LEGAL FRAMEWORKS FOR REDD+ BENEFIT SHARING: EMERGING LESSONS FOR KENYA

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KENYA UK PACT

CONSERVATION INTERNATIONAL

Indigenous Livelihoods Enhancement Partners
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"Enhancing Indigenous Resiliency"

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LIST OF ABBREVIATIONS

ART	Architecture for REDD+ Transactions
BAU	Business as Usual
BioCF ISFL	Biocarbon Fund Initiative for Sustainable Forest Landscapes
CDA	Community Development Agreement
COP	Conference of the Parties
DNA	Designated National Authority
EMP	Environmental Management Plan
ER-P	Emission Reduction Program
ER-PIN	Emissions Reduction Program Identification Note
ERPA	Emission Reduction Payment Agreement
ERRs	Emission Reduction Rights
FCMA	Forest Conservation and Management Act
FCPF	Forest Carbon Partnership Facility
FGRM	Feedback Grievance and Reporting Mechanism
FPIC	Free Prior Informed Consent
FREL	Forest Reference Emissions Level
FRL	Forest Reference Level
GCF	Green Climate Fund
GHGs	Greenhouse Gases
IPLCs	Indigenous Peoples and Local Communities
JNR	Jurisdictional and Nested REDD+
KEFRI	Kenya Forest Research Institute
KFS	Kenya Forest Service
KMFRI	Kenya Marine and Fisheries Research Institute
KWS	Kenya Wildlife Service
MRV	Measurement Reporting and Verification
MWCT	Maasai Wilderness Conservation Trust

NCCAP	National Climate Change Action Plan
NDC	Nationally Determined Contribution
NEMA	National Environment Management Authority
NGO	Non-Governmental Organization
NFMS	National Forest Monitoring System
NFRL	National Forestry Reform Law
NLC	National Land Commission
NTFPs	Non-Timber Forest Products
PNG	Papua New Guinea
REDD+	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries plus the Sustainable Management of Forests, and the Conservation and Enhancement of Forest Carbon Stocks
REDD+ SC	REDD+ Steering Committee
SIS	Safeguards Information System
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change

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EXECUTIVE SUMMARY

To sustainably manage, conserve and protect her forest resources, Kenya has been making efforts to implement REDD+. The country has project-level REDD+ initiatives which have generated substantial carbon revenue from the carbon markets and is on track to ultimately receiving REDD+ results-based payments.

Benefit sharing is a key component of REDD+. A robust framework for benefit sharing ensures effective, transparent, and fair distribution of REDD+ benefits to the stakeholders involved in a REDD+ initiative and contributes to the conservation of biodiversity and sustainable access to ecosystem services. This is crucial for transformational change in the forest and land use sector.

Kenya's policy and legal framework emphasizes equitable benefit sharing and community engagement in natural resource management, and the framework has in the recent past evolved to make direct provision on benefit sharing for carbon projects, as well as any other projects involving the exploitation of natural resources such as forests. These changes are reflected in amongst others the Forest Conservation and Management Act, 2016, the Climate Change Act 2016, the Climate Change (Carbon Markets) Regulations, 2024 and currently under development the Draft Forest Conservation and Management Act (Benefit Sharing) Regulations and Natural Resources (Benefit Sharing) Bill.

As Kenya marches on towards REDD+ implementation with an interest in jurisdictional and nested REDD+ (JNR), there is need to analyze the extent to which Kenya's developing policy and legal framework encourages equitable REDD+ benefit sharing and determine what lessons Kenya can glean from comparable jurisdictions that have in the recent past also enacted frameworks for REDD+ benefit sharing. This report comprises an analysis of Kenya's existing benefit sharing policy and legal framework to establish what opportunities and gaps exist for enhancing benefit sharing in the context of REDD+, and highlights lessons on REDD+ benefit sharing from Ghana, Liberia, Fiji, Papua New Guinea, and Nepal.

Key study findings

The study establishes that **since REDD+'s inception numerous countries across the world have initiated national REDD+ activities and various subnational governments are utilizing jurisdictional approaches to REDD+. Local REDD+ projects are also being implemented on a significant scale.** Core to the success of these REDD+ efforts is the concept of benefit sharing which requires the equitable distribution of the benefits of REDD+ projects amongst communities, governments, and other stakeholders.

Benefit sharing is established in the international policy and legal framework for REDD+ as a fundamental principle and practice aimed at ensuring equitable access to resources by all stakeholders. As parties to the UNFCCC and the Paris Agreement, **countries have an international obligation to ensure the achievement of their commitments at the domestic level by enacting a clear benefit sharing policy and legislative framework.**

Kenya's REDD+ benefit sharing approach

- **Kenya has ongoing project level REDD+ projects that have been providing environmental and socio-economic benefits to local communities**, however the country has lacked an overarching REDD+ benefit-sharing policy and legislative framework, thus hindering the application of a consistent approach towards benefit sharing. This has raised instances where projects fail to demonstrate transparency and accountability in benefit sharing. Furthermore, the National REDD+ Strategy indicates the country's efforts towards implementing JNR where project level activities shall be nested in a jurisdictional programme, but the existing benefit sharing framework does not elaborate on mechanisms for disbursing benefits from national to subnational entities.

- Kenya's **REDD+ projects are currently being implemented across varied land ownership and tenure regimes.** Ensuring equitable benefit sharing is compounded by challenges in securing land rights particularly with respect to community land. The Community Land Act recognizes community land but requires that communities must be registered otherwise their land is held in trust for them by their county government. However few communities have been registered to date. Furthermore, whilst the Community Land Regulations 2017 require group representatives incorporated under the Land (Group Representatives) Act to make an application to be registered as (i.e. converted into) communities within 12 months from the regulations' gazettement, some group representatives are yet to make this transition and face heightened contestation on land ownership thus affecting the abilities of rightful owners and beneficiaries to receive benefits.

- The **amendment of the Climate Change Act, 2016 has introduced mandatory benefit sharing ratios for the first time in Kenya's legislative history.** The Act now requires land-based carbon market projects (including REDD+ projects) on community and public land to provide local communities with at least 40 per cent of the previous year's aggregate earnings less the cost of doing business as an annual social contribution. The annual social contribution, defined as the sharing of annual benefits accruing from carbon projects, is to be disbursed through a Community Development Agreement (CDA), whose requirements and composition are detailed in the Climate Change (Carbon Market) Regulations, 2024. The calculation of aggregate earnings and deductible costs of doing business requires transparency. Furthermore, as the CDA is governed by a CDA Committee that is comprised of representatives from youth, women, village elders, marginalized groups, persons with disability, civil society, and government.

- **Parallel to the reforms in the climate change legal regime that have introduced legislation on benefit sharing, there is under development the draft Forest Conservation and Management Act (Benefit Sharing) Regulations, and Natural Resources (Benefit Sharing) Bill, which have a bearing on REDD+.** These multiple regulatory and legislative frameworks may create overlapping requirements for entry into benefit sharing agreements, dispute resolution and the roles of different institutions. As such, the legislative approach to benefit sharing needs to be properly managed to enhance attraction of private investments as opposed to increasing transaction costs that would instead bar the flow of private finance for REDD+.

Lessons from other Jurisdictions

- **The experiences from Ghana, Liberia, Fiji, Papua New Guinea, and Nepal demonstrate that for countries to successfully participate in REDD+ they must put in place measures to ensure the equitable sharing of benefits amongst all beneficiaries noting the requirements of the specific REDD+ programmes and standards.** Papua New Guinea and Fiji are among the first recipients of results-based finance and offer valuable insights into the practical implementation of benefit-sharing systems in their benefit sharing plans. Ghana and Nepal on the other hand have signed Emission Reduction Purchase Agreements (ERPA) under the Lowering Emissions by Accelerating Forest Finance (LEAF) Coalition for the supply of high-integrity jurisdictional REDD+ emission reductions and removals credits. It is fundamental to note that countries participating in LEAF must demonstrate how they shall equitably share benefits with all REDD+ beneficiaries. Where a government has not yet negotiated, developed, or established benefit sharing plans or mechanisms for REDD+ activities, LEAF requires them to submit a roadmap. The roadmap outlines how consultations will be carried out to develop benefit sharing. Emergent allows 12 months to finalize benefit sharing plans, agreements, or mechanisms and consultations from the date of an ERPA signing.

- **Countries adopt varied approaches to benefit sharing based on their unique national circumstances and local contexts.** Each country's land and forest tenure systems influence their approaches. Whereas Liberia uses a jurisdictional approach since all its forests are state-owned, distributing funds through designated channels; Fiji focuses on project-level benefits, emphasizing both monetary and non- monetary benefits shared among customary land owners who form majority of the land owners; and Papua New Guinea incorporates both jurisdictional and project-level arrangements, with a detailed allocation of benefits to various stakeholders. The approach in Papua New Guinea is to harmonize the National REDD+ Benefit Sharing and Distribution Guidelines with the law, by operationalizing the benefit sharing provisions of the Climate Change Management Act.

- The **identification of beneficiaries in REDD+ programs is crucial to ensuring that the intended support reaches the right people,** with clear mechanisms in place to determine who the beneficiaries are, how much they will receive, and how they can utilize those benefits. Fiji has a unique approach to benefit sharing where it ensures that minors also form part of the beneficiaries. The benefits owed to minors are not simply given directly to them but are instead deposited into a bank account that accrues interest. These funds are then made available to the minors once they reach the age of eighteen. This system helps ensure that even young people, who may not have direct access to these funds until they come of age, are still beneficiaries of the program's benefits. By accumulating interest over time, the savings provide an enhanced benefit when they are eventually disbursed, contributing to long-term financial security for the young beneficiaries.

- **Countries implementing REDD+ programs must ensure that their benefit-sharing mechanisms are inclusive and provide equal opportunities for all individuals and**

communities to participate and benefit. This inclusivity can be achieved through capacity building and training, particularly for marginalized groups such as women, youth, migrant farmers, and people with disabilities. In Ghana, for example, the government, has partnered with non-governmental organizations (NGO) to enhance social inclusion within the Ghana Cocoa Forest REDD+ Program. The social inclusion activities include directly engaging farmers across 100 communities, and ensuring that vulnerable groups are actively involved in REDD+ action and benefit equitably from emissions reduction efforts.

Recommendations

Based on the findings of the policy and legislative analysis as well as the case studies, this report recommends that Kenya:

a. **Streamlines and harmonizes its REDD+ benefit sharing policy and legislative framework:** There are different existing and proposed policies, laws and regulations in Kenya, with a bearing on benefit sharing in REDD+. This includes the Climate Change Act, 2016 as amended in 2023 and the Climate Change (Carbon Markets) Regulations, 2024, the Natural Resources (Benefit Sharing) Bill, and the Draft Forest Conservation and Management Act (Benefit Sharing) Regulations. It is fundamental that the country harmonizes its REDD+ benefit sharing framework by developing specific REDD+ guidelines under the Forest Conservation and Management Act. This will avoid unnecessary transaction costs and eliminate confusion that emanates from having multiple legal and regulatory provisions on benefit sharing operating simultaneously in the country. Furthermore, as jurisdictional-based carbon project funding mechanisms require that specific benefit sharing requirements be met for countries to participate, Kenya needs to clarify its beneficiary identification, eligibility and modalities for jurisdictional REDD+.

b. **Clarifies land ownership, tenure and user rights:** Land tenure, ownership and user rights help to determine the beneficiaries of REDD+. Kenya's land rights remain unclear and contested especially with respect to community land. There is therefore need for further clarification of land ownership and tenure in Kenya to ensure equitable benefit sharing, which is critical for the success of REDD+ projects. In this regard relevant stakeholders including communities and public officials need to mobilize resources and have their capacities built for increased efficiency and effectiveness in the registration of community land and participatory forest management.

c. **Clarifies key aspects of benefit-sharing requirements:** Kenya should provide clear definitions and guidelines on critical aspects of its REDD+ benefit-sharing framework to prevent potential exploitation of communities. It is important for transparency to be maintained in the calculation of aggregate earnings and the deductible cost of business to be based on verifiable project operational costs. Additionally, the process for disbursing benefits between national and sub-national entities, as well as the use of these disbursements in a jurisdictional REDD+ programme, needs to be well-articulated to ensure transparency, equity, and accountability. This is particularly important as the National REDD+ Strategy highlights the country's keenness to pursue jurisdictional REDD+.

d. **Undertakes capacity building of key stakeholders:** Kenya's Climate Change Act requires benefit sharing in carbon projects to be carried out under the framework of a CDA. The CDA is governed by a CDA committee whose members form further sub-committees. Committee members comprise of representatives from youth, women, village elders, marginalized groups, persons with disability, civil society, and government. As these members are mandated to, amongst other functions, conduct consultations with the community and negotiate with the project proponents on behalf of the community, it is paramount that rigorous capacity building is provided to these stakeholders, to ensure that they possess the capacity to negotiate on behalf of the community, identify, understand and address all opportunities and risk attendant to carbon projects, and resolve any arising disputes.

1 INTRODUCTION

1.1 An Overview of REDD+

Reducing Emissions from Deforestation and Forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) is a global initiative aimed at addressing climate change by curbing the loss of forests, a major contributor to greenhouse gas (GHG) emissions.[1] REDD+ was conceptualized as an international strategy where developed countries would compensate developing countries for conserving their forests, thereby reducing deforestation emissions.[2] By providing financial rewards for reducing emissions from deforestation and forest degradation, REDD+ seeks to promote the conservation and sustainable use of forests whilst simultaneously supporting the livelihoods of local communities.[3]

The concept of REDD+ emerged under the auspices of the United Nations Framework Convention on Climate Change in 2005. REDD+ is ingrained in Article 4 of the UNFCCC which calls for parties to promote sustainable management and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all GHGs including forests.[4] The concept can however be traced back to the late 20th century when the international community began to recognize the significance of forests in climate change mitigation.[5] Early discussions focused on the need to incentivize developing countries to conserve their forests, as these nations often faced the dilemma of economic development versus environmental preservation.

Subsequent UNFCCC Conference of the Parties (COP) decisions have yielded the Cancun Safeguards, the Warsaw Framework, and the Paris Agreement, which are pivotal to the working of REDD+. The Cancun Safeguards, adopted at COP 16, require countries participating in REDD+ to observe seven set out safeguards which lay out elaborate social and environmental protections that are to be observed in the implementation of actions for REDD+.[6] These include the full and effective participation of relevant stakeholders, in particular Indigenous Peoples and Local Communities, and respect for the knowledge and rights of Indigenous Peoples and

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[1] United Nations Framework Convention on Climate Change (UNFCC), Report of the Conference of Parties on its 13th Session, held in Bali from 3 to 15 December 2007, Decision 1/CP.13, FCCC/CP/2007/6/Add.1 (UNFCC 2007).

[2] *Ibid*, UNFCCC 2007.

[3] Tehan, M., et al, The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD (Cambridge University Press, 2017).

[4] UN General Assembly, United Nations Framework Convention on Climate Change : resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

[5] Margaret S, Evolution of International Policy on REDD+, Climate Science Volume 4 Issue 24.

[6] Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, (UNFCCC, 2010).

members of Local Communities. The Warsaw Framework, adopted later at COP 19, provides the complete methodological and financing guidance for countries seeking to implement REDD+ under the UNFCCC.[7] The framework recognizes that results-based finance may come from a wide variety of sources and encourages financing entities to channel adequate and predictable results-based finance in a fair, equitable and balanced manner.

The Paris Agreement, adopted at COP 21, calls upon Parties to take action to conserve and enhance, as appropriate, sinks and reservoirs of GHG including forests.[8] Parties are encouraged, to take action, to implement and support, including through results-based payments, policy approaches and positive incentives for activities relating to REDD+ while incentivizing associated non-carbon benefits.[9]

1.2 Benefit Sharing in the Context of REDD+

Benefit sharing is a fundamental principle and practice aimed at ensuring equitable access to resources and the efficient distribution of positive outcomes and advantages emanating from the exploitation of resources with all relevant stakeholders.[10] The concept acknowledges that various parties contribute to the success or progress of an initiative, and should as a matter of fairness and justice, have a share in the benefits derived.[11] This share is determined according to among other factors, the needs, participation, and investment of the respective stakeholders. Benefit sharing is not confined to financial gains and encompasses a wide range of positive outcomes that contribute to the well-being and advancement of participating stakeholders.[12]

In the context of REDD+, benefit sharing refers to the "distribution of indirect and direct net gains from the implementation of REDD+,[13] and this includes financial gains encompassing revenue generation, cost savings, and potential profitability,[14] social gains arising from improvements in community well-being, health, education, and overall quality of life, and environmental gains focused on the positive outcomes for ecosystems, biodiversity conservation, and climate change mitigation.[15]

REDD+ projects may also yield technological benefits through innovations and advancements that enhance efficiency or create new solutions. Cultural and heritage benefits emerge when projects contribute to the preservation and promotion of cultural identities and historical

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[7] Decision 9/CP.19, The Warsaw Framework: Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, (UNFCCC, 2014).

[8] Article 5, Paris Agreement, FCCC/CP/2015/10/Add.1 Decision 1/CP.21.

[9] *Ibid*, Article 5.

[10] Wong G et al, 'Designing REDD+ benefits sharing mechanisms: from policy to practice', [2022] Center for International Forestry Research.

[11] *Ibid*, Wong 2022.

[12] Elisa M, 'The need for an international legal concept of gair and equitable benefit sharing', [2016] European Journal of International Law, Volume 27 Issue Number 2.

[13] Luttrell, C., et al, Who should benefit from REDD+? Rationales and realities. 2013 Ecology and Society,18(4), 52-70 at 54.

[14] Rakatama A et al, 'Perceived benefits and costs of REDD+ projects under different forest management regimes in Indonesia. [2020] Climate and Development' Volume12 Issue Number 5.

[15] *Ibid*, Rakatama 2020.

legacies.[16] Collaborative partnerships and stakeholder engagement lead to relational benefits, fostering trust, cooperation, and shared learning.[17] Recognizing the immense benefits that REDD+ offers for communities, countries, and the globe at large, the establishment and implementation of an equitable benefit sharing framework becomes crucial for maximizing the positive impacts of these initiatives as well as their enjoyment.[18]

The implementation of an equitable benefit sharing framework ensures that the advantages stemming from these projects are distributed justly among stakeholders, particularly the local communities and Indigenous Peoples whose livelihoods are intricately linked to forest ecosystems thus ensuring community support and buy in.[19] The financial gains from carbon credits and sustainable forest management not only contribute to local economies but also provide funding for essential social services, education, and healthcare.[20]

Beyond economic considerations, an equitable approach acknowledges and respects the rights of Indigenous Peoples, fostering cultural integrity and deepening the commitment to sustainable environmental practices.[21] In essence, an equitable benefit sharing mechanism is integral to the success of REDD+ as a global initiative for climate change mitigation. By addressing the challenges and implementing innovative solutions, the potential for REDD+ to simultaneously reduce emissions, promote sustainable development, and empower local communities becomes more attainable. As the world grapples with the urgency of climate action, ensuring fair and effective benefit sharing within the context of REDD+ is a key component of a sustainable and equitable future.

Early REDD+ pilots were largely comprised of site-specific REDD+ activities, often carried out by a non-profit or for-profit project developer.[22] REDD+ is however evolving as countries increasingly now move towards jurisdictional and nested approaches.[23] Whatever benefit-sharing approach is utilized by a country, it is vital that transparency and equity in the distribution of REDD+ payments is maintained with a focus on vulnerable groups and stakeholders in accordance with REDD+ safeguards. Each country will also need to ensure its REDD+ benefit sharing mechanism conforms to the specific requirements prescribed by the REDD+ programme or standard it seeks to pursue.[24]

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[16] *Ibid*, Rakatama 2020.

[17] *Ibid*, Rakatama 2020.

[18] Elisa M. 'The Need for an International Legal Concept of Fair and Equitable Benefit Sharing' [2016] The European Journal of International Law Volume. 27 Issue number 2.

[19] *Ibid*, Elisa 2016.

[20] *Ibid*, Elisa 2016.

[21] *Ibid*, Elisa 2016.

[22] *Ibid*, Elisa 2016.

[23] Boyd, W. et al,"Jurisdictional Approaches to REDD+ and Low Emissions Development: Progress and Prospects." Working Paper (World Resources Institute, 2018). Jurisdictional approaches comprise government-led REDD+ activities at the sub-national or national level and nested REDD+ refers to a patchwork of approaches that seek to create a common accounting system and/or crediting system in order to integrate existing REDD+ projects into REDD+ programs.

[24] There is an emerging market for jurisdictional REDD+ carbon credits as demonstrated by the acceptance of Architecture for REDD+ Transactions (ART-TREES) credits by the Leaf Coalition enable corporations to gain access to the highest quality forest carbon credits from forest governments, and requires forest carbon credits to meet the ART TREES requirements; and

Table 1: Fund REDD+ benefit sharing requirements.

Fund	Benefit-sharing requirements and considerations
Forest Carbon Partnership Fund (FCPF)	• The FCPF is a global partnership of governments, businesses, civil society, and Indigenous People's organizations focused on REDD+. The FCPF is managed by the World Bank and supports REDD+ efforts through two separate but complementary funds namely the FCPF Readiness Fund and Carbon Fund.[25] • The FCPF requires a Benefit Sharing Plan (BSP) to indicate the Emission Reduction Plan (ER-P) design and incentive mechanisms, stakeholder consultation and expectations management, beneficiaries, benefits, benefit distribution, management of ER-P performance risk, fiduciary and administrative responsibilities and costs, monitoring provisions, and communicating/disseminating the BSP.[26] • The benefit sharing arrangement should be designed in a transparent, consultative, and participatory manner appropriate to the country context. This process is informed by and builds upon the national readiness process and considers existing benefit-sharing arrangements. The benefit sharing arrangement should comply with relevant applicable laws.[27]
Biocarbon Fund Initiative for Sustainable Forest Landscapes (BioCF ISFL)	• The BioCF ISFL is a multilateral fund, supported by donor governments and managed by the World Bank. It promotes reducing GHG emissions from the land sector including, among others, REDD+ efforts in developing countries.[28] • The BioCF ISFL requires a BSP that describes in greater detail than the ER-P, the consultation and design process, compliance with relevant laws and any gaps, categories of beneficiaries including rationale, eligibility criteria and demographic considerations, types and scale of monetary and non-monetary benefits, distribution of benefits, institutional arrangements arising from the implementation of the BSP, and final detailed communication and monitoring provisions.[29]

Verified Carbon Standard's Jurisdictional and Nested REDD+ (JNR Verra) and ART-TREES credits into the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

[25] FCPF: Forest Carbon Partnership 'About the FCPF | Forest Carbon Partnership' <https://www.forestcarbonpartnership.org/about> accessed 15 February 2024.

[26] World Bank, 'World note on benefit sharing for emission reductions - world bank' <https://documents1.worldbank.org/curated/en/655271548399061092/pdf/FCPF-ISFL-Benefit-Sharing-Note.pdf> accessed 6 February 2024.

[27] *Ibid*, World Bank accessed 6th February 2024.

[28] Biocarbon Fund Initiative for Sustainable Forest Landscapes (ISFL) <https://www.biocarbonfund-isfl.org/who-we-are> accessed 15 February 2024.

[29] Biocarbon Fund Initiative for Sustainable Forest Landscapes (ISFL) < https://www.biocarbonfund-isfl.org/sites/default/files/2020-10/Benefit%20Sharing%20Note_August%202020_English_.pdf > accessed 15 February 2024

Fund	Benefit-sharing requirements and considerations
Green Climate Fund (GCF)	• The GCF is the world's largest climate fund and is created under the auspices of the UNFCCC to finance climate action and support developing countries to raise and attain their Nationally Determined Contributions (NDCs) • The GCF requires accredited entities with the participation of the potentially affected Indigenous Peoples and the host government to prepare a consultation strategy and identify the means by which the affected Indigenous Peoples will participate in the design and implementation of GCF-financed activities as well as share equitably in the benefits.[30] • Accredited entities are then required to develop a BSP that contains baseline information, key findings and analysis. This includes information on measures to avoid minimize and mitigate negative impacts, community based natural resource management, results of consultations, gender assessment and action plans, benefit sharing planning, tenure arrangements, grievance redress mechanisms, costs, budgets, timetables, organizational responsibilities, and monitoring and evaluation.[31]

Table 2: Standard Bodies REDD+ benefit sharing requirements.

Standard	Benefit-sharing requirements and considerations
Architecture for REDD+ Transactions REDD+ Environmental Excellence Standard (ART TREES)	• ART TREES requires the fair and equitable use of proceeds from REDD+.[32] Participants are required to describe any agreements in place or that will be in place for the transfer of TREES rights or benefit allocation arrangements with landowners/ resource right holders that exist between the participant and project owners, landowners, and/or other collective rights holders (including Indigenous Peoples and other Local Communities). TREES credits will only be issued where participants have demonstrated clear ownership or rights.
Verra JNR	• Under the Verra JNR standard, jurisdictional proponents are required to put in place an equitable, transparent, and legally binding benefit-sharing system. This system should consider stakeholders carbon rights, including rights to land, forests, forest resources, as well as their contribution to ecosystem services that resulted or will result in GHG emission reductions.[33] • Benefit sharing systems should be developed through a transparent and participatory process in which stakeholder participation is justifiably representative, with a special emphasis on Indigenous Peoples, Local Communities, women and the most marginalized and/or vulnerable.[34]

[30] (Indigenous people's policy - green climate fund) <https://www.greenclimate.fund/sites/default/files/document/ip-policy.pdf> accessed 9 February 2024

[31] *Ibid*, Indigenous People's policy – green climate fund, accessed 9 February 2024

[32] The REDD+ Environmental Excellence Standard (TREES) – Architecture for REDD+ Transactions (ART) <https://www.artredd.org/wp-content/uploads/2021/12/TREES-2.0-August-2021-Clean.pdf> accessed 9 February 2024.

[33] JNR requirements - verra <https://verra.org/wp-content/uploads/2021/04/JNR_Scenario_3_Requirements_v4.0.pdf> accessed 8 February 2024

[34] *Ibid*, JNR requirements – Verra, accessed 18 February 2024

1.3 REDD+ Benefit Sharing in Kenya

Kenya's involvement in REDD+ gained momentum following the ratification of international climate agreements and frameworks such as the UNFCCC and subsequently the Paris Agreement. The country's commitment to REDD+ progress is exemplified through its sustained engagement in REDD+ site-scale projects and efforts to attain REDD+ readiness. Kenya has been active in the development of the key REDD+ readiness instruments, beginning in 2010 with the preparation of a Readiness Plan Idea Note (R-PIN). Kenya has been a partner country to the UN-REDD Programme and a participant of the FCPF readiness fund. The Kenya FCPF REDD+ Readiness Project has funded the development of key REDD+ readiness instruments including the National REDD+ Strategy, Forest Reference Level, Safeguards Information System and National Forest Monitoring System.

Examples of REDD+ site-scale projects include the Kasigau Corridor REDD+ Project, located in the southeastern part of the country. This project focuses on preventing deforestation and conserving biodiversity in the Kasigau Corridor while providing tangible benefits to local communities through carbon credit sales.[35] The Vanga Blue Carbon Project is making significant strides in conserving mangroves in the coastal region. Focused on mangrove ecosystems, the project recognizes the crucial role of blue carbon sequestration in mitigating climate change, prevents mangrove deforestation, promotes sustainable management, reduces emissions, and enhances livelihoods.[36]

The Mikoko Pamoja Project, specifically addresses mangrove conservation in the Gazi Bay area.[37] Through carbon credit sales, Mikoko Pamoja generates revenue that funds community-driven projects, ranging from education and healthcare to infrastructure development.[38] In the heart of Kenya, the Chyulu Hills REDD+ Project emphasizes community involvement, supporting local livelihoods and reinforcing the intrinsic connection between environmental conservation and human well-being.[39] Below is a table highlighting the projects' benefit sharing mechanisms.

[35] Chloe Farand, Kenya Banks on Carbon Credits – But at what cost to communities, Context, Thomson Reuters Foundation, March 30th, 2023.

[36] Fatima F, Mazza F et al, A Virtuous Cycle: Mangrove Conservation and Blue Carbon Initiatives in Coastal Kenya, (Reach Alliance, 2023).

[37] *Ibid*, Fatima, 2023

[38] *Ibid*, Fatima, 2023

[39] Doug B et all, Using Carbon and Wildlife Credits to Protect the Kasigau Corridor in Kenya, (Union of Concerned Scientists 2014) page 5.

Table 3: Kenya's REDD+ projects' benefit sharing mechanisms.

PROJECT NAME	PROJECT PROPONENT	LAND TENURE SYSTEM	BENEFIT SHARING (MONETARY)	BENEFIT SHARING (NON-MONETARY)
Kasigau Corridor REDD+ Project	Wildlife Works Carbon LLC (WWC)	Private land (Private and group ranches) and community land	WWC manages the carbon assets on behalf of the community members. The current benefit sharing formula entails giving a 1/3 of the total revenue to the ranch shareholders. From the remaining 2/3, WWC will deduct all costs and if there is any revenue remaining this shall be shared 50/50 between the broader community and wildlife works.[40]	The 2022 annual report highlights that the project has created multiple jobs and built schools and hospitals for the local communities.[41]
Chyulu Hills REDD+ Project	Chyulu Hills Conservation Trust	Community land and public land (Gazetted forests and park) Community land and public land (Gazetted forests and park)	The Chyulu Hills REDD+ Project is a multi-partner initiative involving Kenya Forest Service; Kenya Wildlife Service; Mbirikani group ranch; Kuku A group ranch; Kuku Group ranch; Rombo group ranch; Maasai Wilderness Conservation Trust (MWCT); Big Life Foundation and David Sheldrick Wildlife Trust. The project has no fixed benefit sharing ratios and sharing of benefits is allocated after costs have been deducted, according to the current needs of the Board members, project, and stakeholders. The board resolutions on benefit sharing must be supported by a 75% majority for them to be binding.[42]	Improving livestock management practices, employing forest rangers, creating alternative income sources, jobs, and employment opportunities.[43]

[40] Jutta K, Kasigau Corridor REDD+ Project In Kenya: A Crash Dive for Athelia Climate Fund, (Re:Common, 2016)

[41] Aenor International S.A.U, Verification Report The Kasigau Corridor REDD+ Project Phase II – The Community Ranches (Aenor International, 2023).

[42] Stakeholder Interview, 19th January 2023.

[43] Conservation International and Everland, Chyulu Hills REDD+ Project Impact Report Q3-Q4 2022, (Conservation International 2022).

PROJECT NAME	PROJECT PROPONENT	LAND TENURE SYSTEM	BENEFIT SHARING (MONETARY)	BENEFIT SHARING (NON-MONETARY)
Mikoko Pamoja REDD+ project	Association for Coastal Ecosystem Services	Gazetted forests	Income from the carbon projects is allocated as follows: 6% is held to meet the cost of 5 year verification, 65% is transferred to Mikoko Pamoja Community Organization (26% of which is the community benefit, 36% payment of expenses, 3% group expenses), and a further 23% is paid to the Mikoko Pamoja Steering Group's expenses.[44]	Schools, hospitals, beadwork projects for the local communities, improved livelihoods, improved fisheries, acquisition of a new project office.[45]
Vanga Blue Forest	Association for Coastal Ecosystem Services	Gazetted Forests	From the total income from carbon credits 60% is sent to the Community where the remainder after community costs have been deducted is used for community benefit projects. 40% is retained by ACES for payment of administration costs such as verification costs, marketing, reporting and maintenance of websites.[46]	The sale of carbon credits has been used for a range of community benefits, including the refurbishment of a science laboratory and purchase of medical equipment for the Vanga community, the reconstruction of Jimbo nursery school and construction of a community teachers' quarters in Jimbo village, and the construction and electrification of two classrooms in Kiwegu village. As of 2022, projects under development include projects on protection of sea grass meadows, project area expansions, and installation of energy saving stoves.[47]

[44] Mikoko Pamoja and Plan Vivo, Plan Vivo Project Design Document 2020 Revision, (Plan Vivo, 2020).

[45] Shillan R, Kassim J, Huxham M et al, Mikoko Pamoja Annual Report 2022, (ACES, 2023).

[46] Vanga Blue Forest, Kenya Marine and Fisheries Research Institute, Vanga Blue Forest Project Design Document, (ACES, 2020).

[47] Mwanarusi M, Shillan R, Huxham et al, Vanga Blue Forest Annual Report 2022, (ACES, 2023).

2 POLICY AND LEGAL FRAMEWORK FOR REDD+ BENEFIT SHARING IN KENYA

Kenya has demonstrated commitment to the principles of benefit sharing in its policy and legislative framework. The concept of benefit sharing is ingrained in the country's Constitution as well as in sectoral policies and laws such as the forestry, land, wildlife, and environment, in broader sustainable development plans and strategies.[48]

The country's existing policy and legislative framework has been the basis upon which ongoing REDD+ projects in Kenya have been carried out. However, despite the existence of enabling provisions on benefit sharing, there are reports that REDD+ projects have encountered challenges in implementation with various claims of inequity arising. Land use restrictions imposed by some of the ongoing projects hit pastoralists and local communities particularly hard as the use of their land is limited, thus hampering their ability to secure livelihoods whilst receiving very few if any of the benefits the REDD+ projects provide.[49] For example, some stakeholders are claimed to be double agents receiving part of their revenues as a result of being shareholders and the other part as a result of sitting in the community project development committees.[50] These stakeholders end up receiving huge amounts of the revenue at the cost of the community.

In certain cases, whilst the project claims that some of the total funds have been distributed to the communities for community projects, this largely proves not to be the case, and there is a general lack of accountability on benefit sharing.[51] Some projects have been accused of running without obtaining community consent through formal and verifiable agreements.[52] Benefits are also being shared without consultation and subsequent agreement with the communities, negating fundamental Cancun Safeguards such as the need for Free Prior and Informed Consent.[53] It is therefore important to critically analyze the legal and policy framework in the country for REDD+ benefit sharing, to determine existing gaps that impede equitable benefit sharing at the project-level, and address how best to confront the challenges that may arise in the benefit sharing front, as Kenya moves forward with jurisdictional and nested REDD+.

2.1 Policy Framework

Kenya's policy framework on benefit sharing refers to the set of policies, plans and strategies that govern the distribution of benefits derived from the utilization of natural resources. There is no overarching policy on REDD+ benefit sharing and salient issues on benefit sharing are scattered across a variety of sector documents.

[48] Kenya Wildlife Service, Community Based Natural Resources Management Guidelines, (G.o.K, 2019).

[49] Jutta K, Kasigau Corridor REDD+ Project In Kenya: A Crash Dive for Athelia Climate Fund, (Re:Common, 2016).

[50] *Ibid*, Jutta 2016.

[51] Counsell S, Blood Carbon: How a Carbon Offset Scheme Makes Millions from Indigenous Land in Northern Kenya, (Survivor International, 2023).

[52] *Ibid*, Counsell 2023.

[53] *Ibid*, Counsell 2023

Forestry

Kenya's forestry policy has undergone significant evolution over the years driven by the need to integrate good governance, transparency, accountability as well as equity and poverty reduction in the forestry sector.[54] The National Forestry Policy of 2023 incorporates vital elements such as the valuation of ecosystem services, investment of natural resource capital into forest management and national accounts, and previously missing sustainable forestry management components such as REDD+.[55] The policy also establishes a framework for enhanced forest governance, resource allocation, and collaboration between the National and County governments, the private sector, and non-state actors.[56]

The policy advocates for the fair distribution of all benefits, including the flow of ecosystem services, to benefit both present and future generations,[57] and also calls for the development of a regulatory framework rooted in participatory principles and institutional support for community forestry. This framework should ensure equal rights, financing, and responsibilities for all participants, encompassing benefit-sharing mechanisms and fostering good governance.[58] Acknowledging the necessity of addressing conflicts related to resource management and benefit sharing among pertinent stakeholders at both government levels, the policy mandates the government to establish mechanisms for management of such conflicts in the forest sector.[59] Amongst its recommendations, the policy calls for a review of the legislations currently governing forestry citing the need for a framework clearly defining the holders of legal rights to forest ecosystems related benefits including those generated by REDD+ activities in public, communal and private forests.[60]

Kenya has adopted a National REDD+ Strategy which is a key component of the country's REDD+ Readiness. The National REDD+ Strategy offers a comprehensive roadmap on the implementation of REDD+ in Kenya and proposes required strategic actions across various sectors which emphasize on inclusivity and the importance of community-led benefit sharing, where local communities are actively involved in identifying and prioritizing their own needs and benefits from REDD+ initiatives.[61]

Recognizing the critical role that local communities play in forest conservation and seeking to ensure that they are empowered to make decisions about how benefits should be shared, the strategy calls for results-based payments as a way of incentivizing sustainable forest management practices and rewarding local communities for their efforts in protecting and conserving forests.[62]

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[54] Government of Kenya, National Forest Programme 2016-2030, (G.o.K, 2016)

[55] Government of Kenya, National Forest Policy, 2023 (G.o.K 2023).

[56] *Ibid*, Government of Kenya 2023.

[57] *Ibid*, Government of Kenya 2023.

[58] *Ibid*, Government of Kenya 2023.

[59] *Ibid*, Government of Kenya 2023.

[60] *Ibid*, Government of Kenya 2023.

[61] Government of Kenya, National REDD+ Strategy, (G.o.K, 2021).

[62] *Ibid*, Government of Kenya 2021.

These payments are tied to specific performance indicators, such as reductions in deforestation rates or improvements in forest health and are designed to provide a direct financial incentive for communities to invest in sustainable forest management practices.[63]

A key strategic option of the Strategy is the establishment of Payment for Ecosystem Services schemes. To drive this, the Strategy undertakes that the Ministry of Environment Climate Change and Forestry (MOECCF) and the Kenya Forest Service (KFS) will be the entities responsible for clarifying and streamlining benefit sharing mechanisms for all stakeholders as well as providing support for jurisdictional projects.[64] Clarity on benefit sharing is therefore of particular importance as Kenya pursues JNR, which involves the integration of site-scale REDD+ projects within a national or subnational jurisdictional approach.[65] However, this clarity is yet to be set out in national policy.

Wildlife

Kenya's National Wildlife Policy emphasizes the critical importance of equitable benefit sharing in incentivizing local communities towards the protection and sustainable use of wildlife resources and habitats.[66] The policy urges the government to consider enhancing the access to and equitable sharing of wildlife resources' benefits with both the present and future generations in order to conserve in perpetuity, these resources as a national heritage.[67]

The policy urges that wildlife benefits should be seen beyond the lens of tourism as this view conceals other benefits associated with wildlife including provision of ecosystem services, carbon dioxide sequestration, provision of fresh water and air among other benefits. The policy cites that this narrow appreciation of the value of wildlife has led to poor retention and distribution of the benefits generated from Kenya's wildlife sector. To address this challenge, the policy proposes that the government develops a framework for sharing benefits accrued from the use of wildlife resources.[68]

Land

The principle of benefit sharing is also highlighted in the National Land Policy which calls upon the State to protect community and individual interests over land-based resources and facilitate benefit sharing.[69] The policy highlights that the management and utilization of land-based natural resources should involve all stakeholders. The National Land Use Policy is also premised on the philosophy of public benefit sharing,[70] and calls upon the State to use national

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[63] *Ibid*, Government of Kenya 2021.

[64] *Ibid*, Government of Kenya 2021.

[65] *Ibid*, Government of Kenya 2021.

[66] Republic of Kenya, Ministry of Tourism and Wildlife, Wildlife Policy, Sessional Paper No.1 of 2020.

[67] *Ibid*, Republic of Kenya 2020.

[68] *Ibid*, Republic of Kenya 2020.

[69] Republic of Kenya, Ministry of Land and Physical Planning, National Land Policy, Sessional Paper No. 03 of 2009.

[70] Republic of Kenya, Ministry of Lands and Physical Planning, National Land Use Policy, Sessional Paper No.1 of 2017.

land resources in ways that encourage efficiency, access to land use information, equity, elimination of discrimination and public benefit sharing.[71]

Climate Change

Kenya's National Climate Change Framework Policy of 2016 demonstrates a commitment to addressing the challenges posed by climate change while emphasizing the importance of benefit sharing.[72] The policy recognizes that effective climate action requires the active involvement of various stakeholders, and benefit sharing is a crucial component of this approach.[73] It outlines the importance of ensuring a fair and equitable allocation of effort and cost, as well as ploughing back of benefits to address disproportionate vulnerabilities, responsibilities, capabilities, disparities, and inter and intra-generational equity.[74]

The National Policy on Climate Finance of 2016 similarly emphasizes the importance of benefit sharing. It highlights that the sharing of benefits emanating from climate finance and carbon markets is a constitutional requirement and that any benefits accruing from carbon markets activities and transactions such as fees, taxation of other related income would need to be shared between the national government, county governments and local communities.[75]

Kenya's policy framework for climate change also encompasses a National Climate Change Action Plan (NCCAP), updated every five years, The current plan, NCCAP 2023 -2027, highlights Kenya's desire to participate in jurisdiction/compliance REDD+ markets and cites that this can only be achieved by advancing the development of benefit sharing mechanisms, a registry, safeguards, and a Safeguards Information System.[76] The NCCAP acknowledges that Kenya is well positioned to benefit from emerging carbon markets, selling carbon credits generated from the forestry sector, and reiterates that these benefits must be shared with all key stakeholders.[77] NCCAP operationalizes Kenya's Nationally Determined Contribution (NDC), which aims to abate 32% of its GHG emissions by 2030.[78]

2.2. Legal Framework

Kenya's commitment to benefit sharing extends beyond policy to a relatively robust legislative framework. The country has strategically embedded legal provisions within its legislative instruments to ensure that the benefits derived from the exploitation of natural resources are equitably distributed.

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[71] *Ibid*, Session Paper No. 1 of 2017.

[72] Republic of Kenya, Ministry of Environment and Natural Resources, National Climate Change Framework Policy, Sessional Paper No. 5 of 2016.

[73] *Ibid*, Session Paper No. 5 of 2016

[74] *Ibid*, Session Paper No. 5 of 2016

[75] National Treasury, National Policy on Climate Finance, (G.o.K, 2016).

[76] Ministry of Environment, Climate Change and Forestry, National Climate Change Action Plan (Kenya) 2023-2027, (Government of Kenya, 2023), page 6.

[77] *Ibid*, Government of Kenya, 2023

[78] Government of Kenya: Kenya's Updated Nationally Determined Contribution, 2020, (G.o.K, 2020).

Constitutional Provisions

The Constitution of Kenya mandates that any treaties or conventions ratified by Kenya shall form part of the laws of the country.[79] The implication of this provision is that the UNFCCC, the Paris Agreement, and other frameworks such as the Warsaw framework, Cancun safeguards and Doha agreement, form part of Kenya's legislative framework.

The Constitution obligates the national government to ensure sustainable exploitation, utilization, management and conservation of its environment and natural resources for the benefit of the people of Kenya.[80] Parliament is mandated to advance fair and equitable benefit sharing and enact legislation securing local communities' benefits on matters pertaining to investment of property and the exploration of the country's natural resources.[81] The people of Kenya's benefits and interests are further protected by the requirement that all transactions involving the grant of a right or concession by or on behalf of any person, including the national government to another entity for the exploitation of any natural resource of Kenya are subject to Parliament's ratification.[82]

Land Laws

The Constitution enables REDD+ benefit sharing in Kenya by clarifying land ownership and tenure rights. Clear definition of land ownership and tenure helps to determine who is eligible for benefits by providing insight on forest resource user rights and benefit sharing arrangements. Land in Kenya is owned collectively by the people of Kenya either as a nation, community or as individuals.[83] Public land is held in trust by the State on behalf of the nation, private land is owned by individuals and community land is owned by the communities.[84]

Public land in Kenya is administered by the National Land Commission but can be vested separately in either the National Government or the County Government. Forest carbon ownership and underlying rights, are therefore held in trust either by the National Government in trust for the people of Kenya or the County Government in trust for the residents of the county (provided that such land is not the subject of a concession, lease or allocation to a 3rd party under which user rights have been transferred).

[79] Article 2 (5), Constitution of Kenya, 2010.

[80] *Ibid*, Article 69 (1) (a).

[81] *Ibid*, Article 66.

[82] *Ibid*, Article 71.

[83] *Ibid*, Article 61(1).

[84] Ibid, Article 61.

Table 4: Kenya's Public Land Regime.

PUBLIC LAND

National Government	County Government
• All minerals and mineral oils. • Government forests other than community forests. • All roads as defined by law. • All rivers, lakes and water bodies as defined by law. • Territorial sea, exclusive economic and zone and seabed. • Any land that's neither community nor private land. • Land declared to be public land by law.	• Land lawfully held, used, or occupied by any state organ except land that is occupied by the State organ as a lessee under a private lease. • Land transferred to the State by way of sale, reversion, or surrender. • Land which cannot be identified as communal or individual by any legal process. • Land under which no heir can be identified under any legal process.

Community land includes land lawfully registered in the name of group representatives under the provisions of any law; land lawfully transferred to a specific community by any process of law; any other land declared to be community land by an Act of Parliament; and land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities or lawfully held as trust land by a County Government.[85] It is vested in and held by communities identified based on ethnicity, culture, or similar community of interest and unregistered community land is held in trust by County Governments on behalf of the communities for which it is held.

The Community Land Act buttresses the Constitution's provisions by providing for the recognition, protection, and registration of community land rights as well as the management and administration of community land. The Act makes provision for the roles of county governments in relation to unregistered community land. Subject to any other law, natural resources found in community land are to be used and managed sustainably and productively; for the benefit of the whole community including future generations; with transparency and accountability; and on the basis of equitable sharing of accruing benefits.[86] This provision of the Act thus requires all those charged with administration of such jointly owned resources to not only ensure equitable sharing of accruing benefits, but also sustainable and productive use and management of the same.

[85] Ibid, Article 63.

[86] Section 5, Community Land Act, 2016.

The community registration process in Kenya has been challenging and few communities have been registered to date. Furthermore, whilst the Community Land Regulations 2017 require group representatives incorporated under the Land (Group Representatives) Act to make an application to be registered as (i.e. converted into) communities within 12 months from the regulations' gazettement, some group representatives are yet to make this transition and face heightened contestation on land ownership thus affecting the abilities of rightful owners and beneficiaries to receive benefits.

Private land comprises land that is registered and held by any person under any freehold tenure; land held by any person under leasehold tenure; and any other land declared private land under an Act of Parliament.[87] In the absence of a law to the contrary, REDD+ user rights arising from private land vest in the private landowner unless these rights have been passed to a third party. REDD+ user rights could be owned by a third party not holding proprietary rights over land, where the entity acquires usage rights through the mechanics set out in the Land Act and the Land Registration Act. In the case of private or community land, a third party acquires rights through leases or licenses over land[88], or through contractual arrangements over the land's resources such as the forest or tree cover on the land[89]. The transfer of rights over the trees may include the transfer of the carbon sequestered in the trees and as such any contingent interests or benefits arising from the sequestered carbon.

Forestry Laws

The Forest Conservation and Management Act (FCMA) stands as a cornerstone of Kenya's legal framework for REDD+ as it is the overarching forestry legislation in the country. Enacted to provide for the conservation and sustainable management of forests, this law serves as a robust foundation for benefit sharing and defines benefits as the "*quantifiable and non-quantifiable goods and services provided by forest ecosystems.*"[90] The FCMA mandates the Kenya Forest Service (KFS) to establish and implement benefit sharing arrangements,[91] and outlines the rights of local communities and Indigenous Peoples with regards to forest resources, emphasizing the necessity for their participation in decision-making processes and in ensuring that they receive a fair share of benefits accrued from forest activities.

The FCMA requires that joint management agreements between the KFS and other entities specify the contributions, rights, and obligations of all parties, and set out the methods of sharing the costs and benefits accruing from the utilization of forest resources.[92] It also calls upon all forest investors to mandatorily share the benefits derived from the forests with local communities via infrastructure, education, employment, and social amenities.[93]

[87] Article 64, Constitution of Kenya, 2010.

[88] Section 5, Land Act, 2012.

[89] *Ibid*, Section 5.

[90] Section 2, Forest Conservation and Management Act, 2016.

[91] *Ibid*, Section 8.

[92] *Ibid*, Section 2 and 41.

[93] *Ibid*, Section 53.

The FCMA categorizes forest ownership as public, private and community forests,[94] in line with Constitution's categorization of land. This categorization determines who earns the benefits gained from the utilization, conservation, protection, and management forests, as REDD+ benefits are distributed to the persons with tenure or ownership rights and interests over the forests. In the case of a public forests, the owner is the national government and the county government,[95] and the forest is managed by either the Kenya Forest Service[96], National Land Commission[97] or County Governments[98]. Private forests are owned and managed by the registered owner of the land on which the forest is on.[99] Community forests are owned and managed by the registered community under which the land, upon which the forest is situated, is registered.[100]

A. Public Forests	The FCMA classifies public forests to include government forests other than community forests, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas; and forests on land between the high and low watermarks.[101]
B. Private Forests	Private forests are provided for under FCMA to include forests held under freehold tenure on registered land; forests held under leasehold tenure; forest held by an institution, individual or corporate body for commercial or non-commercial use; and forests on private land.[102]
C. Community Forests	Community forests are classified under FCMA to include forests on land lawfully registered in name of group representatives; forests on land lawfully transferred to a specific community; forests on any other land declared to be community land by an Act of Parliament; forests on land that is lawfully held, managed or used by specific communities as community forests; forests on ancestral lands and lands traditionally occupied by hunter-gatherer communities; and forests lawfully held as trust land by the county governments, but not including any public land held in trust by the county governments under Article 62 (2) of the Constitution.[103]

In some instances, forest owners may cede forest ownership and tenure rights to third parties. These transfers of ownership and tenure rights may extend benefit sharing interests to the entities acquiring the tenure and ownership rights. In the case of public forests, for example, ownership of tenure rights may pass to a third party through a concession agreement whereby KFS enters into long term agreements for the management of a specified public forest area

[94] *Ibid*, Section 30.

[95] Article 62 (1), Constitution of Kenya, 2010.

[96] Section 8, Forest Conservation and Management Act, 2016.

[97] Section 67 (2) (a), Constitution of Kenya, 2010.

[98] *Ibid*, Section 62 (2).

[99] Article 64, Constitution of Kenya, 2010; Section 30 (4), Forest Conservation and Management Act, 2016.

[100] Article 63, Constitution of Kenya, 2010; Section 30 (3), Forest Conservation and Management Act, 2016.

[101] Section 30 (2), Forest Conservation and Management Act, 2016.

[102] *Ibid*, Section 30 (4).

[103] *Ibid*, Section 30 (3).

at a price determined after forest valuation and bidding.[104] Once entered into, a concession agreement entitles the entity with rights of use in respect to a specific area in a national or county forest by means of a long-term contract, for the purpose of commercial forest management and utilization.[105] These tenure and use rights guarantee the entity's rights to the benefits accruing from their utilization and management of the forest.

Tenure rights may also be vested fully or partially to a non-owner of forested land in the case of joint management agreements. In this case, a private forest owner, KFS or the County Department responsible for forestry agrees to enter into partnership with other persons for the joint management of a specified forest area, specifying the contribution, rights and obligations of each party and setting out the methods of sharing the costs and benefits accruing from the forest so managed.[106] KFS may enter into a management agreement with a community organized or constituted as Community Forest Association under which agreement the community is granted with forest user rights.[107] Entities gaining forest user or tenure rights through management agreements also have rights to benefits accrued from the utilization and management of the forest in accordance with the terms of the agreement entered into with KFS.

Climate Change Laws

Kenya's Climate Change Act 2016 (Act) aims for the development, management, implementation, and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development in the country.[108] The Act has been amended through the Climate Change Amendment Act of 2023 (Amendment Act) that commenced on the 15th of September 2023. The amendments provide guidance in the development and implementation of carbon market and non-market approaches in compliance with international obligations. To further operationalize the Act's provisions on carbon markets, the government gazetted the Climate Change (Carbon Markets) Regulations, 2024 on 17th May 2024.

While the Act had previously made no mention of REDD+, substantial provisions on REDD+ have been included through its amendment. The Act now defines REDD+ as "*activities in the forest sector that reduce GHG emissions from deforestation and forest degradation as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks at the national and subnational levels.*"[109]

Whilst the Act does not explicitly mention the term benefit sharing, it requires project proponents to pay an annual social contribution to be managed and disbursed for the benefit of the

[104] *Ibid*, Section 2.

[105] *Ibid*, Section 2.

[106] Section 2 FCMA; details of the operationalization of these agreements are set out in Section 41 of the FCMA.

[107] *Ibid*, Section 49(1).

[108] Section 3(1), Climate Change Act, 2016.

[109] *Ibid*, Section 2.

community.[110] This annual social contribution is derived from the project proponent's aggregate earnings which are defined as "the total of all income in a carbon project without adjustment for inflation, taxation or types of double counting." The Regulations mandate that the annual social contribution for land-based projects shall be at least forty (40%) per centum of the aggregate earnings of the previous year less cost of doing business.[111] The term "cost of doing business" is not defined. Private entity carbon market projects on private land are not required to disburse annual social contributions in the manner laid out in the Act and may as such develop their own mechanisms for sharing benefits in so far as they align with the laws of Kenya.

To enhance transparency in the disbursement of the annual social contribution from the project proponent's aggregate earnings to the community, the Regulations criminalize knowingly giving misleading information with respect to environmental or financial gains from carbon market investments.[112] The offence carries with it a fine not exceeding five hundred shillings, an imprisonment term of a period not exceeding ten years or both of the penalties, upon conviction.[113] Effects of this provision with regard to benefit sharing is that it ensures that communities receive the benefits owed to them by dissuading carbon project developers from underquoting their financial gains and subsequently distributing lesser benefits to communities.

The management and distribution of these benefits shall be undertaken under the Community Development Agreement (CDA)[114] which is defined in the Regulations as "an agreement which outlines the relationships and obligations between the proponents of a project and the community in public and community lands where the project is being developed". The CDA is to outline the relationships and obligations of project proponents and is to be registered in the National Carbon Registry.[115]

General Overview

The CDA sets out key principles and directions that enable the parties to work together for their mutual benefit. Communities are to co-operate with the project proponents to mobilize social capital and monitor the implementation of the project,[116] whereas project proponents are to make payments from their aggregate earnings each financial year towards the benefit of the community.[117] To ensure transparency, the project proponent must maintain clear and up to date records of all disbursements made, provide an annual report to the CDA Committee (Committee) setting out its annual aggregate earnings and prepare an annual implementation report for the project.[118]

[110] *Ibid* Section 23 E (5).

[111] Section 2, Draft Climate Change (Carbon Markets) Regulations, 2023.

[112] Section 33 (c), Climate Change Act, 2016.

[113] *Ibid*, Section 33

[114] *Ibid*, Section 23

[115] *Ibid*, Section 23 E

[116] Community Development Agreement, Schedule 5 of the Draft Climate Change (Carbon Markets) Regulations, 2023, pg 4.

[117] *Ibid*, page 5

[118] *Ibid*, page 6

Governance Structure

The governance structure of the CDA comprises of the Committee which has oversight responsibility over the implementation of the agreement. The Committee is supported by the Monitoring, Evaluation and Reporting Sub-Committee which monitors and evaluates the implementation of projects and the CDA, and the Grievance Resolution Sub-Committee (GRS) which is responsible for resolving any complaints arising from the implementation of the CDA. The Committee's functions include monitoring and evaluating compliance with the terms of the CDA, facilitating engagement between the community and the project proponent, and settling disputes arising from the implementation of the agreement.

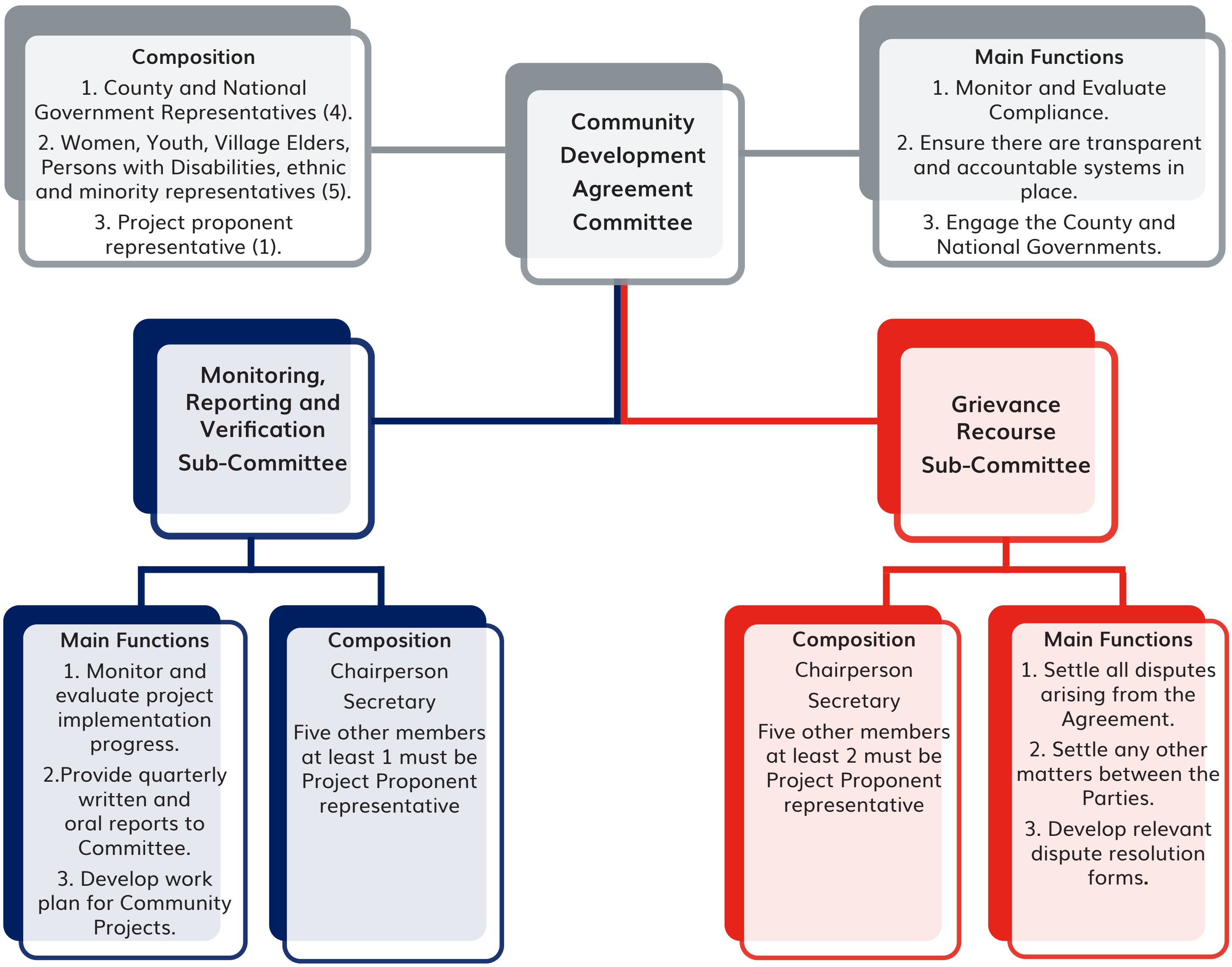

Figure 1: CDA Governance and Institutional Framework[119]

[119] *Ibid*, Page 6-13

Allowable Expenses and Projects

Allowable expenditure payable under the CDA includes, costs incurred to implement projects, administrative expenses, and costs for the proper and effective functioning of the CDA Committee. Parties to the CDA must agree on the limit for the administrative expenses and signatories to the administrative expenses account are the Chairperson, a representative of the project proponent and any other party agreed upon by the parties. On the other hand, allowable community projects that may be undertaken with the CDA funds include amongst others; special programmes that benefit women, youth and persons with disabilities, protection of the environment and natural resources, education and employment opportunities, and support for infrastructure. These projects are funded through the community projects development expenses account, whose signatories are the community representatives.

Dispute Resolution

Disputes arising from the CDA's implementation are to be first resolved through dialogue and negotiation. If the dispute remains unresolved, it shall be lodged with the Chairperson of the GRS, who must acknowledge receipt of the grievance within ten days, for determination. The GRS Chaiman is to call the concerned parties to a dispute resolution session with the GRS, which must resolve the dispute within thirty days. If the GRS is unable to resolve the grievance, it shall refer the grievance to the Committee for resolution at its next meeting or at an emergency meeting set for the same. The Act's dispute resolution clause is aligned to the CDA's but adds that where the dispute is not resolved by the CDA's dispute resolution mechanism within thirty days, it shall be referred to the National Environmental Tribunal.[120]

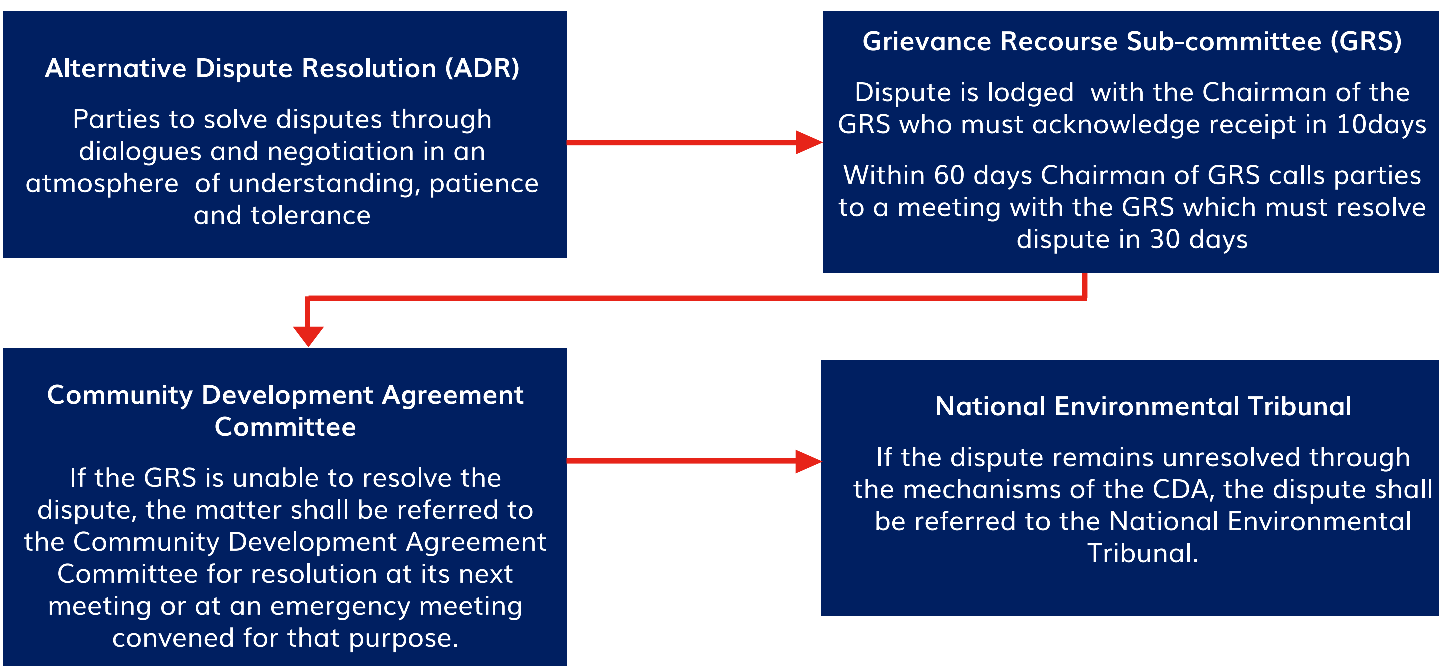

Figure 2: Climate Change Framework's Dispute Resolution Mechanism[121]

[120] *Ibid*, Section 23 H

[121] Community Development Agreement Schedule Five of the Draft Climate Change (Carbon Markets) Regulations, 2023 and

Based on the analysis of the Act and Regulations, key areas requiring attention are the need for transparency to be maintained in the calculation of aggregate earnings and the deductible cost of doing business which must based on verifiable project operational costs. Communities and other entities involved in the implementation of the CDA must be trained and sensitized on the requirements of the law with regards to CDAs and their capacity built to enable them to effectively negotiate and enter into suitable agreements that protect their interests and advance the goal of climate action. There also exists an urgent need to clarify on the annual social contribution provisions for jurisdictional land-based carbon projects, as the current provisions of the Act and the Regulations are mainly implementable for site-scale projects whereas Kenya's policy framework reveals the country's intention to implement jurisdictional REDD+.

Natural Resource Benefit Sharing Laws

Other legislative developments include the Natural Resources (Benefit Sharing) Bill, 2022, which seeks to establish a system of benefit sharing in natural resource exploitation between resource exploiters, the national government, county governments and local communities. The Bill specifically includes the exploitation of forests within its scope, meaning that, the use of a forest for a REDD+ project, along with any income generated from the sale of carbon credits, would likely fall under the category of using natural resources for commercial benefit.

"Benefit sharing" under the Bill is defined as the "sharing of any benefits arising from the exploitation of natural resources in a fair and equitable manner, and this is envisioned to be done through a benefit sharing agreement which sets out how revenue accruing from natural resources shall be shared out between an affected entity (the organization or person involved in the exploitation of a natural resource) and a county.[122] The Bill provides for a revenue sharing ratio with respect to royalties collected by the Kenya Revenue Authority (KRA). The Bill defines these royalties as, "fees or payments by whatever name, paid by an affected entity for the exploitation or exploration of a natural resource in Kenya."

Every organization or person involved in the exploitation of a natural resource to which the Bill applies is also required to enter into a benefit sharing agreement with the relevant county, setting out the manner in which revenue accruing from the natural resources will be shared.[123] This should be done before the exploitation of the resource in the affected county, and the agreement should include both monetary and non-monetary benefits.[124] The Bill does not prescribe a specific percentage of revenue accruing to the entity as mandatory for sharing in the agreement, and as such this is subject to the negotiation of the parties. The agreement will require the approval of the county assembly prior to execution,[125] and once executed, a copy is to be deposited with the KRA and a copy transmitted to the Senate.

Section 23H Climate Change Act, 2016.

[122] Section 2, Natural Resources (Benefit Sharing) Bill, 2022

[123] *Ibid*, Section 9.

[124] *Ibid*, Section 9 (2).

[125] Ibid, Section 12.

The Bill fails to bring harmony to the forestry sector as it requires parties to enter a benefit sharing agreement and mandates KRA to monitor the implementation and compliance with written law of any benefit sharing agreement entered pursuant to the Bill and any other written law.[126] On the other hand the Act and Regulations mandate all land based carbon projects to utilize CDAs negotiated by the CDA Committees under the oversight of the National and County governments with copies being deposited at the National Carbon Registry which the DNA manages. These conflicting provisions across various laws have the potential to bring confusion as to who oversees REDD+ benefit sharing arrangements should the Bill be passed into law as currently designed.

Table 5: A Summary of Kenya's current and proposed benefit sharing framework.

Key Elements	The Climate Change Act 2016	The Climate Change (Carbon Markets) Regulations, 2024	The Natural Resources (Benefit Sharing) Bill 2022
Benefit Sharing Ratios	The term "benefit sharing" is not defined, but the Act provides for an annual social contribution that must be disbursed for the benefit of the community. This annual social contribution is derived from the project proponent's aggregate earnings which are defined as "the total of all income in a carbon project without adjustment for inflation, taxation or types of double counting." The contribution shall be at least 40% of the aggregate earnings in land-based projects.	The regulations further clarify that the annual social contribution of 40% of the project proponent's aggregate earnings is only disbursable by land-based projects being implemented. It also highlights that the annual social contribution shall be deductible from the aggregate earnings of the previous year less cost of doing business. The term "less cost of doing business" is not defined. Private entity carbon market project on private land are not required to disburse the annual social contribution.	"Benefit sharing" is defined to mean the sharing of any benefits arising from the exploitation of natural resources in a fair and equitable manner. The Act does not prescribe ratios for benefit sharing and mandates the project proponent together with the key stakeholders involved in the implementation of the project shall determine the amount of money to be allocated to each local community from monies that accrue under a benefit sharing agreement under this Act.

[126] *Ibid*, Section 6 (4).

Key Elements	The Climate Change Act 2016	The Climate Change (Carbon Markets) Regulations, 2024	The Natural Resources (Benefit Sharing) Bill 2022
Benefit Sharing Agreement	Projects are to be implemented through a Community Development Agreement (CDA) that is to be recorded at the National Carbon Registry. The CDA must set out the roles of key stakeholders, including project proponents, impacted communities, and national or county governments, while ensuring meaningful engagement with local communities. It must also provide for an annual social contribution from the project's earnings to support community development and outlines how benefits from carbon markets and carbon credits are shared between project proponents and impacted communities.	The CDA must include plans for socio-economic development initiatives aimed at improving local livelihoods. Schedule Four of the Regulations sets out a template CDA that all projects must use. The CDA template sets out the institutional framework which includes the CDA Committee, Monitoring Evaluation and Reporting Sub-Committee and the GRS. To ensure transparency, the project proponent must maintain clear and up to date records of all disbursements made, provide an annual report to the Committee setting out its annual aggregate earnings and prepare an annual implementation report for the project. The CDA must be reviewed or amended at least every five years to remain effective and responsive to community needs. The CDA mandates that the CDA Committee conducts consultations with the Community in accordance with the laws of Kenya and the requirements of the applicable carbon standard and obtains their free, prior, and informed consent to the CDA, and that the CDA's content is consistent with the community's consent. The Committee's consultation process must be annexed to the CDA.	Every affected entity must enter into a benefit sharing agreement with the relevant county government before the exploitation of a natural resource in the affected county. The agreement shall be deposited within thirty days of its execution to the Senate. The agreement must include non-monetary benefits that may accrue to the county and the contribution of the affected entity in realizing the same. Each county that has a natural resource to which this Act applies must establish a County Benefit Sharing Committee which shall negotiate the terms of a benefit sharing agreement with an affected entity on behalf of the county government; determine the amount of money to be allocated to each local community from monies that accrue under a benefit sharing agreement; and convene public forums to facilitate public participation with regard to proposed benefit sharing agreements during negotiations prior to execution by the county government.

Key Elements	The Climate Change Act 2016	The Climate Change (Carbon Markets) Regulations, 2024	The Natural Resources (Benefit Sharing) Bill 2022
Dispute resolution	Disputes arising under a land-based project shall be subjected to the dispute resolution mechanism set out in the CDA in the first instance and be resolved within 30 days from the date that the dispute is lodged. Where the dispute is not resolved within thirty days of submission, the dispute shall be referred to the National Environmental Tribunal.	The CDA highlights that disputes shall be first resolved through dialogue and negotiation. If the dispute remains unresolved, it shall be lodged with the Chairperson of the GRS, who must acknowledge receipt of the grievance within ten days. The GRS Chaiman is to call the concerned parties to a dispute resolution session with the GRS, which must resolve the dispute within thirty days. If the GRS is unable to resolve the grievance, it shall refer the grievance to the CDA Committee for resolution at its next meeting or at an emergency meeting set for the same.	The Bill does not set out a dispute resolution mechanism.

2.3 Opportunities and Gaps in Kenya's Policy and Legal Framework

Kenya has made significant progress and its sectoral policies and legislations such as the National REDD+ Strategy, NCCAP, NDC, FCMA and Wildlife Conservation and Management Act all advocate for equitable benefit sharing, in line with the Constitution's requirements that all natural resources be exploited for the benefit of the people of Kenya. These policies and legislations have formed the basis for the implementation of various REDD+ projects that not only reduce emissions from deforestation and degradation but also generate carbon credit sales.

Nevertheless, it was only until the amendment of the Act that a clear benefit-sharing system has been established. The Act, and Regulations operationalizing it, set out the need for an annual social contribution that must be disbursed for the benefit communities. This annual social contribution must be at least 40% for land-based community carbon projects and public carbon projects, and is to be derived from the aggregate earnings of the project proponent. As this is a nascent provision of law, there lacks country-wide sensitization to ensure that CDAs can be effectively negotiated, executed and implemented by all relevant parties involved. Widespread sensitization is therefore necessary and should focus on among others the carbon and non-carbon benefits of REDD+ projects and how to disburse them, and the appropriate calculation of the annual social contribution to communities in a transparent and accurate manner. Duplication of benefit sharing laws with a bearing on the forest sector is underway in Kenya and needs to be avoided to prevent bureaucracy and overlapping mandates that cause confusion. Lastly, the provisions on annual social contribution focus mainly on project level activities leaving out jurisdictional projects. These exclusions are despite Kenya's National REDD+ Strategy establishing that the country is working towards the implementation of a JNR programme.

From the foregoing, the country needs to clarify its policy and legislative framework, as when read together, critical aspects of REDD+ benefit sharing such as which benefit sharing agreement should be used and the roles of different institutions become unclear. These challenges highlight the need for a REDD+ specific benefit sharing regime so as to simplify and harmonize national approaches to REDD+ benefit sharing. This will avoid unnecessary transaction costs, redundancies, confusion, and competition from multiple REDD+ related legislative instruments operating simultaneously in the country, and will also ensure that Kenya creates an enabling legal environment for the success of REDD+.

3 REDD+ BENEFIT SHARING FRAMEWORKS IN OTHER JURISDICTIONS.

Since REDD+'s debut on the global stage more than a decade ago, more than 50 countries have launched national REDD+ initiatives, dozens of subnational governments have experimented with "jurisdictional approaches" to REDD+, and more than 350 local REDD+ projects have been implemented globally.[127] These national, subnational and local REDD+ initiatives have helped create domestic conditions for addressing deforestation and forest degradation whilst providing an important foundation for long-term impact, including; better understanding of deforestation drivers, improved forest monitoring capacities, and increased stakeholder engagement.

Core to the success of these REDD+ efforts is the concept of benefit sharing. In fact, evidence from early recipients of results-based finance, suggests that REDD+ initiatives positively influenced forest governance through increased transparency, accountability, and equitable benefit sharing.[128] This comparative study aims to look at countries that have a functioning REDD+ benefit sharing mechanism so as to draw out lessons and recommend best practices on benefit sharing arrangements for Kenya. Lessons from these countries' benefit-sharing experiences can be used to identify and mitigate risks of inequitable, ineffective, and illegitimate outcomes in Kenya's implementation of REDD+.

3.1 Ghana

Ghana, with nearly 80,000 square kilometers of forest cover, representing 35% of its total land area, has been experiencing a significant decline, marked by a net annual loss of 4%.[129] Key drivers of deforestation and forest degradation include agricultural expansion (50%), wood harvesting (35%), population and development pressures (10%), and mining (5%).[130] To combat this trend, Ghana engaged in REDD+ in 2008, obtaining approval for its Readiness Project Idea Note (R-PIN) in 2010.[131]

The country achieved REDD+ readiness in 2018, focusing on building capacity, understanding, and systems for implementation. With a National REDD+ Strategy, Forests Reference Emissions Level (FREL), SIS, and MRV mechanism in place, Ghana is transitioning to the implementation stage. Ghana aims to significantly reduce emissions over the next two decades while ensuring benefits from its forest resources are shared with local communities to enhance livelihoods across all regions of the country.[132]

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[127] Angelsen A et al, 'Forest-Based Climate Mitigation: Lessons from REDD+ Implementation' (CIFOR, 2019).

[128] *Ibid*, CIFOR, 2019.

[129] Global Forest Watch, State of the Forests Annual Report 2022, (GFW, 2022).

[130] Forest Commission of Ghana, National REDD+ Strategy, (Government of Ghana, 2016).

[131] *Ibid*, Government of Ghana, 2016.

[132] *Ibid*, Government of Ghana, 2016.

The concept of benefit sharing is entrenched in Ghana's Constitution which provides a formula for benefit sharing in relation to the use of Stool and Skin lands. The Constitution mandates that 10% of all revenue accruing from Stool and Skin lands has to be paid to the Office of the Administrator of Stool Lands (OASL) to cover administrative expenses.[133] The remaining revenue has to be disbursed between the following constitutional beneficiaries: stool (25%), traditional authority (20%), and district assembly (55%).[134]

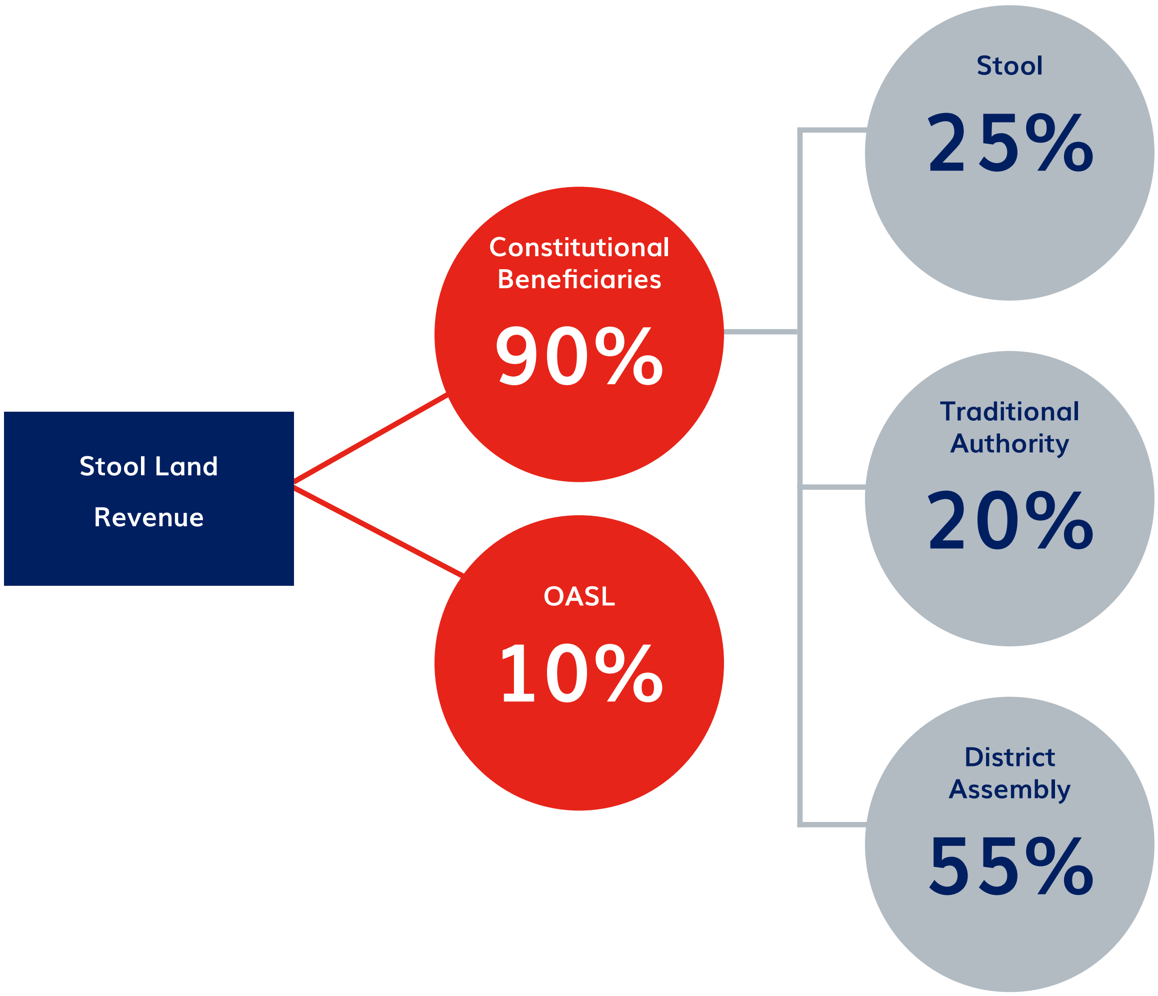

Figure 2: Benefit Sharing under Ghana's Constitution

Under the Community Resource Management Area (CREMA) benefit sharing model, communities organise themselves for the purpose of sustainably managing and conserving forest resources. The communities form a CFA with its own constitution. The CREMA mechanism gives communities the right to manage and benefit economically from their natural resources within the accepted Constitutional rights and in line with the CREMA's constitution and associated by-laws. CREMA benefit sharing arrangements are contractual and vary from CREMA to CREMA. CREMA communities thus determine their own benefit-sharing arrangements that are responsive to the CREMA stakeholders' values, perceptions of equity and needs.

[133] Article 267, Constitution of Ghana, 1992.

[134] *Ibid.*

Ghana is currently in the process of deploying a jurisdictional system where the government is mandated to enter an ERPA.[135] In particular, the Ministry of Finance is the contracting entity for the ERPA in relation to the cocoa forest REDD+ programme.[136] Ghana Cocoa Forest REDD+ Programme (GCFRP) is the first ER-P developed under REDD+ in Ghana.[137] It is jointly coordinated by the Climate Change Directorate / National REDD+ Secretariat (NRS) of the Forestry Commission and Ghana's Cocoa Board (Cocobod).[138]

The final BSP for GCFRP asserts that only verified reductions in deforestation and degradation will trigger carbon payments from the FCPF to be shared between the identified beneficiaries.[139] Ghana expects to produce emission reductions which will generate approximately USD 50 million in carbon fund payments.[140] This revenue will be distributed to the various beneficiaries based on demonstrated performance against indicators.[141]

Notably, four percent (4%), sixty-nine (69%), and twenty seven (27%) of the total carbon payments are to cover the program's annual fixed costs, the Hotspot Intervention Areas (HIAs) stakeholders,[142] and government stakeholders respectively.[143] After fixed costs, 3% of performance-based payments are to be channeled to a temporary benefit sharing buffer to cover potential shortfalls that could result from underperformance or unexpected delays from the carbon funds and the government of Ghana.[144] However, if the amount is left unspent, it would be distributed to beneficiaries during the final disbursement.[145]

To enhance social inclusion within the GCRP, Ghana has partnered with NGOs actively working with local communities in cocoa landscapes.[146] The GCRP social inclusion activities include directly engaging farmers across 100 communities, and ensuring that vulnerable groups such as women, youth, migrant farmers and persons with disabilities are actively involved in REDD+ action and benefit equitably from emissions reduction efforts.[147] The project aims to build

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135 Government of Ghana, Ghana's REDD+ Strategy 2016 – 2035, (Government of Ghana).

136 *Ibid*, (Government of Ghana, 2016).

137 *Climate Change Directorate/National REDD+ Secretariat, Final Benefit Sharing Plan: Ghana Cocoa Forest REDD+ Programme, (Government of Chana, 2020).*

138 *Ibid*, (Government of Ghana, 2020).

139 *Ibid*, (Government of Ghana, 2020).

140 *Ibid*, (Government of Ghana, 2020).

141 *Ibid*, (Government of Ghana, 2020).

142 These are administrative district boundaries within which numerous farmers, communities, and tradition authorities who preside over the land under the ER-P landscape are grouped.

143 Climate Change Directorate/National REDD+ Secretariat, Final Benefit Sharing Plan: Ghana Cocoa Forest REDD+ Programme, (Government of Ghana, 2020).

144 *Ibid*, (Government of Ghana, 2020).

145 *Ibid*, (Government of Ghana, 2020).

146 Kennedy Fosu, World Bank Approved Grant to Boost Community Access to Funds Earned from Carbon Credits, World Bank available at: World Bank Approves Grant to Boost Community Access to Funds Earned from Carbon Credits, last accessed 27/04/25.

147 *Ibid*, World Bank.

the knowledge and skills of these groups to help them engage in the REDD+ programme, by developing communication toolkits tailored to demystify REDD+ processes and benefit sharing, and institution of training programs to entrench dialogue and policy formulation.

3.2 Liberia

Liberia's 7.5 million hectares of tropical forest plays a crucial role in the national economy and sustains its communities.[148] However, just like many developing countries, Liberia faces the dual challenge of boosting revenue and creating jobs, versus sustainably managing its forests.[149]Deforestation poses a growing threat, necessitating Liberia's commitment to participating in REDD+ as a means to reform its forestry sector and generate community, conservation, and commercial benefits. Significantly, Liberia has achieved notable progress in REDD+, evidenced by the development of its National REDD+ Strategy, National Forestry Monitoring System (NFMS), Forest Reference Emission Level (FREL), Monitoring, Reporting and Verification System (MRV), Safeguards Information System (SIS), and Grievance Recourse Mechanism (GRM), and is progressing towards results-based payment.[150][151]

The national REDD+ Safeguards Information System (SIS) emphasizes the protection, conservation, and sustainable management of forest resources, safeguarding the rights of communities residing in these areas, and ensuring effective policies for the rightful distribution of REDD+ benefits.[152] Liberia's National REDD+ Strategy, recommends establishing benefit-sharing mechanisms aligned with those in forestry, mining, agriculture, and other relevant sectors.[153] The Strategy aligns with the Liberian Constitution, which mandates the government to manage natural resources for the maximum participation of citizens and the equitable sharing of benefits to advance the general welfare and economic development of Liberia.[154]

REDD+ benefit sharing in Liberia is governed by the National Forestry Policy, Community Rights Act, Land Rights Act, Natural Resource Law, National Forestry Reform Law (NFRL), and the Forest Development Authority Regulation No. 106-07. The National Forestry Policy mandates the Forest Development Authority to manage forest resources with the participation of and for the benefit of all Liberians.[155] The NFRL establishes a transparent framework for the use, management, protection, and conservation of forest resources, emphasizing benefits that

[148] Forestry Development Authority REDD+ Implementation Unit, 'National Strategy for Reducing Emissions from Deforestation and Forest Degradation (REDD+) in Liberia', (Government of Liberia, 2016).

[149] *Ibid*, (Government of Liberia, 2016).

[150] Forestry Development Authority REDD+ Implementation Unit, 'REDD+ in Liberia', (Government of Liberia, 2021).

[151] *Ibid*, (Government of Liberia, 2021).

[152] Environmental Protection Agency of Liberia, 'Liberia's REDD+ Safeguards Information Systems (SIS) Initial Summary of Information (SOI) Report', (Government of Liberia, 2022).

[153] Forestry Development Authority REDD+ Implementation Unit, 'National Strategy for Reducing Emissions from Deforestation and Forest Degradation (REDD+) in Liberia', (Government of Liberia, 2016)

[154] Article 7, Constitution of the Republic of Liberia,1986.

[155] Section 3.1, National Forestry Policy.

integrate community, conservation, and commercial forest management.[156]

The NFRL charges forestry fees which are fees associated with the use or exploitation of forest land.[157] Charged forestry fees include stumpage fees, land rental fees, administrative fees and area-based fees which are tied to forest resources licenses issued by the Forest Development Authority.[158] These fees form part of the country's revenue and are distributed between the county government, the national government and the local communities entitled to benefit.[159]

The National Community Benefit Sharing Trust is responsible for managing the thirty percent allocation to communities under the NFRL.[160] The trust is overseen by the National Benefit Sharing Trust Board, ensuring fair and equitable distribution of funds received from the Forestry Development Authority, the Central Bank, and the Ministry of Finance.[161] The Board disburses funds to Community Forestry Development Committees, acting on behalf of affected communities.[162] Collaborating with committees and communities, the Board ensures that funds are utilized in line with the NFRL, directing that committee-received funds be used for projects benefiting the represented affected communities.[163]

Counties receive funds through the County Forestry Development Fund, the exclusive channel for the national government to transfer funds under the National Forestry Reform Law's benefit sharing mechanism.[164] The Forest Development Authority, in collaboration with the Central Bank and the Ministry of Finance, annually distributes thirty percent of allocated funds to the fifteen counties.[165] Counties manage and account for these funds transparently within their established budgetary processes.

To enhance fairness and transparency, the Forest Development Authority is obligated to compile an annual report detailing government disbursements to each County Forestry Development Fund and the National Community Benefit Sharing Trust. The report includes disbursement dates, funds allocated to Community Forestry Development Committees, expenditure breakdowns, and a list of public complaints.[166] The report must then be made available for public participation under the Forestry Development Authority's Regulation No. 101-07 on public participation.[167]

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[156] Preamble, National Forestry Reform Law, 2006.

[157] *Ibid*, Section 14.2.

[158] *Ibid*, Section 14.2 (e).

[159] *Ibid*, Section 14.2 (e).

[160] Section 32, Forestry Development Authority Regulation No. 106-07 on Benefit Sharing.

[161] *Ibid*, Section 32.

[162] *Ibid*, Section 33 (a).

[163] *Ibid*, Section 33 (a).

[164] *Ibid*, Section 23 (b) (1).

[165] *Ibid*, Section 22.

[166] *Ibid*, Section 41.

[167] Section 13, Forestry Development Authority Regulation No. 101-07 on Public Participation.

Liberia is in the process of establishing a REDD+ Feedback and Grievance Redress Mechanism (FGRM) which hears complaints regarding the implementation of REDD+ projects and amongst the complaints it hears include benefit sharing complaints.[168] The objective of FGRM is to provide an accessible and user-friendly platform and means for making, receiving, tracking, and responding to both feedbacks and grievances concerning or related to the impact of REDD+ activities in Liberia.[169] The FGRM is comprised of the Town Grievance Redress Committee, Chiefdom Grievance Redress Committee, County Grievance Redress Committee and Courts of Law in that hierarchical order.

3.3 Fiji

Fiji is covered by approximately 1.1 million hectares (ha) of forests, representing 56.0 percent of the total land area.[170] Deforestation and forest degradation, driven by various factors, have led to an annual forest cover loss of 0.32%, necessitating urgent actions for restoration.[171] Fiji's National Adaptation Plan (NAP) emphasizes on the dual role that REDD+ plays both in protecting and conserving forests, and calls upon the government to embed REDD+ in all national and sectoral policies, plans and strategies.[172]

The national REDD+ Programme, initiated in 2009 and led by the Ministry of Forest and the Ministry of Economy, achieved readiness in 2016 and has transitioned to implementation. The comprehensive REDD+ program includes a National REDD+ Strategy, a National REDD+ Policy, a Monitoring/Measurement, Reporting and Verification System, a Communications Strategy, a Safeguards Information System, a Forest Information Management System, and a Benefit Sharing Plan, with a notable emphasis on benefit sharing in its implementation process.

Fiji's REDD+ policy aims to enable the country to achieve its core forest sector goals whilst ensuring equitable distribution of benefits to the rightful beneficiaries.[173] The policy calls for the REDD+ Steering Committee to establish a clear REDD+ benefit sharing mechanism that is in harmony with the country's policies and legal framework on benefit sharing. Fiji's Constitution calls for the equitable distribution of benefits arising from the exploitation of the country's natural resources, and while it doesn't specifically address REDD+ benefit sharing, the Constitution mandates an 80% sharing ratio of royalties and extraction proceeds from minerals with landowners.[174] REDD+ stakeholders have unanimously agreed that this ratio of sharing should be adopted and that no less than 80% of proceeds from Emission Rights revenue is directed to the beneficiaries.[175]

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168 Forestry Development Authority Redd+ Implementation Unit, Feedback and Grievance Redress Mechanisms for Implementation of Liberia's Forest Sector Project Activities and REDD+ Results Based Projects, (Government of Liberia, 2022).

169 *Ibid*, (Government of Liberia, 2022)

170 Ministry of Forestry of the Republic of Fiji, 'Global Forest Resources Assessment 2020: Fiji' (Food and Agriculture Organization of the United Nations, 2020).

171 *Ibid*, (Food and Agriculture Organization of the United Nations, 2020).

172 Government of the Republic of Fiji, 'Republic of Fiji National Adaptation Plan: A pathway towards climate resilience' (Government of the Republic of Fiji, 2018)

173 *Ibid*, (Government of the Republic of Fiji, 2012)

174 Article 30 (1), Constitution of Fiji, 2013; *Ibid*, Article 30(2); Section 13 (b), Fair Share of Mineral Royalties Act, 2018

175 Conservation International, 'REDD+ Emissions Reduction Program: Benefit Sharing Plan', (Conservation International,

Fiji's REDD+ Benefit Sharing Plan (BSP) defines benefit sharing as the intentional transfer of monetary and/or non-monetary benefits (goods, services, or other benefits) to stakeholders for the generation of GHG 'carbon' emissions reduction and removals (ERRs) and other objectives funded by payments received under an Emissions Reduction Payment Agreement (ERPA).[176] The BSP lists examples of non-monetary benefits to include enhancements to community forestry, sustainable forest management, agricultural productivity, diversification, and improvements in Non-Timber Forest Products quality, all aimed at reducing deforestation and forest degradation risks.[177]

The BSP also provides on the beneficiaries of REDD+ benefits highlighting them as either direct beneficiaries or indirect beneficiaries.[178] Direct beneficiaries of monetary and non-monetary benefits include landowners and tenant farmers, freehold landowners, national and sub-national government, statutory and civil societies, research and academic institutions and private sector. Indirect beneficiaries include communities living in the emissions reduction program accounting area and markets that receive products resulting from climate smart agriculture. The table below highlights the criteria beneficiaries must meet.

Table 6: Criteria for allocation of benefits under the Fijian Benefit Sharing Plan[179]

Beneficiaries	Definitions of Beneficiaries	Criteria for allocation
National Trust of Fiji	• Main stakeholders that support forest conservation. • Legal owners of the land with license to undertake Emission Reduction Program (ER-P) activities in the ER-P accounting area.	• Must have confirmed legal rights (lease and license). • Must be essential to facilitate/enable results. • Must incur costs when implementing ER-P activities. • Must be resource stewards in REDD+ activities.
Provincial and District Councils	• Coordinate and implement ER-P activities at the provincials and district levels. • Liaison with communities and other actors of the ER initiative.	• Must be essential to facilitate/enable results. • Form part of subnational leadership of resource stewards.

2020)

[176] *Ibid*, (Government of Fiji, 2019).

[177] Ministry of Forestry, 'Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program', (Government of Fiji, 2019).

[178] *Ibid*, (Government of Fiji, 2019).

[179] Conservation International, 'REDD+ Emissions Reduction Program: Benefit Sharing Plan', (Conservation International, 2020).

Beneficiaries	Definitions of Beneficiaries	Criteria for allocation
Private Sector	• Implement private initiatives to reduce deforestation and forest degradation in the ER-P accounting area such as sustainable forest management and plantation establishment.	• Must have confirmed legal rights (lease and license). • Must incur costs when implementing ER-P activities. • Must need incentives to change behavior (sustainable forest management).
Communities/ Villages/ Settlements	• Main stakeholders in the ER-P who sometimes assist in the implementation of the ER-P. Consists of members who may be legal owners of the land with license to undertake ER-P activities in the ER-P accounting area.	• Must have confirmed legal rights (lease and license). • Must be essential to facilitate/enable results. • May be incurring costs to implement ER-P activities. • May be resource stewards (communities that collectively maintain/support REDD+ activities). • May need behavioral changes (sustainable land use and communal stewardship).
Small Holder Farmers	• Main stakeholders in the ER-P farming at the edge of the forest, targeted to adopt sustainable land use practices. • Legal owners of the land with license to undertake ER-P activities in the ER-P accounting area.	• Must have confirmed legal rights (lease and license). • Incurs costs to implementing ER-P activities. • Must be resource stewards. • May need behavioral change (sustainable land use).

Fiji is informed by an extensive range of existing models of benefit sharing mechanisms that are supported by existing laws and policies. The extensive Fiji framework is aimed to ensure equitable, transparent transactions that respects the rights of all resource owners. The models include options to use; the iTaukei Lands Trust Board (TLTB) Lease; the Ministry of Lands' Land Bank; the Ministry of Lands Distribution of Mineral Royalties under the Fair Share Mineral Act; and the provisions of the Forest Bill on the payment of royalties relating to iTaukei land.[180] The iTaukei Lands Trust Board is mandated to protect and manage iTaukei land ownership rights vested in the iTaukei people by the iTaukei Land Trust Act.[181] The TLTB facilitates commercial transactions relating to the issuance of leases and licenses, then collects premiums, lease rental fees and other similar land resource transaction fees. It keeps 10% of the fees as an administration charge and distributes the reminder of the fees in equal parts to the bank accounts of the members of the Land Ownership Units (LOU). All LOU members over 18 years of age receive their benefits instantly whereas those who are under 18 have their funds invested to generate interest. Both the funds and the interest are issued to them once they get to 18 years.

[180] Ministry of Forestry, 'Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program', (Government of Fiji, 2019); Section 29, Forest Bill, Bill No. 13 of 2016.

[181] Section 5, iTaukei Land Trust Act.

The Land Bank benefit sharing option provides an opportunity for iTaukei landowners to have their lands administered by the government through the Land Bank[182] on the condition that 60% of the members agree. Under this arrangement, LOU elect members who are approved by the Prime Minister to act as trustees, represent the entire interest of the LOU. The trustees receive payments on behalf of the LOU and are then responsible for its distribution according to the specifications of their deed of Trust. The Fair Share of Mineral Royalties Act benefit sharing mechanism stipulates that royalties must be shared in the following manner: 20% of the royalty to the State; and 80% of the royalty to the owner of the land.

Fiji's REDD+ Programme "Reducing Emission and Enhancing Livelihoods & Building Climate Resilient Communities", exemplifies the distribution of carbon results based payments of USD 12.5million from the World Bank FCPF ERPA in accordance with the BSP approved by Cabinet, as below[183]:

- 10% or USD 1.25 million is allocated to the Ministry of Forestry for the management and emission monitoring functions.

- 5% or USD 625,000 is allocated to support the coordinating role of the Provincial Offices (Ministry of iTaukei Affairs).

- 5% or USD 625,000 is retained as a "Buffer Fund"; the fund will be retained by the Ministry of Finance and only used to finance the rehabilitation of forest carbon stocks that have been affected by natural disasters. In the event that there are no natural disasters (damages to the forest carbon stock), the fund will be distributed to the beneficiaries at the end of the programme.

- 80% or USD 10,000,000 is paid to the beneficiaries of the national emission program.

Fiji's BSP also provided for a Feedback, Grievance and Redress Mechanism which hears grievances on the distribution of benefits between forest users, elemental property rights, internal power conflicts, disputes on FPIC, boundary disputes, division of responsibilities between forest users and other stakeholders, and REDD+ forest management lease terms and their enforcement. The FGRM emphasizes on the need for transparency when determining matters. Fiji's FGRM procedure is a six-step process which includes the filing and registration of a complaint; evaluation and screening of the complaint for eligibility; determination of the proposed grievance resolution approach/method; implementation of the selected grievance resolution approach/method; solving of the complaint; and closure, monitoring and tracking of results.

3.4 Papua New Guinea

Papua New Guinea has a high level of forest cover at 77.8% making it one of the most extensively forested countries in the world.[184] Despite this Papua New Guinea's forests have

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[182] Section 4.5. Land Use Decree.

[183] Government of Fiji, Fiji's National REDD+ Program: Inaugural National Carbon Market Strategy Roadmap Consultation Workshop 1st May 2023 Ministry of Forestry.

[184] Government of Papua New Guinea, National REDD+ Strategy 2017-2027, Climate Change and Development Authority (GOPNG, 2017).

been in decline, with deforestation reducing levels of forest cover and degradation changing the nature of a significant portion of Papua New Guinea's forests.[185] REDD+ provides Papua New Guinea with an opportunity to develop and implement a structured national approach to address both the direct and indirect drivers of forest cover change and support transformation shift towards green, low-carbon development through changes in the way land use and forest management occurs.[186]

Papua New Guinea has been at the forefront of REDD+ negotiations globally since 2005 when Papua New Guinea and Costa Rica introduced the concept of reduced emissions from deforestation to the UNFCCC. Over time, and in compliance with the requirements of the UNFCCC, Warsaw Framework, Cancun Safeguards and Paris Agreement, Papua New Guinea has developed its National REDD+ Strategy, FRL, SIS and NFMS. These documents list amongst their objectives the need to share resources for the benefit of Papua New Guinea clans, tribes, and communities rather than for individual benefit, with the National REDD+ Strategy citing that Papua New Guinea's government must implement REDD+ in a manner that ensures that the country's forest resources are used in a sustainable and equitable manner for the benefit of current and future generations.[187]

Benefit sharing can be traced to Papua New Guinea's Constitution which states that the country's natural resources must be responsibly managed and used in a manner that benefits all people in Papua New Guinea. The Climate Change Management Act, 2015 supports this position and states that all funds received from donors or persons or entities nationally and internationally, except from the Government of Papua New Guinea, by any person or entity for the purposes of climate change related activities shall be declared and 7% of the total moneys received at any one time shall be paid to the Trust Fund as climate administration fee.[188] The Trust Fund shall provide grant or loan funding to finance any climate change related activities or programmes in Papua New Guinea including community- based programmes that have a REDD+ focus; climate change adaptation or mitigation programmes that supports women, children and other vulnerable groups; and public, private, academic and civil society climate change adaptation or mitigation programs including REDD+.[189]

With respect to land tenure and benefit sharing, the Act, states that the ownership rights of the State and any freehold or fee. simple landholders shall be respected when dealing with a climate change related project.[190] Furthermore, all affected landholders have the right to participate and benefit from the incentives of a climate change related project implemented on land or at sea.[191] To ensure transparency and accountability during benefit sharing, the Act provides that the Climate Change and Development Authority or any person or entity who undertakes a climate

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185 *Ibid*, (Government of Papua New Guinea, 2017).

186 *Ibid*, (Government of Papua New Guinea, 2017).

187 *Ibid*, (Government of Papua New Guinea, 2017).

188 Section 38, Climate Change Management Act, 2015 Papua New Guinea.

189 *Ibid*, Section 39.

190 *Ibid*, Section 92.

191 *Ibid*, Section 93.

change project shall use every reasonable means to quantify the net income or net benefits and present an annual report before on 31st March of each calendar year for perusal by all land holders and stakeholders.[192] Persons who fail to adhere with this requirement are to be, upon conviction, fined a fine not exceeding Kl0,000.00 or imprisonment for a term not exceeding six months or both, for a natural person or a fine not exceeding K500,000.00 for a body corporate.[193]

The Climate Change Management Act provides for the establishment of a 'Dispute Resolution Mechanism to address all forms of disputes arising from climate change related projects or activities in the country.[194] This formed the legal basis for the establishment of specific measures like the REDD+ Grievance Redress Mechanism (GRM).[195] The GRM spells out the system, procedures/process and resources established by Climate Change Development Authority with consultation with key government agencies and development partners to receive and address concerns that may arise from the implementation of REDD+ at the national level as well at the subnational level. The GRM process will only take effect if the grievance cannot be resolved at the project level after exhausting established project level grievance recourse mechanism.

Papua New Guinea's National REDD+ Benefit Sharing and Distribution Guidelines operationalize the provisions of the Climate Change Management Act which calls for the benefits sharing of proceeds of climate change projects to identified beneficiaries including landowners.[196] The guidelines define benefits to include carbon credit benefits and non-carbon credit benefit which may be monetary or non-monetary.[197] They further classify beneficiaries as including primary beneficiaries who are stakeholders that play a direct role in reducing deforestation and degradation and secondary beneficiaries as stakeholders who have important roles in the implementation of REDD+ but their roles and impacts are largely indirect.[198] To determine beneficiaries and the types of benefits they are entitled to various factors must be analysed including prior stakeholder consultations, the forms of benefits beneficiaries may already be receiving, impacts suffered by stakeholders, and stakeholder priorities.[199] The guidelines warn that care must be taken when implementing this benefit sharing criteria in order to ensure the eligibility criteria does not inadvertently exclude relevant or vulnerable stakeholders.[200]

The guidelines provide two main benefit sharing arrangements for REDD+ results-based payments. Results-based payments claimed by PNG under the compliance market will be subject to the following benefit sharing allocations: 20% towards the national government as it performs its monitoring, reporting and regulatory functions, most of which may be administered through

[192] *Ibid*, Section 94.

[193] *Ibid*, Section 95.

[194] *Ibid*, Section 105.

[195] Government of Papua New Guinea, National REDD+ Benefit Sharing and Distribution Guidelines, (GOPNG, 2023).

[196] *Ibid*, Government of Papua New Guinea, 2023.

[197] *Ibid*, Government of Papua New Guinea, 2023.

[198] *Ibid*, Government of Papua New Guinea, 2023.

[199] *Ibid*, Government of Papua New Guinea, 2023.

[200] *Ibid*, Government of Papua New Guinea, 2023.

Climate Change Development Authority, and other REDD+ sector agencies; 20% to be distributed at the sub-national government level; and 60% to the customary landholding communities.

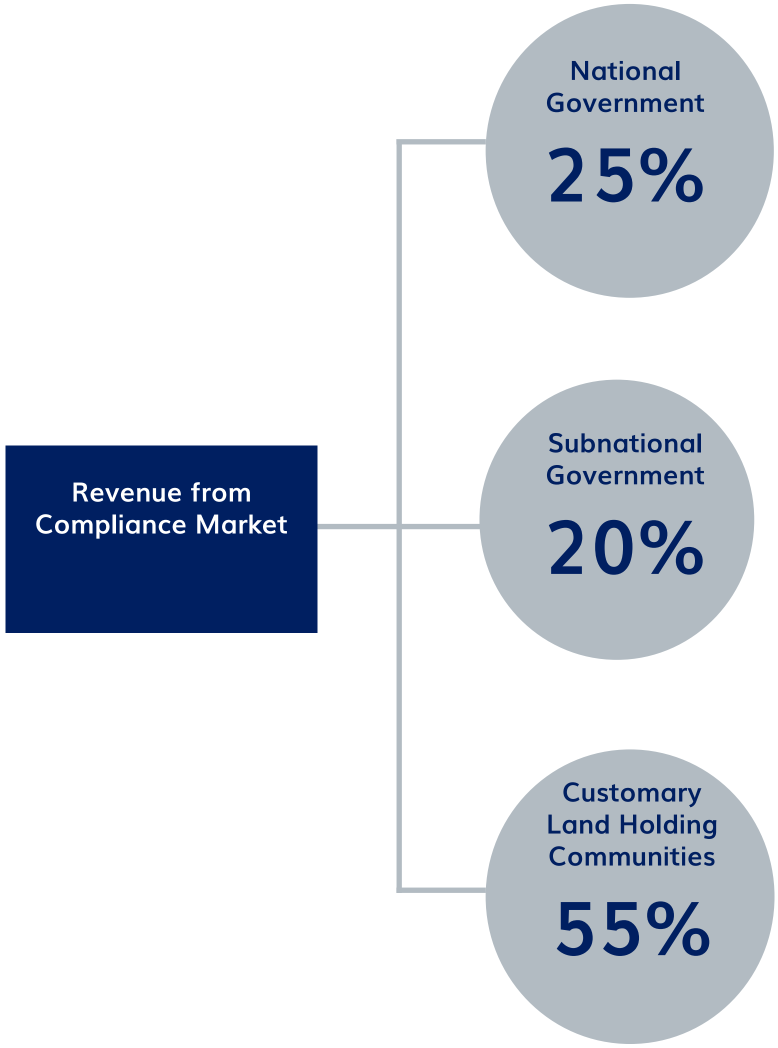

Figure 3: Papua New Guinea's Benefit Sharing Mechanism for Revenue from Compliance Markets

On the other hand, results-based payments from voluntary carbon markets shall be subject to the following distribution: 7% shall be shared to the Climate Change Development Authority, 3-5% shall be distributed to subnational government agencies and of the remainder 40% shall go to the project developer whereas 60% goes to the customary land holding communities. Project developers must enter a benefit sharing agreement that stipulates benefit sharing arrangement. The agreement must also set out a dispute resolution mechanism.

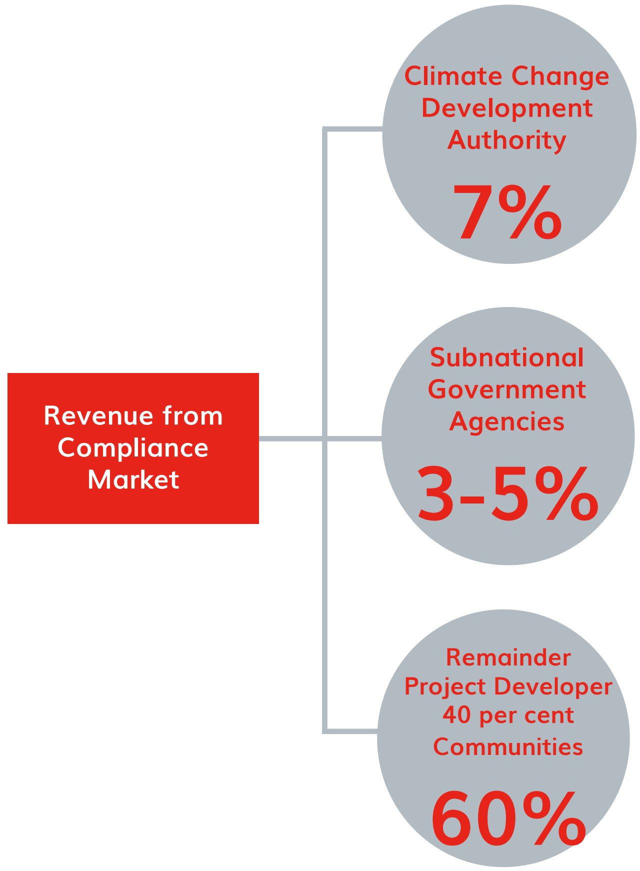

Figure 4: Papua New Guinea's Benefit Sharing Mechanism for Revenue from Voluntary Carbon Markets

3.5 Nepal

Nepal has been involved in the REDD+ process since 2008 and the Government of Nepal has been carrying out periodic forest inventories to determine the total forest cover of the country.[201] According to the Water and Energy Commission, the forest area of Nepal in 2020/2021 was 44.74%.[202] Between 1994 to 2012 a significant area of forest was converted to agricultural land, degraded to shrub land, or deforested for other purposes such as roads and settlements and the area of natural forests decreased by an average of 1.7% per annum.[203] However, the recent Forest Resource Assessment (2014-2018) reported an increase in forest area by 2.33% during this period. Factors responsible for these results include the success of community-based forest management such as community forestry, leasehold forestry, collaborative forestry, buffer zones and conservation areas.[204]

The success of the community-based forest management is attributed to Nepal's generation

[201] Government of Nepal, Nepal REDD+ Strategy, (GoN, 2018).

[202] *Ibid*, (Government of Nepal, 2018).

[203] *Ibid*, (Government of Nepal, 2018).

[204] *Ibid*, (Government of Nepal, 2018).

and equitable sharing of revenue from carbon financing with its people.[205] Nepal's benefit-sharing mechanism for funds received from the ER program is structured under the Forest Act, 2019, to ensure equitable distribution and effective implementation.[206] When funds are received from the ER program, they are initially deposited into the treasury of the Ministry of Finance. The Ministry of Finance then deducts up to 20% of the total amount and transfers at least 80% of the funds to the Forest Development Fund (FDF).[207]

The FDF is overseen by a committee chaired by the Secretary of the Ministry of Forests and Environment (MoFE).[208] The committee's composition includes high-level representatives from the Ministry of Finance, the provincial ministries responsible for forests and environment, and the Department of National Parks and Wildlife Conservation.[209] Additionally, community users, including one female representative, are nominated to the committee. The Director General of the Department of Forests and Soil Conservation (DOFSC) serves as the Member Secretary.[210]

The Committee is responsible for a wide range of tasks, including determining the annual budget and setting financial ceilings, inviting program-implementation plans from provincial ministries and local governments, and approving programs and budgets.[211] The committee also oversees the implementation of multi-year projects, develops long-term policies and strategies, and coordinates efforts among federal, provincial, and local governments.[212] It plays a crucial role in promoting sustainable forest management by encouraging participation from local forest users, communities, and institutions, as well as engaging the private sector in greening initiatives.[213] The committee is also tasked with monitoring and evaluating programs funded by the FDF and developing procedures necessary for program implementation.[214]

The FDF itself is managed by the Department of Forests and Soil Conservation, with its bank account signatories being the Director General of DOFSC and the Chief of Finance and Administration Unit of the DOFSC.[215] This structure ensures that the funds are managed effectively and that the benefits of the ER program are distributed in a manner that supports sustainable forest management and community participation in Nepal.[216] The funds are distributed as demonstrated in the chart below:

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[205] *Ibid*, (Government of Nepal, 2018).

[206] Section 35, Forest Act, 2019.

[207] *Ibid*, Section 35 (2) (a).

[208] *Ibid*, Section 35 (2) (c).

[209] *Ibid*, Section 35 (2) (d).

[210] *Ibid*, Section 35 (2) (d).

[211] *Ibid*, Section 35 (2) (d).

[212] *Ibid, Section 35 (2) (d).*

[213] *Ibid*, Section 35 (2) (d).

[214] *Ibid*, Section 35 (2) (d).

[215] *Ibid*, Section 36 (a).

[216] *Ibid*. Section 36 (a).

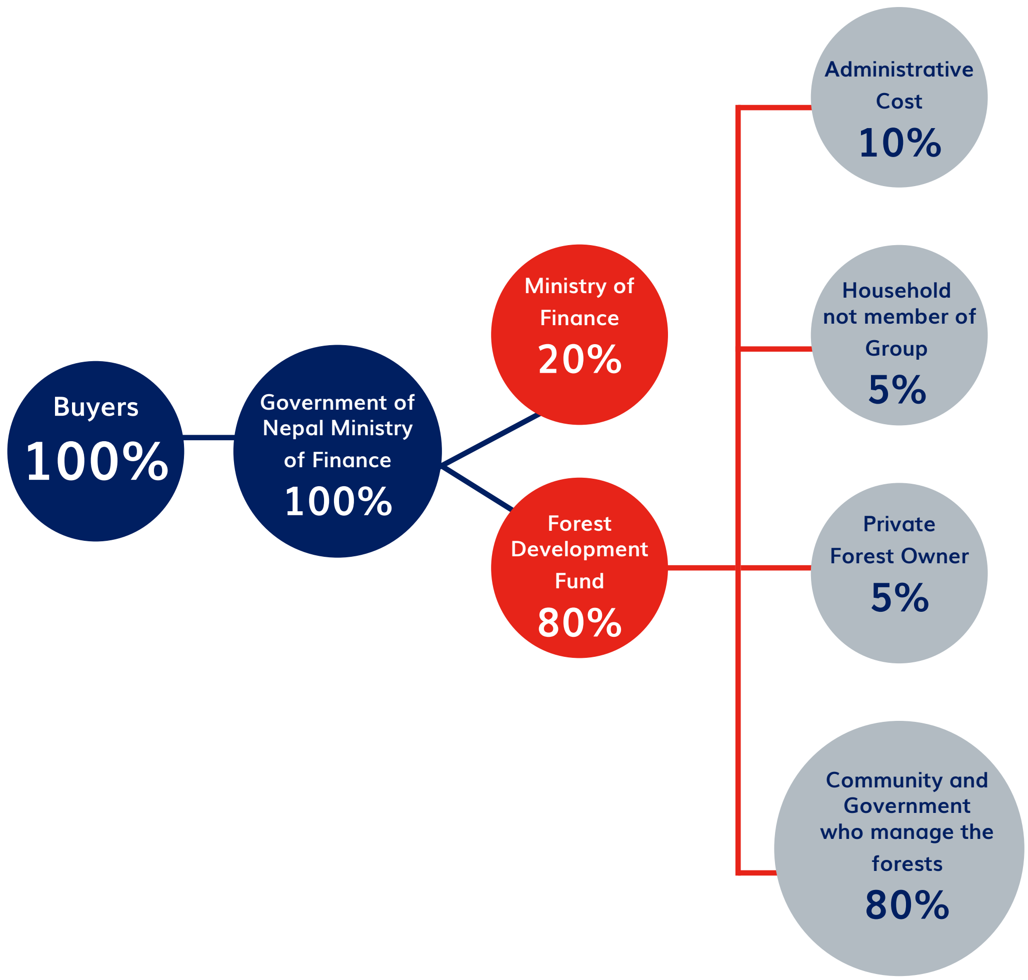

Figure 5: An Illustration of the Benefit Sharing Mechanism in Nepal

According to the Forest Act 2019, the income received by the communities through the implementation of the benefit sharing plan shall be spent to implement various community level development projects as illustrated in the figure below[217]:

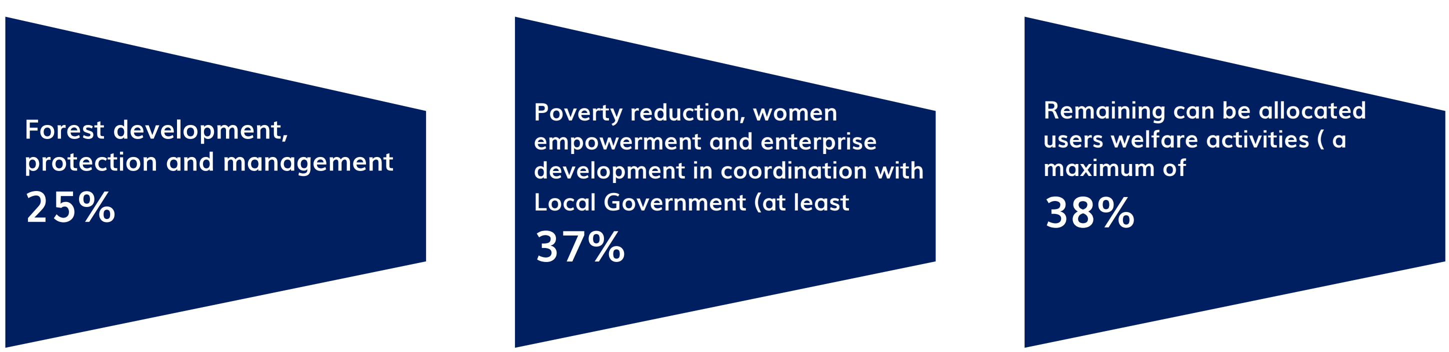

Figure 6: Nepal's project allocation ratios

[217] *Ibid*, Section 36 (b) (i).

3.6 Emerging Lessons for Kenya

The above experiences from the Republics of Ghana, Liberia, Fiji, Papua New Guinea and Nepal establish that it is fundamental for countries keen on implementing an equitable REDD+ to develop clear benefit sharing frameworks. The countries establish these frameworks either by relying on existing benefit sharing frameworks or by establishing a REDD+ benefit sharing guideline or a REDD+ benefit sharing plan.

The countries' land and forest tenure and ownership rights influence the approaches to benefit sharing. For Liberia, the country adopts a jurisdictional approach to benefit sharing as the Constitution sets out that all forests belong to the State. The Government receives the funds and then allocates and distributes them to various stakeholders. Counties receive funds through the County Forestry Development Fund, the exclusive channel for the national government to transfer funds under the National Forestry Reform Law's benefit sharing mechanism.[218] Communities, receive benefits through the National Community Benefit Sharing Trust, which is overseen by the National Benefit Sharing Trust Board. This board disburses funds to Community Forestry Development Committees, acting on behalf of affected communities.[219]

The Liberian benefit sharing mechanism illustrates the collaboration between the various institutions, and highlights on the different actors in benefit sharing, their functions, as well as their relations with each other.[220] Not only is there collaboration at the national level but the mechanism also lays out a clear mode of revenue sharing between the national and subnational governments.[221] To enhance fairness and transparency, the Forest Development Authority is obligated to compile an annual report detailing government disbursements to each County Forestry Development Fund and the National Community Benefit Sharing Trust. The report includes disbursement dates, funds allocated to Community Forestry Development Committees, expenditure breakdowns, and a list of public complaints.[222] The report must then be made available for public participation under the Forestry Development Authority's Regulation No. 101-07 on public participation.[223] Liberia's grievance mechanism is comprised of both national and subnational committees that hear and determine disputes.

Fiji's REDD+ Benefit Sharing Plan (BSP) defines benefit sharing as the intentional transfer of monetary and/or non-monetary benefits (goods, services, or other benefits) to stakeholders for the generation of GHG 'carbon' emissions reduction and removals (ERRs) and other objectives funded by payments received under an Emissions Reduction Payment Agreement

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[218] Section 23 (b) (1), Forestry Development Authority Regulation No. 106-07 on Benefit Sharing.

[219] *Ibid*, Section 33 (a).

[220] Forestry Development Authority REDD+ Implementation Unit, 'National Strategy for Reducing Emissions from Deforestation and Forest Degradation (REDD+) in Liberia', (Government of Liberia, 2016); Section 23 (b) (1), Forestry Development Authority Regulation No. 106-07 on Benefit Sharing.

[221] Section 33 (a), Forestry Development Authority Regulation No. 106-07 on Benefit Sharing.

[222] Section 41, Forestry Development Authority Regulation No. 106-07 on Benefit Sharing.

[223] Section 13, Forestry Development Authority Regulation No. 101-07 on Public Participation.

(ERPA).[224] The BSP lists the various monetary and non-monetary benefits of REDD+ projects and highlights the beneficiaries as either direct beneficiaries or indirect beneficiaries.[225] Fiji's benefit sharing ratios and method present a key learning point for Kenya, in that the country's mechanisms allows for the share of benefits with children within the communities where the projects are being undertaken.[226] The TLTB distributes monetary benefits in equal parts to the bank accounts of the members of the Land Ownership Units (LOU). All LOU members over 18 years of age receive their benefits instantly whereas those who are under 18 have their funds invested to generate interest. Both the funds and the interest are issued to them once they get to 18 years.[227] This ensures that all members of the community receive benefits and that they are not discriminated based on age.

Papua New Guinea has developed REDD+ benefit sharing guidelines that operationalize the country's Climate Change Management Act's provisions on benefit sharing. The guidelines provide for both jurisdictional and project level REDD+ benefit sharing arrangements.[228] Results-based payments claimed by PNG under the compliance market will be subject to the following benefit sharing allocations: 20% towards the national government as it performs its monitoring, reporting and regulatory functions, most of which may be administered through Climate Change Development Authority, and other REDD+ sector agencies; 20% to be distributed at the sub-national government level; and 60% to the customary landholding communities.[229]

On the other hand, results-based payments from voluntary carbon markets shall be subject to the following distribution; 7% shall be shared to the Climate Change Development Authority, 3-5% shall be distributed to subnational government agencies and of the remainder 40% shall go to the project developer whereas 60% goes to the customary land holding communities.[230] Project developers must enter into a benefit sharing agreement that stipulates benefit sharing arrangement. For both approaches, the guidelines are also clear on the types of benefits (carbon, non-carbon, monetary, and non-monetary benefits), stakeholders and beneficiaries, methods of selecting beneficiaries, governance and institutional frameworks, methods of disbursement, ratios of sharing benefits, justifications for such allocations, and the mechanics for the dispute resolution mechanism.[231]

Other lessons for Kenya emanate from Ghana which enhances social inclusion within the GCRP. Ghana has partnered with NGOs actively working with local communities in cocoa

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[224] Ministry of Forestry, 'Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program', (Government of Fiji, 2019).

[225] Ibid, Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program.

[226] Ministry of Forestry, 'Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program', (Government of Fiji, 2019); Section 29, Forest Bill, Bill No. 13 of 2016.

[227] *Ibid*, Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program

[228] Government of Papua New Guinea, National REDD+ Benefit Sharing and Distribution Guidelines, (GOPNG, 2023)

[229] *Ibid*, Papua New Guinea REDD+ Guidelines.

[230] *Ibid*, Papua New Guinea REDD+ Guidelines.

[231] *Ibid*, Papua New Guinea REDD+ Guidelines.

landscapes.[232] The GCRP social inclusion activities include directly engaging farmers across 100 communities, and ensuring that vulnerable groups are actively involved in REDD+ action and benefit equitably from emissions reduction efforts.[233] The project aims to build the knowledge and skills of these groups to help them engage in the REDD+ programme, by developing communication toolkits tailored to demystify REDD+ processes and benefit sharing, and the institution of training programs to entrench dialogue and policy formulation.

[232] Kennedy Fosu, World Bank Approved Grant to Boost Community Access to Funds Earned from Carbon Credits, World Bank available at: World Bank Approves Grant to Boost Community Access to Funds Earned from Carbon Credits, last accessed 27/04/25.

[233] *Ibid*, World Bank.

4 CONCLUSION AND RECOMMENDATIONS

Benefit sharing is established in the international policy and legal framework for REDD+ as a fundamental principle and practice aimed at ensuring equitable access to resources by all key stakeholders.[234] As a party to the UNFCCC, its COP decisions and the Paris Agreement, Kenya has an international obligation to ensure the achievement of its commitments at the domestic level by enacting a clear benefit sharing policy and legislative framework.

Equitable benefit sharing and community engagement in natural resource management are emphasized as principles of both policy and law in Kenya. The country has a detailed policy framework that underscores the importance of benefit sharing in the context of REDD+. This framework spans the land[235], forestry[236], wildlife[237], and climate change[238] sectors, and highlights the centrality of the principles of equity, inclusivity, and fairness in implementing REDD+. However, there is as yet no overarching policy specific to REDD+ benefit sharing, and the different, multi-sectoral, policies, plans and strategies offer minimal clarity on the actual content of Kenya's benefit sharing mechanism, applicable to site-scale REDD+ projects and jurisdictional REDD+ programs.

From a legislative perspective, the Constitution advocates that the utilization, management and conservation of the environment and natural resources must be for the benefit of the people of Kenya.[239] The land and forest laws enable REDD+ benefit sharing, by providing for tenure and ownership rights in public, private and community land.[240] This framework provides insights on land and forest resource user rights, thus helping to determine who is eligible for benefits. However, community land rights in Kenya remain unclear as the registration process is marred by undue bureaucracy and complexities. These challenges hamper the benefit sharing process as it becomes difficult to determine who is entitled to what benefits leading to the disenfranchisement of stakeholders.

While provisions from sectoral legislation provide a basis for benefit sharing, it was only until the amendment of the Act that a clear benefit-sharing system has been established

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[234] United Nations Framework Convention on Climate Change (UNFCC), Report of the Conference of Parties on its 13th Session, held in Bali from 3 to 15 December 2007, Decision 1/CP.13, FCCC/CP/2007/6/Add.1 (UNFCC 2007); UN General Assembly, United Nations Framework Convention on Climate Change : resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189; Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, (UNFCCC, 2010).

[235] Republic of Kenya, Ministry of Tourism and Wildlife, Wildlife Policy, Sessional Paper No.1 of 2020.

[236] Government of Kenya, National Forest Policy, (G.o.K, 2023), page 12; Government of Kenya, National REDD+ Strategy, (G.o.K, 2021).

[237] Republic of Kenya, Ministry of Tourism and Wildlife, Wildlife Policy, Sessional Paper No.1 of 2020.

[238] Ministry of Environment, Climate Change and Forestry, National Climate Change Action Plan (Kenya) 2023-2027, (Government of Kenya, 2023); Government of Kenya: Kenya's Updated Nationally Determined Contribution, 2020, (G.o.K, 2020); Republic of Kenya, Ministry of Environment and Natural Resources, National Climate Change Framework Policy, Sessional Paper No. 5 of 2016.

[239] Article 69 (1) (a), Constitution of Kenya, 2010.

[240] Article 61-64, Constitution of Kenya; Land Act 2014; Land Registration Act, 2014; Section 5, Community Land Act, 2016; Section 30, Forest Conservation and Management Act, 2014.

for land-based carbon projects. The Act and Regulations thereunder set out the need for an annual social contribution that must be disbursed for the benefit communities.[241] This annual social contribution which must be at least 40% for land-based carbon projects being implemented on community and public land is to be derived from the aggregate earnings of the project proponent. However, it should be noted that the provisions on the annual social contribution focus on benefits to communities on carbon projects on public and community land and do not address allocations to other beneficiaries who would be involved in jurisdictional REDD+. These exclusions are despite Kenya's policy framework establishing that the country is working towards the implementation of a JNR programme.

The annual social contribution is to be disbursed and managed through the CDA which provides a platform for its parties to collaborate on not only the implementation of the project but also the equitable distribution of benefits. It is important for transparency to be maintained in the calculation of aggregate earnings and the deductible cost of business to be based on verifiable project operational costs.

Kenya is also in the process of passing the Natural Resources (Benefit Sharing) Bill, 2022 which seeks to establish a system of benefit sharing in natural resource exploitation between resource exploiters, the national government, county governments and local communities. The Bill defines benefit sharing as the sharing of any benefits arising from the exploitation of natural resources in a fair and equitable manner, and this is to be done through a benefit sharing agreement setting out how revenue accruing from natural resources shall be shared out between an affected entity (the organization or person involved in the exploitation of a natural resource) and a county.[242]

Kenya needs to streamline its policy and legislative framework and harmonize national approaches to REDD+ benefit sharing to address critical gaps currently existing on REDD+ benefit sharing as highlighted throughout this report. This will enable the country to ensure equitable and inclusive REDD+ implementation and attract investments from a variety of sources to finance REDD+ activities.

The comparative study establishes that since REDD+'s debut on the global stage more than a decade ago, more than 50 countries have launched national REDD+ initiatives, dozens of subnational governments have experimented with "jurisdictional approaches" to REDD+, and more than 350 local REDD+ projects have been implemented globally.[243] Core to the success of these REDD+ efforts is the concept of benefit sharing.[244]

Experiences from the Republics of Ghana, Liberia, Fiji, Papua New Guinea and Nepal establish that it is fundamental for countries keen on implementing an equitable REDD+ to develop clear benefit sharing frameworks. Countries can establish these frameworks by either relying on

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[241] Section 23 E, Climate Change Amendment Act, 2023.

[242] Section 2, Natural Resources (Benefit Sharing) Bill, 2022.

[243] Angelsen A et al, 'Forest-Based Climate Mitigation: Lessons from REDD+ Implementation' (CIFOR, 2019).

[244] *Ibid*, CIFOR, 2019.

existing benefit sharing frameworks such as in the case of Ghana[245] or by establishing a REDD+ specific benefit sharing guideline that operationalizes the existing benefit sharing provisions in the country's climate change law, as in the case of Papua New Guinea.[246]

Countries adopt varied approaches to benefit sharing based on their unique national circumstances and local contexts. Each country's land and forest tenure systems influences their approaches: whereas Liberia uses a jurisdictional approach since all its forests are state-owned, distributing funds through designated channels[247]; Fiji focuses on project-level benefits, emphasizing both monetary and non- monetary benefits shared among customary land owners who form majority of the land owners; and Papua New Guinea incorporates both jurisdictional and project-level arrangements, with a detailed allocation of benefits to various stakeholders.[248]

The identification of beneficiaries in REDD+ programs is crucial to ensuring that the intended support reaches the right people, with clear mechanisms in place to determine who the beneficiaries are, how much they will receive, and how they can utilize those benefits. Fiji has a unique approach to benefit sharing where it has a model that provides the option for minors to also form part of the beneficiaries. The benefits owed to minors are not simply given directly to them but are instead deposited into a bank account that accrues interest. These funds are then made available to the minors once they reach the age of eighteen. This system helps ensure that even young people, who may not have direct access to these funds until they come of age, are still beneficiaries of the program's benefits. By accumulating interest over time, the savings provide an enhanced benefit when they are eventually disbursed, contributing to long-term financial security for the young beneficiaries.

Countries implementing REDD+ programs must ensure that their benefit-sharing mechanisms are inclusive and provide equal opportunities for all individuals and communities to participate and benefit. This inclusivity can be achieved through capacity building and training, particularly for marginalized groups such as women, youth, migrant farmers, and people with disabilities. In Ghana, for example, the government, in partnership with NGOs, has launched a project to enhance social inclusion within the GCRP. The project directly engages farmers across 100 communities, ensuring that vulnerable groups are actively involved in REDD+ action and benefit equitably from emissions reduction efforts.[249]

Based on the above findings of the policy, legal and regulatory analysis, and comparative study this report recommends that Kenya:

[245] Forest Commission of Ghana, National REDD+ Strategy, (Government of Ghana, 2016).

[246] Government of Papua New Guinea, National REDD+ Benefit Sharing and Distribution Guidelines, (GOPNG, 2023)

[247] Ministry of Forestry, 'Republic of Fijis Islands Forest Carbon Partnership Facility Emissions Reductions Program', (Government of Fiji, 2019); Section 29, Forest Bill, Bill No. 13 of 2016.

[248] Government of Papua New Guinea, National REDD+ Benefit Sharing and Distribution Guidelines, (GOPNG, 2023).

[249] World Bank Group, World Bank Approved Grant to Boost Community Access to Funds Earned from Carbon Credits, last accessed at World Bank Approves Grant to Boost Community Access to Funds Earned from Carbon Credits on 3rd March 2025

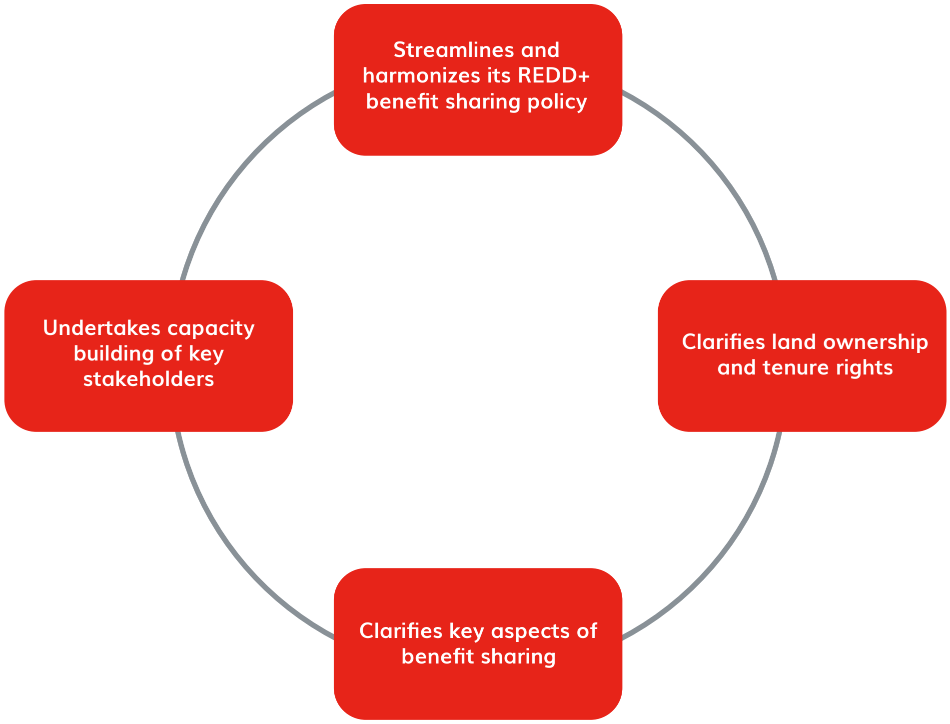

Figure 7: A summary of key recommendations for Kenya's REDD+ benefit sharing framework.

A. **Streamlines and harmonizes its REDD+ benefit sharing policy and legislative framework:** There are different existing and proposed policies, laws and regulations in Kenya, with a bearing on benefit sharing in REDD+. This includes the Climate Change Act, 2016 as amended in 2023 and the Climate Change (Carbon Markets) Regulations, 2024 and the Natural Resources (Benefit Sharing) Bill. It is fundamental that the country harmonizes its REDD+ benefit sharing framework by developing specific REDD+ guidelines under the FCMA. This will avoid unnecessary transaction costs and eliminate confusion that emanates from having multiple legal and regulatory provisions on benefit sharing operating simultaneously in the country. Furthermore, as JNR funding mechanisms require that specific benefit sharing requirements be met for countries to participate, Kenya needs to clarify its beneficiary identification, eligibility and modalities for jurisdictional REDD+.

B. **Clarifies land tenure, ownership and user rights:** Land tenure, ownership and user rights help to determine the beneficiaries of REDD+. Kenya's land rights remain unclear and contested especially with respect to community land. The Community Land Act mandates that communities must be registered; however registration is pending for a number of communities. There is also need to incentivize CFA establishment under the FCMA and participation of forest adjacent communities in REDD+ activities with clear provisions on benefit sharing in agreements between parties. Streamlining of land ownership, tenure and user rights in Kenya will be important to ensure equitable benefit sharing, and relevant stakeholders, including communities and public officials need to mobilize resources and have their capacities built for increased efficiency and effectiveness in the registration of community land and participatory forest management.

C. **Clarifies key aspects of benefit-sharing requirements:** Kenya should provide clear definitions and guidelines on critical aspects of its REDD+ benefit-sharing framework to prevent potential exploitation of communities. It is important for transparency to be maintained in the calculation of aggregate earnings and the deductible cost of business to be based on verifiable project operational costs. Additionally, the process for disbursing benefits between national and sub-national entities, as well as the use of these disbursements in a JNR programme, needs to be well-articulated to ensure transparency, equity, and accountability. This is particularly important as the National REDD+ Strategy highlights the country's keenness to pursue jurisdictional REDD+.

D. **Undertakes capacity building of key stakeholders:** Kenya's Climate Change Act requires benefit sharing in carbon projects to be carried out under the framework of a CDA. The CDA is governed by a CDA committee whose members form further sub-committees. Committee members comprise of representatives from youth, women, village elders, marginalized groups, persons with disability, civil society, and government. As these members are mandated to, amongst other functions, conduct consultations with the community and negotiate with the project proponents on behalf of the community, it is paramount that rigorous capacity building is provided to these stakeholders, to ensure that they possess the capacity to negotiate on behalf of the community, identify, understand and address all opportunities and risk attendant to carbon projects, and resolve any arising disputes.

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