

The Development of a National Safeguard System for REDD+ in Mexico

A Case for the Value of International Guidance



Rachel Baker | Juan Carlos Carrillo | Allison Silverman

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NOVEMBER 2014





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EXECUTIVE SUMMARY

As countries around the world make progress in preparing for REDD+ (Reducing Emissions from Deforestation and Forest Degradation), national governments are grappling with how to respect and address the requisite social, environmental and governance safeguards. They must comply with the REDD+ safeguards within their national contexts, while also navigating the various standards attached to multiple sources of REDD+ finance. Several years into the REDD+ preparation process, Mexico is in the midst of developing a national safeguards system for REDD+. Through this process, Mexico is generating useful lessons learned for other countries preparing for REDD+ and which may inform additional guidance for REDD+ from the United Nations Framework Convention on Climate Change (UNFCCC). Importantly, Mexico is also a useful example illustrating

that even a country that has made strong advances in REDD+ would benefit from further international guidance to address and respect REDD+ safeguards.

This case study describes the dialogue to date around the development of a

national safeguard system in Mexico. The purpose of this examination is to identify transferrable lessons for other countries and useful content for further guidance on REDD+ from the UNFCCC and other international actors. The study begins by

Mexico's National REDD+ Strategy: Emphasis on Sustainable Rural Development

The government of Mexico is approaching REDD+ as a tool to promote rural sustainable development. The government plans to employ an “integrated territory management” model which incorporates areas of conservation, agriculture, reforestation, agroforestry, silvo-pastoralism, sustainable forest management, and aquaculture at the territorial level. Through this model, the government seeks to achieve the ENAREDD+'s goal of development of social capital and economic growth in rural communities.

According to the ENAREDD+, Sustainable Rural Development is the best way to define REDD+ in Mexico and to restructure and reduce pressures that drive deforestation and forest degradation.

summarizing Mexico's major milestones towards the development of a national REDD+ strategy and its corresponding institutional arrangements.

We subsequently concentrate on the dialogue around the required REDD+ safeguards, describing Mexico's progress towards a national safeguard system and a safeguard information system (SIS). We include a discussion on the integration of REDD+ safeguards within Mexico's existing legal framework, the foreseen components of a national safeguard system, and its scope. We proceed to Mexico's development of instruments to promote the full and effective participation in Mexico, beginning with institutionalized mechanisms for participation in forest policy broadly, the participatory fora created specifically for REDD+, and the requirements for consultation in Mexico. The study then examines Mexico's forest governance in light of preparing for REDD+, with a focus on carbon rights and ownership and land tenure.

We then broaden our scope beyond Mexico's national process to consider the implications of Mexico's experience for international actors engaged in standard-setting and finance for REDD+, specifically for the UNFCCC and the World Bank. The study notes the contributions the World Bank safeguards have made to Mexico's REDD+ process, and the threat posed by potentially diluted standards that may result from the World Bank's safeguard review process.

We find that Mexico has demonstrated clear progress in national REDD+ arrangements, including the development of safeguard policy frameworks. Mexico has engaged with REDD+ through country-driven processes both at the national and sub-national levels. It has also integrated broad stakeholder participation by involving various actors to prepare, implement and monitor REDD+, and by requiring

free, prior and informed consent (FPIC) for both indigenous peoples and rural community members. Moreover, Mexico has recognized the important role forests play in climate change, and conceives of REDD+ as a mechanism beyond carbon by framing it in terms of rural sustainable development. The government of Mexico clearly seeks to strengthen governance and landscape management; and the development of its national safeguard system is grounded in its existing national legislation.

Despite Mexico's advances, there are shortcomings in each of the areas addressed, constituting areas where further work is needed. Mexico has demonstrated

coordination between local communities and the various government agencies involved in REDD+ implementation. Finally, the multiple sources of REDD+ finance in Mexico and their corresponding safeguard standards have created complex political landscapes; thus, it is perhaps unsurprising that Mexico has followed a circuitous path towards REDD+ implementation.

We conclude that the lessons garnered from Mexico's experience in REDD+ safeguards implementation can contribute to the formulation of further guidance from the UNFCCC and other fora. Sharing Mexico's experiences may save other REDD+ countries the time and

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some confusion between the concepts of a national safeguards system and an SIS. Only recently did the government acknowledge that the SIS is not itself the focus of the safeguards discussion, but rather a component and a reporting mechanism for a national safeguard system. With regards to participation, local community participation in the construction of the REDD+ strategy has been limited, and Mexican legislation lacks procedural requirements for implementing FPIC. Due to civil society concerns over the representative nature of these spaces, overlapping participatory spaces for REDD+ have been created. In the realm of forest governance, there is still a lack of clarity around the ownership and rights to carbon within the Mexican legal framework. Although Mexico's focus on "integrated territorial management" sounds promising, it remains unclear how the government will facilitate the close

effort required to resolve these issues, rather than starting from scratch. Many of Mexico's advances have been made slowly over the course of several years; and are, in large part, a product of a rich dialogue with civil society. If there had been more explicit guidance in place when Mexico first initiated their REDD+ preparation process, then the development of its national safeguard system and participatory processes could have proceeded much more smoothly, rather than in a sporadic manner. With the support of further guidance from the UNFCCC, the creation of overlapping participatory spaces in Mexico, and the slow evolution of a discourse on carbon rights and on the SIS could have been avoided. These challenges should be avoided to the extent possible for other countries that are in earlier stages of the REDD+ process than Mexico.

REDD+ in Mexico: A Brief Introduction

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an initiative developed under the UN Framework Convention on Climate Change (UNFCCC) that provides incentives to developing countries to protect their forests, recognizing the vital role forests play in addressing climate change. According to the United Nations Food and Agriculture Organization (FAO) 2010 Global Forest

Although Mexico has received substantial financial support for REDD+ preparation, managing these multiple funding sources requires the Mexican government to comply with each of their donor's standards and safeguards.

Resources Assessment,¹ approximately 33 percent of the Mexican territory is covered by forest, jungle, or some type of natural vegetation (64.8 million hectares).² As a result, REDD+ is an initiative of significant interest to the Mexican federal government. The majority of the country's forest land is owned by indigenous communities and *ejidos*, which represent two communal land tenure systems.³ The vast forest area managed by local communities in Mexico has generated some of the most important community forest management experiences in the world. Hence, Mexico possesses specific characteristics that facilitate participation in REDD+ and the sustainable management of forests, environmental protection, and community development projects, while simultaneously taking advantage of incentives to reduce carbon dioxide (CO₂) emissions by preventing deforestation.

During the last four years, the Mexican government has clearly signaled its interest in establishing a national REDD+ strategy, and has reached several milestones towards achieving this goal. In 2010 during

COP-16 in Cancún, Mexico presented its "Mexico Vision for REDD+,"⁴ officially indicating for the first time its intention to develop a National REDD+ Strategy (ENAREDD+). The ENAREDD+ is the governing document that describes proposed REDD+ activities and lines of action in Mexico and the corresponding institutional structure. Mexico's ENAREDD+⁵ which is a draft document in evolution since the first version in 2011, promotes sustainable rural development based on integrated territorial land management. The document elaborates on the guidelines established in the Mexico Vision for REDD+, which touch upon the components of a REDD+ Strategy defined by the UNFCCC.

Mexico is preparing to implement REDD+ by piloting the concepts described in the ENAREDD+ through sub-national REDD+ activities in strategic states and zones of the country, known as REDD+ Early Action Areas (AT-REDD+). The purpose of these early action areas is for Mexico to examine possible institutional arrangements, governance structures, and monitoring and financing mechanisms for REDD+. This preparation will provide critical lessons which will position Mexico to receive results-based finance.

In addition to the effort expended by the Mexican government in preparing for REDD+, Mexico has an advantage in effective REDD+ implementation due to the country's established institutional framework. Considering that REDD+ is an initiative that crosscuts numerous sectors, Mexico has involved various governmental bodies, organizations and institutions as part of the institutional framework for REDD+; this has been particularly critical given the government's construction of REDD+ as a mechanism to support rural development and promote integrated landscape management. For example, the Ministry of Environment and Natural Resources (SEMARNAT); the National Forest Commission (CONAFOR), which is the focal point for REDD+; the Inter-Secretarial Commission on Climate Change (CICC); and its REDD+ work group (GTREDD+) are all directly working to advance REDD+ in Mexico. In addition, the relevant agencies in the fields of protected areas, indigenous peoples, and agriculture are also playing an important role in REDD+.

In addition to Mexico's inter-sectoral support for REDD+, the Mexican

government has received strong financing for REDD+ from various sources. These sources include bilateral donations from Norway, the United States, France, and Spain, and multilateral finance from the Forest Carbon Partnership Facility (FCPF) and the Forest Investment Program (FIP), among others. Mexico is a member and beneficiary of both FCPF funds: the Readiness Fund and the Carbon Fund.

Although Mexico has received substantial financial support for its REDD+ preparation, managing these multiple funding sources requires that the Mexican government comply with each of their donors' standards and safeguards—for example, the World Bank and the Inter-American Development Bank—as well as the universal UNFCCC safeguards. In addition, during 2014 Mexico piloted the voluntary REDD+ Social and Environmental Standards (REDD+ SES) in select areas. In many respects, the REDD+ SES is more detailed and robust than the aforementioned required standards, and Mexico's willingness to take the initiative and participate in REDD+ SES demonstrates interest in piloting various approaches to addressing safeguards for REDD+. Mexico has grappled with the complexity of several safeguard systems through an interesting dialogue at the national level around the creation of a National Safeguard System (SNS) and the preparation of its Safeguard Information System (SIS), and how the SNS and SIS should address specific safeguards and issues.

Mexico's Process of Developing its Own Safeguards for REDD+

DEVELOPMENT OF MEXICO'S SIS AND SNS

As a Party to the UNFCCC, Mexico must abide by the decisions adopted by the Conferences of the Parties (COPs) in order to participate in the REDD+ mechanism. Thus, it is necessary to comply with the requirement to apply the seven UNFCCC safeguards and provide information through its SIS regarding how it is addressing and respecting these safeguards. The REDD+ safeguards are principle-based requirements that seek to ensure consistency with international law, improvements to forest governance, respect for the rights of indigenous peoples and local communities, biodiversity protection, and effectiveness of REDD+ activities. They are established to prevent



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harm as well as to generate benefits. These social, environmental and governance safeguards for REDD+ are of particular importance in Mexico, where an estimated 80 percent of the country's forest area belongs to communally managed *ejidos* and indigenous communities.⁶

Within the draft ENAREDD+, Mexico has indicated that the REDD+ safeguards are considered to be instruments not only for preventing and mitigating harm, but also for reinforcing positive impacts⁷. As such, Mexico's SIS will track its compliance with the UNFCCC safeguards, and will consider the existing criteria, principles, and safeguards under the various relevant federal laws in Mexico. For example, the ENAREDD+ points to key principles, such as respecting local governance; transparency, the transversal nature of policies; equitable benefit-sharing; certainty regarding and respect for property rights; free, prior, and informed consent (FPIC) for both rural and indigenous communities; and the economic competitiveness of rural forest activities. Furthermore, in keeping with the ENAREDD+'s rural sustainable develop-

ment focus, Mexico could promote REDD+ benefits that go beyond the reduction of carbon emissions to include "co-benefits," or "non-carbon benefits." Examples of such co-benefits include empowering stakeholders by ensuring their full and effective participation, and improving forest governance.⁸

CONAFOR and civil society organizations have undertaken analyses of existing and potential components of an SNS for REDD+ in Mexico.⁹ These analyses have informed initial ideas of how the Mexican government will approach formulation of an SNS and integration with the existing legal framework. As of September 2014, CONAFOR anticipates that three principal elements will comprise the SNS: a legal framework, an institutional framework, and a compliance framework.¹⁰ The compliance framework must guarantee the application of the safeguards and the observance of related laws, including three sub-elements including [sic]: 1) mechanisms/elements for resolving complaints and/or disputes, which will address conflicts or disputes among individuals or groups whose rights may be affected by the implementation of REDD+

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activities; 2) information and/or reporting systems that will provide information on how the safeguards are addressed and respected; and 3) mechanisms/elements for addressing non-compliance that will address any non-compliance with the safeguards during the implementation of REDD+ activities.¹¹

Previously, Mexico often confused the SNS framework with the SIS; however its thinking and understanding of the SIS has evolved over time. For the first time, the November 2014 draft of the ENAREDD+ defines the SNS as the structure required to guarantee compliance with the safeguards.¹² Whereas CONAFOR previously confused its own SNS with the SIS, the ENAREDD+ now delineates the components of an SNS described above, and recognizes the relationship between the SNS and the SIS. Notably, the ENAREDD+ “lines of action” enumerated in the safeguards section include: identifying the elements and the architecture for the design of the SNS, ascertaining the measures for implementing the SNS, and promoting participation during the design of the SNS. In each case, the term “SNS” was substituted for “SIS” in the prior versions of these lines of action. In all four earlier drafts of the ENAREDD+, only the SIS or the “national safeguard information system” was mentioned, demonstrating clear confusion with regards to the SNS, the SIS, and their interaction. This change reflects several years of dialogue between the government and stakeholders, ultimately leading to the recognition of the concept of an SNS.

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THE INTEGRATION OF MEXICAN FEDERAL LAWS AND THE SAFEGUARDS

The Mexican government’s vision for integrating Mexican federal laws and the safeguards involves designing an SNS¹³ and an SIS that use the current legal framework and existing participation platforms in Mexico as a base, rather than designing a new and independent safeguard system for REDD+. Thus, it has prescribed that the SNS should be designed, at a minimum, to respect and address the UNFCCC REDD+ safeguards as well as its own federal legislation, including Articles 1 and 2 of the Mexican Constitution and the *Ley General*

de Desarrollo Forestal Sustentable [General Law on Sustainable Forest Development] (LGDFS).

As a result of Mexico’s legislative reform in 2012, the LGDFS Article 134 bis now sets forth its own eight social safeguards for environmental services in Mexico that closely correspond to the UNFCCC safeguards, although they do not incorporate the UNFCCC’s environmentally-focused safeguards that address leakage and permanence. In some respects, the LGDFS safeguards are more demanding than those of the UNFCCC. For example, instead of the UNFCCC’s “full and effective” participation requirement, the LGDFS explicitly includes the FPIC of *ejidos*, rural communities, and indigenous peoples, as well as plurality and participation, inclusion, and territorial, cultural, social, and gender equity. The LGDFS also specifies the rights to transparency, access to information, and accountability, while the UNFCCC only makes reference to those issues in general terms. In addition, the LGDFS provides guidance for owners and legitimate possessors of land regarding equitable benefit-sharing, recognition of and respect for forms of internal organization, certainty over rights to ownership and legitimate possession, as well as access to natural resources. In contrast, the UNFCCC is less detailed in its requirement to respect the knowledge and rights of indigenous peoples and local communities. The LGDFS also describes governance principles in the LGDFS in a more detailed

manner in terms of comprehensiveness, coordination, and complementarity among the policies and instruments of the three levels of government.¹⁴ Due to the high degree of relevance of LGDFS Article 134 bis to REDD+, the ENAREDD+ identifies Article 124 as one of the legal foundations of the SNS, along with the Constitution and the *Ley General de Equilibrio Ecológico y la Protección al Ambiente* [General Law on Ecological Equilibrium and Environmental Protection] (LGEEPA).

THE SCOPE OF MEXICO’S NATIONAL SAFEGUARD SYSTEM

The institutions involved in implementing the SNS will be determined by the scope of the system. As of yet, there has not been a clear decision about whether the SNS will be a system specifically designed for REDD+, a system focused on the forest sector, or an intersectoral system that addresses sectors related to sustainable rural development. Nevertheless, in all cases the SNS must be respected and applied by diverse authorities in accordance with its scope. At minimum, the scope of the SNS should include the environment, forest, rural, and agricultural sectors.

The discussion of the scope of the SNS is particularly important right now because the federal Executive Branch in Mexico is promoting a series of reforms to the regulations of several laws, including proposals related to the hydrocarbon sector as a part of the reform of the LGDFS¹⁵ and the parallel



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Energy Reform. These ongoing reform processes demonstrate the need to facilitate intersectoral coordination and the participation of a wide range of government agencies in the SNS. It is interesting to note that the dialogue regarding an SNS for REDD+ has encouraged a dialogue regarding social and environmental safeguards in other fora, including Mexico's Energy Reform process.

Once CONAFOR clearly defines the scope, elements, and means of implementing the SNS, there must be a concerted effort to foster coordination within relevant agencies of the federal government. Up until now, such coordination has been weak between some ministries. There must also be the promotion of any legal reforms necessary for establishing and operationalizing the system. Once the SNS and SIS have been clearly defined and established, it will be necessary to consider how to implement such a system in practice, and subsequently evaluate its effectiveness. While Mexico has taken the initial steps necessary to establish an SNS, many issues remain unresolved. Implementation of the SNS will be the true measure of success.

Promoting Full and Effective Participation

The participation of indigenous peoples, local communities, and civil society is a fundamental element of the development and implementation of a REDD+ strategy. Indigenous peoples and local communities have protected the forests for centuries because they depend on forest resources for their culture and livelihood. It is they who will also assume the responsibility for carrying out many of the REDD+ activities and face the risks posed by REDD+. Importantly, Mexican legislation and the UNFCCC safeguards recognize the right to participation, acknowledging the need for local communities and indigenous peoples to be consulted and given the opportunity to engage in REDD+.

MEANS OF PARTICIPATION IN MEXICAN FOREST POLICY

Mexican legislation mandates several participatory spaces for dialogue related to forestry issues. At the national level, the LGEEPA promotes public participation¹⁶ through consultation bodies. Under this

law, governmental entities and agencies, academic institutions, and social and business organizations are permitted to participate.¹⁷ Similarly, the LGDFS establishes the *Consejo Nacional Forestal* [National Forestry Council] (CONAF) as a consultative and advisory body for forestry issues, which serves as an agency that advises, supervises, oversees, evaluates, and monitors the application of the LGDFS provisions.

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Mexico has established other avenues to promote broad participation in REDD+. One of these participatory spaces is the CTC-REDD+, which is a non-binding space for dialogue among civil society organizations, academia, and the government at the national level. The CTC facilitates analysis of the ENAREDD+ and issues proposals and recommendations related to the construction and design of a REDD+ mechanism in Mexico. In addition to the CTC-REDD+ at the national level, the CTC model has been taken up at the sub-national level in various states in the form of regional and statewide CTCs in the AT-REDD+.

Some actors have considered the CTC to be a space of analysis and discussion, but not a space of building agreements. This perspective results, in part, from the lack of rules governing the CTC, the lack of a legal basis for the CTC, and the absence of equilibrium among sectors and local actors. In response to the request and advocacy of the social and indigenous sectors of CONAF, an ENAREDD+ Working Group within CONAF was created with the objective to provide opinions and recommendations for the ENAREDD+, ultimately achieving an ENAREDD+ that the CONAF Working Group feels is ready for consultation. The Working Group, like all CONAF committees, requires the participation of representatives from eight sectors of Mexican society, as follows:



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indigenous, social (*ejidos* and forest producers), non-government organizations, industry, academia, service providers, government, and regional councils.

Despite these advances, there are still limitations to ensuring broad participation of all stakeholders in Mexico. There has been minimal direct participation of *ejidos*, communities, and indigenous peoples—those who own and manage the country's forests and thus would be directly involved in the implementation of a REDD+ strategy.

CONSULTATION PROCESS AND REQUIREMENTS

In accordance with its international obligations and the requirement to be consistent with the UNFCCC Safeguards (particularly UNFCCC Safeguards A, C, and D), the Mexican government has an obligation to carry out a broad consultation process. Mexico has signed and ratified the International Labor Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, which requires that they are consulted on issues that affect them and are able to participate in the formulation, application, and evaluation of national and regional development plans and programs.¹⁸ In addition, Mexico is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, which recognizes FPIC. It is notable that in the case of Mexico, the government has indicated that FPIC applies not only to indigenous peoples, but also to non-indigenous rural communities.

Although Mexico has a clear obligation to ensure participation and FPIC, Mexican legislation has yet to establish clear regulations regarding public consultation on strategies, programs, and projects. Despite the requirement to protect these rights when implementing REDD+, there are no existing procedures which indicate how to operationalize or verify FPIC, and the UNFCCC does not provide guidance to direct the fulfillment of FPIC. In Mexico, conversations have stalled around a draft bill of a General Law on Consultation with Indigenous Peoples and Communities undergoing a country-wide consultation led by the Indigenous Affairs Commission of the Congress of the Union, in coordination with the *Comisión Nacional para el Desarrollo de los Pueblos Indígenas* [National Commission on Indigenous Peoples' Development] (CDI).¹⁹ The existing institutional mechanisms to

promote respect for the rights, traditions, and customs of forest and indigenous communities that have traditionally developed in Mexico are insufficient or not very effective in preventing socio-environmental risks to the owners and holders of the majority of the country's biological wealth that policies and programs may generate.²⁰ In order to advance REDD+ in a just and transparent

Although FPIC applies to indigenous peoples and agrarian communities in Mexico, there are no existing procedures indicating how to implement FPIC.

manner, and appropriately implement the right to consultation and FPIC for indigenous peoples and agrarian communities, the Mexican legal framework will need to incorporate obligatory protocols or guidelines.

Access to information is a prerequisite to ensure effective and responsible social participation, and various Mexican laws promote this right. For example, the Constitution²¹

and the Federal Law on Transparency and Access to Public Governmental Information²² provide for the right of access to information. These laws establish the instruments and institutions that will enable the effective and efficient accountability for managing the public resources related to the REDD+ mechanism in Mexico.

CONAFOR is also in the process of developing a consultation plan for REDD+. Although CONAFOR had planned to submit the final draft ENAREDD+ for national consultation in 2014, this process has been delayed. As a stakeholder input to this forthcoming consultation process, the *Mesa Campesina e Indígena* [*Campesino* and Indigenous Consultation Roundtable] was created as part of CONAF in 2014 to provide feedback and facilitate participation in the development of the consultation plan for the ENAREDD+. Moreover, in addition to the ENAREDD+, CONAFOR will need to consult the Emissions Reduction Project Document (ER-PD) of the Carbon Fund, the Dedicated Grant Mechanism for Indigenous Peoples and Local Communities of the FIP, and carry out a participatory process of Strategic Environmental and Social Assessment (SESA) required by the FCPF Readiness Fund. Ideally, CONAFOR should coordinate these processes in a comprehensive consultation.



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Promoting Forest Governance

Forest governance is one of the emerging issues under discussion in the context of REDD+. Mexico, among other countries engaged in REDD+, is seeking ways to strengthen governance, promote rural development, and comply with UNFCCC Safeguard B, which deals with forest governance. This requirement indicates that REDD+ activities must develop and apply transparent and effective local governance structures. REDD+ has promoted dialogue in various areas of forest governance in the Mexican context, including carbon ownership, benefit-sharing, land tenure, and territorial management.

At the national level, the Mexican Agrarian Law indicates that *ejidos* and agrarian communities have the right to operate in accordance with internal regulations, without any further limitations beyond activities forbidden by law.²³ This provision allows each community to be governed by the rich customs and traditions of the diverse ethnic groups of the country. As such, the internal organization of the community will be the decision-making body for many matters related to local REDD+ implementation, such as benefit-sharing and gender equity, among others. Although this arrangement offers advantages for promoting forest governance, there are a number of actors—widows, children, settlers in a community without rights to communal lands—who can play a strategic role in REDD+ even though they may not have the express legal recognition that will enable them to guide or guarantee the equitable distribution of benefits generated by REDD+ or by any other mechanism.

CARBON OWNERSHIP

Even though REDD+'s focus on sustainable rural development clearly seeks to strengthen local governance, the most recent draft ENAREDD+ incorporates minimal content with regards to benefit-sharing, and somewhat confusing language on carbon ownership. The ENAREDD+ is based on applicable legislation and recognizes that the owners of the land are also the owners of the forest resources; and therefore the owners of the forest carbon that is captured and stored in trees. Nonetheless, the language around avoided carbon emissions in the ENAREDD+ is less clear. The ENAREDD+ states that “it is not technically viable to



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*determine the specific contribution of each property... to avoided emissions.*²⁴

The April 2014 draft ENAREDD+ offers language indicating that the benefits generated from the payment for the results of avoided emissions should be channeled to the people who are the legal owners or possessors of the lands in the regions where activities with the objective to curb deforestation and forest degradation are undertaken. This language represents a small positive change from the previous drafts of ENAREDD+, in which the majority of the section on carbon ownership was focused on specifying that the government cannot “*make transfers to individuals for not deforesting or degrading the forests,*” reportedly because deforestation

is already regulated as an infraction of federal law in many cases; an argument which many consider to be incongruent with other CONAFOR programs, such as the Payment for Environmental Services program, which offers financial incentives to not deforest.

Despite Mexico's small step forward in the area of carbon ownership and the corresponding benefit sharing arrangements, express legal recognition of the strategic actors for REDD+, including community members and land owners, is still lacking. As acknowledged in the most recent ENAREDD+, the current legal framework is not explicit with regards to avoided carbon emissions, and it will be necessary to consider whether to define the concept of carbon within the LGDFS.²⁵ There is still a risk that the de facto possessors of land will be excluded from decision-making processes or the distribution of incentives and benefits generated by REDD+. Given the unique characteristics of REDD+, a comprehensive SNS will require that the federal legislation, particularly the LGDFS and Agrarian Law, be updated to address this risk by clearly defining the rights of all actors that take part in forest management.²⁶

LAND TENURE AND INTEGRATED TERRITORIAL MANAGEMENT

Mexico constitutionally recognizes communal land tenure. As an outcome of the agrarian reform that began during the Mexican Revolution, 103 million hectares of land in Mexico is legally titled communal land, which represents 53 percent of the land area of the country.²⁷ Land tenure is generally perceived to be well established in Mexico and more secure than in other countries in the region. Consequently, CONAFOR does not identify land tenure as a barrier to REDD+ implementation, nor does the ENAREDD+ mention challenges related to land tenure. Nonetheless, it is important to highlight that the last two decades have brought signs of major change to communal land tenure systems in Mexico. Despite the constitutional recognition of land tenure, the Mexican government has made several attempts to promote the privatization of *ejidos*. For example, in 1992, it enacted constitutional reforms that

In the context of threats to the communal lands in Mexico, it will be necessary to ensure that the implementation of a national REDD+ strategy does not exacerbate conflicts over land or weaken tenure rights.

permit the transfer, rental, or privatization of parcels of land within *ejidos*. Moreover, in January 2014, the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) signaled its future plans to further promote the privatization of *ejidos*.²⁸ In the context of threats

to the communal lands in Mexico, it will be necessary to ensure that the implementation of a national REDD+ strategy does not exacerbate conflicts over land or weaken tenure rights.

CONAFOR has promoted the concept of “integrated management” of territory as a principal REDD+ proposal related to forest governance. Integrated management supports a landscape perspective and includes a variety of land uses, including sustainable forest management, reforestation, conservation, agriculture, and silvo-pastoral systems. Success in this integrated territorial management model will require close coordination among the federal, state, and municipal levels of government, as well as capacity building at the local level. To support capacity building, the ENAREDD+ describes Local Technical Agents (ATLs) and Local Development Agents (ADLs) who will support the implementation of REDD+ activities at the local level. CONAFOR is piloting the integrated territorial management strategy in the AT-REDD+ of Jalisco, in particular.

Although the concept of integrated territorial management appears to be a sustainable proposal for REDD+, and is consistent with the global dialogue on a landscape approach to conservation and management, there is still a need for CONAFOR to further define this strategy. A clear strategy for territorial management must strengthen forest governance and promote initiatives that are driven by the communities themselves. Mexico has taken steps in the right direction to promote forest governance and sustainable rural development. Nevertheless, effective implementation will depend on the meaningful participation of local actors, the recognition of rights-holders, a clear definition of benefit-sharing systems, and clarity as to the relationship between carbon ownership and land and natural resource rights.

The Role of International Standards

International institutions, such as the UNFCCC and the World Bank, are part of the institutional landscape for both REDD+ finance and standard setting. As such, they play an important role in enabling progress at the national level. Below we consider these two institutions and their impacts on the REDD+ process in Mexico. Broadly, we assert that numerous lessons



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from the Mexico's REDD+ process can inform what additional guidance is needed from the UNFCCC on exactly how countries should operationalize the safeguards, what information should be provided, and when, in the Safeguards Information Systems (SIS). In fact, if additional guidance had already been elaborated at the international level, it would have been helpful for REDD+ preparation, even for a high capacity country with strong governance, like Mexico. In terms of the World Bank, we assert that the current safeguard policies have made an important contribution to the REDD+ process in Mexico; however, the current World Bank safeguards policy review process may undermine further progress and may have a negative effect on standards in Mexico and elsewhere.

THE ROLE OF THE WORLD BANK'S STANDARDS IN MEXICO'S REDD+ IMPLEMENTATION

The World Bank plays an integral role in global REDD+ finance and standard-setting. It serves as a primary source of early funding for REDD+ readiness and pilot projects, and provides prescriptive guidance for REDD+ preparation and activities. The World Bank's role is particularly robust in

Mexico, where the country engages in both the World Bank's administered FCPF and the FIP. Although World Bank administered trust funds are by no means the only source of REDD+ finance in Mexico, they set the tone for REDD+ implementation and establish some of the common safeguard parameters. Activities carried out through the FCPF and FIP help inform national institutional arrangements and national strategies for REDD+ in Mexico. These include, for example, the use of strategic social and environmental assessments to inform the national REDD+ strategy, the attention to potential negative social impacts on indigenous peoples and *ejidos*, the incorporation of innovative methodologies for community participation in monitoring and evaluation, and the establishment of effective grievance mechanisms for REDD+.

While World Bank standards are not universally applicable to all REDD+ activities, Mexico must comply with World Bank safeguard policies for any World Bank funded initiative, including the FCPF Readiness Fund and Carbon Fund, the FIP, and the large World Bank Forest and Climate Change project which supports REDD+ implementation. As national governments struggle to reconcile the numerous international

standards attached to REDD+ finance, World Bank safeguards are one of the principal systems of safeguard policies that will be considered and incorporated into national safeguard systems. The World Bank safeguards have generally provided operationalizable guidance in the form of procedural requirements and criteria, and Mexico has extensive experience with their implementation, which makes their uptake relatively easy.

THE CURRENT WORLD BANK SAFEGUARD REVIEW: IMPLICATIONS FOR MEXICO

As a result of the World Bank's ongoing safeguard review, the institution's environmental and social policies are on the brink of a major transformation. These changes will have broad implications for REDD+ finance. The updates made to the World Bank's policies during this review will not only directly alter safeguard requirements for future REDD+ finance throughout the World Bank, but are also likely to initiate a series of cascading impacts on the governing standards of other sources of REDD+ finance, including the UNFCCC and bilateral donors, and other international financial institutions such as the Global



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Environmental Facility (GEF) and the regional development banks.

Unfortunately, the current draft of the World Bank's Environmental and Social Management Framework (ESMF) has clear negative implications for Mexico and all countries that receive funds from the World Bank. This first draft has drastically weakened protections in a number of areas, including the REDD+-relevant standards on forests, biodiversity, indigenous peoples and other local communities, and the use of the borrower's environmental and social framework. Diluted World Bank safeguards would prove problematic in Mexico and countries receiving World Bank finance for REDD+. This is true even for countries with a strong legal framework and high

institutional capacity, like Mexico. Despite the strides Mexico has made towards a national safeguard system for REDD+, there are still shortcomings in its national systems. Diluted World Bank safeguards would drive weaker application of safeguards for REDD+ by failing to provide operational guidance for REDD+ safeguard implementation, which helps civil society and communities to hold national governments accountable.

Additionally, the World Bank's new proposed approach to country systems, which allows a country to use their own national systems and regulations as an alternative to the World Bank's safeguards if the country's system is deemed sufficiently strong, substantially lowers the bar for evaluating

the equivalence between the World Bank's policy and a country's own systems. While the existing policy requires the borrower's systems to "adhere to the applicable operational principles" outlined in World Bank safeguards,²⁹ the draft ESMF sets the lowest possible standard by only requiring the project "to achieve objectives materially consistent"³⁰ with the safeguards. As a likely candidate for implementation of country systems, Mexico would potentially not be required to follow even the weakened requirements of the revised safeguard policies; only their objectives. The World Bank's safeguard draft also lacks clarity regarding how gaps in capacity would be identified (and public

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participation in that process), how an action plan would be created and funded to close these gaps, and how the World Bank would monitor progress towards completion of such an action plan.

The World Bank's draft language on the use of country systems fails to uphold the strong institutional oversight and supervision that is critical to ensure consistent and effective application of standards. Considering that strengthening national legal frameworks and institutional capacity is a desired outcome for REDD+, this dilution poses a risk to ensuring protection of rights and environmental integrity. In Mexico, as in all countries, strong country systems are a necessary condition for the successful implementation of a national REDD+ strategy that meaningfully addresses the multiple and complex pressures on forests.

Given that REDD+ countries like Mexico rely on funding from international financial institutions such as the World Bank, further guidance from the UNFCCC, which extends universal requirements for social, environmental and governance

protections, is essential and can help fill the potential gap left by weakened World Bank safeguards.

THE NEED FOR FURTHER GUIDANCE FROM THE UNFCCC

The UNFCCC lays out the fundamental architecture and requirements for REDD+ that are universal regardless of the REDD+ country or the source of finance. Under the UNFCCC, the Conference of Parties (COP) has adopted a number of REDD+ decisions collectively called the “Warsaw Framework for REDD+,”³¹ which includes the Cancun Safeguards³² and the Durban decision on SIS.³³ This Warsaw Framework establishes a basic structure for preparing for and implementing REDD+. The UNFCCC has also adopted methodological guidance for REDD+ activities, which is focused on scaling up and improving the effectiveness of REDD+ finance as well as results-based finance to guide the full implementation of REDD+ activities. In addition to mobilizing resources, the UNFCCC has created a mandate for the coordination of implementation activities

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related to mitigation in the forest sector and has supported capacity building, information sharing and demonstration activities.

Although the UNFCCC provides this broad guidance for countries implementing REDD+, it is still unclear how to translate the principles found in the safeguards into action at the national and local levels.³⁴ The current guidance does not clarify whether and how countries like Mexico should

demonstrate that the required safeguards have been implemented equitably and effectively. Moreover, there are gaps that constrain the UNFCCC, the Green Climate Fund (GCF) and other entities involved in REDD+ when assessing whether the safeguards have been addressed and respected in order to deliver results-based finance. These gaps are compounded by the different standards REDD+ countries must follow depending on their source of REDD+ funding. In light of these challenges, the UNFCCC will negotiate whether to develop additional guidance on the REDD+ SIS at COP 20 in Lima.

Unlike many countries pursuing REDD+ finance, Mexico has strong existing legal, regulatory and institutional systems on which to base its SIS. In preparing for and implementing REDD+ pilot activities, Mexico has taken steps to incorporate the UNFCCC safeguards into its laws, and is in the process of establishing a comprehensive safeguards system through its SNS. There are a number of important lessons from Mexico’s REDD+ preparation experiences that can inform why further guidance from the UNFCCC is important and what it should include. For



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example, Mexico's process of assessing the national legal and regulatory frameworks for REDD+ have, importantly, been carried out in a reasonably transparent and multi-stakeholder manner. Supporting such broad engagement has facilitated incorporating, at least, some feedback and ideas from civil society, indigenous peoples and forest communities. Moreover, Mexico has taken steps to actually reform its laws to create an adequate legal framework for REDD+. These experiences should inform the characteristics and content of UNFCCC guidance on SIS, so that existing gaps that prevent developing country Parties from meeting their safeguard requirements and the international community's expectations are filled, and that the SIS can function effectively.

Nevertheless, Mexico's process of establishing its own comprehensive safeguards system has generated confusion among civil society and government agencies with regards to how its system relates to an SIS. There is also uncertainty around how a country's national safeguards fit in and comply with both the UNFCCC REDD+ Safeguards as well as the safeguards of multilateral institutions, such as the World Bank, who are funding REDD+ preparation and pilot projects in Mexico. Further guidance from the UNFCCC could clarify the difference between an SIS and a national safeguard system, and explain how the former is built off of the latter without infringing upon a country's sovereignty or the need to take national circumstances into account.

Although Mexico has demonstrated technical and financial capacities to design its own approach to implement and report on the REDD+ safeguards, it is difficult to ensure that the safeguards have been addressed and respected. UNFCCC guidance can address preparing a country's summary of information, setting up the SIS, and spelling out the essential components and characteristics of reporting on how safeguards are addressed and respected in order to access results based finance. It could also give examples of the different types of indicators and information that could be provided. Especially for a country like Mexico, which has many regulating agencies involved in REDD+ implementation and already receives support for REDD+ from various funding sources, further guidance from the UNFCCC would facilitate coordination of information provision between REDD+ processes. UNFCCC guidance could

promote coherence and create links between the SIS and other international reporting processes.

Further guidance for the SIS could provide common reporting templates, using those of the World Bank, UN-REDD and the GEF, among others. This coherence would allow countries to more easily report to its REDD+ donors, and significantly ease the burden of reporting. Moreover, it could

Additional guidance that draws upon Mexico's experience could provide a useful roadmap for other REDD+ countries.

help to limit inconsistencies between different countries' reporting requirements, avoiding unnecessary costs and inconveniences in fulfilling their REDD+ requirements. Further guidance from the UNFCCC is particularly critical for countries like Mexico given that, as previously discussed, the World Bank is undergoing a safeguard review process that may reduce the detailed operational guidance that it currently provides. In addition to securing cohesion between the standards of diverse funding sources and the UNFCCC safeguards, Mexico should continue the process of harmonizing and incorporating these rules within its own national laws, regulations and systems.

The government of Mexico has argued that the existing international guidance in place is "sufficient" to determine how to implement safeguards and build the SIS at the national level.³⁵ Mexico, like other REDD+ countries, is concerned that additional guidance will prevent a country-driven system. Rather than fear that further guidance would obstruct national efforts, such guidance could, as mentioned above, simplify reporting formats and thus reduce the burden of reporting and improve understanding and awareness among REDD+ stakeholders by making information more publically available. Additional guidance could identify a range of likely legal and regulatory elements that must be put in place to address and respect the safeguards without prescribing specific changes that need to be determined at the national level based on national circumstances.

In fact, the Mexico case can help identify these characteristics needed for additional guidance, and provide examples for other countries. Additional guidance that draws upon elements of Mexico's experience could provide a more useful roadmap for countries at the early stages of their own national safeguard system and SIS design.

Mexico's approach to developing its own national safeguard system is appropriately based on its national governance system. Its process has shown that international inputs and feedback have been helpful to ensure that the REDD+ safeguards and other standards are appropriately implemented and that rights are protected. Many factors at the country level will influence REDD+ implementation and result in significant differences in how different countries will treat different issues. However, further guidance from the UNFCCC could support better uniformity and reliability, and also clarify conflicts. For example, there are now generally agreed upon principles for feedback and grievance redress mechanisms for REDD+ emerging from the FCPF and the UN-REDD Program. These methods for reporting on accountability could be incorporated into the SIS guidance.

Conclusions

Mexico's experience preparing for and implementing REDD+ offer a useful example to illustrate that even a country that has made strong advances in REDD+ would benefit from further international guidance. In fact, many elements from the Mexican REDD+ process can be used to inform such additional guidance. As a country with high institutional capacity, a robust legal framework, and many years of experience in implementing forest-related programs, Mexico is a global frontrunner in REDD+. The government has demonstrated clear progress in national REDD+ arrangements, including development of safeguard policy frameworks and facilitating an interesting dialogue around safeguards for REDD+. Mexico has engaged with REDD+ through country-driven processes both at the national and sub-national levels, and has also integrated broad stakeholder participation by involving various actors to prepare, implement and monitor REDD+. Moreover, Mexico has recognized the important role forests play in climate change, and conceives of REDD+ as a mechanism beyond carbon by framing it in terms of rural sustainable development.



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Despite Mexico's significant advances in REDD+ preparation, shortcomings and confusion are still evident in a number of areas. Participation is one of the key requirements for REDD+; however while several participatory spaces have been created for civil society to input into Mexico's REDD+ process, the direct participation of communities and indigenous peoples has been limited. Some civil society organizations feel that their input has not been incorporated in a genuine way; consequently, many groups have elected to remove themselves from participating in these fora.

Furthermore, despite Mexico's international obligations to protect specific rights in the international agreements to which it is committed, comprehensive integration of these rights—such as FPIC—in Mexico's legal framework is still lacking. Despite CONAFOR's acknowledgement that the carbon rights from enhancement of carbon stocks belong to the legitimate owners of

International institutions like the UNFCCC and the World Bank can provide guidance to help countries operationalize safeguards and protect community rights.

the land, rights to avoided emissions remain unclear, and appear to belong to the government. Finally, although Mexico is actively discussing a national safeguard system alongside its safeguard information system, confusion exists between the two concepts, which lack a clear conceptualization of their differences and how they interact. Mexico has gradually made progress and clarified its position in a number of these areas, but this

process has occurred slowly over the course of several years, and is in large degree a product of pressure from civil society organizations.

Mexico's gaps and imperfections in REDD+ preparation demonstrate a clear and ongoing role for international institutions. International institutions like UNFCCC and the World Bank, among other global forums on REDD+, can provide guidance to help countries advance towards effective operationalization of safeguards and protection of community rights. Broad, flexible guidance capable of accommodating diverse approaches and supporting payment for different types of results is needed to prevent harms in implementing REDD+ as well as promote benefits. Robust additional guidance will undoubtedly prove beneficial for REDD+ countries, as it is essential to improve country capacity, enable broad participation, and build greater confidence in REDD+.

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Bank Information Center
1100 H Street NW, Suite 650
Washington DC 20010, USA
(202) 636-7752 • www.bicusa.org



Centro Mexicano de Derecho Ambiental
Atlixco 138, col. Condesa Deleg.
Cauhtémoc México, D.F.
52 (55) 52 86 33 23 • www.cemda.org.mx



Center for International Environmental Law
1350 Connecticut Avenue NW, Suite #1100
Washington, DC 20036 USA
(202) 785-8700 • www.ciel.org

Thanks to Niranjali Amerasinghe, Carlota Fluxa, David Gerratt, Emily Goldman, Joshua Lichtenstein, and Gustavo Sánchez Valle.

The full text of the report is available online at <http://bit.ly/REDDsafeguardsMX>.