

# CLAIMS & APPEALS MECHANISM

Group 2

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# OVERALL CONSIDERATIONS

- The mechanism shall be for UN-REDD (preparation stage), with the proposition that it works later on while implementing REDD+
- It will deal with subjects related to FPIC as well as claims related to other rights which have been affected (integrity of rights)

Diversity of players, conflicts and  
possible claims

Private property

Indigenous territory (acknowledged)

Unregulated territory (mixed uses)

Small owners

# DIVERSITY OF PLAYERS - DIVERSITY OF CONFLICTS

Indigenous  
peoples with regularized land

Private companies

NGOs

Private owners

Indigenous peoples  
without  
regularized land

Government

# FOR WHOM?

INDIGENOUS PEOPLES,  
AFRICAN DESCENT PEOPLES AND OTHER  
COMMUNITIES that live off of the  
FORESTs

# Nature of the Mechanism

**BINDING** through:

1. National, regional tribunals and courts (such as IACHR) or international (UNFCCC); and/or,

1. Independent committees at the three levels

(Legal sanctions and/or financial and political sanctions)

# On what bases?

- International and national legislation concerning collective and individual rights of indigenous peoples, those of African descent, and other communities that live off the forests
- UN-REDD Program rules and principles

# When?

- Throughout all stages: design, implementation and execution of the REDD program in the country (before, during and after...)
- (NB) Applies the option of anticipated claims as a precautionary measure



# **OPERATIONAL CONSIDERATIONS**

# LEVELS

**LOCAL:** conflicts are resolved between communities - internally - through common law or mediators.

**NATIONAL:**

The **National Committee** receives information and tries to resolve the conflict or channels it. Claims can be against private players, the State, and from other communities...

**REGIONAL:**

The **Regional Committee** can receive first instance claims against UN-REDD and/or against the State (including against unjust judicial decisions); it can also receive appeals at the national level

**INTERNATIONAL:**

Global Program, UNFCCC (?), Human Rights System

# How the Mechanism works

|                 |                               |                    |               |
|-----------------|-------------------------------|--------------------|---------------|
| <b>GLOBAL</b>   | UN-REDD Guideline Board       |                    | UNFCCC        |
| <b>REGIONAL</b> | REDD Regional Committee       |                    | IACHR         |
| <b>NATIONAL</b> | REDD<br>National<br>Committee | Programme          | State         |
| <b>LOCAL</b>    | Community                     | Local<br>mediators | Third Parties |

# The National Committee's Role

- Competency in subjects specific to REDD (technical and administrative and that occur in "facts" -factual not legal-).
- The national committee should explain its role in the national context with respect to existing judicial mechanisms and respecting the principle of the autonomy of indigenous peoples to resolve their internal conflicts
- When existing bodies and mechanisms are not expeditious, they can go to other bodies to resolve the conflicts.
- Legal matters are referred to courts with legal jurisdiction.

# PRINCIPLES

- ACCESSIBILITY
- INDEPENDENCE AND IMPARTIALITY
- EFFICIENCY AND EFFECTIVENESS
- WITH A SPECIFIC BUDGET
- FLEXIBILITY
- WITH THE POSSIBILITY OF INFORMING  
DECISION MAKERS AND offering  
RECOMMENDATIONS ABOUT CHANGES IN  
POLICIES & PROCEDURES
- **\*\*TRANSPARENCY\*\***

# Principle: Accessibility

- Problem: communities lack financial resources to take their complaints (cost and time to travel to the capital to talk to authorities, they do not have a computer, at times they do not have Internet).
- We support Hanoi's suggestions regarding prior information on how to file a claim, and we recommend information be included regarding the organizational structures and levels of authority, not only immediate authority, but at all levels); their communication channels of and how adherence to measures are monitored.
- The requirements for filing a claim should be easy to follow. They can be represented in any language or format; including by phone or through a simple one-page form (in multiple languages). For example, the IACHR has a very simple form to initiate a complaint.
- A specific guaranteed budget is required for the mechanism and for the filing and monitoring process of those affected (free of charge), as well as for the resolution of claims.

# Principle: Effectiveness

To make sure it is binding:

- UN-REDD must clarify in contract entered into with the national government, that financial flows will be suspended if human rights are violated, .
- You need an office within UN-REDD at a national level to monitor the program.
- Clarify, when consulting with the communities, which authorities are responsible for (1) receiving claims; and (2) monitoring the program.
- The person directly responsible at the national level must be identified, as well as the hierarchy of those responsible within the program at the national and international levels.

# Principle: Independence

- The committees (national and regional) with specific jurisdiction over REDD directly inform the oversight agency of any program REDD manages (UN-REDD Guideline Board, for example when it is international and Country Program when it is national).
- When it is national in nature, the national committee should be multi-sectorial and representative and maintain equality criteria in its representation (include indigenous peoples, local communities; CSOs, government?, UN-REDD?).
- Its initial responsibility will be to develop and provide legal bases for the exercise of court jurisdictions and national judicial systems with regard to issues specifically pertaining to REDD. A second function will be related to receiving specific REDD claims.
- When it is international in nature, it is more independent and can receive first instance claims (e.g. when a claim is received against a State) as well as appeals claims.