • Support communities with extension and technical assistance • Locate and practice community forestry on communal land **Bushmeat/hunting:** • Enforce wildlife protections and design and implement programs to support income generating activities as alternatives to commercial hunting **Wood energy and NTFPs:**

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• Ensure adequate legal and regulatory frameworks for production and commercialization of fuelwood, charcoal and NTFPs **Forest Conservation:** • Increase public awareness of forest conservation issues • Strengthen and improve alternative livelihoods opportunities to reduce rural dependence on forests **Land Tenure and Land Use Planning:** • In recognition of the failures to conduct effective land use planning: in collaboration with other agencies, establish forest land use classifications and produce maps of these, including different areas of ownership and define the rights and responsibilities of different forest users • Develop procedures for managing land use changes to assess suitability of forest conversion proposals • Maintain collaboration with Government agencies responsible for land use and land use planning **Forest Governance:** • Introduce sound financial management, including independent oversight • Improve transparency and accountability by strengthening monitoring, evaluation and reporting • Improve public participation • Decentralize decision-making and delegate authority where appropriate **Information:**

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• Create forest information database to monitor sustainable forest management and establish a program to collect, update and disseminate this information on a regular basis **Enforcement:** • Review and update legislation to support aims of this policy • Strengthen enforcement through training and increased funding, as well as stricter penalties • Develop process for public consultation, adjudication of disputes and public reporting of compliance with forest law

	National Forestry Reform Law (2006)	**Objective**: sustainable management of forest land, conservation of forest resources, protection of the environment and sustainable development of the economy with participation of and for benefit of all Liberians and to contribute to poverty alleviation (§ 3.1)
		
		Policy and Planning:
		
		• Forest Development Authority (FDA) has mandate to manage forest resources according to policies and strategies mandated in NFRL and consistent with Environmental Protection Law and other applicable environmental laws (§
		• Board of Directors of FDA adopts (and revises from time to time) a National Forestry Policy that promoted the sustainable management of Liberian forests (§ 4.3)
		• FDA required to produce (and revise from time to time) a National Forest Management Strategy that shall:
		  ○ Classify all forests according to legal status and potential suitable use based on best available data;
		  ○ Identify and validate (following a standardized procedure) specific areas suitable for:
		  ▪ Commercial use under FMCs or TSCs;
		  ▪ Protection; and
		  ▪ Community management
		Permitting: ***see Table 2.***

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions

		Tenure:
		
		• All forest resources are held in trust by the Republic (§ 2.1), except:
		  ○ Forest resources in communal forests;
		  ○ Forest resources developed on private or deeded land through artificial generation
		• Where GoL has granted permission for use of forest resources, no land owner or occupant can bar that right, but impacted individuals/communities can seek compensation (§ 11.3)
		• § 10.1 stipulates that community forestry regulations must specify the rights and responsibilities of communities with respect to ownership and uses of Forest Resources and that FDA shall by regulation grant local communities use and management rights, build their capacity and transfer control of forest use to them
		Inter-sectoral Coordination:
		
		• § 2.2 requires FDA to collaborate with other Government agencies and local communities "as necessary" in carrying out its duties
		• PPCA applies to all FMCs and TSCs
		• § 4.1 requires FDA to manage forests consistently with EPML and other applicable environmental laws
		• § 4.2 establishes a Forest Management Advisory Committee to advise the FDA on forest policy, consisting of 7-12 members representing various stakeholder groups and ensuring that women and youth are fairly represented.
		Community Forestry:
		
		• FDA will undertake regulatory measures to ensure community participation in forest management, including but not limited to:
		  ○ Recognition and protection of tenure rights;
		  ○ Mechanisms to promote informed community participation in forest-related decisions;
		  ○ A framework for fair access to forest resources;
		  ○ Social, economic and technical procedures for capacity building to ensure equitable participation in and benefits from sustainable forest management

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• FDA shall by regulation grant local communities use and management rights, build their capacity and transfer control of forest use to them (§10.1) **Stakeholder Engagement/FPIC:** • Ch. 10 stipulates that community forestry regulations must include mechanisms to promote informed community participation in forest-related decisions and capacity building mechanisms for those ends • The public shall have access to all documents and other information in FDA's possession, including audits, license fees, business and management plans, and other, with certain stipulated exceptions (§ 18.5) • Government required to provide notice and receive comments (through a specified procedure) when granting title over forest lands to a private entity (requires written approval of FDA) **Monitoring, Dispute Resolution, Enforcement:** • FDA has inspections authority to ensure compliance with this Act (§ 3.2) and Sworn Forest Officers may conduct visits, searches, and seizures pursuant to the laws of Liberia (§ 20.5). • Annual auditing is required of all licensed operations (§ 3.4) and holders of Forest Resources Licenses shall submit to the Authority such reports as their contracts, permits, and any supporting Regulations may require (§ 18.13). • FDA is obligated to monitor forest lands to ensure all use, harvest, and transport of forest resources is lawful and based on sustainable yield (§ 8.2) • The Authority may include provisions for appropriate resolution of disputes in Forest Management Contracts and Timber Sale Contracts and may, by Regulation, establish additional procedures for dispute resolution with respect to the management of Forest Resources (§ 17.1) • A court may issue an injunction to enforce any provision of this Law against any Person, including the FDA (§ 20.1) • A Person who contravenes any of the following provisions of this Law, or any Regulation implementing any of these provisions, is guilty of an offense and is liable upon conviction to fines, imprisonment, and other penalties as provided in the law (20.1) • Holders of Forest Resources Licenses and Persons having permits or licenses under Chapter 9 of this Law are liable to the Republic for acts committed in contravention of this Law by themselves, their Operators,

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		employees, agents, contractors, or subcontractors (§ 20.3). • Any Person harmed by a violation of any provision of this Law or when a holder violates a condition or requirement of an FMC or TSC may bring an action against any responsible Person except the Government and its employees, and in response a court may award civil damages and injunctive relief, as the court deems appropriate (§ 20.10). **Environmental Protection and Requirements:** • FDA is required to prepare (and revise from time to time) forest management guidelines and a code of harvest management practice in accord with internationally accepted practices and principles and these are enforceable: "No person shall conduct activities on public or private forest land in violation of the Guidelines or Code." (§ 8.1) • No person shall waste, expose to harm, damage long-term productivity or significantly harm the forest environment unless necessary to save human lives or prevent major injury to body or property or approved under an EIA (§ 8.1) • FDA shall develop national strategy to prevent deforestation and identify sites suitable for reforestation and afforestation (§ 8.2) and contracts for reforestation shall be monitored and evaluated by FDA • FDA shall promote planting of indigenous trees and as appropriate obligate industry to promote forest enrichment planting through best practices silvicultural treatment (§ 8.3) **Protected Forest Areas Network/Forest Conservation:** • FDA to establish a PFAN with conservation corridors and incorporating existing national forests to cover 30% of existing forest area (~ 1.5 million ha) and propose categories for forest protected areas based on the Protected Forest Areas Network Law (2003) (§ 9.1) • FDA is responsible for developing and updating a 5-year management plan for each National Forest, National Park, Nature Reserve, or Strict Nature Reserve (§ 9.8) • Restrictions for each type of protected area are provided (§ 9.10), including a ban on shifting cultivation in all National Forests, National Parks, Nature Reserves or proposed protected areas or areas designated as "high forest" in the NFMS (not defined) (§16.3)

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
	Community Rights Law (2009)	**Objective:** In accordance with the National Forest Reform Law, to empower communities to fully engage in the sustainable management of forests by creating a legal framework that defines and supports community rights in the management and use of forest resources. **Principles include** (§2.2)**:** • All forest resources on Community Forest Lands are owned by local communities. • All forest resources are regulated by the FDA (**except** those located in community forests and those that have been developed on private or deeded land through artificial regeneration). • Any decision, agreement, or activity affecting the status or use of community forest resources requires free, prior and informed consent of the community. • FDA shall perform duties in fair and equitable manner so all communities get equitable benefits from technical assistance and support in community forest management. • All forest resources must be regulated, protected, managed, and developed to sustain and optimize social, economic and environmental benefits; ensure fair and equitable benefit sharing; promote full management by the community; conserve natural resources, biodiversity, habitats and ecosystems and encourage active public participation. **Classification** (§2.3)**:** • Forest lands between 5,000 and 49,999 ha can be designated Community Forest Land, and shall be identified, validated and recommended to FDA for approval by a Community Forest Management Body (Art. 2.4). • All pre-existing legal deeds and certificates are still valid, and customary land is recognized. **Community Rights** (§3.1)**:** • Control the use, protection, management, and development of community forest resources in accordance with applicable regulations. • Enter into small-scale commercial contracts to harvest timber and NTFPs on community forest lands in accordance with regulations.

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		• Negotiate and enter into social contracts with concessionaires to engage in forestry activities on community forest lands. • Communities should receive at least 55% of all revenues generated from large-scale commercial contracts between communities, FDA, and 3d Parties for harvesting timber. • "Full right to management of forest resources having met management and technical specifications" based on regulations and guidelines of the FDA. **Community Responsibilities** (§3.2): • Management of community forest resources in and environmentally sustainable manner and according to the regulations and guidelines of the FDA. • Prepare Community Forest Management Plans in keeping with requirements and specifications in regulations and guidelines. • Ensure full community membership participation in, and transparency and accountability of community forestry management. • Report and account to FDA and other relevant GoL agencies on the effective and efficient management as prescribed by guidelines. • Ensure incomes and benefits contribute to community development as directed by Community Assembly and its Executive Committee. **Community Management Frameworks:** • Community Assemblies are the highest decision-making authority with respect to community forest management; the Executive Committee of the CA (2 members of legislature and 4 elected officials) oversee and supervise the community forestry management body, including policy and strategic direction; approving, monitoring and ensuring compliance with management plans; and investigating alleged misconduct and dispute resolutions (§4.1). • Community Forest Management Body (CFMB) is made up of 5 members to manage day-to-day activities of community forestry management (with at least one woman) appointed by the CA; functions and responsibilities include: adopting by-laws; making decisions on behalf of the community; developing and implementing a community forest management plan; considering, rendering decisions on, and negotiating terms for requests

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		for commercial and non-commercial forest use, access, and management; reporting to the CA; and establishing and administering a community forest fund (§4.2). **Duties and Powers of FDA** (Ch. 5): • Maintain a register of forestry governance and management entities and serve as repository of CFMPs and other related community forestry documents; • Assist communities to access technical and management support, including development of management structures and plans; • Facilitate establishment of CFMBs and provide minimum standards for drafting FMPs, forest rules, forest agreements, and other technical documents. • Provide guidance on forest zoning, restoration, extractive and non-extractive uses and setting and collecting user fees. **Commercial activities on Community Forest Lands (Ch. 6):** • Small-scale commercial use contracts for timber or NTFPs are allowed on community forest lands (CFLs) on a non-competitive basis. • Medium-scale commercial use contracts for areas 5,001-49,999 ha are allowed on CFLs on a non-competitive basis. • Large-scale commercial contracts are allowable but must be concluded in collaboration with FDA, guided by sustainable forest management standards, and done on a competitive basis in compliance with core regulations for commercial logging. • Prerequisites for all commercial contracts include the formation of a CFMB and an approved CFMP that envisages commercial activities and is being implemented. • Land rental and bids are paid according to regulations 107-07. **Enforcement (Ch. 7):** • Violations of forest rules or applicable by-laws are reportable to the local authority and subject to penalties according to the by-laws.

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		• Allegations against members of the CFMB of misconduct of misappropriation of funds shall be investigated by the Executive Committee with support of FDA. If mismanagement is found and not rectified in 90 days of receipt of the investigation report, the Executive Committee shall request FDA to take over management on an interim basis. • Criminal offenses are referred to the appropriate judicial authority. • Disputes between two or more communities or the FDA or third parties may be subject to customary dispute resolution processes or arbitration pursuant to Chapter 64 of the Civil Procedure Law.
	Protected Forest Areas Network Law (2003)	• Establishes the Forest Areas Protected Network and Conservation Corridors to cover at least 30% of existing forest area of Liberia (~1.5 million hectares) • FDA shall appoint an Advisory Committee of scientists, other professionals and non-governmental environmental organizations to assist in surveying and research for the establishment of the Network • FDA has the mandate to propose appropriate Protected Forest Area type based on categories and selection criteria, to be approved by the President and ratified by the legislature • FDA has mandate to prepare and publish and thereafter review and republish every 10 years a comprehensive management plan for each established National Park, Nature Reserve, and Strict Nature Reserve • Strict Nature Reserves are limited to management and research purposes only • Acts prohibited in National Parks, Nature Reserves and Game Reserves include: prospecting, hunting, farming, mining, fishing, timber or non-timber forest extraction. Only non-consumptive uses, management, tourism, recreation and research. • Acts prohibited in Communal Forests include: prospecting, mining, farming and commercial timber extraction. Other uses are regulated by the community with assistance of the FDA. • Acts prohibited in National Forests include: prospecting, class B or C mining and farming. Class A mineral rights and access for licensed and managed commercial forest product extraction are allowable unless local restrictions are imposed by FDA for sustainable management purposes. • Acts prohibited in Multiple Sustainable Use Reserves include: farming and commercial timber extraction. Other uses are regulated by FDA in cooperation with local authorities.

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	Forestry Core Regulations (2007)	**Regulation No. 101-07** on Public Participation in Promulgation of Regulations, Codes and Manuals: • Establishes transparent, participatory procedures that the FDA shall follow in adopting and amending regulations, codes and manuals and to ensure broad public access to these materials and their supporting documentation (§2). • The FDA shall maintain a list of persons known to be interested in forest management and make a reasonable effort to keep it updated to facilitate prompt and efficient communication between the FDA and stakeholders. • The FDA shall adopt and, as necessary, amend regulations to ensure the sustainable management of Liberia's forests and to implement the requirements and policies of the NFRL; this may be done jointly with other agencies (§21). • All persons and the FDA are bound by the requirements of properly promulgated regulations (enforceability). • Procedures for adopting and amending regulations include extensive public notice and comment regional public hearings, and review by the Board and the Forest Management Advisory Committee (§23). • Codes shall be adopted to regulate and give guidance to all persons in forest sector activities; manuals regulate and provide detailed guidance to the FDA staff (§31). • The FDA and all people are bound by the requirements of a properly promulgated Code; the FDA is bound by the requirements of a properly promulgated Manual (§31). • Conflicts between a Regulation and a Code are resolved in favor of the Regulation; between a Code and a Manual, in favor of a Code. • Procedural requirements for adoption of a Code include notice and comment and review by the Board and the Forest Management Advisory Committee (§34); for a Manual, if the FDA makes a determination (based on predetermined criteria) that there is a high degree of public interest or controversy related to the subject, they shall undertake public notice and comment (§37). • The public shall have access to complete and accurate copies (paper and electronic) of the laws, regulations, codes and manuals; FDA shall maintain a public area for viewing and a website of electronic copies, including supporting documentation. **Regulation 102-07** on Forest Land Use Planning:

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		• The purpose of forest land use planning is to establish the suitability of Forest Lands for sustainable land use allocations through a participatory process, based on local validation, that optimizes the benefits of forest land allocation to Liberian society as a whole; FDA shall conduct planning so as to balance economic development, benefit to forest-dependent communities and protection of the environment and natural resources (§21). • The FDA shall develop a National Forest Management Strategy (NFMS) that will be implementing by proposing and validating forest land use actions (§21). • The FDA shall collect and maintain a forest land use database on all available socio-economic, biological, and physical data pertaining to forests (§22). • NFMS classifies all forest land into one or more forest land use category ad includes forest land suitability maps (§42); amendments can be undertaken if new information becomes available that substantially alters one or more of the assumptions on which the Strategy is based, if it no longer reflects national land use priorities, or if inconsistent with the national development plan (§45). • Proposed forest land use actions must be based on suitability determinations made by the FDA and commit an area of forest to conservation, commercial, community or a combination of uses; each action should recommend one or more management tools for the area (§61); for each proposed action, FDA shall convene one or more local public meetings to assess local impacts and evaluate alternatives (§62). • If the area is committed to commercial use, it cannot include any part of a protected area or proposed protected area, deeded or tribal land or an area known to contain mineral deposits of substantial commercial value; it must contain sufficient timber volume to support the use; and if it includes customarily held forest land, a community forest development committee has granted prior, informed consent to the commercial use in writing (§61). • The FDA shall use best efforts to identify adverse environmental impacts that could result from a suitability determination or from implementation of any forest land use action and shall work with stakeholders to minimize or mitigate adverse impacts and coordinate with EPA (§63). **Regulation 104-07**: Regulation of Tender, Award and Administration of FMCs, TSCs and major FUPs: • Areas to be offered as FMCs or TSCs must have been identified in the NFMS as suitable for commercial use and validated locally; the FDA must also have found the area suitable for offering in a pre-feasibility study under §103 of the Public Procurement and Concessions Act involving forest inventories, biological studies and socio-economic assessment of the area (§21).

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		• Areas to be offered must exclude lands in Protected Areas Ordinarily Closed to Commercial Use or Proposed Protected Areas, unless FDA makes a written finding explaining why the Commercial Use is compatible with the protected status (§21). • FDA shall conduct preliminary public consultations before authorizing a Certificate of Concession (§22) and shall not proceed with offering a proposed FMC or TSC unless they have obtained free, prior and informed consent in writing from Community Forest Development Committees representing all Affected Communities identified to negotiate a social agreements (§22(j)). • The holder of an FMC or TSC shall conduct timber harvests in accordance with generally accepted silvicultural practices and in accordance with all regulations, codes and guidelines issued by FDA; in accordance with the terms and conditions of the contract and in a manner that promotes sustained development of forest resources and environmental protection for the common good of the people of Liberia (§74). **Regulation No. 105-07**: on Pre-felling Operations under Forest Resource Licenses • Certification for pre-felling from FDA requires: an executed social agreements; EIA and approval; and an approved forest management plan (§24). • Social agreements must govern rights and responsibilities of members of affected communities and of the Holder and its employees and contractors (§33); in the event a Community Forest Development Committee cannot in good faith agree to the terms of a social agreements, FDA shall use best efforts to resolve the outstanding differences; if unresolved, parties can request 3d party mediation and if that fails can appeal to a court of competent jurisdiction (§37). • Total annual financial benefit provided by the Holder for the benefit of all affected communities must equal or exceed US $1 per cubic meter of logs harvested annually under the license (§34). **Regulation No. 106-07** on Benefit sharing (FILL IN FROM RACHEL) **Regulation No. 109-07** on Penalties: • FDA shall publish an annual enforcement report and make it available freely on the Internet (§3); • FDA shall promptly refer violations of the NFRL and its regulations to the Ministry of Justice for enforcement and provide assistance in investigation and prosecutions of offenses (§22).

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		• FDA staff shall promptly notify the Managing Director of any offense committed under the NFRL or other laws relevant to forestry, or of the regulations, codes, guidelines or manuals issued by the FDA (§31). • FDA may impose administrative penalties rather than referring to MoJ if no physical injury occurred, no significant harm was causes to interests of a local community and the offense did not result in damage to forest resources or the environment exceeding 10,000 USD (§41).
	Regulations to the Community Rights Law (2011)	**Public participation and access to information:** • All information and documents related to community forestry are public unless explicitly restricted by law or regulation (§6). • Community Assemblies, their Executive Committees, and Community Forest Management Bodies shall operate with openness, inclusiveness and transparency; all residents above 18 can participate in activities; all meetings of the Assembly are open to civil society as observers (§7). **Enforcement:** • All breaches of this regulation is subject to sanctions by FDA and the criminal justice system; violations of forest management rules established by CFMBs are subject to sanctions by the Body and the criminal justice system (§8). • Aggrieved persons may challenge decisions of FDA or the CFMB in a court of competent jurisdiction (§9). **Criteria for designation of Authorized Forest Community:** • Objectives that must be sought for forest management include: sustainable use of forest resources to maintain the forest ecosystem; conservation of the environment and biodiversity; creation of cooperation and partnership with the State (§4). • FDA must (with advice and consent of community) undertake a socio-economic profile reconnaissance to inform the management planning process (§6); and FDA shall survey, demarcate and map community forest area (§8). **Community Forest Governance:**

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		• Community Assemblies (CAs) must be established and are the highest decision-making authority with respect to community forestry; CAs must be broadly representative including women, men, youths and all ethnic groups (Ch.3§1). • Functions, responsibilities and powers of CAs include, *inter alia*: appointing members of the CFMB; approving annual budgets of CFMB; receiving and reviewing reports of Executive and Standing Committees of the CA and the CFMB; ensuring sustainable management of the community forest resources; and ensuring incomes from community forestry support community development (Ch.3§2). • The Executive Committee of the CA: makes policies and provides strategic direction to the CFMB; approves budgets and community forest management plans; ensures transparency and accountability of community forest funds; ensures LEITI compliance; receives and reviews quarterly operational and monitoring reports; accounts to the CA; and uphold and protects community forest rights (§12). • Where Community Forestry Development Committees exist, they should be integrated into new institutional arrangements as far as possible (§15). • CA shall establish a 5-member Community Forest Management Body (CFMB) to manage day-to-day aspects of community forestry and shall set criteria for selection of members (at least one woman) (Ch.4§1). • CFMBs shall: implement policies of the CA and its Executive Committee; with involvement of CA, prepare and implement an Operational Handbook; with involvement of the community and approval of Executive Committee prepare and implement the Community Forest Agreement and Community Forest Management Plan and forestry rules/guidelines; represent the community in negotiations and all matters related to community forestry; report offenses; establish and administer a Community Forest Fund; develop annual budgets; and ensure good governance and that resources are managed in an environmentally sustainable manner (§7). • FDA shall ensure that community forest resources management occurs in a sustainable manner and assist in conserving, protecting and planting trees to ensure sustainability of forest resources and the environment for benefit of future generations (Ch. 5§3). • FDA shall establish standards for review an approval of community forest management plans and monitor and evaluate management programs (Ch. 6§2). • A Community Forest Management Plan shall be in effect throughout the duration of a Community Forest Agreement and reviewed every 5 years or more frequently if necessary; FDA may require modifications

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		consistent with prevailing conditions and requirements of laws, policies, plans, or to ensure sustainability of the forest (Ch.8). **Commercial Activities:** • Small-scale commercial activities (no more than 5,000 ha) are commercial activities undertaken by community members; no requirement for competitive processes under the PPCA; can involve timber and NTFPs; only for domestic market (Ch. 9, §1). • Medium-scale commercial activities are conducted by communities or by third party business agents pursuant to a contract; 5,000-49,999 ha and can involve both timber and NTFPs; if sources to a third party, the relevant provisions of the PPCA apply ad an agent shall not be permitted to operate more than 149,997 ha at a time and shall conform to requirements for an FMC under the NFRL and its regulations (Ch. 9, §2). • Large-scale commercial activities are undertaken by communities or sourced to third-party business agents; these take place on areas over 49,999 ha; if 3d party, PPCA applies and limited to 250,000 ha at a time. • An Authorized Forest Community may not use the community forest in the form of a concession; sell or transfer rights granted in a Community Forest Agreement; or harvest timber products and NTFPs I a manger that violates the terms and conditions of the approved Community Forest Management Plan (Ch.9, §4). • At least two bank accounts shall be established: one for operations of the community forestry management program and one for implementation of community development projects (Ch.10, §1); disbursements of funds are made as provided in an approved budget (§5). • Tax laws of general application apply to community forest commercial products (Ch.11, §2); fees include payment of land rental by 3d party medium-scale and large-scale producers, whereby 55% goes to the communities and 45% to the National Government (§4).
	Chainsaw Milling Regulation #115-11 (2012)	• In recognition of the need to formally regulate chain sawing as a means for maximizing the socio-economic benefits of chain sawing while addressing and mitigating its negative ecological and environmental impacts, this regulation establishes a structured process for authorization for chain saw milling (Pt. 2). • Chain saw permits are allowable in community forests or private or deeded forest land that is registered with the FDA for chain sawing (§2(a); §6(d)). • The area for the permit must be designated as suitable for commercial use by FDA and validated pursuant to the NFRL (§2(b)); the FDA shall not offer permits on areas greater than 1,000 ha (§2(c)).

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		• Permits are only allowable on areas unsuitable for sustainable forest management (§2(e)). • Permit holders must receive both permission from FDA and free, prior and informed consent of the community in community forest areas or private owner (or proof of title)(§2(b)). • Chain saws are required to be registered along with their areas of intended use (§6). • Prior to FDA permitting, the applicant must prepare a tree registration scheme to log all trees cut and include in the application the location, ownership, number of trees, species and diameter, and conduct a field investigation (§11). • All chain sawing must be in line with the Code of Forest Harvesting Practices for Chain Sawing Operations, including environmental protections (§12). • 30% of stumpage fees are to be collected and distributed to affected communities through the National Benefit Sharing Trust (§16).
	Regulation on the Commercial and Sustainable Extraction of Non-Timber Forest Products (NTFPs), Regulation No. 111-08	• Production/exploitation and utilization of NFTPs should be sustainable (both commercial and non-commercial). Forest use permit holders harvesting NTFPs within any community should provide compensation/ return some of the benefits to the community before lifting of the products to the market; • Forest Use Permit Holders must pay extraction fees to the Government for the harvesting/collection of NTFPs. • Any forest use permit holders harvesting NTFPs in any area where the product is naturally grown shall bring along (sic) a written agreement with the local communities; • Resident community members/producer groups may sustainably harvest NTFPs from their forest lands for use within the community, or for commercial purposes within the community as defined in the Community Rights Law. • Community-forest management bodies may levy fees on NTFP production by community members which will be credited to a Community Forestry Fund • NTFP fees are required to be paid for resource extraction, transportation and export (which requires a separate permit). • Certain NTFPs, including biomass-based products (e.g., charcoal) requires a Waybill for transportation including information on the name of the trader, where the product is harvested, amounts, destination and name of buyer and amount of harvesting fees paid to GoL and communities. • Processing requires a permit.

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		• Sustainable use of NTFPs at community level whether under a Forest Use Permit or by community members will fall under the purview of the Community Forestry Management Body.
Environment/ **Natural Resources**	National Environmental Policy (2002)	**Goal**: ensure long-term economic prosperity through sustainable social and economic development which enhances environmental quality and resource productivity to meets the requirements of the present generation without endangering the potential of future generations to meet their own needs. The policy seeks to, *inter alia*: • Maintain ecosystems and ecological processes essential for the functioning of the biosphere; • Ensure sound management of the natural resources and the environment; • Adequately protect human, flora, fauna, their biological communities and habitats against harmful impacts, and to preserve biological diversity; and • Integrate environmental considerations in sector and socio-economic planning at all levels; throughout the nation. Specific Policy Objectives include: • To use the Liberian environment in such a way that will be beneficial to the present and future generations. • To halt and reverse the current environmental degradation, manage the ecosystems in the biosphere for the maintenance of diverse biological diversity. • To encourage the participation of the civil society, NGOs, CBOs, and private sector in the proper management of the environment. • To foster communal management of the environment on common or customary land. • To enact or promulgate environmental legislation and regulatory measure, which will be complemented by social and economic incentives and institutional arrangements to influence positive environmental management. • To establish a resource inventory and environmental accounting for accurate monitoring of the state of the Liberian environment.

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		Key Principles include: • Liberia's economic development should be based on sustainable natural resource use and sound management; • The fundamental requirement for sustainable natural resource management is land security and resource tenure; • Sustainable natural resource and environmental development should dictate long-term food security strategies; • Enforcement of environmentally related laws should be prioritized; • Put in place an integrated and multi-sectoral systems approach to resource and environmental planning; • Regular monitoring, evaluation and assessment of the environment should be conducted and the results widely publicized; • Encourage effective involvement of women and youth in natural resource policy formulation, planning, decision making and program implementation, as an essential tool; • Use of incentives in addition to regulatory measures; • Decentralization of decision-making to the appropriate level of Government and civil society; • Sustainable harvesting of the natural resources and ecosystems. With respect to Forests, the following strategy measures are recommended: • Conduct a forest cover assessment to gather information on qualitative and quantitative data on the general status of the rainforest to derive proper management strategies; • Encourage lowland (swamp) farming, mechanize farming, introduce crop rotation methods and create farming zones. • Develop a comprehensive land-use planning strategy; • Review activities of mining concessions to set standard of operations that are internationally accepted and practiced under sustainable management policies; • Enact legislation that will maximize use of non-timber forest products on a sustained basis. • Promote the concept of local community forests nationwide; and

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		• Empower local communities to development their own forestry programs.

	Environmental Protection and Management Law (2002)	**Principles include (§4):**
		
		• Ensure the sustainable or wise use of natural resources in pursuance of social and economic development without undermining the ecosystem's renewal and re-supply process;
		• Ensure implementation of biodiversity conservation;
		• Ensure maximum participation by the people of Liberia in the management and decision making processes of the environmental and natural resources;
		• Ensure access to environmental information; and
		• Require prior environmental assessments for proposed projects that could adversely impact the environment.
		Environmental Impact Assessment (Pt. III):
		
		• An environmental impact assessment (EIA) license or permit is required prior to the commencement of all projects and activities specified in Annex I to this Law, including:
		  ○ Cultivating natural and semi-natural area not less than 50 ha;
		  ○ Large-scale monoculture
		  ○ Agricultural programs necessitating the resettlement of people
		  ○ Timber logging and processing
		  ○ Forest plantation and afforestation and introduction of new species
		  ○ Selective removal of a single species of commercial tree
		  ○ Construction and expansion/upgrading of roads
		  ○ Flood control works, hydroelectric and irrigation dams
		  ○ Mining and quarrying
		  ○ Decisions of policies and programs and legislative acts on environment and development
		  ○ Transportation master and development plans
		• EIA must be evaluated by the EPA and the relevant line Ministry (§10); if likely to have a significant impact, an Environmental Impact Statement (EIS) is required.
		• The project proponent must ensure public participation in the EIA process (§ 11 (2)); EPA is requires to consult with the public upon submission of an EIS and receive and incorporate comments; EPA may hold a public

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		hearing if 5 or more requests are received or if EPA determines the level of potential controversy warrants one (§18).
		• An EIS must incorporate, *inter alia:*
		  ○ A description of the potentially affected environment and direct, indirect, cumulative, short-term and long-term impacts;
		  ○ Identification and description of mitigation measures or measures to avoid/minimize impacts;
		  ○ Identification of gaps in knowledge and uncertainties and the stage at which irreversible or irretrievable impacts are likely to occur if implemented.
		• EIS must be shared with relevant Line Ministries and County Environment Officers (for further dissemination); Line Ministries are required to comment (§19).
		• After all comments are received, the EPA shall constitute an EIA Committee to review the EIS, including pertinent staff from the Line Ministry, representative of the proponent, and at least one person from the impacted area (§20).
		• EPA and the Line Ministry are to monitor all elements of mitigation measures and operation of projects to ensure their compliance with this and other applicable law (§24).
		Protection of Forest (§§77-78):
		• The EPA has the mandate to (in consultation with the relevant Line Ministry), issue guidelines and prescribe measures for the sustainable use, protection and management of all forests in Liberia; EPA shall work with relevant agencies to define and designate communal forests and establish guidelines for their management and use.
		• County Environment Committees with assistance from District Environment Committees shall ensure implementation of guidelines and measures.
		• Guidelines issues and measures prescribed shall account for, *inter alia*: forest land as a sink for greenhouse gases; protected forest areas; communal uses and management; set asides for biodiversity conservation.
		• The commercial or industrial exploitation of forest shall be carried out in accordance with the principle of sustainable use.
		• Forest use agreements shall incorporate measures for rehabilitation and restoration/reforestation with involvement of communities.

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		• County Environment Action Plans shall include provisions for tree plantations. **Conservation of Energy and Use of Renewable Sources (§81):** • EPA shall promote the use of renewable sources of energy, including economic incentives, and measures for conservation of non-renewables. **Protection of Biodiversity (Pt. VII):** • EPA shall issue guidelines and prescribe measures to conserve biodiversity, including national strategies, plans and programs, inventories, and codes of practice (§83). • In situ biological resources shall be protected, including measures for land use that are compatible with protection of biodiversity and selection and management of protected areas and selection and management of buffer zones near those areas (§84). **Land Use Planning (§ 87):** • EPA is mandated with working with Line Ministries to issue (and monitor implementation of) guidelines and environmental protection measures for land use planning and the District, County and national levels, including: an integrated land use policy; adoption of planning and management systems that integrate environmental components (landscape level); enhancement of land management through tenure reform. **Protection of the Ozone (§89):** • EPA shall issue guidelines and institute programs related to, *inter alia*: controlling practices leading to the degradation of the ozone layer and stratosphere and conservation of Liberian rainforests as sinks for greenhouse gases. **Monitoring and Enforcement:** • Any person may petition the EPA or bring an action before the Environmental Court to assert their right to a clean and healthy environment (§5). • EPA may bring criminal charges through the Ministry of Justice for violations of this Law; the court may provide injunctive relief and damages; decisions of the Court are appealable to the Supreme Court of Liberia (§5).

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		• EPA shall carry out periodic audits of activities or projects likely to impact the environment (§25). • Environmental Inspectors are granted broad powers to enter, inspect and make inquiries to ensure compliance with this Law (§95). **International Obligations (§99):** • EPA shall ensure the necessary measures are taken for implementation of multilateral environmental agreements to which Liberia is a party. **Access to Information:** • The EPA is charged with gathering, analyzing, and disseminating information on the environment and natural resources (§100). • EPA shall advise other line ministries and agencies on this matter and coordination the management of environmental information among ministries (§100). • Freedom of access to environmental information is guaranteed with certain limited exceptions (§101).

Mining	Mineral Policy of Liberia (2010)	• **Vision** includes:
		  ○ A "sustainable and well-governed mining sector that…is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities."
		  ○ A "vibrant, environmentally friendly and socially sustainable artisanal and small-scale mining sector"
		• Part 2: **Principles**:
		"Objectives" include:
		  ○ To "put in place a mechanism for the evaluation of competing land use options." Part 6 of the Policy elaborates that the GoL "shall" establish a framework for "evaluation and management of competing land use options with a view to maximizing sustainable development potential" for Liberians including identification and consultation with potentially affected communities
		  ○ To "eliminate adverse social conditions and environmental degradation due to mining activities"
		  ○ To ensure equitable distribution of benefits from mining activities. Part 11 elaborates, committing to ensure that communities adversely affected "derive regular and significant benefits" from those operations under a "predictable formula" that is not limited to revenue allocation.

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		○ To ensure consultation of all stakeholders. Part 12 elaborates, emphasizing the responsibility of the GoL for "developing and disseminating procedures to enhance effective consultation and participation." • Policy also commits to reinvesting resource rents into sustainable activities and to use mineral infrastructure to underpin growth in other sectors • Commits to developing a web-based mining cadaster information management system to enhance transparency of award and monitoring of mineral rights • Commits to harmonization of Minerals and Mining Law (2000) with PPCA, EPA and other relevant sectoral laws and to encouraging consultation among sectors on decision-making around the minerals sector • Part 7 stresses that sustainable natural resource use and sound management is critical and that the Ministry of Lands, Mines and Energy will work closely with the EPA to establish relevant principles and customized environmental protection guidelines for mineral exploration and exploitation. Plans for managing both social and environmental impacts "must be included" in EIA reports. • Proposes integrated Spatial Development Initiatives to integrate development across sectors (including agriculture and forestry) and promote infrastructure linkages and integration of national economic and development planning across those sectors. • Part 9 addresses the benefits and environmental impacts of the artisanal and small-scale mining (ASM) sector, promoting integration of the sector into rural development plans, capacity strengthening for the sector, and the creation of a transparent licensing regime to ensure mitigation of impacts and regulatory oversight of the sector.
	Minerals and Mining Law (2000)	• All minerals belong to the State and the exploration, development, mining and export are covered under this Law. • Holders of mineral rights shall acquire ownership and title of minerals they extract by mining pursuant to this Law. • Licensing requirements for prospecting, exploration, and operation of mines require licenses, the terms of which are set forth in the Act and regulations • Class A Exploration and Mining licenses require the development and approval of a Mineral Development Agreement, which become binding and enforceable • Chapter 8 provides that "each holder of a Mineral Right shall take reasonable preventive, corrective and restorative measures to limit pollution or contamination of or damage to streams, water bodies, dry land

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		surfaces and the atmosphere;" Sec. 8.3 requires that all holders shall engage in reforestation activities if responsible for large-scale felling of trees during exploration or mining. The Minister in charge of mining shall issue regulations for the further protection of the environment, setting forth operational and other requirements to ensure compliance with this Section. • Environmental impact assessment is required as a condition precedent of approval of all Class A and Class B mining license applications, and must include a mitigation and reclamation plan, with special attention to impacts on nearby communities. • An Environmental Management Plan must be concluded for all exploration, mining or other operations before commencement of activities; periodic environmental assessments by the Minister in charge of Mines in collaboration with the Operator are required. • Mineral rights shall not be granted in protected zones (though PAs are not mentioned, "grounds reserved for public purposes" are) (Ch. 10).
Agriculture	Food and Agriculture Policy and Strategy	**Objectives include**: • A revitalized and modernized food and agriculture sector that is contributing to shared, inclusive and sustainable economic growth and development of Liberia (Sec. 1.3.3) • Effective and efficient human and institutional capacities in the public and private sectors, civil society, and communities to plan, deliver services, invest and monitor performance in, among other things, natural resource sustainability (Sec. 1.3.4) **Principles include:** • Maximization of comparative advantages: the uplands will be utilized for tree crops • Sustainable development management: a high sensitivity to sustainable management of the country's natural resources, including water, land and forestry resources **Natural Resource Sustainability:** • Under the policy of "strengthened human and institutional capacities," Strategy 5 focuses on ensuring sustainable use and management of natural resources, which includes: o Inclusive, partner-based approaches for form and implement effective policies, laws and access rights

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		○ Promotion of establishment of forests for watershed protection, conservation of biodiversity and stabilization of the global climate ○ Supporting participatory EIA in agricultural and forestry concessions ○ Giving priority to tenure arrangements that adapt sustainable and inclusive land management practices ○ Promote sustainable cropping systems to conserve the natural resource base • Establishing an Environment Unit in the MOA to collaborate with the Environmental Protection Agency (EPA) and supporting the establishment of similar units in other agriculturally related institutions • Supporting the development of environmental legislations and guidelines for agricultural practice • Supporting measures to subject all sector policies and plans to Strategic Environmental Assessments (SEAs) and projects to Environmental Impact Assessments (EIAs) **Tree Crops:** • For rubber, palm oil, cocoa and coffee, the policy proposes increasing productivity and production, especially for smallholders and increasing smallholder integration into the production of tree crops as outgrowers. **Agriculture and Environment:** • Policy includes the establishment and enforcement of appropriate policy instruments to ensure environmental protection from agricultural and related land use activities including logging, grazing, mining, fishing, and land preparation. Strategies to achieve this include ○ Establishing an Environment Unit in the MoA to collaborate with EPA; ○ Supporting the development of environmental legislations and guidelines for agricultural practices and establishing appropriate measures for country-wide sensitization, awareness, and enforcement of the policy instruments; ○ Supporting and promoting actions for establishment of forests for protection of watersheds and wetlands; combating desertification; conserving biological diversity and contributing to the stabilization of global climate; and ○ Supporting measures to subject all sector policies and plans to Strategic Environmental Assessments (SEAs) and projects to Environmental Impact Assessments (EIAs).

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		• Policy includes development of a policy and strategy framework that supports the transition from shifting cultivation to sedentary farming in a manner that ensures sustainable natural resource utilization and a realization of the benefits and economic returns from it such as real productivity increases, environmental protection (reduction of land degradation), and social development (poverty alleviation and emergency relief).
		• Measures to achieve this include:
		  ○ Subsidizing the provision and use of critical inputs such as improved seeds and fertilizers;
		  ○ Sensitizing farmers and providing technical support to introduce and promote best sustainable practices for land use, particularly conservation agriculture, organic and integrated farming, and participatory management of forest resources including controlled logging; and
		  ○ Developing a comprehensive program to create awareness for sustainable natural resources management.
		
		Forestry:
		
		• The FAPS will complement and reinforce the National Forestry Policy towards the effective management and sustainability of Liberia's forest resources, including:
		  ○ Linking the sectors more closely;
		  ○ Ensuring that policy options to reduce emissions from deforestation and forest degradation and their associated benefits do not compromise economic and cultural values throughout the agricultural sector.
		Tenure:
		
		• Contributing to land reform measures that give farmers access to and security in the use of land
		• Advocating for, and supporting the establishment of a high level body to investigate the issues and make recommendations on land tenure that will accommodate the demands of commercial agriculture
		• Promoting land use policy (demarcating land for national reserve, agriculture, forestry, etc.)

Land	Land Rights Policy (2013)	**Principles include**: • GoL is responsible for administering and managing land for the public interest and recognizing and protecting land rights of communities, groups, families and individuals as equal to private land rights

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		Process: Reforms are proceeding in "clusters": land rights, land administration, and land use/management **Government and Public Land:** • All Government and Public Land is owned by the GoL in and used or managed on behalf of the people of Liberia • Government Land includes land used for buildings, projects or activities of Government, including Government Protected Areas (GPAs), which are conserved and managed for the benefit of all. GPAs cannot be sold, leased or granted as a concession; GPAs can only be converted to Private, Customary or Public Land according to legislation. Limited use rights may be granted on GPAs if consistent with the conservation and management of the land. • Public Land is land designated for future use; managed in the public interest; and not Government Land, owned by a community or used or managed in accordance with customary practices; or owned as Private Land. It may be leased, sold, granted as a concession or otherwise transferred. • Sales and long-term leases of Public and Government Land must be done through a public, competitive bidding process overseen by GoL. **Expropriation and Eminent Domain** • The GoL can acquire land through mutual agreement, eminent domain, or donation. Exercise of eminent domain requires "just and prompt" compensation to place them as closely as possible to the same position as before the expropriation; compensation calculated on basis of fair market value. • GoL may expropriate land for the security of the nation in the event of armed conflict; where public health or safety are endangered; or for other purposes beneficial to the public but for which no private entity has been willing to use its resources **Customary Land:**

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• Defined as land owned by a community and used or managed in accordance with customary practices and norms; this includes Customary Protected Areas, which can be established by GoL on request, or on initiative of Government in collaboration with community. • Rights to Customary Land, including ownership, should be protected equally to private land rights. • Communities should determine how their land is managed, used, and allocated within a framework of transparency, accountability, inclusiveness, and shared responsibility with the GoL. • National policy and laws should have minimal impact on customary practices and norms as is consistent with the Constitution, sound policy, shared responsibilities with GoL, and international legal obligations, including women's land rights. • Customary practices and norms do not conflict with land laws and should be integrated into the legal framework • Communities must establish themselves as legal entities with management institutions that are accountable and representative to gain formal tenure rights. • Customary land rights will be formalized by the issuance of a deed, bearing the name of the community and includes ownership of natural resources on the land, including forests and carbon credits. • Boundaries of customary land will be determined through active participation of the community and neighboring communities, including: elders, chiefs, youth, women, minorities, local authorities. • The GoL should provide resources/build capacity of communities to implement this policy and realize their rights. **Private Land:** • Private land is owned by an individual or private entity and rights are statutory; private land rights are limited to Liberian citizens, who must abide by all applicable policies and laws. • Private land may be acquired through: purchase from the GoL, and individual or entity; sale; lease; concession; gift; donation; will; upon marriage, divorce or death of a spouse; or any other lawful means • Private land may be acquired through sale of Customary Land only if the sale is fully representative and accountable to all community members; the sale occurs after the community has been self-defined, been issued a deed and established a legal entity • Foreign citizens may obtain leases for Private Land for a "reasonable length of time"

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• Private land may be subject to easements that are recognized in law, by the courts or in regulations (no mention of conservation easements)
	Draft Land Rights Act (2014)	**Purpose of Act:** to define and delineate different categories of land ownership and rights; ensure security of tenure; to provide equal access and protection to tenure rights, including Customary Land. **Definition of "ownership" (Art. 5):** • Land ownership includes rights to: possess, use, exclude and transfer, although absence of right to transfer does not restrict other rights or defeat ownership; Land may be held singly, jointly or collectively by a community and communal property or by GoL as public assets; Ownership of land does not extend to mineral resources on and under the land; ownership is limited to Liberian citizens, diplomatic mission and non-citizen missionaries, education or other "benevolent institutions"; Liberian business corporations/ entities are not entitled to own land • Other rights include: agreement of lease; easement; license; concession granted by GoL on Government or Public Land **Tenure categories (Art. 8):** (1) Public Land; (2) Government Land; (3) Customary Land; (4) Private Land; (5) Protected Area (may cut across or subsist within first four categories) **Proof of tenure/rights in land (Art. 9):** • Proof of ownership of Private Land is a deed, duly probated showing a proper chain of title from the original owner; • Proof of ownership of Government Land is "demonstrated existence on the land" of Government buildings, projects, etc. • Proof of ownership of Public Land is "competent evidence of its acquisition by the GoL by purchase, escheat, confiscation, gift or otherwise (and not Private or Customary Land). • Proof of ownership of Customary Land shall consist of "any competent evidence including oral testimony showing a verifiable longstanding relationship and/or ties that the communities claiming ownership…has had to

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		the land." Ownership can under no circumstances be denied for failure to produce documentary evidence of title. • Any rights in land constitute property as defined in the Constitution; GoL has duty to protect and enforce the protection of these rights (Art. 10). **Registration of rights (Art. 11):** • Except Customary Land, no title or interest in land is enforceable unless in writing and registered with the GoL. **Transparency and Accountability** • All transfers of land must be publicized. **Transfers/Acquisition of Land (art. 25):** • Customary Land may be acquired by/granted to a resident, but only up to 1 acre; no person shall purchase or hold Customary Land as Private Land after 99 years as of the effective date of this Act. • Adverse possession (possession by continuous occupation/use) requires continued occupancy of 20 years (10 years under color of title, or written instrument); this in inapplicable to Government, Public and Customary Land. **Customary Land (Pt. 3):** • Defined as: "Land acquired and owned by a Community in accordance with customary practices and norms based on long period of occupancy and/or use;" it is enforceable. • Ownership may be established by deed or by evidence that the land is considered Customary Land by common and long-standing understanding of community; has been used/possessed continuously by a community or some members for socio-cultural or economic purposes for over 50 years, as established by oral testimony of communities and their neighbors or by land-based customary evidence; communities have the right to self-define, but may not exclude any resident from membership or restrict their right to peaceful exercise of land rights (Art. 34) • No documentary evidence other than oral testimonies of community members and neighboring communities is necessary to establish ownership.

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• **Customary tenure rights** include: exclusion; possession and use of land; management and improvement of the land (including harvesting forest products) directly or through contracts with 3d parties; transfer some of land or use and possession through lease or other lawful means. This specifically includes the right to use and alienate all non-mineral resources, including forest resources and carbon credits. • Pre-existing concessions, permits, contracts and other documented licenses on Customary Land remain valid and enforceable provided that the community has the right to participate as owner of the Concessions Area in every scheduled review of the concession; any other extraction of mineral resources on Customary Land shall be upon the free, prior and informed consent of the community and upon a lease agreement negotiated in good faith • Private land rights located within or surrounded by Customary Land is not extinguished by recognition of that Land if ownership is evidence by a valid deed (Art. 46). • Communities must create a **Community Land Development and Management Association (CLDMA)**, develop and adopt by-laws and elect a governing body to gain legal personality; the governing body is elected and is accountable to the whole community and should be representative of men, women, youth, and chiefs/traditional leaders who serve pro bono. GoL can regulate the minimum requirements for governance and management of CLDMAs (Art. 36) and they shall be integrated into official administration of the community in keeping witt the Decentralization Policy. • **Governance:** community Members (usually meeting as Council) are the highest decision-making authority/have power to: amend and adopt the CLDMA by-laws; approve appointment of the CLDMA governing board; review and decide on complaints regarding allocation or use of land; determine whether to approve leases/contracts for over 50 acres of land; decide when to sell land; investigate all complaints involving the CLDMA. • GoL shall undertake a national survey of Customary Land within 36 months after the effective date of this Law; the absence of a confirmatory survey shall not negate the existence or enforceability of community's ownership, but shall be a condition precedent for the transfer of any contested pieces of land (although communities can also settle on their own through a Stipulation of Boundaries); resolution of disputes is through customary law, appealable first to the Commission and then the courts (Art. 37). • **Agricultural activities** are permitted on as much Customary Land as appropriate for and dedicated to that purpose; leases can be granted for large tracts of land for medium- or large-scale agriculture according to the by-laws

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• **Protected Areas** can be established on Customary Land at the instance of the community or upon the request of the GoL following good-faith negotiations and accepted by 2/3 vote of the community membership present at a meeting duly convened, otherwise it constitutes a taking and is subject to requirements for eminent domain. PAs on Customary Land remain under community ownership and management, but cannot then be leased, sold or granted as a concession. Limited use for livelihoods can be granted if consistent with the land's conservation and management. GoL shall provide reasonable technical support and resources for the protection and management of these PAs (Art 42). • **Forest Lands** have timber as primary cover and are not located on residential areas, agricultural areas, or protected areas (Art. 43). Communities may use Forest Lands and harvest all timber and NTFPs (directly or indirectly) in keeping with the provisions of the Community Rights Law and the National Forest Reform Law. • **Mining/industrial areas** may be designated and communities can obtain licenses pursuant to the Mines and Minerals Act and other applicable legislation. • **Concessions** on Customary Land are allowable under such terms and conditions as determined by the CLDMA for lands under 50 acres and by vote of the Community Members for lands larger than 50 acres (Art. 49). Total leases shall not exceed 50 years, include a payment of rent and equitable benefits to the community. Concessions and leases can only occur after the CLDMA is established and the lease/concession is in keeping with its by-laws and Constitution. **Government and Public Land:** • Considered public assets or resources held in trust by GoL; • Acquiring Government or Public Land through eminent domain is allowable, but every effort should be made to obtain the land first through lease, and if not then by mutual agreement that provides for just and timely compensation in accordance with fair market value (Art. 54). • Sale and leases of Government and Public Land must be through a public, competitive bidding process overseen by the GoL, with notice to all potentially affected stakeholders and allowance for comments on the proposal.
	Public Lands Law (1972)	

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
Energy	National Energy Policy (2009)	**Objective:** To ensure universal access to modern energy services in an affordable, sustainable, and environmentally friendly manner in order to foster the economic, political and social development of Liberia. **Policy priorities include:** • Electricity sector reform • Petroleum sector reform • Rural and renewable energy development • Institutional and regulatory framework development **Rural and renewable energy development policy statements include:** • Facilitate and accelerate the economic transformation of rural Liberia by establishing a semi-autonomous agency dedicated to the commercial development and supply of modern energy services to rural areas with an emphasis on locally available renewable resources; • Support the development of all economically viable, socially acceptable and environmentally friendly rural energy projects regardless of financial viability; • Ensure that the utilization of biomass and other renewable resources for energy does not contribute to deforestation or food insecurity and to adopt appropriate environmental and agricultural support strategies, such as tree replanting programs.
Development	Liberia Vision 2030 and Agenda for Transformation	
Finance	Public Finance Management Act (2009)	

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
	Public Finance Management Regulations (2009)	
	Public Procurement and Concessions Act (2010, as amended)	• Establishes the Public Procurement and Concessions Commission (Commission) and regulates all forms of public procurement and concessions in order to, *inter alia*, promote integrity, fairness, accountability and public confidence in the procurement process and achieve transparency in the procedures, processes and decisions related to procurement of concessions. • The Commission is mandated with, *inter alia*: monitoring compliance with this Act; developing regulations; formulating policy and preparing standards for concession processes and public procurement; making information public and maintaining an internet-accessible database of all relevant information on procurements and concessions; investigating misconduct; reviewing complaints; and developing certification and qualifications. • The Commissioners and Executive Director have the authority to compel any information related to a procurement or concession proceeding or contract for the purposes of ensuring compliance with this Act. • The Commission shall have a 5-person Complaints, Appeals and Review Panel, appointed by the President, to hear and make determinations on complaints and to advise the Commission; the Panel has the legal authority to compel evidence and testimony (Art. 11). **Concession Procedural Requirements:** • Each Concession Entity (including FDA) must constitute a Concession Committee (Art. 77), which is responsible for, *inter alia*: obtaining a Certificate of Concession from the Ministry of Planning and Economic Affairs (Art. 88) and preparing a Concession Procurement Plan (Art. 79). • For each Concession proposed to be awarded, an Inter-Ministerial Concessions Committee shall be established, which shall include the Chair of the Commission; the Ministers of Justice, Finance, Labor, Planning and Economic Affairs, Internal Affairs and 2 additional Ministers representing collective interests of sectors connected to the concession (appointed by the President) and the head of the Concession Entity (barring conflict of interest) (Arts. 81-83).

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		• All proposed concessions are subject to stakeholder consultations (Arts. 90-91) and concessions entities are required to maintain documentation in relation to the process and submit to the Commission (Art. 92). • International competitive bidding for a concession is required when: the project requires international expertise; the technology required is not available in Liberia; the project requires capital not ordinarily available in Liberia; or technical specifications (compatible with national requirements) are based on international standards (Art. 97). • Minimum contents of evaluation criteria for all concessions include impact on the environment and compliance with environmental laws and regulations, and expected effects on communities (Art. 113(2)(h) and (i)).
Cross-cutting	Constitution of the Republic of Liberia (1986)	**Article 5**: The Republic shall…encourage all citizens to participate in government. **Article 7**: The Republic shall…manage the national economy and the natural resources of Liberia in such manner as shall ensure the maximum feasible participation of Liberian citizens under conditions of equality as to advance the general welfare of the Liberian people and the economic development of Liberia. **Article 11**: All persons have the right to possess and protect property. **Article 15:** there shall be no limitation on the public right to be informed about the Government and its functionaries. **Article 22**: Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic; Private property rights, however, shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic and be used by and for the entire Republic.

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
	Freedom of Information Act (2010)	**Right to Access to Information:** • Everyone has a right of access to information generated, received and or held by public bodies, subject only to such limitations as are necessary and narrowly established for reason of an equally or more compelling public interest; this includes both (1) a right to request and receive information, and (2) an obligation on the part of public bodies and officials to disseminate essential information (§1.4). • The right of access to information applies to private entities that receive public resources and benefits, engage in public functions, and or provide public services, particularly in respect of information relating to the public resources, benefits, functions or services (§1.6). • Save for the Constitution, this Act is the primary law governing access to information in Liberia and prevails over other inconsistent statutes (§1.7). **Publication of Information (§ 2.0):** • Every public authority or body shall establish, maintain, and regularly update a widely accessible and user-friendly publication scheme for automatic provision of detailed information regarding its core functions, nature of its activities and operations, and the information it possesses. **Requests for Information (§3.0):** • All public information held by public bodies and those held by private entities in respect of public funding received or public services provided shall be accessible, and may be inspected, requested, provided, reproduced and retained as provided in this Act; no reason must be given for a request for information; every entity to which this Act applies must appoint at least one person/staff to receive and process these requests within 30 days. **Exemptions (§4.0)**: • Exemptions must be justified and may be made for information pertaining to: national security, defense or international relations; an active criminal investigation; trade secrets; personal information; or information that would be privileged under a legal proceeding. **Oversight (§5):** • The implementation of this Act is overseen by an Independent Information Commissioner and a Technical Secretariat; the Commissioner is appointed by the President with the advice and consent of the Liberian Senate. • The Commissioner has the authority to hear and decide complaints and mediate disputes; compel witnesses and evidence; review information held by public bodies and covered private entities; investigate, monitor and

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		promote compliance with this Act; order release of information not exempted; train and build capacity for implementation of this Act; evaluate existing laws and regulations and make recommendations for reform and harmonization. **Appeals (§6) and Sanctions (§7):** • There is a right to appeal a denial of information to the entity, subject to an internal review; once completed, further complaints can be made to the Commissioner and an appeal from the Commissioner must be made to the courts. • Fines and sanctions (including dismissal from office) are provided for violations; criminal penalties apply to willful destruction of records.
	LEITI Act (2009)	
	Draft Local Government Act (2013)	
	National Gender Policy (2009)	
International Agreements	United Nations Convention on Biological Diversity	Liberia is a signatory to the Convention on Biological Diversity (CBD). The three objectives of the CBD are: • The conservation of biological diversity; • The sustainable use of its components; and • The fair and equitable sharing of benefits arising from the utilization of genetic resources. Governments are required to develop a national biodiversity strategy and action plan (NBSAP), and to integrate these into the broader national plans for environment and development. EPA is the focal point for the CBD in Liberia.

Sector	Policy/Legal Instrument	REDD+ Relevant Provisions
		Liberia's NBSAP was completed in 2004 with an overall goal of sustainable use of Liberia's biodiversity to meet the needs of present and future generations. It contains a Vision Statement, guiding principles, and goals and objectives, as well as Actions for biodiversity conservation, sustainable use, and benefit sharing. The **vision statement** of the National Biodiversity Strategy and Action Plan (NBSAP) is, "to have a society that lives in harmony with its natural environment, balances livelihood and conservation of biological resources and promotes equitable sharing of benefits arising from the sustainable use of genetic resources as an integral part of national socio-economic development." **Guiding Principles** include: • Economic development must be based on sustainable use and sound management of renewable and non-renewable resources; • Regular assessment, monitoring and evaluation of biological diversity should be conducted and results widely publicized; • An integrated systems approach to biological resources and multi-sectoral planning should be put in place • Ecosystem approach should be seen as critical to comprehensive and effective conservation and sustainable use of biological diversity; • Sustainable use of biological diversity requires appropriate policies and legislations and their enforcement requires adequate institutional capacity and human resources. **Specific Goals** include: • To take appropriate measures to protect critical ecosystems against harmful effects or destructive practices for conservation of biological diversity; • To commit the people to the sound and sustainable use of biological diversity to bring about socio-economic development; • To promote rational utilization and conservation of biological diversity.