

# Equity Dimensions in ABS Legal Agreements and REDD+ Negotiations

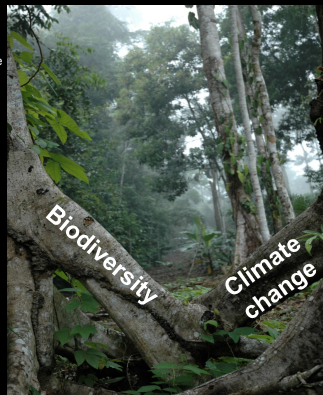
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## 1. BACKGROUND

Photographs: Claudia Ituarte-Lima

In the last 50 years, human actions have changed biodiversity more than ever before.  
 •Negative impact on ecosystems.  
 •Putting at risk wellbeing of future generations (Millennium Ecosystem Assessment 2005).



Increased frequency of future hazards with implications for peoples' livelihoods. (Human Development Report, UNDP 2009)

Legal negotiations and agreements on sharing environmental costs and benefits between different actors in these topics are not straightforward.

Ramifications of a typical "actors-concerns" scenario in the environmental arena

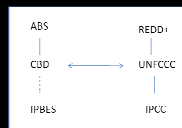
- ACTORS**
- Forest dependent people
  - Academia & research institutions
  - Business & enterprises
  - NGOs
  - Governments
  - International organisations



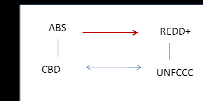
- CONCERNS**
- Access to resources
  - Self determination (customary norms & cultural relationships)
  - Livelihoods
  - Food security
  - Economic development
  - Equitable transactions
  - Legal means to make enforceable claims

## 2. RESEARCH FOCUS

### Interlinkages



Only relatively recently has the literature addressed the interlinkages in terms of lessons that can be learnt in biodiversity and climate change legal and policy negotiations. Moreover, the focus has been on lessons from the UNFCCC negotiations, to those under the Convention on Biological Diversity (CBD), and not vice-versa. One example is the negotiation (not yet approval) of a science-policy mechanism that would link biodiversity, ecosystem services and human well-being (IPBES) similar to the Intergovernmental Panel on Climate Change (IPCC). However, the experiences in access and benefit sharing (ABS) legal negotiations in tropical forest countries that can be useful in negotiations concerning reducing emissions from deforestation (REDD) are not fully understood.



This poster explores lessons learnt in access and benefit sharing (ABS) legal negotiations in the Peruvian Amazon that can be useful in negotiations concerning reducing emissions from deforestation (REDD plus) in other tropical rainforests viz in Indonesia.

It brings into dialogue debates on mechanisms for ABS related to the Convention on Biological Diversity in South American countries, and the implementation of the UN Framework Convention on Climate Change in Southeast Asian countries. It highlights links to case studies and experiences of communities from different tropical regions in addressing the challenge of ensuring development objectives in an equitable and just manner.

## 4. LAW AND POLICY IMPLEMENTATION

### 3. RIGHTS AND DUTIES

Peruvian Law on collective knowledge and biological resources (Law 27811)

A central element in Peruvian law: A holder of rights and responsibilities has to be an individual or collective with legal personality, e.g. Article 10 of Peruvian Copyright Law  
**Legal personality of a collective implies that more than one individual can act as a single entity for legal purposes such as signing a contract, suing or getting sued.**

Yet, pragmatic strategies of indigenous and forest-dependent people have arisen.  
 Example: Amazonian NGOs with legal personality national and territorial scope  
 -diverse rights and duties

Tensions between this legal requirement and the customary norms of indigenous and forest peoples' organisational forms for the governance of biocultural resources.

**Sui generis dimension of Law 27811: it includes the legal category of representative organisations which should:**  
 - grant or deny consent concerning the access of outsiders to collective knowledge for scientific, commercial or industrial applications (Article 6, Law 27811).

Diverse collectives embedded in the category of representative organisations, some with legal personality others without such legal status (e.g. indigenous peoples).



Implementation of Law 27811

Standardisation (Common to other legal processes)	Diversification (Particular processes associated with Law 27811)
Publication of Law 27811 in the Gazette ( <i>El Peruano</i> )	Diffusion of Law 27811 is made: • Translation into different languages • Diffusion material responding to geographical differences (e.g. selva (rainforest) and sierra (mountain region)) and cultural differences • Carbons explaining law 27811 • A radio programme
Initially, a fee to register collective knowledge (a mechanism of knowledge protection under Law 27811) was stated in the TUPA "Unique text for Administrative procedures".	Then, registering knowledge under Law 27811 got exempted from fee. Such exemption responded to the economic situation of many biodiversity knowledge holders.
State funds are required to implement Law 27811	Economic resources for implementing the Law came not only from the State funds but also from NGOs and international cooperation

### Lesson for REDD-plus and Indonesia

In the development, diffusion and implementation of laws and regulations associated with REDD-plus, Indonesia should consider cultural and biological diversity and adequate mechanisms to ensure equity:

- Across its 17,508 islands, including distinct ethnic, linguistic, and religious groups, and various ecosystems.
- Between forest-dependent people and one or a combination of other actors such as local governmental institutions, NGOs, private and financial sectors, and international mechanisms such as the UNEP Finance Initiative and the UN Global Compact, the World Bank's Forest Carbon Partnership Facility.

### Lesson for REDD-plus and Indonesia

Effective participation of forest-dependent people in REDD-plus may involve engaging in contractual agreements between a rainforest community and one or a combination of other stakeholders.

-Requirement: have legal personality

Social groups without legal personality may not be able to participate on an equitable basis and may be in a disadvantaged position in REDD-plus legal negotiations vis a vis those entities that have legal personality.

Hence, mechanisms for participation of social groups with and without legal personality should be considered before, during and after a legal agreement associated with REDD-plus.

## 5. FINDINGS

ABS has important lessons for REDD-plus in terms of the various

equity challenges in the implementation of laws and policies that aim to link:

environmental conservation and social development in tropical biodiverse countries.

• Need to go beyond the assumption that parties in legal agreements are equal partners that in practice will always exchange rights and obligations reciprocally.

• Equitable legal relationships between forest-dependent people with one or a combination of other REDD-plus actors will not develop automatically. Instead, they need to be actively fostered considering power imbalances and difficulties of forest-dependent people in complying with legal requirement