An aerial photograph of a vast, dense forest. The trees are a mix of green and yellowish-green, suggesting a tropical or subtropical environment. The sky is bright blue with scattered white cumulus clouds. The text is overlaid on the center of the image.

# Legal Issues related to Forests and Climate Change

International Climate Change and Energy Law

Spring semester 2011

Dr. Christina Voigt

February 2011

# Reducing deforestation: mitigate climate change, promote sustainable development

**Climate change is one of the biggest challenges of our time**



**Deforestation and forest degradation in developing countries contribute to almost one fifth of all greenhouse gas emissions (GHG)**



**Reducing deforestation and forest degradation in developing countries (REDD+) is a cost-effective measure to decrease GHG emissions**

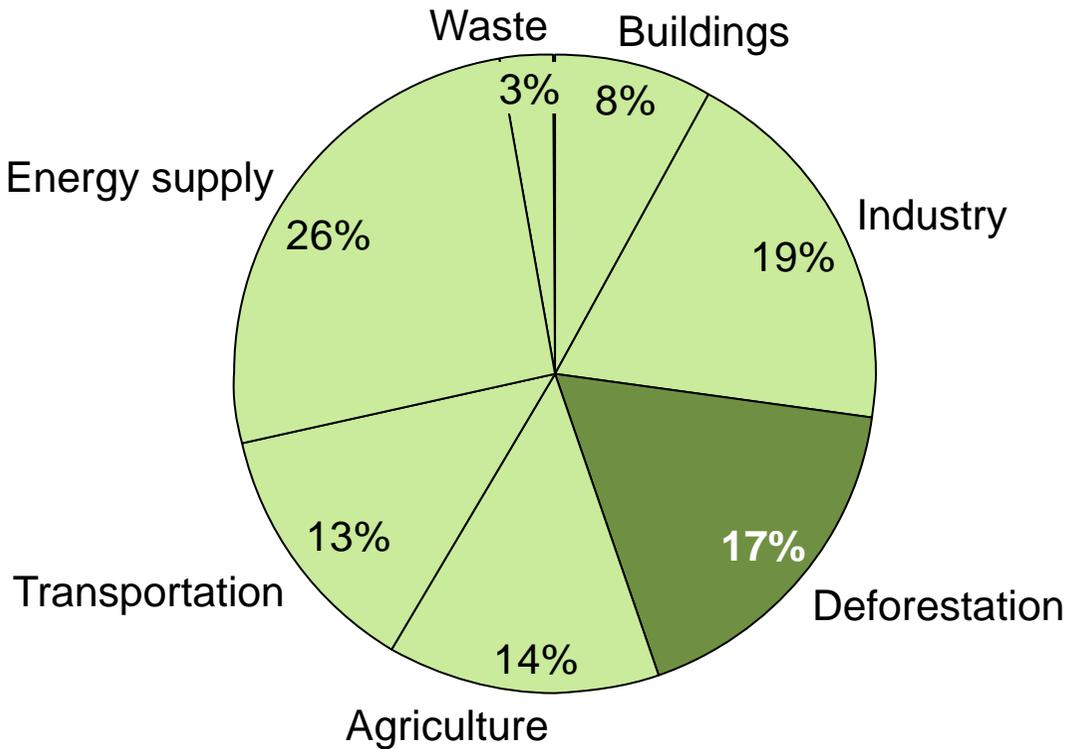


**Reducing forest loss sustains livelihoods and protects water resources, ecosystems and biodiversity**



# IPCC estimates that deforestation contributes about 17 % of GHG emissions

Emission of greenhouse gasses from different sources  
100% = ~50 GtCO<sub>2</sub>e in 2004

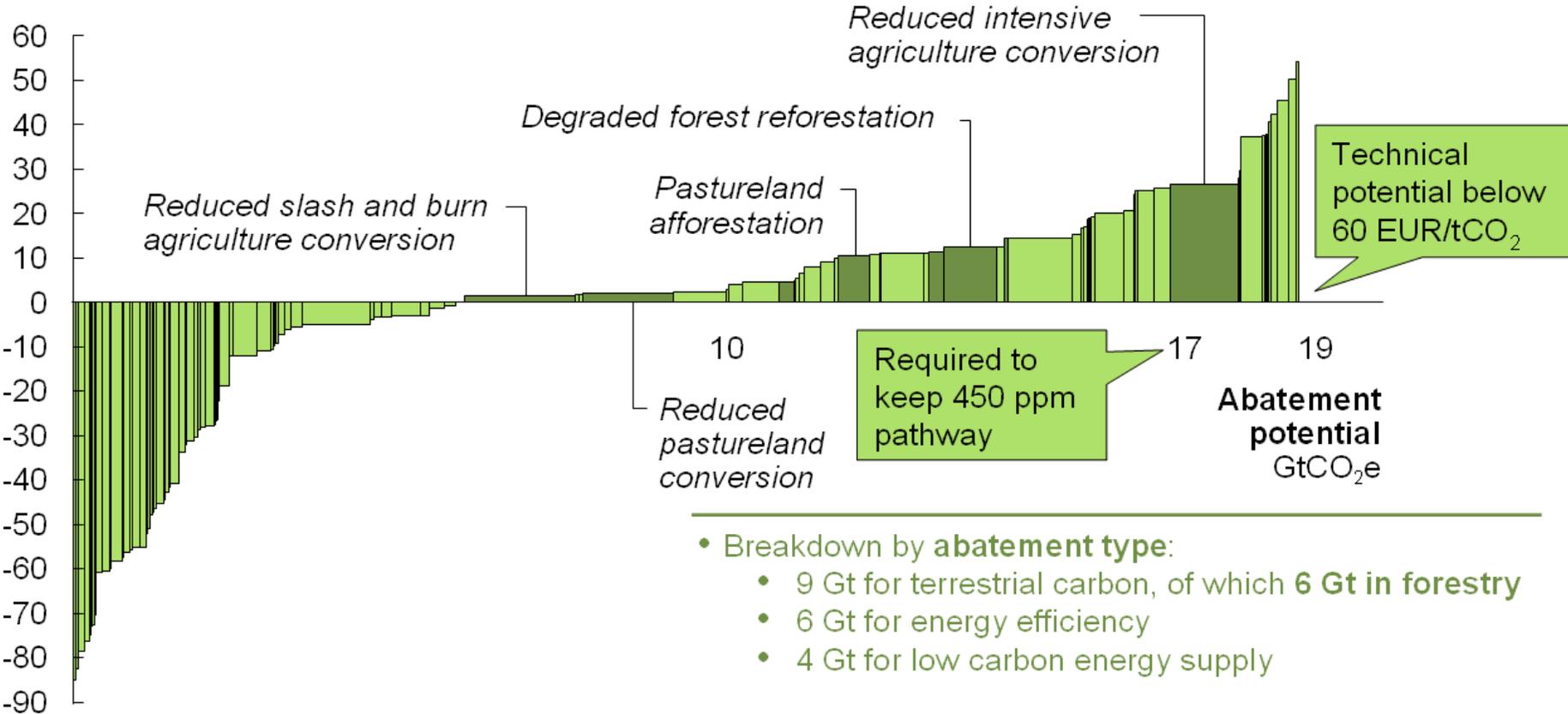


# Forestry is a significant lever in limiting global warming to 2°C

McKinsey global abatement cost curve, 2020 (up to costs of EUR 60/t CO<sub>2</sub>e abated)

■ Forestry

Abatement cost  
EUR tonne

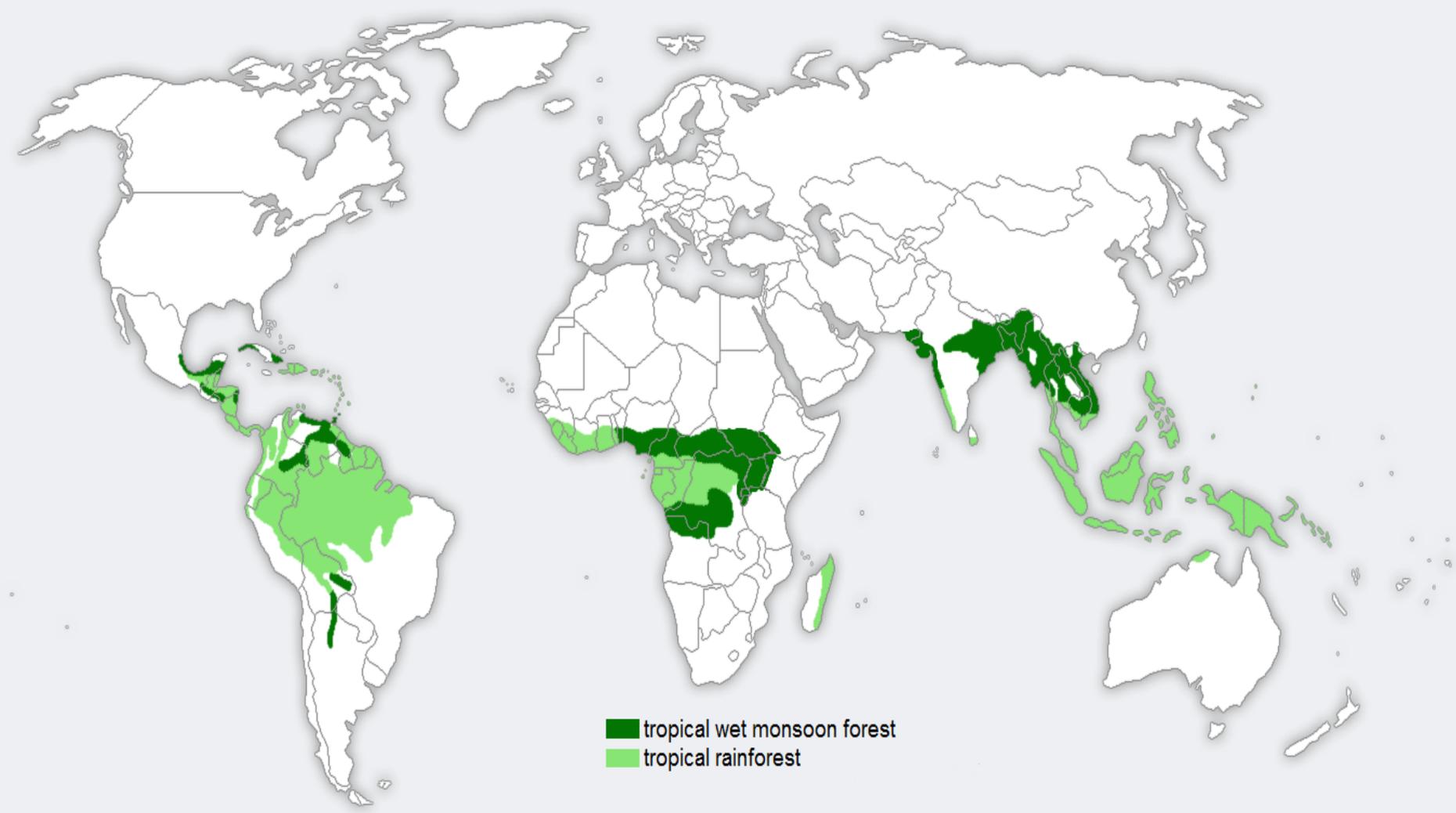


- Breakdown by **abatement type**:
  - 9 Gt for terrestrial carbon, of which **6 Gt in forestry**
  - 6 Gt for energy efficiency
  - 4 Gt for low carbon energy supply
- Breakdown by **geographic location**:
  - 5 Gt in developed country geographies
  - 14 Gt in developing country geographies

# REDD+: Development under the UNFCCC

- UNFCCC Art. 4.1 a, b, c (“anthropogenic emissions by sources and removals by sinks”)
- Not part of the Kyoto protocol
- Agreement reached at Bali in 2007 (COP13) on process for **REDD+** (Bali Action Plan). Deadline set for COP15 in Copenhagen.
- Copenhagen Accord:  

“agreement on the need to provide positive incentives to such actions through the immediate establishment of a mechanism including REDD-plus, to enable the mobilization of financial resources from developed countries”.



# Decision 4/CP. 15

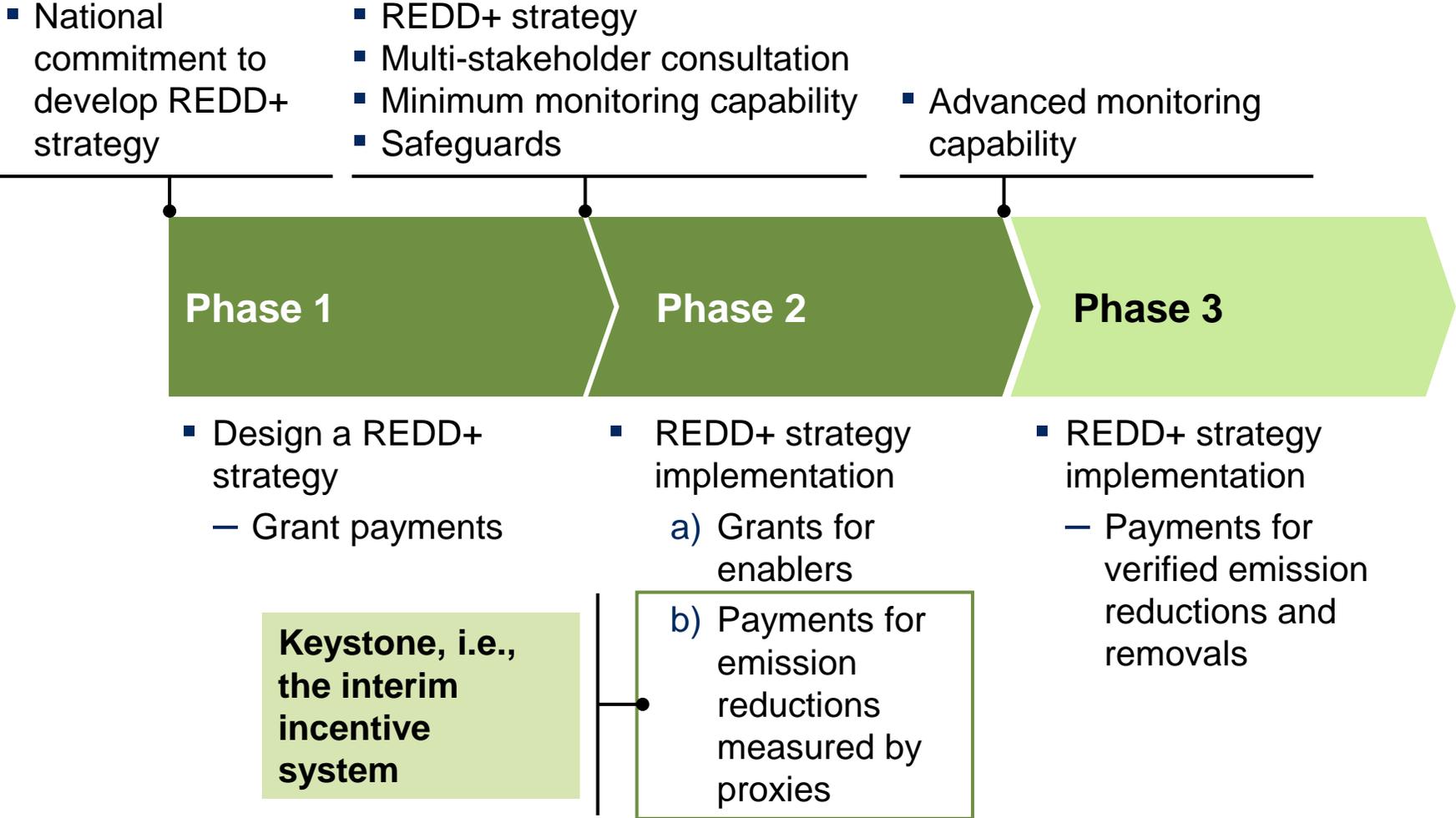
- Identification of **drivers of deforestation** and forest degradation resulting in emissions and also the means to address these (para 1a);
- Identification of **activities** within the country that result in reduced emissions and increased removals, and stabilization of forest carbon stocks (para 1b)
- Establishment of robust and transparent national **forest monitoring systems** (para 1d)
- Development of guidance for effective engagement of **indigenous peoples** and local communities in monitoring and reporting;
- Establishment of forest reference emission levels

# REDD+ Decision in Cancun -/CP.16

- Framework decision on REDD + that establishes the global REDD+ mechanism.
- Elements:
  - **Overall goal**: slow, halt and reverse forest cover and forest carbon loss, consistent with Article 2 UNFCCC (Preamble 1)
  - **Scope** of REDD+ (same as in Bali Action Plan) (para 70)
  - A **phased approach**: from capacity building via enabling policies and measures to result based payments (para 73)
  - **Safeguards** for biodiversity protection and indigenous peoples' and local communities' involvement (annex I).
  - **National REDD+ strategy** and robust and transparent **national forest monitoring and reporting system** (4/CP.15)
  - Addressing **drivers of deforestation** and forest degradation, **land tenure issues, gender considerations** and the **safeguards**, ensuring the **full and effective participation** of all stakeholders, inter alia indigenous peoples and local communities (p. 68, 72)
  - **Coordination** of activities at national level (para 78)

# A phased approach to REDD action allows for flexibility and immediate action until a long-term solution is in place

■ Potential scope for interim mechanism



# REDD+ Decision in Cancun -/CP.16

## Principles:

- Voluntary participation (annex I, 1 (a))
- Respect for national sovereignty (annex I 1 (d), (e) , (f))
- Common but differentiated responsibilities (paras 70, 71, 74 annex I, 1(i))
- Results-based approach (annex I (j))
- Financing???
- Environmental integrity (annex I, 1 (d))

# Safeguards (-/CP. 16 Annex I para 2)

“The following safeguards should be promoted and supported:

- (a) Actions complement or are **consistent with** the objectives of national forest programmes and **relevant international conventions and agreements**;
- (b) **Transparent and effective national forest governance structures**, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and **rights of indigenous peoples and members of local communities**, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) The **full and effective participation of relevant stakeholders**, in particular, indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of this decision;
- (e) Actions are **consistent with the conservation of natural forests and biological diversity**, ensuring that actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to **enhance other social and environmental benefits**;
- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions. “

# **REDD+: legal questions?**

## **1. Stakeholder Engagement:**

- How to identify stakeholders?**
- How to ensure the full and effective participation of stakeholders, in particular indigenous peoples and local communities?**
- Experiences with consultation procedures**
- Experiences with Participatory Forest Management (PFM)**
- Identifying challenges of adding carbon to PFM**

# **REDD+: legal Questions**

## **2. Promotion of Safeguards**

- How to show respect for the knowledge and rights of indigenous peoples and members of local communities?**
- Identification of indigenous peoples, and critical assessment of the concepts of "forest-based-communities" and pastoralists**
- Identification of their rights (procedural rights, land rights and other substantive rights)**

# **REDD+: Legal questions**

## **3. Governance and Land Tenure Rights**

- **How to secure the land tenure system, including rights to and in the forest?**
- **How to reconcile basic food security (charcoal), optimal use of land resources and ensuring ecological balance of the environment?**
- **Which acts and regulations exist that affect forest resources and management (directly and indirectly)?**
- **Identify gaps, overlaps and conflicts between sectoral policies and institutions? Reforms needed?**

# REDD+: Legal Questions

## 3. Governance and Land Tenure Rights

- **Situation of law enforcement and capacity**
- **Legal possibilities to avoid land grabbing (experiences from biofuel and carbon trading, CDM)?**
- **How to deal with corruption?**
- **Tanzania: How to reconcile the Forest Act, Village Act and Local Government Act in relation to the powers of village governments in the management of forests?**

# Challenges

- **International framework still evolving**
- **What can be learned from pilot activities for:**
  - **Ensuring sustainable forest management**
  - **Securing land tenure**
  - **Legal and institutional frameworks?**