



Legal Preparedness for REDD+

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Who

- **IDLO:** Inter-governmental Organization Specialized in Legal and Institutional Aspects of Development

How

- **Supporting Justice:** Legal Capacity Building and Technical Assistance Programs on Sustainable Development (Climate, Natural Resources, Green Economy) and other issues.

Target

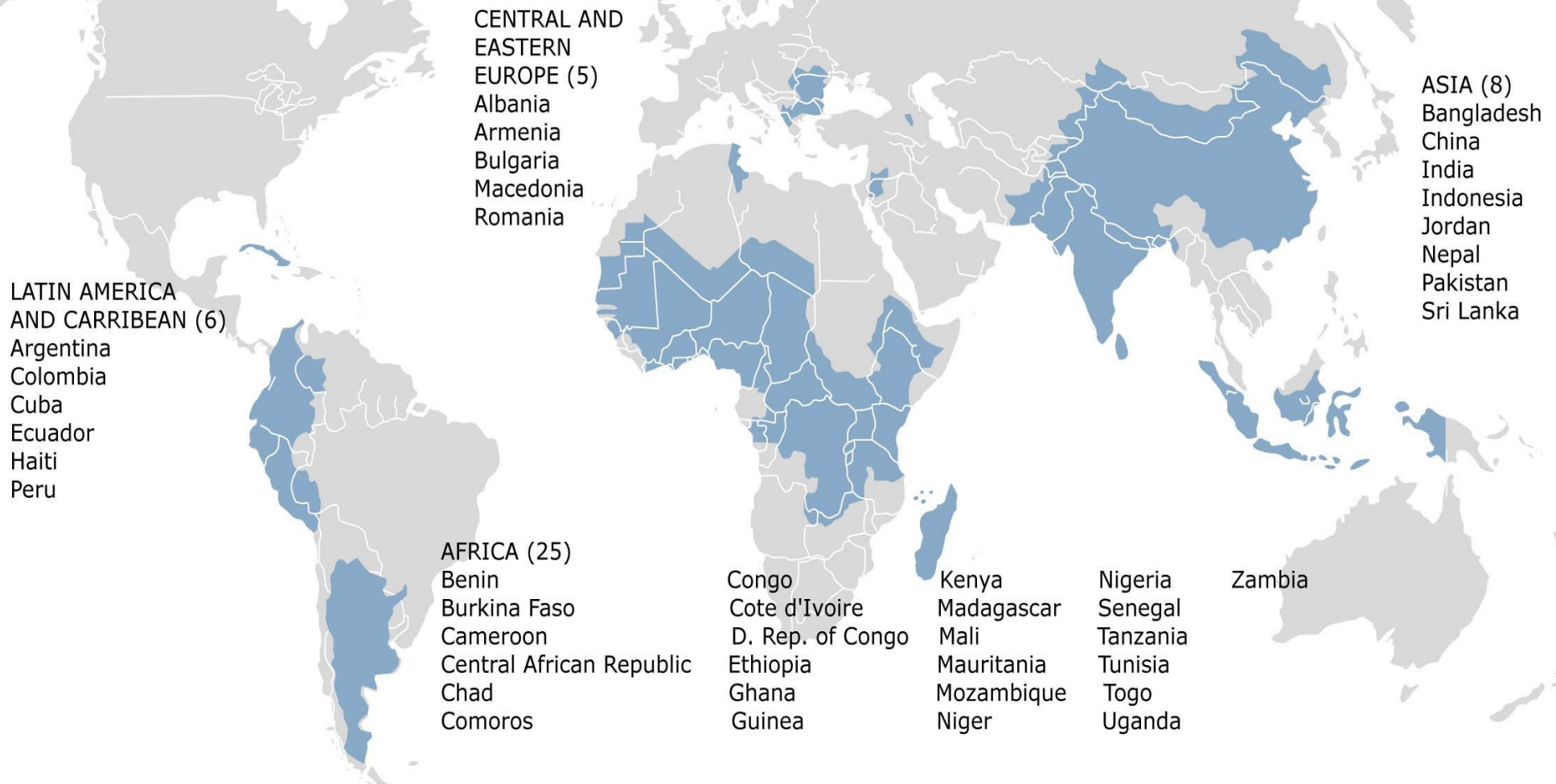
- **Helping People:** Legal Professionals; Governments; Policy Makers; Regulators; and Civil Society in Developing Countries, Transition Economies and Countries Emerging from Conflicts

Where

- **In-Country Programs:** Active in over 175 Countries
- **On-Site:** Rome HQ, Offices in Bishkek, Juba, Kabul, Nairobi
- **Community:** Legal Alumni Networks in 44 Countries

Making a Difference through Law

IDLO has over 20,000 alumni worldwide and a network of 44 alumni associations





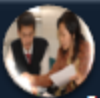
ECONOMIC GROWTH & TRADE

Trade & Investment Law

Intellectual Property

Legal Preparedness for Climate Change

**Legal Preparedness for the Green
Economy**



**Capacity
Building &
Training**



**Technical
Assistance**



**Research &
Publications**



**Public
Awareness
Campaigns**



**Activating
Networks**

1. Overview

Existing Initiatives to Support Legal Preparedness for REDD+

2. IDLO Activities:

Legal Preparedness for REDD+ Program

3. Methodological Framework: Legal Preparedness for Climate Change Initiative (LPCCI) & Reference Tool

4. Brief Examples:

**Crosscutting Legal Study & REDD+
In-Country Engagement in Kenya**

The Role of Law and Governance in REDD+

Laws and institutions not only ***prohibit*** or ***incentivize*** but also provide an ***overall enabling framework*** that guides public and private sector activities towards desired ends.

- **Good governance is a pre-requisite for effective REDD+ at all stages from planning to implementation to reporting**
 - Necessary to **avoid adverse impacts** of REDD+ activities
 - Key to **achieving desired results** (poverty reduction and climate mitigation).

Existing Initiatives to Support Legal Preparedness for REDD+

1. International REDD+ capacity-building programmes
2. Domestic legal and institutional reform processes
3. Governance analysis toolkits
4. Research studies

International REDD+ capacity-building programmes: Within the context of the Cancun Agreements Phase 1 “Readiness” preparations undertaken in conjunction with a number of partners such as the UN-REDD Programme, Forest Investment Program (FIP), Forest Carbon Partnership Facility and the REDD+ Partnership, many countries are developing national REDD+ programmes and strategies that identify specific needs for review, analysis and reform of legal and institutional frameworks for REDD+. Legal reform activities may be included as a component of the “Implementation” phase under those programmes.

Domestic legal and institutional reform processes: Many developing countries are unilaterally undertaking legal and institutional reforms for REDD+. In some cases, capacity building organizations, such as the GLOBE Legislators Forest Initiative, support parliamentarians and other government representatives to formulate those reforms.

Existing Initiatives to Support Legal Preparedness for REDD+ (cont'd)

1. International REDD+ capacity-building programmes
2. Domestic legal and institutional reform processes
3. Governance analysis toolkits
4. Research studies

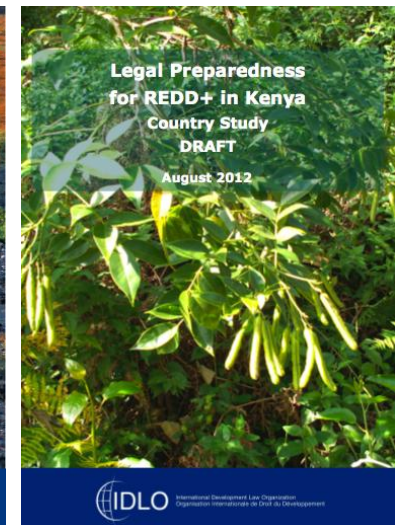
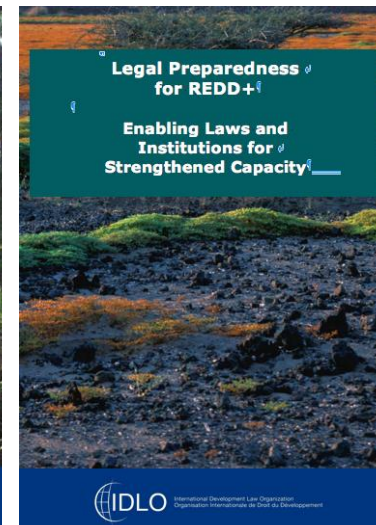
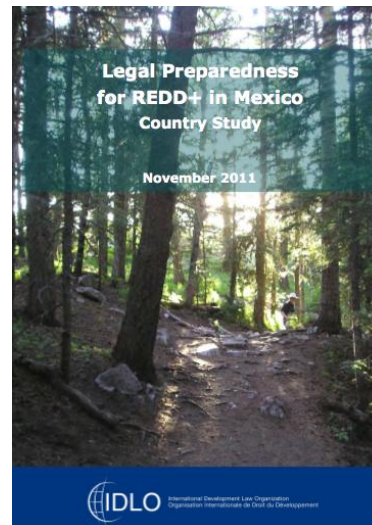
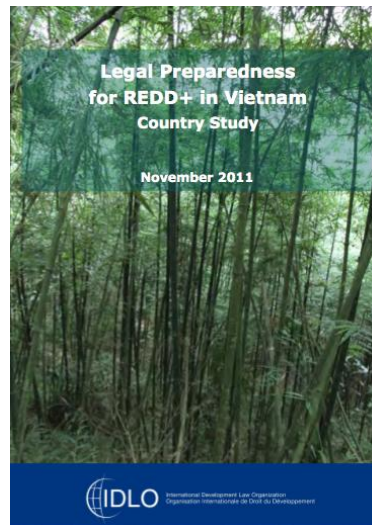
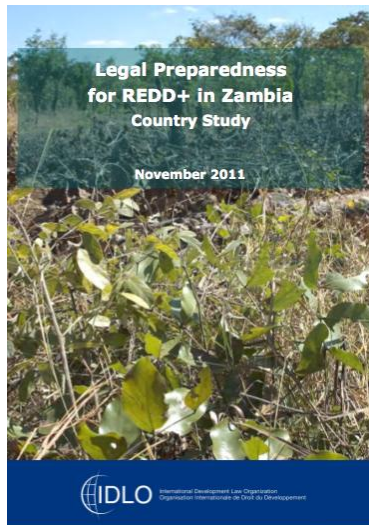
Governance analysis toolkits: A number of initiatives are developing toolkits that support the assessment of forest or REDD+ governance issues through varied approaches, such as the establishment of indicators or standard setting. Examples include the FAO & Profor, *Framework for Assessing and Monitoring Forest Governance*; ICV, Imazon & WRI, *The Governance of Forests Toolkit (v.1)*; REDD+ Social and Environmental Standards Initiative; and Chatham House, *Measuring the Response to Illegal Logging: Indicators of Progress*.

Research studies: Certain countries have been the subject of independent or commissioned research studies as in the GLOBE International & IUCN, *GLOBE Forest Legislation Study*, and FAO, IDLO & UN-REDD Programme *Legal Preparedness for REDD+ Project*. Other subject matter studies include the IUCN, *Legal Frameworks for REDD: Design and Implementation at the National Level*, and Baker & McKenzie and Covington & Burling LLP, *Background Analysis of REDD Regulatory Frameworks*.

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How was the Legal Preparedness for REDD+ Initiative developed?

- Program developed through discussions and collaborations formed during at UNFCCC COP 16 Cancun Side Event & COP 17 Durban Roundtable



FutureFocus:

- New REDD+ Country Studies in Colombia, Ecuador and Guatemala,
- Next phases in existing countries to develop Legal Action Plans and Capacity Building training for government actors and communities.

Why conduct a Legal Preparedness for REDD+ Study?

- **Useful tool to identify challenges and innovations to REDD+ implementation for countries considering REDD+ engagement**
- **Target Audience:**
 - **Policy-makers:** To increase understanding of legal aspects of REDD+ by national and subnational government policymakers;
 - **Stakeholders:** To engage & enable stakeholders to participate in decision-making processes

General steps in conducting a REDD+ Country Study

1. Engage in-country lawyers for a review of cross-sectoral laws impacting on REDD+ activities
2. Consultations across government ministries and key stakeholders
3. Drafting of Country Study Report
4. Multi-stakeholder Validation Conference to verify report findings
5. Incorporation of feedback and finalization of Report

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	Summary Provisions	Relevant Excerpts from the Cancun Agreements	Related Legal Instrument Options
1.	<p>Ensure that REDD+ activities are used to enhance social benefits.</p>	<p>1.10. <i>Realizes that addressing climate change requires a paradigm shift towards building a low-carbon society that offers substantial opportunities and ensures continued high growth and sustainable development, based on innovative technologies and more sustainable production and consumption and lifestyles, while ensuring a just transition of the workforce that creates decent work and quality jobs;</i></p> <p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;FN1</p> <p>FN 1 Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.</p>	<ul style="list-style-type: none"> • Participatory decision-making procedures to determine appropriate levels, nature and timing of monetary and non-monetary benefit distribution for local communities and indigenous peoples, including ex-ante support for start-up costs • Rules for the entitlement to and how benefits will be distributed among investors, landowners, government, local communities and indigenous peoples and persons engaged in forest management (i.e. for opportunity costs, traditional knowledge, employment, management, royalties) • Enforceable provisions for free, prior and informed consent (FPIC) in all REDD+ activities that affect stakeholders, particularly local communities and indigenous peoples • Labour and employment standards that take into account freedom of association and decent work conditions • Procedures, such as Impact Assessments and indicator-based reporting, for local communities and indigenous groups to signal unexpected impacts taking place as a consequence of REDD+ projects • Risk sharing mechanisms to insure recoverable damages for disputes between employed persons, public authorities, and national and international investors • Pricing tools, value addition and other incentives to promote alternative and sustainable livelihoods, for instance from non-wood forest products or ecotourism • Clear and defined rights to land, forests and carbon ownership, use and transfer that support the assessment of benefit distribution systems • Legal education on designing and drafting REDD+ contracts for local communities, indigenous peoples and persons undertaking forest management activities

Building on the Legal Preparedness for Climate Change Initiative (LPCCI)



LPCCI is a legal methodology that systematically identifies legal and governance barriers, and implements tailored solutions, to enable:

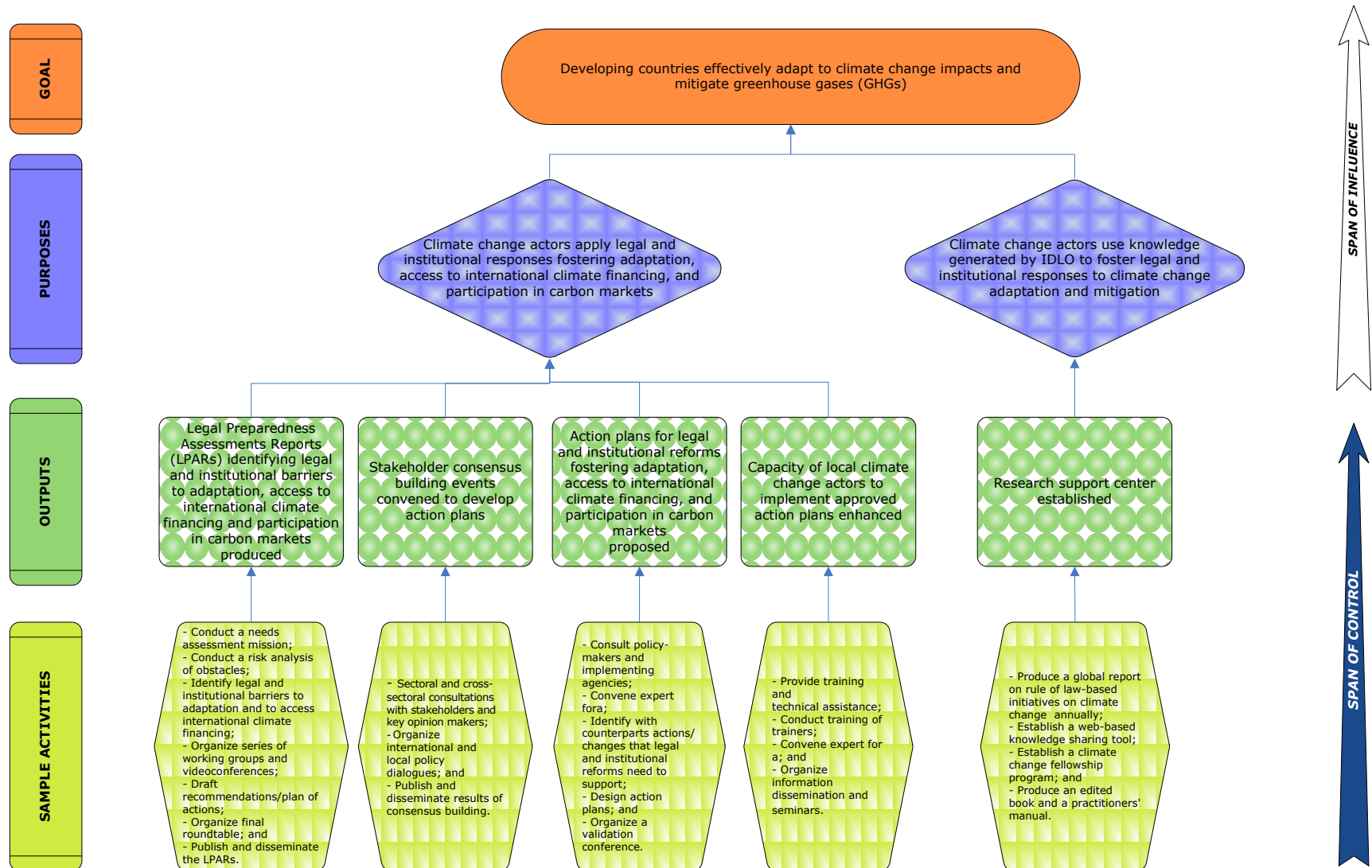
- More effective adaptation to climate impacts
- Mitigation of GHGs through participation in climate finance mechanisms (CDM, REDD)
- Access to other international climate funding (voluntary markets, grants)
- Knowledge generation and sharing

Methodology:

1. **Assessment** to identify and provide recommendations to overcome legal & institutional barriers (Legal Preparedness Assessment Report, LPAR)
2. **Consultations** to engage stakeholders to set legal & institutional reform priorities, in accordance with national climate change objectives & targets
3. Climate Law **Working Groups** to co-design legal & institutional reform actions, with legal expert support (Legal Reform Action Plans, LRAPs)
4. **Capacity Enhancement Activities**, to strengthen legal & institutional capacity of national actors to implement Legal Reform Action Plans
5. **Independent legal research & analysis** of proposed climate law reforms

Building on the Legal Preparedness for Climate Change Initiative (LPCCI)

PROGRAM TITLE: LEGAL PREPAREDNESS CLIMATE CHANGE INITIATIVE (LPCCI)
IDLO STRATEGIC OBJECTIVE: SO3 – GLOBAL CHALLENGES



Practical Deliverables:

1. **Active engagement** of relevant national / local stakeholders leading to ownership of necessary legal and institutional reforms across society
2. A **Legal Preparedness Assessment Report** (LPAR) or **Country Study** that provides analysis and recommendations for legal reforms
3. Capacity to implement laws and institutions enhanced through **legal training**
4. **Recommendations** for legal and institutional reform, meeting or surpassing international standards, adopted through national process
5. International support attracted and lessons shared through an **international engagement process**

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3 Country Studies in Vietnam, Mexico and Zambia

- In-country experts
- Desk review, and consultations conducted from May-Nov 2011
- Expert review (geographical and subject matter)
- 3 stakeholder engagement and validation workshops
- COP17 Side-Event (IDLO, CISDL, FAO, UN-REDD Programme)
- Expert Roundtable at the Conference on Climate Law & Policy in the Global South (Faculty of Law, University of KwaZulu-Natal, Durban)

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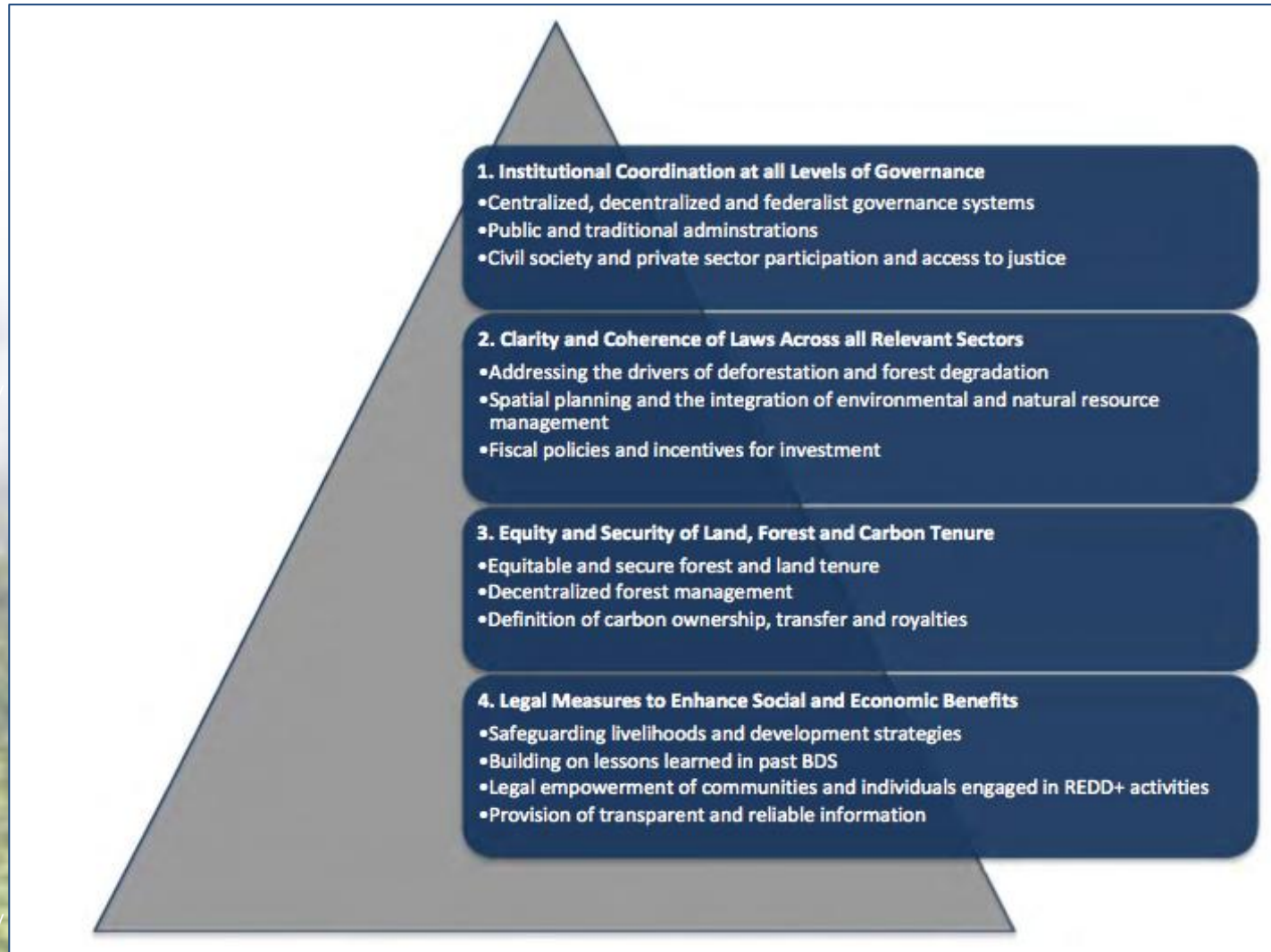
1 Crosscutting Legal Study

- Legal Preparedness for REDD+: Enabling Laws and Institutions for Strengthened Capacity
- User-friendly and accessible for policy-makers
- Builds on 3 Country Studies as well as other REDD+ initiatives
- Information gained from Roundtable on REDD+ Legislative Initiatives
- Expert consultations during and after COP17

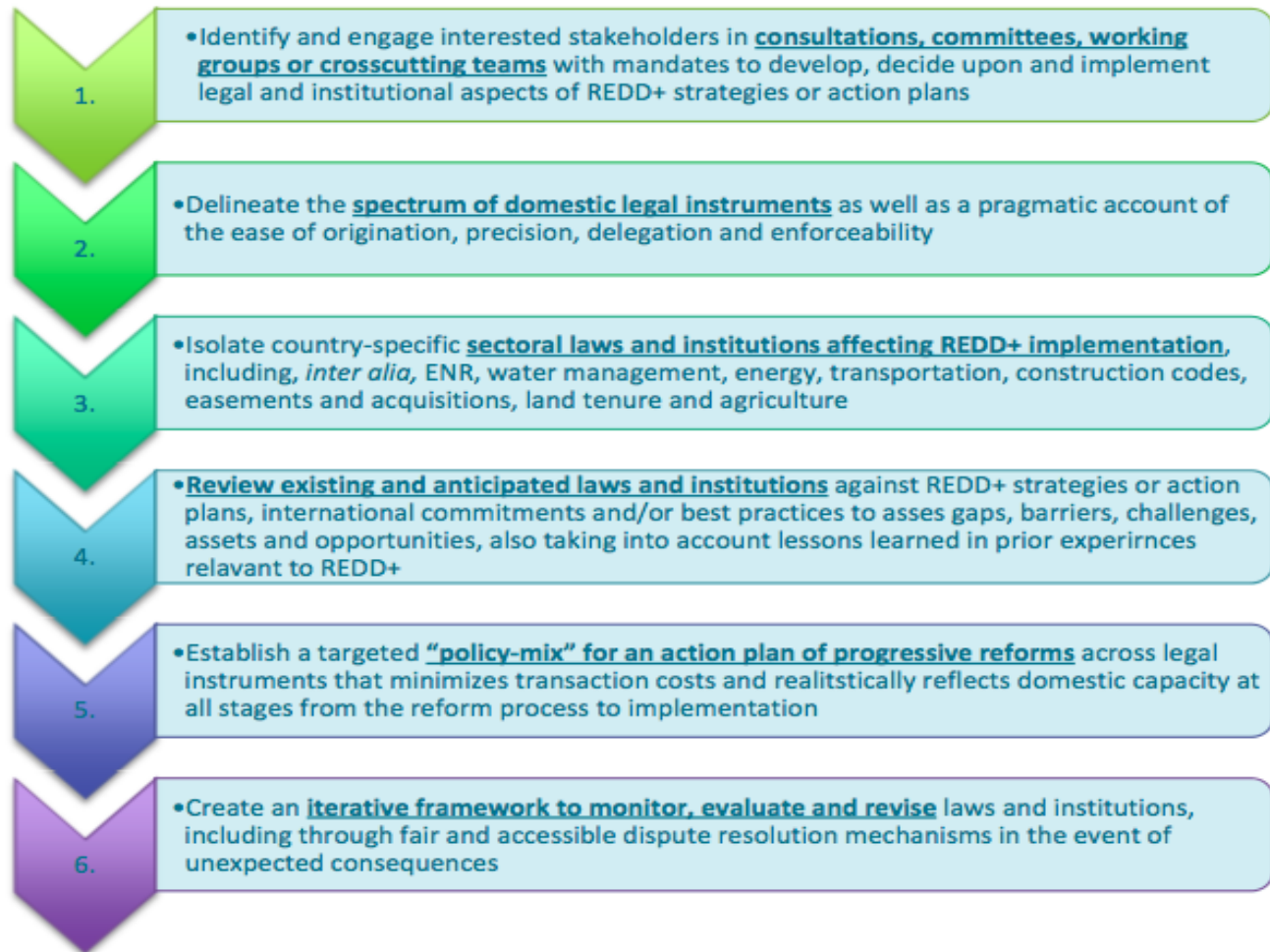
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Principles Derived from Country Studies



Guidance on Integrating REDD+ into Laws and Institutions



Sample Generic Legal Options for Strengthened Capacity

Crosscutting Issues for Domestic Implementation		Sample Generic Legal Options for Strengthened Capacity
1.	Institutional Coordination at all Levels of Governance	
a.	Centralized, decentralized and federalist governance systems	<ul style="list-style-type: none"> • Clarification of vertical and horizontal government authority over REDD+ issues, including setting geographical boundaries, national and subnational jurisdiction over decision-making and implementation, and lines of reporting and accountability • Capacity building and allocation of sufficient resources for decentralized or local government administrations to carry out legislative mandates • Rules on how national and subnational carbon crediting and BDS may be effected in the case of in-country reversals or displacements that raise national forest reference emission levels and/or forest reference levels
b.	Public and traditional administration systems	<ul style="list-style-type: none"> • Statutory recognition of traditional administration systems as an arm of government • Incorporation of traditional and culturally sensitive structures in REDD+ planning and implementation processes, including representatives chosen by themselves in accordance with their own procedures • Reinforcement of capacity of the judiciary for customary justice systems and alternative disputes resolution, including expanding recognized adjudicators, arbitrators or mediators to include representatives of local communities • Guarantees against discriminatory practices by political and traditional administrations in all REDD+ related activities, particularly with respect to property rights
c.	Civil society and private sector participation and access to justice	<ul style="list-style-type: none"> • Clearly defined and enforceable rules on levels, timing and mechanisms for stakeholder participation in decision-making and implementation • Grievance procedures, such as Social Impact Assessments and indicator-based reporting, for stakeholders to signal unexpected impacts resulting from REDD+ activities • Dispute resolution mechanisms that are equitable, transparent, accountable, independent, confidential and affordable or free

Kenya's Action Plan for the Implementation of the National Climate Change Response Strategy

Kenya LPCCI Deliverables

- Legal Preparedness Assessment Report & REDD+ Country Study
- Draft Climate Change Policy
- Enabling Legislative Framework for Climate Change Response
- County Level Capacity Building Activities

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Methodology

- Establish Kenyan Climate Law Working Group
- Members draft Legal Working Papers to feed into LPAR & Country Study
- Lead author drafts LPAR and is responsible for quality assurance
- Extensive consultation and validation with Government, Working Groups & geographical and subject matter experts

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THANK YOU / MERCI / GRACIAS

ANNEXES

Objective

To review and analyze existing laws and institutions relevant to REDD+ at the domestic level and to identify key challenges and innovations for REDD+ implementation with the ultimate aim of drawing generic options and recommendations to support REDD+ countries in strengthening capacity.

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Zambia

- Equitable and secure land tenure
- Clarity and coherence of laws and institutions related to REDD+
- Regulation of the charcoal industry for effective REDD+ implementation
- Benefit distribution systems (BDS) that are equitable and results-based

Mexico

- Complementary State and Federal Legal and Policy Frameworks
- Securing clear and coherent laws and institutional mandates for REDD+
- Land use planning (conversion to slash and burn agriculture)
- Benefit distribution systems (BDS) that are equitable and results-based

Vietnam

- Coordination of land-use planning for REDD+
- Effective forest governance systems
- Rights to the benefits of REDD+ activities

Kenya

- Cross-sectoral coherence of laws and institutions related to REDD+
- Effective local community participation in REDD+ planning and implementation
- Regulation of the charcoal industry and illegal logging

Zambia

- Responsive national forest governance systems (*Draft National Forest Policy and Bill*)
- Decentralized decision-making and two-way information systems (*Strategic Programme for Climate Change Resilience*)
- Incentivizing private and public investments (*Zambia Development Agency*)

Mexico

- Regional Accords on climate change and REDD+
- Inter-municipal networks
- Engaging beneficiaries through flexible land tenure recognition systems

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Vietnam

- Lessons learned from Payment for Forest Ecosystem Services
- CDM afforestation and reforestation project
- Draft National Strategy on Climate Change

Kenya

- Forest governance initiatives in Vision 2020, the Constitution of 2010 and legislative reforms
- The Action Plan to Implement the NCCRS
- Clarification of land tenure under the Constitution 2010 and legislative reforms
- Kenya's REDD+ preparations, including lessons learned from pilot projects

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UNFCCC 2010 CANCUN AGREEMENTS on REDD+

“...in the context of the provision of adequate & predictable support to developing country Parties, Parties should collectively aim to slow, halt & reverse forest cover & carbon loss...”

5 Accepted REDD+ Activities:

- | | |
|--|---|
| • Reducing emissions for deforestation | Reducing emissions for forest degradation |
| • Conservation of forest carbon stocks | Sustainable management of forests |
| • Enhancement of forest carbon stocks | |

Phased Implementation:

- Development of national strategies or action plans, policies and measures and capacity building with consultation and participation (“readiness” Phase 1)
- Implementation with further engagement, capacity building, technology development and transfer and results-based demonstration activities (Phase 2)
- Results-based actions that should be fully measured, reported and verified (Phase 3)

2010 CANCUN AGREEMENTS on REDD+, cont.

UNFCCC Parties will develop:

- National REDD+ strategy +/- action plan
- National forest reference emission levels, or as interim measure, at sub-national levels
- Robust and transparent national forest monitoring system for the monitoring and reporting of REDD+ activities with sub-national MRV as interim measures
- System for providing REDD+ Safeguards information on how addressed and respected

National strategies and actions plans can address, *inter alia*:

- Full & effective participation of stakeholders, indigenous peoples & local communities
 - Drivers of deforestation and forest degradation
 - Land tenure matters
 - Gender considerations
- REDD+ Safeguards
Forest governance systems

Important REDD+ Guidance and Safeguards

REDD+ Guidance and Safeguards

- * Ensure that REDD+ activities are used to enhance other social benefits
- * Promote and support transparent and effective national forest governance structures, taking into account national legislation
- * Promote and support actions to address the risk of reversals
- * Promote and support multiple forest functions
- * Undertake activities consistent with national sustainable development needs and goals
- * Promote and support that actions complement or are consistent with international agreements

- * Promote and support that actions complement or are consistent with national forest programmes
- * Undertake activities to be consistent with adaptation needs
- * Undertake activities that are results-based
- * Promote and support the knowledge and rights of indigenous peoples and local communities
- * Promote and support the full and effective participation of relevant stakeholders in para.70 activities and developing and implementing national REDD+ strategies or action plans
- * Promote and support actions to reduce the displacement of emissions

Overcoming Legal Barriers to REDD+: Land, Forest and Carbon Rights

The Cancun Agreements request that Parties address issues such as land tenure, forest governance and the drivers of deforestation and forest degradation in developing national REDD+ strategies or action plans

However, clear land ownership, use and management face serious challenges. To address these, countries can use legal tools such as:

- Equitable and secure land and forest tenure
- Accessible land titling registration
- Clear rules to prioritize land and forest use so as not to risk reversals of REDD+ activities
- Integrated spatial planning rules
- Reconciliation of forest, agriculture, land, easements, planning and other land related laws



Overcoming Legal Challenges to REDD+: Benefit Sharing

The Cancun Agreements request that Parties promote and support the enhancement of the environmental and social benefits of REDD+ activities that are results based

Ensuring social benefits that are results based faces challenges. To address these, countries can use legal tools such as:

- Equitable benefit distribution systems
- Procedures to determine both monetary and non-monetary compensation
- Accessible project approval and verification cycles
- Dispute resolution mechanisms that incorporate customary justice systems
- Transparent and accountable financial institutions



Overcoming Legal Challenges for REDD+: Public Participation and Access to Information

The Cancun Agreements safeguard the participation of relevant stakeholders, particularly local communities and indigenous peoples, in developing and implementing REDD+ strategies or action plans

Public participation and access to information faces serious challenges. To address these, countries can use legal tools:

- Enforceable measures for access to info
- Clear rules on communication, timing and effective public engagement
- Incorporation of traditional and community decisions and dispute resolution systems
- Provision of legal education to key stakeholders



Overcoming Legal Challenges to REDD+: Compliance & Access to Justice

Inaccessible institutions & complex rules can lead to corruption, exploitation, administrative barriers & lack of enforcement. Solutions may include:

- Free, prior & informed consent (FPIC)
- Rules for participatory project implementation
- Stakeholder decision-making procedures
- Tailored & transparent law enforcement
- Clear & affordable rights of recourse
- Respect & support for indigenous customary laws & compliance systems
- Targeted legal training of officials, the judiciary & administrative tribunals

