

Rights and Jurisdictional REDD+ in Tanzania

4.1 FORESTS, GOVERNANCE, AND RIGHTS IN TANZANIA

Forests make up 38 percent of Tanzania's land mass and represent 46 percent of the total forested area in all of East Africa.⁶⁰⁴ Although the majority of Tanzania's forest area comprises dry woodlands, it also includes other forest types such as humid mangrove forests and coastal woodlands that are rich in biodiversity.⁶⁰⁵ The forestry sector itself is not an important source of economic activity and timber products only amount to 1.9 percent of Tanzania's GDP.⁶⁰⁶ On the other hand, Tanzania's forests provide important habitats and wilderness areas for a range of animal species, help maintain soil fertility, limit soil erosion, landslides, and floods, and regulate water catchments and quality.⁶⁰⁷ These ecosystem services are essential for other important economic sectors, such as agriculture and tourism, and have been estimated to account for 10 to 15 percent of Tanzania's GDP.⁶⁰⁸ Forests are moreover critical to the livelihoods and cultural practices of rural and forest-dependent communities, who depend on them for shelter, income, food, building materials, traditional medicines, and energy supply (in the form of charcoal and fuel wood).⁶⁰⁹ As a result, the forestry sector has long been at the heart of Tanzania's development policies⁶¹⁰ as well as the aid programs

⁶⁰⁴ FAO, *supra* note 427 at 110. ⁶⁰⁵ Burgess *et al.*, *supra* note 142 at 341–343.

⁶⁰⁶ FAO, *supra* note 604 at 147.

⁶⁰⁷ World Bank, *Putting Tanzania's Hidden Economy to Work: Reform, Management, and Protection of its Natural Resource Sector* (Washington, DC: World Bank, 2008) at 16.

⁶⁰⁸ *Ibid.* ⁶⁰⁹ *Ibid.*

⁶¹⁰ See, *e.g.*, United Republic of Tanzania, Office of the Vice-President, *National Strategy for Growth and Reduction of Poverty*, 2005, at strategies 2.1.4, 2.10.1, and 4.7.2.

delivered by international donors.⁶¹¹ Likewise, Tanzania's policy framework for forest governance recognizes the importance of forests in the alleviation of poverty and the pursuit of sustainable economic growth and development.⁶¹²

Tanzania's vast forests have been characterized by high and unsustainable rates of deforestation and forest degradation in recent decades.⁶¹³ Between 2005 and 2010, Tanzania lost 403,000 hectares of forest cover per year, corresponding to an annual loss of 1.16 percent of its total forest area⁶¹⁴ and generating 122.14 million tons of carbon emissions on an annual basis.⁶¹⁵ Given its relatively undeveloped rural economy, its reliance on agriculture, and the limited commercial potential of its dry woodland forests, the main causes of deforestation and forest degradation in Tanzania have been local in nature and have included the conversion of lands for agriculture, bio-fuel production, and human settlements; livestock grazing; firewood and charcoal production; uncontrolled wild fires; illegal logging and mining; and infrastructure development.⁶¹⁶ The broader drivers of forest loss in Tanzania include the limited capacities of its government agencies to effectively manage forests and prevent the overexploitation of forest products and resources; its rapid population growth and the related environmental pressures that this creates; and the high levels of poverty among rural communities who depend on forests to meet their basic needs in terms of income, food, and energy.⁶¹⁷ That said, forests managed by rural communities under Tanzania's advanced regime for participatory forest management have been characterized by lower

⁶¹¹ See, e.g., Tanzania Development Partners Group, "The Large and Uncaptured Potential of the Forestry Sector in Developing Tanzania's Economy" (2005), available at: www.tzonline.org/pdf/thelargeanduncapturedpotentialoftheforestry.pdf (accessed 7 October 2014).

⁶¹² Tanzania's National Forest Policy aims to "enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of her natural resources for the benefit of present and future generations" (United Republic of Tanzania, Ministry of Natural Resources and Tourism, *National Forest Policy*, 1998, at 14) and its National Forest Programme aims "to reduce poverty and increase economic growth by managing forests sustainably without compromising environmental and cultural values" (United Republic of Tanzania, Ministry of Natural Resources and Tourism, Forestry and Beekeeping Division, *National Forest Programme in Tanzania 2001-2010*, 2001, at Section 1.2).

⁶¹³ Fabiano L. Godoy, "Deforestation and CO₂ emissions in coastal Tanzania from 1990 to 2007" (2011) 39(1) *Environmental Conservation* 62.

⁶¹⁴ FAO, *supra* note 604 at 110.

⁶¹⁵ United Republic of Tanzania, Office of the Vice President, *National Strategy for Reduced Emissions from Deforestation and Forest Degradation (REDD+)* (March 2013) (on file with the author) at 36.

⁶¹⁶ *Ibid.* at 13–15. See also Simon Milledge, Ised Gelvas & Anyje Ahrends, *Forestry, Governance and National Development: Lessons Learned from a Logging Boom in Southern Tanzania* (TRAFFIC East/Southern Africa, 2007) at 32–35.

⁶¹⁷ *Tanzanian National Strategy for REDD+*, *supra* note 615 at 15–16.

rates of forest loss, as compared to forests managed by central authorities or those with an open-access status.⁶¹⁸ Given that the forests under the direct management of communities only amount to 13 percent of Tanzania's total forest area, the provision of funding and capacity-building to support communities in securing and governing forests has thus long been identified as a promising intervention for reducing deforestation in Tanzania.⁶¹⁹

The management of land and forests was heavily centralized in Tanzania⁶²⁰ during British colonial rule with the adoption of laws and policies that prioritized the statutory rights of colonial settlers over the customary rights accorded to Tanzanians⁶²¹ and asserted control over forests, wildlife, and natural resources by establishing protected areas from which rural and forest-dependent communities were evicted and barred entry.⁶²² For the first few decades after independence, the authoritarian socialist regime of Julius Nyerere pursued a similarly coercive approach to land and resource governance. It expanded the number and scope of protected areas⁶²³ as well as implemented a policy of large-scale villagization (*ujaama vijijini*) that involved the forcible resettlement and concentration of rural Tanzanians into planned villages and the establishment of agricultural cooperatives.⁶²⁴ While this program gave newly formed village settlements the authority to manage land and allocate rights of occupancy within their borders, villagers themselves lacked statutory rights to land and enjoyed very little security of

⁶¹⁸ Tom Blomley *et al.*, "Seeing the wood for the trees: an assessment of the impact of participatory forest management on forest condition in Tanzania" (2008) 42:3 *Oryx* 380.

⁶¹⁹ Burgess *et al.*, *supra* note 142 at 247–348.

⁶²⁰ The discussion that follows focuses on forest governance and local communities in mainland Tanzania and not in Zanzibar. While the Union Government exercises power over "union" matters such as matters as foreign affairs, education, or the environment in both mainland Tanzania and Zanzibar, the Revolutionary Government of Zanzibar exercises power over "non-union" matters. Although REDD+ as a whole falls within the responsibility of the Union Government, forest governance and land rights are a non-union matter and the discussion below thus focuses on the regime for forest governance and land rights on mainland Tanzania.

⁶²¹ As was the case in their other colonies in Africa, the British imposed a two-tiered system of land law and governance that accorded statutory rights of occupancy to colonial settlers and gave village chiefs the power to allocate customary rights to land to villagers. This regime of customary property law not only disregarded existing communal practices, but also provided villagers with insecure and weak rights that could be overridden and reallocated for other purposes by colonial authorities. See Elke Grawert, *Departures from Post-Colonial Authoritarianism. Analysis of System Change with a Focus on Tanzania* (Frankfurt, Germany: Peter Lang, 2009) at 193–194.

⁶²² Fred Nelson *et al.*, "Community-Based Conservation and Maasai Livelihoods in Tanzania" in Katherine Homewood *et al.*, *Staying Maasai? Livelihoods, Conservation and Development in East African Rangelands* (New York, NY: Springer, 2009) 299 at 301–303.

⁶²³ *Ibid* at 303–305. ⁶²⁴ Grawert, *supra* note 621 at 202–205.

tenure as a result.⁶²⁵ The resulting ambiguities around unclear and overlapping land rights, the lack of recognition of customary land rights and practices, and ongoing tensions over the management of natural resources and the exclusion of rural communities from forest and nature reserves generated a series of protracted conflicts over land between various actors of Tanzanian society.⁶²⁶

In the second half of the 1980s, in response to an economic crisis and the pressures exerted through the structural adjustment programs imposed by multi-lateral donors, Tanzania began to transition away from socialist policies to adopt liberal economic policies and forms of governance.⁶²⁷ This broader trend toward political decentralization coincided with greater interest among donors as well as Tanzanian officials in experimenting with community-based approaches to forest management in the early 1990s.⁶²⁸ Finally, the extensive discontent with land conflicts and tenure insecurity led the reformist government of Ali Hassan Mwinyi to appoint a commission of inquiry on land matters.⁶²⁹ These efforts eventually culminated in the adoption of three laws, the *Land Act* and the *Village Land Act* in 1999 and the *Forest Act* in 2002, which provide the foundations for rural communities to govern their lands and manage their forests in contemporary Tanzania.

The *Land Act* provides that all land is held in trust by the President on behalf of all citizens⁶³⁰ and recognizes three categories of land: reserved land, village land, and general land.⁶³¹ Reserved land is land that is set aside by the central government for the purposes of conservation or development under national laws and ordinances, such as national parks, land for public utilities, and wildlife reserves.⁶³² Village land is land managed by Village Councils on behalf of Village Assemblies that falls within the demarcated boundaries of villages that have obtained formal certificates for this purpose as well as land that villages have been occupying or using for twelve or more years under customary law.⁶³³ Village Councils may further demarcate village land into three sub-categories: communal land jointly used by villagers (such as pastures or forests); occupied

⁶²⁵ Patrick McAuslan, *Land Law Reform in East Africa: Traditional or Transformative?* (Abingdon, UK: Routledge, 2009) at 50–55.

⁶²⁶ Grawert, *supra* note 621 at 205–212, 226–232, and 512–534. ⁶²⁷ *Ibid* at 234–243.

⁶²⁸ Fred Nelson & Tom Blomley, “Peasants’ Forests and the King’s Game? Institutional Divergence and Convergence in Tanzania’s Forestry and Wildlife Sectors” in Fred Nelson, ed., *Community Rights, Conservation and Contested Land: The Politics of Natural Resource Governance in Africa* (Abingdon, UK: Routledge, 2012) 79 at 85–88. See also Liz Alden Wily & Peter A. Dewees, “From users to custodians: Changing relations between people and the State in forest management in Tanzania” (World Bank Policy Research Paper 2569, 2001).

⁶²⁹ McAuslan, *supra* note 625 at 95–98. ⁶³⁰ *Land Act*, art. 4(1). ⁶³¹ *Ibid*, art. 4(4).

⁶³² *Ibid*, art. 6(1). ⁶³³ *Village Land Act*, art. 7(1).

land used and managed by individuals or groups; and future land set aside for future use by villagers.⁶³⁴ Villagers can gain rights to occupied land through either a granted right of occupancy obtained from Village Councils that is subject to a designated lease period of a maximum of 99 years⁶³⁵ or a customary right of occupancy that may be held indefinitely.⁶³⁶ Finally, general land is public land that does not constitute reserved land or village land.⁶³⁷ Tanzania's land tenure system thus provides a clear legal basis for rural communities to exercise statutorily and customarily defined rights to manage, occupy, and use land *within the boundaries of villages*. On the other hand, the exercise of customary land rights claimed by communities on reserved or general lands has received less recognition and protection from central authorities and has moreover given rise to continued land disputes and conflicts between communities.⁶³⁸

The *Forest Act* enables communities living in or adjacent to forests to control and manage or co-manage their forests through one of two mechanisms: Community-Based Forest Management (CBFM) and Joint Forest Management (JFM). The provisions on CBFM most notably allow villages to establish and manage, whether separately or jointly, a Village Land Forest Reserve (VLFR).⁶³⁹ In order to do so, a village must establish that it holds tenure over a given forest, prepare a plan for its sustainable management, and adopt by-laws that support this plan (through the provision of fines or sanctions, for instance). The plan and the by-laws must then be ratified by the District Council, who can then declare the existence of a new VLFR. After three years, villages may moreover apply for their VLFR to be gazetted by the central government.⁶⁴⁰ The creation of a VLFR provides local communities with clear and unambiguous statutory rights to manage and control forests and fully benefit from their resources, in line with their approved VLFR management plan.⁶⁴¹ As is recognized by the Tanzanian Ministry of Natural Resources & Tourism, CBFM thus "aims to secure forests through sharing

⁶³⁴ *Ibid.*, art. 12–13. ⁶³⁵ *Land Act*, art. 22. ⁶³⁶ *Village Land Act*, art. 18.

⁶³⁷ *Ibid.*, art. 1(2). In fact, this definition is not consistent with the one included in article 4(c) of the *Land Act*, which defines general land as "all land which is not reserved land or village land and includes any unoccupied or unused village land." This inconsistency creates significant ambiguity about the scope and security of unoccupied or unused village lands (Peter G. Veit, Darryl Vhugen & Jonathan Mine, "Threats to Village Land in Tanzania Implications for REDD+ Benefit-Sharing Arrangements" in Lisa Naughton-Treves & Cathy Day, eds., *Lessons about Land Tenure, Forest Governance and REDD+*: *Case Studies from Africa, Asia and Latin America* (Washington, DC: USAID, 2012) 11 at 14).

⁶³⁸ USAID, "USAID Property Rights and Resource Governance Country Profile: Tanzania" available at: http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Tanzania_Profile.pdf (accessed 8 October 2014) at 10 and 14–15.

⁶³⁹ *Forest Act*, art. 32. ⁶⁴⁰ Blomley & Iddi, *supra* note 144 at 12–14.

⁶⁴¹ Nelson & Blomley, *supra* note 628 at 83.

the rights to control and manage them, not just the right to use or benefit from them” and “targets communities not as passive beneficiaries but as forest managers.”⁶⁴² In contrast, JFM entails the adoption of joint forest management agreements between communities and the central government and does not therefore provide communities with additional statutory rights to govern forests or to access their benefits.⁶⁴³

As of 2009, 1,460 villages (14 percent of all villages on mainland Tanzania) had engaged in CBFM and 395 forests had been declared or gazetted as VLFRs, thus placing 12 percent of unreserved forests under the direct control and authority of local communities.⁶⁴⁴ However, local communities have also faced a number of challenges in the establishment and management of VLFRs, including their limited capacity to protect VLFRs from exploitation by outsiders participating in the growing trade in illegal timber. This has been compounded by the reluctance of some District Council officials to declare a new VLFR due to the potential loss of revenue (in the form of taxes and levies on the exploitation of forests or bribes or kickbacks received as part of their participation in illegal logging) that may result therefrom. These practical challenges have thus prevented many local communities from taking full advantage of Tanzania’s advanced CBFM regime.⁶⁴⁵

The experience of local communities pales in comparison with the setbacks faced by Indigenous Peoples seeking recognition and protection of their customary lands and forests. Four ethnic communities identify as Indigenous Peoples in contemporary Tanzania: forest-dwelling hunter-gatherers known as the Hadzabe and the Akie and pastoralists known as the Maasai and the Barabaig.⁶⁴⁶ Throughout the twentieth century, these communities experienced ill-treatment, discrimination, and deprivation at the hands of the German and British colonial authorities as well as the post-colonial government of Nyerere. They were evicted, frequently through force, from their traditional lands and forests to make way for the creation of forest and nature reserves and thereafter subjected to coercive regimes of wildlife and resource management that adversely affected their traditional livelihoods and cultural practices. Their lands, forests, and grazing tracts were also alienated to commercial and private

⁶⁴² United Republic of Tanzania, Ministry of Natural Resources and Tourism, Forestry and Beekeeping Division, *Community-Based Forest Management Guidelines for the establishment of Village Land Forest Reserves and Community Forest Reserves* (2007) at 2.

⁶⁴³ *Forest Act*, art. 16. ⁶⁴⁴ Blomley & Iddi, *supra* note 144 at 19.

⁶⁴⁵ Nelson & Blomley, *supra* note 628 at 89–91.

⁶⁴⁶ See International Fund for Agricultural Development (IFAD), “Country Technical Note on Indigenous Peoples’ Issues: The United Republic of Tanzania” (June 2012), available at: www.ifad.org/english/indigenous/pub/documents/tnotes/tanzania.pdf (accessed 8 October 2014) at 5–7.

interests, without their consent or receipt of any compensation. And their traditional systems of customary law and governance were disrupted through the imposition of external legal and administrative structures (such as the bifurcated property rights regime of the British or the villagization program of the Nyerere regime).⁶⁴⁷

During the 1980s, members of the Maasai and Barabaig communities filed a number of lawsuits against the Tanzanian government and corporations that had dispossessed them of their lands. However, their attempts to gain recognition and restoration of their customary land rights before the Tanzanian courts were ultimately unsuccessful.⁶⁴⁸ In the early 1990s, these communities began to establish links with, and draw inspiration from, the global Indigenous movement originating in Canada, Australia, and Latin America. They began to identify as Indigenous and formed a series of NGOs to advocate for the recognition of their status and rights as Indigenous Peoples.⁶⁴⁹ In 1994, these NGOs most notably established a new umbrella organization known as Pastoralist and Indigenous NGOs (PINGOs) to serve as a “loose coalition of like minded pastoralist and hunter/gatherer community based organisations.”⁶⁵⁰ With support from international donors, these NGOs sought to take advantage of the opportunities offered by the gradual liberalization of Tanzanian politics to press for the protection of their rights as Indigenous Peoples, especially in terms of their traditional rights to land.⁶⁵¹ Nevertheless, the effectiveness of Tanzania’s fledgling Indigenous movement has been limited due to its disjointed and disorganized nature as well as its detachment from the communities that it is meant to serve, and it has made few legal or political gains over the last two decades.⁶⁵²

For one, the Hadzabe, Akie, Maasai, and Barabaig have not succeeded in being recognized as “Indigenous” by the Tanzanian government. Although Tanzania voted in favor of the *UN Declaration on the Rights of Indigenous Peoples* in 2007, it has not acknowledged the existence of Indigenous Peoples on its territory nor has it adopted any national laws or policies that aim to

⁶⁴⁷ Nelson *et al.*, *supra* note 622 at 301–304; Albert Kwokwo Barume, *Land Rights of Indigenous Peoples in Africa* (Copenhagen, Denmark: IWGIA, 2010) at 138–142.

⁶⁴⁸ *Ibid* at 123–138.

⁶⁴⁹ Jim Igoe, “Scaling Up Civil Society: Donor Money, NGOs, and the Pastoralist Rights Movement in Tanzania” (2003) 34(5) *Development and Change* 863; Jim Igoe, “Becoming Indigenous Peoples: Difference, Inequality, and the Globalization of East African Identity Politics” (2006) 105/420 *African Affairs* 399.

⁶⁵⁰ *Ibid* at 415. ⁶⁵¹ Igoe, “Scaling Up Civil Society” *supra* note 649.

⁶⁵² Dorothy L. Hodgson, “Precarious Alliances: The Cultural Politics and Structural Predicaments of the Indigenous Rights Movement in Tanzania” (2002) *American Anthropologist* 1086; Igoe, “Scaling Up Civil Society” *supra* note 649.

recognize or protect the rights of Indigenous Peoples.⁶⁵³ While recognizing that some ethnic groups may need “special protection,” the Government of Tanzania has maintained that all Tanzanians are “Indigenous.”⁶⁵⁴ This position goes against an explicit recommendation adopted by the African Commission on Human and Peoples’ Rights (ACHPR) calling on Tanzania to “[f]ormulate a definition of indigenous peoples that accommodates Tanzania’s circumstances and is consistent with the provisions and principles of the African Charter.”⁶⁵⁵ The nonrecognition of Indigenous Peoples has been widespread across other segments of Tanzanian society that have viewed their traditional lifestyles as incompatible with the “modern” values of contemporary Tanzania.⁶⁵⁶ Indigenous Peoples have thus experienced systematic discrimination as well as political and socioeconomic marginalization not only due to the policies of

⁶⁵³ Elifuraha Isaya Laltaoka, “Indigenous Peoples’ Rights in Tanzania and International Rights Law” (2012) 1(1) *TUMA Law Review* 147.

⁶⁵⁴ Human Rights Council, Working Group on the Universal Periodic Review, “Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania” UN Doc. A/HRC/19/4 (2011) at para. 24.

⁶⁵⁵ ACHPR, “Concluding Observations and Recommendations on the Consolidated 2nd to 10th Periodic Report of the United Republic of Tanzania,” 43rd Ordinary Session, 7–22 May 2008, Ezulwini, Kingdom of Swaziland, available at: www.achpr.org/files/sessions/43rd/conc-obs/2010-1992-2008/achpr43_conc_staterep2010_tanzania_2008_eng.pdf (accessed 6 February 2015) at para 37. In this regard, it is worth emphasizing that the ACHPR has endorsed the report drafted by a working group on Indigenous Populations and Communities in Africa, which recognizes the value and application of the concept of Indigenous Peoples in the African context: “The overall conclusion is that indigenous peoples and communities in Africa suffer from a number of particular human rights violations that are often of a collective nature; that the African Charter is an important instrument for the promotion and protection of the rights of indigenous peoples and communities; and that the preceding jurisprudence of the African Commission opens a way for indigenous peoples and communities to seek protection of their human rights. The report further concludes that, although contested, the term ‘indigenous peoples’ is valuable also in an African context as it offers the victims of particular human rights abuses an important avenue forward to improve their situation. (...) Unlike other indigenous peoples outside Africa, where the aboriginal type of indigeneity is the characteristic feature, Africa’s indigenous peoples have their own specific features that reflect from the specific feature of the African state and its role. They have specific attachment to their land and territory; they have specific cultures and mode of production that are distinct from the groups that dominate political, economic and social power. As predominantly traditional systems, they have their own forms of governance, laws that go in the name of customary laws, modes of productions and culture, all deriving from an all-inclusive indigenous knowledge system” (Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities. Submitted in accordance with the “Resolution on the Rights of Indigenous Populations/Communities in Africa,” adopted by The African Commission on Human and Peoples’ Rights at its 28th ordinary session (Eks/Skolens Trykkeri and Copenhagen, Denmark: ACHPR and IWGIA, 2005) at 106–107).

⁶⁵⁶ IFAD, *supra* note 646 at 10–13.

the Tanzanian government, but also due to the actions of the private sector, conservation actors, and rural communities.⁶⁵⁷

In addition, Indigenous Peoples have, by and large, not benefited from land and forest reforms adopted in Tanzania in the late 1990s and early 2000s.⁶⁵⁸ While some Indigenous communities in Tanzania have sought to establish customary rights of occupancy on their traditional lands under the *Land Act* and the *Village Land Act*, this option has remained riddled with a number of legal and bureaucratic obstacles, particularly their exclusion from the village-based unit of political administration and governance.⁶⁵⁹ As such, most of the customary lands of Indigenous Peoples have been declared as reserve lands (particularly conservation or wildlife areas) or village lands (established during the *ujaama vijijini* era).⁶⁶⁰ Indigenous Peoples have continued to face significant barriers in claiming and exercising their land and tenure rights, as well as eviction from their lands, pastures, and grazing areas.⁶⁶¹ The tenure insecurity that Indigenous Peoples face in Tanzania is all the more harmful since access to land and its resources is integral to their livelihoods and cultural practices.

4.2 THE PURSUIT AND GOVERNANCE OF JURISDICTIONAL REDD+ IN TANZANIA

The commencement of jurisdictional REDD+ activities in Tanzania originates in the conclusion of a bilateral agreement in April 2008 with the government of Norway that established a “Climate Change Partnership with a focus on REDD.”⁶⁶² The original impetus for this agreement came largely from the Norwegian Embassy in Dar es Salaam and built on Norway’s long-standing support for forest conservation and governance in Tanzania.⁶⁶³ In

⁶⁵⁷ IFAD, *supra* note 646 at 8–25. See generally Human Rights Council, Working Group on the Universal Periodic Review, “Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1. United Republic of Tanzania” UN Doc. A/HRC/WG.6/12/TZA/3 (2011) at para. 61–66.

⁶⁵⁸ Barume, *supra* note 647 at 142–145.

⁶⁵⁹ Two obstacles are that Indigenous lands are not physically occupied by households on a permanent basis and that many Indigenous communities do not have enough members to form a village under Tanzanian law. IFAD, *supra* note 646 at 14.

⁶⁶⁰ Barume, *supra* note 647 at 145–151; IFAD, *supra* note 646 at 13–14.

⁶⁶¹ Elifuraha Isaya Laltaoka, “Pastoralists’ Right to Land and Natural Resources in Tanzania” (2013) 15 *Oregon Review of International Law* 43.

⁶⁶² Royal Norwegian Embassy in Dar es Salaam, “Letter of Intent between the United Republic of Tanzania and the Kingdom of Norway on a Climate Change Partnership with focus on REDD” (2008) (on file with the author).

⁶⁶³ Interview 16 at 3–4; Interview 44 at 4; Interview 65 at 1.

this early period in the emergence of REDD+ within the UNFCCC and around the world, Norwegian officials believed that supporting the operationalization of REDD+ in Tanzania could be used to demonstrate its potential role in contributing to the alleviation of poverty as well as its applicability in the dry woodlands that are common in much of sub-Saharan Africa.⁶⁶⁴ In turn, Norway's interest in funding the implementation of REDD+ in Tanzania garnered significant interest both from the Tanzanian Vice President's Office, which handles environmental issues and climate change, as well as the Tanzanian Ministry of Natural Resources and Tourism, which oversees the management and governance of forests.⁶⁶⁵ Tanzanian officials saw the pursuit of REDD+ readiness activities as an opportunity to take advantage of new funds to improve Tanzania's forest management practices, contribute to poverty alleviation, and make a voluntary contribution to global climate mitigation efforts.⁶⁶⁶

Pursuant to its bilateral partnership with Norway, Tanzania created a National REDD+ Taskforce bringing together six senior government officials from the Office of the Vice-President (Division of the Environment) and the Ministry of Natural Resources and Tourism (Forestry and Beekeeping Division) to coordinate its jurisdictional REDD+ readiness efforts in late 2008.⁶⁶⁷ In addition, Tanzania also established a REDD+ Secretariat, hosted at the Institute of Resource Assessment (IRA) of the University of Dar es Salaam,⁶⁶⁸ which was given the important task of receiving and administering the funding provided by Norway for the creation of a national REDD+ strategy. The establishment of this secretariat in a third-party institution outside of government was motivated by Norway's lack of confidence in the ability of the MRNT to manage donor funds, in light of a corruption inquiry that was unresolved at the time. In addition, Norwegian and Tanzanian officials also shared an interest in finding a neutral platform that could facilitate the development of a national REDD+ strategy in a context where the MRNT and VPO were unable to agree as to who should hold primary responsibility for coordinating REDD+ readiness efforts.⁶⁶⁹

⁶⁶⁴ Interview 15 at 8; Interview 44 at 4; Interview 52 at 1–2.

⁶⁶⁵ Interview 19 at 1; Interview 21 at 1; Interview 22 at 1.

⁶⁶⁶ Interview 15 at 8; Interview 19 at 3; Interview 21 at 1; Interview 22 at 1. See also Salla Rantala & Monica Di Gregorio, "Multistakeholder environmental governance in action: REDD+ discourse coalitions in Tanzania" (2014) 19(2) *Ecology & Society* article 66 at 5.

⁶⁶⁷ REDD+ Secretariat, "Tanzania REDD Initiative Newsletter" Issue 1, August 2009 (on file with the author) at 6–7.

⁶⁶⁸ Institute of Resource Assessment, University of Dar es Salaam, "Facilitation for the Preparation of a National REDD Strategy in Tanzania, proposal submitted to the Royal Norwegian Embassy in Tanzania" (2 March 2009) (on file with the author) at 4.

⁶⁶⁹ Interview 15 at 8; Interview 20 at 1; Interview 52 at 3; Interview 65 at 1.

From 2009 to 2014, Norway disbursed 58 million US dollars for the implementation of three types of REDD+ readiness activities in Tanzania. First, Norway provided more than 7 million US dollars to fund the preparation of a national REDD+ strategy. Second, Norway provided close to 30 million US dollars to support the development and operationalization of nine REDD+ pilot projects across Tanzania.⁶⁷⁰ Third, it spent over 21 million US dollars to fund two major research, training, and infrastructure programs in collaboration with the Sokoine University of Agriculture, one focusing on climate change impacts, adaptation, and mitigation (CCIAM) and another supporting the development of a national system for the measurement, reporting, and verification (MRV) of forest carbon stocks.⁶⁷¹ Norway's support for these various activities created momentum, generated knowledge, and increased capacity for the pursuit of REDD+ in Tanzania.⁶⁷² Yet, despite the important role that Norway played in the inception and funding of REDD+ in Tanzania,⁶⁷³ Tanzanian officials pursued their REDD+ readiness activities in a relatively autonomous fashion.⁶⁷⁴ Indeed, Norwegian officials aimed to foster Tanzanian ownership of REDD+ and thus sought to influence REDD+ readiness efforts through dialogue rather than through the use of conditionality or overt political pressure.⁶⁷⁵

In addition to the bilateral support provided by Norway, Tanzania received close to four million US dollars in assistance from a dedicated UN-REDD National Programme for its jurisdictional REDD+ readiness efforts.⁶⁷⁶ From

⁶⁷⁰ These pilot projects are discussed in Section 5.4.

⁶⁷¹ NORAD, *supra* note 423 at 308–309. ⁶⁷² *Ibid* at 318, 321–322.

⁶⁷³ In addition to its bilateral program, Norway also served as the primary donor of the UN-REDD Programme and the development of an R-PP for the FCPF in Tanzania. See NORAD, “Real-Time Evaluation of Norway’s International Climate and Forest Initiative Contributions to National REDD+ Processes 2007–2010 Country Report: Tanzania” (March 2011), available at: www.norad.no/en/tools-and-publications/publications/evaluations/publication/_attachment/333469?_download=true&_ts=12f9be7412d (accessed 14 October 2014) at 40.

⁶⁷⁴ Interview 16 at 7; Interview 20 at 7.

⁶⁷⁵ Interview 15 at 9–10; Interview 20 at 7. Perhaps the best illustration of Norway’s lack of control over the jurisdictional REDD+ readiness process in Tanzania was the fact that representatives from the Norwegian Embassy were unable to participate (due to last-minute invitations) in the meetings of Tanzania’s National REDD+ Taskforce after May 2012 and did not receive copies of final REDD+ policy documents in a timely fashion in the final stages of the finalization of the national REDD+ strategy (see Nordeco & Acacia, *National REDD Policy Project in Tanzania, End-of-Project Review, Final Report*, 25 February 2014 (on file with the author) at 9).

⁶⁷⁶ Multi-Partner Trust Fund Office, “UN-REDD Programme – Tanzania Quick Start Initiative,” available at: <http://mptf.undp.org/factsheet/project/00073511> (accessed on 6 January 2013).

2009 to 2013, this program provided funding, capacity-building, and technical assistance in order to support the design of a national governance framework for REDD+, the development of a national MRV system, the effective implementation of REDD+ at district and local levels, and the generation of a broad consensus among multiple stakeholders for the pursuit of REDD+ in Tanzania.⁶⁷⁷ Apart from its important role in providing technical support for developing Tanzania's MRV capabilities, the influence of the UN-REDD Programme on Tanzania's REDD+ readiness efforts was limited, however. For one, Tanzania had already initiated the development of its national REDD+ strategy with support from Norway by the time the National UN-REDD Programme was operational and officials from the UN-REDD Programme struggled to ensure that their work was relevant to Tanzania's ongoing efforts on REDD+ readiness.⁶⁷⁸ For another, the availability of funding from Norway and the few strings attached made it possible for Tanzanian officials to dismiss the advice and knowledge products provided by the UN-REDD Programme.⁶⁷⁹

Finally, Tanzania submitted an R-PP to the World Bank FCPF in 2010 that was subsequently approved by the World Bank FCPF in 2011.⁶⁸⁰ Although it went through the exercise of preparing and submitting an R-PP to the FCPF, Tanzania did not seek funding from the FCPF Readiness Mechanism as such and used its membership within the FCPF Participant's Committee as an opportunity to stay engaged in international discussions of REDD+ as well as to learn from the experience of other developing countries pursuing REDD+ readiness efforts.⁶⁸¹ Tanzania did not receive direct technical support and assistance from the FCPF as such, and the FCPF exerted little influence on the design and implementation of Tanzania's jurisdictional REDD+ readiness efforts.⁶⁸²

⁶⁷⁷ UN-REDD Programme, "UN-REDD Programme – Tanzania Quick Start Initiative" (December 2009) (on file with the author) at 39–42.

⁶⁷⁸ Interview 8 at 7–8. See also Nordeco & Acacia, *supra* note 675 at 17.

⁶⁷⁹ Interview 8 at 8; Interview 19 at 3; Interview 20 at 7–8. See also Gapare & William, *supra* note 749 at 7 and 46.

⁶⁸⁰ FCPF, "REDD Readiness Progress Sheet: Tanzania, March 2012," available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2012/REDD%20Tanzania%20Fact%20Sheet_March%202012_0.pdf (accessed 14 October 2014).

⁶⁸¹ Interview 19 at 2; Interview 20 at 8. See also NORAD, *supra* note 426 at 308; FCPF, "REDD Readiness Progress Fact Sheet," available at: <https://forestcarbonpartnership.org/sites/fcpf/files/2014/August/FCPF%20Country%20Progress%20fact%20Sheet%20August%202014-Tanzania.pdf> (accessed 7 October 2014) at 1.

⁶⁸² Nordeco & Acacia, *supra* note 675 at 18; NORAD, *supra* note 423 at 325. This is most notably reflected in the fact that Tanzania's National REDD+ Strategy does not follow the template set by the FCPF as well as in Tanzania's decision not to undertake a SESA.

4.3 THE RIGHTS OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES IN JURISDICTIONAL REDD+ READINESS ACTIVITIES IN TANZANIA

4.3.1 *Rights in the National REDD+ Strategy*

The National REDD+ Taskforce initiated Tanzania's jurisdictional REDD+ readiness activities in January 2009 with a four-day multi-stakeholder planning workshop and a series of field trips to Australia, Norway, and Brazil in May and June 2009.⁶⁸³ In August 2009, it launched a National REDD Framework that identified the key elements of jurisdictional REDD+ readiness that Tanzania would aim to achieve and offered a multi-year roadmap for the development of a national REDD+ strategy.⁶⁸⁴ This framework recognized the potential adverse implications of REDD+ for the rights of Indigenous Peoples and local communities as well as the benefits their engagement might bring in the creation and implementation of a national REDD+ strategy.⁶⁸⁵ In particular, Tanzania's National REDD Framework identified enhanced support for participatory forest management as a potential pathway for reducing carbon emissions in Tanzania⁶⁸⁶ as well as recognizing the critical importance of secure land tenure and community rights for the sustainable management of forests.⁶⁸⁷

From August to October 2009, the National REDD+ Taskforce undertook an initial series of consultations on the development of a national REDD+

⁶⁸³ See REDD+ Secretariat, "Tanzania REDD Initiative Newsletter" Issue 2, January 2010 (on file with the author) at 2–4. Although the field visit in Brazil highlighted issues relevant to the engagement of Indigenous Peoples in Brazilian forest governance, this was not one of the key lessons identified by the REDD+ Secretariat in its later summary of the three field trips. See REDD+ Secretariat, "Brief Report of A Study Tour to Brazil on REDD Experience" (on file with the author) at 8.

⁶⁸⁴ United Republic of Tanzania, Office of the Vice President, *National Framework for Reduced Emissions from Deforestation and Forest Degradation (REDD)* (August 2009) (on file with the author).

⁶⁸⁵ *Ibid* at 10.

⁶⁸⁶ *Ibid* at 10: "The overwhelming need as regards communities and people in the forest is to ensure that they are involved in a positive and mutually beneficial way in management, since this is one of the very few effective means of controlling degradation over very large areas. Already there are some very positive models and success stories in Tanzania with regard to PFM implementation. However, adding carbon (and potentially rewards for carbon reductions) into the PFM will raise a lot of issues that need to be resolved." See also *ibid* at 11: "The current speed under which PFM projects are established is also observed to be very low. Access to REDD finances could potentially facilitate and speed up this process and possibly reducing the high levels of deforestation and forest degradation."

⁶⁸⁷ *Ibid* at 13: "Security of land tenure and resources influences the level of investment on land and conservation of land based natural resources thus, natural resource management depends on land tenure and local community rights."

strategy.⁶⁸⁸ This initial set of consultations enabled the National REDD+ Taskforce to gauge the challenges involved in discussing REDD+ at the local level, especially since the specific ways in which the eventual implementation of REDD+ in Tanzania might affect the interests of local communities were not necessarily apparent or easy to communicate.⁶⁸⁹ In the synthesis document resulting from the consultations, the National REDD+ Taskforce committed to ensuring “the active participation/involvement of local communities in developing, implementing and monitoring REDD activities,” including through additional local consultations and awareness-raising.⁶⁹⁰ The consultations also generated a number of preliminary conclusions that would be reflected in the National REDD+ Taskforce’s bifurcated approach to the rights of Indigenous Peoples and local communities. On the one hand, the synthesis acknowledged the critical importance of forests for the livelihoods, sustenance, and cultural practices of rural communities, highlighted the central role the establishment of VLFs could play in reducing carbon emissions in Tanzania, and singled out forest-dependent communities as an important group whose interests should be considered in a national REDD+ strategy and who should therefore be consulted as part of its development.⁶⁹¹ On the other hand, the synthesis failed to recognize the status of Indigenous Peoples in Tanzania, concluding that “few communities can rightly be called ‘indigenous’ people like the Red Indians of the USA, the Aborigines of Australia or the Bambuti pigmies of Congo forests,” and that “[t]he only people who could be described as ‘indigenous’ would be the Hadzabe people of Lake Eyasi who are heavily dependent on forest resources for their livelihoods.”⁶⁹²

Alongside the consultations that it undertook and the studies that it commissioned to develop a national REDD+ strategy for Tanzania, the National

⁶⁸⁸ Institute of Resource Assessment, *Preparing for the REDD Initiative in Tanzania: A Synthesised Consultative Report*, November 2009 (on file with the author) at 5. A team comprising two rotating members of the National REDD+ Taskforce, supported by the REDD+ Secretariat and two facilitators, met with over 235 government officials, NGO representatives, and villagers in each of Tanzania’s eight regional zones. Consultations were most notably held with over 100 village leaders and villagers in one village per regional zone, with a key focus on villages possessing some experience with participatory forest management (Institute of Resource Assessment, *Preparing for the REDD Initiative in Tanzania: A Synthesised Consultative Report*, Draft – November 2009 (on file with the author) at 7–9 and 37–53).

⁶⁸⁹ Interview 19 at 2. See also United Republic of Tanzania, Office of the Vice President, *Draft National Strategy for the Reduction of Emissions from Deforestation and Forest Degradation (REDD+)* (December 2010) (on file with the author) at 14.

⁶⁹⁰ Institute of Resource Assessment, *supra* note 688 at 21. ⁶⁹¹ *Ibid* at 8, 18–19 and 21.

⁶⁹² *Ibid* at 20.

REDD+ Taskforce also prepared an R-PP for submission to the FCPF – a process that brought issues specifically relating to Indigenous Peoples and their rights to the foreground. The draft version of the Tanzanian R-PP submitted to the FCPF in the spring of 2010 highlighted the valuable contributions of participatory forest management in Tanzania and stressed the need to engage local communities in the implementation of REDD+ activities.⁶⁹³ This R-PP included no references to the rights or engagement of Indigenous Peoples, however.⁶⁹⁴ This triggered criticisms and suggestions from the FCPF Technical Advisory Panel⁶⁹⁵ as well as the FCPF Participants' Committee.⁶⁹⁶ In response, the National REDD+ Taskforce submitted a revised R-PP in October 2010 that recognized the existence of “concerns” regarding “the rights of indigenous people and communities dependent on forests and the impact of REDD programmes on such groups.”⁶⁹⁷ In an annex, the revised R-PP nonetheless specified that: “Tanzania, in principle, does not have Indigenous People but has communities living in and close to forests who's (sic) livelihoods depend greatly on the forests. These are recognized as

⁶⁹³ See generally United Republic of Tanzania, “Forest Carbon Partnership Facility Readiness Preparation Proposal” (15 June 2010), available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2010/Tanzania-Revised_R-PP_main_document_V9-10.06.2010.pdf (accessed 9 October 2014).

⁶⁹⁴ *Ibid.*

⁶⁹⁵ Harrison Ochieng Kojwang and TAP Team, “Tanzanian R-PP External Review,” available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2010/Tanzania_R-PP_TAP_Review_Synthesis.pdf (accessed 9 October 2014) at 4: “One of the TAP members has established that there are National networks of Indigenous Peoples in Tanzania such as the Pastoralists indigenous Non Governmental organization Forum (PINGOS FORUM) and the National Indigenous Peoples Coordinating Committee on REDD (NIPCC-REDD) but they are not mentioned as having been part of the consultation process. Similarly, the National REDD Task Force does not include members from indigenous peoples. On these grounds the TAP recommends the inclusion of representatives of indigenous peoples/forest dependent peoples in the Task Force and under implementation arrangements.”

⁶⁹⁶ Forest Carbon Partnership Facility (FCPF) Sixth Meeting of the Participants Committee (PC6), 28 June to 1 July, 2010 – Georgetown, Guyana, Informal Summary of Discussions of Tanzania's Draft R-PP, available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Jul2010/4aSummary_PC6_discussion.pdf (accessed 9 October 2014) at 1: “Participants noted that the R-PP does not identify the Indigenous Peoples as a separate stakeholder group in Tanzania. Participants urged that Tanzania recognize the definition of Indigenous Peoples and clarify how the Indigenous Peoples are being engaged in the REDD+ readiness process in Tanzania.”

⁶⁹⁷ United Republic of Tanzania, “Forest Carbon Partnership Facility Readiness Preparation Proposal” (15 June 2010), available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2010/Tanzania-Revised_R-PP_main_document_V9-10.06.2010.pdf (accessed 9 October 2014) at 16.

forest dependent and forest adjacent people.”⁶⁹⁸ This revised version of Tanzania’s R-PP attracted another series of criticisms and recommendations from a different set of experts from the FCPF Technical Advisory Panel as well as reviewers within the FCPF Secretariat, who all stressed the need for additional consultations with stakeholders and a greater focus on land and tenure rights in the development of Tanzania’s R-PP.⁶⁹⁹ Regarding the recognition of the concept of Indigenous Peoples, the FCPF Secretariat explained that this would henceforth be discussed “at the broader portfolio level between the Government of Tanzania and the World Bank” and was, in effect, no longer identified as a critical issue in the development of Tanzania’s R-PP.⁷⁰⁰

A coalition of conservation and development NGOs implementing REDD+ pilot projects in Tanzania submitted similar recommendations for the finalization of Tanzania’s R-PP to the FCPF and the National REDD+ Taskforce. These recommendations did not refer to Indigenous Peoples, but focused instead on the enhancement of community rights through Tanzania’s REDD activities, the definition and scope of village rights to govern forests on general lands, and the need for greater civil society participation in Tanzania’s REDD+ readiness activities, most notably through representation on the National REDD+ Taskforce.⁷⁰¹ Pursuant to these various suggestions, the FCPF Participants’ Committee requested, in November 2010, that Tanzania implement additional changes to its R-PP that included “giving due consideration to the representation of and engagement with civil society, forest

⁶⁹⁸ *Ibid*, Annexes to United Republic of Tanzania, “Forest Carbon Partnership Facility Readiness Preparation Proposal” (15 June 2010), available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Sep2010/Tanzania_R-PP_Annexes%20_August_2010.pdf (accessed 16 October 2014) at 24. The R-PP thus envisaged conducting a study to “specifically identify forest dependent communities, legal institutions and organisations representing them, challenges and opportunities for REDD, mechanisms for effective participation in the REDD readiness and implementation processes and how identified challenges could be addressed to maximize benefits of REDD to such communities.”

⁶⁹⁹ Australia, Argentina, and Denmark, “Tanzanian R-PP External Review,” available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2010/FCPF%20Assessment%20of%20Tanzania%20R-PP%20Consolidated%20AUS-AR-G-DK%20ofinal.pdf (accessed 16 October 2014) at 4–7; FCPF FMT, “Comments from the World Bank Team on Tanzania’s R-PP” (version submitted in October 2010), available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2010/World%20Bank%20Comments%20on%20TZ%20R-PP.pdf at 2–4.

⁷⁰⁰ *Ibid* at 3.

⁷⁰¹ Tanzania Forest Conservation Group *et al.*, “Recommendations from Tanzanian Civil Society with regard to Tanzania’s Readiness Preparation Proposal to the Forest Carbon Partnership Facility,” available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2010/PC%203c%20Tanzania%20R-PP%20CSO%20Recommendations.pdf (accessed 16 October 2014).

dependent people, and associations of Wildlife Management Areas in the national and subnational policy and decision making bodies on REDD+, including the national Task Force” and “further clarify[ing] and elaborat[ing] on land tenure and related rights, and how these will be incorporated into benefit-sharing systems.”⁷⁰² As such, despite the fact that the World Bank’s Operational Policy on Indigenous Peoples would be applicable to the delivery of any funding Tanzania might receive from the FCPF for its REDD+ readiness activities, Tanzania’s refusal to acknowledge the status and rights of Indigenous Peoples did not stand in the way of the approval of its R-PP by the FCPF Participants’ Committee at a later meeting.⁷⁰³

In December 2010, the National REDD+ Taskforce released a first draft of Tanzania’s National REDD+ Strategy,⁷⁰⁴ which reproduced much of the language that had been adopted in the synthesis document on the consultations held in the fall of 2009 and the R-PP Tanzania submitted to the FCPF in October 2010.⁷⁰⁵ As such, the draft strategy focused on lessons learned from Tanzania’s experience with community-based forest management and the way in which the country could contribute to, and benefit from, from the pursuit of REDD+ activities.⁷⁰⁶ It envisaged several strategic interventions for REDD+ that would reduce poverty and support livelihoods among rural communities,⁷⁰⁷ strengthen forest governance,⁷⁰⁸ and enhance participatory land-use planning and conflict resolution.⁷⁰⁹ As far as Indigenous Peoples were concerned, the draft strategy cited the safeguards recently adopted within the UNFCCC in Cancun, including those relating to the knowledge and rights of Indigenous Peoples and local communities and their full and effective participation in REDD+ activities.⁷¹⁰ It also highlighted that Tanzania had signed the *UN Declaration on the Rights of Indigenous Peoples*,⁷¹¹ and included the World Bank’s definition of Indigenous Peoples in its glossary.⁷¹² On the other hand, the draft strategy averred that “the issue of engagement of

⁷⁰² FCPF PC, “Resolution PC/7/2010/1: Tanzania’s Readiness Preparation Proposal,” available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Nov2010/PC7%20Resolutions.pdf (accessed 16 October 2014) at 2.

⁷⁰³ Tanzania submitted another R-PP in line with the comments made by the Participants’ Committee, but opted not to apply for funding from the FCPF readiness mechanism (FCPF, “REDD Readiness Progress Fact Sheet. Country: Tanzania. March 2014,” available at: www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2012/REDD%20Tanzania%20Fact%20Sheet_March%202012_0.pdf (accessed 22 October 2014) at 1). On the other hand, it is quite possible that the recognition of the rights of Indigenous Peoples may be raised again if Tanzania decides to apply for funding from the FCPF Carbon Fund (Nordeco & Acacia, *supra* note 675 at 13–14).

⁷⁰⁴ *Tanzanian Draft National Strategy for REDD+*, *supra* note 689. ⁷⁰⁵ *Ibid* at 10–11.

⁷⁰⁶ *Ibid* at 36. ⁷⁰⁷ *Ibid* at 83. ⁷⁰⁸ *Ibid* at 84. ⁷⁰⁹ *Ibid* at 87. ⁷¹⁰ *Ibid* at 11.

⁷¹¹ *Ibid*. ⁷¹² *Ibid* at 100.

‘indigenous peoples’ in Tanzania is being handled via the concept ‘forest-based communities’ rather than ‘indigenous peoples’ – a concept which some stakeholders found derogatory and discriminatory.”⁷¹³ In this regard, the draft strategy further identified “the Hadzabe people of Lake Eyasi who are heavily dependent on forest resources for their livelihoods” and “groups like pastoralists and other communities living adjacent to forest reserves” as forest-based communities and stressed the importance of considering their interests and building on their knowledge and practices in the design and implementation of REDD+ in Tanzania.⁷¹⁴

During the first quarter of 2011, the National REDD+ Taskforce organized a series of multi-stakeholder workshops to discuss the draft National REDD+ Strategy in seven zones across Tanzania⁷¹⁵ and solicited feedback from key international and domestic interlocutors. Through written comments and ongoing dialogue, the Norwegian Embassy pressed the National REDD+ Taskforce to recognize the distinctive status and rights of Indigenous Peoples as separate from forest-dependent communities.⁷¹⁶ For its part, the UN-REDD Programme did not raise the issue of Indigenous rights and instead highlighted the importance of holding additional stakeholder consultations as well as broadening the membership of the National REDD+ Taskforce to include civil society representatives.⁷¹⁷ Finally, the conservation and development NGOs implementing REDD+ pilot projects in Tanzania released a series of briefs and statements that reiterated many of their previous recommendations regarding strengthening participatory forest management, including civil society in decision-making, recognizing community rights to unreserved forests, and creating opportunities for communities to receive direct payments from REDD+ activities. They also included a new recommendation (stemming from the recent adoption of the *Cancun Agreements*) that the national strategy contain a set of social and environmental safeguards.⁷¹⁸

⁷¹³ *Ibid* at 11. ⁷¹⁴ *Ibid* at 11.

⁷¹⁵ REDD+ Secretariat, “Tanzania REDD Initiative Newsletter” Issue 5, March 2011 (on file with the author) at 4.

⁷¹⁶ Interview 16 at 3; Interview 52 at 6; Interview 65 at 4. Norwegian Embassy, “Consolidated Comments to the draft National REDD+ Strategy for Tanzania” (21 February 2011) (on file with the author) at 5 (noting that a section on “forest dependent communities deserves more reference to United Nations and African Union documentation relating to Indigenous Peoples.”)

⁷¹⁷ Correspondence from Ralf Ernst, UN-REDD Coordinator – Tanzania to Secretariat of the National REDD+ Task Force (on file with author) at 2–5.

⁷¹⁸ See MJUMITA & Tanzania Forest Conservation Group, “A one-step guide to making the National REDD strategy more pro-poor” Policy Brief, 2011 (on file with the author); Tanzania Forest Conservation Group, “Feedback on the Tanzania National REDD Strategy, prepared

In early 2012, the National REDD+ Taskforce responded to some of these comments by naming a civil society representative to the taskforce⁷¹⁹ and creating a technical working group to focus on legal, governance, and safeguards issues.⁷²⁰ In what has been described as a “milestone achievement” for the recognition of the status of Indigenous Peoples in the Tanzanian policy-making process,⁷²¹ this working group included a representative from “Pastoralists and Hunter Gatherer Organizations.”⁷²² Although these two nominations provided new opportunities for civil society advocates to influence the development of the national REDD+ strategy, the work of the National REDD+ Taskforce continued to be largely dominated by government representatives and their views on the future of REDD+ in Tanzania.⁷²³ This is clearly reflected in the text of the draft National REDD+ Strategy released in June 2012.⁷²⁴ While it acknowledged the role that the allocation of land and tenure rights for local communities and the establishment of VLFs could play in the pursuit of REDD+ in Tanzania,⁷²⁵ this second draft strategy did not recognize the customary rights of villages to manage their forests on unreserved lands⁷²⁶ and continued to privilege a national funding mechanism for receiving international payments for REDD+ and channeling related benefits to local communities.⁷²⁷ With respect to Indigenous Peoples, the strategy omitted all references previously included in the first draft to Indigenous Peoples, pastoralists, hunter-gatherers, or the *UN Declaration on the Rights of Indigenous Peoples*.⁷²⁸ That said, this second draft strategy

by the REDD Pilot Projects” (2011) (on file with the author); MJUMITA and Tanzania Forest Conservation Group, “Five Steps to Get REDD Right(s)” (2011) (on file with the author); Jessica Campese, “Integrating REDD+ Social and Environmental Safeguards and Standards in Tanzania” TFCG Technical Report 32, July 2011 (on file with author).

⁷¹⁹ Nordeco & Acacia, *supra* note 674 at 8. The civil society representative was Charles Meschack, the Executive Director of the Tanzania Forest Conservation Group (TFCG), one of the NGOs implementing a pilot project in Tanzania, and a specialist in community forest governance in Tanzania (Interview 14 at 6–7).

⁷²⁰ *Ibid* at 11. ⁷²¹ IFAD, *supra* note 646 at 34.

⁷²² Interview 5 at 12–13. The representative of Pastoralists and Hunter Gatherers was Elifuraha Isaya Laltaika, the Executive Director of the Association for Law and Advocacy for Pastoralists (ALPA). A trained lawyer and law professor, Laltaika also served as the Indigenous representative for Africa on the Policy Board of the UN-REDD Programme at a global level. See ALPA, “Achievements,” available at: http://alapa.or.tz/alapa/?page_id=8 (accessed 20 October 2014).

⁷²³ Nordeco & Acacia, *supra* note 675 at 9.

⁷²⁴ United Republic of Tanzania, Office of the Vice President, *National Strategy for Reducing Emissions from Deforestation and Forest Degradation*, Second Draft (June 2012) (on file with the author).

⁷²⁵ *Ibid* at 10, 12, 22, 35, and 43. ⁷²⁶ *Ibid* at 22. ⁷²⁷ *Ibid* at 37.

⁷²⁸ Oddly enough, the glossary to this second draft strategy still included the definition of Indigenous Peoples, a term that did not appear in the text of the strategy itself (*ibid* at 58).

included new commitments to adopting a set of social and environmental safeguards for REDD+⁷²⁹ and undertaking a strategic and social impact assessment that would “give special consideration to livelihoods [and] resource use rights (including those of forest dependent Peoples).”⁷³⁰ The release of the second draft strategy prompted a number of international and domestic stakeholders to reiterate their concerns and recommendations regarding the need to further recognize and engage with Indigenous Peoples,⁷³¹ explicitly recognize and clarify the land and tenure rights of villages in relation to unreserved forests and the carbon stored in village forests,⁷³² consider adopting a nested approach for the management of international REDD+ payments and the sharing of benefits derived therefrom,⁷³³ and systematically integrate social and environmental safeguards into the very body of the strategy.⁷³⁴

During the summer and fall of 2012, the National REDD+ Taskforce undertook a final series of consultations across Tanzania, held a series of dialogues with stakeholders involved with REDD+ pilot projects, and organized workshops with parliamentarians in the Zanzibar House of Representatives and the Parliament of Tanzania.⁷³⁵ After one final rewrite by the National REDD+ Taskforce, the National REDD+ Strategy was formally approved by the National Climate Change Steering Committee and launched in March 2013.⁷³⁶ Like previous drafts, the final draft of Tanzania’s National REDD+ Strategy adopts an approach that supports the engagement and rights of local communities in the development and implementation of REDD+ activities while simultaneously excluding Indigenous Peoples and their rights from its purview. As far as participatory rights are concerned, Tanzania’s National REDD+ Strategy includes as one of its main objectives and result areas the engagement and active participation of multiple stakeholders in the design and implementation of REDD+ schemes.⁷³⁷ To this end, the National REDD+ Strategy envisages numerous strategic actions, including building the capacity of local communities in relation to REDD+⁷³⁸, engaging domestic civil society organizations, and learning from their experiences with pilot projects.⁷³⁹ On the other hand, Tanzania’s National REDD+ Strategy does not recognize the importance of the right to

⁷²⁹ *Ibid* at 35. ⁷³⁰ *Ibid* at 48. ⁷³¹ Interview 5 at 8–9; Interview 16 at 3; Interview 52 at 6.

⁷³² TFCG *et al.*, “Recommendations from Civil Society Organisations for Tanzania’s 2nd Draft National REDD+ Strategy and Draft Action Plan” (on file with the author) at 2.

⁷³³ *Ibid* at 5. ⁷³⁴ *Ibid* at 3. See also Interview 23 at 5.

⁷³⁵ TFCG, “TZ-REDD Newsletter” Issue 9, January 2013 (on file with the author) at 3.

⁷³⁶ National REDD+ Secretariat, “REDD+ Strategy Development and Implementation Process in Tanzania (1 October 2012 to 31 March 2013)” (on file with the author).

⁷³⁷ *Tanzanian National Strategy for REDD+*, *supra* note 615 at 3 and 42. ⁷³⁸ *Ibid* at 42.

⁷³⁹ *Ibid* at 43.

FPIC, nor does it acknowledge the role that traditional knowledge might play in the design and implementation of REDD+ activities.⁷⁴⁰

Tanzania's National REDD+ Strategy is much more comprehensive in its approach to the substantive rights of local and forest-dependent communities and recognizes that an effective REDD+ mechanism will build on as well as contribute to the promotion of rights and livelihoods.⁷⁴¹ The National REDD+ Strategy most notably identifies the following as key strategic actions for reducing carbon emissions from forest-based sources: improving access to energy alternatives and economic opportunities for forest-dependent communities,⁷⁴² scaling up community-based forest management,⁷⁴³ accelerating participatory land-use planning (leading to land reforms and the issuance of customary rights of occupancy),⁷⁴⁴ and supporting the demarcation and mapping of village lands.⁷⁴⁵ At the same time, despite its emphasis on participatory forest management and poverty alleviation, the National REDD+ Strategy maintains a preference for the creation of a national fund to receive and manage REDD+ finance.⁷⁴⁶ This went against the demands of conservation and development NGOs, who had advocated for a nested mechanism⁷⁴⁷ and were generally concerned about the ability of a central government-run mechanism to deliver benefits to local communities.⁷⁴⁸ As such, the establishment of an equitable and transparent mechanism for REDD+ finance and benefit-sharing remains one of the key outstanding issues that Tanzania must resolve in order to be ready for the full operationalization of REDD+ at the national level.⁷⁴⁹

Another key element of jurisdictional REDD+ readiness that was not finalized in Tanzania's National REDD+ Strategy relates to the adoption of social and environmental safeguards for REDD+. ⁷⁵⁰ Tanzania's National REDD+ Strategy includes a commitment to develop and enforce social and environmental safeguards to ensure that REDD+ activities deliver multiple benefits, including in terms of "forest dependent communities' rights," and to limit its potential adverse impacts on "the livelihoods and rights of

⁷⁴⁰ The only reference to traditional knowledge in the National REDD+ Strategy is found in a section that calls for the "application of useful traditional knowledge" to address forest fires as a driver of deforestation (*ibid* at 49).

⁷⁴¹ See, e.g., *ibid* at xxii, 9–13, 15, 26–27, 34, 48–49, 52–54, and 63. ⁷⁴² *Ibid* at 48.

⁷⁴³ *Ibid.* ⁷⁴⁴ *Ibid* at 48–49. ⁷⁴⁵ *Ibid* at 51. ⁷⁴⁶ *Ibid* at 26–27.

⁷⁴⁷ TFCG *et al.*, *supra* note 732 at 5.

⁷⁴⁸ Interview 14 at 7–8; Interview 29 at 7–8; Interview 30 at 2.

⁷⁴⁹ Nordeco & Acacia, *supra* note 674 at 15–16; Nelson Gapare & Christopher William, "Final Evaluation of the UN-REDD Tanzania National Programme" (4 December 2013), available at: www.fao.org/fileadmin/user_upload/oed/docs/UNJPURT238UNJ_2013_ER.pdf (accessed 7 January 2014) at 56.

⁷⁵⁰ The development of Tanzania's safeguards policy is discussed in Section 4.3.2.

communities.”⁷⁵¹ To this end, the strategy plans for the establishment of a national safeguards information system in accordance with the requirement set by the *Cancun Agreements*, as well as the operationalization of safeguards based on Tanzania’s existing laws and policies and drawing on the standards adopted by the UNFCCC, the UN-REDD Programme, the World Bank, and the REDD+ SES.⁷⁵² In this second regard, Tanzania’s National REDD+ Strategy emphasizes that an eventual set of social and environmental safeguards “will give special consideration to livelihoods, resource use rights (including those of forest dependent Peoples), conservation of biodiversity, cultural heritage, gender needs, capacity building and good governance.”⁷⁵³

In comparison with the first draft of the National REDD+ Strategy released in December 2010, the final draft includes fewer references to and less consideration of the rights and status of Indigenous Peoples in Tanzania. Unlike previous drafts and other policy documents, the final draft does not even explain whether the concept of Indigenous Peoples is applicable in Tanzania, nor does it identify forest-dependent communities or discuss their distinctive character and needs. What is more, Tanzania’s National REDD+ Strategy proposes a number of interventions that could have negative impacts on Indigenous Peoples in Tanzania, most notably in its identification of pastoralism as a driver of deforestation and forest degradation and its commitment to reviewing “livestock policy and strategies to reduce overgrazing and nomadic pastoral practices” and supporting “commercial livestock destocking campaigns.”⁷⁵⁴ Given the economic and political marginalization of pastoralists in Tanzania and the barriers that stand in the way of recognition of their customary land rights, the implementation of these types of REDD+ activities could cause significant harm to Indigenous pastoralist communities like the Maasai and the Barabaig.⁷⁵⁵

All told, the National REDD+ Strategy presents meaningful opportunities for jurisdictional REDD+ activities to support the implementation of the rights of forest-dependent communities to govern their forests in line with the existing mechanisms laid out in the *Forest Act*. That said, the extent to which arrangements for REDD+ finance and benefit-sharing may enable communities to actually benefit from the funds generated by REDD+ remains an open question. Whatever challenges local communities may face in accessing the benefits engendered by REDD+, they still fare much better than

⁷⁵¹ *Tanzanian National Strategy for REDD+*, *supra* note 615 at 52. ⁷⁵² *Ibid* at 52–54.

⁷⁵³ *Ibid* at 54. ⁷⁵⁴ *Ibid* at 50.

⁷⁵⁵ Interview 5 at 8–11 and 13–14. See also Nordeco & Acacia, *supra* note 675 at 25.

Indigenous Peoples. Indeed, the National REDD+ Strategy completely ignores the status and rights of Indigenous Peoples and even creates important risks for the continuation of the traditional livestock practices of pastoralists.

4.3.2 *Rights in the Social and Environmental Safeguards for REDD+*

The development of safeguards for REDD+ in Tanzania was first identified as an item to be addressed in the National REDD Framework adopted by the National REDD+ Taskforce in August 2009.⁷⁵⁶ The National REDD+ Taskforce subsequently invited a team from the REDD+ SES Initiative to hold a series of meetings and workshops with multiple stakeholders in September 2009 to discuss the development of social and environmental safeguards in Tanzania.⁷⁵⁷ This visit provided an opportunity for Tanzanian officials and nongovernmental representatives to learn about the concept and importance of safeguards⁷⁵⁸ and revealed differences of opinion between the team from the REDD+ SES Initiative and the Tanzanian participants regarding the definition and application of concepts such as Indigenous Peoples, forest-dependent communities, and customary rights in Tanzania.⁷⁵⁹

Despite this initial swell of interest and the fact that two Tanzanians, one from government and the other from civil society, joined the international steering committee of the REDD+ SES Initiative,⁷⁶⁰ the development of social and environmental safeguards remained dormant in Tanzania for two years due to the National REDD+ Taskforce's reluctance to apply external standards in sensitive areas of law and policy.⁷⁶¹ However, the emergence of safeguards information systems as an element of jurisdictional REDD+ readiness within the UNFCCC in 2010 and the combined pressures from international and domestic interlocutors for Tanzania to adopt its own set of social and environmental safeguards eventually led the National REDD+ Taskforce to create a technical working group on legal, governance, and safeguards issues and recruit a consultant to facilitate the process of applying and interpreting

⁷⁵⁶ *National REDD Framework*, *supra* note 684 at 21.

⁷⁵⁷ REDD+ SES, "REDD+ Social and Environmental Standards Consultation Meetings, 9th-11th Sept 2009, Tanzania" (9 October 2009) (on file with the author).

⁷⁵⁸ Interview 23 at 8–9.

⁷⁵⁹ Interview 84 at 9–10. See also REDD+ SES, "Appendix 2. Draft Indicators for REDD+ Social & Environmental Standards. Version July 9th 2009 with new indicators and comments proposed by working groups in Tanzania on Sept 9th 2009" in REDD+ SES, *supra* note 757 at 1–4.

⁷⁶⁰ Interview 77 at 13. ⁷⁶¹ Interview 84 at 8.

the REDD+ SES in early 2012.⁷⁶² Throughout 2012 and the first half of 2013, the National REDD+ Taskforce and the National REDD+ Secretariat completed the first steps set out in the guidelines for the use of the REDD+ SES, including the organization of awareness raising and capacity-building activities, the selection of a facilitation team, and the creation of a multi-stakeholder standards committee.⁷⁶³ A first draft of the social and environmental safeguards for REDD+ was prepared by the consultant and finalized through a series of workshops held with government officials and representatives of the pilot projects.⁷⁶⁴ This draft was released in June 2013⁷⁶⁵ and was discussed through a series of consultations held with multiple stakeholders across Tanzania during the summer of 2013.⁷⁶⁶ A final draft policy on social and environmental safeguards for REDD+ was then approved by the National Climate Change Steering Committee and adopted by the Vice President's Office in October 2013.⁷⁶⁷

Tanzania's REDD+ social and environmental safeguards policy explains that these safeguards are meant to provide a "country-specific tool" to operationalize the REDD+ safeguards listed in the *Cancun Agreements*⁷⁶⁸ and ensure "that implementation of REDD+ activities respect the rights of all relevant stakeholders including forest dependent communities, avoid social and environmental harm and generate significant benefits for the present and future generations."⁷⁶⁹ The safeguards are comprised of eight principles, forty-eight criteria, and 107 indicators, and the safeguards policy provides a thorough overview of how each of these principles relate to existing laws and institutions in Tanzania as well as the safeguards included in the *Cancun Agreements*. Although the safeguards policy claims they were drafted on the basis of a wide range of international and foreign sources, Table 4.1

⁷⁶² Interview 16 at 7; Interview 23 at 2 and 8–9; Interview 84 at 8; Nordeco & Acacia, *supra* note 675 at 24. See also the discussion above regarding the emergence of safeguards as an issue in the development of the national REDD+ strategy in Tanzania.

⁷⁶³ United Republic of Tanzania Vice-President's Office, *Tanzania REDD+ Social and Environmental Standards. Final Draft* (October 2013) (on file with the author) at 11–12.

⁷⁶⁴ *Ibid* at 12.

⁷⁶⁵ United Republic of Tanzania Vice-President's Office, *Tanzania REDD+ Social and Environmental Standards* (June 2013) (on file with the author).

⁷⁶⁶ *Tanzania REDD+ Social and Environmental Standards. Final Draft, supra* note 763 at 12.

⁷⁶⁷ *Ibid*. At this stage, the Vice-President's Office is intending to secure additional funding from the Norwegian Embassy to complete the final four steps set out in the guidelines set by the REDD+ SES Initiative, namely the preparation of a monitoring and assessment plan, the collection and assessment of monitoring information, the organization of a stakeholder review of this assessment report, and the publication of a report assessing the national safeguards policy against the REDD+ SES indicators (Email Communication no 4 at 1; Nordeco & Acacia, *supra* note 675 at 13–14).

⁷⁶⁸ *Tanzania REDD+ Social and Environmental Standards. Final Draft, supra* note 763 at 11.

⁷⁶⁹ *Ibid* at 9.

TABLE 4.1. *Comparison of the REDD+ SES and Tanzania's draft social and environmental safeguards*

Tanzania's social and environmental safeguards	REDD+ SES
"Principle 1: The REDD+ initiative contributes to good governance and sustainable natural forest resources."	"Principle 4: The REDD+ program contributes to good governance, to broader sustainable development and to social justice."
"Principle 2: The REDD+ initiatives recognize, guarantee and respect forest dependent communities and marginalized groups' rights to land and natural forest resources."	"Principle 1: The REDD+ program recognizes and respects rights to lands, territories and resources."
"Principle 3: The REDD+ initiatives improve livelihoods and well-being of forest dependent communities especially the marginalized and vulnerable groups."	"Principle 3: The REDD+ program improves long-term livelihood security and well-being of Indigenous Peoples and local communities with special attention to women and the most marginalized and/or vulnerable."
"Principle 4: Key stakeholders participate fully and effectively in designing, planning, implementing, monitoring and evaluating REDD+ initiatives and MRV process."	"Principle 6: All relevant rights holders and stakeholders participate fully and effectively in the REDD+ program."
"Principle 5: All key stakeholders particularly the forest dependent communities and marginalized groups have timely access to appropriate and accurate information about REDD+ initiative including MRV data to enable them make informed decision."	"Criteria 6.5 The REDD+ program ensures that rights holders and stakeholders have the information that they need about the REDD+ program, provided in a culturally appropriate, gender sensitive and timely way, and the capacity to participate fully and effectively in program design, implementation and evaluation."
"Principle 6: The costs incurred and benefits generated by the REDD+ initiative are shared in a timely, transparent and equitable manner among all relevant stakeholders."	"Principle 2: The benefits of the REDD+ program are shared equitably among all relevant rights holders and stakeholders."
"Principle 7: REDD+ initiative maintains, promotes and enhances sustainable conservation of the country's natural forests for their biodiversity and all ecosystem services (co-benefits) while meeting the needs of forest dependent communities."	"Principle 5: The REDD+ program maintains and enhances biodiversity and ecosystem services."

TABLE 4.1. (continued)

Tanzania's social and environmental safeguards	REDD+ SES
“Principle 8: REDD+ initiatives recognize, respect and utilize existing complaint and dispute resolution mechanism at both local and national levels for REDD+ related claims.”	“Criteria 6.2: The REDD+ program identifies and uses processes for effective resolution of grievances and disputes relating to the design, implementation and evaluation of the REDD+ program, including disputes over rights to lands, territories and resources relating to the program.”

demonstrates that the structure and content of the safeguards were primarily developed through an adaptation of the REDD+ SES to the context of Tanzanian law and policy.

Through their sustained and detailed emphasis on good forest governance, land and resource rights, support for livelihoods, full and effective participation, equitable sharing of benefits, and dispute resolution mechanisms, Tanzania's social and environmental safeguards are strongly supportive of the participatory and substantive rights of forest-dependent communities. On the other hand, Tanzania's social and environmental safeguards fail to recognize or protect the status and rights of Indigenous Peoples. Although the safeguards policy includes a few brief allusions to Indigenous Peoples in its discussion of international guidance on REDD+ safeguards,⁷⁷⁰ the actual principles, criteria, and indicators that form the heart of the safeguards themselves do not include any references to Indigenous Peoples or their rights. The only clear consideration of the concept of Indigenous Peoples is in the policy's glossary, where it is subsumed within a broader definition of forest-dependent communities.⁷⁷¹ In fact, all of the references to Indigenous Peoples and local communities included in the REDD+ SES have been replaced by the

⁷⁷⁰ *Ibid* at 9 and 35.

⁷⁷¹ *Ibid* at 32: “These are people who live inside forests as hunter-gatherers or shifting cultivators, and who are heavily dependent on forests for their livelihoods primarily on a subsistence basis. People in this category are often indigenous people or people from minority ethnic groups who; a) Self identify themselves as members of a distinct indigenous cultural group and recognition of this identity by others; b) Have collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; c) Have customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture; and d) Have an indigenous

term “forest-dependent communities and marginalized groups” in Tanzania’s social and environmental safeguards. For instance, whereas criterion 1.3 of the REDD+ SES provides that “[t]he REDD+ program requires the free, prior and informed consent of Indigenous Peoples and local communities for any activities affecting their rights to lands, territories and resources,” criterion 2.2 of Tanzania’s social and environmental safeguards mandates that “[t]he REDD+ initiative promotes and respects the right to free prior and informed consent (FPIC) of forest dependent communities and marginalized groups for any REDD+ activities that might affect their rights to land and natural resources.” This application of the right to free, prior, and informed consent to forest-dependent communities is striking for two reasons. For one, it represents a complete transformation of this right, which first emerged in relation to Indigenous Peoples under international human rights law,⁷⁷² was then extended to local communities within the REDD+ SES,⁷⁷³ and now applies to forest-dependent communities only in the Tanzanian context. For another, it recognizes and aims to protect a right that forest-dependent communities do not hold, under Tanzanian law, outside of the structure of the village unit of governance under the *Village Land Act* and *Forest Act*.⁷⁷⁴ Accordingly, the development and adoption of Tanzania’s social and environmental safeguards led to the expansion of the rights held by local communities, while simultaneously neglecting those of Indigenous Peoples.

4.4 EXPLAINING THE CONVEYANCE AND CONSTRUCTION OF RIGHTS THROUGH JURISDICTIONAL REDD+ ACTIVITIES IN TANZANIA

The development of a National REDD+ Strategy and a safeguards policy in Tanzania reflect two very different outcomes with respect to the conveyance and construction of the rights of Indigenous Peoples and local communities. In essence, the National REDD+ Strategy reflects the *nonconveyance* of exogenous legal norms relating to the rights of Indigenous Peoples and local communities. Indeed, in spite of the efforts of multiple international actors

language, often different from the official language of the country or the region. 2. People who live near forests, usually involved in agriculture outside the forest, who regularly use forest products (timber, fuel wood, bush foods, medicinal plants etc.) partly for their own subsistence purposes and partly for income generation (FAO).”

⁷⁷² Gilbert & Doyle, *supra* note 60.

⁷⁷³ REDD+ SES, “REDD+ Social & Environmental Standards” Version 2, *supra* note 409 at 9.

⁷⁷⁴ Interview 20 at 9; Interview 24 at 5. This is also clear from the comparison of this right with existing Tanzanian law and policy (*Tanzania REDD+ Social and Environmental Standards*, *supra* note 768 at 29).

(Norway, the FCPF, and the UN-REDD Programme) and the advocacy of Indigenous activists, the National REDD+ Taskforce never adopted the exogenous legal norms relating to the rights of Indigenous Peoples in the context of its National REDD+ Strategy. I would argue that this can be best explained by the enduring resilience of a powerful counter-norm to the effect that all Tanzanians are Indigenous and that the concept of Indigenous Peoples is a concept that applies to pre-colonial communities in the Americas, but not Africa.⁷⁷⁵ This counter-norm appears to have prevented the internalization of any exogenous norms relating to the concept and rights of Indigenous Peoples in the context of the National REDD+ Strategy.⁷⁷⁶ In addition, this outcome may also stem from the inability of Indigenous Peoples in Tanzania to effectively mobilize for the recognition of their status and rights. In this regard, it bears mentioning that the Indigenous movement in Tanzania is disjointed and fragmented and has not managed to build effective alliances with other domestic or international actors both in general and in the specific context of Tanzania's jurisdictional REDD+ readiness process.

While Tanzania's National REDD+ Strategy does recognize the importance and role of the forest, land tenure, and resource rights of local communities in the design and development of REDD+ activities, I would argue that this can be primarily explained by the existing endogenous legal norms in Tanzania. Throughout the development of the National REDD+ Strategy, the National REDD+ Taskforce identified the implementation of the CBFM and JFM provisions under the *Forest Act* as central to the pursuit of jurisdictional REDD+ activities in Tanzania.⁷⁷⁷ This commitment to community-based approaches to forest governance stemmed first and foremost from a belief on the part of the National REDD+ Taskforce that community forestry constituted an effective and efficient way of addressing important local drivers of deforestation and generating reductions in carbon emissions in forests. For the most part, this belief was itself embedded in pre-existing shared understandings about the legitimacy of village governance and the superiority of

⁷⁷⁵ Interview 21 at 2 (“There are no Indigenous Peoples in Tanzania because all Tanzanians are indigenous. Living in a rural area does not make someone any less Tanzanian or any more Indigenous. In fact, only South America has truly Indigenous Peoples.”)

⁷⁷⁶ In the case of the safeguards policy, this counter-norm can be seen as having led to the construction of a hybrid legal norm providing Indigenous rights to forest-dependent communities, but not Indigenous Peoples.

⁷⁷⁷ See *National REDD Framework*, *supra* note 684 at 11–14 and 23–24; *Preparing for the REDD Initiative in Tanzania*, *supra* note 688 at 8, 18–19 and 21; *Tanzanian Draft National Strategy for REDD+*, *supra* note 689 at 36 and 87; *Tanzanian 2nd Draft National Strategy for REDD+*, *supra* note 724 at 10, 12, 22, 35, and 43; *Tanzanian National Strategy for REDD+*, *supra* note 615 at 48–51.

wparticipatory forest management that had developed in Tanzania throughout the 1990s and were formally enshrined in the *Village Land Act* and *Forest Act*. Accordingly, the creation of a strategy for jurisdictional REDD+ can itself be seen as an exogenous legal norm that was translated by the National REDD+ Taskforce on the basis of the endogenous legal norms that defined the appropriateness of community-based mechanisms in Tanzanian forest governance.⁷⁷⁸

On the other hand, the National REDD+ Taskforce never altered its position about the necessity of creating a national trust fund to receive, manage, and channel payments for REDD+,⁷⁷⁹ despite the preference for a nested REDD+ finance mechanism that was clearly, constantly, and unanimously expressed by the proponents of all nine REDD+ pilot projects⁷⁸⁰ as well as the civil society representatives serving on the National REDD+ Taskforce and its technical working groups.⁷⁸¹ In all likelihood, the National REDD+ Taskforce's steadfast refusal to consider a nested approach to REDD+ finance was motivated by a strong inclination to retain control and influence over the management and distribution of funding for REDD+.⁷⁸² Indeed, while the pursuit of jurisdictional REDD+ activities may have been seen as an opportunity for Tanzanian government officials to implement existing mechanisms relating to participatory forest management, it was also perceived as an opportunity to increase funding for the Forest and Beekeeping Department.⁷⁸³ The material interests of Tanzanian government officials thus explain the incongruous manner in which the National REDD+ Strategy recognizes local communities as best placed to manage forests under REDD+, while at the same time denying them the capacity to access or manage the funds that might be generated by REDD+ activities.⁷⁸⁴ All told, the

⁷⁷⁸ Interview 19 at 1.

⁷⁷⁹ See *National REDD Framework*, *supra* note 684 at 9–10; *Tanzanian Draft National Strategy for REDD+*, *supra* note 689 at 74; *Tanzanian 2nd Draft National Strategy for REDD+*, *supra* note 724 at 37; *Tanzanian National Strategy for REDD+*, *supra* note 615 at 26–27.

⁷⁸⁰ TFCC, “Feedback on the Tanzania National REDD Strategy, prepared by the REDD Pilot Projects” *supra* note 718 at 3; MJUMITA & TFCC, “Five Steps to Get REDD Right(s)” *supra* note 718 at 2; TFCC *et al.*, “Recommendations from Civil Society Organisations for Tanzania’s 2nd Draft National REDD+ Strategy and Draft Action Plan” *supra* note 732 at 5.

⁷⁸¹ Interview 14 at 7.

⁷⁸² Interview 14 at 8; Interview 16 at 7; Interview 19 at 3; Interview 20 at 5; Interview 21 at 2. At a deeper level, the reasoning in favor of a central fund was moreover embedded in an enduring ideological resistance to market-based approaches that prevails among many government officials in Tanzania (Interview 15 at 12).

⁷⁸³ Interview 15 at 2 and 7–8; Interview 19 at 1.

⁷⁸⁴ Indeed, if the focus on participatory forest management had been primarily motivated by reasons of principle, having to do with the dignity, autonomy, or ability of local communities, one would expect that this would also translate into greater respect for the right of local communities to manage, and benefit from, the funds generated through REDD+.

elaboration of a National REDD+ Strategy reflects the influence of endogenous, rather than exogenous, legal norms, especially as far as the rights of Indigenous Peoples and local communities are concerned.

Unlike the National REDD+ Strategy, Tanzania's policy on social and environmental safeguards reflects the conveyance and construction of the rights of Indigenous Peoples and local communities. I would argue that this process can be explained by a causal sequence involving multiple causal mechanisms. To begin with, the National REDD+ Taskforce's commitment to developing a policy on social and environmental safeguards for REDD+ was driven by the combined effect of the mechanisms of cost-benefit adoption and mobilization. Once the development of an information system for reporting on social and environmental safeguards became a core requirement for jurisdictional REDD+ readiness and was tied to the delivery of finance for REDD+, Tanzanian officials recognized that it would be necessary for Tanzania to develop a policy on social and environmental safeguards in order to eventually access sources of finance for REDD+ and remain in compliance with its obligations under the UNFCCC.⁷⁸⁵ At the domestic level, the proponents of the REDD+ pilot projects also repeatedly pressed the National REDD+ Taskforce to adopt a set of social and environmental safeguards, with a particular emphasis on protections for the rights of local communities, as part of Tanzania's National REDD+ Strategy.⁷⁸⁶ In response, as was discussed in Section 4.4.2, the National REDD+ Taskforce developed a policy on social and environmental safeguards for REDD+ using the process and guidance set by the REDD+ SES Initiative. In other words, the National REDD+ Taskforce committed to an exogenous legal norm – the need to develop a set of social and environmental safeguards – because of the material benefits that it might gain in doing so (cost-benefit adoption) and due to the political pressure exerted by domestic civil society actors (mobilization).

Whereas the mechanisms of cost-benefit adoption and mobilization triggered the conveyance of legal norms relating to the development of social and environmental safeguards, the construction of the participatory rights of forest-dependent communities in these safeguards are best explained by the mechanism of persuasive argumentation. A process of argumentation facilitated by the novelty of the pursuit of jurisdictional REDD+ efforts meant that

⁷⁸⁵ Interview 16 at 7; Interview 84 at 8; Nordeco & Acacia, *supra* note 675 at 24.

⁷⁸⁶ Interview 23 at 2 and 8–9. See TFCCG, "Feedback on the Tanzania National REDD Strategy, prepared by the REDD Pilot Projects" *supra* note 718 at 6; MJUMITA & TFCCG, "Five Steps to Get REDD Right(s)" *supra* note 718 at 2; TFCCG *et al.*, "Recommendations from Civil Society Organisations for Tanzania's 2nd Draft National REDD+ Strategy and Draft Action Plan" *supra* note 732 at 3.

Tanzanian government officials were open to new normative understandings about the importance of social safeguards for REDD+, including those relating to the participatory rights of forest-dependent communities.⁷⁸⁷ Moreover, the flexible guidance set by the UNFCCC and the REDD+ SES Initiative for the development of a policy on social and environmental safeguards fostered the engagement of Tanzanian government officials in a deliberative discourse with other domestic actors and their international interlocutors around the nature and extent of participatory rights in the context of REDD+.⁷⁸⁸ In this process, the national consultant who facilitated the application of the REDD+ SES Initiative served as a key intermediary in ensuring that exogenous legal norms relating to participatory rights were effectively adapted to the Tanzanian context and appropriated by Tanzanian government officials.⁷⁸⁹ I thus argue that persuasive argumentation explains why and how exogenous legal norms that define the participatory rights of “Indigenous Peoples and local communities” in the *Cancun Agreements* and in the REDD+ SES were translated in line with existing endogenous norms in Tanzania and led to the construction of hybrid legal norms recognizing similar rights for “forest-dependent communities and marginalized communities,” but not for Indigenous Peoples.⁷⁹⁰ In other words, the construction of hybrid legal norms relating to social and environmental safeguards for REDD+ in Tanzania also reflects the enduring influence of an endogenous norm that denies the status, existence, and rights of Indigenous Peoples.⁷⁹¹ The resilience of this endogenous norm also explains

⁷⁸⁷ Interview 23 at 6–7. See Nordeco & Acacia, *supra* note 675 at 24: “REDD+ Safeguards are an entirely new concept in Tanzania and a major investment of time and effort was needed to raise awareness regarding safeguards. Strong resistance to the concept of safeguards was expressed from some quarters of the NRTF during these early discussions. Following the recruitment of a national consultant and the development of a final list of principles, criteria and indicators, these discussions in Tanzania has evolved and matured significantly. There is now, among NRTF members, an acceptance of the importance of safeguards and a broad based consensus regarding the Tanzanian outputs to date, as well as consensus on moving forward to safeguard implementation. (...) So, while no impacts have been realised through the adoption of safeguards, (just as REDD+ implementation has yet to take place, beyond individual pilot projects), the validity and necessity of the concept has been well internalised among decision makers in Tanzania, and a strong basis exists for moving forward with subsequent support to safeguard implementation.”

⁷⁸⁸ Interview 23 at 5. ⁷⁸⁹ Interview 23 at 6–7.

⁷⁹⁰ *Tanzania REDD+ Social and Environmental Standards*, *supra* note 768, principles 2 and 4.

⁷⁹¹ Interview 20 at 6 (“Who are the Indigenous people? We are all Indigenous anyway. (...) We have qualified that term slightly different. We consider them as forest dependent communities.”); Interview 21 at 2 (“There are no Indigenous Peoples in Tanzania because all Tanzanians are indigenous. Living in a rural areas does not make someone any less Tanzanian or any more Indigenous. In fact, only South America has truly Indigenous Peoples.”)

why the material and social pressures to recognize the status and rights of Indigenous Peoples that were exerted by the Norwegian Embassy, the World Bank FCPF, and the UN-REDD Programme were ultimately unsuccessful in getting Tanzania to alter its position on this matter.

4.5 REDD+ AND THE FUTURE OF INDIGENOUS AND COMMUNITY RIGHTS IN TANZANIA

This chapter has shown that the pursuit of jurisdictional REDD+ activities has resulted in the enactment of an enhanced set of participatory and substantive rights for forest-dependent communities in Tanzania. Notwithstanding ongoing disagreements over the establishment of finance and benefit-sharing arrangements for REDD+, Tanzania's National REDD+ Strategy and its safeguards policy recognize the importance of respecting and protecting the participatory and substantive rights of forest-dependent communities in the design and implementation of REDD+ activities, including their right to free, prior, and informed consent. The long-term implications of these developments are hard to discern because the future prospects of jurisdictional REDD+ in Tanzania remain uncertain as of August 2014. At the moment, the Tanzanian government is aiming to obtain additional funding from the Norwegian government to complete its jurisdictional REDD+ readiness efforts.⁷⁹² Without additional support from donors, the jurisdictional REDD+ readiness policies developed by Tanzania are unlikely to be implemented,⁷⁹³ which would not only limit the impacts of these policies on the ground, but also undoubtedly constrain their influence on the adoption of policies in related sectors such as forestry, agriculture, and social development. What is more, as Tanzania's economy becomes increasingly integrated into the global market for agricultural commodities, the Tanzanian government's interest in the implementation of jurisdictional REDD+ policies may further diminish.⁷⁹⁴

Nonetheless, there are two reasons to think the recognition of the rights of forest-dependent communities in the context of jurisdictional REDD+ might have durable effects. The first reason has to do with the fact that these rights constitute hybrid legal norms that were constructed on the basis of endogenous Tanzanian norms regarding the role of these communities in forest

⁷⁹² Nordeco & Acacia, *supra* note 675 at iii–vi; E-mail communication 4 at 1.

⁷⁹³ Interview 11 at 7–8.

⁷⁹⁴ See generally Eric F. Lambin & Patrick Meyfroidt, "Global land use change, economic globalization, and the looming land scarcity" (2011) 108:9 PNAS 3465.

governance as well as the nonexistence of Indigenous Peoples on Tanzanian soil. The legal norms relating to the rights of forest-dependent communities were effectively translated and appropriated by Tanzanian officials as well as domestic CSOs throughout the jurisdictional REDD+ readiness process. The enhanced normative resonance of these hybrid legal norms suggests they may influence Tanzania's law, policies, and practices in forest governance and other policy sectors in the years to come.

The second reason has to do with the many ways in which domestic CSOs have been empowered as a result of the jurisdictional REDD+ readiness phase. It is important to highlight that the relatively consultative manner in which jurisdictional REDD+ policies were elaborated, as reflected in the inclusion of representatives from CSOs in the National REDD+ Taskforce and its technical working groups and the organization of an iterative series of multi-stakeholder consultations and workshops, stands in sharp contrast to the usual policy-making practices that prevail in Tanzania.⁷⁹⁵ To the extent this precedent has redefined the expectations of government officials, domestic CSOs, and donors it may have durable implications for future policy-making processes in forestry and other sectors.⁷⁹⁶ Most importantly, given the resources, credibility, and capabilities that domestic CSOs have acquired as a result of the direct support they have received from Norway and their work in developing and implementing REDD+ projects on the ground,⁷⁹⁷ domestic CSOs are well-positioned to advocate for greater recognition of, and support for, the rights of forest-dependent communities in the context of the implementation of jurisdictional REDD+ policies as well as forest governance and policy more broadly.⁷⁹⁸

On the other hand, this chapter has also shown that the pursuit of jurisdictional REDD+ activities has done very little to foster recognition of and protection for the distinctive status and rights of Indigenous Peoples in

⁷⁹⁵ That is to say that the development of REDD+ policies in Tanzania was perfectly or completely inclusive. Among other shortcomings, the consultations included too many local government stakeholders and not enough civil society representatives. It also largely excluded Indigenous Peoples (Nordeco & Acacia, *supra* note 675 at 11). And despite their participation in the policy-making process, it is hard to identify any concrete areas in which civil society managed to exert meaningful policy-making influence, apart from the creation of a policy on social and environmental safeguards.

⁷⁹⁶ Interview 15 at 13–14; Interview 52 at 14. ⁷⁹⁷ See Section 5.3.

⁷⁹⁸ That said, the empowerment of these domestic CSOs should not be seen as equivalent to the direct empowerment of forest-dependent communities and villages. Indeed, most of these domestic CSOs only represent and serve the interests of local communities to the extent that this is consistent with their broader objectives of conserving forests, ensuring their sustainable management of forests or alleviating poverty.

Indonesia. Their inclusion in a technical working group of the National REDD+ Taskforce was lauded as a “milestone”⁷⁹⁹ by international observers working on Indigenous rights and is viewed as an important development that created space for them to advocate for their rights.⁸⁰⁰ But the reality is that the National REDD+ Strategy and safeguards policy fail to recognize their very existence as defined under international law and creates risks that the implementation of jurisdictional REDD+ policies may only serve to further marginalize them. This is consistent with the Tanzanian government’s continuing rejection of the application of the concept of Indigenous Peoples in international fora⁸⁰¹ as well as pursuit of policies in which Indigenous Peoples continue to experience significant tenure insecurity.⁸⁰²

All told, the jurisdictional REDD+ readiness phase can be said to have reinforced endogenous legal norms and practices that have progressively given local communities greater rights and authority over their lands and forests over the last decade, while denying similar protections to Indigenous Peoples. As such, for good and for bad, the recognition and protection of rights in the context of the jurisdictional REDD+ cannot be divorced from the broader achievements and failures that various international and domestic actors have had in pressing for increased respect for human rights and local autonomy since the end of authoritarian socialism in Tanzania.

⁷⁹⁹ IFAD, *supra* note 646 at 34.

⁸⁰⁰ PINGOs Forum, *Annual Report. 2012-2013. Report submitted to Oxfam Ireland* (on file with the author) at 38–39.

⁸⁰¹ Statement by H.E. Ambassador Ramadhan M. Mwinyi, Deputy Permanent Representative of the United Republic of Tanzania to the United Nations, during the 12th session of the Permanent Forum on Indigenous Issues, Agenda Item 4, “Half-Day Discussion on African Region,” (New York, 23 May 2013), available at: www.minorityvoices.org/force_download.php?file=data/files/final/news_1435/TanzaniagovernmentstatotheUN.pdf (accessed 19 December 2014) at 2: “The United Republic of Tanzania has always expressed reservations on the claim that indigenous communities exist in her jurisdiction.”

⁸⁰² For instance, a Maasai community in Northwestern Tanzania have faced eviction due to the proposed establishment of a private game reserve on their traditional lands. See Gerhard Jacobs, “Tanzania sells Masai people’s land to Arab royals, who want to build a hunting reserve for the rich” available at: www.thesouthafrican.com/tanzania-sells-masai-peoples-land-to-arab-royals-who-want-to-build-a-hunting-reserve-for-royals/ (accessed 19 December 2014); David Smith, “Tanzania’s Masai ‘breathe sigh of relief’ after president vows never to evict them,” available at: www.theguardian.com/world/2014/nov/25/tanzania-masai-eviction-utum (accessed 19 December 2014).