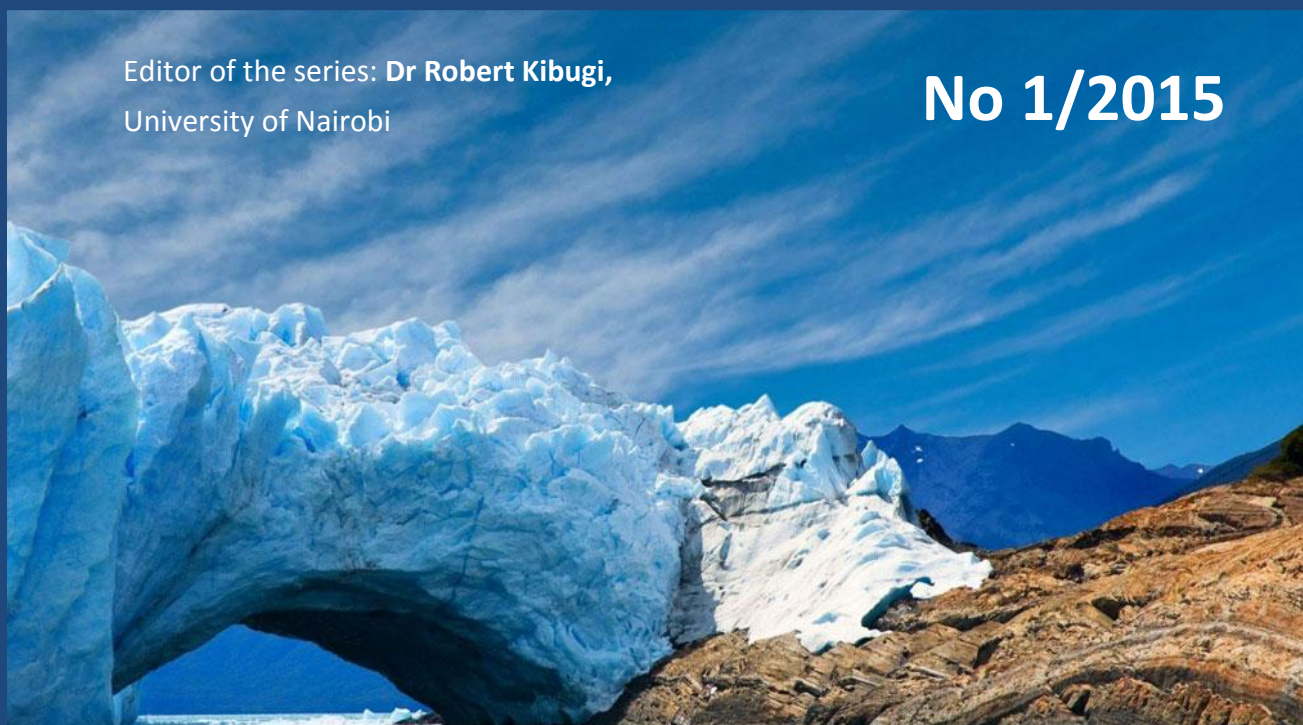


## REDD+ Benefit Distribution in Viet Nam

By: **Katherine Loftis**, M.A. (McGill), LL.B. / B.C.L. (McGill), B.A. (Victoria),  
Programme Coordinator, CISDL

Editor of the series: **Dr Robert Kibugi**,  
University of Nairobi

**No 1/2015**



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The CISDL, in cooperation with the Lauterpacht Centre for International Law at the University of Cambridge, the Centre for Research on Climate Resilience at the Universidad de Chile, and the Centre for Advanced Studies in Environmental Law and Policy at the University of Nairobi, held an International Legal Essay Competition for students and recent graduates on the topic of “Climate Change, Sustainable Development and the Law: Governance Challenges and Innovations.” The winners were announced during the Law, Governance and Climate Change International Law and Policy Workshop, in the context of the UNFCCC COP20 in Lima, Peru, by Markus Gehring and Tony La Viña.

## Contact Information

### CIGI

67 Erb Street West  
 Waterloo, Ontario N2L 6C2, Canada  
 tel +1 519 885 2444  
[www.cigionline.org](http://www.cigionline.org)

### CISDL

Chancellor Day Hall, 3644 Peel Street  
 Montreal, Quebec H3A 1W9, Canada  
 tel +1 818-685-9931 fax +1 514-398-4659  
[www.cisdll.org](http://www.cisdll.org)

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## REDD+ BENEFIT DISTRIBUTION IN VIET NAM

By Katherine Lofts \*\*

Centre for International Sustainable Development Law

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### I INTRODUCTION

1. Viet Nam has a rich history of benefit distribution systems for decentralised forest management. It can draw clear policy options from this experience to build a benefit distribution system compliant with the Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme. By participating in international capacity building programmes, Viet Nam has taken the first steps toward designing such a system. This brief highlights key lessons from the Vietnamese experience, outlines the process of preparing such a system in the country, and lists the challenges that remain.
2. Currently, Viet Nam is participating in several initiatives to prepare for a REDD+ financial mechanism. In July 2008, the country was one of the first to receive approval for its Readiness Project Identification Note under the Forest Carbon Partnership Facility, and in March 2009 it was one of nine pilot countries selected for the Quick Start Initiative under the UN-REDD Programme. Viet Nam is now drafting its National REDD+ Strategy and has established a National Readiness Management Arrangement, including a Viet Nam REDD+ Steering Committee, Network and dedicated Office. It is estimated that REDD+ could generate benefits of US\$ 80–100 million per year in the country—roughly three to four times the amount of aid money currently supporting the Vietnamese forestry sector. However, the country’s ability to attract this financing will depend on its development of a REDD+ compliant benefit distribution system.
3. Those who undertake forest management – including indigenous and forest-dependent communities – need clear incentives for adopting REDD+ activities. Equitable and transparent benefit distribution systems are key to providing such incentives. Also, investors find security in transparent and accountable systems that are monitored, reported and verified. In addition, performance-based or other conditional payments can motivate communities to achieve and sustain results, leading to

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\*\* **Ms Katherine**, M.A. (McGill), LL.B. / B.C.L. (McGill), B.A. (Victoria), is a Legal Research Fellow and Programme Coordinator for Climate Change Law with the CISDL. The author acknowledges that this text was originally published as part of the Climate and Development Knowledge Network’s “Inside Stories” series. Winner of a Gold Medal.

further carbon reductions. For these reasons, Viet Nam considers the design of a compliant benefit distribution system to be a priority in its preparations for REDD+.

4. While REDD+ has not yet been fully informed by best practice – as the international mechanism remains under negotiation– there are nevertheless certain key aspects common to the Cancun Agreements, UN-REDD Programme and Forest Carbon Partnership Facility, such as the preparation of a national REDD+ strategy or action plan. Therefore, Viet Nam situates its benefit distribution system efforts as part of an implementation framework within its REDD+ strategy. The country has also undergone several expert studies of existing policies, legislation, institutions and experiences with benefit distribution systems in the forestry sector.

## II VIET NAM'S EFFORTS TO PREPARE FOR A REDD+ COMPLIANT BENEFIT DISTRIBUTION SYSTEM

5. In late 2009, a team of 15 international and national experts convened under the leadership of the Department of Forestry of the Ministry of Agriculture and Rural Development to conduct a study on the design of a REDD-compliant benefit distribution system for Viet Nam.<sup>1</sup> The UN-REDD Programme released a follow up to this study in December 2010. In March 2011, under the auspices of the Forest Carbon Partnership Facility, Viet Nam produced a Readiness Preparation Proposal (R-PP) addressing benefit distribution issues. An independent review followed, leading to a report commissioned by UN-REDD and the Forest Carbon Partnership Facility.<sup>2</sup> In each case, Viet Nam's past experiences with benefit distribution systems in the forestry sector, as well as existing legal and institutional frameworks, were reviewed to draw out lessons learned and identify recommendations for an improved benefit distribution system in the context of REDD+.

### *Past experiences with benefit distribution systems*

6. Since the 1980s, Viet Nam has encouraged the decentralisation of forest restoration, conservation and management to households and communities through a number of initiatives. Lessons have been drawn from the 661 Programme (also known as the 5 Million Hectares Rehabilitation Programme), payment for ecosystem services pilot projects, forest restoration projects, community forest management projects, and Clean Development Mechanism afforestation and reforestation projects. These initiatives adopted differing approaches to benefit distribution systems and achieved varying degrees of success, thus providing a strong empirical basis for prospective system designs.

<sup>1</sup> UN-REDD Programme and MARD (2010)

<sup>2</sup> Costenbader, John (2011).

*Recommendations for the design of future benefit distribution systems*

7. The experts considered a number of issues related to the design and implementation of an effective benefit distribution system. Viet Nam's experience has shown that a system of fixed payments per hectare (such as that employed by the 661 Programme) results in the inefficient use of funds and fails to recognise differences in local forest quality and ecosystem services. Performance-based payments provide one solution to this problem. For example, the 'K-factors' used in Viet Nam's previous payment for ecosystem services pilot projects represent a model that could be adapted to meet REDD+ objectives. These are factors used to weight payments in a manner that takes into account the relative value (type and quality) of different forest areas. Building on the concept of K-factors, the first report proposed the use of a system of 'R coefficients' that would differentiate payments according to carbon stocks while also taking into account other goals such as poverty alleviation.
8. Payments must be set at a level that does not merely offset the opportunity costs incurred by forest users but offers clear incentives for participation in REDD+. The timing of fund disbursement is also key to creating effective incentives. While *ex-post* payments for REDD+ services can be clearly linked to performance, some pre-investment is needed to meet start-up and opportunity costs. Periodic disbursement of payments combined with micro-financing schemes can also be used to overcome high start-up costs while motivating forest managers to keep delivering results.
9. Another issue examined in the studies is the eligibility to receive REDD+ benefits. Payment for ecosystem services pilot projects have demonstrated that paying benefits to communities tends to result in more equitable disbursement, lowering the risk of 'elite capture', in which the powerful few retain the best land and receive disproportionate payments at the expense of the many poor. This is therefore preferable to disbursement to individual households, state-owned companies, or protected area management boards. However, legal constraints currently prevent village communities from being eligible for REDD+ payments, as discussed below.
10. Mechanisms for managing dedicated REDD+ revenues (i.e., revenues that are kept separate from government budgets) were also considered. REDD+ revenues are best collected in a dedicated national fund that is firewalled to prevent the leakage of funds into general government revenues, with equivalent funds at the provincial and district levels. Two such off-budget mechanisms already exist in Viet Nam. The Forest Protection and Development Fund was established in 2008 to receive

funding from PFES projects, but it lacks the civil society participation in its management likely to be required in REDD+. The Trust Fund for Forests pools funding from international sources and allows non-governmental participation in its governance, offering a more appropriate model for REDD+.

11. Among the other issues considered in the expert studies are the appropriate institutions for monitoring REDD+ interventions and actions, mechanisms for revenue retention to cover administrative costs, the need to strengthen forest law enforcement, and the establishment of an equitable recourse mechanism to address disputes arising from REDD+ activities.

*Pilot projects: tailoring benefit distribution system design and implementing free, prior and informed consent*

12. Viet Nam has 53 ethnic minority groups constituting 16 million people, many of whom live in and around forests. Based on past experiences with payment for ecosystem services, Viet Nam's R-PP acknowledges that no one benefit distribution system can apply to all provinces; in response, the government will seek to implement pilot projects in a number of provinces throughout the country, the first being Lam Dong province in the Central Highlands.
13. As a precursor to the implementation of those pilot projects, Viet Nam has also pioneered projects for free prior informed consent in the Lam Ha and Di Linh districts of the province. The concept of free, prior and informed consent recognises the primacy of participation, inclusion and safeguards as key human rights that must guide sustainable development projects. Free, prior and informed consent is now enshrined as a right in Article 19 of the United Nations Declaration of the Rights of Indigenous Peoples. By implication, it extends beyond those who identify themselves as indigenous, entitling all peoples to free, prior and informed consent.
14. The free, prior and informed consent projects initiated in Lam Dong province involved an eight-step process, implemented over a 5-month period at the beginning of 2010. This process included awareness-raising, the recruitment and training of interlocutors, preparing and conducting village meetings, recording decisions on consent, documenting and reporting to UN-REDD Viet Nam, and independent verification and evaluation.
15. Viet Nam's application of free, prior and informed consent to REDD+ activities is novel and has already faced challenges. Civil society organisations have expressed concerns that scheduled village meetings were too short to fully inform villagers about the issues and that no time was allotted for internal discussions within villages. Also, information provided through official channels – such as

posters and leaflets – raised concerns about objectivity, as no alternative sources or views on REDD+ were made available. Information about the risks and costs of participation in REDD+ to local people was lacking, as was planning for an independent grievance mechanism. These challenges provide important lessons for Viet Nam’s future pilot projects, as well as for other countries seeking to implement free, prior and informed consent to protect the interests of indigenous and local communities.

*Safeguarding social and economic benefits for local and indigenous communities*

16. The Cancun Agreements require that parties undertaking REDD+ activities safeguard the rights of indigenous peoples and local communities throughout the planning and implementation processes. Moreover, in developing their national REDD+ strategies or action plans, governments are requested to address the issues of land tenure and forest governance, gender considerations and the full and effective participation of stakeholders. Despite its participation in studies to design a REDD+ compliant benefit distribution system, as well as its pilot projects on free, prior and informed consent, Viet Nam still faces significant challenges in aligning its legal and institutional frameworks to ensure the equitable distribution of social and economic benefits. The exclusion of indigenous and local communities from national policy and legal planning processes must also be addressed.
17. One paramount issue concerns the eligibility of village communities to receive the benefits of REDD+. Although the 2004 Forest Protection and Development Law recognises communities as forest owners and therefore eligible to receive payments for carbon credits, the Civil Code fails to recognise communities as legal entities. Without the legal status needed to spearhead REDD+ planning and implementation, communities’ ability to access its benefits is uncertain.
18. Related to this is the uncertainty surrounding the carbon rights of forest and land owners and users. Under the Constitution of Viet Nam, as well as the 2003 Land Law, the State is deemed to own all land and forest resources, which it allocates to individuals and organisations for their use and benefit. However, carbon ownership and transfer rules arising from REDD+ activities have not yet been defined in general, let alone with detailed provisions for the rights of those implementing these activities at the local level. This could pose a challenge to establishing an equitable benefit distribution system in so far as the benefits of REDD+ activities are to be performance-based and tied to carbon sequestration on specific parcels of forested land.



19. Local communities have lacked decision-making power in previous benefit distribution system projects. The role of civil society organisations (CSOs) in the current preparatory process for a benefit distribution system has also been very limited, and some CSOs are critical of proposed solutions as being overly complicated. It is vital that these shortcomings be remedied in Viet Nam's ongoing benefit distribution system design process.
20. Finally, Viet Nam must establish an effective recourse mechanism to address grievances from individuals or from entire communities. The country's political system seems relatively open to public complaints, its environmental protection system is described as a complaints-based system, and civil society is increasingly active in environmental monitoring. A recourse mechanism for a future benefit distribution system should include the participation of CSOs to ensure transparency.

### III LESSONS AND IMPLICATIONS

#### *Lessons drawn from Viet Nam's experiences in REDD+ compliant benefit distribution*

21. **Countries must be open to addressing sensitive governance issues.** Viet Nam's development of a REDD+ compliant benefit distribution system is groundbreaking. It has opened itself up to a national debate on potentially sensitive governance issues, including the legal status of local communities, the rights of minorities and indigenous groups, and the challenges posed by individuals and organisations to law enforcement and accountability. However, issues such as land, forest and carbon tenure remain to be addressed.
22. **Learn from existing benefit distribution systems.** As one of the few countries to embark on a process to examine how benefits should be distributed, Viet Nam's experience provides valuable insights for future benefit distribution system projects in other countries. The expert studies carried out in preparation for designing a REDD+ compliant benefit distribution system draw on Viet Nam's rich history in the area of forest governance to provide viable design options. These highlight the importance of a clear legal framework, decentralisation, dedicated funds, community empowerment, performance-based payments, and independent monitoring and enforcement.
23. **Funding mechanisms must be flexible and transparent.** Off-budget mechanisms for managing REDD+ revenues – particularly those that allow for non-government participation– provide a good model for a future benefit distribution system. As Viet Nam's history with other benefit distribution schemes demonstrates, payments for REDD+ are likely to be most effective when they are



performance-based and set at a level that motivates participation beyond merely offsetting participants' opportunity costs.

24. **Adapt the system to local needs through pilot programmes.** The design of a benefit distribution system will differ for each province and district, as each area has different capacities and requirements. As a result, the implementation of pilot programmes at the provincial level is crucial to the adaptation process required to meet the needs of local people in different geographical regions of the country. Pilot programmes can then be scaled up or further adapted, depending on their degree of success.
25. **Make free, prior and informed consent more effective.** Viet Nam's initiative in implementing free, prior and informed consent as a precursor to its REDD+ pilot projects is key to ensuring the participation and equitable treatment of local people, particularly indigenous and minority groups. However, to be effective these projects must be conducted within a realistic timeframe that allows for proper communication of the issues, internal discussion, and truly informed consent – or the withholding of it. There needs to be sufficient, objective information about the risks and costs of REDD+ projects, and an independent grievance system should cover both the planning and implementation phases.
26. **Safeguard benefits for communities.** In addition to free, prior and informed consent, the rights of local and indigenous people must be safeguarded by other means. The legal right of local communities to receive equitable benefits must be unambiguously established. This in turn implies the determination of complex issues of land and carbon rights, which may be difficult for the government to tackle. An accessible recourse mechanism – friendly, local and affordable – is also essential. All of these issues must be resolved if Viet Nam is to maximise the social and economic benefits of future REDD+ activities. Communities must be encouraged to participate fully in the planning and implementation of REDD+ activities beyond the initial free, prior and informed consent consultation process.

*Viet Nam's experiences: broader implications*

27. Communities require sufficient legal status and rights to participate independently and effectively in REDD+ contracts and the carbon market.
28. A decentralized institutional structure and clear legal status for communities are keys to effectively engaging communities and encouraging them to develop a sense of ownership of the forest

management outcomes critical to REDD+. Community forest management may offer cost, equity and social benefits over management by individual households or state agencies, including a lower risk of elite capture, pro-poor benefits through the inclusion of marginalised households, and improved social cohesion.

29. REDD+ funds should be kept separate from general government revenues, and fund managers should be able to account for all administrative costs.
30. Payments can be linked to performance by using a formula to assess the actual and potential carbon stock of local forests and to measure progress towards REDD+ social and environmental objectives.
31. Periodic disbursement of fund payments can be used in combination with micro-financing schemes to overcome the problem of high start-up costs while motivating forest managers to keep delivering results.
32. Effective recourse mechanisms are needed to address the grievances that will inevitably arise over the differentiated payment scheme.
33. Independent third-party monitoring is critical to ensuring that REDD+ funds are delivered to forest owners who achieve real and lasting carbon storage results.

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