

The Food and Agriculture Organization as Agent of Civic Environmentalism Discourse in the Intersect of REDD+, Agriculture, Forestry, and Food Security

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As REDD+ increasingly becomes an integral part of climate change negotiations, the tension between agriculture, forestry, food security, and REDD+ initiatives

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increasingly becomes apparent as well. The tension bodes unfavorably for indigenous and local communities from developing countries as they have the most to lose from conservation efforts that prevent access and profitable land use. There is still uncertainty about the governance framework that would apply to REDD+. It is within this space that the Food and Agriculture Organization of the United Nations (FAO) can enter and claim expertise and authority. The FAO has already taken the first step with the issuance of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and Forests in the Context of National Food Security*, establishing itself as the forum to discuss issues relating to forestry, including tenure, participation in project design, and allocation of benefits. The *Voluntary Guidelines*, with its social justice provisions, advance the civic environmentalism discourse — a much-needed discourse in an arena dominated by the discourses of Ecological Modernization and Green Governmentality. The FAO, having the confidence of States, and being in a strategic position in the UN-REDD Programme, would have the influence to express a counter-narrative to the dominant discourses — a counter-narrative that would be faithful to the overarching theme of food security and that would promote the neglected interests of local and marginalized groups.

I. INTRODUCTION

Climate change negotiations have increasingly integrated the subject of Reducing Emissions from Deforestation and Forest Degradation and conservation, sustainable management of forests, and enhancement of forest carbon stocks (REDD+) in efforts to reduce greenhouse gas emissions.¹ As its inclusion has been quite recent, questions remain as to how exactly REDD+ will be implemented, how compliance will be monitored, how compensation will be measured, and what governance regime will be applied.² There is fragmentation in the perception of REDD+'s implementation and governance.

Another challenge for REDD+ is that, due to its extent, it would necessarily impact agriculture and the livelihoods of local communities and indigenous peoples.³ Forest conservation in developing countries means that

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1. See William Boyd, *Deforestation and Emerging Greenhouse Gas Compliance Regimes: Toward a Global Environmental Law of Forests, Carbon and Climate Governance*, in *DEFORESTATION AND CLIMATE CHANGE: REDUCING CARBON EMISSIONS FROM DEFORESTATION AND FOREST DEGRADATION I* (Valentina Bosetti & Ruben Lubowski eds., 2010).
 2. See Valentina Bosetti & Ruben Lubowski, *Preface* to *DEFORESTATION AND CLIMATE CHANGE: REDUCING CARBON EMISSIONS FROM DEFORESTATION AND FOREST DEGRADATION* (Valentina Bosetti & Ruben Lubowski eds., 2010).
 3. See United Nations Food and Agriculture Organization (FAO), *Expert Meeting on Land Tenure Issues and Requirements for Implementing Climate Change*

indigenous and local peoples would be prevented from using the forest for other means.⁴ This may mean that they will not be able to clear the land for agricultural purposes for their sustenance or to profit therefrom if the land could be converted into more profitable uses such as palm oil or coffee production, which in turn, could possibly be a way to break out of the cycle of poverty. Thus, it is of extreme importance to ensure that they fully participate in the design and implementation of REDD+ projects by way of consultation and distribution of benefits.⁵ Within this context, the FAO⁶ issued⁷ the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and Forests in the Context of National Food Security (Voluntary Guidelines).⁸ The Voluntary Guidelines fills the void as to governance of tenure of land and forests, and aims to do so with the goal of ensuring food security.⁹

This Article examines the role of the FAO in REDD+ discussions within the broader forest governance discourse. There are three principal discourses in forest governance — Ecological Modernization Theory,¹⁰ which is of neoliberal origin, Green Governmentality,¹¹ and Civic Environmentalism.¹² The current trend of REDD+ discussions favor Ecological Modernization and Green Governmentality discourses, especially

Mitigation Policies in the Forestry and Agriculture Sectors (A Summary of Discussions) 3, *available at* http://foris.fao.org/static/data/nrc/LT-CCM_Summary.pdf (last accessed Dec. 2, 2013) [hereinafter FAO, Expert Meeting on Land Tenure Issues and Requirements].

4. *Id.*

5. *Id.*

6. See FAO, About FAO, *available at* <http://www.fao.org/about/en/> (last accessed Dec. 2, 2013)[hereinafter About FAO].

7. FAO, Countries Adopt Global Guidelines on Tenure of Land, Forests, Fisheries, *available at* <http://www.fao.org/news/story/en/item/142587/icode/> (last accessed Dec. 2, 2013) [hereinafter FAO, Countries Adopt Global Guidelines].

8. FAO, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (A Set of Guidelines Released by the FAO), *available at* <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> (last accessed Dec. 2, 2013) [hereinafter FAO, Voluntary Guidelines].

9. FAO, Countries Adopt Global Guidelines, *supra* note 7.

10. Joyeeta Gupta, et al., *Comparative Analysis of Vietnam, Indonesia, Cameroon and Peru*, in CLIMATE CHANGE, FORESTS AND REDD: LESSONS FOR INSTITUTIONAL DESIGN 197 (Joyeeta Gupta, et al. eds., 2013).

11. *Id.*

12. *Id.*

upon examination of what developed countries prefer as the governance regime.¹³ The FAO can be an advocate of the Civic Modernization discourse in light of its institutional emphasis on the human right to food security.¹⁴ By issuing the Voluntary Guidelines, the FAO has deemed unto itself authority to issue standards and effectively guide the settlement of issues relating to tenure and allocation of benefits.

This Article argues that the FAO's issuance of the Voluntary Guidelines, with its social justice provisions, shows that the FAO can conceivably be an agent of the Civic Environmentalism discourse. The Voluntary Guidelines is a good step. However, the FAO can do more to promote the Civic Environmentalism discourse, particularly in view of the human right to food security.¹⁵ It should step up in its participation in the United Nations Collaborative program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries¹⁶ (UN-REDD Programme), particularly with regard to the latter's prescriptive and normative functions, and other REDD+ design processes to ensure that food security and the proper allocation of benefits are taken into account.¹⁷ In light of the uncertainty as to what governance structure will emerge in REDD+ programs, it is crucial for the FAO to take the lead. It can be an effective body for providing a counter-narrative to balance out the Ecological Modernization and Green Governmentality discourses.

Part II of this Article will give an overview of what REDD/REDD+ is, a background of how it emerged in the climate change discourse, and the current debate about its governance structure. Part III will discuss the tension between food security, agriculture, and REDD+, what the role of the FAO has been, and the issue on tenure and the Voluntary Guidelines.

13. *Id.*

14. *See* About FAO, *supra* note 6.

15. *Id.*

16. *See* United Nations Collaborative Program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries Official Website, About United Nations Collaborative program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme), *available at* <http://www.un-redd.org/AboutUN-REDDProgramme/tabid102613/Default.aspx> (last accessed Dec. 2, 2013).

17. *See* Framework Document, United Nations Collaborative Program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries Official Website, *available at* http://www.un-redd.org/Portals/15/documents/publications/UN-REDD_FrameworkDocument.pdf (last accessed Dec. 2, 2013).

Part IV will discuss the three main forest governance environmental discourses, and argue that the FAO, while being a participant of the Ecological Modernization and Green Governmentality discourses can, and should be, an agent of the Civic Environmentalism discourse. In the absence of a consensus on what the governance structure will be, the FAO is in a unique position to advance social justice principles, particularly the right to food security, in the REDD+ discourse.

II. THE DEVELOPMENT OF REDD AND REDD+

Reducing Emissions from Deforestation and Forest Degradation¹⁸ (REDD) is premised on the idea that developing countries are given incentives to decrease deforestation rates and, in case success is achieved, are rewarded financially.¹⁹ Preventing the deforestation of existing forests, which cover around 30% of the land surface of the planet, is a more effective way of reducing emissions than afforestation or reforestation.²⁰ On the one hand, newly planted forests only potentially reduce emissions until their full growth and such growth takes a great amount of time.²¹ On the other hand, when existing forests are conserved, the reduction of greenhouse gases, which would have been emitted from the cutting and burning of trees, is immediate.²² It is estimated that emissions relating to forests and land use change account for up to 17% of annual global greenhouse gas emissions.²³ Notably, housed in their biomass, the Earth's forests contain around 240,441 million tons of carbon stock.²⁴

18. See UN-REDD Programme Official Website, About REDD+, available at <http://www.un-redd.org/AboutREDD/tabid/102614/Default.aspx> (last accessed Dec. 2, 2013).

19. See Constanze Haug & Joyeeta Gupta, *The Emergence of REDD on the Global Policy Agency*, in CLIMATE CHANGE, FORESTS AND REDD: LESSONS FOR INSTITUTIONAL DESIGN 77 (Joyeeta Gupta, et al. eds., 2013).

20. See Lee Godden, et al., *Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD): Implementation Issues*, 36 MONASH U. L. REV. 139 (2010) & COLIN A.G. HUNT, CARBON SINKS AND CLIMATE CHANGE: FORESTS IN THE FIGHT AGAINST GLOBAL WARMING 186-206 (2009).

21. *Id.*

22. *Id.*

23. United States Environmental Protection Agency, Global Greenhouse Gas Emissions Data, available at <http://www.epa.gov/climatechange/ghgemissions/global.html> (last accessed Dec. 2, 2013).

24. Biomass is the quantity of living plant material in forests. Knowing the spatial distribution of biomass is important for many reasons, such as calculating the sources and sinks of carbon that result from converting a forest to cleared land

The idea of REDD appeals to developed countries because it presents a cost-effective way to meet emission reduction targets.²⁵ REDD is also attractive to developing countries as a mechanism to access funding and as a mechanism to gain greater participation in the climate change regime.²⁶ However, in spite of its mass appeal and of the great potential of REDD initiatives to contribute to climate change mitigation efforts, the inherent difficulties in implementing a system that addresses all relevant issues have, thus far, effectively barred its entry into the international regime.²⁷

A. The Journey from the UNFCCC to Doha

The United Nations Framework Convention on Climate Change²⁸ (UNFCCC) does not specifically allude to REDD mechanisms.²⁹ However, it does recognize forestry as a sector in which anthropogenic emissions of greenhouse gases may be reduced or prevented.³⁰ It also provides that Parties to the Convention (Parties) have a duty to conserve, enhance, and promote the sustainable management of forests.³¹

In the Kyoto Protocol to the UNFCCC³² (Kyoto Protocol), Parties pledged to promote “sustainable forest management practices, afforestation[,] and reforestation.”³³ The Kyoto Protocol also directed the Conference of Parties (COP) to deliberate, and issue guidelines and rules, on how greenhouse gas emissions and removals from the forestry sector will relate to

and vice versa. See Georg E. Kindermann, et al., *A Global Forest Growing Stock, Biomass and Carbon Based Map Based on FAO Statistics*, 42 (3) SILVA FENNICA 387 (2008).

25. See Australian Council for International Development, *Can Money Grow on Trees? (An Unpublished Research Paper About How REDD Will Affect Developing Countries)* 4-5, available at <http://www.acfid.asn.au/resources-publications/files/acfid-redd-report> (last accessed Dec. 2, 2013).

26. *Id.*

27. ALEXANDAR ZAHAR, ET AL., *AUSTRALIAN CLIMATE LAW IN GLOBAL CONTEXT* 229-32 (2013).

28. United Nations (U.N.) Framework Convention on Climate Change (UNFCCC), *opened for signature* June 4, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

29. *Id.*

30. *Id.* art. 4 (1) (c).

31. *Id.* art. 4 (1) (d).

32. Kyoto Protocol to the UNFCCC, *opened for signature* Mar. 16, 1998, 37 ILM 22 [hereinafter Kyoto Protocol].

33. *Id.* art. 2 (1) (a) (ii).

the obligations of the Parties included in Annex I of the Kyoto Protocol.³⁴ Forestry and land-use projects can be used by Annex I countries to achieve their target caps.³⁵ Net-Net accounting was allowed to be used by Annex I countries to measure emissions from deforestation between the 1990 base level and the 2008–2012 level.³⁶

The Kyoto Protocol also contained a general directive to include forestry management in mitigation and adaptation measures of the Parties' national and regional programs.³⁷ The Kyoto Protocol however stopped short of identifying REDD as a specific mechanism for the reduction of emissions.³⁸ Specifically, there was no mention of REDD as an available mechanism for the carbon emissions market.³⁹

Interested parties, rainforest nations in particular, have prompted the COP to include REDD and REDD+ in the climate change discourse.⁴⁰ In Montreal, rainforest nations, headed by Costa Rica and Papua New Guinea, called for a reopening of discussions on credits for REDD activities.⁴¹ They urged the COP to highlight deforestation as a substantial cause of greenhouse

34. *Id.* art. 3 (4).

35. *Id.*

36. Net-Net accounting is the term used when deforestation as a net source of emission, in the first commitment period 2008–2012, is measured against the 1990 level. See HUNT, *supra* note 20, at 191.

37. See Kyoto Protocol, *supra* note 32.

38. According to the Kyoto Protocol, countries that want to limit or reduce their emissions must meet their targets primarily through national measures. As an additional means of meeting these targets, the Kyoto Protocol introduced three market-based mechanisms — Emissions Trading, the Clean Development Mechanism, and Joint Implementation. The Kyoto Protocol did not mention that REDD was one of the mechanisms. See UNFCCC, The Mechanisms under the Kyoto Protocol: Emissions Trading, the Clean Development Mechanism, and Joint Implementation, *available at* http://unfccc.int/kyoto_protocol/mechanisms/items/1673.php (last accessed Dec. 2, 2013).

39. *Id.*

40. See Coalition for Rainforest Nations, UNFCCC Official Website, *available at* http://unfccc.int/methods/redd/redd_web_platform/items/6655.php (last accessed Dec. 2, 2013).

41. See UNFCCC, Montreal Climate Change Conference — December 2005, *available at* http://unfccc.int/meetings/montreal_nov_2005/meeting/6329.php (last accessed Dec. 2, 2013) & UNFCCC, Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action, FCCC/CP/2005/MISC.1, 2 (Nov. 11, 2005).

gas emissions and called for an urgent and active discussion on possible approaches.⁴²

In Bali, forests were named as a priority area in the Bali Action Plan,⁴³ as rainforest countries were prodded to look into REDD initiatives and there was a discussion on what would constitute appropriate and applicable financial assistance.⁴⁴ It was the first time that the UNFCCC endorsed the development of a REDD mechanism.⁴⁵ As provided in the Bali Action Plan, the Parties agreed to initiate negotiations with the purpose of developing a Long-term Cooperative Action Plan (LCA).⁴⁶ Parties were also allowed to proceed with REDD-related initiatives independently and on a voluntary basis.⁴⁷

Taking a cue from the Bali Action Plan, the Copenhagen Accord⁴⁸ declared support for Reducing Emissions from Deforestation and Forest Degradation including conservation,⁴⁹ sustainable management of forests,⁵⁰ and enhancement of forest carbon stocks (REDD+) efforts,⁵¹ and declared the formation of a mechanism to organize and use finances from developed countries.⁵² Six countries agreed to commence the initial funding for REDD+ in the amount of \$30 billion.⁵³

42. *Id.*

43. UNFCCC, *Bali Action Plan*, Decision 1/CP.13 at 1 (b), FCCC/CP/2007/6/Add.1 (Dec. 3-15, 2007).

44. The 13th Session of the Conference of the Parties (COP) to the Kyoto Protocol took place in Bali and was hosted by the Government of Indonesia. See UNFCCC on Climate Change, *Bali Climate Change Conference — December 2007*, available at https://unfccc.int/meetings/balidec_2007/meeting/6319.php (last accessed Dec. 2, 2013) & UNFCCC, *Report on the Conference of the Parties on its 13th Session, held in Bali from 3 to 15 December 2007*, FCCC/CP/2007/6/Add.1, 3 (Mar. 14, 2008).

45. Godden, et al., *supra* note 20, at 242.

46. *Id.*

47. *Id.* at 243.

48. See *Copenhagen Accord*, UNFCCC Official Website, available at http://unfccc.int/meetings/copenhagen_dec_2009/items/5262.php (last accessed Dec. 2, 2013).

49. UNFCCC, *Copenhagen Accord*, FCCC/CP/2009//11/Add.1, 11 (Dec. 18, 2009).

50. *Id.*

51. *Id.*

52. The 15th Conference of the Parties to the Kyoto Protocol took place in Copenhagen and was hosted by Denmark. It culminated in the Copenhagen

In Cancun, there was an agreement that developing countries be requested to develop national strategies or action plans relating to REDD+.⁵⁴ Along with the national strategies or action plans, developing countries were called on to implement a national forest emission level and a robust and transparent national system for the monitoring and reporting of REDD activities.⁵⁵ Significantly, and as will be discussed in Part III of this Article, there was a mention of safeguards, including the rights of local communities and indigenous peoples.⁵⁶ In Durban, there was an agreement on the possibility of private financing for REDD+ and there was further discussion on safeguards and forest reference emission levels.⁵⁷ In Doha, the Parties agreed on the measurement of deforestation and indicated support for initiatives to prevent deforestation.⁵⁸ In the 16th Session, the COP decided to adopt a results-based financed approach to implement the following

Accord. See Canada's Action on Climate Change, Copenhagen Accord, available at <http://www.climatechange.gc.ca/default.asp?lang=En&n=AA3F6868-1> (last accessed Dec. 2, 2013) & UNFCCC, *Copenhagen Accora*, FCCC/CP/2009/L.7, 2-3 (Dec. 18, 2009).

53. *Id.*

54. The 16th COP to the Kyoto Protocol took place in Cancun and was hosted by the Government of Mexico. See UNFCCC, Cancun Climate Change Conference — November 2010, available at http://unfccc.int/meetings/cancun_nov_2010/meeting/6266.php (last accessed Dec. 2, 2013) & UNFCCC, *Report on the Conference of the Parties on its 16th Session, held in Cancun from 29 November to 10 December 2010*, FCCC/CP/2010/7/Add.1, 12-13 (Mar. 15, 2011).

55. *Id.*

56. Leo Peskett & Kimberly Todd, Putting REDD+ Safeguards and Safeguard Information Systems into Practice, available at http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=9167&Itemid=53 (last accessed Dec. 2, 2013).

57. The 17th COP to the Kyoto Protocol took place in Durban and was hosted by South Africa. See UNFCCC, Durban Climate Change Conference — November/December 2011, available at http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php (last accessed Dec. 2, 2013) & UNFCCC, *Report on the Conference of the Parties on its 17th Session, held in Durban from 28 November to 11 December 2011*, FCCC/CP/2011/9/Add.1, 34 (Mar. 15, 2012).

58. The 18th COP to the Kyoto Protocol took place in Doha and was hosted by Qatar. See UNFCCC, Doha Climate Change Conference — November 2012, available at http://unfccc.int/meetings/doha_nov_2012/meeting/6815.php (last accessed Dec. 2, 2013) & UNFCCC, *Report on the Conference of the Parties on its 18th Session, held in Doha from 26 November to 8 December 2012*, FCCC/CP/2012/8/Add.1, 7 (Feb. 28, 2013).

REDD+ activities: (1) reducing emissions from deforestation;⁵⁹ (2) reducing emissions from forest degradation;⁶⁰ (3) conservation of forest carbon stocks;⁶¹ (4) sustainable management of forests;⁶² and (5) enhancement of forest carbon stocks.⁶³

B. REDD+ Governance

Notwithstanding the apparent momentum that REDD+ has gained in international negotiations, the details regarding the regulatory frameworks to support REDD activities remain largely unresolved.⁶⁴ The Subsidiary Body for Scientific and Technological Advice⁶⁵ (SBSTA) was requested to “consider existing institutional arrangements or potential governance alternatives including a body, a board, or a committee, and to make recommendations on these matters to the [COP] at its [19th] session.”⁶⁶ It was also requested to consider the ability of non-market based approaches to support REDD+ activities and to explore the non-carbon benefits thereof.⁶⁷

In the 18th Session, the COP invited parties and organizations with observer status to submit their views on REDD+.⁶⁸ As of 25 March 2013, there were 14 submissions — 11 submissions from member countries and three from non-governmental organizations,⁶⁹ such as the Climate Action Network International,⁷⁰ Environmental Defense Fund,⁷¹ Union of

59. *Report on the Conference of the Parties on its 16th Session, held in Cancun from 29 November to 10 December 2010*, *supra* note 54, at 12.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. Godden, et al., *supra* note 20.

65. See UNFCCC Official Website, Subsidiary Body for Scientific and Technological Advice (SBSTA), available at <http://unfccc.int/bodies/body/6399.php> (last accessed Dec. 2, 2013).

66. *Report of the Conference of the Parties on its 18th Session, held in Doha from 26 November to 8 December 2012*, *supra* note 58, at 8.

67. *Id.*

68. *Id.*

69. UNFCCC SBSTA and Subsidiary Body for Implementation (SBI), *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35*, FCCC/SBI/2013/MISC.3 (Apr. 26, 2013).

70. UNFCCC, *Submissions from Observer Status to the ADP*, available at http://unfccc.int/documentation/submissions_from_observers/items/7479txt.php (last accessed Dec. 2, 2013).

Concerned Scientists,⁷² Rainforest Alliance,⁷³ Woods Hole Research Center,⁷⁴ National Wildlife Federation,⁷⁵ Wildlife Conservation Society,⁷⁶ The Nature Conservancy,⁷⁷ and International Emissions Trading Association.⁷⁸

The following table shows their views on the REDD+, particularly on the governance structure.

Table 1. A Table Showing the REDD+ Views of the Different Parties and Organizations with Observer Status

Coalition for Rainforest Nations (Bangladesh, Belize, Chad, Congo, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Dominican Republic, Fiji, Gabon, Ghana, Guatemala, Guyana, Honduras, Kenya, Nigeria, Panama, Papua New Guinea, Solomon Islands, Suriname, Uganda, and Vietnam) ⁷⁹	Called for the creation of a REDD+ committee to oversee implementation of REDD+ activities. The REDD+ committee would be under the authority of the COP. There is no governance framework under the UNFCCC for REDD+ and with parties having agreed on institutional arrangements for other areas (e.g., Global Environment Facility, National Appropriate Mitigation Actions), there is sufficient precedent for
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71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Submissions from Observer Status to the ADP, *supra* note 70.

77. *Id.*

78. *Id.*

79. *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35, supra* note 69, at 4.

	the creation of a REDD+ body. ⁸⁰ A REDD+ Committee will be beneficial for developing countries in addressing cross-cutting issues. ⁸¹
Bolivia ⁸²	In COP 19, a decision on specific institutional arrangements should be reached by the Parties. ⁸³
Chad on behalf of Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda, and Sao Tome and Principe (Countries of the Congo Basin meeting within the Commission of Central African Forests (COMIFAC)) ⁸⁴	There is a need for the establishment of a Council for REDD+ mechanism. ⁸⁵ Funding should come from public and private sources. ⁸⁶
Chile ⁸⁷	Expressed concern over the benefits of a new governance system and the delay to be caused by the establishment of a new body. ⁸⁸ There are already existing

80. *Id.*

81. *Id.* at 6-7.

82. *Id.* at 11.

83. *Id.*

84. *Id.*

85. *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35, supra note 69, at 15.*

86. *Id.*

87. *Id.* at 16.

88. *Id.* 16-17.

	Organizations/Programs with accumulated experience. Their capabilities should be strengthened and they should be made to report, in an official capacity, to the UNFCCC Secretariat and the COP. ⁸⁹
Indonesia, and Indonesia on behalf of Association of Southeast Asian Nations (ASEAN) Countries (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) ⁹⁰	<p>There is a need for improvement in coordination of support. Improved coordination will facilitate disbursements, promote transparency and will assist in the identification of gaps and overlaps.⁹¹</p> <p>Expressed that they are open to exploring potential governance alternatives such as a committee, board, or body.⁹²</p> <p>There is a need for a Registry to track REDD+ activity and performance. The Secretariat can act as the interim Registry.⁹³</p>
Ireland and the European Commission on behalf of the European Union (EU) and its member States (supported by Albania, Croatia, Bosnia, and Herzegovina, the Former Yugoslav Republic of	<p>While the EU pledged to continue to contribute to REDD+ programs, it considers domestic funding as the primary source of finance and private sector investments having a critical role.⁹⁵</p> <p>It does not find value in creating new</p>

89. *Id.*

90. *Id.*

91. *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35, supra note 69, at 18–22.*

92. *Id.* at 22.

93. *Id.*

95. *Id.* at 27.

Macedonia, Montenegro and Serbia) ⁹⁴	<p>structures. Support for REDD+ should be done through improving existing arrangements instead. The creation of a new body could cause delay, divert resources, and hinder institutional economy.⁹⁶</p> <p>The SBSTA should recommend ways to strengthen already existing institutional arrangements. In the interim, REDD+ Partnership plays a central role.⁹⁷</p>
Nepal on behalf of Least Developed Countries ⁹⁸	<p>Developed countries should meet obligations relating to technological and financial transfers to least developed countries.⁹⁹</p> <p>There is a need for systematic valuation of forests.¹⁰⁰</p> <p>There is a need for the establishment of a REDD+ coordination body and a REDD+ advisory committee.¹⁰¹</p>
Pakistan ¹⁰²	<p>There is a need to improve coordination among three United Nations implementing agencies within Pakistan.¹⁰³</p>

94. *Id.* at 23.

96. *Id.* at 30-31.

97. *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35, supra* note 69, at 30-31.

98. *Id.* at 32.

99. *Id.*

100. *Id.*

101. *Id.* at 33.

102. *Id.* at 34.

103. *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35, supra* note 69, at 34.

	<p>There is sufficient coordination among donors/investors at the level of the UN-REDD Policy Board and REDD+ Partnership but no mechanism for coordination among donors/investors at the country level. A country-level REDD+ Donors/Investors coordination group should be established.¹⁰⁴</p> <p>Proactive participation of FAO and UNDP in the National REDD Steering Committee is required.¹⁰⁵</p>
Switzerland and Mexico	<p>There is a need to map out the functions of existing institutions to determine complementarity and overlaps.¹⁰⁶</p> <p>Coordination activities under REDD+ Interim Partnership should transition into UNFCCC.¹⁰⁷</p> <p>Creating an institution within UNFCCC in COP 19 will pre-empt the outcome of the evolution of markets. Instead, it is advisable to integrate the forest sector within the overall institutional sector under COP 20.¹⁰⁸</p> <p>They recommend a governance structure with private sector participation.¹⁰⁹</p>

104. *Id.*

105. *Id.*

106. *Id.* at 36.

107. *Id.* at 37.

108. *Id.* at 38.

109. *Views on the matters referred to in decision 1/CP.18, paragraphs 34 and 35, supra note 69, at 39.*

U.S. ¹¹⁰	<p>It does not support the view that a new institutional or governance structure is necessary.¹¹¹</p> <p>The integration of REDD+ activities into existing mechanisms would be more effective.¹¹²</p> <p>There are tools to improve coordination: national REDD+ strategies and action plans, voluntary REDD+ database, creation of a system to track units of net emission reductions.¹¹³</p> <p>There is a need to entertain creative ideas on REDD+ finance generation such as government bonds and tax concessions.¹¹⁴</p>
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The foregoing responses of the Parties reflect deep fragmentation concerning the REDD+ governance regime. It is interesting to note that the Coalition of Rainforest Nations,¹¹⁵ the Least Developed Countries,¹¹⁶ the COMIFAC,¹¹⁷ and the ASEAN countries¹¹⁸ favor the establishment of a

110. *Id.* at 40.

111. *Id.*

112. *Id.* at 42.

113. *Id.*

114. *Id.* at 43.

115. Coalition for Rainforest Nations, *supra* note 40.

116. See UNFCCC Official Website, Least Developed Country (LDC) Information, available at http://unfccc.int/cooperation_and_support/ldc/items/3097.php (last accessed Dec. 2, 2013).

117. See UNFCCC, Congo Basin & COMIFAC Approaches (A PowerPoint Presentation Delivered at the 2d UNFCCC Workshop on Reducing Emissions from Deforestation in Developing Countries), Cairns, Mar. 7-9, 2007 available at <http://unfccc.int/files/methods/lulucf/application/pdf/070307malinbangar2.pdf> (last accessed Dec. 2, 2013).

118. See Association of Southeast Asian Nations (ASEAN) Official Website, Overview, available at <http://www.aseansec.org/overview/> (last accessed Dec. 2, 2013).

separate REDD+ body, whether by way of committee, council, or board. On the other hand, developed countries such as the U.S. and the EU states do not support the establishment of a separate body and prefer instead to deal with REDD+ within existing institutions. That there is a divergence in the viewpoint of developed and developing countries with regard to governance structures highlights the fact that there is no consensus on the structure and implementation of REDD+.

III. THE FOOD SECURITY AND REDD+ INTERSECT

A. Tensions

When there are tensions between international regimes, coordination and cooperation among institutions can help avoid or resolve conflicts.¹¹⁹ With REDD+, there is a significant opportunity to address potential conflicts before they arise.¹²⁰ This is because of the fact that REDD+ rules have not yet been drafted and finalized.¹²¹

In the absence of conflict provisions in the UNFCCC, the COP has issued decisions that anticipate conflicts and prescribe the methodology of safeguards in addressing such prospective conflicts.¹²² In the Cancun Agreements, the COP requested the member Parties to address issues relating to land tenure, food governance, gender, and safeguards.¹²³ The safeguards are located in Appendix I of the Decision and include consistency with “the objectives of national forest programs and relevant international conventions and agreements.”¹²⁴ Thus, the COP has anticipated the issue of both food security and food governance, directly by virtue of Section 72¹²⁵ and indirectly by reference to safeguards.¹²⁶ Although Professor Annalisa

119. Annalisa Savaresi, REDD+'s Role in Harmonizing Overlapping International Obligations (A Report Delivered at the International Center for Climate Governance in Venice, Italy), *available at* http://www.neln.life.ku.dk/NELN-events/Past_plus_events/NELNWorkshop_Helsinki_2011/~media/Neln/docs/Helsinki/Savaresi.ashx (last accessed Dec. 2, 2013).

120. Rainforest Foundation Norway, A Complaint Mechanism for REDD+ (An Unpublished Report from the Center for International Environmental Law and Rainforest Foundation Norway) 5, *available at* http://www.ciel.org/Publications/REDD+_ComplaintMech_May11.pdf (last accessed Dec. 2, 2013).

121. *Id.* at 12.

122. Peskett & Todd, *supra* note 56.

123. *Id.* at 2.

124. *Id.*

125. *Report on the Conference of the Parties on its 16th Session, held in Cancun from 29 November to 10 December 2010*, *supra* note 54, at 13.

126. Peskett & Todd, *supra* note 56.

Saveresi is cautious about the legal force of COP decisions, as well as the fact that the reference to safeguards is not equivalent to conflict resolution, she is optimistic that this will pave the way for its being addressed in the UNFCCC framework.¹²⁷

Human rights, to which the right to food security belongs, have the ability to constrain REDD+ actions or collectively be a useful tool in drafting the relevant instruments.¹²⁸ Thus, there is a potential for both “friction and synergy.”¹²⁹ In the absence of a governing REDD+ treaty or law, some authors have suggested that the implementing bodies, such as the Forest Carbon Partnership Facility¹³⁰ (FCPF) and the UN-REDD Programme implement their schemes with due regard to human rights principles.¹³¹ A significant issue arising from this approach is that not all parties that may qualify to carry out REDD+ activities are signatories to human rights treaties, and by mandating human rights safeguards, it may amount to forcing these parties to comply with obligations they have not agreed to in the first place.¹³² Another issue is that injecting human rights issues into REDD+ negotiations may add to the complexity thereof.¹³³

Despite these concerns, it is apparent that systemic integration of all relevant institutions, implementing agencies, and national governments is the most reasonable way of addressing REDD+ related concerns.¹³⁴ On the one hand, it is uncertain whether member Parties that have not acceded to human rights instruments will object to the inclusion of some human rights principles to a REDD+ framework.¹³⁵ Member Parties may well find value in the human rights principles of food security, tenure, and co-benefits and acquiesce to the recognition of these principles. With regard to the complexity of negotiations, these should not be a hindrance to tackling the

127. Annalisa Savaresi, *The Role of REDD in the Harmonisation of Overlapping International Obligations*, in CLIMATE CHANGE AND THE LAW 401 (Erkki J. Hollo, et al. eds., 2010).

128. *Id.* at 411.

129. *Id.* at 410.

130. See UNFCCC Official Website, REDD Web Platform: Forest Carbon Partnership Facility, available at http://unfccc.int/methods/redd/redd_web_platform/items/6678.php (last accessed Dec. 2, 2013).

131. Savaresi, *supra* note 127, at 416.

132. *Id.*

133. *Id.* at 418.

134. *Id.* at 417-18.

135. *Id.*

fundamental questions in REDD+. The extreme benefits of having a suitable system far surpass the pain of the process that it will go through.¹³⁶

B. Food Security and Tenure

Agriculture is a significant cause of deforestation because forests are cleared to make the land more suitable for crop-planting.¹³⁷ With agriculture being the greatest cause of deforestation,¹³⁸ there exists an inherent tension between food security and REDD+ initiatives.¹³⁹ Poor communities from developing countries feel this tension more. The confiscation of the communities' ability to grow crops will have considerable impact on their vulnerability to food insecurity and their ability to break free of poverty.¹⁴⁰

The FAO observes that the emissions from agriculture are mostly from developing countries whose people depend greatly on agriculture for livelihood, thus bringing about the need to think about poverty reduction and food security in developing mitigation plans.¹⁴¹ Because REDD+ policies aim to conserve existing forest stocks, they would impede the expansion of crops and grazing areas.¹⁴² Global food prices are seen to rise by as much as 34% for crops and 18% for livestock by the year 2030.¹⁴³

An issue that arises is how to ensure that payment for REDD+ credits will inure to the benefit of local communities that lose income because they cannot convert forests for agricultural purposes.¹⁴⁴ It is ideal that the resultant

136. *Id.*

137. Sumit Chakravarty, et al., *Deforestation: Causes, Effects, and Control Strategies*, in GLOBAL PERSPECTIVES ON SUSTAINABLE FOREST MANAGEMENT 7 (Okia Clement Akais ed., 2010).

138. *Id.*

139. J. Jackson Ewing, *Forests, Food, and Fuel: REDD+ and Indonesia's Land-Use Conundrum* (An Unpublished Paper Submitted to the Centre for Non-Traditional Security Studies) 13-17, available at http://www.rsis.edu.sg/NTS/resources/research_papers/MacArthur_Working_Paper_Jackson_Ewing.pdf (last accessed Dec. 2, 2013).

140. *Id.*

141. UNFCCC, *Enabling Agriculture to Contribute to Climate Change Mitigation*, available at <http://unfccc.int/resource/docs/2008/smsn/igo/036.pdf> (last accessed Dec. 2, 2013).

142. Onno Kuik, *REDD Policies, Global Food, Fibre and Timber Markets, and Leakage*, in CLIMATE CHANGE, FORESTS AND REDD: LESSONS FOR INSTITUTIONAL DESIGN 207, 215 (Joyeeta Gupta, et al. eds., 2013).

143. *Id.* at 216.

144. See HUNT, *supra* note 20, at 203.

funds be used to increase productivity levels of existing agricultural land.¹⁴⁵ This bodes positively for both climate change mitigation and food security preservation. But the question of how it can be achieved is not yet apparent.

REDD+ initiatives would also affect the spending power of the poorest countries.¹⁴⁶ A simulation of a REDD-type policy was conducted whereby 28 million hectares of forests were conserved and the result was that not only will crop and livestock prices rise, income for poor countries would also fall.¹⁴⁷ In Indonesia, loss of income was projected at 0.7% of Gross Domestic Product (GDP).¹⁴⁸

According to Professor Colin A.G. Hunt, REDD+ activities and policies will have serious consequences for participating countries.¹⁴⁹ An immediate effect is loss of income to landowners.¹⁵⁰ In terms of preventing deforestation of areas that would have been converted into the production of an exportable product, such as palm oil, there will also be loss in export sales, loss in public revenue in terms of taxation, and loss of employment.¹⁵¹ The impact of forest conservation on job creation should be seriously considered as this effectively deprives local communities of an avenue to rise out of poverty.¹⁵² Coupled with the rise in food prices, poor local communities will become extremely susceptible to food insecurity.¹⁵³

With the increased impact on local communities, the issue of how to ensure that they are amply benefitted by REDD+ is thrust into the forefront. It is imperative to ensure that a proper process of identification of beneficiaries and distribution of benefits is put in place.¹⁵⁴ Thus arises the issue of tenure or the “systems of rights, rules, institutions[,] and process regulating resource access and use.”¹⁵⁵ Tenure is the instrument to determine who has carbon rights and who should be compensated financially under

145. *Id.*

146. *Id.* at 225.

147. *Id.*

148. *Id.*

149. *Id.*

150. See HUNT, *supra* note 20, at 190.

151. *Id.* at 203.

152. *Id.*

153. *Id.*

154. See Haug & Gupta, *supra* note 19, at 89.

155. *Id.* (citing LORENZO COTULA & JAMES MAYERS, TENURE IN REDD: START-POINT OR AFTERTHOUGHT? (2009)).

REDD+ programs.¹⁵⁶ Tenure cannot simply be equated with ownership. Instead, it operates within complex circles involving local communities, indigenous peoples, customary rights, and informal rights.¹⁵⁷ It is against this backdrop that the FAO has issued the Voluntary Guidelines,¹⁵⁸ which will be discussed in more detail in Part III (D) of this Article.

In case studies involving Vietnam, Indonesia, Peru, and Cameroon, land rights, access, and allocation have been identified as key issues to be addressed for the proper implementation of REDD+ policies.¹⁵⁹ Commodification of forests is likely to increase tensions about who has rights to the forest and the projected benefits of REDD+ projects.¹⁶⁰ It has been observed that the international focus on some local actors and their rights, such as indigenous peoples, may be to the disadvantage of other local actors such as the farmers and other members of the local community.¹⁶¹ This may result in an iniquitous situation where not all rights are protected, or some rights receive better protection than others.¹⁶²

C. *The Role of the FAO*

Food security is a core principle of the FAO.¹⁶³ In the International Undertaking on Food Security, which was adopted in 1974, it recognized the principle that food security is a shared responsibility of the international community as a whole.¹⁶⁴ Today, the FAO declares that “achieving food security for all is at the heart of [its] efforts.”¹⁶⁵

The long-term development and conservation of forests are FAO’s priority areas.¹⁶⁶ With the adoption of the Jakarta Declaration,¹⁶⁷ the FAO recognized early on that forest protection is integral to rural development

156. See Godden, et al., *supra* note 20.

157. *Id.*

158. FAO, Voluntary Guidelines, *supra* note 8.

159. See Gupta, et al., *supra* note 10, 194–98.

160. *Id.* at 195.

161. *Id.*

162. *Id.*

163. See FAO, About FAO, *supra* note 6.

164. FAO, World Food and Agriculture Situation, available at <http://www.fao.org/docrep/meeting/007/F5340E/F5340E03.htm> (last accessed Dec. 2, 2013).

165. See FAO, About FAO, *supra* note 6.

166. EDOUARD SAOUMA, FAO IN THE FRONT LINE OF DEVELOPMENT 119 (1993).

167. See FAO, Forestry: the Jakarta Declaration, available at <http://www.fao.org/docrep/x5565e/x5565e06.htm> (last accessed Dec. 2, 2013).

and environmental stability.¹⁶⁸ It played a prominent role in the 1972 United Nations Conference on the Human Environment¹⁶⁹ in Sweden where the issues of conservation vis-à-vis human needs were discussed.¹⁷⁰

In 2003, the FAO described its core work in forestry as providing “direct technical support” to countries to assist with the conservation and management of forests and the harvest of products, and helping them ensure that “people reap benefits equitably.”¹⁷¹ In the context of economic viability and sustainable use, the FAO confirmed that it was available to assist member countries in order to strengthen forest-related institutions as well as with the formulation of forest policies.¹⁷² The FAO declared itself as a “neutral forum, bringing countries together to discuss technical and policy issues related to forestry.”¹⁷³ Drawing on its mandate to deal with forestry issues, the FAO saw itself as having an instrumental role in shaping the discussions on international policy.¹⁷⁴ According to the FAO, it is a forum consisting of broad participation, not only of policy-makers from the government, but also of local organizations, the private sector, and non-governmental organizations.¹⁷⁵ The FAO claimed that it has work in participatory and community forestry to ensure that local communities are able to share in benefits.¹⁷⁶ It aims to explore ways on how forests and forestry can provide livelihood for the poor, thus supporting its objectives of food security and poverty alleviation.¹⁷⁷

With regard to its goal of assisting countries in planning strategies, the FAO expresses belief in the enhancement of forest management by using financial and economic principles and tools such as cost-benefit analysis, economic appraisal, and valuation of products.¹⁷⁸

168. SAOUMA, *supra* note 166, at 121.

169. See Declaration of the United Nations Conference on the Human Environment, Audiovisual Library of International Law Website, available at <http://legal.un.org/avl/ha/dunche/dunche.html> (last accessed Dec. 2, 2013).

170. SAOUMA, *supra* note 166, at 168.

171. FAO, FAO STRATEGY FOR FORESTS AND FORESTRY 3-4 (2003) [hereinafter FAO, FAO Strategy].

172. *Id.* at 5.

173. *Id.*

174. *Id.* at 2.

175. *Id.* at 5.

176. *Id.* at 5-8.

177. FAO, FAO Strategy, *supra* note 171, at 9.

178. *Id.* at 8.

Together with the United Nations Development Programme¹⁷⁹ (UNDP) and the United Nations Environment Programme¹⁸⁰ (UNEP), the FAO is a key implementing agency of the UN-REDD Programme. UN-REDD was founded in 2008 as an initiative to support developing countries in the preparation and implementation of REDD strategies¹⁸¹ and to develop “normative solutions and standardized approaches based on sound science for a REDD instrument linked with UNFCCC.”¹⁸² The UN-REDD Programme is an official observer of the Forest Carbon Partnership Facility (FCPF)¹⁸³ and also works in collaboration with the Forest Investment Program.¹⁸⁴

In 2010, the FAO recognized one strategic objective: the sustainable management of forests and trees.¹⁸⁵ With sustainable management as a tool, it considered forestry initiatives as consistent with food security and poverty alleviation.¹⁸⁶ The FAO, claiming 60 years of experience in forestry, acknowledged that it possessed a set of core functions relating to forestry, which includes “[l]eading the development of voluntary guidelines, supporting the development of national legal instruments, and promoting their implementation.”¹⁸⁷

179. See United Nations Development Programme (UNDP), Overview, *available at* <http://www.undp.org/content/undp/en/home/ourwork/overview.html> (last accessed Dec. 2, 2013).

180. See United Nations Environment Programme (UNEP), The Voice of the Environment, *available at* <http://www.unep.org/About/> (last accessed Dec. 2, 2013).

181. UNDP Newsroom, U.N., Norway Combat Climate Change From Deforestation, *available at* <http://content.undp.org/go/newsroom/2008/september/la-onu-y-noruega-se-unen-para-luchar-contra-el-cambio-climtico-en> (last accessed Dec. 2, 2013).

182. UNDP, UN-REDD Programme (An Unpublished Paper About the UN-REDD Programme) 1, *available at* <http://www.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/climate-change/un-redd-programme-brochure/unredd.pdf> (last accessed Dec. 2, 2013).

183. See Forest Carbon Partnership Facility (FCPF), Official Observers, *available at* <http://www.forestcarbonpartnership.org/official-observers> (last accessed Dec. 2, 2013).

184. See Climate Investment Funds, REDD-plus Collaboration, *available at* <https://www.climateinvestmentfunds.org/cif/node/3433> (last accessed Dec. 2, 2013).

185. FAO, FAO Strategy, *supra* note 171, at 4.

186. *Id.* at 3-4.

187. *Id.* at 3.

D. Social Justice in the Voluntary Guidelines

In 2012, the FAO's Committee on World Food Security endorsed the Voluntary Guidelines as a standard of governance of tenure for forests under the "overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security."¹⁸⁸ According to the FAO, the Voluntary Guidelines are "aimed at helping governments safeguard the rights of people to own or access land, forests[,] and fisheries."¹⁸⁹ Though the value of FAO-issued, voluntary, non-binding instruments has been put into question, they have the capacity of establishing an influential normative framework¹⁹⁰ and act as the foundation of cooperative efforts by the relevant actors.¹⁹¹ Voluntary instruments fill in the gaps left by other international agreements and have the advantage of linking state and non-state actors, and concretizing principles into specific rules.¹⁹²

Social justice provisions are entrenched throughout the Voluntary Guidelines. The principal objective of the Voluntary Guidelines is to improve governance of tenure for the benefit of all, with an emphasis on vulnerable and marginalized people.¹⁹³ In Part III (B) of the Voluntary Guidelines, the principles of equity and justice, human dignity, gender equality, non-discrimination, and consultation and participation are distinctly identified as essential for the implementation of responsible governance of tenure.¹⁹⁴

The Voluntary Guidelines state that tenure rights should be considered in the context of human rights and general welfare, and, as such, no tenure right is absolute.¹⁹⁵ The civil, cultural-political, social, and economic rights of affected persons such as peasants, indigenous peoples, and rural workers¹⁹⁶ should be recognized and protected, even if they are not currently formally

188. FAO, *About the Voluntary Guidelines on the Responsible Governance of Tenure*, available at <http://www.fao.org/nr/tenure/voluntary-guidelines/en/> (last accessed Dec. 2, 2013).

189. *Id.*

190. Jurgen Friedrich, *Legal Challenges of Nonbinding Instruments: The Case of the FAO Code of Conduct for Responsible Fisheries*, 9 GERMAN L. J. 1539, 1561 (2008).

191. *Id.*

192. *Id.* at 1544-51.

193. FAO, *Voluntary Guidelines*, *supra* note 8, at 1.

194. *Id.* at 4.

195. *Id.* at 5.

196. *Id.* at 6.

recognized or protected under the law.¹⁹⁷ Hence, in allocating or recognizing tenure rights, adequate safeguards should be implemented to ensure that tenure rights of others, including those that are not presently protected under the law, are not violated.¹⁹⁸ States are obliged to identify all tenure and right holders, regardless of whether their rights are on record, including customary tenure holders, smallholders, and indigenous peoples.¹⁹⁹ Customary tenure holders should also be recognized when it is the state that owns the land or controls its use.²⁰⁰ With regard to benefits that may be derived from state-owned land or forests, tenure rights policies should ensure proper consultation, participation, and equitable distribution.²⁰¹

The Voluntary Guidelines promotes inclusiveness by providing that laws, policies, and procedures be developed through participatory processes that engage all affected parties.²⁰² Further, the Voluntary Guidelines requires information sharing on tenure rights to all sectors, including local communities, indigenous peoples, the private sector, the academe, civil society, and the general public.²⁰³ With regard to vulnerable or marginalized groups, states are directed to consider providing additional measures of support to promote access to legal, judicial, and administrative services.²⁰⁴

Sections 9 and 10 provide special attention to customary tenure, particularly to tenure of indigenous peoples, and informal tenure.²⁰⁵ States are required to recognize and protect the legitimate tenure rights of indigenous peoples and communities which have customary tenure systems, with due regard to international law obligations and voluntary commitments.²⁰⁶ Section 9.2 encourages indigenous peoples and communities with customary tenure to promote the effective participation of all members, regardless of sex or age, in the decision-making process.²⁰⁷ Prior to the initiation of any project or measure that would affect the resources to which the communities have rights, states are required to undergo good faith, effective, and meaningful consultations to obtain their

197. *Id.*

198. *Id.* at 11.

199. FAO, Voluntary Guidelines, *supra* note 8, at 11.

200. *Id.* at 12.

201. *Id.*

202. *Id.* at 7.

203. *Id.* at 9.

204. *Id.*

205. FAO, Voluntary Guidelines, *supra* note 8, at 14-16.

206. *Id.* at 14.

207. *Id.*

free, prior, and informed consent.²⁰⁸ With regard to informal tenure, states are required to promote a process that is participatory and gender-sensitive before establishing policies and laws that would provide legal recognition.²⁰⁹ States are encouraged to provide special attention to small-scale food producers and farmers.²¹⁰

Part IV of the Voluntary Guidelines contains provisions applicable when rights or duties are reallocated or transferred through transactions or markets as a result of, among others, investments.²¹¹ Under Section 12.1 of the Voluntary Guidelines, the FAO requires responsibility in the making of investments to ensure that food security improves.²¹² States should also support smallholder producers in recognition of their contribution to food security, environmental resilience, and poverty reduction.²¹³ The FAO discourages large-scale transfers of rights to investors — it prefers partnerships with local tenure right holders instead.²¹⁴ The FAO compels states to assess impacts of investments on tenure right holders, particularly in the context of food security, livelihood, and the environment.²¹⁵

Section 15.1 encourages states to consider undertaking redistributive reforms, as they “can facilitate broad and equitable access to land and inclusive rural development.”²¹⁶ In the event that states do decide to implement redistributive reforms, the Voluntary Guidelines requires that laws and policies are developed through participatory processes²¹⁷ and that they are implemented through transparent, accountable, and participatory procedures.²¹⁸

Section 20.4 of the Voluntary Guidelines requires states to ensure that, in developing spatial plans, there is wide public participation, and that the interests and priorities of food-producing communities and indigenous peoples are included.²¹⁹ States are also required to provide support to

208. *Id.* at 15.

209. *Id.* at 16.

210. *Id.*

211. FAO, Voluntary Guidelines, *supra* note 8, at 17.

212. *Id.* at 18.

213. *Id.*

214. *Id.* at 19.

215. *Id.* at 20.

216. *Id.* at 22.

217. FAO, Voluntary Guidelines, *supra* note 8, at 23.

218. *Id.*

219. *Id.* at 28.

communities during the planning process and to disclose how public inputs were incorporated in the final plans.²²⁰

Section 23 of the Voluntary Guidelines applies specifically to mitigation and adaptation initiatives to respond to climate change, which would include REDD+ initiatives.²²¹ Section 23.2 requires states to ensure that all people, both women and men, who are under the risk of displacement, should be consulted and should participate in the preparation of strategies and actions.²²² Likewise, with regard to mitigation and adaptation programs, the consultation and participation of marginalized people, small-scale food producers, and farmers is required.²²³

As identified above, social justice provisions are prevalent in the Voluntary Guidelines. It has been observed that civil society organizations have criticized the Voluntary Guidelines for not expressly banning land-grabbing and for not containing explicit references to the U.N. Declaration on the Rights of Indigenous Peoples.²²⁴ Nonetheless, the Voluntary Guidelines promotes the adoption of standards that are anchored in human rights principles and obligations.²²⁵ In the implementation of the principles of equity and justice, human dignity, gender equality, non-discrimination, and consultation and participation, the Voluntary Guidelines requires states to accord respect and recognition to all persons who may be affected by tenure-related policies, laws, decisions, processes, services, transactions, and projects. The Voluntary Guidelines is a soft-law instrument.²²⁶ Being a soft-law instrument, it is able to generate “the pull of legitimacy”²²⁷ of social justice principles through the articulation of common goals notwithstanding the absence of any sanctions that may be applied to violations thereof.²²⁸

220. *Id.* at 28–29.

221. *Id.* at 31.

222. *Id.*

223. FAO, Voluntary Guidelines, *supra* note 8, at 31.

224. Philip Seufert, *The FAO Voluntary Guidelines of the Responsible Governance Tenure of Land, Fisheries and Forests*, 10 GLOBALIZATIONS 181 (2013).

225. *Id.*

226. A soft-law instrument is an instrument that is not binding on those to whom they are addressed. However, soft-law instruments can still produce legal effects. See Eurofound, *Soft Law*, available at <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/softlaw.htm> (last accessed Dec. 2, 2013).

227. See Angela Williams, *Solidarity, Justice and Climate Change Law*, 10 MELBOURNE J. INT'L L. 493, 507–08 (2009).

228. *Id.*

IV. DISCOURSES

Environmental conflict is discursive.²²⁹ Debate arises from how the problems of the environment are constructed and interpreted, and how agents put forward their ideas and concepts.²³⁰ There are three principal discourses in forest governance: (1) Ecological Modernization Theory; (2) Green Governmentality; and (3) Civic Environmentalism.²³¹

A. Ecological Modernization

The roots of Ecological Modernization can be traced to the 1980's, when the Organisation for Economic Co-Operation and Development²³² (OECD) put forward the relationship and complementarity of the environment and economy, and the idea that environmental policies can be a contributive instrument for economic growth.²³³ Ecological Modernization can be "positive-sum"²³⁴ or "win-win"²³⁵ inasmuch as capitalism and industrialization is seen as compatible with environmental strategies.²³⁶ In the Ecological Modernization discourse, it is expected that the problems of the environment will be responded to by a liberalized market, which will provide cost-effective solutions.²³⁷ The Ecological Modernization discourse is essentially neo-liberal.²³⁸ With regard to REDD+, the Ecological Modernization discourse sees the success of REDD+ as dependent on how it

229. See MAARTEN A. HAJER, *THE POLITICS OF ENVIRONMENTAL DISCOURSE: ECOLOGICAL MODERNIZATION AND THE POLICY PROCESS* 8-11 (1997).

230. *Id.*

231. See Bas Arts, et al., *Discourses, Actors, and Instruments in International Forest Governance*, in *EMBRACING COMPLEXITY — MEETING THE CHALLENGES OF INTERNATIONAL FOREST GOVERNANCE* 60-62 (Jeremy Rayner, et al. eds., 2011).

232. See The Organization for Economic Cooperation and Development (OECD), *About the OECD*, available at <http://www.oecd.org/about/> (last accessed Dec. 2, 2013).

233. *Id.*

234. See ERIC C. PONCELET, *PARTNERING FOR THE ENVIRONMENT: MULTISTAKEHOLDER COLLABORATION IN A CHANGING WORLD* 121 (2004).

235. See Gabriel Ekermo, *The Struggle Within: Examining the Presence of Win-Win Solutions in EU Environment Legislation*, at 1 (May 2013) (unpublished Master Thesis in European Studies, University of Gothenburg) (on file with the University of Gothenburg online library system).

236. *Id.*

237. Bas Arts, et al., *supra* note 231, at 57 & 60.

238. Ekermo, *supra* note 235, at 4.

will link to the carbon market and on what role the private sector will play in its implementation.²³⁹

The Ecological Modernization discourse is criticized for neglecting equity and poverty issues in the developing countries where environmental projects are implemented.²⁴⁰ The Ecological Modernization discourse is also criticized for neglecting the need to safeguard the social and environmental value of forests.²⁴¹ As investors place emphasis on cost-effectiveness and flexibility of projects, local people and communities who depend on the forest for their livelihood and sustenance have been relegated to being homogenous participants.²⁴²

B. Green Governmentality

Green Governmentality is also a principal discourse.²⁴³ Together with ecological modernization, it has been put forward by industrialized societies, and dominates the current climate change discussion.²⁴⁴ Green Governmentality rests on the idea that the environment, and life in the planet in general, can be administered and controlled.²⁴⁵ Scientists and experts are deemed as having the ability to monitor and manage the Earth via a multitude of technological tools at their disposal.²⁴⁶ As such, nature is seen as a subject of “state protection, management[,] and domination.”²⁴⁷

With regard to REDD+, the Green Governmentality discourse requires that emergence of guidelines that will be able to accurately measure global forests carbon sinks and sequestrations.²⁴⁸ Much emphasis is placed on

239. Tobias Nielsen, *Governing Forests as Cost Effective Mitigation, Carbon Sinks or Providing Livelihood Activities: A Discursive Overview* (An Unpublished Paper Presented at the Lund Conference on Earth System Governance on Apr. 18–20, 2012) 6, available at <http://www.earthssystemgovernance.org/lund2012/LC2012-paper346.pdf> (last accessed Dec. 2, 2013).

240. Karin Backstrand & Eva Lovbrand, *Planting Trees to Mitigate Climate Change: Contested Discourses of Ecological Modernization, Green Governmentality, and Civic Environmentalism*, 6 GLOBAL ENVTL. POL. 50 (2006).

241. Nielsen, *supra* note 239, at 12.

242. Backstrand & Lovbrand, *supra* note 240, at 62–63.

243. Bas Arts, et al., *supra* note 231, at 62.

244. Backstrand & Lovbrand, *supra* note 240, at 53.

245. *Id.* at 54.

246. *Id.*

247. *Id.* at 55.

248. Nielsen, *supra* note 239, at 8.

international organizations and their ability to provide the required scientific information.²⁴⁹

The Green Governmentality discourse is criticized as elitist because it “marginalizes alternative understandings of the natural world.”²⁵⁰ Furthermore, the science behind the discourse is not divorced from politics, thus coloring the objectiveness of the discourse.²⁵¹ When experts differ, the question of which expert to listen to is influenced by power such as who has the power to define which knowledge is legitimate or illegitimate.²⁵² Another critical observation of the Green Governmentality discourse, with its adoption of the “rational scientific approach,” is that it may indirectly support the cost-effectiveness of the Ecological Modernization discourse.²⁵³

C. Civic Environmentalism

The reformist form of Civic Environmentalism discourse prescribes that all persons and groups who have a legitimate stake or interest, including marginalized groups such as indigenous peoples and women, should be able to participate in finding solutions to the environmental solution.²⁵⁴ Hence, “participation” and “stake-holding” are significant terms in the Civic Environmentalism discourse.²⁵⁵ There is emphasis on civil society being given access, and finding a voice, to express local concerns.²⁵⁶ In contrast to Ecological Modernization and Green Governmentality approaches, which are “top-down,” Civic Environmentalism adopts a “bottom-up” approach.²⁵⁷ The growth of stakeholder participation will lend legitimacy to multilateral institutions and increase their accountability with regard to the initiatives they undertake.²⁵⁸

249. *Id.*

250. Backstrand & Lovbrand, *supra* note 240, at 55.

251. Nielsen, *supra* note 239, at 13.

252. *Id.*

253. *Id.* (citing Constance McDermott, et al., *Building the Forest-Climat Bandwagon: REDD and the Topic of Problem Amelioration*, 11 (3) GLOBAL ENVTL. POL. 85-103 (2011)).

254. Backstrand & Lovbrand, *supra* note 240, at 55.

255. *Id.*

256. *Id.* at 56.

257. *Id.*

258. Bas Arts, et al., *supra* note 231, at 60 (citing Jeffrey McGee & Ros Taplin, *The Role of the Asia Pacific Partnership in Discursive Contestation of the International Climate Regime*, 9 (3) INT’L ENVTL. AGREEMENTS 213 (2009)).

With regard to REDD+, the Civic Environmentalism discourse is skeptical of market-based mechanism as the predominant design for REDD+ programs.²⁵⁹ It disagrees with the oversimplification of deforestation and calls for a sustained discussion on various issues such as tenure, the rights of indigenous peoples, and biodiversity instead of focusing solely on financial incentives.²⁶⁰

Civic Environmentalism, especially its more radical form,²⁶¹ is criticized mainly for being utopian and anti-pragmatic.²⁶² The radical form of civic environmentalism, with its neo-Gramscian roots, questions existing institutions, the relations of power between the global North and South, and the world order.²⁶³ This has caused the question of REDD+ to be brought into the broader debate surrounding development, which may prove to be counter-productive.²⁶⁴ The language of the Civic Environmentalism discourse has been used more for criticizing instead of bringing about solutions.²⁶⁵

D. Dominance of Ecological Modernization and Green Governmentality Discourses

Economic motivations greatly influence climate change's law and policy.²⁶⁶ Professor Karin Mickelson has taken note of the common view of environmentalists from the global North, that climate change discussions can only progress if there is a "win-win economic opportunity framework" in place.²⁶⁷ At present, there is very little space given to individuals or non-government organizations to participate, challenge, or gain access to justice in Clean Development Mechanism (CDM) projects,²⁶⁸ and it appears that this trend will continue with REDD+. From the different State responses to the SBSTA on their views on REDD+ governance (discussed in Part II (B)),

259. Nielsen, *supra* note 239, at 9.

260. *Id.*

261. See Backstrand & Lovbrand, *supra* note 240, at 56 & Bas Arts, et al., *supra* note 231, at 61.

262. See Rena Steinzor, *Myths of the Reinvented State*, 29 CAP. U. L. REV. 223, 234 (2001).

263. Backstrand & Lovbrand, *supra* note 240, at 56.

264. Nielsen, *supra* note 239, at 13.

265. *Id.*

266. Cinnamon Carlarne, *Risky Business: The Ups and Downs of Mixing Economics, Security and Climate Change*, 10 MELBOURNE J. INT'L L. 439, 441-45 (2009).

267. Karin Mickelson, *Beyond Politics of the Possible? South-North Relations and Climate Justice*, 10 MELBOURNE J. INT'L L. 411, 419 (2009).

268. See Kylie Wilson, *Access to Justice for Victims of the International Carbon Offset Industry*, 38 ECOLOGY L. Q. 967, 1005-26 (2011).

it can be seen that the Ecological Modernization and Green Governmentality discourses are again expected to prevail in the design of the REDD+ system.

Professors Karin Backstrand and Eva Lovbrand identify institutional organizations such as the World Bank, the UNEP, and the FAO as agents of the Ecological Modernization discourse due to their endorsement of the environment-development nexus.²⁶⁹ Some scholars have recognized that fusing climate change with economics make initiatives more palatable to the relevant actors.²⁷⁰ However, there is a pressing need to find ways to support initiatives that will place value in equity considerations and support the common good.²⁷¹ As Professors Backstrand and Lovbrand themselves point out, the reform-oriented Civic Environmentalism discourse can tie into “democratic versions of strong ecological modernization and green governmentality that advocate a pragmatic shift towards more equitable terms of trade and reflexive scientization.”²⁷² It is possible to strike a balance among the three for purposes of finding participatory and equitable mechanisms to implement REDD+. Unfortunately, at present, the scales are skewed too much in favor of the Ecological Modernization and Green Governmentality discourses. There is a need for an effective agent of the counter-narrative.

E. The FAO as Agent of Civic Environmentalism Discourse

In the tension involving agriculture, forestry, climate change, and food security, a solution that has been advocated is the promotion of small-scale sustainable agriculture.²⁷³ Agriculture can be both bane and boon in the context of climate change adaptation and mitigation. Agriculture is a chief source of greenhouse gas emissions. On the other hand, carbon capture or sequestration through the use of practices such as using manure as fertilizer, composting, and crop rotation, has significant potential for climate change mitigation.²⁷⁴ These practices also promote climate change adaptation as

269. Backstrand & Lovbrand, *supra* note 240, at 67.

270. Carlarne, *supra* note 266.

271. *Id.*

272. Backstrand & Lovbrand, *supra* note 240, at 71.

273. See Carmen Gonzalez, *Climate Change, Food Security, and Agrobiodiversity: Toward a Just, Resilient, and Sustainable Food System*, 22 FORDHAM ENVTL. L. REV. 493, 513 (2011).

274. *Id.* at 513-14.

increase in soil quality reduces vulnerability of crops to climate change events such as floods.²⁷⁵

Transnational agricultural companies hailing from the global North and bolstered by protectionist policies currently dominate the market and dictate agricultural practices.²⁷⁶ These commercial and industrial agricultural practices, which consist of crop specialization and the use of industrial-grade fertilizers, not only promote an iniquitous system for small-scale farmers, they also contribute greatly to worsening the climate change situation, are unsustainable, and put the world's food security at risk.²⁷⁷ While transnational agricultural companies are allowed to dictate agricultural practices, there is no relief to be seen from the agricultural sector.

The promotion of small-scale sustainable farming is challenging because it runs counter to the Ecological Modernization discourse. It involves a re-thinking of the current trading system in the view of climate change and food security needs. The view of food sovereignty, or the “democratic national and local control over food production, distribution, and marketing in ways that are socially just and ecologically sustainable”²⁷⁸ has been put forward. This ideology goes against the grain of current world trading practices and of the cost-effectiveness principle dominating REDD+ discussions. This proposed solution presents a dramatic departure from neoliberal policies, which, scholars have argued is necessary in view of the equally dramatic and devastating effects of climate change, particularly its impact on food security.

Proposals such as small-scale sustainable farming, being so contrary to the dominant Ecological Modernization discourse, are unlikely to find proponents in REDD+ discussions. It is within this context that the FAO can continue what it has started with the issuance of the Voluntary Guidelines. By supporting initiatives such as small-scale sustainable agriculture, it can advance the Civic Environmentalism discourse.

Another opportunity for the FAO to act as an agent for the Civic Environmentalism discourse is through its participation in the UN-REDD

275. *Id.* at 514-15.

276. Peter Burdon, *What is Good Land Use?*, 34 MELBOURNE U. L. REV. 708, 712-21 (2010).

277. *Id.*

278. Gonzalez, *supra* note 273, at 521 (citing PETER M. ROSSET, *FOOD IS DIFFERENT: WHY WE MUST GET OUT OF THE WTO* 34-35 (2006) & Annie Shattuck & Eric Holt-Gimenez, *Moving from Food Crisis to Food Sovereignty*, 13 YALE HUM. RTS. & DEV. L. J. 421-33 (2010)).

Programme.²⁷⁹ In the UN-REDD Programme 2011-2015 Strategy (Strategy), stakeholder engagement, including indigenous peoples and members of civil society, was identified as a key work area.²⁸⁰ According to the Strategy, the UN-REDD Programme shall engage in:

- (1) supporting the full and effective engagement of indigenous peoples and other forest dependent communities, civil society[,] and other relevant stakeholders in national and international REDD+ fora and initiatives at all stages of the process including design and implementation; and
- (2) assisting national and international REDD+ processes to establish transparent and accountable REDD+ guidelines and strategies that recognize and respect the rights of, and respond to the concerns of, these stakeholders.²⁸¹

By being a main implementing agency of the UN-REDD Programme, the FAO can take active participation in this area. It can guide the REDD+ guidelines and strategies to be established to ensure that they reflect the social justice provisions of the Voluntary Guidelines and articulate the overarching theme of food security.

In Part II (B), a number of countries, in terms of governance, preferred that REDD+ be dealt with through existing institutions. Pakistan specifically mentioned that the proactive participation of the FAO is needed. The FAO, being an established institution and having the expertise to engage in forestry and REDD+ matters, can be effective in exerting influence over the actors and advancing agenda that is consistent with the principles of Civic Environmentalism. The FAO recognized in itself the possession of a key role in shaping international policy discussion,²⁸² with this in mind, it can steer the discussion in the direction of social justice.

V. CONCLUSION

The tragedy of climate change is rooted in global injustice. According to Professors Saleemul Huq and Camilla Toumlin, “[o]ne group of people (namely, people everywhere, but mostly in rich countries) have caused the problem, and another group of people (namely, poor people especially in

279. UN-REDD PROGRAMME, THE UN-REDD PROGRAMME STRATEGY 2011-2015, I (2008).

280. *Id.* at 5.

281. *Id.* at 11.

282. FAO, About FAO, *supra* note 6.

poor countries) will suffer most of the adverse consequences in the near term.”²⁸³

Without adequate representation and participation of all persons who have a legitimate stake or interest in REDD+ initiatives, global injustice will continue to persist. REDD+ extends to the spheres of agriculture, forestry, and food security. Because forest conservation will prevent local and indigenous communities from clearing forest land for agriculture purposes, or for converting it for purposes which would yield income, then it is extremely significant to ensure that these communities have ample involvement in the design and implementation of these projects, as well as in the distribution of benefits therefrom.

Judging from the tenor of the various states’ responses on the questions of what REDD+ governance framework will apply, the climate change arena has more than enough vanguards of the Ecological Modernization and Green Governmentality discourses, discourses that would tend to disregard poverty, equity, and food security issues. A balance between the discourses is essential. This is why there is a dire need for the FAO to adopt the language of civic environmentalism in REDD+ debates. By claiming itself as the forum for discussing policy and technical issues relating to forestry, it has assumed responsibility for ensuring that the overarching theme of food security is entrenched in REDD+ discussions, which would necessarily have an effect on tenure.

With the issuance of the Voluntary Guidelines, the FAO has shown that it is able to prescribe normative standards that would respect and protect marginalized groups in relation to the issue of tenure. The FAO should continue the path it has set foot on and use its institutional influence to explore solutions such as small-scale sustainable agriculture, which is sure to find resistance from the Ecological Modernization and Green Governmentality discourses. By deliberately advancing Civic Environmentalism, not only would the FAO be staying true to its mandate, it would be promoting the interests of local and marginalized groups who are all too often neglected in the over-all REDD+ discourse.

283. Saleemul Huq & Camilla Toumlin, Three Eras of Climate Change (An Unpublished Paper Submitted to the International Institute for Environment and Development) 2, *available at* <http://www.iied.org/pubs/pdfs/11060IIED.pdf> (2006) (last accessed Dec. 2, 2013).