

UN-REDD support & country examples on **LEGAL PREPAREDNESS** for REDD+



UN-REDD
PROGRAMME



What is legal preparedness for REDD+?



Legal preparedness for REDD+ refers to countries' efforts to establish national and/or sub-national legal frameworks supportive of REDD+. In preparing for REDD+, countries seek to build upon or adapt their existing policies, laws and regulations, possibly through the adoption of new texts, in order to support and operationalize their national REDD+ processes and strategies.

Legal preparedness for REDD+ is a cross-cutting endeavour. Most aspects of REDD+ such as, for instance, benefit sharing, tenure and national forest monitoring systems, entail various legal considerations. Addressing legal gaps or inconsistencies can support efforts to clarify tenure rights, define institutional mandates for MRV, ensure REDD+ safeguards are addressed and respected, design effective mechanisms to share benefits, etc. Detecting and preventing overlaps between sectoral laws as well as adding more clarity to legal provisions can also contribute to those efforts.

In Indonesia, the 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 has enabled the adoption of rules clarifying the distribution modalities of payments from REDD+ demonstration projects.







Why are adequate legal frameworks important for the success of REDD+?

Legal frameworks are one of the key building blocks of REDD+ governance. For instance, legal preparedness activities may include the establishment of legally defined institutional arrangements for REDD+, which facilitate the coordination of REDD+ policies and actions amongst institutions. Legal preparedness also promotes transparent decision making processes through the participation of policy-makers, non-governmental institutions, central and local authorities, community and private sector actors. Compliance with international REDD+ guidance, most notably the United Nations Framework Convention on Climate Change (UNFCCC), can be achieved through the revision of relevant legal frameworks.

Effective and supportive legal frameworks are a key success factor in the implementation of REDD+. Not only does legal preparedness strengthen governance structures, it also helps prepare the ground for REDD+ implementation. When undertaking readiness efforts, challenges associated with legal gaps or inconsistencies may be identified on specific aspects, e.g. the harmonization of forest terminology. The sooner these challenges are anticipated and addressed, the smoother the transition to REDD+ implementation will be.

Robust and transparent laws and regulations are also required to attract investment for the implementation phase of REDD+. Legal preparedness provides the opportunity to build investor confidence through the adoption of laws and regulations based on participatory approaches and the strengthening of law enforcement capacities, which improves governance and reduces risks perceived by the private sector.

In the Democratic Republic of Congo, the Decree n°09/40 institutionalised the REDD+ process through the creation of the National REDD Committee and the Inter-ministerial committee on REDD+.

Mexico was one of the first countries to reform in 2012 its *Environmental Law (1988)* and *Sustainable Forest Development Law (2003)* to integrate REDD+-related terms such as forest degradation and deforestation and to define environmental services.

Where to start?

Many countries have been undertaking legal preparedness activities, some of them with UN-REDD support. There are **two main entry points for legal preparedness work. Some countries may first undertake an analysis of their Policies, Laws and Regulations (PLRs) that relate to REDD+ and then identify areas for reforms on specific REDD+ aspects**, e.g. conflict resolution, etc.

Other countries may identify legal gaps in the course of readiness activities for specific REDD+ aspects. For instance, REDD+ Corruption Risk Assessments entail a legal component in considering which anti-corruption or freedom of information laws exist, how they are effectively enforced and how they can be applied to REDD+. Participatory Governance Assessments (PGA) for REDD+ may reveal inadequacies in legal frameworks, pointing to the need for more specific legal preparedness work to strengthen PLRs and relevant governance structures.

Building on ongoing reform processes is highly recommended, as is the case in Madagascar where the ongoing reform of the forestry laws and their compilation into the forestry code are providing a timely opportunity to establish an adequate legal and regulatory framework in support of REDD+.

Both entry points could lead to further legal work with the objective of amending existing texts of laws or drafting new provisions in order to provide national REDD+ processes and strategies with adequate legal frameworks. They may also lead to capacity building activities e.g. to strengthen law enforcement capacities.

Engaging with relevant governmental institutions, including implementing agencies, to promote the adoption of the texts and the enforcement of the law is also crucial to make reforms operational. At the project level, legal work may also be required, for instance for drafting contractual arrangements between project developer and a governmental institution.

In Honduras, legal challenges to implement REDD+ differ between regions. Common priority issues include the need to enforce the *Law on Forest, Protected Areas and Wildlife* (Decree 98-2007) and Free, Prior and Informed Consent (FPIC) principles, clarify tenure issues and harmonize sectorial laws. Those legal considerations are discussed by the Technical REDD+ Sub-Committee which comprises representatives from the governmental and non-governmental institutions, the civil society and the Academia.







UN-REDD support on legal preparedness

UN-REDD support on legal preparedness is two-fold. Upon government request, **legal advisory services and assistance can be provided** through a collaborative approach to review existing legislation, assess law enforcement capacities and formulate recommendations for reforms, including drafted texts, based on a participatory law development process.

Capacity building activities are also provided at the regional and global levels. Awareness raising and experience sharing activities to strengthen countries' legal capacities for REDD+ have been organized at the regional level. Knowledge products such as case studies and best practices as well as guidance documents for national legal practitioners are also developed by the Programme in order to support countries in undertaking legal efforts for REDD+.

“The legal analysis undertaken in support of Kenya’s REDD+ Readiness activities contributed greatly in identifying gaps within the current policy and legislative instruments that will have to be addressed as part of the REDD+ strategy. In addition, the analysis supported the identification of priority areas to provide Kenya with an adequate legal framework for REDD+ implementation”.

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