



The Emergent Nature of National REDD+ Design: Lessons from Kenya

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Abstract

Reducing Emissions from Deforestation and Forest Degradation, conserving and enhancing forest carbon stocks and sustainably managing forests (REDD+) is an important pillar of the post 2012 international climate change regime. However, since REDD+ is a highly contextual concept, national design and implementation strategies are taking different forms and approaches. Taking Kenya as a case, this study examined the influence of legacy forest governance on national REDD+ design by developing and using the Forest Governance – REDD+ Analytical Framework. The resultant findings show that legacy forest governance regimes and issues have had a significant influence on national REDD+ design, with the focus being on solving the existing forest governance issues before adopting alternative options altogether. This study thus contributes to the growing body of knowledge on the emerging nature of national REDD+ design, and the subsequent influence of legacy forest governance on its design.

Keywords: REDD+ design, Forest Governance, Mitigation, Post 2012 Climate Regime, Climate Change.

Introduction

Climate change is undoubtedly one of the major human development challenges in the 21st century, hence the significance of climate change mitigation through the reduction of greenhouse gas emissions to the Earth's atmosphere. Major efforts to combat dangerous climate change are being undertaken under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC). One of the mechanisms developed to reduce greenhouse gas emissions is the Reducing Emissions from Deforestation and Degradation, conserving and enhancing forest carbon stocks and sustainably managing forests (REDD+). Furthermore, the significance of REDD+ has been underscored by the incentives it creates for developing countries to protect and manage their forest resources in a more sustainable manner¹.

The concept of REDD+ was initiated by Papua New Guinea, Costa Rica and 8 other countries, and subsequently backed by other developed countries, during the 15th Conference of Parties to the UNFCCC (COP15) in Montreal, Canada, in 2005², initially as Reducing Emissions from Deforestation and Forest Degradation (REDD). The REDD+ mechanism has since gained traction in the global arena, as it aligns political and scientific interests. On the one hand, climate scientists estimate the significance of this form of greenhouse gas emission reduction, since forest loss and degradation accounts for about 17-20% of global emissions, while economists, on the other hand, believe that REDD+ offers a relatively low cost option for reducing global carbon emissions³. The Warsaw Framework on REDD+,

finalised at COP19 in Warsaw, Poland, has been hailed as a milestone in the operationalisation of the mechanism. In essence, this set the ball rolling as regards climate finance flows, by encouraging REDD+ countries to establish designated REDD+ focal points or national entities to handle the subsequent finance flows⁴. This thus places REDD+ as an important pillar of the post-2012 international climate regime.

There have been strong indications that land tenure and carbon rights will pose significant challenges to the implementation of REDD+. However, literature has mostly focused on the impact of land tenure systems on REDD+ policies and measures, at the expense of how they would influence REDD+ design and implementation⁵. Furthermore, as much as current literature on REDD+ suggests the need to focus on governance issues in REDD+, there is a dearth of literature on governance improvements of REDD+ at the country level^{1,6}. REDD+ is not an entirely new concept per se, since it significantly leverages on forest governance. Since REDD+ is a recent development, exploring how previous, stand-alone forest governance regimes at the national level have influenced the development of REDD+ offers a critical lens into how national REDD+ design and implementation can be improved. Therefore, using legacy forest governance as a benchmark for REDD+ governance is an innovative and insightful way of assessing the improvements – or lack thereof – in REDD+ governance at the country level.

Thus, it is in this context that this research aims to contribute to the body of literature on how the legacy of forest governance has influenced national REDD+ design and implementation at

the national level, thus unearthing the improvements – or lack thereof – in REDD+ governance. This paper explored the impact of legacy forest governance on national REDD+ design in Kenya, adopting a holistic overview of REDD+ governance, a departure from the usual issue-based overview of REDD+ research. The wholesome review of national REDD+ design provided an important avenue in which to view the national REDD+ design process in an integrated manner.

This paper proceeds as follows: section 2 outlines the key concepts and methodologies used in this research, section 3 gives an overview of the forest governance in Kenya, section 4 analyses the influence of legacy forest governance on national REDD+ design, section 5 summarises the discussions, chapter 6 concludes this research and makes recommendations.

Methodology

Data and Materials: The main data and information for this research was derived from publicly available documents on REDD+ and the forestry sector in Kenya, from laws and policies, to reports from workshops focusing on REDD+ in Kenya. Legal analysis of the laws and policies governing REDD+, or aspects of REDD+, was also undertaken. The combination of academic literature review, content analysis and legal analysis constituted the deductive research approach adopted in analyzing documentation relevant to REDD+ in Kenya.

Observations from four national and local REDD+ workshops and conferences attended in Kenya, between the years 2013 to 2014, were also considered, analysed and integrated into this research. Personal, semi-structured interviews with key stakeholders in the REDD+ sector in Kenya were also conducted and included in this research. However the key informants for the interviews requested anonymity, given the sensitive nature of land and forest governance in Kenya.

Legacy Forest Governance: The concept of legacy forest governance as used in this research refers to the national laws, policies and institutions that deal with forestry as a stand-alone sector. For instance, the Forest Act, the overarching legislation for the forestry sector in Kenya, can be considered as legacy forest governance legislation. The adoption of this concept is premised on the understanding of REDD+ as a cross-sectoral, cross-cutting issue, with forestry as the key sector encapsulated by REDD+. Thus, legacy forest governance is just but one aspect of the broader REDD+ mechanism, albeit the central one.

REDD+ as a boundary object: REDD+ was considered as a boundary object in this research viewed as ‘plastic, open to interpretation by different actors and valuable to each for different’³. Generally, a boundary object refers to concepts that are loosely structured so as to accommodate different perspectives, but that have sufficient minimum content to bring together the different actors / perspectives together^{3,7}. This

concept has its roots in sociology, and it can be considered as a collection of ‘bare minimum’ objectives that bring together different diverse actors.

The concept of the boundary object has had different applications in different study areas. However, the major premise underlying the general use of boundary objects is that ‘the creation and management [of boundary objects] is key in developing and maintaining coherence across intersecting worlds’⁷. Therefore, the concept of the boundary object is a suitable conceptualization of REDD+, since it has different actors who each have different objectives, but share some basic objectives to bring them together in a REDD+ project or programme.

Analytical Framework: This research explored the influence of legacy forest governance on national REDD+ design, which were examined and interrogated under the Earth System Governance (ESG) concept^{8,9}. Earth System Governance (ESG) was developed by the Earth System Governance Project as a framework for analysing five key interrelated governance research dimensions at the local and international levels: Architecture, Agency of and beyond the state, Adaptiveness, Accountability and legitimacy, and Allocation and access⁸. The concept of governance espoused by ESG refers to ‘forms of steering that are less hierarchical than traditional government policy-making rather decentralised, open to self-organisation, and inclusive of non-state actors that range from industry and non-governmental organisations to scientists, indigenous communities, city governments and international organisations’⁸. This is clearly representative of the REDD+ governance landscape, with its numerous, varied stakeholders, such as national governments, private developers, civil society organisations as well as indigenous groups.

The central innovation of this research was the inclusion of a temporal dimension to the assessment of how legacy forest governance has influenced national REDD+ design. This inclusion facilitated the analysis of the evolution of the various aspects of REDD+ governance, as mapped onto the ESG framework. The development of the national REDD+ programme was examined with reference to legacy forest governance, which has been in place for a long time. This perspective along such a timescale accords the possibility of effectively assessing the influence of legacy forest governance on the emergent national REDD+ regime. In other words, the temporal dimension provides a ‘time perspective’ on the emergent influence of forest governance on national REDD+ design. This is a departure from the reductionist approach of analysing singular and specific aspects of REDD+ governance. This emergent framework was henceforth termed as the Forest Governance – REDD+ Analytical Framework, and is depicted in the Figure-1.

The adoption and use of the Legacy Forest Governance – REDD+ Analytical framework in this research was informed by the emergence of REDD+ as having different facets, actors and levels of governance¹. Furthermore, the use of the ESG analytical framework was underscored by the main objective of the ESG research methodology, which is anchored on the notion that ‘new perspectives and research are needed to understand the complex relation between global transformations of social and natural systems, including accelerating economic integration, globalization in all its forms, internationalization of policy processes, and the multi-scale consequences of ecological transformations’⁹.

REDD+ governance falls squarely on the bull’s eye of the ESG concept, since the objectives of REDD+ clearly map onto the ESG research framework: management of the natural ecosystem – through the avoidance and reduction of deforestation and forest degradation, designing and impacting social systems through improved livelihoods in the quest for sustainable development, and formulation of policy and policy processes to support the design and implementation of REDD+ projects to meet these objectives. Using the ESG analytical lens thus provides an innovative way of having a comprehensive overview of the REDD+ governance landscape at the country level. REDD+ governance issues are also multi-scale, as global norms are set mainly under the auspices of the UNFCCC, while countries have the mandate and responsibility to carry out nation-specific REDD+ readiness processes. REDD+ project implementation usually occurs at the local level, with numerous, varying REDD+ projects being undertaken in a country.

ESG framework has been used in mapping REDD+ governance¹. This was through the mapping of the REDD+ governance and implementation issues onto the five interdependent analytical problems of the ESG framework: architecture of earth system governance, agency beyond the state, adaptiveness of governance mechanisms, accountability and legitimacy, and allocation in earth system governance⁹. This research is thus an advancement of the approach put forth by Corbera and Schroeder (2011), since it provides a specific country-level case study. That analysis revealed that National REDD+ design evolves along the ESG governance aspects of allocation, adaptiveness of governance mechanisms, accountability and legitimacy, and agency beyond the State¹.

Subsequently, legacy forest governance issues were then mapped onto the ESG framework adapted for REDD+ governance, thus providing perspectives of how legacy forest governance issues have influenced REDD+ design in Kenya.

Forest Sector in Kenya: Even though it accounts for a small percentage of total land area (1.7%), Kenya’s forestry sector is a crucial part of the country’s ecosystem, since about 80% of the country is considered Arid and Semi-Arid¹⁰. Furthermore, the forest sector provides crucial ecosystem and environmental services, economic development, and water availability, as well

as contributing to significant greenhouse gas mitigation¹¹. The significance of the forest cover has been underscored by the Constitution of Kenya, which established a goal for a minimum tree cover of 10%. Kenya has 5.6% tree cover, and has made slight gains in reducing deforestation, from 0.35% in 2005 to 0.31% in 2010¹².

Results and Discussion

Influence of Legacy Forest Governance on National REDD+ Design in Kenya: Architecture of Forest Governance Regimes in Kenya: In order to put the context of the emerging REDD+ governance architecture into perspective, it is imperative to understand the evolving nature of forest governance in the country. Architecture here refers to governance meta-level, that is, institutions, organizations, principles, norms, mechanisms and decision-making^{8,9}.

Law and Policy Making: The government of Kenya is tasked with coming up with the relevant laws and policies governing land and forest use, as espoused in the Constitution of Kenya. In fulfillment of this obligation, the government has taken lead in the formulation of previous and current forest and land laws and policies, such as the Land Act of 2012, draft Forest Bill 2014 and the draft REDD+ Law and Policy 2013. This has usually been undertaken by the relevant ministries taking lead in the development of the laws and policies, always through a consultative process, and through the legislative arm of government, the Parliament. Currently, the Ministry of Environment, Water and Natural Resources has the mandate to address issues dealing with the forest sector. However, there have been concerns from stakeholders, such as indigenous peoples living in forests, that their views have always been neglected, hence lack of recognition of their rights in the legal and policy frameworks on land and forest governance. As well, the lack of an equitable benefit-sharing framework in the draft Forest Bill 2014 is a reflection of these concerns, mainly due to disagreements about the appropriate benefit-sharing formula (Interview with CFA member, August 20, 2013).

This has subsequently created a path dependence of power asymmetry, which has thus brought a cloud of doubt on the legitimacy of the government’s actions in advancing suitable land and forest laws and policies reflecting prevailing stakeholders’ opinions. The previous land and governance conflicts, usually pitting the government against indigenous communities, is testament to the inherent challenges of policy and law making, as well as implementation, regarding land and forest governance.

Vertical integration of the national legal and policy framework in governing REDD+ in Kenya with international laws, treaties and conventions, already ratified in Kenya, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biodiversity (CBD), the Convention to Combat Desertification, and others, have been

applied in the design of REDD+ in Kenya¹⁴. Thus, the overarching international guidelines on REDD+ have been adopted, albeit within a national context.

Participation: The decision-making procedures employed in land and forest governance in Kenya have been participatory in nature, underpinned by the political principle of public participation¹⁵. This has mainly been the case when conflicts arise; a clear example is the reforestation of the Mau Forest Complex project. The decision to prevent further degradation of the Mau Forest Complex was undertaken by the government of Kenya, which then attracted foreign investment to actualize the project. The implementation of the project was to follow recommendations of the Report of the Prime Minister's Task Force on the Conservation of the Mau Forest Complex¹⁶. This task force comprised members from the government, private sector, civil society, international organisations as well as the local communities, among others. However, the concept of Participatory Forest Management (PFM) has not been operationalised and ambiguity still persists¹⁷, thus posing a challenge to effective forest governance.

As regards REDD+, a similar scenario is playing out. In recognition of the legacy of conflicts between the government of Kenya and indigenous peoples, the first stage of REDD+ preparation in Kenya involved conducting a Strategic Environmental and Social Assessment (SESA), under the World Bank's Forest Carbon Partnership Facility (FCPF)¹⁸. The main agenda of the SESA was to "bring out issues and identify solutions in a consultative manner and through a practical process of engagement for stakeholders"¹⁹. In this case, the national REDD+ design process sought to address persistent, unresolved issues that have been plaguing the legacy forest governance regime.

Stakeholder Conflicts: Conflicts between government and indigenous people in Kenya, as regards land and forest governance, have been recurrent, and have increased since Kenya gained independence in 1963²⁰. This has necessitated the need to address any such conflicts that may arise in the implementation of REDD+ projects in Kenya. To this end, the Free, Prior and Informed Consent (FPIC) is emerging as a principle of choice to address this issue, as it is being integrated into national REDD+ design in Kenya. FPIC is a rights-based principle that anchors the inherent rights of indigenous people in the case of development projects affecting them, a manifestation of inherent rights of indigenous people¹⁴. The choice of FPIC in national REDD+ preparedness in Kenya has been buttressed by the recognition and use of the principle by international organisations and conventions, as well as States²¹. Thus, the National REDD+ Secretariat in Kenya has expressed its commitment to establish a proper FPIC framework for REDD+¹⁴, with the FCPF using the principle extensively. This is a critical aspect of REDD+ architecture in Kenya, since the indigenous communities have to fully embrace the REDD+

projects for them to be effective.

Conflicts between CFA members and private investors running REDD+ projects have been prevalent (Interview with forest governance expert, August 08, 2013). The major issue under contention is the sharing of carbon rights between the CFAs and the private sector, with a number of CFAs lamenting that they have signed up contacts with private foreign investors whereby CFAs realize later that the contracts they signed do not reflect their aspirations and expectations, mainly due to information asymmetry between the CFAs and the private investors (Interview with CFA members, August 14, 2013, August 21, 2013).

Agency of and Beyond the State: Non-state actors (NSA) are playing an increasing role in governance, thus making the ESG analytical theme of agency of and beyond the state quite powerful and insightful⁸⁻⁹. Historical and contemporary forest governance in Kenya has been marked by an increasing number and role of actors aside from the State. The main actors in forest governance in Kenya have been the State, the private sector, international actors, local communities through Community Forest Associations (CFAs), indigenous people and individuals. This multi-stakeholder approach is being extrapolated into national REDD+ design, where a multi-stakeholder Thematic Working Group (TWG) is taking lead in the management of REDD+ preparations²². The TWG's main role is to play an advisory role to the National REDD+ Steering Committee, which is the top body responsible for REDD+ management in the country¹⁸. The role of the different agents in REDD+ is quite important, and this has been recognised in Kenya's REDD+ preparations, through the design of a stakeholder Consultation and Participation (CandP) plan, that was implemented between November 2009 and May 2010¹⁸. Currently, the different actors in REDD+, apart from the State, are: multinational institutions (such as the World Bank), the private sector (such as Wildlife Works), indigenous communities (where REDD+ projects will be conducted), UN Agencies (such as UNEP, FAO and UNDP who make up UN REDD and provide technical support), bilateral partners, and non-governmental organisations.

The different agents in REDD+ design play different roles, with the State overseeing the overall management of REDD+ preparation, the multilateral partners such as the World Bank providing the financing, and the UN agencies providing administrative support. Civil society organisations are involved in making certain that there is transparency and accountability in the national design of REDD+ in Kenya (Personal observation at REDD+ workshop, August 14, 2013, August 21, 2013). Thus, agency of and beyond the State in Kenya is a key feature of REDD+ implementation in Kenya.

Adaptiveness of the national REDD+ regime: Adaptiveness in the ESG context is used to describe changes made by groups in response to challenges created through environmental change⁹. Forest governance in Kenya has been adaptive, if its history is

anything to go by. Forest governance in Kenya is closely coupled with administrative changes²³, of which Kenya has seen a fair share, from gaining independence in 1963, to the revisions of the Forest law and policy. The main trend has been towards decentralisation of forest governance, with the first major attempt at this undertaken in 1983, when the central government devolved forest governance to the provincial, district and division levels, through the Forest Department²³. The authors further note that the lack of subsequent decentralisation of financial resources during the 1983 reforms led to an increase in deforestation and forest degradation, mainly because the Forest Department adopted an authoritarian approach to forest management, thus undermining the contribution and benefits of other stakeholders to forest management²³.

The other major decentralisation effort is the current realignment of the Forest Bill with the Constitution of Kenya promulgated in 2010. This draft bill has a significant focus on decentralisation of forest governance, in tandem with the decentralisation of the overall structure of governance in Kenya, from a central government to a County government system. Subsequently, the draft Forest Bill has to adapt to fit with related laws which have a significant impact and complementarity to forest governance, such as the Land Act 2012.

Since REDD+ has been termed as a boundary object, the ESG analytical theme of adaptiveness becomes an appropriate tool to examine how the emerging REDD+ design is suited to adaptiveness¹. But perhaps the most significant REDD+ activity that underscores the adaptiveness of REDD+ is the requirement for each participating country to develop a REDD+ Readiness Preparation Proposal (R-PP), given the different national contexts of these countries. Kenya's R-PP underscores this need, by noting that "the development of the Readiness Preparation Proposal (R-PP) has to build in flexibility and take into account the evolving nature of a REDD+ mechanism"²⁴. Furthermore, Kenya's R-PP implementation would have to coexist with the country's sustainable development planning, as well as the national climate change goals²⁴. Thus, embedding REDD+ into such a context would require it to be adaptive to other changes within the development context, especially in the future.

Some REDD+ projects are already being implemented in the absence of relevant and sufficient legislative frameworks²⁵. This then implies that these REDD+ projects have to change their design later on in order to conform to the introduced legislation governing their implementation. This in essence requires REDD+ project developers to design this flexibility in their projects.

The lack of legal and policy safeguards in REDD+ presents a corruption risk, and there have been corruption allegations leveled against REDD+ projects, a REDD+ project committed a

CFA to sign a long-term contract waiving their rights to carbon in a forest they were administering (Interview with CFA member, August 14, 2013). The REDD+ project developer then declined to revise the contract, and cut off communication with the CFA. This is a clear indication that corruption risks in REDD+ still remain a major issue in the successful implementation of REDD+ in Kenya (Interview with anticorruption expert, September 09, 2014). This means that these REDD+ projects have to be adaptive to the subsequent emergent national and local legal and policy frameworks that would govern the projects, making it easy for the REDD+ project developers to align their projects to conform to the emergent laws, policies and regulations on REDD+.

Accountability and Legitimacy: The issue of accountability and legitimacy is one that concerns all aspects of governance, from the local level to the international level, it also affects both private and public dimensions of governance regimes²⁶.

Accountability is the "willingness to accept responsibility or to account for one's action"²⁶. The main challenge of accountability in forest governance in Kenya is the lack of adequate information on forest resources, as well as revenues from these resources, coupled with corruption and mismanagement of forest resources²⁷. However, the Kenya Forest Service has taken steps to address this challenge by developing an Information Center which will comprise a public library and online resources, as well as releasing more information on forest governance issues¹⁰.

The development of a Monitoring, Reporting and Verification (MRV) framework has been one of the main focus areas for REDD+ preparation in Kenya, responding to the challenge of poor accountability due to lack of adequate information²⁷. The MRV framework developed under the FCPF in Kenya's REDD+ preparation identified conducting a gap analysis on the institutional capacity for forest mapping and REDD+, establishing reference systems and standards for mapping and classifying resources, and identifying sources of forest and land use data²⁸. As well, the development of a full National Inventory System is underway, aimed at developing "comprehensive, objective and reliable information on forest and tree resources and carbon stock in Kenya"²⁸. The development of the MRV framework for REDD+ is a response to the requirement laid out in the Cancun Agreements on REDD+²⁹.

Legitimacy "commonly describes the state or quality of being legitimate, that is, of being in accord with established legal requirements, or conforming to recognised principles or accepted rules and standards of behaviour"²⁶. The concept of Free, Prior and Informed Consent (FPIC) has been identified as crucial in the design of Forest Management Agreements so as not to place excessive burdens and liabilities on local communities²⁷. Since FPIC is not well developed in Kenya, the national REDD+ process has adopted the guidelines established

by UN REDD in operational sing FPIC in Kenya¹⁴. However, the major challenge in operationalising REDD+ is the lack of definition of carbon rights in Kenya as well as the lack of clarity on land tenure systems, especially regarding indigenous people^{14,30}.

Allocation and Access: The ESG theme of allocation and access in the context of REDD+ encompasses the issue of distribution mechanisms, tenure rights and social and environmental safeguards¹.

There is no explicit legal provision for a benefit sharing mechanism for forest resources in Kenya, subsequently, the existing REDD+ projects in Kenya have adopted a diverse approach of designing benefit sharing mechanisms, with respect to identification of carbon rights, scope, timing and disbursement procedures, chiefly to explore which arrangement works best³¹. To this end, there are recommendations for the inclusion of forest carbon in the benefit sharing discussions of the draft Forest Bill³¹.

Kenya does not have an explicit legal definition of carbon rights, and the persistent issue of land tenure insecurity presents a major challenge to the security of forest carbon rights. Recent developments in land tenure rights reforms have converted customary rights into statutory rights, but this does not guarantee tenure security, as this is aggravated by challenges in land administration³⁰. The definition of forest carbon rights will be critical to the success of REDD+ projects, because carbon tenure has significant repercussions on benefit sharing³².

Discussions: REDD+ as a boundary object: From the analysis of the emergent nature of REDD+ design in Kenya, it is clear that REDD+ design at the national level exhibits the characteristics of a boundary object. There are various stakeholders with various interests: the government is responsible for the management, design and implementation of the national REDD+ strategy, multilateral and bilateral institutions are instrumental in mobilizing funds to facilitate the design of the national REDD+ strategy, private institutions are already involved in the running REDD+ projects, and Civil Society Organizations (CSOs) ensure the national REDD+ process is transparent and accountable by advocating for appropriate safeguards. All these stakeholders have varying interests, but have the successful design and implementation of REDD+ projects emerges as the common objective shared by all the stakeholders involved.

Influence of legacy forest governance on national REDD+ design: As well, legacy forest governance issues bear significant influence on the design of national REDD+ strategies. For instance, benefit sharing of forest resources has been a thorny issue in Kenya, with the absence of well defined and universally accepted benefit sharing mechanisms being a major indicator. The marginalization of indigenous people has also been a recurring issue, with the FPIC concept being strongly adopted so that the target communities of REDD+

projects embrace the projects. This is also aimed at avoiding grievances of exclusion from the local indigenous communities.

National REDD+ strategies also integrate governance safeguards and other practices from the international REDD+ mechanism. For instance, Kenya's national REDD+ strategy design and implementation is vertically integrated with developments in international REDD+ design under the UNFCCC, by being designed to be adaptive from the onset. Further, the challenges faced in international REDD+ design are manifested in the national REDD+ design. The lack of universal definition of carbon rights is one of the challenges that national REDD+ designs are facing, thus hampering the effectiveness of REDD+ as a climate finance mechanism.

The implementation of national REDD+ strategy also exhibits the tendency to solve the persistent forest governance issues and approaches before abandoning them altogether and introducing new approaches, unless there is no other option other than to create new approaches. For instance, the upholding of public participation and adoption of internationally agreed norms and standards, albeit improved ones such as SESA, is a result of the accrued benefits of using these paths, hence a 'lock-in' for the approaches that have been yielding benefits. But for the other legacy forest governance issues that have been unresolved, new approaches have been adopted: the development of the national forest inventory to address the challenge of inadequate information on forest reference levels for emissions reductions calculations, the establishment of a Monitoring, Verification and Reporting (MRV) framework to enable transparency in the emissions reductions calculations and carbon trading, and the adoption of the FPIC concept to engage the indigenous communities, who had been marginalized in the previous forest governance regimes.

The influence of legacy forest governance issues on national REDD+ design is summarised in Table-2.

The main conclusion of this research is that legacy forest governance issues have had significant influence on national REDD+ design, as is the case in Kenya, with the former providing an avenue to address the legacy forest governance issues. Further, this research unearthed that there is greater preference to solve existing forest governance issues that are significant to REDD+ plus, before embarking on different alternatives altogether. This provides for the development of legacy forest governance regime and REDD+ regime in parallel. Moreover, this research found that the legacy forest and REDD+ regimes were highly contextual to the national circumstances, especially the historical evolution of the national legacy forest governance regime. The key challenges faced by the legacy forest governance regimes in Kenya, such as legal definition of carbon rights, benefit sharing mechanisms and participation and rights of indigenous people, have had a significant influence on national REDD+ design, and still remain highly contested issues.

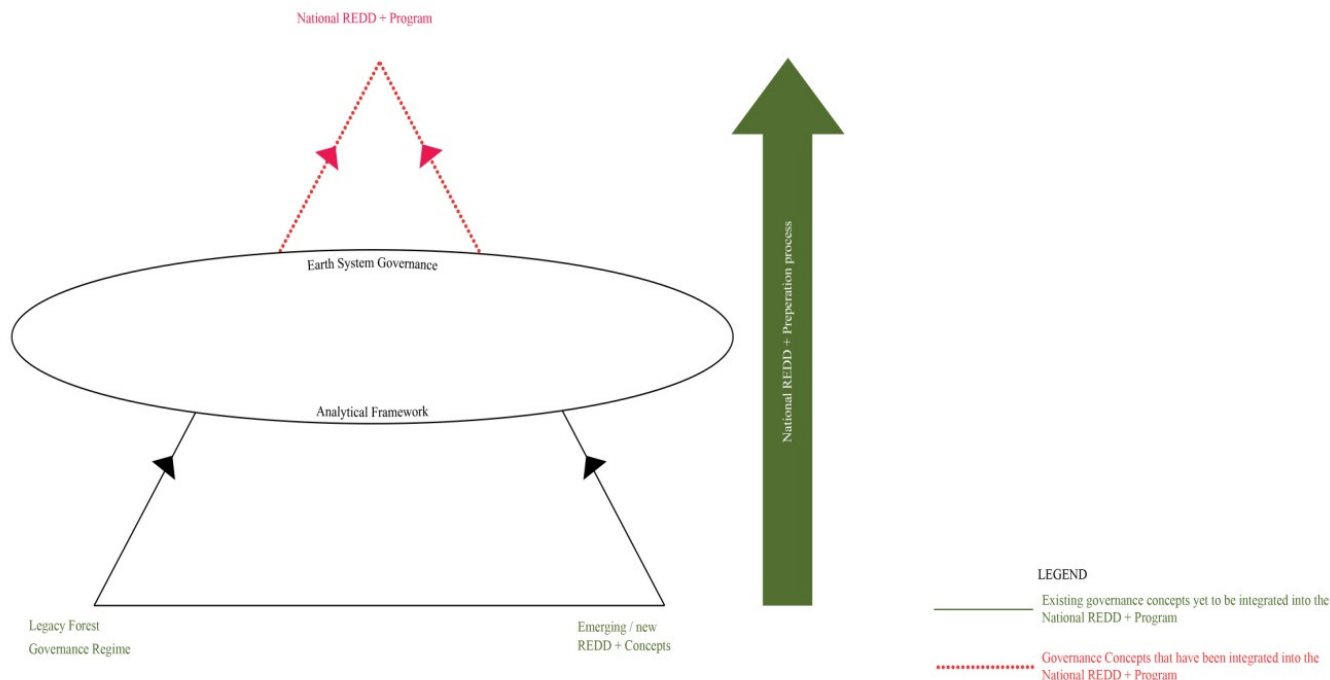


Figure-1
The Legacy Forest Governance – REDD+ Analytical Framework

Table-1
Summary of Earth System Governance (ESG) framework⁹

| | |
|--------------------------------|---|
| Architecture | The overarching system of public or private institutions, principles, norms, regulations, decision-making procedures and organisations that are valid or active in an issue areas |
| Agency of and beyond the State | The involvement of actors beyond governments and state agencies in prescribing behaviour and obtaining consent from the governed |
| Adaptiveness | The governance of adaptation to socio-ecological change as well as the process of change and adaptation within governance systems |
| Accountability and Legitimacy | Wider public scrutiny and acceptance of decisions and actions in public norm-setting |
| Allocation and access | Who gets what, when and where |

Table-2
Summary of influence of legacy forest governance issues on national REDD+ design

| ESG Theme | Analytical Legacy Forest Governance Issue | Emergent National REDD+ design |
|--------------------------------|--|---|
| Architecture | Collaborative law and policy making, underpinned by the public participation principle Power asymmetry in law and policy making (marginalization of some stakeholders such as indigenous people) Vertical integration of international laws, conventions and norms into the national legal and policy frameworks Marginalization of local forest communities and indigenous people Lack of operationalization of Participatory Forest Management (PFM) concept | Collaborative legal and policy making Attempts to engage previously marginalized groups by reducing power asymmetry, e.g the development of a CP plan Vertical integration of international laws, conventions and policies into national design of REDD+, e.g adoption of Cancun Agreement MRV guidelines in national REDD+ MRV design Use of Strategic Environmental and Social Assessment (SESA) safeguards to integrate concerns of local and indigenous groups |
| Agency of and Beyond the State | Presence of Non-State Actors (NSAs): Forest user communities, private companies, CSOs | Increased number of NSAs: multilateral institutions, bilateral development partners, international organizations, private companies, UN agencies, international NGOs |
| Adaptiveness | Forest governance has been adaptive to administrative and legal and policy changes, but in an ad-hoc, reactive manner | Adaptiveness of national REDD+ integrated from the onset, in tandem with the changing nature of the international REDD+ mechanism National REDD+ design considers REDD+ as a boundary object National REDD+ designed to be adaptive to the changing facets of the dynamic national sustainable development and climate change regimes Currently, there are REDD+ projects in operation, in the absence of clear legal and policy frameworks to guide them |
| Accountability and legitimacy | Lack of adequate information on forest resources / inventory Lack of an MRV framework for forest governance Lack of legitimacy of the forest governance regime: marginalization of indigenous people due to lack of implementation of FPIC Lack of legal definition of carbon rights | Development of a full National Forestry Inventory System Establishment of a public library and online resources on forest governance in progress Use of FPIC and development of a consultation plan of action to engage all relevant stakeholders in National REDD+ design: enhanced legitimacy Use of UN REDD guidelines to strengthen FPIC Still lack of legal definition of carbon rights |
| Allocation and access | Unclear land tenure system No explicit and universally agreed benefit sharing system | New land law enacted, and new forest law under development Development of a REDD+ Law and Policy Diverse types of benefit sharing mechanisms due to varying nature of REDD+ projects |

Conclusion

REDD+ is an international mechanism that is a significant pillar of the UNFCCC post 2012 climate finance regime, as regards greenhouse gas mitigation as well as fostering forest governance and improving livelihoods. It is within this context that this research examined the influence of legacy forest governance regimes on national REDD+ design. The Forest Governance – REDD+ Governance Analytical Framework, based on the Earth System Governance framework - which was combined with temporal analysis of the evolution of forest and REDD+ governance - was developed, adopted and utilised.

Research gaps and limitations: However, due to the depth of this research, there were a number of limitations, especially related to broader issues.

Scope of governance: The governance aspects investigated in this research were limited to the five research areas outlined by the Earth System Governance framework. This in essence means that the resultant findings from this research are constrained by the understanding of governance within the ESG context.

Single-country case study: The focus on a single-country afforded the exploration of national REDD+ design in great detail. However, since there are many other countries involved in REDD+, with different socio-economic contexts, this research was unable to extend such scrutiny to other countries. Despite this limitation, the methodology adopted, enhanced and utilised in this research can be replicated in another country undertaking national REDD+ design.

Recommendations: More national case studies: This research proffers a number of recommendations. First, since different countries undertaking REDD+ preparations and projects have varying forest governance legacies, more case studies on how these forest legacies are influencing national REDD+ design should be undertaken, thus building and contributing to a body evidence of best practices in national REDD+ design. As well, comparative case studies on the influence of legacy forest governance on national REDD+ design stand to contribute to a better understanding of this nexus at national levels, especially the identification of common issues and practices in the different countries.

REDD+ implementation: The study of REDD+ projects at the implementation level would also generate useful insights into effective REDD+ design, thus providing invaluable lessons on how to improve their effectiveness. Since national REDD+ design is an iterative process, lessons from actual REDD+ project implementation stand to inform the design process, thus leading to an effective national REDD+ regime.

Vertical integration of lessons on national REDD+ design: The international REDD+ development process should integrate

lessons learnt from the influence of legacy forest governance regimes on national REDD+ design processes, thus reflecting the realities of the REDD+ mechanism in the overarching international REDD+ framework.

Broadening the governance perspective: Finally, other governance dimensions captured by the ESG framework should be used to examine the influence of legacy forest governance on National REDD+ design. This would in essence afford a much broader understanding of the influence on legacy forest governance on national REDD+ design.

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