

# Legal Fragmentation Of Iraqis Forest Legislations, A Case Study Of Adoption The Forest Management Under United Nation Framework Convention Of Climatic Change (UNFCCC) And Biological Diversity (UNCBD)

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## Abstract:

It is widely known that there has been a large expansion in the international environmental law on forest management, especially those under United Nation Convention on Climatic Change UNFCCC and United Nation Convention on Biological Diversity UNCBD. Thus, the multiple objectives of both conventions reflected on the national level Iraq. Iraq has been enacted several legislations on forest management in term of compliance to the said conventions. This leads to statues of fragmentation of legal instrument concerning forest sector in this country, also this leads to overlap of legislations on specific subject matter which cause the trade-off in the application of their policy. This prone to reconsider their overlapped mandate on forest sector should be integrated to avoid the trade-off. This Article build on idea of integration, where multiple legislations on forest can be harmonies to make the different objectives inherited in the international instrument workable on national level of Iraq, and this claim us to analysis these laws.

**Key Words:** Forest Management, Fragmentation, Legal Overlap, Iraqis Forest Legislation, Trade-off.

## I. Introduction:

Fragmentation it's a phenomena that inherited in the legal studies regarding scattered rules that governing multiple subjects in international law. But this term have it's resonance with many environmental sector and their legal instruments which regulate specific ecosystem component. Forests was one of those sectors which have been exhibited by various legal instruments that manage and regulate forest for different purposes. Currently, climatic change and biological diversity being two significant threat for the international community, both UNFCCC and UNCBD imposed their own perspective on protect and manage forest and this led to overlap and trade-off in achieving the objectives of these

conventions. Iraq as a member for both regimes, have enacted several legislations in term of adopting the policy of these conventions and also as participation to overcome these two global crises, but this multiplicity and trade-off by fragmented forest management reflected on the national level. This article describe the phenomena of legal fragmentation of forest management and its reflection on the national level of Iraq. First, this article will introduce the term of fragmentation then investigate in the overlap of these conventions on forest sector, then its move to the Iraq's adoption for those perspective, second it will study how they overlap and create a trade-off on Iraqi's national level. In the end, this paper will analysis the impact of

fragmentation and the method to overcome such legal dilemma.

## 2. Legal Fragmentation

Fragmentation according to Galaz et al<sup>1</sup> the term fragmentation denotes to 'the increased proliferation of international regulatory regimes and institutions with overlapping jurisdictions and ambiguous boundaries. Galaz et al,<sup>2</sup> said the term fragmentation designates the breaking up, the reduction to fragments, of something that was a whole. It implies the factual premise, that indeed, before it was fragmented, something unitary existed and the value judgment that fragmentation is bad while unity is good. Debates about fragmentation of international environment law started without discussing the factual correctness of the unity of international environment law and saw fragmentation with concern, as a risk to be avoided.

For example, Peter<sup>3</sup> claimed that fragmentation can generate overlap and legal obligations incompatibility, there is a dispute in a narrow sense where there are divergent laws that impose mutually overlapping obligations, in addition, one treaty or regime can thwart another's objectives without a strict dispute. . Sometimes there are contradictions between the treaties, but also between new forms of standards such as codes, acts and memoranda, etc. Moreover, fragmentation also causes legal certainty losses, which in turn is a component of the global rule of legislation. The multitude of institutions creates a chaos with these multiple jurisdictions. Zürn and Faude<sup>4</sup> examined the predictable and reliable legal applications of the boards minimize the differences and potentially contradictory legal standards of substance that are applicable to those bodies.

In the report of Food, Agricultural Organization FAO, demonstrated that the management of forest been a subject for several international legal instruments,<sup>5</sup> The 2020 report of FAO elucidate that the forest management fragmented as the number of legal rules exists because an international environmental convention perhaps

treat the forest sector from different perspective of another, taking in the account the social, economic and ecological components. Both UNFCCC and UNCBD represent a legal framework for two global crises, and their nexus on forest being manifold starts from their first fiction to utilize this ecosystem sector to achieve their objectives, whether reduction or global warming as in UNFCCC or conservation of life habitat in UNCBD as next section will illustrate.

## 3. Legal Overlap of Forest Management

The overlap between UNFCCC and UNCBD on forest could be viewed for two phases, The UNFCCC and UNCBD nexus on forest management goes back to their overlapped legal instrument in years that preceded the establishment of Paris Agreement and Aichi Target. The Kyoto protocol, Clean Development Mechanism CDM and Reduction Emission from deforestation and environment degradation REDD+ were established by UNFCCC parties to impose mitigation policy, and forest sector was a significant topic in this mitigation, but in same time the policy of forest management were in odds with UNCBD. However, the failure of Kyoto Protocol to achieve the proposed mitigation made the state parties to switch for another legal binding agreement that fill the gaps which left from the old instruments of UNFCCC.<sup>6</sup> The Paris Agreement shaped the new legal mechanism in this era that allow developing countries to participate in the mitigation policy, this agreement utilize the REDD+ policy regarding forest.<sup>7</sup> Regarding UNCBD, the Aichi Targets drawn 20 goals that imposed on member states to preserve and monitor ecosystem component and report that in annual years, forest sector played a significant role in protecting life habitat, these targets 5<sup>th</sup>, 7<sup>th</sup> and 15<sup>th</sup> of Aichi were mapped and adopted forests.<sup>8</sup>

The problem of overlapped international instruments on forest management lays in the perspective of per instruments to achieve their targets of utilizing forest sector. For example, UNFCCC and their annexes viewed the forest as

source of sinks and emission of carbon, while UNCBD and Aichi Targets view forest as source of human living and its necessary guarantee the balance and equity of sharing these resources.<sup>9</sup> Subsequently, any activities or policy imposed on the forest whether afforestation, reforestation or any changes on this sector by UNFCCC or their annexes, would consist a threat to biodiversity of trees and species which are significant for human and nature resources and protected by UNCBD. For example, both convention encourage members to increase the tree cover and greening the lands, but this increasing must contain a procedures to preserve the biodiversity of trees and the circumstances of the communities who live around these lands and without considering these aspects, the increasing would threaten lives. The topic of overlap and threat was studied and confirmed by many scholars,<sup>10</sup> but in same time, some of them argued that the UNFCCC policy could be converge with UNCBD on forest management if not implemented poorly.<sup>11</sup>

The window to deploy integration of objectives as solutions that avoid irreversible impacts is rapidly closing on both the climate and biodiversity crises unless there is rapid but careful ramp-up of solutions that deliver co-benefits for both climate and biodiversity integration on forest management by member states on national level. At the same time, discussion of trade-offs is inevitable as not all potential solutions can be win-wins. Iraq's Ministry of Health and Environment MOHenv in phase of implementing the principle of biodiversity and climatic change to manage several environmental sector and forest sector was included. To ensure the success of implementing these legal instrument, the MOHenv must integrate the policy of climatic change to biodiversity.

#### **4- Iraq's Adoption for Forest Management**

In the interest of the country about the importance of environmental issues in Iraq, the preserving Iraq environment has become a

necessity to protect the health of society and increase production with the optimal use of natural resources, the issues of climatic change and biodiversity was considered one of the first of those issues and one of the most important resources.<sup>12</sup> At the end of July 2009, Iraq deposited its instrument of accession to the Convention on Biological Diversity (CBD) with the Secretary General of the United Nations, and on the 26th October of 2009 became the 192nd Party to the Convention.<sup>13</sup> In the same year of Iraq adoption for UNCBD 2009, the Iraqi legislator was in progress steps to adopt the UNFCCC due to the interests of Iraq to participate in protecting Iraq environment from global warming risk which impacted on the country ecosystem. Iraq parliament issued Law No.7 2009 of the accession of the Republic of Iraq to the UNFCCC and the Kyoto Protocol. After Kyoto Protocol was failed as legal instrument to mitigate the emission and warming risks,<sup>14</sup> Iraq as member of UNFCCC joined the Paris Agreement and start to take steps to fulfill its pledges to achieve policy of reduction of the global temperature, the Iraq's National Determined Contribution INDC were the contribution instrument for Iraq to announce about its serious attitude to this agreement.<sup>15</sup> Generally, in term of compliance to the international instruments, the Iraqi's legislator has been issued several legislations and codes to manage and conserve forest in Iraq. Due to Article 1 of Law on the Protection of the Environment Improvement No. 27 of 2009 which mandate the MOHenv to play role to keep up with new developments, the Ministry has been projected three legislations as fulfillment to the UNFCCC and UNCBD policies on forest sector. The said legislations were adopted the dissimilar objectives on manage and conserve forest sector, and this need to investigate to realize the gaps and concepts that lead to impose that the implementation of these overlapped legislations might consist a trade-off and adverse to forest ecosystem as a result of fragmented legislations.

#### **4.1 Forests and Trees Law No. 30 2010**

The Iraqi legislator believes in the great importance of the issue of forests to climatic change after the adoption of UNFCCC, and the basic ecological function, which require the development of a legal framework that determinant and preserves existing forests and ensures their sustainability and development for the future climatic change,<sup>16</sup> this is why Forests and Trees Law 2010 adopted. The legislator realized the necessity of forest and its role as stated in the main articles of UNFCCC and its Kyoto Protocol, for that this law come to reflect the ambitious and policy of those international tools on forest sector.<sup>17</sup>

Literally, this law came to embodied the entire forest management perspective that proposed and initiated in climatic change, in Kyoto Protocol to be exact, for example the Article 1 of this law define the Forest as “the integrated life unit of trees, shrubs, herbs and plants, whether they grow naturally or by human action, such as irrigated or artificial trees”.<sup>18</sup> Then in same Article define the Brawlers in referring to reforested area “The areas that are artificially wooded with suitable trees that are fast-growing and short-lived”,<sup>19</sup> it's clear from these definitions the orientation of the legislator was to adopt the entire Kyoto concepts on forest. These definitions, the legislator treated both natural and artificial forest as same unit, this apparent through the referring to those lands which artificially forested made apparent links to those concepts of afforestation and reforestation of Kyoto.<sup>20</sup>

The law clarify its objective to be in accordance with Kyoto, for example its set first objectives as to “organizing the management, protection, maintenance and improvement of forests and increasing their areas”,<sup>21</sup> the wording of this objectives not clear, first, the management of forest must be in comprehensive aspects (for example gazing, fires, species conservation and biodiversity purposes ...etc), and in the investigation of this law, there is no details on these issues, second, increasing the forest area

does not determine those natural or artificial one or this increasing is adequate to biodiversity. Therefore, the prohibiting of some humane induce activities to forest was worded unsuitably, for example the deforestation, the law in Article 9 banned the cut or harvesting just for those private and artificial forests, and made exception for these activities in certain cases such as if the forest protects the land from the inundation of rivers and torrents in the sloping areas, or if the forest leads to the preservation of springs and streams.<sup>22</sup> The content of these articles consider as threat to biological diversity of forest, the law didn't made a monitoring system to conserve this sector, the increasing of areas with one kind of trees consists an adverse to the species and life habitat in forests. Furthermore, these extension of forest will affect the ecosystem as the increasing of forest distances require new springs, and induce new change in soil which destruct the immense of species.<sup>23</sup>

Iraq which categorized under countries Anex11 in Kyoto Protocol,<sup>24</sup> so the policy of this law regarding forest management supposed to exists in accordance with this Protocol by reduce the temperature less than 2C, the law dealt with forest sector in imprecise method that may impact the ecosystem and biodiversity directly. In review on the content of this law, governing the forest and tree were placed with absence for respective mechanism that guarantee the protection on biodiversity,<sup>25</sup>

Generally, the Forests and Trees Law No. (30) 2010 imposed a regulation on forest management which consider improper to biodiversity, subsequently, this law was abandoned gradually with keeping preserving policy in light of the engaging the Iraq's MOHenv with new developments on climatic change policy on forest sector of REDD+,<sup>26</sup> but there is no explicit decision regarding this abandoned law.

#### **4.2 Law No. 10 of Kurdistan Forest 2012, a steeping to protect forest biodiversity**

In purposes of fulfillment of Iraq pledges in protecting the forest biodiversity under the UNCBD and Aichi Target 2010-2020, this law was drafted and issued by MOHenv as a compliance step to manage the forest sector in way that suite the biodiversity goal which drawn by these international instrument. In reviewing of the objectives of this law, it could be realized the attention that paid by the legislator for the significantly of forest ecosystem and its contribution for the individuals, for example the law set the objectives to “maintaining stability and natural balance, managing and regulating forests and increasing its area, with an emphasis on preserving the diversity of trees” this objective came in line with the restoration the forest under 15 Target of Aichi Target. Also the law been in resilience when it’s worded in its objectives that “the necessity of improving the environment, reducing the effects of climate change, and preserving biodiversity” and “Preserving the natural varieties of plants and preserving their origins genetic”,<sup>27</sup> this an insight of the legislator to consider the climatic change policy on forest. The law classified and impose a categorization for the types of forest to impose the policy of biodiversity protection and constraints or preventing the harvesting or any human induced activities which harm the nature of forest. The law prohibited the “creation, alteration or transfer on the territory of forests, the establishment of public or private facilities within the forest lands, whether temporarily or permanently”<sup>28</sup> and “pruning or cutting of forest trees and shrubs resulting in damage or cut down any of the forest trees”.<sup>29</sup> These articles exists as adequate measures to fulfill with Aichi Targets 5 and 7 aside several policies on forest management, ecological restoration as a means of enhancing biodiversity and improving the provision of diverse ecosystem services were adopted in this law.<sup>30</sup>

The legislator interest in forests due to their environmental importance is manifested through conservation on ecosystems because of their impact on human survival and for the

development of his life and the lives of future generations.<sup>31</sup> So, in the review of these Articles, it’s clear that the legislator adopt the integration approach to establish these commitments, the ecological, social and economic goals were took in consideration in adopting forest management in this law.

### **4.3 Protected Areas Law No.2 2014, stepping to achieving Paris Agreement Pledges**

After the failure of Kyoto to overcome the emission reduction policy, and due to the minorities of forest management that witnessed by this mechanism, in prior of this failure, the United Nations was supported projects in 2009 specialized in reducing emissions resulting from deforestation and forest degradation in what is known as REDD. This projects aim to protect forests and the functions they perform on storing and absorbing carbon dioxide, which causes global warming, which is responsible for global warming, and according to the Climate Protection Council, 17% of greenhouse gases are caused by deforestation in different parts of the world, preserving forests contributes to limiting the rise in temperatures.<sup>32</sup> After that, the United Nations launched the REDD+ program, which goes a step further, as it is not limited to protecting forests, it works to enhance forest resources and benefit from it sustainably. This initiatives of REDD+ was adopted in the 2013 in Warsaw Framework for REED+ (WF-REDD+) in proactive step to conclude it in Paris Agreement.<sup>33</sup>

Iraq as a developing country found that an opportunity to adopt the new project on forest that qualify the ambitious to reduce the global warming and in same time suitable policy to preserve the forest as an ecosystem component and its biodiversity. In this sense, adopting the concept of Sustainable Forest Management SFM within the REDD+ framework opens the opportunity not only to better deal with forest degradation effects, but also to minimize the risk of conversion of forests to other land uses and achieve mitigation targets under new legal

commitments of Paris Agreement and integrate the said policy with UNCBD and Aichi Targets.<sup>34</sup>

Once the 2009 Forest and Tree Law presented unfavorable circumstances in integrating such strategy within its scope, Iraq issued the Protected Areas Law No.2 2014 to adopt new concepts on forest conservation in REDD+ which helps aside of new forest management policy in UNFCCC and emission mitigation, also to safeguard the biodiversity of forest sector. This law builds on an idea of delimitation specific areas of forest to be protected and impose the REDD+ concept of SFM to contribute forest in the policy of mitigation and also enhance the forest resources and its contributions to ecosystem. Under this law contents, the law dealt with forest sector to achieve the goal of climatic change and provide a respective protection for certain forests and its biodiversity.

The first chapter of the law is devoted to the definition the Protected Areas, including forests, and determine of nature these areas and their types and its importance. The second part is devoted to explaining the administrative mechanisms for the establishment of protected areas, it is focused on the five necessary mechanisms: selection of the area, delimitation of the area and projecting it on the map, setting goals, collecting data Analyze and finally define policies. In the third chapter, it's dealt with the four legal mechanisms for the establishment of protected areas: the decision-making body, the selection system, the alternative or publication system and advertising.<sup>35</sup>

In this law, the theories of climatic change and biological diversity on forest could be combined together, a wide range of forest management adopted in order to contribute Iraqi's forest in mitigation policy under REDD+ which coincidence Iraq's preparation to join Paris Agreement.<sup>36</sup> Additionally, in Article 3 of this law considers it necessary to develop a comprehensive strategy to safeguard biodiversity of forest, as well as a national statistical map for the various types of elements of biological diversity approach to adopt a comprehensive

policy to educate citizens and make them aware of the significant importance of preserving on the various components of biodiversity. Strengthening forest wealth by protecting it and expanding operations afforestation and resistance to soil erosion and drainage.<sup>37</sup>

This law referred directly to the biological diversity in its definition for forest, in Article 1, as "an area of land that contains living organisms, plants or animals, or environmental features that are placed under legal protection to protect its natural resources and the sustainability of its resources".<sup>38</sup> This law made remarkable steps by alignment with Sustainable Development Goals SDGs that proposed a year after the issuance of this law, which no previous law on forest could concluded such principles on Iraq's national level, in Article 1. 9 of this law, and in referring to SDG15, define the necessity of taking the sustainable development in consideration on the management of this forest as long as this principles helps to possibility of achieving and sustaining economic and social development for future generations without depleting natural resources.<sup>39</sup> This law and in order to align its objectives to REDD+ and it policy to safeguard the forest biodiversity, Article 7 contained a conditions to consider a certain area of forest as protected area and they are:

- Clearly distinguishing components of biodiversity.
- Availability of a significant number of single endemic species for the components of biodiversity.
- Availability of one or more rare and endangered species.
- A distinctive landform that has scientific and environmental value.<sup>40</sup>

This for Qadir,<sup>41</sup> the article consists of a successful step from the legislator by paying attention of biodiversity of forest aside its role in climatic change policy, the legislator followed the policy that imposed by WF-REDD+ on forest management and its contribution on mitigation, and policy of biodiversity safeguarding to protect the social and economic aspects of forest.

## 5. National Forest Management Overlap

It has been illustrated in the present argument on the fragmentation of forest management that diverse of international environmental standards may apply in a particular situation, but they will all point to different directions. This remark can also be extended, to a legislative point of view, to include the UNCBD's overlap with the UNFCCC where the possible overlap between the aims is unavoidable under legal differences of environmental law. In previous sections, the research elucidated the Iraqi's adoption for both conventions and their instruments to reflect their perspective on national policy, and in same scenario of overlap on forest management, it seems the adoption was in odds due to the different perspectives regarding forest sector as a result of fragmentation.

Where the Law No. 10 2012 come to view the forest as sector that assists the community or to life and prosperity, consequently protecting their biodiversity it is necessary to keep the balance of life habitat, while those laws which issued to reflect climatic change viewed the forest as a source of sinks and emission, and proposed to manage this sector exclusively to their role in absorbing the carbon. Despite the Law No2 2014 were more converge to diversity perspective, the induction of these laws, its apparently that the law No. 10, 2012 was so relicense when its settled its' objectives by indicating to climatic change issues in its policy of forest management, unlike the law No.30 2010, which doesn't pay any attentions for biodiversity. The law No2 2014 underpin the issues of biodiversity by referring to sustainability, but the concept of avoiding and prohibition regarding certain management concept consist unsatisfactory for biodiversity and the forest sustainability. For example Fauzi<sup>42</sup> he studied the increasing and mapping forest which lead for potential threats to biodiversity of trees and species, this for Fauzi consists misunderstand able by the legislator to combine the objectives of biodiversity in climatic change policy in these forest legislations.

Those categorization of forests under these previous laws is also controversial, the forest management under law No. 10 2012 protect those

natural forest, which include old trees or trees that consider rare and important to forest ecosystem, while the law No. 30 2010 for example induced artificial forests as a type of forests that must provide a protection that equal with natural one. This is ironically for Parfondry and Cicatiello<sup>43</sup> to treat artificial and Brawlers forests that planted of one kind of trees and organize their suitability without jeopardize the ecosystems components that surrounding their biodiversity, for example soil, springs...etc. The categorization of forest that initiated in law No.2 2014, the conditions of establishing an certain forest as protected area as proposed in Article 7 does not match that on law No.10 2012, the latter appear to be more comprehensive and that is clear from the law's definition on forest.

## 6. Conclusion

Generally, It could be say due to the number of legislations which enacted regarding forest sector, that the phenomena of fragmentation on forest management transmitted to national level of Iraq, where every legislation exit to apply specific perspective on governing forest belong to the different conventions. It is asserted that the tension that exists in the overlapping objectives on international level will manifest as an overlap between the national rules that suggest different ways to deal with the environmental problems. Consequently, the Iraq's forest exhibited by applicability of numerous legal standards that bearing different perspective on management forest sector.

The said legislations enacted in subsequent, whenever there is a new policy imposed on member states, this apparently shown when the issuance of Law No 30 2010 on Forest and Trees adopted the policy of forest management that reflect the vision of Kyoto Protocol, in hence, the Law No 2 on 2014 of Protected Areas was adopted to reflect the policy inherited in REDD+ to fill the gap in previous law and as readiness for Paris Agreement. Thus Law No 10 2012 of Kurdistan Forest was adopted to be a spit image of the conservation policy on forest management that inherited in UNCBD and Aichi Target, notably, these legislation didn't refer to each

other or contained a texts indicate to the applicability or cancelation on other law.

Building on above, the MOHenv are responsible to apply the integration approach to achieve mitigation and adaption policy in coming years to be in accordance with these goals of preserving the biodiversity characters on forest and devoid or mitigation purpose. The win-win solution may be it hard to reach against unavoidable risk that outcome of the operation of the climatic change policy on biological diversity on forest management. The best way for integration that could be achieve by MOHenv, is the combination of the objectives of mitigation and adaption in climatic change and conservation of biological diversity of forest, in one unified forest legislation. Instead of existing several legislations on forest, each one consists a prerequisite for an international convention perspective on forest management. This new forest legislation must reflect the ambitious of forest management perspectives that adopted by both UNFCCC and UNCBD in general, and the new pledges of Iraq's participation in Paris Agreement and Aichi Target respectively.

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### List of Laws

- Iraqis Forests and Trees Law No. 30 2010.  
 Iraqis Kurdistan Forest Law No. 10 2012.  
 Iraqis Protected Areas Law No.2 2014