



**LOCAL GOVERNANCE, ANTI-CORRUPTION AND
REDD+ IN LATIN AMERICA AND THE CARIBBEAN:
EXPLORING SYNERGIES TO STRENGTHEN
TRANSPARENCY AND ACCOUNTABILITY**

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ACCOUNTABILITY**

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SEPTEMBER 2011

The views expressed in this publication are those of the author and do not necessarily represent those of the United Nations Development Programme (UNDP).

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Presentation

The **Transparency and Accountability in Local Governments** (TRAALOG) regional initiative started in April 2010. The TRAALOG has been supported by the Democratic Governance Thematic Trust Fund (DGTTF), the Global Thematic Programme on Anti-Corruption for Development Effectiveness (PACDE), and the United Nations Development Programme (UNDP) Spanish Trust Fund. The TRAALOG is an initiative of the UNDP Democratic Governance Practice Area of the Regional Bureau for Latin America and the Caribbean (RBLAC), and is implemented from the UNDP Regional Centre for Latin America and the Caribbean in Panama.

The TRAALOG targets small initiatives at the local level that can be scaled up through policy support and capacity development and partnerships. One of the key activities of TRAALOG is to promote the development and systematization of knowledge products and tools, focusing on specific initiatives aimed at increasing transparency and accountability, as well as to mainstream anti-corruption issues into other areas, such as access to information, ethics, climate change, health, Millennium Development Objectives and social audit. The idea is for these knowledge products to serve as means and to generate interest and discussion among UNDP Country Offices inside and outside the region, regional service centers and other units of UNDP and the wider United Nations System, as well as development and democratic governance practitioners.

Similarly, it is hoped that these knowledge products could serve as a reference in pursuing initiatives and in seeking opportunities for replication. These can also be used to develop and support projects and programs, as well as regional activities. These knowledge products are the result of partnerships with a number of UNDP Country Offices, donors, consultants and associate experts, academic institutions and civil society organizations. All helped to identify experiences that provide valuable practical information relative to improving democratic governance and increasing transparency and accountability.

These knowledge products are not meant to be prescriptive. Rather, their aim is to:

- Provide examples of transparency and accountability activities;
- Generate discussion and policy dialogue;
- Illustrate practices;
- Present tools, methodologies, approaches and frameworks;
- Highlight case studies;
- Direct readers to additional resources.

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Acronyms

AFL	Authority of Forests and Lands (Bolivia)
ARI	Amazon Research Institute
ASLs	Social Associations of the Place (Bolivia)
BDS	Benefit Distribution Systems
BNDES	Brazilian Development Bank
BOLFOR	Bolivia's Sustainable Forest Management Project
CECLIMA	Centre for Climate Change
SCCU	State Centre of Conservation Units Centro Estadual de Unidades de Conservação
CICIG	International Commission Against Impunity
CIFOR	Centre for International Forestry Research
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CO ₂	Carbon dioxide
CO ₂ e	Carbon dioxide equivalent
COP	Conference of the Parties
FAS	Sustainable Amazonas Foundation
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FEMA	Fundação Estadual de Meio Ambiente
FIP	Forest Investment Programme
FLEGT	Forest Law, Enforcement, Governance and Trade
FMP	Forest Management Plans
FSC	Forest Stewardship Council (Bolivia)
FUNBIO	Brazilian Biodiversity Fund

GCF	Governor’s Taskforce on Climate and Forest (Brazil)
GECAM	Strategic Group to Combat Environmental Crimes
GFTZ	State of Amazonas Green Free Trade Zone
GFTZ	Green Free Trade Zone
GTZ	German Technical Cooperation
IACC	Inter-American Convention against Corruption
IBAMA	Brazilian Institute of Environment and Renewable Natural Resources
IDESAM	Institute for Conservation and Sustainable Development of Amazonas
IDR	International Development Research Centre
INPE	Brazilian National Institute for Space Research
INRA	National Institute for Agrarian Reform (Bolivia)
IPAAM	Institute of Environmental Protection of Amazonas
IPCC	International Panel on Climate Change
ITEAM	(Instituto de Terras do Amazonas
ITTO	International Tropical Timber Organization
IUCN	International Union for Conservation of Nature
MDG	Millennium Development Goals
MEA	Multilateral Environmental Agreement
MESICIC	Mechanism for the Implementation of the Inter-American Convention against Corruption
MMA	Brazilian Ministry of Environment
MOU	Memorandum of Understanding
MRV	Monitoring, Reporting, and Verification
NPD	National Programme Document (UN-REDD)
NGO	Non-Governmental Organization
NKCAP	Noel Kempff Climate Action Project

OAS	Organization of American States
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
OTBs	Territorial grassroots organizations
PACDE	Global Thematic Program on Anti-Corruption for Development Effectiveness
PAS	Sustainable Amazon Plan
PASA	Promotion Agency of the State of Amazonas
PES	Payment for Environmental Services
PPG7	Pilot Program to Conserve the Brazilian Rain Forest
PMFSPS	Plano de Manejo Florestal Sustentável com Procedimentos Simplificados
SBSTA	Subsidiary Body for Scientific and Technological Advice
SDS	State of Amazonas, Secretariat for Environment and Sustainable Development
SSCU	State System of Conservation Units of the Amazon
SSEMA	Secretary of State for Environment of Mato Grosso
SELRP	System of Environmental Licensing in Rural Property
SWG	Soy Working Group
TRAALOG	Transparency and Accountability in Local Governments
UNCAC	United Nations Convention Against Corruption
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	United Nations Forum on Forests
UN-REDD	The United Nations Collaborative Programme on Reducing Emissions from Deforestation and forest Degradation in Developing Countries.
USAID	United States Agency for International Development

Acknowledgements

This report was prepared by Beatriz García for the Transparency and Accountability in Local Governments (TRAALOG), a regional initiative of the UNDP Democratic Governance Practice Area of the Regional Bureau for Latin America and the Caribbean (RBLAC), and is implemented from the UNDP Regional Centre for Latin America and the Caribbean in Panama. The author wishes to thank the advice, inputs and valuable comments and contributions of Gerardo Berthin (UNDP) and Estelle Fach (UNDP-UN-REDD), who also provided orientation throughout all phases of the study. Similarly, valuable comments and inputs were received from Pierre-Yves Guedez, Vanessa Retana, Jason Portner and Clare Romanik of UNDP, Gabriel Labbate of UNEP, Lisa Ogle (Independent Consultant) and Amelia Thorpe (Environmental Defender's Office).

INTRODUCTION

Chapter 1

Introduction

1.1 Study Background

This study examines the role of local governance institutions in preventing corruption risks in the forestry sector in Latin America and the Caribbean (LAC). The 2010 United Nations Development Programme (UNDP) report *Staying on Track: Tackling Corruption Risks in Climate Change* provided recommendations on how to address such risks in the context of REDD+ and indicated the need to “strengthen transparency and accountability of local governance institutions and systems.”¹ The present study complements this report by 1) examining two case studies to see how local governments in LAC have tackled corruption risks in the forestry sector and 2) extracting lessons learned from their experiences that may be relevant to REDD+. The study links three issues of major importance to UNDP’s work: climate change, anti-corruption and local governance. As an initial study, it aims to provide inputs to the UN-REDD Programme and to the Democratic Governance Practice Area.

1.1.1 UNDP’s Support to Anti-Corruption Efforts

Since the early 1990s, UNDP has supported countries to enhance accountability, transparency and integrity of their national systems.² With the advent of the 2005 United Nations Convention against Corruption (UNCAC) and some regional anti-corruption instruments, UNDP has supported member countries to implement those international standards. For example, it provides policy advice, disseminates knowledge products and helps improve the “watchdog” role of the media and civil society. UNDP Country Offices assist particular countries to formulate anti-corruption laws and policies and strengthen their institutional capacity. UNDP has developed a global anti-corruption program, the *Global Thematic Program on Anti-Corruption for Development Effectiveness (PACDE)* for the years 2008-11, to help countries improve governance. UNDP’s anti-corruption work strives to mainstream anti-corruption initiatives into its work areas, such as climate change, poverty reduction and post-conflict recovery, among others.

1.1.2 UNDP and Democratic Governance

In Latin America and the Caribbean, the analysis of local governance, anti-corruption and climate change is a new topic of research. In most of the countries of the LAC region development efforts over the past three decades have been accompanied by an attempt to modernize public institutions and improve democratic governance. Strengthening sub-national governments and making them more transparent and accountable is an integral part of the process of making public institutions more efficient, responsive and accountable to citizens.

¹ A. Thorpe, L. Ogle, *Staying on Track: Tackling Corruption Risks in Climate Change*, UNDP (2010), p. 11 (Hereinafter: 2010 UNDP Corruption and Climate Change Report), p. 5.

² *Ibid.*, p. 11.

While corrupt practices occur in all societies and at all levels, sub-national governments in newly democratic countries (like most in the Latin American and the Caribbean region), are particularly vulnerable. Local governance, decentralization and devolution of power and responsibilities have brought new challenges and opportunities for sub-national governments in the region. Greater financial responsibility, increased discretionary powers and new service delivery responsibilities have created opportunities to enhance local governance. However, they have also brought greater risks and an increased focus on institutional vulnerabilities, particularly to manage such complex issues as climate change.

As local governments are closer to constituencies, the lack of transparency and accountability and the prevalence of corrupt practices can have a more immediate and corrosive impact for democratic governance than in other levels of government. Corrupt practices at the local level are not much different than those occurring at the national level; what may vary are the anti-corruption tools used in each case. Anti-corruption laws, such as those on access to information, whistleblower protection, freedom of information, citizen participation and public service, have mainly been adopted at the national level. Specific anti-corruption laws are less common at the local level, but in many countries sub-national governments have sufficient autonomy to pass ordinances and municipal decrees to promote transparency and accountability. In addition, laws, policies and institutions combating illegal practices may also be useful to tackling corruption.

Corruption and the challenges of transparency and accountability at the local level vary across sub-national governments within and across countries in the region, depending on administrative and institutional responsibilities and capacity. In any case, local governments tend to be better placed to handle certain corruption risks due to their specific knowledge of the local context and the proximity of potential corrupt actors and practices. Likewise, sub-national governments in Latin America and the Caribbean may play a key role in tackling corruption risks when REDD+ process reaches the implementation phase. While national governments tend to be more involved in the REDD+ design phase (for example in building national frameworks and strategies, setting national baselines or designing and establishing benefit distribution systems), local governments may be increasingly involved in implementing REDD+ activities.

UNDP's Democratic Governance Practice Area in Latin America and the Caribbean clearly recognizes the importance of strong, transparent and accountable institutions at the sub-national level to articulate public policies in the forest sector and manage risks. UNDP's Regional Bureau for Latin America and the Caribbean (RBLAC) supports sub-national stakeholders' efforts to strengthen democratic governance and develop a citizens' democracy, with one of its main outcomes in this area being to strengthen accountable and responsive governance institutions. For example, the Transparency and Accountability in Local Governments (TRAALOG) regional initiative focuses on assisting a selected number of UNDP Country Offices in Latin America and the Caribbean to address transparency and accountability in local governments in order to mainstream anti-corruption.

The TRAALOG is part of an effort to articulate transparency issues in sub-national governments that began in 2008, when the 1st Latin American and Caribbean Community of Practice on Anti-Corruption

was held in Lima. In June 2009, the 2nd UNDP Latin American and Caribbean Community of Practice on Anti-Corruption was held in Bogota, and provided a number of inputs about the needs of Country Offices. Also, a mapping of anti-corruption initiatives at UNDP Country Offices was carried out in 2009, which helped generate an inventory of activities, topics and potential future opportunities, including climate change.

Box 1: Definitions³

Local governments can be defined as formal institutions mandated to deliver a variety of public goods and services at the sub-national level.

Local governance refers to the ways in which local level decision-making is carried out, subject to the scrutiny and oversight of citizens, open and transparent, rule-bound, and participatory.

Local governance institutions vary from country to country, but generally include governments (municipal, state, provincial, community) and a variety of other special purpose institutions (water, health, education). These local governance institutions are means through which services are provided and policies are implemented in areas such as land use planning, roads, and utilities, public transit, economic development, health services, among others. Local governance institutions are also means for citizens to get involved in decision making processes and exercise oversight and demand transparency and accountability.

1.1.3 UNDP's Support to Democratic Governance in REDD+

In 2008 UNDP endorsed a climate change strategy to improve developing countries' capacity to make informed policy and investment decisions to reduce poverty (in line with the 2000 United Nations Millennium Development⁴ Goals) and limit greenhouse gas (GHG) emissions.⁵ That same year UNDP, FAO and UNEP established the UN-REDD Programme to support demonstration REDD+ activities, by assisting countries to prepare for REDD+ (*readiness activities*).⁶ The UN-REDD Programme's five year strategy clearly frames UNDP's role in supporting national governance systems for REDD+, transparent, accountable and equitable management of REDD+ funds, and engagement of local communities and Indigenous Peoples. The Programme now works with 35 partner countries including 12 Latin American countries; four of these (Bolivia, Ecuador, Panama and Paraguay) have received funding to implement National UN-REDD Programmes (See Annex 1).

The World-Bank hosted Forest Carbon Partnership Facility is the other main multilateral REDD+ readiness platform.⁷ Bilateral initiatives include Norway's International Climate and Forest Initiative and Australia's International Forest Carbon Initiative (Asia-Pacific), among others.

³ UNDP, UNCDF, UNEP (2010), *Local Governance and Climate Change*, Discussion Note, pp. 7-8.

⁴ A/RES/55/2, 18 September 2000.

⁵ UNDP (2009) *UNDP Annual Report*, p. 26. On the climate change strategy. See, Climate Change at UNDP (2008), *Scaling up to Meet the Challenge*.

⁶ *Ibid.*, p. 27.

⁷ See <http://www.forestcarbonpartnership.org>

1.1.4. Why Tackle Corruption Risks in REDD+?

The basis behind REDD+ is that developing countries should be financially compensated for reducing emissions from deforestation and forest degradation, conservation, the sustainable management of forests and the enhancement of forest carbon stocks. It was first proposed in 2005 by Papua New Guinea and Costa Rica at the 11th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC-COP-11) and has since been primarily discussed within the United Nations. The debate was initially limited to deforestation (the acronym then was RED), but was later expanded to include forest degradation (the second D in REDD), and conservation, sustainable forest management and enhancement of carbon stocks (the “plus” in the current acronym “REDD+”).⁹

REDD+ was included in the Bali Action Plan (UNFCCC-COP-13), which invited States to reduce emissions from deforestation on a voluntary basis and undertake “demonstration activities.”¹⁰ In 2009 the Copenhagen Accord adopted at the UNFCCC-COP-15 called for the “immediate establishment of a mechanism including REDD+ to enable the mobilization of financial resources from developed countries.”¹¹ At the conclusion of the 16th Conference of the Parties to the UNFCCC (COP-16) held in Mexico in December 2010, a framework for REDD+ was defined in the “Cancun Agreements,”¹² with a number of details on goals, scope, scale, elements, phases as well as social and environmental safeguards. However, a final design of the REDD+ mechanism has yet to be defined. Since no such mechanism exists under the Kyoto Protocol, carbon credits from avoided deforestation and forest degradation so far are limited to voluntary markets.

REDD+ in practice may encounter many challenges, in particular including a poor governance context of most forest countries. Corruption could be one of the major barriers to an effective REDD+ mechanism. REDD+ will occur in a context of the forestry sector, where it is currently estimated that each year US\$10-23 billion worth of timber is illegally felled in part due to deeply engrained corruption, whereby forest assets are used for personal enrichment or for buying political support or influence.¹³ In most Latin American countries corruption in the forest sector is widespread, planting a social, economic and political context that is likely to adversely affect REDD+. Corruption may occur at all levels of administration (national, federal, intermediate, municipal, communal) and in both the design and implementation of REDD+. It might not be restricted to the forestry sector and could affect land administration, agrarian reform, trade and other sectors. Dealing with corruption risks in the context of REDD+ is crucial to increase the secure commitment from local actors and communities who are expected to forgo their current use of forest resources, gain confidence of potential donors and investors and ensure long-term sustainability and financing. In the absence of anti-corruption measures, REDD+ may become an additional source corruption. The 2010 UNDP report on corruption and climate

⁸ World Bank (2008), *Global Monitoring Report: Millennium Declaration Goals and the Environment*, p. 228.

⁹ N. Olsen and J. Bishop *The Financial Costs of REDD: Evidence from Brazil and Indonesia*, IUCN, 2009, p. 3.

¹⁰ Decision 2/CP.13, FCCC/CP/2007/6/Add.1, p. 8.

¹¹ Paragraph 6, FCCC/CP/2009/L.7, 18 December 2009.

¹² Decision 1/CP.16.

¹³ Transparency International (2011), *Global Corruption Report Climate Change*, p. 299.

change identified the major corruption risks in the design and implementation phases of REDD+, which are summarized below.

Table 1: Examples of Corruption Risks in REDD+¹⁴

REDD+ Design	
Phases	Corrupt Practices
Land Use Planning	<p>Logging companies seeking to influence the design of land use plans by bribing officials to exclude high value timber concessions from REDD+, while pressing for areas which have already been degraded (selectively logged) to be included.</p> <p>Project developers, multinational corporations or powerful agribusiness operators bribing public officials to ensure that land areas they own or have an interest in are allocated to, or excluded from, REDD+.</p>
Land and Natural Resource Tenure	<p>Failing to recognize competing rights of formal or informal customary land tenure, so that political elites can “trump” customary tenure and capture REDD+ revenues.</p> <p>Adopting a REDD+ framework which appears to respect customary land tenure, for example by recognizing registered customary land titles while failing to provide the necessary administrative and budgetary support to build capacity for the land registration process (“<i>corruption by omission</i>”).</p>
Allocation of Carbon Rights	<p>Corrupt actors may seek to “legalize” corruption. For example, political elites may seek to link carbon rights to state ownership of forests – thus excluding any claims to carbon rights by those holding or asserting customary tenure.</p>
Setting Reference Emission Levels	<p>Artificially inflating the baseline to increase the emissions reductions, and thus the REDD+ revenues, which can subsequently be claimed. This allows the excess to be “skimmed” by corrupt officials at a later date once the real rate of deforestation/degradation becomes apparent.</p>
Design of Benefit Distribution Systems (BDS)	<p>BDS may be unduly influenced by state capture, nepotism and cronyism, which could influence design of the BDS at the national, provincial and local levels.</p>

¹⁴ Summarized from the 2010 UNDP Corruption and Climate Change Report.

REDD+ Implementation	
Phases	Corrupt Practices
Land Administration	<p>Bribe public sector officials to fraudulently create land titles or to register titles over state land in the name of particular individuals or corporations.</p> <p>Bribe public sector officials to overlook competing customary claims to land titles.</p>
Spot Rezoning	<p>Logging companies may bribe a public sector official to include a specific parcel of land in REDD+, with a view to revoke the REDD+ zoning designation at a later date, thus allowing the logging concession over the land to be reactivated.</p>
Carbon Rights	<p>Project developers, logging companies or local elites may bribe public officials in the lands department to register the carbon rights over particular parcels of land in the name of the corrupt actor, who could sell the carbon rights to a third party and then abscond with the proceeds. This could occur without the knowledge or consent of the indigenous people or other local communities, who own, use or occupy the land.</p> <p>Laundering of money through the purchase and sale of carbon rights.</p>
Carbon Measurement Risks	<p>Public sector officials may over-estimate the amount of avoided emissions and emission reductions against the baseline in order to inflate REDD+ revenues, and subsequently “skim off” and embezzle these additional revenues generated by political elites or public sector officials.</p> <p>Project developers may bribe public sector officials to falsify claimed emissions reductions from projects to secure additional revenues.</p>

While REDD+ can itself be a source of corruption, it could also help attenuate it. When compared to existing mechanisms, such as forest audit systems, investigation and social monitoring, REDD+ will be subject to greater oversight from a broader range of institutions. Such institutions include Ministries of Environment, Foreign Affairs and Trade, Non-governmental Organizations (NGOs), civil society bodies, international donors and investors. International organizations (notably the UNFCCC), donors and legitimate investors might also exercise some degree of oversight over REDD+ activities. The UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA) in charge of setting up common methodological guidelines¹⁵ may provide strict guidance on items such as in setting reference emission

¹⁵ SBSTA is in charge of technical aspects related to REDD, notably methodological issues. In particular, Decision 2/CP.13 (Paragraphs 7 (a) and 11) mandated SBSTA to “undertake a programme of work on methodological issues related to a range of

levels and measuring carbon emissions, thus reducing some associated corruption risks. At the national level, countries are expected to develop monitoring systems of REDD+ activities and information systems on safeguards, which may be tools for preventing corruption. In addition, REDD+ readiness support, including the one offered by the UN-REDD Programme, has placed emphasis on engaging civil society and indigenous populations to create an opportunity for involvement and thus stronger systems of checks and balances, involving oversight by local actors. REDD+ also has the potential to improve forest governance, as it may become the primary source of funding for forest governance reforms.

In this context, the UN-REDD Programme has included anti-corruption for REDD+ as a key issue of its five-year Programme Strategy.¹⁶ UNDP is the lead agency in the field of governance and transparency for the UN-REDD Programme.¹⁷ In particular, UNDP plans to assist countries by building institutional frameworks for equitable, transparent and accountable benefit distribution systems in REDD+, developing effective and inclusive national governance systems and safeguards, ensuring integrity of fiduciary systems managing REDD+ revenues and creating multi-stakeholder mechanisms involving local and indigenous communities.

1.2 Scope and Methodology

1.2.1. Objective

The purpose of this exploratory study is to:

- Examine how local governance institutions in Latin America are currently tackling corruption risks in the forestry sector, involving measures both to prevent and suppress corrupt practices.
- Extract good practices and lessons learned from selected case studies.
- Provide inputs to the Democratic Governance Practice Area and other relevant UNDP practice areas and UN agencies on how to strengthen current institutional and organizational set-up so that they can be applied in the REDD+ context.
- To make recommendations, including to UNDP, on how those best practices can be applied in the REDD+ context.

1.2.2. Methodology and Justification

This study uses a case-based approach to draw recommendations on how best practices in Latin America could apply in the REDD+ context. The case studies were selected through a review of different bodies of literature, including, but not limited to, democratic governance, corruption, illegal logging, REDD+, payments for environmental services, local governance and decentralization. Some consultations were conducted with a few institutions in the selected countries where REDD+ pilot projects are currently active.

policy approaches and positive incentives.”

¹⁶ UN-REDD, *The UN-REDD Programme Strategy 2011-2015*, p. 10. See also UN-REDD (2010), *Programme Scope of work on Anti corruption*.

¹⁷ *The UN-REDD Programme Strategy 2011-2015*, p. 14.


The case studies refer to experiences in Brazil and Bolivia, two REDD+ countries with rich forest area and that have gained expertise in hosting REDD+ pilot projects, as well as other projects aimed at reducing emissions from deforestation.

Bolivia and Brazil have undertaken, to various degrees, a process of decentralization that generally gave a greater role to local governments in forest administration. The selected countries have a particular experience at the sub-national level that may be relevant to future anti-corruption measures carried out in the REDD+ context. The case studies refer to countries for which local governments have differing structures, competencies and functions. For the purposes of this paper, the terms *sub-national*, *local* and *municipal* governments will be used indistinctively. The current status of UN-REDD National Programmes in Latin American and the Caribbean is provided in Annex 1.

1.3. Lessons Learned and Key Recommendations

The key lessons learned and recommendations to tackle corruption risks, at the sub-national level and in the context of REDD+, outlined in this paper include:

Lessons Learned

- Local governments currently have a greater role in forest administration due to a process of decentralization observed in most countries in Latin America and the Caribbean. In view of this, local governance institutions should have a more active role in preventing and suppressing corruption.
-  Although municipal governments have a greater role in forest administration and are in some cases better funded, they still lack the technical and human capacity to adequately tackle corruption.
- Latin American and Caribbean countries generally have robust anti-corruption legal and institutional frameworks, although specific anti-corruption laws, policies and mechanisms in the forest sector are less common. In most of those countries law-enforcement and implementation remain weak.
- Specific anti-corruption laws, policies and mechanisms are less common at the local level. In the absence of specific anti-corruption bodies, local governance institutions in charge of forest control and law-enforcement may play a key role in detecting and suppressing corruption.
- Certain measures taken at the sub-national level are useful in preventing corruption, notably those that enhance sustainable forest management, secure access of local and indigenous communities to forest resources, and allow the oversight of forest operations.
- Corruption may occur at all levels of administration (national, federal, intermediate, municipal, communal) and in both the design and implementation of REDD+. It might not be restricted to the forest sector, but involve a few others, such as land administration, agrarian reform, and trade, among others.

- REDD+ may involve corruption risks that may differ from those observed in the forest sector (e.g. related to illegal logging, movement of timber and wood products and to the avoidance of payment of forestry charges). Specific REDD+ corruption risks may occur for example, in the allocation of carbon rights, setting of emissions baselines or in the design of benefit distribution systems.
- REDD+ may help reduce corruption in the forest sector if the issue is adequately addressed. When compared to existing anti-corruption measures, such as forest audit systems, investigation and social monitoring, REDD+ will be subject to greater oversight from a broader-range of institutions.

Key Recommendations

UNDP's assistance to prevent and suppress corruption at the sub-national level for REDD+ design and implementation phases is crucial not only for the success of REDD+, but most importantly to strengthen the democratic governance architecture of sub-national governments.

The paper recommends that UNDP supports UN-REDD Programme partners in Latin America and the Caribbean to seek the following:

- Raise awareness and understanding about REDD+ and related corruption risks among local governance institutions (including local and indigenous communities and civil society institutions).
- Identify, during the REDD+ design phase, 1) REDD-specific corruption risks at the sub-national level, 2) local governance institutions (including indigenous communities and civil society) best suited to take anti-corruption measures, if there are no specific anti-corruption institutions at that level, and 3) propose preventive anti-corruption measures.
- Design REDD+ specific anti-corruption measures, clarify the role of local governance institutions and introduce such proposals in the Latin American and Caribbean countries' National REDD+ Strategies.
- Design and implement a strategy to suppress corruption risks identified during the REDD+ design phase. In particular, support is required to enhance the capacity of local governance institutions to manage investigations, collaborate with national entities, monitor the complaints systems in relation to REDD+ and ensure whistle-blower protection.
- Engage local and indigenous communities and civil society institutions in monitoring REDD+ decision-making and activities, for example by creating oversight committees. These bodies could monitor for example whether land tenure rights are respected, whether REDD+ revenues are equitably shared, and/or whether REDD+ decision-making is transparent, among others.

Promote greater transparency in decisions on resource use and distribution, as well as climate change, forest management and REDD+ policies. This could involve for example publicizing the findings of periodic monitoring and evaluation of climate change, forest management and REDD+ issues or public awareness campaigns about the costs of mismanagement and corrupt practices.

- Use UNCAC and IACC as a guide to develop comprehensive anti-corruption frameworks among UN-REDD Programme partners, also considering potential actions at the sub-national level. In particular, discuss cooperation with OAS in the framework of IACC Follow-up Mechanism (MESICIC).

FOREST GOVERNANCE AND ANTI-CORRUPTION MEASURES IN LATIN AMERICA

Chapter 2

Forest Governance and Anti-Corruption Measures in Latin America

2.1 The Background: Corruption in the Forest Sector

Corruption is defined as the “misuse of entrusted power for private gain.”¹⁸ It can occur both in public and private sectors. In the forest sector, corruption is currently associated with illegal activities that largely fall into three broad categories:¹⁹ 1) illegal logging, 2) movement of timber and wood products, which may or may not have been harvested legally, without authorization or in contravention of controls and 3) avoidance of payment of taxes or forestry charges. In other words, current illegal practices in the forestry sector most often take place when wood is harvested, transported, processed or commercialized in violation of national and/or international law.²⁰

Corruption allows such illegal practices to occur or stop the perpetrator from being held accountable. While corruption is usually illegal in itself, not all illegal forest activities involve corruption.²¹ For example, in Bolivia a common illegal practice that may not involve corruption occurs when forest users overestimate the volumes to be logged in their area, for which permits are issued, in order to transport timber extracted from other areas of non-managed forest (practice known as “laundry operations of illegal logging”).²² Table 2 below provides more detailed examples of Illegal Practices in the Forest Sector.

¹⁸ K.L. Rosenbaum, *Forest Integrity, Corruption, Drawing Lessons from Transparency International*, The World Bank (2005), p. 1.

¹⁹ D. J. Callister, *Corrupt and Illegal Activities in the Forestry Sector: Current understandings, and implications for World Bank Forest Policy*, Background paper for the 2002 Forest Strategy, 1999, p. 7.

²⁰ FAO, ITTO (2005), *Best practices for improving law compliance in the forestry sector*, p.14. Forest sector is defined as the ‘chain from licensing/regulations to harvesting through processing and ultimately the sales/export of forest products, including raw logs, processed timber and veneer and pulp and paper.’ See also, A.G Blundell and E.E Harwell, *Manual: An analysis of corruption in the forestry sector*, Transparency International, Natural Capital Advisors (2009), p. 7.

²¹ Rosenbaum, op. cit., p. 1.

²² Pacheco, *Law Compliance: Bolivia Case Study*, FAO (2004), p. 16. Data from the World Bank (from 1996-2008) shows that selected Latin American countries (Brazil, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Peru, Venezuela) countries have not significantly improved control of corruption over that period, see A. M. Larson and E. Petkova, “An Introduction to Forest Governance, People and REDD+ in Latin America: Obstacles and Opportunities,” *Forests* (2011), pp. 86-111, p. 99. Other case studies (Costa Rica, Honduras, Nicaragua and Brazil) indicate that national institutions in charge forest crime control have limited capacity and funding, see D. Brown, K. Schreckenber, N. Bird, P. Cerutti, F. Del Gatto, C. Diaw, T. Fomété, C. Luttrell, G. Navarro, R. Oberndorf, H. Thiel, A. Wells, *Legal Timber Verification and Governance in the Forest Sector*, Overseas Development (2008), p. 15. Further field research is required to identify corruption risks per country both at the national and sub-national levels.

Table 2: Examples of Illegal Practices in the Forest Sector²³

Stage in Process	Illegal Activity
Regulatory Design	Undue influence or bribery to obtain favorable policies and regulations Violations, bribes and deception in the bidding process to acquire rights to a forest concession
Harvesting/Processing	Logging of timber species protected by law Logging outside concession areas Logging in protected areas (e.g. forest reserves) or in prohibited areas (e.g. river banks and catchment areas, etc.) Logging without authorization Extracting more timber than authorized Obtaining concessions illegally Operating without a processing license or other licenses and approvals Processing timber without required documentation verifying its legal origin
Transport	Unauthorized movement of timber across district or national borders Movement of illegally logged timber from forest to markets
Trade	Export/import tree species banned under national/international law (e.g. CITES) Export/import tree species listed under CITES without the appropriate permits Export volumes of forest product in excess of the documented export quantity Declare selling forest products at prices below market prices to reduce declared profits and corporate and income taxes Declare buying inputs at prices above market prices to reduce declared profits and corporate or income taxes Manipulate debt cash flows (e.g. transferring money to subsidiaries or a parent company where debt repayment is freer), reducing the level of declared profits and, therefore, of taxes Overvalue services received from related companies to reduce declared profits and corporate and income taxes Avoid royalties and duties by under-grading, under-measuring, under-reporting and under-valuing timber

2.1.1. Types of Corruption

Corruption runs both ways in forest operations:²⁴ companies may approach public officials to offer bribes (*supply-side corruption*), while officials may demand favours from companies, such as extortion to

²³ This table has been adapted from Callister, op. cit. pp. 7-8.

²⁴ Blundell and Harwell, op. cit., p. 8.

issue authorization for a legal forest operation (*demand side corruption*). Corruption may involve large bribes paid to top government officials or politicians (*grand corruption*) or small bribes paid to low-rank officials (*petty corruption*).²⁵ A corrupt practice may occur when a farmer or logging company bribes a public sector official to overlook indigenous peoples' competing claims to customary title. It should be noted that REDD+ may introduce new and specific corruption risks that are not related to logging operations, for example they may be associated to land administration, carbon rights and measurements and benefit sharing. See examples in Table 3.

Table 3: Examples of Corrupt Acts in Stages of Forest Operations²⁶

Stage in Process	Activity	Actors Involved
Regulatory Design	Undue influence on forest laws and regulations, e.g. public official or politician makes use of his/her position to obtain favourable policies and regulations under the influence a logging company Inducements to strike or delay bills and weaken regulations Undue influence or bribery to skew design and implementation of land use plans Inducements to change the zoning of an area in order to allow logging.	Logging companies; Agribusinesses; Political elites
Harvesting/ Processing	Loggers bribe forestry officials to harvest without legal permits or to speed up the issuance of permits Logging operators bribe local officials to obtain logging permits in violation of forest laws Logging concessionaires pay inducements so that over-harvesting is not monitored	Logging companies; Agribusinesses; Landowners; Forest Controllers; Political elite; Project developers
Transport	Loggers bribe public officials to allow transport of illegally logged timber	Logging companies; Agribusinesses; Landowners; Forest Controllers
Trade	Undue influence or bribe to export/import timber and wood products without permits or using fraudulent documentation Pay bribes to avoid taxes, fees and royalties. Money laundering	Forest traders; Customs officers; buyers; brokers

Public officials who engage in corruption may do so either in exchange for the commission of a crime or the omission of duty, such as ignoring infringements of forest laws. In the latter case, corrupt actors

²⁵ Examples can be found in Callister, *op. cit.*, pp. 7-10.

²⁶ Table adapted from, P. Bofin, M-L. du Preez, A. Standing and A. Williams, *REDD Integrity Addressing Governance and Corruption Challenges in Schemes for Reducing Emissions from Deforestation and Forest Degradation*, U4 Report, 2011, p. 10.

tend to shirk culpability by blaming their lack of implementation or enforcement capacity. In practice, it may be hard to distinguish between a deliberate neglect of duty and a legitimate lack of capacity to perform routine tasks. In general, corrupt acts involving the omission of duty are more socially accepted and thus more deeply entrenched.²⁷

In corruption, private gains need are not always monetary. Individuals may engage in corruption to consolidate political power rather than to obtain immediate financial gain. One of the perverse effects of corruption is that legitimate forest operators, or potential REDD+ investors, tend to flee from a sector where corruption is the “cost of entry,” as they fear to risk their reputation and financial investments.²⁸

2.1.2. Corruption Risks at the Sub-National Governance Level

Although corruption occurs at all levels of administration, most anti-corruption efforts, including laws, policies and institutions, seem to be at the national level. Yet significant power and competencies are also being vested in sub-national governments.²⁹ While the political, administrative and fiscal autonomy held by local governments vary, they tend to play a prominent role in the delivery of services to citizens, such as road maintenance, city planning and public utilities. In the course of their daily lives, citizens probably have more contact with local agencies than with the national government. Local officials’ proximity to the people and the discretion sub-national officials have in exercising their functions can make local governments a prime locus of corruption.³⁰ In general, public officials have greater discretion than national decision-makers and relative freedom of oversight. Several corruption vulnerabilities can be identified at the sub-national levels that require tailored solutions (see Table 4).

In many Latin American and Caribbean countries, local governments tend to have a greater role in forest administration (i.e. authority to manage, regulate and oversee forest use and conservation), as a result of on-going processes of decentralization.³¹ Decentralization can occur through various forms, such as delegation, desconcentration and actual devolution of political, administrative and fiscal responsibilities and competencies to sub-national governmental units.³² Honduras for example adopted in mid-1990s laws to decentralize natural resources management to the municipalities and created an Executive Commission for State Decentralization.³³ In Costa Rica, the 1988 reform of the Municipal Code

²⁷ Blundell, and Harwell, op. cit., p. 9.

²⁸ Ibidem.

²⁹ Information on local corruption is based on Transparency International (2009), *Corruption and Local Government*.

³⁰ Ibid., p. 2.

³¹ D. Brown *et al.*, op.cit., p. 15.

³² A. M. Larson, *Democratic Decentralization in the Forestry Sector: Lessons Learned from Africa, Asia and Latin America*, CIFOR (2004), p. 3. According to this author, the transfer of power from central to sub-national governments can take two forms: 1) administrative decentralization (also known as *desconcentration*), which involves a “transfer to lower-level central government authorities, or to other local authorities who are upwardly accountable to the central government,” or 2) political or democratic decentralization that “refers to the transfer of authority to representative and downwardly accountable actors, such as elected local governments.”

³³ See more information about the *Comisión Ejecutiva para la Descentralización* in Asociación Internacional para la Administración de Ciudades y Condados, *Tendencias en la Descentralización, el Fortalecimiento Municipal y la Participación Ciudadana en Centro América, 1995–2003*, Informe de País Honduras, 2004.

Table 4: Corruption Vulnerabilities at the Local Level³⁴

Corruption Vulnerability	Activity	Type of Corruption
Dispersed Control over Finances	The transfer of central funds downward through different tiers of government and the dispersal of powers to raise revenues increase the number of actors with control over public finances.	Potential for budget fraud, particularly through <i>embezzling</i> or <i>skimming</i> public funds allocated or collected.
Freedom to Hire and Fire	The discretion to recruit and dismiss local staff without the approval of central government is a practice that lends local government increased independence.	If effective controls and safeguards are not in place, it can create opportunities for corrupt employment practices such as <i>cronyism</i> , <i>clientelism</i> or <i>nepotism</i>
Interaction at the Point of Service Delivery	Local officials are more likely to have direct personal contact with citizens, which can help strengthen governance, but can also increase the potential for corruption.	Potential for <i>bribes</i> to be offered or demanded for services to be provided more efficiently, favorably or speedily, e.g. issuing licenses or collecting levies.
Relationship between Officials and Contractors	The relative proximity to stakeholders may allow greater interaction and dialogue between local officials, but it may also subvert fair procurement procedures.	Potential for practices such as <i>fraud</i> , <i>bribery</i> or <i>patronage</i> .
Patronage Networks	Local government is particularly vulnerable to capture by groups using informal or patrimonial relationships to exert undue influence over local decision-makers and erode accountability.	Factors such as strong family ties or dynasties, the dominant influence of local leaders and cultural traditions of reciprocity, allied to the often lengthy tenure of local officials, can lead to elite <i>State capture</i> and <i>patronage</i>
Lack of Capacity and Oversight	Compared to national institutions, many local government agencies lack capacity and staff and are often inadequately paid.	Lack of resources, low salaries and limited capacity may encourage <i>petty corruption</i> as a means for officials to “supplement” their income.

³⁴ Adapted from Transparency International (2009), op. cit.

introduced direct popular consultations by which local communities have demanded greater engagement of local governments.³⁵ Bolivia and Guatemala have also passed new Forest Laws in the mid-1990s, introducing a decentralized model in the region.³⁶ In Brazil, the Law on the Management of Public Forests envisaged the management of certain forest areas by local communities and created the National Forest Service (*Serviço Florestal Brasileiro*).³⁷ One of the expected effects of decentralization is to bring government control closer to local populations.³⁸

Countries experience different levels of decentralization. For example, Bolivia and Brazil have had local governance reforms for a long period of time. In contrast, Costa Rica's experience is more recent and it has one of the most centralized systems in the region. In general, all Latin American and Caribbean countries are still experiencing some form of decentralization. As sub-national governments in the region gain a greater role in forest administration, they may also play a more active role in combating corruption. In the REDD+ context, sub-national governments may have a key role in implementing REDD+ activities and tackling associated corruption risks.

Corruption in its various forms occurs at all levels of administration, however, certain corruption risks are more likely to take place at the national level, related for example to the drafting of forest laws or institutional reforms. In this case, central government institutions, such as Ministries of Environment, Foreign Affairs and Trade and parliaments, are more likely to be involved, as are international/national logging companies and agribusinesses. Certain forms of corruption may more often occur at the local level.

Likewise, in the REDD+ context, certain corruption risks are more likely to occur at the national level, for example those related to the design of national REDD+ strategies that tend to involve mostly the central government and certain interest groups (e.g. logging companies, agribusiness, and multinational corporations, among others). Sub-national governments may become more involved at the next phase, during REDD+ implementation. At this stage corruption may occur for example when local level officials ignore indigenous land claims or titles, or when they turn a blind eye to REDD+ regulations. Some examples of potential corruption risks at the local level are indicated in Annex 2.

Corruption risks in the forest sector and in REDD+ may include for example:

- Logging operators bribing local officials to obtain logging permits in violation of forest laws.

³⁵ Article 4 (g), *Código Municipal of 1998*. These and other examples of decentralization can be found in L. Ferroukhi (ed.), *Municipal Forest Management in Latin America*, CIFOR, IDRC, 2003, pp. 60, 195.

³⁶ For more details see: A.M. Larson, P. Pacheco, F. Toni and M. Vallejo, *Trends in Latin American forestry decentralizations: legal frameworks, municipal governments and forest dependent groups* *International Forestry Review* Vol.9(3), (2007); A. Larson, P. Pacheco, F. Toni and M. Vallejo, *Exclusión e inclusión en la forestería latinoamericana ¿Hacia dónde va la descentralización?*, CIFOR, IDRC (2006), p. 33.

³⁷ On forests areas assigned to local communities see Article 6, on the National Forest Service, Article 54, Law 11284/2006. Covington, Baker & Mackenzie, *Terrestrial Carbon, Background Analysis of REDD Regulatory Frameworks*, (2009), p.18.

³⁸ A.M. Larson *et al.*, *op. cit.*, p. 742.

- Local elites bribing public officials in the lands department to register the carbon rights over particular parcels of land in the name of the corrupt actor.³⁹

2.2. Brief Overview of National Measures Tackling Forest Corruption

A majority of Latin American and Caribbean countries have ratified the UNCAC and the Inter-American Convention against Corruption (IACC).⁴⁰ Most of them also have anti-corruption laws and specialized control institutions in place to promote accountability and transparency in areas such as procurement, election campaigns, public administration, and private sector, among others. For example, Brazil's Environmental Crimes Law (Law 9.605/1998) criminalizes acts against fauna and flora, as well as corruption in environmental administration.⁴¹ Guatemala's International Commission against Impunity (CICIG), created in 2006 with the support of the United Nations, assists national institutions, such as the Public Prosecutors Office and the National Civilian Police, to investigate certain sensitive cases and dismantle illicit organizations and impunity.⁴² Bolivia has a Ministry of Institutional Transparency to Fight Corruption.

Although many American and Caribbean countries have a robust anti-corruption framework, law-implementation and enforcement remain weak and they face different challenges.⁴³ Argentina for example passed a new broadcasting law in 2009 that seeks to “decentralize and democratize” the media.⁴⁴ Transparency of political party and candidate financing, however, have registered modest improvements.⁴⁵ Likewise, Bolivia has robust anti-corruption laws and an active NGO community, but safeguards ensuring the integrity of political financing for example remain weak.⁴⁶ Mexico, on the other hand, has active “watchdog” civil society organizations and an independent oversight mechanism to ensure public access to government information.⁴⁷ It was one of the first countries in Latin America to pass a federal freedom of information law⁴⁸ in 2002 to tackle corruption and foster democracy, and all of its 32 states have their own laws and access to information commissions. However, the country's public integrity system continues to wrestle with significant weaknesses. Likewise, Peru has passed anti-corruption laws, such as a whistle-blower protection law for the public sector.⁴⁹ However, the power of

³⁹ 2010 UNDP Corruption and Climate Change Report, p. 40.

⁴⁰ As of June 2011, only Antigua and Barbuda, the Bahamas, and Guyana had not ratified the UNCAC, and only Barbados had not ratified the IACC.

⁴¹ For example, civil servants making false or deceitful statements, omitting the truth or withholding information or technical-scientific data in environmental authorization or licensing procedures (Article 66); a civil servant granting license, authorization or permission contrary to environmental norms, for activities, works or services, the accomplishment of which depends on an authorization act from the Government (Article 67), or the omission of compliance with an obligation of relative environmental interest by whoever has the contractual or legal duty to do so (Article 68).

⁴² The CICIG's mandate has been extended and will now go until September 2011. Information available at: <http://cicig.org/index.php?page=home-page>

⁴³ According to Global Integrity national reports, available at <http://www.globalintegrity.org/report>.

⁴⁴ Article 1, Law 26522/2009 on Audio-Visual Communications (also called the Media Law).

⁴⁵ Global Integrity Report Argentina (2010).

⁴⁶ Global Integrity Report Bolivia (2010).

⁴⁷ At the basis of this mechanism is the *Instituto Federal de Acceso a la Información y Protección de Datos*, an independent organization with autonomy and authority to enforce the Information Law (Article 33), 2002 Transparency Law.

⁴⁸ The Transparency Law of 2002 (*Ley federal de Transparencia y Acceso a la Información Pública Gubernamental*).

⁴⁹ Law 29542/2010 (*Ley de Protección al Denunciante en el Ambito Administrativo y de Colaboración Eficaz en el Ambito Penal*).

anti-corruption institutions to conduct independent investigation is limited, as it is under the control of the executive branch.

Certain Latin American and Caribbean countries have taken steps to tackle corruption risks specific to the forest sector. For example, Peru has drafted an Anti-corruption Plan for the Forest Sector and Wild Fauna (*Plan Anticorrupción del sector Forestal y Fauna Silvestre*),⁵⁰ under discussion in the framework of the National Plan to Combat Corruption 2006-11.⁵¹ Peru also has a well-established National Network against Corruption supported by *Proética*,⁵² which has created centres and *Anti-Corruption Schools* to disseminate knowledge at the local level. Initiatives such as this can be useful in the REDD+ context. For example, corruption risks in REDD+ could be introduced by such Anti-Corruption Schools.

2.3. Regional Legal and Policy Anti-Corruption Frameworks

The international community has taken action to fight corruption by adopting treaties such as the 2003 United Nations Convention Against Corruption (UNCAC) or the 2007 OECD Convention on Combating Bribery on Foreign Public Officials in International Business Transactions, which is particularly relevant in Latin America for Argentina, Brazil, Chile and Mexico.⁵³ No international treaty has yet been adopted to deal with corruption in the forest sector, but issues related to illegal trade are covered by the Convention on International Trade in Endangered Species (CITES).⁵⁴ Other international initiatives to combating corruption in the forest sector include for example the European Community FLEGT scheme⁵⁵ and the Lacey Act passed in 2008 by the U.S. Congress.⁵⁶ The 1996 Inter-American Convention against Corruption (IACC) also provides a framework for combating corruption in the forest sector. Most Latin American countries partner to the UN-REDD Programme are parties to both UNCAC and IACC.⁵⁷

The IACC has two goals that are broadly related to climate change and forest management. First, to promote and strengthen the development of the necessary mechanisms to prevent, detect, penalize and eradicate corruption (in any sector); and second, to promote, facilitate and regulate cooperation among States Parties to ensure the effectiveness of measures and actions to prevent, detect, penalize and eradicate acts of corruption (in any sector).

⁵⁰ *Resolución Ministerial 505-2010-AG.*

⁵¹ Plan de Acción el Desarrollo de la Lucha contra la Corrupción en el Perú y el Fomento de la Ética Ciudadana, available at: http://www.minsa.gob.pe/transparencia/Archivos/Plan_Anticorrupcion.pdf

⁵² *Proética (Consejo Nacional para la Ética Pública)* was created as a nonprofit civil association in 2001, constituted by the following institutions: *Asociación de Exportadores (ADEX)*, *Comisión Andina de Juristas (CAJ)*, *Instituto Prensa y Sociedad (IPYS)* and *Asociación Civil Transparencia* constituted the *Consejo Nacional para la Ética Pública (PROÉTICA)*. In 2003, *Proética* was considered Transparency International 'chapter' in Peru, <http://www.proetica.org.pe/Index.html>.

⁵³ 2010 UNDP Corruption and Climate Change Report, p. 10.

⁵⁴ Contreras-Hermosilla, *Emerging best practices for combating illegal activities in the forest sector*, Global Witness (2003), p. 27.

⁵⁵ The European Union Action Plan for Forest Law, Enforcement, Governance and Trade (FLEGT) is regulated by European Community (EC) Council Regulation 2173/2005, on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Under the plan, bilateral Voluntary Partnership Agreements (VPA) are signed between the EU and wood-producing countries, which include commitments from both sides to halt trade in illegal timber via a licensing scheme to verify the legality of timber exported to the EU FLEGT Implementing Regulation is the EC Commission Regulation No 1024/2008, laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005.

⁵⁶ The Act bans the import of illegally harvested wood and wood products. More information available at: www.eia-global.org/lacey.

⁵⁷ Information on IACC available at http://www.transparency.org/regional_pages/americas/conventions/oas.

The IACC provides a framework for corruption in the forest sector, because it adopts a comprehensive approach to corruption, by establishing measures ranging from the preventive to the prosecutorial, and contains some innovative features, such as that related to civil society and NGO participation. Within the category of preventive measures, the IACC incorporates a set of regulations regarding transparency policies, administrative regulations, definition of public institutions and the role of civil society in the fight against corruption. They provide a preventive framework regarding acts of corruption (in any sector). The IACC provisions focus on the structural aspects of corruption, such as Article 3 that set out criteria for procurement, bribery, and whistle blower protection, all relevant to the forest sector. The Convention also urges the parties to promote “mechanisms to stimulate the participation of civil society and nongovernment organizations in the efforts to prevent corruption.”

Moreover, the IACC has a review and follow-up mechanism (MESICIC) that has been in place for more than a decade, and serves as a political platform to encourage compliance with IACC.⁵⁸ This voluntary mechanism evaluates how well the parties comply with the treaty, by looking at their domestic anti-corruption policies, and also propose ways to improve compliance. Under the Follow-up Mechanism, some provisions of the Convention are selected for review in a particular *round*. A *round* is the period of time allotted for the parties to assess and report through a questionnaire how the selected IACC provisions are complied with. So far there has been three rounds, with the third one ending in 2011 (see Annex 3).⁵⁹ Not only the State parties, but also civil society representatives are invited to respond with a questionnaire. In the context of REDD+, a similar reporting practice to assess States’ anti-corruption efforts could be introduced and some form of cooperation or exchange with MESICIC could be envisaged.

A few Andean countries, including Bolivia, Colombia, Ecuador and Peru, also created a common platform to prevent, investigate and sanction corruption, the 2007 Andean Plan of Action against Corruption (Andean Community Decision 668). The parties must ensure transparency in public administration and private sector, independency of anti-corruption bodies, encourage public participation and implement anti-corruption treaties. In terms of international cooperation, they shall create mechanisms to facilitate penal investigation of corrupt practices and information exchange. The Andean Plan set up by an Executive Council (*Comité Ejecutivo Andino del Plan de Lucha contra la Corrupción*), which is now debating the creation of a transparency index (*Índice Andino de Corrupción*).⁶⁰

⁵⁸ Regulated in the so-called Buenos Aires Report.

⁵⁹ First round (2002-6), Second Round (2006-8), Third Round (2009-11).

⁶⁰ See http://www.instituto-idl.com/index.php?option=com_content&view=article&id=259:la-can-trabaja-en-diseno-de-indicador-de-corrupcion-para-la-subregion&catid=37:noticias

**LOCAL GOVERNANCE
RESPONSES TO CORRUPTION
RISKS IN THE FOREST
SECTOR: CASE STUDIES IN
BRAZIL AND BOLIVIA**

Chapter 3

Local Governance Responses to Corruption Risks in the Forest Sector: Cases in Brazil and Bolivia

3.1. Brazil: Bolsa Floresta and the Regulatory Framework in Amazonas

3.1.1. Background

Amazonas is the largest State in Brazil, with 157 million hectares.⁶¹ It is one of the states within the Brazilian Amazon and shares borders with Columbia and Venezuela and the states of Acre, Rondônia, Pará, and Roraima. Amazonas plays a key role in regulating rainfall regimes and the global climate. It has the largest forest cover in Brazil, approximately 98% of forestlands (2% have been deforested) over an area of 1.46 million Km², equivalent to 43% of the total remaining Amazon forest in Brazil. It contains nearly 50% of the carbon stock in the Brazilian Amazon, holding roughly 23.6 Gigatons of carbon.

The State of Amazonas has a relatively low deforestation rate, with 46% of its forests, around 164 thousand Km², protected. This is equivalent to 41% of the protected forests in the Brazilian Amazon. It is, however, projected that in a business-as-usual scenario, Amazonas would have lost 50 million hectares by 2050, around 30% of its forest cover.⁶²

Deforestation in Amazonas occurs mostly in the South in municipalities bordering the states of Pará, Mato Grosso, Rondônia and Acre.⁶³ Major drivers of deforestation include the building of highways, along with the expansion of the soybean and timber industries led by the exhaustion of forest resources in neighbouring states. The increased risks of drought-driven forest fires are also a threat. Despite these challenges, Amazonas has remarkably managed to reduce deforestation over the last years.⁶⁴ According to the Brazilian National Institute for Space Research (INPE), the 2010 rate of deforestation in the state of Amazonas is only 474 Km²/year, out of a total deforestation rate of 6451 Km² in the Brazilian Amazon.⁶⁵

The Green Free Trade Zone

The government of Amazonas has taken a series of measures that put it at the forefront of efforts to create market incentives to preserve standing forests. A major outcome of recent government-led reforms is the creation of a legal and policy framework for the use of economic instruments, such as payments for environmental services (PES), as a way to reduce emissions from deforestation.

⁶¹ This description and figures are found in: Government of the State of Amazonas, Secretariat for Environment and Sustainable Development (SDS), *Amazonas Initiative on Climate Change, Forest Conservation and Sustainable Development* (2006).

⁶² See B.S. Soares Filho, D.C. Nepstad, L.M. Curran, G.C. Cerqueira, R.A. Garcia, C. Azevedo, E. Voll, A. MacDonald, P. Lefebvre and P. Schlesinger (2006), *Modelling Conservation in the Amazon Basin*, Nature, pp. 520-523.

⁶³ Secretariat for Environment and Sustainable Development, *Plano Estadual de Combate ao Desmatamento* (2008), p. 18.

⁶⁴ SDS *2010 Management Report*. According with SDS, the state has reduced deforestation in 77.58% over the last eight years, with data estimated by PRODES/INPE.

⁶⁵ Data available at: http://www.obt.inpe.br/prodes/prodes_1988_2010.htm

In 2003, Amazonas' newly elected government began to seriously invest in the forest sector,⁶⁶ with the announcement of a sustainable development plan known as the Green Free Trade Zone (GFTZ).⁶⁷ This was quite an advance for a state that until recently would distribute free electric chainsaws to promote "development."⁶⁸ At the centre of this initiative was the Secretariat for Environment and Sustainable Development (SDS), created by Law 2.783/2003.⁶⁹ SDS conducts the State's environmental policy with the support of the Institute of Environmental Protection of Amazonas (IPAAM). This latter organ is responsible for the environmental control, which involves licensing, inspection and monitoring of forest activities.⁷⁰ The law-enforcement bodies in charge of handling environmental crimes, including corruption, are the Strategic Group to Combat Environmental Crimes (GECAM)⁷¹ and an Environmental Force (*Batalhão Ambiental*) within the military police.

Another step forward was taken in 2007 with the adoption of the State Climate Change Policy (Law 3135/2007) and system for protected areas (Complementary Law 53/2007). Amazonas' Climate Change Law is the first of its kind in Brazil, introducing market instruments and incentives for reducing emissions from deforestation. The State Centre for Climate Change (CECLIMA) implements and articulates policies on climate change and environmental services.⁷² CECLIMA for example is leading the discussion on the Governor's Taskforce on Climate and Forest (GCF), involving the American states of California, Illinois and Wisconsin, five Brazilian States (Amazonas, Amapá, Acre, Mato Grosso and Pará) and three Indonesian provinces (Papua, Aceh and Eastern Kalimantan).⁷³

In line with national policies to curb deforestation,⁷⁴ the Amazonas government in 2008 formulated a Plan to Prevent and Combat Deforestation in the State of Amazonas.⁷⁵ This policy complements Brazil's National Policy on Climate Change created by Law 12.187/2009. Under this law, Brazil commits to

⁶⁶ S. Stone, *Country Study: Forest Tenure and Poverty in Brazil, with an emphasis on the states of Acre, Amazonas, and Pará* (2006), p. 8. This paper is part of the Listening, Learning and Sharing Launch program of the Rights and Resources Initiative.

⁶⁷ Information about the *Programa Zona Franca Verde* is available at <http://www.ads.am.gov.br/pagina.php?cod=2>.

⁶⁸ SDS *Amazonas Initiative on Climate Change*...op. cit.

⁶⁹ SDS is supported by the following executive bodies: *Instituto de Proteção Ambiental do Amazonas* (IPAAM), *Fundação Estadual de Política Indigenista* (FEPI), and *Agência de Florestas e Negócios Sustentáveis do Amazonas*.

⁷⁰ According to Law 2416/1996, all forest operations (including harvesting, processing, industrialization) requires a prior environmental license from IPAAM (Article 4) and must be accompanied by a Forest Management Plan (Article 7). Potentially harmful activities also require prior environmental license from IPAAM (Article 3), according to Law 3219/2007.

⁷¹ In Portuguese: *Grupo Estratégico de Combate aos Crimes Ambientais* (GECAM). GECAM was created by Law No. 3262/2008 of 30.05.2008 under the framework of IPAAM. In Portuguese: Article 1 *Fica instituído o Grupo Estratégico de Combate a Crimes Ambientais - GECAM, na estrutura organizacional do Instituto de Proteção Ambiental do Amazonas, com a finalidade de atuar nas áreas críticas do Estado do Amazonas, mediante um eficiente esquema de inteligência visando coibir as ações dos infratores ambientais com base no planejamento tático operacional. Parágrafo único. Para o cumprimento de suas finalidades, o GECAM atuará em conjunto com a Secretaria de Estado do Meio Ambiente e Desenvolvimento Sustentável -SDS, a Polícia Militar do Estado do Amazonas, o Instituto de Terras do Amazonas - ITEAM e instituições parceiras federais e municipais.* State laws available at: <http://www.aleam.gov.br/ALegislacao.asp>

⁷² SDS *2010 Management Report*, p. 51.

⁷³ SDS, op. cit., p. 60. On the Governor's Taskforce on Climate and Forest, see <http://www.gcftaskforce.org/index.html>.

⁷⁴ The major national policies include the following: Plano Amazônia Sustentável (2004), Plano de Prevenção e Controle do Desmatamento da Amazônia Legal (2003) and Pacto pela Valorização da Floresta, e pelo fim do desmatamento na Amazônia Brasileira (2007).

⁷⁵ A new Forest Law is under discussion by the Brazilian Parliament (*Projeto de Lei 1876/1999*) to replace the current Forest Law 4.771/1965 (*Código Florestal*). A contentious issue in the proposed law is the reduction of the *reserva legal* in the Brazilian Amazon (and other biomes). Currently, private landowners must keep a percentage of their land in native forest, corresponding to 80% in the Amazon forest and 35% for savannah in the northern region, according Law 4.771/1965 Article 16, I.

reduce its carbon emissions between 36.1% and 38.9% by 2020 (Article 12). The Decree 12.187/2009 defines specific measures to meet that voluntary target, such as actions to reduce 80% of total deforestation in the Brazilian Amazon, in relation to the average rate observed between 1996-2005 (Article 6, I).⁷⁶

Table 5: Amazonas State Legal Framework

Laws	Description
1.532/82	Environmental State Policy
2416/96	Concession of Licenses for the Exploitation and Processing of Forest Products
2.713/01	Policy for the Protection of Aquatic Fauna and the Development of Fishing and Sustainable Aquaculture
2.985/05	Creating the State Environmental Council (CEMAAM)
3.135/07	Climate Change, Environmental Conservation and Sustainable Development
3.167/07	State Policy on Water Resources and System for Water Resources Management
3.219/07	Environmental Licensing

Bolsa Floresta

Bolsa Floresta is a pioneering payment scheme for environmental services introduced by Law 3135/2007 that rewards traditional communities for the sustainable use of natural resources (Article 4, II). Participation is open to families, communities or family associations that register for the Programme. The modality of payments varies according to the type of participant. A 'forest grant' paid to families correspond to a monthly payment of R\$50. In order to be eligible to receive it, they must attend a training programme on climate change and sustainability and make a voluntary zero deforestation commitment. The grant is paid to the woman of families, who also sign the voluntary commitment (*termo de compromisso*).⁷⁷

Bolsa Floresta is conducted by the Sustainable Amazonas Foundation (FAS) in partnership with the SDS and Bradesco, one of Brazil's largest private banks. Funding is equally provided by the state government and Bradesco, while additional funds are expected to be raised from the sale of carbon credits in the voluntary markets. Coca-Cola became a co-founder of FAS in 2009, with a recent donation of BRL\$20 million.⁷⁸ FAS is a beneficiary of the Amazon Fund,⁷⁹ which contributed to US\$ 11 million to the expansion of the number of beneficiary families under Bolsa Floresta.

⁷⁶ According to Article 6, the policy instruments that make part of the National Climate Change policy include: National Plan on Climate Change, the National Fund on Climate Change (created by Law 12,114/2009), and the Action Plans to the Prevention and Control of Deforestation in different biomes.

⁷⁷ For the responsibilities involved in receiving the forest grant in its different modalities, see Fundação Amazonas Sustentável (FAS), Relatório de Gestão 2010, p. 30.

⁷⁸ FAS, Relatório de Gestão 2008, p. 46.

The Programme is now in its second phase started in 2008,⁸⁰ with payments made through an agreement between FAS and PASA (*Promotion Agency of the State of Amazonas*). The number of families benefited since the start of the Programme has increased rapidly, jumping 278% from 2007 to 2008.⁸¹ Until 2010, 7.225 families including 32 thousand people benefited from the Programme.⁸² In addition, a number of REDD+ and PES projects are also underway in Amazonas, such as the Juma Reserve and the Surui project. Rondônia's Surui project contains a few measures to prevent corruption, such as a mechanism of prior informed consent and one of financial control to ensure transparency under the Surui Fund.⁸³

Box 2: Juma Reserve

The Juma Reserve is a conservation unit located in Amazonas' municipality of Novo Aripuanã.⁸⁴ It is the first project to be implemented under the state Law on Climate Change, Environmental Conservation and Sustainable Development (Law 3.135/2007) and the state Protected Areas System (Sistema Estadual de Unidades de Conservação). The project was developed by the Sustainable Amazonas Foundation (FAS) in partnership with the State of Amazonas Secretariat for Environment and Sustainable Development (SDS), and with the technical assistance by the *Instituto de Conservação e Desenvolvimento Sustentável*. It received validation by the standard Climate Community and Biodiversity Alliance issued by the German audit company Tüv Süd. The project is expected to be concluded in 2050 and generate credits for million tons of CO₂ equivalent. FAS covers its operation costs, while its future financial sustainability should be ensured by the carbon credits trading. The hotel chain Marriott International also sponsors the project, with US\$2 million allocated for a four-year period, and in return expects to have privileges at the carbon credits purchase. Marriott's guests are offered the option to offset their emissions at US\$1 a night per the Juma Reserve Project.

3.1.2. The Virtuous Link between Democratic Governance and Anti-Corruption Measures

This case study illustrates that local governments can be active participants in forest administration. As local governments play a more active role, they may also be further involved in combating corruption. Traditionally, local governments in Brazil have had limited autonomy and capacity to manage their forests. As in other Latin American countries, since the mid-1990s there has been a gradual devolution

⁷⁹ For information about the Amazon Fund: <http://www.amazonfund.gov.br>

⁸⁰ In its initial phase (2007-2008), Bolsa Floresta was carried out in a few Conservation Units in the State of Amazonas. They include: Cujubim, Mamirauá, Catua-Ipixuna, Piagacu-Purus, Uatuma and Uacari, FAS, op. cit., p. 23.

⁸¹ FAS, op. cit. p. 24.

⁸² FAS, Relatório de Gestão 2010, p. 28.

⁸³ For more information, see Brochure available at

http://moderncms.ecosystemmarketplace.com/repository/moderncms_documents/folder_surui.1.1.1.pdf On prior informed consent, see the document *Free, Prior and Informed Consent, Surui Carbon Project*, Equipe de Conservação da Amazônia, Associação Metareilá do Povo Indígena Surui, Associação de Defesa Etnoambiental Kaninde, Forest Trends, Brazilian Biodiversity Fund (FunBio), Institute for the Conservation and Sustainable Development of Amazonas (Idesam), 2010.

⁸⁴ Information available at <http://www.fas-amazonas.org/pt/secas/projeto-juma>. See also V. Viana et al., *Reserva de Desenvolvimento Sustentável do Juma: o primeiro projeto REDD na Amazônia Brasileira*, Fundação Amazônia Sustentável (2008). See description in B. Garcia, *The Amazon from and International Law Perspective*, Cambridge University Press, 2011, p. 247.

of forest-related matters to states and municipalities, through a process of political decentralization.⁸⁵ As far as forest management is concerned, the 1988 Federal Constitution distributed legislative power among the three levels of administration (federal, state and municipal). They share responsibility to protect the environment and preserve forests (Article 23) and can legislate concurrently on issues involving forests, soil, and natural resources (Article 24). The exact competencies of the three levels of administration, however, are less clear, as there is no ordinary law regulating Articles 23 and 24.⁸⁶ The federal government maintained the exclusive competence to legislate on matters related to indigenous peoples.⁸⁷

While some states in Brazil, such as Amazonas, Mato Grosso and Acre, are quite active and perform most of the responsibilities earlier assigned to the Brazilian Institute for the Environment and Renewable Resources (IBAMA),⁸⁸ others are less engaged in forest administration. Amazonas conducted extensive negotiations with IBAMA to decentralize forest management responsibilities, which occurred gradually between 2003 and 2005. A first agreement signed with IBAMA in 2003 transferred to SDS several functions, including power to issue forest use and clearing licenses, monitor forest operations and control the transport and trade of timber, among others.⁸⁹ The agreement first covered the areas of Alto Solimões and Juruá and the municipalities of Maués and Boa Vista do Ramos, and between 2004 and 2005 the same powers were extended to the rest of the state.⁹⁰ IBAMA continues to have a central role in forest control, also in detecting and suppressing environmental crimes, including corruption, and should ideally operate along with local governments.⁹¹

Although there is currently no specific anti-corruption law or body in the state of Amazonas,⁹² the legal and policy reforms introduced by the state government are useful to preventing and suppressing corruption. For example, the state government passed Decree 3195/2011 to ensure the transparency of public finance and spending, by requiring the posting of information on the web at the *Portal da Transparência*.⁹³ The state Law 53/2007 also includes environmental offences and penalties.⁹⁴ The lack of specific anti-corruption laws should not pose a problem, as environmental crimes, including corruption, are criminalized by federal law and must be deterred at the sub-national level.⁹⁵ Federal Law 9.605/1988 (regulated by Decree 3179/1999) criminalizes certain corrupt practices against environmental administration, for example: civil servants making false or deceitful statements, omitting

⁸⁵ S. Stone, op. cit, p. 35.

⁸⁶ F. Toni, *Gestão florestal na Amazônia brasileira: avanços e obstáculos em um sistema federalista*, CIFOR (2006) p. 27.

⁸⁷ Articles 22 and 231.

⁸⁸ Toni, *Gestão florestal na Amazônia brasileira...*, p. 45.

⁸⁹ Processo Ibama 02001 004871/2003-79, published at *Diário Oficial da União*, on 21.10.2003.

⁹⁰ Toni, *Gestão florestal na Amazônia brasileira...*, p. 49.

⁹¹ Article 5, Law 11.516/2007. On IBAMA see www.ibama.gov.br

⁹² The Decree 31095/2011 created the *Portal da Transparência* in the State of Amazonas, and Law 3631/2011 established a day for the fight against corruption. Certain state laws, for example related to ethics in the public service, tackle the issue of corruption, such as Law 2869/2003 (*Código de ética profissional dos servidores públicos civis e dos militares do estado do Amazonas*), Law 2271/1994, Law 1778/1987 and Law 1762/1986.

⁹³ Portal da Transparência www.transparencia.am.gov.br. This is established by Law 131/2009 (*Lei da Transparência*). For anti-corruption laws in Brazil, see <http://www.cgu.gov.br/AreaPrevencaoCorrupcao/Legislacao>.

⁹⁴ Articles 59-70.

⁹⁵ According to the 1988 Federal Constitution, both the authority to legislate and the police power are concurrently exercised by the Federal, State and Municipal levels of administration (Articles 23, VI, VII).

the truth or withholding information in environmental authorization or licensing procedures, or civil servants granting license, authorization or permission contrary to environmental norms, among others (Articles 66-68).

The state government has taken measures that are also instrumental in *preventing* corruption. For example, by providing economic incentives for local forest users to engage in sustainable activities, through initiatives such as *Bolsa Floresta*, the government reduces incentives for illegal activities with high corruption risks, in particular illegal logging. The Programme *Bolsa Floresta* includes a few anti-corruption measures that are worth mentioning. FAS administration and finance is monitored by three independent councils and subject to external audits, so far done by PricewaterhouseCoopers.⁹⁶ In addition, the Amazon Fund, which supports *Bolsa Floresta* and other projects in the state of Amazonas, also contains anti-corruption safeguards. The Fund is managed by the Brazilian Development Bank (BNDES), with an initial donation agreement signed with the Ministry of Foreign Affairs of Norway,⁹⁷ to finance projects that prevent, monitor and avoid deforestation in the Amazon biome.⁹⁸ The donation agreement between BNDES and Norway urges the parties to take legal action to ‘stop, investigate and prosecute’ and person suspected of misuse of resources or corruption (Article 1). The Fund is audited annually by external auditors and Norway also reserves the right to carry out independent reviews of its operations and stop disbursements or cancel the agreement in the event of corrupt or fraudulent practices. The Amazon Fund also has an inclusive structure that facilitates oversight, involving federal and state governments within the Brazilian Amazon, and civil society (NGOs, social movements, indigenous people and companies).

To effectively engage small landowners (those owning land below 500 ha), who often struggle with the costly requirements of forest management plans, SDS introduced a simplified forest management plan (*Plano de Manejo Florestal Sustentável com Procedimentos Simplificados* - PMFSPS).⁹⁹ Other fiscal incentives and subsidies created by the Amazonas government, for example rubber subsidies,¹⁰⁰ also created conditions for local producers to exploit forests sustainably and reduce informality in the sector that tends to favour illegal and corrupt practices.

Monitoring and Oversight: Pillars of the State’s Multi-Year Plan 2008-2011

This is a useful tool to detect and prevent illegal activities, including corruption. The plan created a specific programme for the surveillance of conservation units and evaluation of carbon sequestration

⁹⁶ The three councils are Conselho de Administração, Conselho Fiscal, Conselho Consultivo, FAS, *Relatório de Gestão* (2010), p. 20.

⁹⁷ BNDES was authorized by Decree Nº. 6527/2008 to sign a Donation Agreement with the Ministry of Foreign Affairs of Norway, which occurred on 25 March 2009. A second agreement was signed with Germany on 7 December 2010, see for more information: The Amazon Fund’s Annual Report 2009.

⁹⁸ Eligible projects should contribute to reducing the deforestation of the Amazon Forest, while up to 20% of the Fund’s disbursements may support the development of systems for monitoring and controlling deforestation in other Brazilian biomes and in other tropical countries, Article 1 (3), Donation Agreement between BNDES and the Ministry of Foreign Affairs of Norway, of 25 March 2009.

⁹⁹ PORTARIA/SDS/Nº 040/03 – GS, available at <http://www.florestas.am.gov.br>.

¹⁰⁰ Toni, *Gestão florestal na Amazônia brasileira...*, p. 50.

capacity (*Programma de Apoio à Fiscalização e Monitoramento*).¹⁰¹ Thirty-four conservation units covering 16.5 million hectares have thus far been set under the state System of Conservation Units (*State System of Conservation Units of the Amazon - SSCU*) created by the State Law 53/2007. It is managed by the State Centre for Conservation Units (*State Centre for Conservation Units of the Amazon-SCCU*),¹⁰² which may have an important role in the implementation of REDD+ projects in protected areas.

IPAAM is the body in charge of Amazonas' environmental control.¹⁰³ As an interesting initiative, the Mobile IPAAM Project involves a group of experts who offer trainings in different municipalities on themes ranging from environmental licensing and FMPs, to fire management. IPAAM also provides consultancy services and *in situ* visits to provide guidance on environmental license recommendations.¹⁰⁴ Both REDD+ and associated corruption risks could possibly be included as a theme in IPAAM's capacity building activities. IPAAM, with the support of the World Bank, has also established a first assistance agency in the municipality of Tabatinga.¹⁰⁵ Another initiative by the SDS that may complement IPAAM's monitoring and control activities is its Programme of Voluntary Environmental Agents (*Agentes Ambientais Voluntários*) in the State Conservation Units.¹⁰⁶ They may also play a 'watch dog' role in monitoring and ensuring transparency in future REDD+ activities in protected areas.

To ensure public participation, the state government has created the Board for Sustainable Development of the Traditional People and Communities (CDSPT/AM).¹⁰⁷ The Board is an advisory body within SDS that takes part in policy decision-making, especially those related to local and indigenous communities.¹⁰⁸ The participation of such groups tends to confer more transparency and legitimacy in public decision-making. It also encourages their involvement in future REDD+ activities. The Board could for example propose ways to ensure the participation of local and indigenous communities in REDD+.

The Amazonas government has also encouraged civil society participation especially in the area of land administration. The state body in charge of land planning, ITEAM (*Instituto de Terras do Amazonas*),¹⁰⁹ under the State Secretariat of Agrarian Policy (*Secretaria de Estado de Política Fundiária - SPF*), created a forum, entitled *Forum da Terra*, in various municipalities. The Forum is expected to monitor the state's agrarian reform and policies.¹¹⁰ It assists ITEAM in the development, implementation and evaluation of policies related to land reform.¹¹¹ Both ITEAM and the *Secretaria de Estado de Política Fundiária* may help clarify land tenure issues in REDD+, while initiatives such as *Forum da Terra* could play a role in monitoring REDD+ activities and possibly detecting associated corruption risks. At the federal level, the National Foundation for Indigenous Affairs (FUNAI) is in charge of the administrative procedure for the

¹⁰¹ FAS, *Relatório de Gestão* (2008), p. 42. The Plan is available at: <http://www.seplan.am.gov.br>

¹⁰² *Plano Estadual de Combate ao Desmatamento*, op. cit. 26.

¹⁰³ On IPAAM, see <http://www.ipaam.am.gov.br>.

¹⁰⁴ SDS, 2010 Management Report, p. 66.

¹⁰⁵ within the State of Amazonas Regional Development Project (Proderam). SDS 2010 Management Report, p. 67

¹⁰⁶ SDS Resolution 2/2008, SDS, 2010 Management Report, p. 67

¹⁰⁷ Law no. 3525/2010

¹⁰⁸ SDS, 2010 Management Report, p. 113.

¹⁰⁹ For more information: <http://www.iteam.am.gov.br>

¹¹⁰ DOE Portaria 104-2007-GP-ITEAM

¹¹¹ *Plano Estadual de Combate ao Desmatamento*, op. cit. p. 37.

demarcation of indigenous lands and ensures the overall protection of indigenous rights in Brazil. FUNAI shall be actively involved in REDD+, for example in ensuring indigenous communities' right to prior informed consent and participation in REDD+ revenues.

Certain state-level bodies in charge of environmental control and law-enforcement may play a role in *suppressing* corruption, namely the Strategic Group to Combat Environmental Crimes (*Grupo Estratégico de Combate a Crimes Ambientais - GECAM*)¹¹² and the *Batalhão Ambiental*. Despite the progress made by the state government in many respects, those bodies, as well as IPAAM, still have limited capacity to detect and suppress corruption. The articulation between state bodies and IBAMA, and between state and federal justice also remains weak. Ideally, such institutions should work together in combating corruption and other environmental crimes. Future national REDD+ strategies should clarify the role of central and local governance institutions in anti-corruption efforts and define their functions.

Box 3: Operação Curupira, Mato Grosso

During 1999, the State Environmental Foundation of Mato Grosso (*Fundação Estadual de Meio Ambiente (FEMA)*), with support from the internationally-funded Pilot Program to Conserve the Brazilian Rain Forest (PPG7), developed the Land Zone Planning System (System of Environmental Licensing in Rural Property (SELRP). SELRP became operational in 2000 and was a pioneering information system in Brazil to detect illegal deforestation.

Initially this system proved to be slow in making any noticeable impact on law enforcement. Data from 2004 showed that illegal deforestation in licensed areas had not been significantly reduced compared with unlicensed areas, indicating that enforcement and sanctioning of illegal deforestation continued to be weak.

Those flaws became apparent in June and August 2005 when two spectacular anti-corruption operations called *Operação Curupira 1* and *2*, were carried out as coordinated actions between the Ministry of Environment, the Attorney General and the Federal Police. These operations revealed that certain officials at FEMA had favoured actors carrying out illegal deforestation by manipulating the satellite images and producing fake documentation to launder timber that had been illegally obtained. Shortly after these two operations, FEMA was replaced by SSEMA (Secretary of State for Environment of Mato Grosso). SSEMA added two new technologies to the SELRP system: a database of forest product producers and consumers, and an online forest products administration and control system.

¹¹² Created by Law 3262/2008. The purpose of GECAM is defined in Article 1.

3.1.3. Assessment and Lessons Learned

The key lessons drawn from this case are:

- Sub-national governments have actively engaged in forest administration with broader legislative, administrative and fiscal autonomy vis-à-vis the central government. Therefore, they could also have a role in tackling corruption in the forest sector and in the context of REDD+ in particular.
- Good practices at the local level exist and are instrumental in *preventing* corruption, for example: those providing 1) economic incentives to small landowners and local groups (e.g. *Bolsa Floresta*), 2) social monitoring and participation (e.g. through initiatives such as the *Forum da Terra*, *Agentes Ambientais Voluntários*, among others), 3) education and training (e.g. Mobile IPAAM Project) or 4) ensuring transparency of public finance and spending (e.g. *Portal da Transparência*).
- Sub-national governments have a role in *suppressing* corruption (and other environmental crimes), in particular those organs in charge of environmental control and law-enforcement (e.g. IPAAM, GECAM, *Batalhão Ambiental*). Financial and technical support is required to improve their capacity to detect and suppress corruption and further coordination with central bodies, such as IBAMA, is required.
- Specific anti-corruption laws and institutions are less common at the local level. In any case, local governance institutions, in particular law-enforcement bodies, could tackle corruption using existing laws. They could also play a role in preventing and suppressing corruption in REDD+.
- National REDD+ strategies should clarify the role of local governance institutions, in particular law-enforcement bodies, in tackling corruption in the context of REDD+ by 1) obtaining information on their exact role and functions, 2) identifying anti-corruption measures they could perform to prevent and suppress corruption at the local level, and by 3) ensuring specialized training and financial support to the law-enforcement bodies.

3.2. Bolivia: Community Forest Management

3.2.1. Background

Bolivia is one of the countries that have made the greatest progress in distributing forest management functions to local governments.¹¹³ It was in the mid-1990s that decentralization entered the agenda of political reforms, due to increasing pressure from civil society seeking to have greater control over

¹¹³ C.G. Mejía Silva, *Community - Based Forest Management as a determinant for development of indigenous people in Northern La Paz*, Research Paper prepared at the Institute of Social Studies, 2008, p. 19.

natural resources, the move toward decentralization in neighboring countries and the relevance that the issue assumed in donors' agendas.¹¹⁴

Decentralization was introduced by a Popular Participation Law (No. 1551/1994) and Administrative Decentralization Law (No. 1654/1995), both of which were passed by Congress in 1994. Bolivia until then had a long tradition of centralized government. The prefects, the main political authority of Bolivia's departments, were appointed by the central government and their decision-making power was limited, especially in the provision of urban services. Municipalities also had limited resources and political influence. Bolivia's current Constitution defines four levels of administration: departments, provinces, municipalities and rural indigenous lands (*Territorio Indígena Originario Campesino* - TIOC).¹¹⁵ A few other recent laws that carry on Bolivia's decentralization process include Law 031/2010 (*Ley Marco de Autonomías y Descentralización Andrés Babiñez*), the 2008 Municipalities Law (Law 2028/1999), among others.

What is new about Bolivia's legal reform was the attempt to make local governments stronger and more democratic, by promoting local community participation, political and fiscal decentralization and land reform. The Popular Participation Law expanded municipal jurisdiction beyond urban centres to cover also rural areas. To address costs related to new responsibilities, the central government allocated 20% of the national budget to municipal governments by proportional distribution according to their populations.¹¹⁶ The law encouraged political participation of rural populations, mainly small landowners and local and indigenous communities, who gained the right to take part in municipal elections.

Decentralization has also redefined Bolivia's system of titling, land regularization and access to rural property. The 1996 Law on the Agrarian Reform National Service (INRA Law 1715/1996) introduced a process of title regularization, including the demarcation of indigenous lands.¹¹⁷ INRA also conferred to small farmers privileged access to certain public lands and exempted them, as well as indigenous communities, from certain land taxes.¹¹⁸

Community Forest Management

In line with Bolivia's decentralization laws, the Forest Law 1700/1996 assigned a greater role to municipal governments. The departments began to execute the national forest policies and carry out programmes (e.g. for the rehabilitation of forests, forestation/re-forestation), while the municipalities should monitor forest areas to be allocated to Local Social Associations (*Social Associations of the Place* -

¹¹⁴ This description is based on Pacheco, *Decentralization of Forest Management in Bolivia: Who Benefits and Why?* (2004), p. 9. Paper presented at the UNFF Country Led Initiative on Decentralization, Interlaken Workshop on Decentralization, April 27-30.

¹¹⁵ Article 269, Bolivia's Constitution of 7 February 2009.

¹¹⁶ Law 1551/1994, Article 20, II, replaced by Law 031/2010.

¹¹⁷ Article 69, Law 1715/1996.

¹¹⁸ Pacheco, op. cit., *Law Compliance...*, p. 11.

SAP) as community concessions.¹¹⁹ Along with those functions, additional sources of revenue were assigned to municipalities from the collection of forest user fees.¹²⁰

A major outcome of the forest regime introduced by Law 1700/1996 is the democratization of the forest sector. It created the opportunity for certain forest users, including small farmers, local and indigenous communities, to access forest resources and take part in forest management decision-making. It was also an attempt to promote good forest management practices and improve the system of forest fees collection and distribution.¹²¹ Municipalities became entitled to administer up to 20% of total public forests under their jurisdiction, creating Municipal Forest Areas (*Unidades Forestales Municipales*) that should be turned over to Local Social Associations ASLs as forestry concessions.¹²² ASLs include 'traditional users, local, indigenous communities and other local users of forest resources.'¹²³ This mechanism aimed to formalize small-scale loggers' rights, who used to conduct forest operations informally in private forest concessions or protected areas, as they had no legal right to access forest resources.¹²⁴ The situation of Municipal Forest Units is not uniform, as the capacity of municipal governments to create and manage them varies.¹²⁵ Some municipalities have been quite active in creating Municipal Forest Units and allocating resources to the forest sector, others less so. Also, the coordination between municipal and central government is not optimal.¹²⁶

Since 2009, the Forest Law 1700/1996 is under a revision process which objective is to adapt the Law to the new 2009 Constitution and update several of its provisions.¹²⁷ This Law might soon be replaced by a new Forest Law. Recently, significant efforts have been made in Bolivia to tackle climate change and the issue of forest emissions, including for example the adoption of a National Management Forest Plan in 2008, the creation of a new Vice-Ministry of Environment, Biodiversity and Climate Change, in 2009. Bolivia is also one of the four countries in the region receiving UN-REDD support through a National Programme.

¹¹⁹ Forest Law 1700/1996 (Article 25). See, J. L. de Urioste Lincoln Quevedo, R. Guzmán Remy Rojas, *Evaluación del Régimen Forestal Implementado por la Superintendencia Forestal de Bolivia (1997-2008)*, Centro de Investigación y Manejo de Recursos Naturales Renovables, Escuela de Ciencias Forestales de la Universidad Mayor de San Simón (2010), p. 13.

¹²⁰ Municipalities began to receive 25% of the forest use and clearing license fees to be 'distributed in accord with the use areas granted in their respective jurisdiction for supporting and promoting sustainable forest resource use and implementing social works of local value, as long as the municipality complies with the objective of this contribution,' Article 38 (b), Law 1700/1996.

¹²¹ As proposed by Pacheco, *Law Compliance...*, op. cit., p. 7.

¹²² Forest Law 1700/1996, Article 25 (a).

¹²³ Forest Law 1700/1996, Article 1.II.

¹²⁴ W. de Jong, S. Ruiz, M. Becker, 'Conflicts and communal forest management in northern Bolivia,' *Forest Policy and Economics*, Vol. 8, Issue 4 (2006), pp. 447-457, p. 450.

¹²⁵ Pacheco, *Decentralization of Forest Management in Bolivia...*, op. cit., p. 22.

¹²⁶ *Ibid.*, p. 105

¹²⁷ UN-REDD (2010) Programme National Programme Document Bolivia, p. 11.

Box 4: Bolivia and REDD+¹²⁸

Bolivia is one of the three Latin American and Caribbean countries soon to implement its National UN-REDD Programme (NP) and REDD+ National Strategy. The UN-REDD Programme approved a US\$4.7 million funding allocation to Bolivia's National Programme in 2010. The Programme's timeline is from 2010 to 2013.

The Document (NPD) proposes three outcomes to encourage REDD+ readiness in Bolivia by 2012: to improve the capacity of national government institutions (outcome 1), as well as that of civil society (outcome 2), and generate REDD+ experience at the local level, with the participation of local institutions and civil society (outcome 3). To this end, the NPD suggests, among other things, the creation of a Forest and Land-Use Monitoring System, and a REDD+ Action Plan.

Local Governance and Decentralization

The NPD stresses the need to 'strengthen management capacity among local authorities, as well as empowering local stakeholders along the development process.' To ensure their engagement, it proposes the design of a communication and training strategy, a participation plan for stakeholders to design REDD+ activities and a communication and training campaign directed to decision makers and local stakeholders, including indigenous communities. To build capacity at the sub-national level, the NPD envisages the implementation of several demonstrative REDD+ projects with the participation of local institutions and civil society (outcome 3).

Transparency and Anti-corruption Measures

The NPD outlines certain corruption risks in the context of REDD+, notably the misuse of REDD+ funds. Proposed mitigation actions include: 1) design a participation and information mechanism including several stakeholders with clearly defined implementation and control responsibilities, 2) implement a consultation plan to ensure participation of various sectors in REDD+ design and implementation, as well as in that distribution mechanism for REDD+ revenues.

3.2.2. The Virtuous Link between Democratic Governance and Anti-Corruption Measures

This case study indicates the greater role that sub-national governments can play in forest administration, as a result of a process of decentralization. A major outcome of the legal reforms introduced in Bolivia in the 1990s was the enhanced participation of local and indigenous communities' in forest management.¹²⁹ As they gain formal access to forest resources, informality and illegality tend to be reduced, especially activities with high corruption risks such as illegal logging. It is suggested that

¹²⁸ This description is based on UN-REDD (2010) National Programme Document Bolivia, available at <http://www.un-redd.org>

¹²⁹ The current 2009 Constitution confers broad rights to indigenous communities, for example to participate in elections (Article 26, II), to be consulted about legislative or administrative measures likely to affect them, to participate in the benefits involved in the use of natural resources in their traditional lands (Article 30), among others. They also compose the *Agrupaciones Sociales del Lugar*, according to the Supreme Decree 24453. Further research on indigenous peoples' governance institutions at the local level is required.

the 1996 forest regime closed opportunities for forest crime and corruption.¹³⁰ The role of local governments in forest administration also indicates that they may also have a key role in REDD+ and possibly in tackling corruption in this context.

A few measures introduced by Law 1700/1996 were instrumental in preventing corruption. For example, it established a single concession fee of US\$1 per hectare per year.¹³¹ This is markedly different from the previous legislation, which set concession fees according to complex criteria (e.g. involving quality of species harvested, volumes, log quality, etc). The simplified rule reduced the risks of discretionary decisions and also limited the room for tax evasion and corruption. It also made it easier to monitor compliance and prosecute forest operators who fail to pay the fee. The transparency and independence of the Forest Superintendence has also improved when compared to the prior Center for Forestry Development.¹³² In 2009, the Forest Superintendence has been replaced by the Authority for Social Control of Forests and Land (Authority of Forests and Lands - AFL).¹³³ The AFL, like its predecessor, has a key role in the forest regime for its broad-range of functions, including the monitoring and control of deforestation and forest degradation.¹³⁴ It may also play an important role in the context of REDD+.

The 1996 forest regime also introduced new avenues for forest monitoring. AFL can inspect forest operations at anytime, at its own initiative, or at the request of a third party denouncing an illicit act, and may ask municipal governments' cooperation.¹³⁵ Forest audits should take place every five years by an independent party as a pre-condition to renew forest concessions granted to private forest users. The Law also transferred an oversight role to local communities, who can elect oversight committees to monitor municipal finances and influence municipal investment decisions.¹³⁶ In practice, however, those provisions have been poorly implemented. The AFL has limited capacity to deter illegal activities and often lacks the support of municipal governments.¹³⁷ Their interest or capacity to control illegal activities also varies.¹³⁸ Local communities also struggle with the strict requirements of forest management plans (FMPs) imposed by Law 1700/1996, and sometimes have no other choice than resorting to illegal logging and corruption.

Despite its limitations, the 1996 forest regime has improved the participation of local and indigenous communities in forest management and secured land tenure rights. For example, it is observed that 95% of forest users that acquired formal access to natural resources were in Municipalities that had a Municipal Forest Unit.¹³⁹ Field research also suggests that local communities have benefited in some ways, notably with new sources of employment, higher income, training, higher participation and better

¹³⁰ Contreras-Hermosilla, *Emerging best practices...*, op. cit., (citing Pacheco).

¹³¹ Forest Law 1700/1996, Article 37.

¹³² The agency gained relative financial independence, as the law entitled it to 30% of the forestry fees, Forest Law 1700/1996, Article 38 (d). The head of Superintendence was selected by the President of the Republic from a list of three names submitted by the Congress and the staff has been professionalized and hired by merit, Contreras-Hermosilla, op. cit.

¹³³ Created by the Supreme Decree 071/2009.

¹³⁴ On the AFL competencies, see <http://abt.gob.bo>

¹³⁵ *Ibid.*, p. 20.

¹³⁶ Pacheco, *Decentralization of Forest Management in Bolivia*, op. cit., p. 11.

¹³⁷ Pacheco, *Law Compliance...*, op. cit., p. 22.

¹³⁸ Proposed by Contreras-Hermosilla, in P. Pacheco, *Decentralization of Forest Management in Bolivia...*, op. cit, p. 25.

¹³⁹ *Ibid.*, p. 104.

conditions of life.¹⁴⁰ The National Institute for Agrarian Reform (INRA), between 1996 and 2009, sanitized more than 37.7 million ha. Currently there are 13.3 million ha in process of being sanitized and approximately 50% of indigenous lands are already sanitized.¹⁴¹ By doing so, Bolivia gives a step forward to become REDD-ready, as insecure land tenure tends to be a major barrier to REDD+.

The Bolivian government has taken a few innovative measures, which may be useful to support anti-corruption efforts at the sub-national level. According to the new 2009 Constitution all Bolivian citizens have the *duty* to denounce and fight corrupt practices.¹⁴² A Ministry for Institutional Transparency and Fight against Corruption was created with a few sub-national offices (Cochabamba, Santa Cruz, Chuquisaca, Beni and Tarija).¹⁴³ It is expected to take preventive measures against corruption in all levels of administration. For example, in order to detect corruption it has created a webpage for online denunciations (*Formulario de Denuncia*).¹⁴⁴

Bolivia is also one of the few countries in the region to have a specific anti-corruption law (No. 004/2007).¹⁴⁵ The Law creates an Anti-Corruption National Council, anti-corruption tribunals and also envisages a Social Control against corruption exercised by any individual or groups. Bolivia's departments are expected to create anti-corruption agents designated by the *Fiscal General del Estado* (Article 12). Other anti-corruption laws include the Decree 28168/2005 on access to information and transparency of public administration and a National Policy on Transparency and Fight against Corruption¹⁴⁶. Those laws and institutions may provide support to future anti-corruption measures in the context of REDD+. Concerns have been raised regarding whether Bolivia's strict laws may hamper or slow down any project implementation. In practice, countries may indeed achieve a balance between ensuring transparency in REDD+ activities and, at the same time, allowing effective implementation. One way of doing so is to prioritize which anti corruption measure will be most effective in the appropriate timeframe and avoid complex and time-consuming anti-corruption measures.

Civil society in Bolivia is engaged in anti-corruption efforts. For example, *Transparencia Bolivia*,¹⁴⁷ created in 2008 as one of the Transparency International "chapter," strives to create a culture of transparency in public and private sectors, confer a more active role to individuals and strengthen institutions to combat corruption.¹⁴⁸ One of its recent projects related to the implementation of UNCAC and IACAC. It managed to involve decision-makers in the drafting of Bolivia's civil society report submitted to IACC Follow-up Mechanism. *Transparencia Bolivia* could possibly help engage local governance institutions in anti-corruption efforts in the context of REDD+.

¹⁴⁰ Mejía Silva, op. cit., p. 60.

¹⁴¹ UN-REDD (2010) National Programme Document Bolivia, p. 11.

¹⁴² Article 108.

¹⁴³ Ministry's website: <http://www.transparencia.gob.bo>

¹⁴⁴ Available at: <http://www.transparencia.gob.bo/index.php?Modulo=Formdenuncias>

¹⁴⁵ Law 004/2010 (*Ley de Lucha contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas Marcelo Quiroga Santa Cruz*), available at <http://bolivia.infoleyes.com/shownorm.php?id=1521>

¹⁴⁶ Supreme Decree 0214/2009.

¹⁴⁷ <http://www.transparenciabolivia.org>

¹⁴⁸ A recent and relatively successful anti-corruption strategy on value added tax refunds conducted in Bolivia applied a process flow approach that appears to be powerful in preventing corruption in tax administration, U4 Anti-Corruption Resource Centre (2008), Combating corruption in the revenue service: the case of VAT refunds in Bolivia.

Bolivia is also a leader in forest certification in the region, a positive element in terms of preventing corruption risks. Bolivia's voluntary certification programme started in the late 1990s¹⁴⁹ and grew steadily over the last years. Some factors that contributed to the success of Bolivia's forest certification include the support by the government, willing to obtain international market competitive advantages, and that provided by Bolivia's Sustainable Forest Management Project (BOLFOR), created by the United States Agency for International Development (USAID) and the Government of Bolivia.¹⁵⁰ Also, the 1996 Forest Law allowed third-party independent forest certification as a substitute for governmental audits of concessions on public forest land (Article 91).¹⁵¹ In general, certification is beneficial to governments as it liberates forest agencies' scarce resources that, otherwise, would be dedicated to monitoring and controlling forest operations. The risks of corruption within under-funded government agencies tend to be reduced when monitoring is transferred to independent certification bodies. In addition, major concessionaires and entrepreneurs often prefer dealing with independent certifying firms rather than with the government bureaucracy. Box 6 shows a forest certification experience in one of Bolivia's provinces.

3.2.3. Assessment and Lessons Learned

The key lessons drawn from this case are:

- Due to a process of decentralization, sub-national governments in Bolivia have a significant role in forest administration, which could be built on to tackle corruption in the forest sector in the REDD+ context.
- Local communities and indigenous populations participate more actively in forest management decision-making processes as a result of decentralization and legal reforms in Bolivia.
- A few measures introduced by the 1996 Forest Regime helped reduce corruption risks, such as the single concession fee, further transparency and independence conferred to the AFL, and new monitoring mechanisms (e.g. inspection, forest audits, and oversight committees).
- Bolivia has a strong anti-corruption legal and institutional framework (e.g. a specific national anti-corruption laws and Ministry). This may be useful to support local governance institutions design and implement anti-corruption measures.
- Civil society in Bolivia is engaged in anti-corruption efforts, such as *Transparencia Bolivia*. This organization has developed expertise in engaging decision makers in the IACC Follow-Up Mechanism (MESICIC), which may be useful in the context of REDD+.

¹⁴⁹ Forest certification in Bolivia started in 1994 involving the private and public sectors as well as FSC. The Bolivian Council for Voluntary Forest Certification (*Consejo Boliviano para la Certificación Forestal Voluntaria*, was established in Santa Cruz to produce national standards. FSC endorsed those standards in 1998. Simultaneously, the Program of Forest Certification CIMAR/Smart Wood was created in 1996. Soon after, two other certifying firms obtained FSC accreditation (SGS and Imo-Suiza), in A. Contreras-Hermosilla and M.T. Vargas Ríos, *Social, Environmental and Economic Dimensions of Forest Policy Reforms in Bolivia*, Forest Trends, CIFOR, 2002.

¹⁵⁰ *Bolivia Sustainable Forest Management*, BOLFOR Final Report (2004).

¹⁵¹ Decree 24453/1996 (*Reglamento general de la Ley Forestal*), available at: http://www.ypfb.gob.bo/documentos/leyes/ds_24453_reg_ley_forestal.pdf

- Bolivia has gained expertise in forest certification which may have a positive impact in terms of combating corruption. The risks of corruption within under-funded government agencies tend to be reduced when monitoring is transferred to independent certification bodies.

Box 5: Forest Certification in Guarayos¹⁵²

The case study looks at certified forest operations in the province of *Guarayos*, Department of Santa Cruz, in particular at the *Concesión La Chonta (Guarayos)*, and *Concesión CIMAL / IMR Guarayos*. The province of Guarayos is located at 300 km north of Santa Cruz and comprises three municipalities (*Ascensión de Guarayos, Urubichá y El Puente*).

COPNAG (*Organizaciones de Pueblos Nativos Guarayos*) assembles nine organization in neighboring towns (San Pablo, Santa María, Urubichá, Yaguarú, Salvatierra y Yotaú). It represents the *guarayo* people and beneficiary of a TCO (*Tierras Comunitarias de Origen*). Those communities and a few logging companies in the region were involved in certified forest operations. The local logging companies in Guarayos operated with limited work capacity and old machinery.

The case study discusses the relationship between those different forest users and the impact of certification in the region. It indicates that certification has been generally positive, as it created jobs and income. Local logging companies, however, felt the 1996 Forest Law was disadvantageous to them, as they could not handle their concessions as required by this Law and had to handle them back. As a result, some had no other option than to resort to illegal logging. It was also noted that deforestation in the region was caused due to a few factors: the lengthy process of sanitation of TCOs, corruption in INRA (and also among leaders of indigenous communities), and due to the incapacity of the State to exercise control. Local loggers would also complain that indigenous peoples, who received support from NGOs to carry out forest management plans, were being subsidized in an unfair competition. In any case, the companies under study managed to establish good relationships with those communities and signed agreements with COPNAG, under which they committed for example to maintain pathways in their concession areas and provide machinery so that indigenous communities could keep with logging operations.

The case study illustrates that the complex interactions among different users have to be taken into account in the design of forest laws. In some cases, even well-intended laws may have an adverse impact on certain forest users. It also shows that corruption can occur both within sub-national governance institutions or local communities' leadership.

¹⁵² C. van Dam, 'Certificación Forestal y Desarrollo Local: el caso de Guarayos,' *Revista Theomai*, N. 16 (2007), pp. 16-34.

LESSONS LEARNED AND KEY RECOMMENDATIONS

Chapter 4

Lessons Learned and Key Recommendations

In most Latin America and Caribbean countries, local governments are playing an increasing role in forest administration due to an ongoing process of decentralization, and may therefore play a key role in REDD+, especially during its implementation phase. Corruption, however, may be a barrier to the success of REDD+, both at the national and sub-national levels. It is therefore essential that countries create safeguards against corruption risks in REDD+ design and implementation phases. As local governance institutions tend to be directly involved in the implementation of REDD+ activities, they should develop the capacity to prevent and suppress associated corruption risks. REDD+ can either improve forest governance or be undermined by its failures. UNDP has a crucial role in ensuring the success of REDD+, by assisting countries to prevent corruption and improve governance. UNDP support to local governance institutions and decentralization processes is needed to ensure that sub-national governments have political, administrative and fiscal capacities to implement REDD+.

4.1. Lessons Learned for REDD+ from the Selected Case Studies

The key lessons drawn from the selected case studies are:

- Local governments currently have a role in forest administration due to a process of decentralization observed in most countries in Latin America and the Caribbean. In view of this, local governance institutions should have a more active role in tackling corruption.
- Although municipal governments have a role in forest administration and are in some cases better funded, they still lack the technical and human capacity to adequately tackle corruption.
- Latin American and Caribbean countries generally have robust anti-corruption legal and institutional frameworks, although specific anti-corruption laws, policies and mechanisms in the forest sector are less common. In most of those countries law-enforcement and implementation remain weak.
- Specific anti-corruption laws, policies and mechanisms are less common at the local level. In the absence of specific anti-corruption bodies, local governance institutions in charge of forest control and law-enforcement may play a key role in detecting and suppressing corruption.
- Certain measures carried out at the local level may reduce the incentives to corrupt practices, notably those that enhance sustainable forest management, secure the access of local and indigenous communities to forest resources, and allow the oversight of forest operations.

- Good practices at the local level require an enabling legal and policy frameworks and also some coordination with central government institutions, which tend to maintain a key role in forest control. However, coordination between those two levels of administration is often weak.
- Local governance institutions may have a central role especially in REDD+ implementation phase, as they may carry out REDD+ activities. Therefore, they may play a role in undertaking anti-corruption measures at that stage, and their involvement in the planning phase will therefore be key.
- REDD+ involves corruption risks that may differ from those observed in the forest sector (e.g. related to illegal logging, movement of timber and wood products and to the avoidance of payment of forestry charges). Specific REDD+ corruption risks may occur for example, in the allocation of carbon rights, setting of emissions baselines or in the design of benefit distribution systems.
- The National Programme Documents presented by UN-REDD partner countries in Latin America and the Caribbean contain only few specific anti-corruption measures, if any, and put little emphasis on the role of local governance institutions (see Annex 1)

4.2 Role for UNDP in Supporting Enhancement of Local Governance Institutions' Capacity to Tackle Corruption Risks in REDD+

Sub-National Governance

There is little evidence that climate change and forest management are explicitly on the sub-national policy agenda in most Latin American and Caribbean countries. This is not surprising given that climate change and REDD+ are relatively new, but also sub-national governments in the region are just beginning to assume broader democratic governance responsibilities and strategic competencies. It is therefore important to identify key entry points to strengthen sub-national governance and local governments' engagement with REDD+ related risks and opportunities. Here are key recommendations:

- Establish and/or strengthen clear links between national climate change and forest management policies and decentralization/sub-national governance policies.
- Improve sub-national understanding of climate change, forest management, and REDD+ issues. Providing further information to sub-national decision-makers and all other stakeholders involved on the nature of the risks they face in climate change, forest management and REDD+.
- Promote **policy dialogue** around financial arrangements and resources for climate change, forest management and REDD+. For sub-national governments to play an effective role, they will need *access to financial resources*, often in addition to those already available. That includes, providing earmarked "climate change" funding windows with which they can finance policies. This would require a monitoring system to ensure that funds are not being misused.

- Make sub-national democracy work for the people most vulnerable vis-à-vis climate change, forest management and REDD+. They need to recognize that there is a value-added to them, when tackling risks and sustainability in climate change, forest management and REDD+ issues, and their needs must be taken into account.
- Promote **capacity building** for sub-national decisions-makers and civil society organizations in an array of issues such as, monitoring, internal controls, social auditing, advocacy and awareness campaigns to name but a few.
- Promote **accountability and transparency** in decision-making process. Experience from participatory planning processes suggests that these alone rarely translate into decision-making that benefit the most vulnerable. Local media and civil society organizations can play an important role in ensuring that voices and interests of the most vulnerable players are raised in climate change, forest management and REDD+ decision-making processes that affect them.

Sub-National Anti-Corruption Measures

In general, anti-corruption measures that could be envisaged at the sub-national level to tackle corruption risks raised in forest management should include:

- Support public awareness campaigns about the costs of mismanagement and corrupt practices.
- Encourage civil society to monitor climate change, forest management and REDD+ issues and play a 'watchdog' role.
- Institutionalize stakeholder-government policy dialogue.
- Develop clear sub-national regulations that limit discretion in licensing and other forest operations and that ensure law implementation and enforcement.
- Streamline procedures, eliminate 'red tape' and enhance transparency.
- Increase incentives for inspectors, as well as stringent oversight and control

Sub-National Anti-Corruption Measures in REDD+

As REDD+ may involve specific corruption risks, support is required to build the capacity of local governance institutions to identify such risks, design anti-corruption measures and implement them. UNDP support to UN-REDD Programme partners in tackling corruption at the local level in the context of REDD+ should include the following:

REDD+ Design Phase

- Raise awareness and understanding about REDD+ and related corruption risks among local governance institutions (including local and indigenous communities and civil society

institutions). Local governance institutions may be less involved in REDD+ design phase, but support is needed at this stage to raise their awareness and understanding about REDD+. For example, support for awareness campaigns directed to local governance institutions is required.

- Assist countries identify 1) REDD+ corruption risks at the sub-national level in different sectors (e.g. forest and land-administration sectors, agrarian reform and trade, etc), 2) local governance institutions (including indigenous communities and civil society) best suited to take anti-corruption measures, if there are no specific anti-corruption institutions at the local level.
- Support UN-REDD Programme partners in Latin America and Caribbean to design REDD-specific anti-corruption measures, clarify the role of local governance institutions and introduce such proposals in their National REDD+ Strategies.

REDD+ Implementation

- Support local governance institutions best suited to tackle corruption risks at the local level, identified during the REDD+ design phase, to **detect, prevent** and **suppress** corruption in REDD+ implementation. In particular, support is required to enhance their capacity to investigate and repress corrupt practices. If they do not yet exist, support should be given to creating recourse and complaints mechanisms at the local level in relation to REDD+ activities. They should also envisage whistle-blower protection.
- Specific anti-corruption laws are less common at the local level and REDD+ may introduce additional corruption risks. In view of this, support is required to build the capacity of local governance institutions to draft REDD-specific anti-corruption laws or guidelines.
- Assist local governance institutions to work in cooperation with central government institutions, as these latter still have a central role in forest monitoring and control. This could involve, for example, creating joint anti-corruption committees between local and central governance institutions, common anti-corruption guidelines and joint mechanisms to detect and repress corruption, such as independent recourse and complaints mechanisms.
- Enhance support to the engagement of local and indigenous communities and civil society institutions in monitoring REDD+ decision-making and activities, for example by creating oversight committees. Those bodies could monitor for example whether land tenure rights are respected, whether REDD+ revenues are equitably shared, whether REDD+ decision-making is transparent, among others.
- Local governance institutions in charge of forest control, indigenous communities, civil society institutions may as well engage in corruption. Therefore, clear, simple and accessible recourse and complaints mechanism could be further strengthened and/or established.
- Advocate for greater transparency in decisions on resource use and distribution, as well as climate change, forest management and REDD+ policies. This could involve for example publicizing the findings of periodic monitoring and evaluation of climate change, forest

management and REDD+ issues or public awareness campaigns about the costs of mismanagement and corrupt practices.

- Encourage the use of UNCAC and IACAC as a guide to develop comprehensive anti-corruption frameworks among UN-REDD Programme partners, also considering potential actions at the sub-national level. In particular, discuss cooperation with OAS in the framework of IACAC Follow-up Mechanism.

In conclusion, REDD+ may help reduce corruption in the forest sector if the issue is adequately addressed and local governance institutions empowered. UN-REDD Programme partners in Latin America and the Caribbean should devise REDD-specific anti-corruption measures at national and sub-regional levels in relation to REDD+ design and implementation phases. Below are guiding questions for the development of anti-corruption measures in REDD+.

Box 1. REDD+ Proposed Anti-Corruption Measures Check List

Identify Corruption Risks

What are potential REDD-specific corruption risks?

What are the sectors involved?

Design Anti-Corruption Measures

What measures are required?

Which institutions could carry out such measures?

What is the role/functions of those institutions?

What will be the relationship between national and local governance institutions?

How existing laws, policies and mechanisms could be used?

How could civil society, local and indigenous populations be involved?

Are the designed anti-corruption measures too complex or costly?

How to finance those measures?

Implementation of Anti-Corruption Measures

How to ensure that the anti-corruption measures are complied with?

How to evaluate whether anti-corruption measures are effective?

Can the effectiveness of such measures be assessed through the IACAC Follow-up Mechanism?

How to report/inform the public about the measures taken?

ANNEXES

Annexes

Annex 1: Treatment of local governance and anti-corruption in National UN-REDD Programmes in Latin America and the Caribbean

Four UN-REDD partner countries in the Latin America and Caribbean region have developed National UN-REDD Programmes: Bolivia, Ecuador, Panama and Paraguay. From the description of their National Programme Documents (NPD)¹⁵³ provided below, not much emphasis has been given to the role of local governance institutions in transparency/accountability mechanisms in REDD+ and only few specific anti-corruption measures have been envisaged. However, some proposals from the NPD will be useful in curbing corruption risks.

Ecuador¹⁵⁴

The UN-REDD Programme welcomed Ecuador as a partner country in 2009 and approved a US\$4 million funding to its National Programme in March 2011. The Programme's timeline is from 2011 to 2013.

Good Governance and Public Participation

The NPD suggests a process for engaging indigenous peoples, local communities, and Afro-Ecuadorian and *Montubio* populations through a *Civil Society Involvement Plan* in REDD+. The Plan's four components are: 1) dissemination of information, 2) consultation, 3) effective involvement and 4) capacity-building.

Local Governance and Decentralization

According to the NPD, the National Plan for Good Living 2009-2013 is the first to building a decentralized national system of participatory planning intended to "decentralize and desconcentrate power and construct a Plurinational State." The NPD outlines several REDD+ activities at the local level that require coordination across sectors and state institutions. The Inter-Agency Committee on Climate Change, created by the Executive Decree 495/2008, shall harmonize the design and implementation of policies related to REDD+. A National Advisory Committee (COASNA) should ensure that REDD+ is coordinated between different levels of government. Ecuador's Ministry of Environment has also requested that institutions involved in REDD+ designate focal points to facilitate coordination.

Transparency and Anti-corruption Measures

Although the NPD does not indicate specific anti-corruption measures, it proposes measures that may be useful in tackling corruption, including for example: a 1) Civil Society Involvement Program to ensure public participation (output 2.2.), 2) Monitoring system to assess the effectiveness of stakeholder engagement to evaluate participatory governance in REDD+ (output 2.3), 3) Mechanism for the distribution of benefits, including all participants in REDD+ activities (output 6.1) and a 4) Tracking and Monitoring Module for REDD+ within a national registration system that provides publicly available information about REDD+ projects (output 4.1).

¹⁵³ See Chapter 3 for Bolivia's description.

¹⁵⁴ UN-REDD (2011) Draft National Programme Document Ecuador, available at www.un-redd.org.

Paraguay¹⁵⁵

The UN-REDD Programme approved a US\$ 4.7 million funding allocation to Paraguay's National Programme in March 2011 and the National Programme was initiated in July 2011. The Programme's timeline is from 2011 to 2014.

Good Governance and Public Participation

The NPD proposes that indigenous people and rural communities participate actively in REDD+ readiness activities, in line with national and international laws regarding the rights of indigenous peoples, communities and the environment. In this regard, the government has committed to implementing legal and administrative reforms to comply with international standards prior to the implementation of REDD+ activities that may affect the rights of those groups. To enhance participation of rural communities and indigenous peoples the NPD proposes for example, consultation and training on REDD+ (outcome 3), the design of a consultation protocol for free, prior and informed consent for REDD and a plan for participation of indigenous peoples in the REDD+ design (output 3.2).

The NPD also suggests a cross-sectoral coordination and mainstreaming of REDD+ into the policies of various sectors, such as agriculture, livestock, mining and rural development. It also stresses the need to mainstream gender and human rights issues into REDD+. To this end, a National Action Plan for REDD+ (REDD-Plan) should be designed, for mainstreaming REDD+ into sector policies and decentralization strategies for implementation of REDD (outcome 1.1).

Local Governance and Decentralization

The NPD suggests building capacity to implement REDD+ at the *local level* (outcome 2). It proposes among other things, a local REDD Committee, a Training of local REDD Working Group, consultations with local stakeholders and the design of local development plans to be validated by the Local REDD Committee and approved by the competent municipal/departmental authorities and other institutions.

Transparency and Anti-corruption Measures

The NPD does not propose specific anti-corruption measures, but proposes actions that may be useful in tackling corruption. For example, it suggests a National Forest Information System (SNIF) to support REDD+ and monitor forest and land-use changes (outcome 1.2). It also proposes a multi-stakeholder National REDD Committee to provide oversight of REDD+ (outcome 1), as well as monitoring and evaluation. It also proposes active civil society participation in REDD+ activities (outcome 1) and an equitable and transparent system of payments and benefit sharing to be developed with the participation of forest dependent populations (output 1.4). Also, a National awareness campaign on REDD, which targets decision makers, government organizations, NGOs and the general public, should be devised (Output 3.1).

¹⁵⁵ UN-REDD (2011) Programme National Programme Document Paraguay, available at www.un-redd.org.

Panama¹⁵⁶

The UN-REDD Programme welcomed Panama as a partner country in 2008¹⁵⁷ and approved a US\$5.3 million funding allocation in 2010. The Programme's inception is scheduled for August 2011. The Programme's timeline is from 2011 to 2014.

Good Governance and Public Participation

The NPD stresses that strong national consensus on REDD+ is required and indicates that active participation of indigenous groups, in particular, is key for the success of REDD+. It stressed the role of the National Coordination Entity of Indigenous Peoples of Panama (COONAPIP) in coordinating and communicating REDD+ readiness activities (outcome 1.1.).

Local Governance and Decentralization

The NPD proposes to strengthen institutional, municipal and individual capacity at the different levels by raising awareness and providing training on REDD+, especially in relation to measures such as participatory monitoring and land use planning. To this end, a training strategy should be devised focusing on a few issues, including municipal administration (outcome 1.3). Specific measures to achieve this output include: the evaluation of capacity building needs, 2) design of training modules and a training plan and the delivery of training modules and workshops.

Transparency and Anti-corruption Measures

The NPD makes no reference to specific anti-corruption measures, but proposes for example plans for inspection and control, participatory management and reporting system (outcome 1.3.), and a transparent payment and benefit distribution system, both nationally and locally, that can benefit local and indigenous communities and ensure "transparency to avoid the risk of inappropriate diversion of funds" (outcome 1.4).

¹⁵⁶ UN-REDD (2011) Programme National Programme Document Panama, available at www.un-redd.org.

¹⁵⁷ Panama UN-REDD Country Brief

Annex 2: Corruption Risks in REDD+ & Actors Involved¹⁵⁸

REDD+ Design

Activity	Actors Involved			Corruption Threats	Corruption Practices	Anti-Corruption Measures
	National	Provincial	Local			
Design of National REDD+ Framework	Political elites; Logging companies (national or international); Agribusiness			State capture allowing undue influence to affect design of REDD+ strategy. Political corruption Grand corruption	Undue influence to prepare a weak national REDD+ framework, or one that benefits powerful interests.	Corruption risk assessment, followed by a detailed and through analysis of proposed framework, possibly under an economic and social impact assessment. Multi-stakeholders consultations
Preparation of Initial Land Use Plans for REDD+ (Spatial Planning)	Ministry/ Department of Planning Ministry/ Department of Forestry	Governors and provincial level land use planners	LG planners	State capture, political corruption or grand corruption influencing REDD+ land use plans, resulting in failure to respect rights of indigenous peoples and other forest-dependent communities.	Undue influence or bribes to exclude high value timber concessions from REDD+, while pressing for other areas which have already been degraded (selectively logged) to be included in REDD+ land use plans.	Establish objective criteria to guide land use planning decisions. All decision making rules and individual decisions to be made publicly available in an accessible format.
Land and Natural Resource Tenure	Parliament; Political elite; Departments of Planning and Forestry			State capture and political corruption resulting in a failure to recognize customary land tenure.	Undue influence or bribery resulting in failure to recognize competing rights of customary land tenure, so that 'political elites' can trump customary claims and capture REDD revenues.	Capacity building for land administration sector. Assistance to NGOs who often assist customary communities with land registration process.
Allocation of	Parliament; Political elites;			State capture, political	Undue influence	Close analysis through multi- stakeholder

¹⁵⁸ Extracted from the 2010 UNDP Corruption and Climate Change Report.

Carbon Rights	Logging companies; Project developers			corruption or grand corruption resulting in an inequitable allocation of carbon rights under legal REDD+ framework.	to link carbon rights to state owner land titles or logging concessions, thus excluding customary communities from control of carbon resources (and possibly REDD revenues).	consultations of proposed carbon rights allocation rules.
Setting Emission Reference Levels	Ministry/ department of Forestry; Political elites; Logging or agribusiness companies			State capture, political corruption, grand corruption resulting in an over estimation of national reference levels. Collusion	Undue influence to artificially inflate baseline so that excess can be “skimmed” by corrupt officials	Clear guidance on establishing baselines to be given by SBSTA, with third party verification
Design of Benefit Distribution Systems (BDS)	Ministry of Forestry; Ministry of Finance; Political elites	Political elites	Political elites	State capture, favoritism, nepotism or cronyism resulting in weak design of financial management system.	Undue influence on BDS which influences who receives REDD+ revenues and benefits.	Improvement of public financial management. Public financial reporting, multi-stakeholder body to oversee design and implementation of BDS.

REDD+ Implementation

Activity	Actors Involved			Corruption Threats	Corruption Practices	Anti-Corruption Measures
	National	Provincial	Local			
Land Administration		Land admin. officials	Land admin. officials	Bribery by multinational corporations, project developers.	Bribery of land administration officials to overlook competing customary claims to land title, or to create fraudulent land titles.	Capacity building and transparency in land administration sector. Recourse mechanisms
Spot Rezoning of		Logging operators; Carbon	Local level public	Bribery	Bribery of public sector officials to	Public notification and call for public submissions for all

Land to Permit (or Exclude) REDD+ Activities in Specific Areas		brokers	officials; Logging operators ; Carbon brokers		change the zoning of an area to allow or exclude REDD+.	rezoning applications and rezoning decisions.
Carbon Rights		Planning officials; Project developers	Local level planning officials	Bribery by corrupt actors of public officials resulting in the loss of carbon rights for indigenous peoples and other forest-dependent communities.	Bribery to overlook competing claims to carbon rights or to fraudulently create or register carbon rights.	Capacity building for land administration sector. All applications to register carbon rights and decision to register rights to be made publicly available. Recourse mechanisms
Carbon Measurement Risks		Public sector officials in forestry sector	Local level public sector officials	Petty bribery by project developer or at sub-national level.	Public sector officials over-estimating the amount of carbon emission reductions or carbon sequestered.	C-MRV procedures

Annex 3: 1996 Inter-American Convention against Corruption

Corrupt Acts (Article 6)

The Convention is applicable to the following acts:

1. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions
2. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
3. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;
4. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and
5. Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

Follow Up Mechanism

Objective

The Follow up Mechanism examines to what degree the provisions of IACC are being implemented in order to promote compliance with the Convention and facilitate cooperation among states.

Structure

The Mechanism is composed of three bodies under the Inter-American System:

1. Conference of States Parties: the State Parties to the Follow-up Mechanism under this body are represented by high-level diplomatic officers designated by the parties
2. Committee of Experts: this technical body meets at least two times a year at OAS headquarters to assess compliance by the Parties with selected provisions of the Convention.
3. OAS Secretariat: provides administrative support to the Committee of Experts

Procedure

The Committee of Experts conducts examinations according to the following procedure:

1. Preparatory Phase

The provisions of the Convention to be reviewed during the round are selected.

A methodology for evaluating implementation of the selected provisions is created, which will be commonly used by all parties

A questionnaire is formulated and must be answered by each party

An order in which to review the countries is issued. This order first includes countries that have voluntarily presented themselves for review and also appoints countries according to the date on which they ratified the Convention.

2. Review Phase

The States respond to the questionnaire, and provide documentation and data which they send to the Committee of Experts by a certain date.

Civil society also responds to the questionnaire and provides background information to be sent to the Committee of Experts by a certain date.

An informal meeting between civil society and the Committee is held two hours before the formal session of the Committee begins.

A previously appointed Review Subgroup within the Committee, composed of two parties, conducts a preliminary review of the States' response to the questionnaire as well as that of civil society and presents its findings before the Committee of Experts.

The whole Committee examines the response of each State to be reviewed during that meeting and creates a Country Report in each case.

From four to six countries are reviewed at each bi-annual Committee meeting.

The Follow-up Mechanism relies on time periods to examine each State Party. These periods are called *rounds*. A round is the period of time allotted for the States to analyze if specific selected measures have been implemented in each country.

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Regional Centre for Latin America and the Caribbean, Panama

Local Governance and Decentralization Area/Democratic Governance
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Cover Photo: UNEP

September 2011