

Legal Preparedness for REDD+

**Sub-Regional Workshop on National Policy,
Legal, and Institutional Arrangements for REDD+**

Anglophone Africa

Nairobi, 14-15 May 2014



Legal Preparedness for REDD+ key-issues overview

Session A

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- **What is Legal Preparedness for REDD+?**
 - The extent to which national legal frameworks support the successful implementation of REDD+ in multiple sectors.
 - Compliance with relevant international laws and guidance – i.e.: UNFCCC Decisions
 - Addressing necessary modifications to laws, regulations, policies and institutions in support of REDD+
 - Legal responses will vary depending on national circumstances
- **Why is it relevant for REDD+ implementation?**
 - Achieving REDD+ goals depends, in part, on the clarity and stability of the laws and regulations that underpin them (i.e.: safeguards, benefit-sharing, public participation, etc.)
 - Legislative gaps/ inconsistencies and overlapping mandates between institutions may hamper REDD+ implementation
 - Reliable legal frameworks are crucial for fostering investor confidence and attracting finance

- Drivers of deforestation and forest degradation
- Harmonization of terminology
- Gaps/overlaps between sectorial laws
- Carbon tenure and rights
- Safeguards
- Benefit-sharing mechanism
- Clarification of Tenure Rights
- Regulation of MRV systems
- Conflict resolution
- Stakeholder engagement
- Institutional arrangements
- Law enforcement



- **UNFCCC**
 - Cancun Agreements, COP-16 (2010): Articles 68 and 72
 - Warsaw REDD+ Framework, COP-19 (2013): action by Parties, organizations and private sector, information-sharing
- **Legal frameworks can institutionalize policies and actions that:**
 - Create financial incentives to address drivers
 - Increase agricultural productivity and promote sustainable agriculture
 - Engage the private sector
 - Support monitoring and law enforcement capacity
 - Enable cross-sectorial policies and commitments
- **Brazil**
 - Plan for the Prevention and Control of Deforestation in the Legal Amazon (2004): half of avoided deforestation between 2005 and 2009
 - Resolution 3,545 (2008) – Rural Credit to conditioned on compliance with environmental regulations.

- **Definitions** of forests, forest conservation, trees, deforestation, ecosystem services, land degradation and IPs can affect the achievement of REDD+ goals
 - I.e.: Forest loss or conversion may not be counted as deforestation
- **Harmonization** of REDD+ Relevant Terminology may be necessary
 - Legal inconsistencies: different legal instruments may have different definitions of terminology relevant for REDD+
 - National legislators may adapt existing definitions or include new ones in national laws
- **Mexico**
 - Reform the Environmental Law and Sustainable Forest Development Law (2012): (i) 1st REDD+ legal reform, (ii) harmonizing definitions of key terms such as forest degradation and deforestation, (iii) definition of environmental services
- **Côte d'Ivoire**
 - Requested UN-REDD Programme assistance with harmonizing definition of forests (R-PP)



- Assessment of **gaps, conflicts and overlaps between sectorial laws** is a crucial step
- **National and sub-national legislation** should be **harmonized** to acknowledge **IPs and community rights** and **secure carbon benefits**
- Any effort to **reform national laws for REDD+** should ensure REDD+ activities are coordinated with **inter-sectoral planning**
- Harmonized and stable legal frameworks and clear tenure systems are essential for **reducing administrative costs of REDD+ implementation** and **attracting investment**
- **DRC:** Land Act, Forest, Agriculture and Mining Codes - different forest concession system

- **Carbon Rights:** Who has rights to carbon resources, for how long, and what conditions?
- **Definition of the legal nature of carbon rights**
 - Carbon is an intangible resource and most countries do not have legal provisions for it
 - Inevitable association with tenure: *individual vs. communal, statutory vs. customary, private vs. public*
 - Property rights vs. other ownership rights (access, usufruct, management and alienation)
- **Is there a need for defining carbon ownership?**
 - Project-based approach to REDD+, including trading of credits
- **Crucial issues to address:**
 - Impact of carbon rights on benefit-sharing systems, esp. IPs/ FPIC
 - Local recognition of carbon ownership: increases incentives for REDD+ to succeed

- **Country-level approaches to ensure social & environmental risks are minimized and benefits enhanced**
- **Cancun Agreements: Decision 1/CP.16 (2010)**
 - a) Consistency of actions with national forest programmes, international conventions and agreements
 - b) Transparent and effective national forest governance structures, incl. national legislation and sovereignty
 - c) Knowledge and rights of IPs & local communities: international obligations, national circumstances, laws
 - d) Full and effective stakeholder participation, especially IPs and local communities
 - e) Consistency with the conservation of natural forests and biological diversity
 - f) Actions to address the risks of reversals
 - g) Actions to reduce displacement of emissions
- **Safeguards Information Systems (SIS): Decision 12/CP.17, Durban (2011)**
 - Information on how all Cancun safeguards are being addressed and respected
 - Country-driven, implemented at a national level, and built on existing systems, as appropriate
 - Periodic reporting in national communications to the UNFCCC
- **Warsaw Framework, COP19 (2013): timing and frequency of summary of information on safeguards**
- **Applying safeguards at the national level: PLRs, SIS, institutional arrangements**
 - Existing national PLRs may already support UNFCCC safeguards (i.e.: Environmental impact assessments or FPIC)
 - UN-REDD tools: CAST and BeRT
- **Mexico: Sustainable Forest Development Law (2012): safeguards in line with UNFCCC and REDD+ Strategy**

- **Mechanisms to ensure equitable distribution of benefits between various types of stakeholders:**
 - Critical to incentivize the behavioural change that will address drivers
 - REDD+ benefits: cash payments, no-interest loans, capacity-building, services, goods, or tax credits
 - Key: authority over the land, public vs. private finance, whether vulnerable groups are involved
- **Existing PLRs must be considered**
 - National laws may recognize forest carbon sequestration as an environmental service
 - Existing national income distribution to communities based on revenue-generating activities
 - i.e.: community forestry programmes
 - Links with tenure security: (i) carbon ownership, (ii) elite capture, (iii) payment allocation, (iv) tenure reform efforts
- **Necessary legal actions**
 - Benefit-sharing systems should be: (i) transparent, (iii) adequate, (iv) flexible, (v) equitable, (vi) efficient
 - Clear and mutually-agreed authority, responsibilities and benefits: contract rights, principles (minimum shares)
 - Concerns and interests of each stakeholder group must be mapped-out and addressed
 - FPIC of IPs and local communities
 - Ensure dispute settlement grievance and redress mechanisms are in place
- **Indonesia: Ministerial Regulation No. P.36/Menhut-II/2009**
 - On Licensing for the Utilization of Carbon Sequestration and/ or Storage in production Forests and Protected Areas



- Ensuring consistency between various tenure regimes
 - Recognition of customary rights
 - Ivory Coast: Tenure Decree (1971)
 - Legal definitions and typology of lands on which REDD+ activities will take place
 - Kenya: Definition of “community land”
 - Honduras: reforms to solve land categorization conflicts between the Law on Forestry, Protected Areas and Wildlife, the Agrarian Reform Law and the Law on the Protection of the Coffee Activity
 - Legal reforms of the administrative processes to secure tenure
 - Compliance procedures, e.g. Rules for tenure certificates
 - Legal provisions on conflict management modalities (c.f. conflict resolution)
 - Empowerment of marginalized groups (cf. stakeholders engagement)
 - Harmonize tenure legislation and land use planning
- Implications for benefit sharing modalities and investment attractiveness

- Capture institutional mandates/responsibilities related to MRV/National Forest Monitoring System (NFMS)
 - Establish NFMS
 - Mexico: Amendment to Forest Law 2012
 - Colombia: Adapt and design legal framework to integrate an institutional coordination mechanism
 - MRV related tasks
 - Change of an institution's statutes to add data collection responsibilities
 - Bangladesh: Data sharing agreements
 - Ministerial Decree to designate an institution to lead the BUR process
- Nesting/monitoring of project-based initiatives
 - DRC: Ministerial Decree for project homologation process



- Formal recognition of existing mechanisms
 - May require changes to statutes of dispute settlement institutions (e.g. courts, arbitration, customary dispute settlement modalities, etc.)
 - Revision by CONAFOR (Mexico's National Forest Commission) of its complaint processes to extend it to REDD+ activities and to be consistent with current best practice
 - Resolution modality specific to conflict type
 - Land conflicts to be dealt with by the Land Commission
 - Contractual issues to be resolved under existing judicial system
- Creation of a new mechanism
 - Specialized courts: New statutes and expertise to be built
 - Grievance (redress) mechanism: for alleged minor or non systematic violations of rights/policies



- Affects national policies and legislation relating to stakeholders consultation and participation
- Stakeholder Engagement in REDD+
 - FCPF/UN-REDD (2012) Joint Stakeholder Guidelines on Stakeholder Engagement in REDD+ Readiness
 - <http://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2010/FCPF%20UN-REDD%20Stakeholder%20Guidance%20Note%20Draft%2010-29-10.pdf>
 - UN-REDD requires reporting on whether the guidelines for Stakeholder Engagement and Operational Guidance Engagement of Indigenous Peoples and Other Forest Dependent Communities have been applied
 - E.g. Ivory Coast's Joint FLEGT/REDD consultation Platform
- Free, Prior and Informed Consent (FPIC)
 - UN-REDD Guidelines on FPIC provides a normative framework for countries to seek and obtain FPIC when appropriate
- Draft Guidance Note on Gender Sensitive REDD+ (UN-REDD)

- Institutional arrangements affect legislation and regulation related to institutional coordination for REDD+
 - DRC: Decree for the creation, composition and implementation structure of the REDD process (Decree n° 09/40, 26 November 2009)
 - National REDD Committee (incl. Policy and decision makers, civil society, local communities, etc.)
 - Inter-ministerial committee for transversal issues
 - Scientific Committee
 - National coordination of REDD activities, including UN-REDD and FCPF activities
 - Ivory Coast: Decree for the creation, organization and functioning of the National REDD+ Commission (CN-REDD) (Decree 2012-1049, 24 October 2012)
- Law enforcement
 - Strengthening institutional mandates and capacities is key

Thank you for your attention!

Caroline DeVit

caroline.devit@fao.org

Thais Narciso

thais.narciso@unep.org



Overview of key regional legal preparedness needs

Session C

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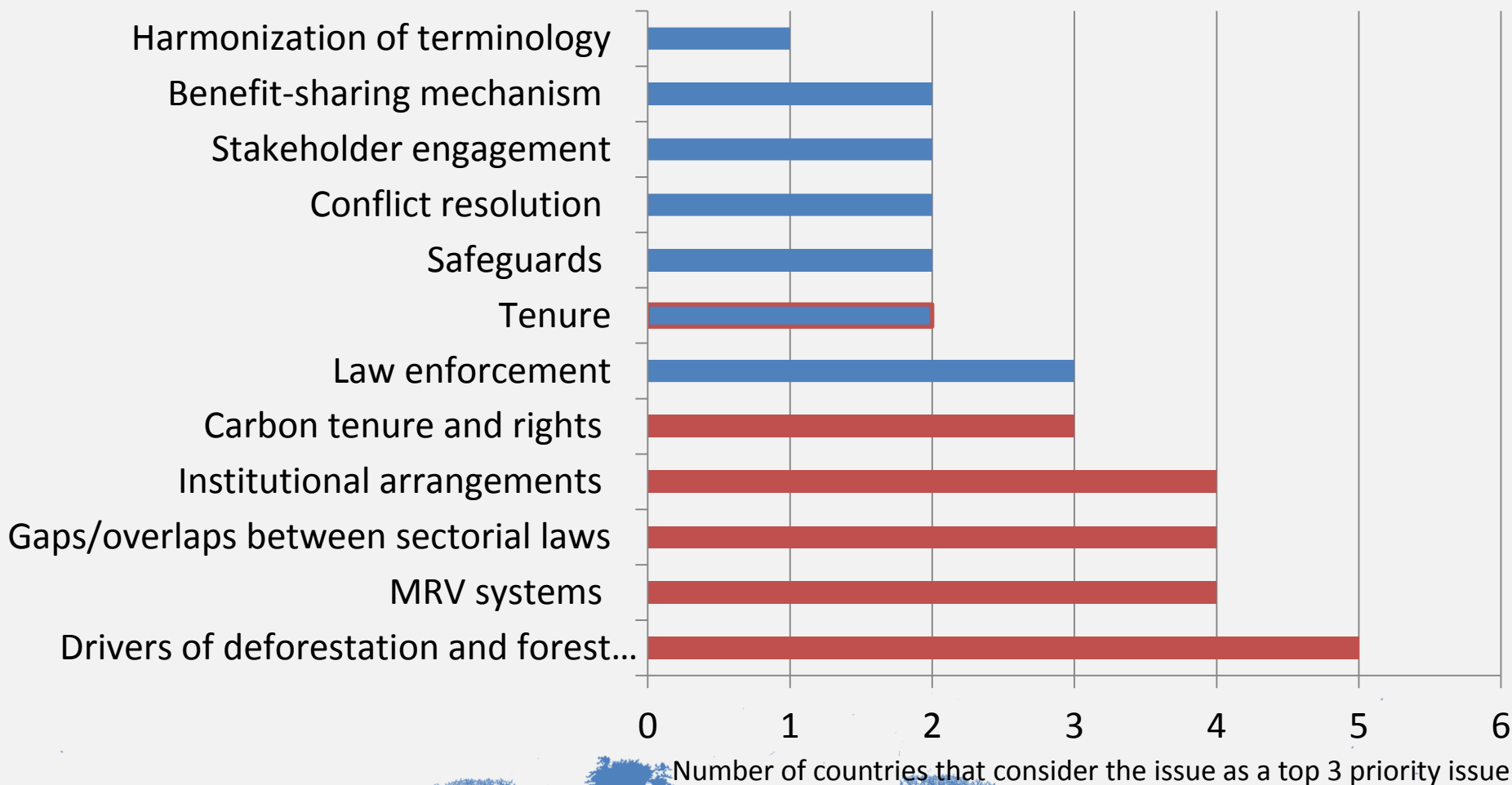


	Review
Ethiopia	<ul style="list-style-type: none"> Federal Forest Law and the regulatory instrument being reviewed based on stakeholders' consultations final version to be presented to parliament in the next few months
Ghana	<ul style="list-style-type: none"> Forest and Wildlife policy reviewed in 2012 to reflect current emerging climate change issues and REDD+
Kenya	<ul style="list-style-type: none"> Environment policy, Forest Policy and Legislation being reviewed (elements relating to community participation, rights and benefit sharing have been included in the current drafts) Draft bills being discussed to support the implementation of the National Land Policy including the Land registration Act and the Community Land Act
Malawi	<ul style="list-style-type: none"> Climate change policy awaiting parliamentary approval (addresses REDD+ in a broad sense) The Forestry Policy (1996) and other relevant policies being reviewed based on stakeholders engagement (i.e. consultative REDD+ governance framework through the Malawi REDD+ Program)
Nigeria	<ul style="list-style-type: none"> REDD policy for the Cross River state being developed
South Sudan	<ul style="list-style-type: none"> Forestry policy, laws and regulations being reviewed
Sudan	<ul style="list-style-type: none"> Sudan National Forest policy Statement 2006 Environmental Act subjected to revisions (would offer the opportunity to provide a clear definition of REDD+ terms)
Uganda	<ul style="list-style-type: none"> PLRs on climate change, energy and agriculture under preparation
Zambia	<ul style="list-style-type: none"> Over 50 PLRs reviewed

UN-REDD Programme Regional priority issues



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Exercise's theme	Group 1 lead	Group 2 lead
Drivers of deforestation and forest degradation	Ethiopia	Uganda
Land and carbon tenure	Ghana	Sudan
Harmonization of sectorial laws	Nigeria	South Sudan
Institutional arrangements (including MRV)	Kenya	Malawi



- **Drivers of deforestation and forest degradation**

- *Recognizant to the multi-sectoral approach needed in addressing the problem of deforestation, the CRGE [Climate Resilient Green Economy] strategy outlines different strategic levers across sectors towards a carbon neutral, green growth path [which address drivers of deforestation and aim to achieve a carbon neutral green economy by 2025]*

- **Stakeholders engagement**

- *The Environment policy, Forest Policy and Legislation are currently being reviewed to align them with the constitution and embrace new emerging issues including climate change. Elements relating to community participation, rights and benefit sharing have been included in the current drafts*
- *The Department of Forestry has also made significant strides in engaging stakeholders and formalizing a consultative REDD+ governance framework through the REDD+ Program*
- *Full and effective participation in formulation of national programs is a constitutional right*



- **To address the institutional conflict and overlaps of mandates**
 - *the Forestry Commission through the Ministry of Lands and Natural Resources established a multi-stakeholder and cross-sectorial National REDD+ Working Group to oversee the implementation of REDD+ Readiness Process*
 - *We have established an inter-ministerial committee that focus on REDD+ implementation activities under the Forest Governance Task Force prior to institutionalization of REDD+ structures*
- **Harmonization of PLRs**
 - *[We hope to legislate on] issues between forestry and other agencies such as investment promotion who use land to invite investors to the state*
 - *The Environmental Protection Act of 2001 was established as umbrella legislation, emphasizing protection of the environment [...] in order to achieve sustainable development. It empowers the Higher Council for Environment and Natural Resources (HCENR) to coordinate the work of State Councils for Environment and Natural Resources (SEC), establish long term policies and to promote research and awareness*