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REDD+ AND CARBON RIGHTS: LESSONS FROM THE FIELD

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FOCUS OF THE STUDY

- ❖ To better understand legal and practical implications of carbon rights at the national and local levels to decide who has access to REDD+ benefits
- ❖ Focuses on lessons learned from analyzing the laws and circumstances of five case study countries: Mexico, Indonesia, Nepal, Tanzania and Mozambique
- ❖ Objective of case studies: assess extent to which national laws establish a secure right to benefit from reduced forest emissions or increased sequestered carbon



WHAT ARE “CARBON RIGHTS” AND WHY ARE THEY IMPORTANT?

- ❖ No agreed-upon definition
- ❖ Our working definition: the legal right to benefit from sequestered carbon and/or reduced greenhouse gas emissions from trees
- ❖ Importance: clearly assign rights to benefit are essential to:
 - ❖ Incentivize desired environmental behavior that leads to reduced net emissions; and
 - ❖ Avoid harm—and perhaps creating benefits—to forest-dependent communities

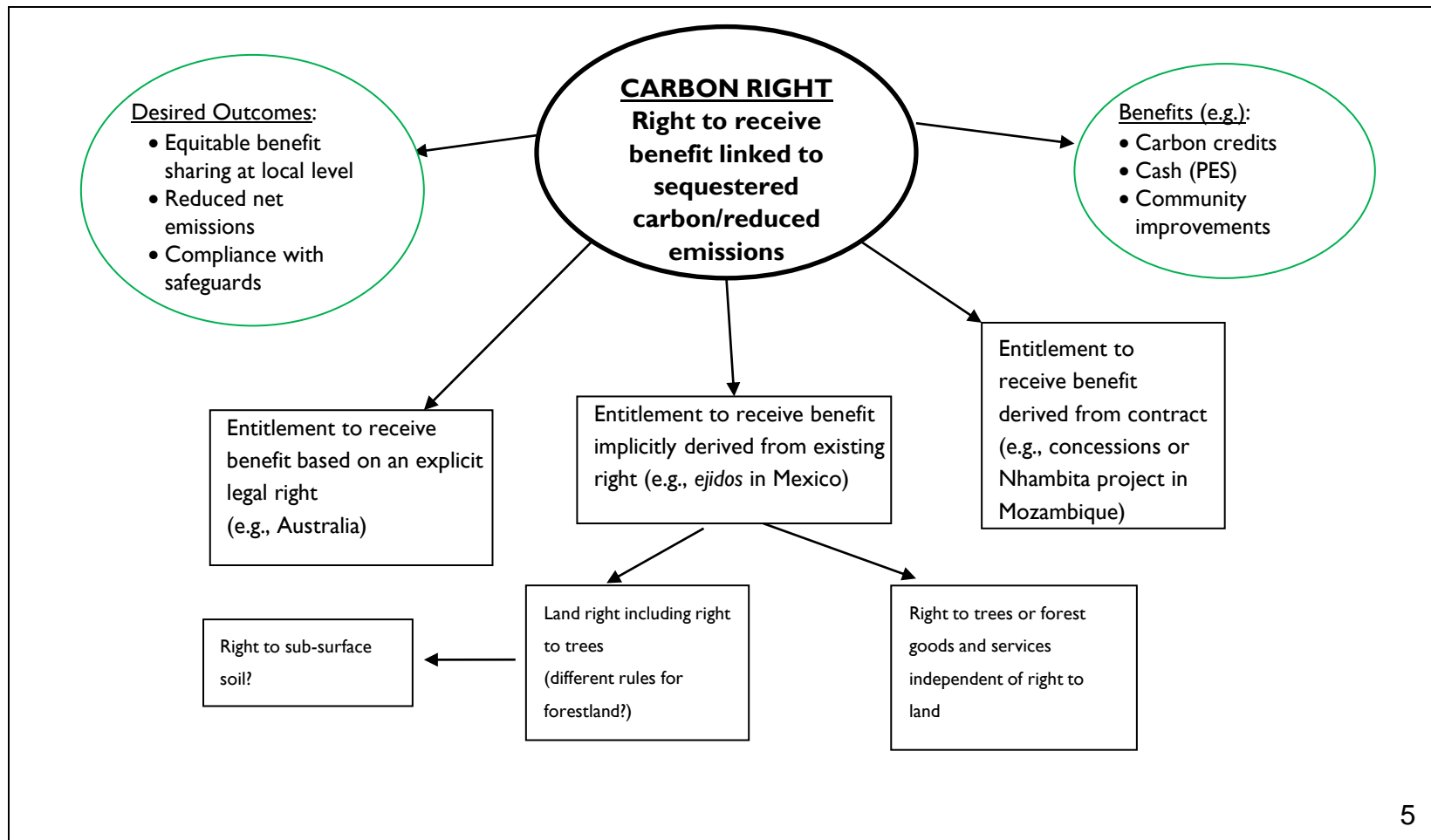


LEGAL APPROACHES TO CARBON RIGHTS

- ❖ **Explicit rights:** founded in a law specifically defining the rights, responsibilities and entitlement to receive benefits relating to sequestered carbon or reduced deforestation
- ❖ **Implicit rights** derived from existing laws or existing rights that do not specifically mention carbon, but provide a basis for one to receive a benefit from carbon sequestration or reduced deforestation
- ❖ **Contractual rights** that arise through particular agreements between parties that are enforceable under existing national contract or administrative law
- ❖ Approaches not mutually exclusive (e.g., Mozambique)



LEGAL PATHWAYS TO CARBON RIGHTS



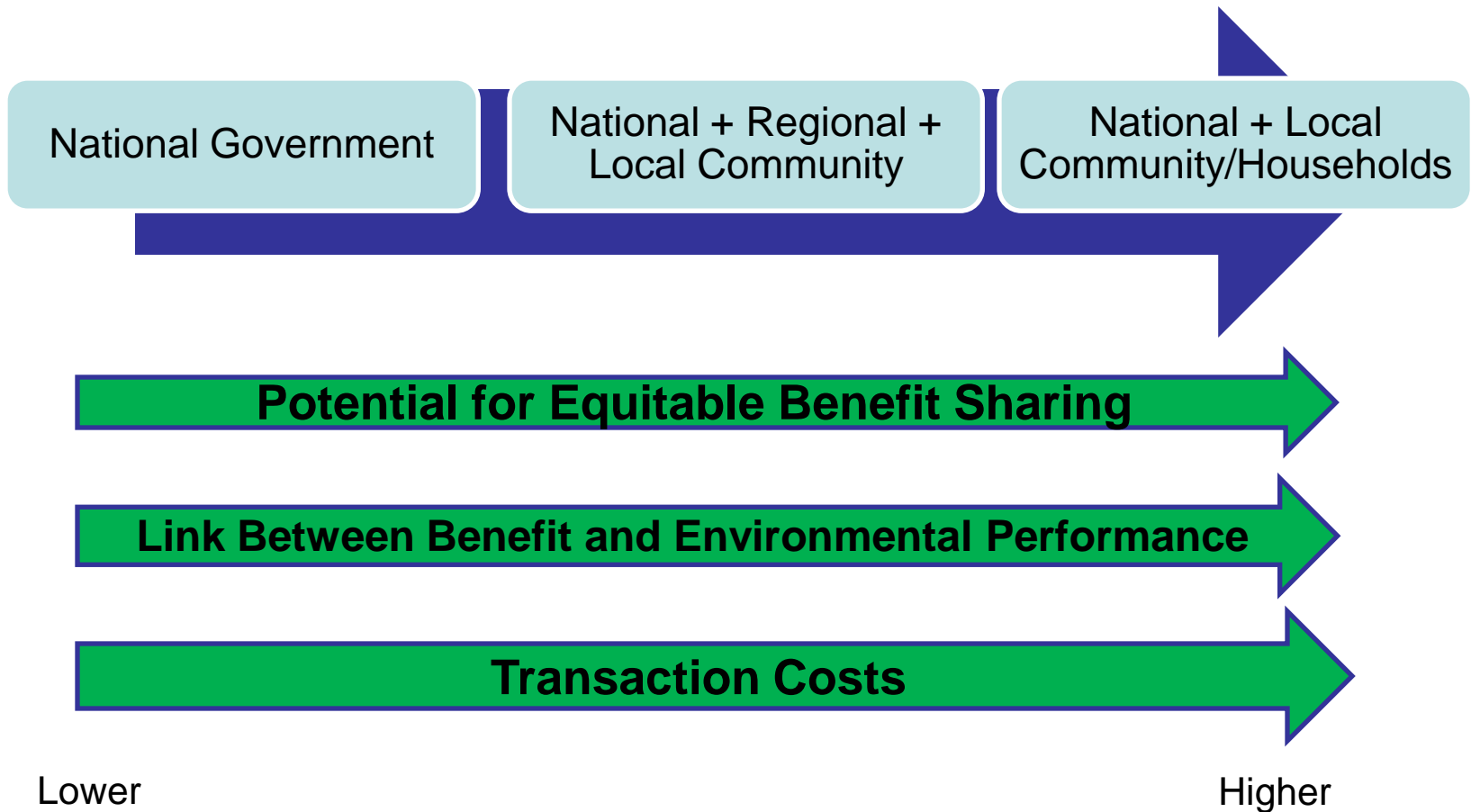


KEY TAKE-AWAYS

- ❖ Explicit legal right-Very few to date (Australia states, Alberta, Indonesia-sort of)
 - ❖ Potential for clear rights but difficult administratively
- ❖ Implicit legal right
 - ❖ Important to have consistency between land and forest rights in determining who has right to forest resources
 - ❖ Who has right to benefit from “non-extractive” forest resources is often unclear
 - ❖ Problematic if right to forest resource is limited to subsistence use. Does receiving benefit from carbon require a forest use license?
- ❖ Contract rights (could include conservation easements)
 - ❖ Beware of transaction costs (Mozambique-Nhambita)



CHOOSING THE APPROPRIATE BENEFICIARY UNIT





KEY COMPONENTS OF ALL CARBON RIGHTS LEGAL REGIMES

- ❖ Rights to benefit must be clear and enforceable
 - ❖ Indonesia “negative outlier”
 - ❖ REDD regs give benefits to those with clear forest tenure rights
 - ❖ But few have such rights
- ❖ The carbon right and a significant share of benefits should go to one who is in the best position to protect the forest; usually local community
 - ❖ Countries must strike balance between performance-based payments and social goals
 - ❖ E.g., Nepal CFUG pilots



NECESSARY COMPONENTS OF ALL CARBON RIGHTS LEGAL REGIMES-2

- ❖ Do no harm to existing tenure rights, including customary rights, rights and circumstances of women, indigenous peoples and marginalized groups
- ❖ If possible, improve such rights but avoid overreaching. REDD+ cannot cure all social ills.
- ❖ Mechanism to address failure to meet national emissions performance standard-who has risk of loss?



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