

Ensuring inclusive, transparent and accountable national REDD+ systems: the role of freedom of information



Executive Summary

November 2012



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UN-REDD

PROGRAMME



The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest-dependent communities, in national and international REDD+ implementation.



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The UN-REDD Programme works closely with UNDP's Democratic Governance Group, whose work includes support to access to information and anti-corruption. The former stems from the fact that implementation of the rights to freedom of expression and to access information are prerequisites for ensuring the voice and participation necessary for a democratic society. Access to information and communication build on these internationally recognized rights and together encompass core principles of democratic governance such as participation, transparency and accountability. The latter derives from the fact that corruption undermines human development and democracy. It reduces access to public services by diverting public resources for private gain, and strikes at the heart of democracy by corroding the rule of law, democratic institutions and public trust in leaders. For the poor, women and minorities, corruption means even less access to social goods, jobs, justice or any fair and equal opportunity.

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The central role of access to information in REDD+

This report examines how the right of freedom of information – i.e. the right of every individual to have access to information held by public bodies, subject only to narrow exceptions – has been or can be used in the context of REDD+ countries activities. REDD+ is proposed under the United Nations Framework Convention on Climate Change (UNFCCC) to mitigate climate change by providing positive incentives to developing countries to reduce emissions from deforestation and forest degradation and conserve, manage and enhance forest carbon stocks.

“Access to”, “Freedom of”: a note on terminology

The phrases “access to information”, “freedom of information”, the “right to know”, and the “right to [official] information” denote the same concept: that information held by governments is in principle freely and openly accessible by all, subject only to narrow exceptions. Usage of these terms depends on context, culture and language. For example, more recent rights-based approaches in East Asia prefer the “right to know”, while more traditional approaches in North America and the United Kingdom use the term “freedom of information”. In line with UNDP’s recent publications*, this report will use the phrases “freedom of information” and “access to information” interchangeably.

*UNDP, Fast Facts on E-Governance and Access to Information, 2012.

Put simply, freedom of information (or “access to information”, see text box) means that individuals have a right to access any information held by the government, subject to exceptions necessary to protect vital public interests – for example, national security. Governments should make information available on request, but they should also ensure that information that is of public interest is made available proactively, without individuals needing to lodge requests.

The right to freedom of information is protected under international human rights, environmental and anti-corruption law. In the last decade there has been a sharp increase in the number of countries that have adopted freedom of information legislation, accompanied by an increase in international standard-setting in the area of freedom of information. Good practice lessons have emerged.

The success of REDD+ will depend on a number of factors. These include both technical aspects such as the ability to produce measurable, reportable and verifiable forest carbon estimates, and governance aspects such as reducing corruption risks, the free, prior and informed consent and full and effective participation of the populations directly

affected by national REDD+ policies and measures, and the traceability of and accountability for payments made and received to ultimately achieve reductions in deforestation and forest degradation. **Access to information is crucial for the success of REDD+ both as a prerequisite for full and effective engagement of stakeholders and as a foundation for transparency and accountability.** In addition to their obligations under international law, REDD+ countries are expected to meet higher standards of transparency and participatory decision-making processes, including through the provisions of the Cancun Agreements that require that REDD+ participating countries develop information systems on REDD+ safeguards.

What information?

Information needs and demands differ according to the audience. Indeed, the packaging of the information to meet the provisions of the UNFCCC Cancun Agreements on REDD+ safeguards, which call for providing information on how safeguards are addressed and respected, will be different from the format and frequency at which information is needed for national and local stakeholders to act upon it so that openness, integrity, accountability and participation are enhanced.

Information needs may also differ in different phases of REDD+. The table below provides a non- exhaustive list of what information is particularly relevant in different phases of REDD+ to promote participation, transparency and accountability in REDD+.

Type of information	Readiness phase (phase 1)	Implementation and performance payments (phases 2 and 3) ¹
How REDD+ works and how it will affect local and indigenous communities	✓	✓
What funding is received for REDD+ and how it is being utilized	✓ Detailed budget data and other information showing (REDD+ readiness) grants made by the international community	✓ Detailed budget data and other information showing REDD+ performance payments made by the international community
Which government agencies, non-governmental organizations (NGOs) or representatives of the private sector are legitimate intermediaries or interlocutors	✓	✓
How are decisions made, including : <ul style="list-style-type: none"> ■ how land-use planning decisions related to REDD+ are made, paying specific attention to the availability of information on land tenure, i.e. which companies, communities or individuals have formal or informal land rights in forest areas² ■ how decisions about REDD+ benefit-sharing are made ■ how REDD+ demonstration projects are selected ■ how to access decision-making processes on REDD+ ■ how, when and what types of benefits may be expected to reach the country 	✓	✓
What are the environmental and social impacts of REDD+ activities	✓ (Predicted)	✓ (Assessed ex-post)

1 Since REDD+ as part of a UNFCCC compliance mechanism is still not operational, no country to date has received payments under REDD+

2 In many countries this type of information can be extremely hard to access, and voluntary guidelines on this have recently been issued by FAO. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Rome 2012: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

Type of information	Readiness phase (phase 1)	Implementation and performance payments (phases 2 and 3) ¹
How the right to free, prior and informed consent is being implemented	✓	✓
How funds or benefits flow from the national to the local level – including the amounts, frequencies and beneficiaries	✓, if any	✓
What are the methods, data and assumptions that underlie results-based estimates		✓
How safeguards are addressed and respected	✓	✓
What are REDD+ related legal rights, such as carbon rights when/if they are developed, and what the modalities are for exercising them		✓

The vast majority of this information needs to be published proactively by information- holders, i.e. without the need for information-seekers to lodge a formal request. Indeed many local stakeholders, including indigenous peoples, are less likely to use request-driven mechanisms. Information also needs to be provided regularly, as simple one-off workshops are likely to be insufficient to gain true engagement, transparency or consent.

How can REDD+ information be effectively delivered and shared?

Various international agencies, including the United Nations Development Programme as well as the human rights bodies of the United Nations and regional organizations such as the African Union, have published good practice recommendations in the area of access to information. These boil down to a small number of basic principles, including:

- Effective freedom of information **legislation** is a crucial ingredient in any access to information scheme.
- **Openness as the norm:** government should be open and information held by the government should in principle be accessible to the public, subject only to very narrow exceptions.
- **Proactive disclosure:** governments are under an obligation to publish information held by them proactively when the information is of public interest.
- **Ease of access and low or no fees:** Procedures to access information should be easy, with low bureaucratic hurdles, and fees should be waived for those who cannot afford them, or where the information is of public interest.
- **Dedicated public information officers** to assist in the implementation of the law have proven effective. Their role is to process requests for information, ensure that proactive publication takes place, provide assistance to applicants, guard internal procedures, promote training, undertake public reporting etc.
- The introduction of freedom of information laws should be accompanied by **campaigns to inform the citizenry of their newly-gained rights** as well as to educate public bodies on their new obligations to publish and share information.
- **Strong supervisory mechanism:** Experience in many countries has shown that the establishment of a sufficiently resourced freedom of information commission can make a real difference in successful implementation of a law.

- **Capacity development:** Freedom of information laws provide an indispensable framework for the fulfillment of transparency, but their introduction needs to be accompanied by measures to strengthen the institutional capacity of public bodies to manage and deliver information; to challenge and change attitudes to secrecy of governmental information; and to undertake awareness-raising with civil society and the population at large of their rights.
- There is some evidence to suggest that lasting gains are made only when freedom of information laws are accompanied by **liberalizing the flow of information in other respects as well, i.e. by encouraging media freedom.**

The report examines the transparency and access to information context in 44 out of the 46 UN-REDD Programme partner countries, with additional in-depth information in ten of these countries to examine transparency and access to information in environment, forest, REDD+ or other relevant initiatives related to natural resources. Drawing from experiences in Cameroon, Colombia, Democratic Republic of the Congo, Ecuador, Guatemala, Indonesia, Kenya, Mexico, Peru and the Philippines, these case studies highlight a number of lessons.

First, although nearly half of the 44 UN-REDD Programme partner countries have some form of freedom of information law, most of these laws have been enacted relatively recently, and their implementation ranges from good to practically non-existent. Weaknesses exist at all levels: within public bodies (not just those dealing with forestry information), where weaknesses range from a prevailing culture of secrecy to a basic lack of capacity with regard to information processing; within civil society, who make insufficient use of the opportunities open to them; within affected communities, which are insufficiently aware or informed of their rights; and within the international community, which has insufficiently scrutinized and promoted the speedy implementation of international commitments made on access to information.

Most REDD+ countries, however, are on a forward trajectory for freedom of information. Even in those countries where the right of freedom of information laws is poorly implemented, civil society representatives tend to describe the situation as 'improving' rather than deteriorating. Nevertheless, even in those REDD+ countries that have reasonably well-functioning freedom of information regimes, **the use of freedom of information regimes in REDD+ processes or in the forestry sector is generally low.**

Second, a number of the countries examined have **developed plans for online systems for information on safeguards.** Some are developing REDD+ **registries** to list and document REDD+ related projects, and in that case ensure a vetting process by the government, that can be a basis for transparency platforms. However, none of the countries examined here have linked their plans for information systems to their freedom of information frameworks.

Finally, lessons can also be learned from other international initiatives that have also shown to be important drivers for transparency. These include the Extractive Industries Transparency Initiative (EITI), which has brought together government, civil society and private industry and which has introduced stringent transparency requirements for payments made to governments to oil, gas and mining industries, the Open Government Partnership, the European Union Forest Law Enforcement, Governance and Trade (FLEGT) and treaties such as the Aarhus Convention.

Recommendations and conclusions

REDD+ raises the bar for countries to achieve of transparency and participatory decision-making, presenting fresh challenges for the implementation of the right to information. To deliver information, freedom of information components should be built within national REDD+ systems.

General recommendations include:

- **Countries should apply existing freedom of information laws to REDD+, pass such laws if they do not exist, and/or build freedom of information into REDD+:** REDD+ countries that have freedom of information laws should ensure that they are effectively implemented and used for delivery of REDD+ information, while countries where no freedom of information law yet exists should build mechanisms for access to information within their REDD+ systems, including in the systems of information on safeguards. This should not however deter from undertaking broader freedom of information reform.
- As REDD+ related information is likely to reside across different government departments, local and regional public bodies, **cross-sectoral efforts** will be needed to provide easy access to information and avoid fragmentation of information.
- Mechanisms to provide information should be **proactive, rather than by request, and provided in accessible format and language tailored to different stakeholder groups**, with particular attention to the information needs and constraints of indigenous peoples and women.
- Campaigns should be organized to inform the citizenry of their rights –existing or newly-gained- as well as to educate public bodies on their new obligations to publish and share information.
- Efforts should be made to build and strengthen existing processes, such as adherence to international agreements or transparency mechanisms.
- Ultimately, the measure of the effectiveness of plans, policies and measures to enact the right to information for REDD+ will lie in careful evaluation as to whether, how, by whom and to what purposes the information provided has been used. In these evaluations, the **specific needs of indigenous peoples and women, and ways that they access and utilize information**, will need to be assessed.

These recommendations will require national efforts to evaluate and address capacity gaps to share and use information among government bodies, civil society organizations, and affected communities.

Specific recommendations include:

To REDD+ national institutions³:

- Ensure the regular availability of up-to-date REDD+ relevant information, making use of existing freedom of information laws and mechanisms when these exist
- Engage in national consultation processes to determine what information is needed, when, and at which frequency, taking into account new information and communication technologies
- Strengthen institutional capacity to deliver REDD+ relevant information at the local, national and regional levels

³ The term “national REDD+ institutions” is used to denote the fact that in some countries the REDD+ process is currently governed by a multi-stakeholder platform or committee, and should therefore not be understood as designing only a governmental entity.

- Ensure that REDD+ relevant databases are developed, up to date and publicly accessible
- Provide training and awareness-raising to the public service on how to implement freedom of information, along with budget support for relevant agencies to carry out this work
- Ensure that good practices principles on freedom of information are incorporated into the national REDD+ safeguards information system required by the UNFCCC Cancun Agreements on REDD+
- Apply the lessons learned from national experiences, when they exist, brought about by participating in the EITI, FLEGT or others.

To legislators and parliamentarians in REDD+ participating countries:

- Examine linkages of REDD+ with other mechanisms, such as the Aarhus Convention or regional equivalents currently under development, the Open Government Partnership and the experiences of other countries and stakeholders
- Support the full implementation for REDD+ of legislations related to right of access to information, in line with international standards and good practices.

To all implementers of REDD+ activities (government agencies, NGOs, private sector and/or local and indigenous communities):

- Share relevant information at the appropriate frequency, formats and language.

To civil society organizations and affected communities:

- Raise awareness of the rights of affected communities to access government information through freedom of information processes
- Advocate for implementation of the rights of access to information and free, prior and informed consent
- Advocate for, and monitor that accurate and verifiable REDD+ information is regularly made available
- Provide guidance on what information is required, when and where, in their national contexts
- Provide training to local stakeholders to understand their information rights in the REDD+ context.

To bilateral and multilateral donors:

- Support national implementation of commitments relating to the right of access to information applied to REDD+ and free, prior and informed consent
- Include access to information requirements in REDD+ bilateral and multilateral agreements and promote monitoring of implementation
- Provide technical support in the drafting and implementation of access to information laws
- Provide support to strengthen the capacity of public bodies at all levels to handle information related to REDD+, disclose REDD+ relevant information proactively and comply with access requests
- Include and promote access to information in their REDD+ related initiatives and spending, including independent evaluations and timely publication of related documents
- Support capacity strengthening for all stakeholders mentioned above.

Given the relatively early stage of development of most REDD+ activities, freedom of information mechanisms can start being built into national REDD+ systems. In particular, when complying with the UNFCCC-requested systems to provide information on safeguards for REDD+, countries should learn from good practices in actively providing timely, relevant and usable information.

To deliver this information, REDD+ mechanisms should have a freedom of information component built into them, relying either on existing general freedom of information laws or utilizing REDD+ specific access to information legislation, guidelines or codes.

Because of the breadth and depth of information to be shared, the variety of stakeholders at the national and local levels who have relevant information to share and specific transparency requirements, REDD+ presents new challenges but also new opportunities to achieve an effective access to information.



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