



WWF GUIDE TO BUILDING REDD+ STRATEGIES

REDD+ Governance

# LEGAL AND REGULATORY FRAMEWORKS



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## Key Messages

- The design and implementation of REDD+ brings new legal challenges for governments of developing tropical forest countries that may require significant reforms to national and subnational legal frameworks.
- It will be essential during the design of legal frameworks to build public participation and consultation processes in the early stages of REDD+ strategy development to ensure that REDD+ systems are designed in a way that recognizes the needs and concerns of local populations.
- Given the urgency in implementing REDD+, it will be important to begin work immediately on the legislative design, implementation and enforcement. In the interim, provisional measures may allow REDD+ activities at the national and subnational levels to commence while longer-term solutions are being found.



## INTRODUCTION

The design and implementation of national and subnational REDD+ strategies will pose significant new legal challenges for tropical forest nations. In many countries this will mean an overhaul of existing national and subnational legislation, including the development of new legal systems, adaptation of existing laws to changing circumstances and abolishment of inappropriate policies and incentives. While some precedents exist, for example through payments for ecosystem services (PES) programmes and other markets for environmental services, rarely have these been implemented at the scale and pace envisioned for REDD+. This process will therefore require careful consideration, including the consultation and engagement of a broad range of national and international stakeholders to ensure the effective, efficient and equitable design of these policies and laws.

The design and implementation of legal frameworks for REDD+ will entail a range of subjective, and often controversial, decisions about rights, benefits and decision-making powers as well as a purely legal set of questions over how those decisions should be implemented. A coherent network of laws will be required, beyond just environmental and forest laws, including agricultural, infrastructure and development laws, that will ideally be capable of adapting to changes and developments in science, economics and policy.

Given the often poor levels of forest governance in developing countries, legal reform will also require vastly enhanced implementation and enforcement of forest laws. Furthermore, the large sums of finance expected to be delivered through REDD+ will require well-crafted fiduciary frameworks to ensure the sustained delivery of global objectives.

Finally, there will be implicit trade-offs in the complexities and urgency in implementing REDD+. While it will be important to begin work immediately on the design, implementation and enforcement of REDD+ legal frameworks to ensure that emissions reduction efforts begin promptly, these may require long-term and dedicated efforts to fully resolve. In the interim, provisional adaptive measures would allow REDD+ activities at the national and subnational levels to commence while longer-term solutions are being developed.

## INTERNATIONAL POLICY CONTEXT



A variety of international laws are relevant to the implementation of REDD+ legal frameworks at the national and subnational levels. While the United Nations Framework Convention on Climate Change (UNFCCC) has been the primary standard-setting body for REDD+, other international conventions play a key role in setting the context within which other objectives of REDD+, e.g. the right to participation, are implemented.

## COP 16: Cancun, 2010

At the 16th Conference of the Parties to UNFCCC (COP 16), in Cancun in 2010, the UNFCCC made specific reference, in its decisions, that REDD+ should be “consistent with the objectives of national forest programmes and relevant international conventions and agreements”.<sup>1</sup> These decisions, collectively known as The Cancun Agreements, also placed a strong emphasis on stakeholder engagement, recognizing “the need to engage stakeholders at the global, regional, national and local levels, be they government, private business or civil society, including youth and persons with disability, and that gender equality and the effective participation of women and indigenous peoples are important for effective action on all aspects of climate change”.<sup>2</sup> This position was further reinforced under the decision on REDD+, which stated that “developing country Parties, when developing and implementing their national strategies or action plans [should ensure] the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities”.<sup>3</sup> Parties in Cancun also agreed to certain safeguards relating to the “knowledge and rights of indigenous peoples and members of local communities”<sup>4</sup> as referred to in the *Social and Environmental Safeguards* chapter.

## Multilateral REDD+ initiatives

The Forest Carbon Partnership Facility (FCPF), whose secretariat is the World Bank, and UN-REDD Programme have developed a range of guidance on the effective engagement of stakeholders in REDD+. Arguably the most important of these are the joint UN-REDD and FCPF Guidelines on Stakeholder Engagement (UN-REDD and FCPF, 2012) that were designed to

support effective stakeholder engagement of indigenous peoples and forest-dependent communities in REDD+. Other guidance includes the UN-REDD Social and Environmental Principles and Criteria (UN-REDD, 2012) and the UN-REDD FPIC Guidelines (UN-REDD, 2012).

### Decisions relating to rights to participation

In addition to purely climate-related international laws, a further set of international legislation provides a framework for participation in REDD+. These are discussed under the Participation section below.

## NATIONAL AND SUBNATIONAL OPTIONS



Three key issues are important in the development of national and subnational legislation in support of REDD+:

- **Legislation design, implementation and enforcement:** these issues represent the majority of legal work in REDD+ countries, and must work together to enable REDD+ to extend coherently from a unified policy vision to effective, efficient and equitable actions on the ground;
- **Rights:** encompassing tenure to land resources, timber and forests, as well as carbon rights;
- **Participation:** including mechanisms for ensuring stakeholders and, in particular, vulnerable forest dwellers have access to information, participation in decision-making, recourse to justice and freedom of expression.

The following sections outline how these three areas affect decision-making processes for countries implementing national and subnational REDD+ strategies. Legal reform work will also have broad implications across many other areas of REDD+ implementation; these issues are discussed further in other chapters in this publication, including *Assessing Finance, Benefit-Sharing Mechanisms, Social and Environmental Safeguards, Institutional Arrangements, Reference Levels, and Monitoring, Measurement Reporting and Verification*.

### Legislative design, implementation and enforcement

The starting point for legal reform for most countries engaging in REDD+ will be the design, implementation and enforcement of REDD+ laws. These issues are often numerous and broadly dispersed across sectors, ministries and jurisdictions, but will need to be largely resolved for REDD+ to deliver on its long-term goals. In many countries, appropriate laws may be in place on paper, but they may either be contradicted by other laws or simply not implemented by poorly funded agencies in charge of legal administration.

For REDD+ legislation to be effective, it needs to (a) mainstream and harmonize REDD+ regulatory goals with other relevant legislation under a clear overall policy vision, avoiding “regulatory proliferation”, and (b) be implemented via secondary decrees that are adequately enforced.

### Legislative design

Legal frameworks for forest conservation and natural resource management are often at odds with national economic development planning, which is based on older models of economic productivity. Therefore, unless reformed, existing policies and incentives designed to maximize the conversion of forests into agricultural or other more “economically productive” uses can dwarf newer finance streams designed to incentivize sustainable activities such as REDD+.<sup>5</sup> Rather than address these conflicts, countries often find it easier to simply overlay newer sustainable development legislation on top of incompatible legislation, resulting in counter-productive “regulatory proliferation”.

When designing REDD+ policies and laws, policymakers will be confronted with an often fragmented and overwhelming array of existing federal and state legislation. This includes binding primary legislation as well as secondary regulations at the national and subnational levels. These are often in addition to *non-binding* national climate change and REDD+ policies or strategies.

During the design of REDD+ legal frameworks, incoherent and conflicting policies can be addressed by either: (a) reframing existing forest, land-use planning, and other related laws and policies to maximize incentives for climate change mitigation, or (b) developing new, cross-cutting national and subnational REDD+ legislation while taking pains to avoid regulatory proliferation.

If a country fails to adequately coordinate its legal system, this can cause as much if not more confusion than a weak or underdeveloped legal framework might cause. In

Indonesia, for example, numerous overlapping and at times contradictory policies exist on forestry, land tenure and spatial planning. In conjunction with a lack of regulatory hierarchy, this results in a competition between institutions over the direction of its REDD+ programme (Costenbader and Veney, 2011).

It will be important to resolve such conflicts early on in the REDD+ process, by harmonizing and mainstreaming REDD-related legislation with other sectors. Ideally, this would give environmental laws favourable to REDD+ priority over legislation promoting competing land uses, whether forestry sector related (e.g. commercial logging) or others (e.g. mining, petroleum or economic development).

Such harmonization, however simple in theory, may not be so easy to achieve in practice. Competing financial interests as well as competing political interests often still favour unsustainable forest and land management. In Uganda, for example, despite widespread legal reform since 1995 aimed at ensuring sustainable forest management, the government has degazetted large tracts of forest reserves in the past decade in order to encourage industrial and agricultural development. As a result, agencies and institutions initially established to sustainably manage forests have found themselves in the paralyzing situation of being required to enforce government policies both in support of and against forest conservation (Advocates Coalition for Development and Environment, 2005; Kakuru, 2011).



### Implementation and enforcement

REDD+ legislation must be both well implemented and adequately enforced in order to realize forest carbon emissions reductions. This requires the following:

- Allocating adequate time and resources to proper drafting and enforcement of secondary legislation;
- Ambitious yet appropriate goals that consider the national context;
- Periodical review of police, judicial systems, and land and forest records and data;
- Equivalent enforcement of forest sector rules on large-scale actors as on small-scale rural users;
- Local community empowerment and involvement in planning and ongoing management processes.

Law enforcement is a challenge for many developing countries. While most have well-drafted, sophisticated legislation in place, they lack either the domestic capacity to implement laws or secondary legislation in the form of implementing decrees and technical regulations to operationalize them. Also, such legislation often fails to account for national and subnational realities of corruption, and overly bureaucratic systems that can attempt to impose regulatory regimes that are not politically feasible. Regardless of the circumstances, for legislation to be implemented and enforced, it needs to be actually capable of being enforced and not overreaching, unfair or unrealistic.

For example, a 2011 review found that DRC, Mexico and Brazil all have generally solid legislative foundations for REDD+ but

revealed major gaps in implementing decrees relevant to land tenure, forest management, public participation and benefit sharing (Costenbader and Veney, 2011). Similarly, Indonesia's Draft National REDD+ Strategy highlighted the need for technical regulations to improve law enforcement (e.g. to its Civil Code and Code of Criminal Justice) so as to minimize criminal activities and corruption in the forest sector (Government of Indonesia, 2010). In Vietnam, a sophisticated forest classification system exists with numerous categories and rules for land management, but poor coordination between forest-related ministries with closely overlapping functions has resulted in confusion and a lack of clarity (Climate Focus, 2012).

Where forest law enforcement is strong, it has the potential to protect the elite and come down harshest on the rural poor lacking political connections. Government officials may overly focus on forest-related laws that favour commercial and strict conservation interests while overlooking human rights-based laws such as those protecting customary land tenure and participatory rights. Consequently, simply increasing enforcement of existing forest law can result in unreasonable penalties being inflicted on indigenous peoples and local communities. This can intensify in areas where government officials, law enforcement and possibly even the judiciary system are involved either directly or indirectly in illegal logging (Colchester, Boscolo et al., 2006).

Finally, law enforcement could further be improved by judicial system reviews to ensure transparent and just law enforcement as well as reviews of data relating to forest land title, access and use claims (Colchester, Boscolo et al., 2006).

### Rights

Many developing countries wishing to establish national and subnational frameworks for REDD+ have forests that fall under state jurisdiction and are not assigned distinct property rights. In these cases, land rights will need to be clearly established to address the underlying drivers of deforestation, as well as to allocate resources derived from REDD+ activities. While some precedents exist through, for example, PES schemes, REDD+ poses new challenges that will need to be addressed within national legal frameworks.

As noted in the *Drivers of Deforestation* chapter, unclear tenure systems and other underlying factors such as the lack of adequate governance structures underpin tropical deforestation (de Sherbinin, 2002). Given that rights and land tenure are often overlapping and sometimes competing among entities,<sup>6</sup> most countries will need to assign or clarify rights to forest carbon or carbon sequestration. The determination of rights will also play a fundamental role in the overall establishment and function of REDD+ systems, as discussed in the *Benefit Sharing Mechanisms* chapter.

### Land tenure

Land tenure encompasses a wide spectrum of issues including both formal and informal ownership along with access and use rights of land. Secure tenure rights will be funda-



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mental for long-term success of REDD+, and countries will need to start immediately in clarifying such issues. In many developing countries, rights to forest land and resources have been historically governed by customary laws and institutions of indigenous peoples and have been recognized by a broad range of international human rights treaties and legal systems. The customary laws of indigenous peoples and local communities (IPLCs), however, are often highly complex and generally lack official recognition or documentation within national and subnational governments; a main area of land tenure conflict arises from the discrepancy between official and customary land rights. For more detailed information on forms of land tenure and rights, please see the *Social and Environmental Safeguards* chapter.

Over 80 per cent of tropical forests are legally held by states, though government ownership rates vary widely from country to country.<sup>7</sup> A 2009 survey found that IPLCs own only 18 per cent of tropical forest land despite significant and longstanding access and use rights to the vast majority of tropical forest areas. Such contradictions create conflicts when, for example, national governments are allocating land to investment opportunities for “unprotected” forest lands that might otherwise be allocated to IPLCs (Rights and Resources Initiative, 2009). This discrepancy between official and customary land tenure has led to a suggestion for a more pragmatic regime of “resource tenure”, in which the bundle of rights to various resources within a given piece of land could be allocated to different user groups (Lyster, 2011).<sup>8</sup>

In addition to conflict between customary and statutory land tenure rights, other common

tenure-related challenges include (Christy, Di Leva et al., 2007; Sunderlin, Hatcher et al., 2008):

- Separate tenure over land and the trees on it (and possibly other non-timber resources);
- Allocation to multiple persons or entities;
- Competing claims of ownership;
- Conflicting, incomplete or obsolete records;
- Conflict or confusion between categories of ownership;
- Inadequate enforcement and implementation of reforms;
- Lack of progress on rights that complement forest tenure reform;
- Government preference for industrial concessions and conservation over people;
- Competition within and among forest communities;
- Weak performance of government in advancing reforms.

#### Carbon rights

In addition to land tenure, REDD+ countries will also need to define rights relating to the storage and sequestration of forest carbon. Carbon rights are a new and challenging type of property with numerous potential legal definitions (Takacs, 2009). In this chapter, the term carbon rights is used to refer to the ownership of a right to the benefits and liabilities arising from the activities that are necessary before a carbon credit may be generated. Generally, carbon rights may be defined through three methods (Vhugen, Aguilar et al., 2012):

- Explicit new legislation
- Interpretation of existing legislation
- Contractual agreement

Clarification of carbon rights will be particularly relevant for countries or states that are interested in attracting private-sector investment, as secure carbon rights will help guarantee investments and theoretically allow ownership of carbon to be separated from the trees and land. Carbon rights will also be important for distributing any benefits that may arise from REDD+ activities to other actors, including IPLCs. The clarification of carbon rights is closely linked with land tenure and will require careful planning and consideration of potential outcomes.

Carbon rights legislation is currently in place in only two developed countries worldwide (Australia and New Zealand), a small handful of developing countries (e.g. Vanuatu) and several states (e.g. Alberta, Canada and Amazonas, Brazil). Several other states have legislation that allows carbon rights to be delineated according to pre-existing legal theories such as usufruct, or the right to use and enjoy the profits and advantages of something belonging to another as long as the property is not damaged or altered in any way (e.g. Madagascar), or other more complicated real estate regulations (e.g. Costa Rica). No developed country to date has established a nationwide carbon rights system that links to a national baseline and includes avoiding deforestation and forest degradation, as envisioned under REDD+ (Takacs, 2009; Vhugen, Aguilar et al., 2012).

As discussed under the section on legislative design, the clarification of carbon rights can either be implemented through new legislation or an interpretation and adaptation of existing legislation. In addition, carbon rights can be clarified through contractual agreement.

These three approaches are discussed in more detail here:

**New legislation** directly addressing the issue of carbon rights has the advantage of allowing carbon agreements (i.e. contracts) to be registered and enforceable by the government, thus greatly increasing security to parties (Takacs, 2009). Australia and New Zealand pioneered carbon rights legislation in conjunction with emissions trading systems in compliance with their Kyoto Protocol commitments at subnational and national levels, respectively, and provide important lessons for REDD+ (albeit with appropriate modifications dependent on a jurisdiction’s legal system, capacity and enforcement capabilities) (Cox and Peskett, 2010).

Governments face important decisions when recognizing carbon rights, particularly with regard to their relation to land tenure and the incentives that these allocations can create. There are several options for the allocation of carbon rights: the state may either claim all carbon rights or delegate all or some proportion of carbon rights to those owning or managing forests. Where the state retains all carbon rights, it can still allocate revenue from carbon credits to landowners and forest dwellers accordingly.

**The interpretation of existing legislation** can provide an indication of how carbon rights will be governed and who is authorized to develop such rights where no regulation addresses carbon rights explicitly. In Guyana for example, because the government owns all state forests, which make up almost all forest in the country, it is the assumed owner of almost all domestic forest carbon. The extent, however, to which forest concession

owners may be charged royalties on forest carbon will depend on whether the Guyana Forestry Commission (GFC) regulates carbon as a “forest product” or transfers carbon rights to other persons or entities (Janki, 2009).

Interpreting existing laws has risks, however, because many REDD+ countries still have unclear tenure regimes for forest land. Moreover, because the state may later decide to reinterpret carbon rights or may issue new laws directly addressing the issue of carbon rights, such an approach could present too high risks for investors. Where a government has only ambiguously specified rights to carbon by law, it will need to provide a clear guarantee that its legal system will honour and enforce contracts regarding forest carbon and preferably that it will also compensate property owners should it legislatively override such rights in the future. Alternatively, political risk insurance (PRI) offered by organizations such as the Multilateral Investment Guarantee Agency (MIGA) for the World Bank or the Overseas Private Investment Corporation (OPIC) in the US can mitigate the risk posed by a change in host country legislation (Cranford and Parker, 2012).

**Contractual agreements** over forest carbon are a third means of defining carbon rights that may work in conjunction with either of the above options. Depending on the nature of the agreement, contracts may be set up in the form of property agreements (covering land) or personal property (other than land and thus lacking recourse to state-registered and enforceable rights) (Takacs, 2009).

## SNAPSHOT CASE STUDY

# SECURING LAND TENURE FOR COMMUNITY-BASED REDD+

## Context

In the Democratic Republic of Congo (DRC), land use and access to resources are complicated by a dual system of statutory and customary laws regarding land tenure. Under current statutory law, most land belongs to the state, and rural people can only get right of use through attribution of “concessions”. On the other hand, and especially in rural and suburban areas, the customary approach to land tenure and natural resources use remains the de facto system, with traditional chiefs managing access to land and natural resources. While several legal texts recognize communities’ rights, to varying degrees, they are often in conflict.

WWF is actively working in the Lac Tumba region of the DRC to address land tenure. Through community-based land use and management plans and the establishment of local committees for development and conservation (CDCs), participatory decision-making processes are encouraged to help secure land tenure.

## Expected changes

- Increase the communities’ ability to participate in decision-making processes on land use by building capacity on the political, legal and contractual issues that may affect land use and local rights.
- Support the development of community-based land use and management plans as a basis for defining land tenure, fostering sustainable management of territories and benefit sharing mechanisms.

## Achievements

At least 350 CDCs now exist at the village level, and these committees have been organized according to the traditional structures of the participating ethnic groups. CDCs are spaces where decision-making regarding land and natural resources management traditionally occur and they are considered a platform for dialogue and action for the development of the village. CDCs also function as intermediary communication channels between communities and other institutions at local, state and provincial levels.

Mapping was carried out of 135 *terroirs* (land areas, including relevant geographic, geological and ecological characteristics). The geographic information and other relevant data gathered through the mapping exercises have been shared with institutions including the Institut Géographique du Congo and the Institut National de la Statistique at the national and provincial levels. Printed maps have been distributed to the communities and administrations.

Community empowerment grew through reinforcing customary knowledge and community land use. The mapping exercise encouraged traditional knowledge and practices and promoted more effective management of community forests. This process also empowered communities by ensuring that customary power and land uses by communities, including by women, were reinforced and integrated into land-use planning.

## Challenges

The costs for the mapping exercise were high and operations were logistically challenging. The costs associated with the community mapping exercise ranged between US\$2,000 and US\$3,000 per *terroir*, depending on the logistics and accessibility of the areas. Mapping teams also found that they needed between three and seven days per *terroir* in order to thoroughly study and survey each area.

## Lessons learned

Support and buy-in from communities take time. During the mapping exercise, some community members were reluctant to participate at first. However, attitudes changed as community members began to trust the process and recognized the potential benefits.

Local administration should be involved at every stage of the process. WWF systematically included representatives of the Administration du Territoire in the mapping exercise. These local representatives also participated in the inception and final validation workshops for this process and helped build trust between WWF offices and communities.

Understanding customary power and administration is critical for the legitimacy and sustainability of REDD+ projects. In a country such as DRC where customary laws play a defining role in land-use management, it is important to work with local chiefs from the onset and obtain their approval to engage with the local communities on REDD+ related issues.

\* This snapshot case study was produced in 2012.



Despite the sudden attention focused on carbon rights in recent years, it may not be advisable for every developing forest country considering a REDD+ programme to define carbon rights, especially where significant challenges exist to resolving land tenure. Moreover, clear carbon rights will be more important for countries seeking investment from private carbon finance rather than for publicly funded REDD+ programmes. Nonetheless, clarity over carbon rights will be essential in the long run to address the underlying drivers of deforestation and to equitably and efficiently distribute benefits arising from REDD+ programmes.

### Participation

The final issue that countries need to address in the design of their national and subnational legal frameworks in support of REDD+ is the role of public participation in decision-making. Participation is central to sound decision-making, allocation of resources, sharing of information and benefit distribution (Cohen and Uphoff, 1980). Participatory processes are also essential in promoting social acceptance of legal frameworks. In turn, these processes can greatly reduce future enforcement burdens and better inform both decision-making and the design of REDD+ mechanisms. Building participatory procedures will be fundamental to regulatory success over the long term, as even perfectly designed and implemented REDD+ systems need to adapt to changing circumstances and will require ongoing inputs from key stakeholders to inform such changes.

While participation in REDD+ programmes is often framed in the context of marginalized communities and groups (e.g. indigenous peoples and women), this section focuses on a wider range of stakeholders as defined by the following groups (Daviet, 2011):

- **Government or public sector:** central/federal, state/regional, or provincial/district and municipal-level institutions and dependencies;
- **Domestic civil society:** local, national and international NGOs, religious denominations, universities, research institutes, farmer organizations, indigenous peoples' organizations, worker/trade unions, community organizations, and organizations that represent women, youth and other vulnerable groups;
- **Private sector:** firms, associations, organizations, cooperatives, and individual proprietors such as banking, transport, industry, marketing, professional and media services;
- **Rights holders:** property owners, indigenous peoples and tribal groups, communities or individuals who hold traditional or formally recognized usufruct (and/or other) rights to land or resources that will be impacted by the decisions being made;
- **Impacted communities:** individuals and communities who are not rights owners but who may be directly impacted by REDD+ land-use decisions due to their proximity to the activities undertaken. Physical and economic displacement stand out among possible impacts on communities;

- **External community:** international financial institutions, international or regional cooperation agencies, bilateral donors, international charity, NGO and volunteer organizations.

Participatory rights can be grouped into four main categories: **right of access to information, right to participate in decision-making, right of access to justice and right of freedom of expression.** All four rights have been developed across a wide variety

of international environmental laws, of which most REDD+ host countries are already parties. Table 1 provides a list of the main international treaties requiring public participation in environmental matters such as REDD+.

See chapter on *Stakeholder Engagement* for more information.

TABLE 1: LIST OF KEY INTERNATIONAL ENVIRONMENTAL TREATIES AFFIRMING PARTICIPATORY RIGHTS

Right of Access to Information	<ul style="list-style-type: none"> <li>» Int'l Covenant on Civil and Political Rights—Art. 19</li> <li>» Aarhus Conv. (Europe, Caucasus, Central Asia)—Arts. 5, 6, Art. 4(1) (passive duty)</li> <li>» Universal Declaration of Human Rights—Art. 19</li> <li>» UNFCCC—Arts. 4 (passive duty), 6 (active duty), see also 12 (national communications)</li> <li>» Kyoto Protocol—Art. 7 (national communications)</li> </ul>	<ul style="list-style-type: none"> <li>» Espoo Conv. on Environmental Impact Assessment in a Transboundary Context—Art. 2</li> <li>» Conv. on the Protection and Promotion of the Diversity of Cultural Expressions—2(1)</li> <li>» Rio Declaration—Principle 10</li> </ul>
Right to Participate in Decision-Making	<ul style="list-style-type: none"> <li>» Int'l Covenant on Civil and Political Rights—Art. 25</li> <li>» Universal Declaration of Human Rights—Art. 21</li> <li>» Aarhus Conv.—Arts. 3, 6</li> <li>» UN Declaration on the Rights of Indigenous People—Arts. 5, 18, 27</li> <li>» Int'l Conv. on the Elimination of Racial Discrimination—Art. 5(c)</li> </ul>	<ul style="list-style-type: none"> <li>» Conv. on the Elimination of Discrimination against Women—Arts. 7(b), 14(2)</li> <li>» UNFCCC—Arts. 4(1)(i), 6(a)(iii)</li> <li>» Int'l Labour Organization 169—Arts. 6(a)(b), 7, 15</li> <li>» Espoo Conv.—Arts. 2(2), 2(6)</li> <li>» Rio Declaration—Principles 10, 22</li> </ul>
Right of Access to Justice	<ul style="list-style-type: none"> <li>» Int'l Covenant on Civil and Political Rights—Arts. 2(3)(a-c), 9, 14, 15</li> <li>» Aarhus Conv.—Art. 9</li> <li>» Universal Declaration of Human Rights—Art. 8</li> </ul>	<ul style="list-style-type: none"> <li>» UN Declaration on the Rights of Indigenous People—Arts. 20(2), 28, 40</li> <li>» Int'l Convention on the Elimination of Racial Discrimination—Arts. 5(a), 6</li> <li>» Rio Declaration—Principle 10</li> </ul>
Right of Freedom of Expression	<ul style="list-style-type: none"> <li>» Int'l Covenant on Civil and Political Rights—Art. 19</li> <li>» Universal Declaration of Human Rights—Art. 19</li> </ul>	<ul style="list-style-type: none"> <li>» Conv. on the Protection and Promotion of the Diversity of Cultural Expressions—Arts. 2(1), 7</li> <li>» Int'l Conv. on the Elimination of Racial Discrimination—Art. 5 (viii)</li> </ul>



The **right of access to information** includes a responsibility of states to both respond to public requests for information and publicly disseminate accurate environmental information.<sup>9</sup> Within the context of REDD+, members of the general population should be allowed to provide solicited feedback directly into decision-making processes, as well as indirectly under the right of free expression (e.g. stakeholders or concerned parties providing watchdog functions). In addition, all elements of a national or subnational REDD+ strategy should be made easily accessible to the public, and this information should be made available in relevant languages to account for the needs of IPLCs in remote forest lands (Lyster, 2011). Indonesia recognized this right in 2010 by passing a freedom of information law with extensive input from information advocacy groups. Although several broad categories of information are exempt from the text and the new mechanisms have yet to be implemented, the new law represents an important first step for Indonesia (Simpson, 2010; Anon., 2011).

The **right to participate in decision-making** can be implemented at several levels as follows (from strongest to weakest):

- **Control:** those who possess rights to carbon sequestration benefits and those with original carbon rights who need to be compensated in case of relocation;
- **Consent:** those whose consent is required (i.e. veto power) before changes can be made to forest lands (e.g. those with rights of access or use such as via leasehold or lien);
- **Consultation:** those lacking ownership, control, access or use rights over land (and thus without any veto power) but living nearby or downstream from an activity

such that they need to be consulted for views on proposed activities.

Many forest-dwelling communities whose livelihoods depend on access and use of forests lack official rights to forestland or carbon benefits. For this group, it will be important that REDD+ activities obtain their **free, prior and informed consent** in decisions or when conducting activities that significantly affect the use of their lands in accordance with the principle of FPIC.<sup>10</sup> Originally enshrined in the International Labour Organization (ILO) Convention 169 (ILO, 1989) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>11</sup> FPIC has been codified in several countries' national law in recent years. In Colombia, Afro-Colombian and indigenous communities have the exclusive right to use forest resources within their territories, and FPIC must be undertaken with communities before the state or outside actors may use those resources (Colombia, 2006).

It is also worth noting, however, that to date, FPIC has not been agreed to as a core principle of REDD+ by parties to the UNFCCC, and the precise parameters of when and how it should be required likely will require further refinement in order to make it practical. The process of FPIC is discussed in more detail in the *Social and Environmental Safeguards* chapter.

The **right of access to justice** is essential to uphold stakeholder rights and includes the right to bring a formal case to court and as appropriate to use alternative methods of dispute prevention or resolution.<sup>12</sup> The right of access to justice will be important to those affected by REDD+ activities that wish to bring a formal case or seek to use alternative

dispute resolution mechanisms. A general framework for building an effective grievance mechanism is presented in the *Social and Environmental Safeguards* chapter.

Finally, the right of freedom of expression, although arguably the least direct of the rights outlined here, allows both stakeholders and outsiders not directly engaged as stakeholders the means to express their views and better inform public debate surrounding REDD-related decision-making.

### WWF VIEWPOINT



Regarding the establishment of rights and tenure, WWF adheres to the REDD+ Five Guiding Principles, which state that "REDD+ should recognize and respect the rights of indigenous peoples and local communities" (Principle 4) and that "REDD+ should provide benefits to local and indigenous communities, such as remuneration for their forest stewardship and empowering them to assert their rights to forest resources" (Principle 3). In the recent WWF report *Community Tenure and REDD+*<sup>13</sup> WWF argues that community land tenure and community rights should be central to the design and implementation of REDD+ (WWF Community Rights and Tenure, 2012), as:

- Tenure security safeguards against risks of involuntary resettlement.
- Tenure status may affect communities' eligibility to participate in REDD+ activities.
- Tenure security supports more effective forest stewardship (and therefore REDD+).



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- Tenure supports the exercise of traditional knowledge and practices contributing to REDD+.
- Tenure will substantially influence the distribution of potential benefits from REDD+.
- Carbon rights will also be shaped by underlying forest tenure.
- Formal recognition of rights is often viewed by communities as an important benefit in itself.

Regarding the design and implementation of REDD+ legal frameworks, WWF believes that REDD+ frameworks should be established via a transparent and documented participatory process that reflects prior informed consent of affected forest-dependent peoples.<sup>14</sup>

WWF has many positions regarding the substance of legal reform. These positions can be found in the following chapters of this publication: *Accessing Finance*, *Benefit-Sharing Mechanisms* and *Social and Environmental Safeguards*.

## FURTHER RESOURCES



## Recommended further reading

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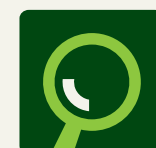
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## END NOTES



1. Decision 1/CP.16 Appendix I
2. Decision 1/CP.16 paragraph 7
3. Decision 1/CP.16 paragraph 72
4. Decision 1/CP.16 Appendix 1
5. It is also worth noting that forest laws rarely refer to conservation of land as "economically productive" activity.
6. It is not uncommon to find countries where different private, communal or state entities have the right to live in forests, to sell the land and to harvest timber, while others have the right to harvest non-timber forest resources.
7. Noting government ownership claims of 33 per cent in Latin America, 66 per cent in Asia and 98 per cent in Africa
8. In civil law, the concept of usufruct would apply roughly to resource tenure, allowing a right to the fruits of things belonging to others without title to the underlying forest or land. Under common law, the legal theory of profit a prendre provides a similar scheme, whereby various areas or resources within a given piece of land may be allocated to different owners.
9. See Rio Declaration, Art 10. See also Aarhus Convention, Arts. 4 and 5 for comprehensive resources on the legal right to information and initiatives under way.
10. FPIC implies that consent must be free of coercion, obtained prior to the commencement of project activities and informed through access to all the information necessary to make the decision, including knowledge of legal rights and the implications of the project.
11. UNDRIP Art. 19 "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."
12. Article 8 of the Universal Declaration of Human Rights states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".
13. [awsassets.panda.org/downloads/report\\_\\_\\_tenur\\_final.pdf](http://awsassets.panda.org/downloads/report___tenur_final.pdf)
14. [awsassets.panda.org/downloads/wwf\\_redd2\\_paper\\_web.pdf](http://awsassets.panda.org/downloads/wwf_redd2_paper_web.pdf)