

Tuesday 25 September 2012

Expert Meeting on Legal Preparedness for REDD+: Exploring needs and sources of expert support

Legal analysis of cross-cutting issues for REDD+ implementation: Lessons learned from Mexico, Viet Nam and Zambia

Francesca Felicani Robles
Development Law Service of FAO





LEG-REDD+

Objective: To assist countries in strengthening their legal capacity for REDD+ implementation

- The Development Law Service of FAO has the experience to assist REDD+ countries in developing robust and coherent legal frameworks and in drafting REDD+ provisions for incorporation in relevant national laws.

Websites:

www.fao.org/legal

www.faolex.fao.org/faolex



Highlights from the legal analysis of cross-cutting issues for REDD+ implementation: Lessons learned from Mexico, Viet Nam and Zambia

The study presents key lessons learned from Mexico, Viet Nam and Zambia in order to provide a better understanding of legal aspects of REDD+ implementation through a review of legal priorities identified by national stakeholders in the three countries, with a view to enhance the support provided by the UN-REDD Programme in relation to legal preparedness for REDD+ implementation.



Lessons learned on REDD+ legal preparedness

I. I Forest, land and carbon rights

Key Points

- A legal definition of carbon rights might be required to secure carbon ownership of individuals or groups involved in activities of forest carbon sequestration;
- Definitions of carbon rights may differ between States in relation to their association with the land (individual versus communal/ private versus public);
- Different options can be considered at national level to facilitate carbon transactions, and will affect potential needs to separate property rights on carbon from other ownership rights (interests) on forestlands (e.g. usufruct rights);
- Forest carbon rights may be granted through registration in land administration systems;
- Registries and certificates might include the rules concerning the control over transferability, inheritance, extinction, subdivisions of carbon property rights.



I. II Recognition of customary rights

Key points

- Engagement of customary land owners is required to ensure the successful implementation of REDD+ at local level;
- Statutory law should be aligned with customary practices to avoid potential conflicts over the land that could interfere with REDD+;
- Customary land owners must give their free, prior and informed consent to decisions affecting their lands;
- Effective and equitable local property rights are needed to identify beneficiaries of REDD+ revenues;
- Protection of the integrity of community and indigenous lands should be guaranteed by Law: Existing customary land claims can be incorporated into national formal legal frameworks;
- Women's customary rights to forests and land resources need to be recognized in order to guarantee an equitable distribution of REDD+ revenues.



I. III Forest definitions and REDD+

Key Points

- Application of UNFCCC accounting rules for Agriculture, Forestry and Other Land Use (AFOLU) can help countries to bypass the need for clear definitions, reduce leakage and promote multifunctional landscapes such as agro-forestry and food production;
- National legislators should carefully consider what legal options are needed to reform current laws, in order to harmonize REDD+ terminology. This could consist of adapting existing definitions or incorporating new ones in the national laws;
- A comprehensive approach to land-based emissions from UNFCCC, which would not depend on a forest definition, would further reduce emissions by enhancing carbon storage in agricultural production systems and systems linking agriculture and forests, such as food production;
- Obvious overlaps between LULUCF and REDD frameworks should be considered and any definition which is of relevance to both must be consistent with the other.



I.IV Major drivers of deforestation and degradation

Key Points

- Major drivers of deforestation and degradation are often outside the forest sector, therefore legal reforms should be cross-sectoral;
- Strategic land use planning frameworks should be established at the national level to harmonize agricultural, mining, forest and other land uses according to REDD+ priorities;
- Illegal logging, unclear forest and land rights, lack of secure tenure for local people, gaps in land use planning, fragmented laws and unclear legal regimes related to the conversion of forest to agricultural lands are considered examples of legal barriers driving to deforestation and forest degradation;
- There are a number of synergies between REDD+ and agricultural sector objectives which can be realised through cross-sectoral coordination.



I.V Harmonize sectoral laws

Key Points

- Strategic land use planning reflecting communal rights on forest lands plays a key role in harmonizing sectoral interests;
- National and sub-national legislation should be aligned to recognize local communities rights and benefits associated with REDD+;
- Contradictory laws will need to be resolved and land and forest regulations clarified to ensure that carbon-related benefits are allocated to those who depend most on forest cover;
- The development of new national REDD+ laws and/or the reform of existing environmental or forest laws should pay particular attention to avoiding contradictions in order to establish clear legal mechanisms;
- Policy and legal adjustments should reduce human pressure on forests so as not to compromise poverty alleviation and economic development targets.



I.VI Institutional Coordination

Key Points

- REDD+ implementation will require a coordinated institutional framework in order to overcome misunderstandings and conflicts among REDD+ planning and implementing actors;
- Coordination should be cross-sectoral and from national to local level in order to avoid gaps and conflicts in institutional mandates;
- Multilateral institutional strengthening may reduce country-related risks and help to raise REDD+ finance;
- Delivering REDD+ payments at the local level may require updated legal structures able to distribute REDD+ revenues;
- Forest and REDD+ coordination agencies/committees at national and sub-national levels can help ensure cross-sectoral coordination;
- Parliaments have to be included in order to secure long-term political ownership of the REDD+ process, as well as ensuring accountability and monitoring.



I.VII Public Participation

Key Points

- Public participation is one of the most widely recognized principles of sustainable development and should be applied to REDD+ implementation at all levels in order to promote participatory law developments;
- Participatory processes facilitate institutional cooperation in terms of sharing relevant information before a decision affecting forest-dependent-communities is made, and building on their capacities and knowledge concerning REDD+ and forest law;
- Participation is a key approach to address tenure-related issues, and to identify land uses in areas selected to develop REDD+ projects, prevent or resolve local conflicts;
- National legislation will have to identify the responsibility of national and local authorities in relation to access to information and participatory rights of forest dependent communities;
- Free, Prior and Informed Consent of indigenous peoples can be guaranteed through adequate REDD+ planning as well as recourse mechanisms to address their complaints.



I.VIII Decentralization

Key Points

- In recent forest law reforms, decentralization processes related to local forest management have received increasing levels of attention;
- Through decentralization, forest-dependent-communities can participate more actively in REDD+ decision-making processes;
- Forest administration is also closely linked to land-use regulation which will affect REDD+ and which is typically a local responsibility;
- Qualified staff, which could be external, as well as financial support is necessary for local governments to effectively engage in and support REDD+ processes;
- Departmental or municipal forest committees could be the primary channel for implementing REDD+ at the local level;
- Decentralization should incorporate significant, long-term devolution of land tenure to community-based forest management institutions to ensure long term results related to REDD+ activities.



I.IX Benefit Sharing

Key Points

- Unclear land tenure rights make it difficult to allocate REDD+ payments;
- Forest carbon sequestration is commonly defined as an environmental service by forest laws, therefore PES schemes could be used for benefit sharings derived from REDD+ implementation;
- Lessons from previous PES initiatives provide evidence that a higher percentage of revenues should be allocated directly to people responsible for providing the ecosystem services in order to ensure any equitable distribution of REDD+ benefits;
- Laws and regulations should regulate relevant aspects of benefit sharing mechanisms to guarantee equity, transparency, efficiency, effectiveness and accountability in benefits distribution;
- Community forestry schemes can be used for REDD+ revenues distribution;
- Legal provisions should be designed or updated to incorporate clear rules that guarantee an equitable distribution of payments among governments and forest communities;
- Provisions should ensure that local landholders and indigenous communities are able, and have access to relevant information explaining how the benefits will be distributed.



I.X Provide incentives to private and public investments

Key Points

- Political and land tenure issues constitute the major risks for foreign operators willing to invest in REDD+;
- To reduce risks to both public and private investors on REDD+ activities, updated legal frameworks, including foreign investment laws, will be crucial;
- To promote REDD+ and attract foreign investors, governments can also adopt innovative fiscal incentives such as tax exemptions or low interest loans;
- Before legislative reforms are enacted, knowledge gaps and technical legal issues relevant to REDD+ should be clarified in order to avoid inconsistencies between national laws and international provisions.



Participatory law developments



**Thank you for
listening!**

