

# Good Governance

REDD+ Academy



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# Expected Learning Outcomes

This module will provide an overview of good governance for REDD+. In particular you will:

Understand what is “governance”, “good governance”, and the importance for REDD+ implementation

Understand the principles of credible and inclusive national governance for REDD+ implementation;

Understand how principles of good governance interact with the three components of governance

Be able to develop an action plan to identify and address weaknesses in governance for REDD+ in your country

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# Overview of Module

- Information Session 1: Introduction to Governance and its importance for REDD+
- Group Exercise 1: What is Governance and what are the key principles of governance?
- Information Session 2: The principles of good governance for REDD+
- Group Exercise 2: Principles and components of “good governance” – how do they interact?
- Information Session 3: Components of good governance
- Group Exercise 3: Developing a plan for good governance
- De-brief and reflection



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First information session

# Introduction to Governance, and its importance for REDD+



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# Introduction to Governance and its importance for REDD+

Language

Bahasa

زبان

Хэл

ភាសា

भाषा

འགྲུབ་

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Tok

Wika

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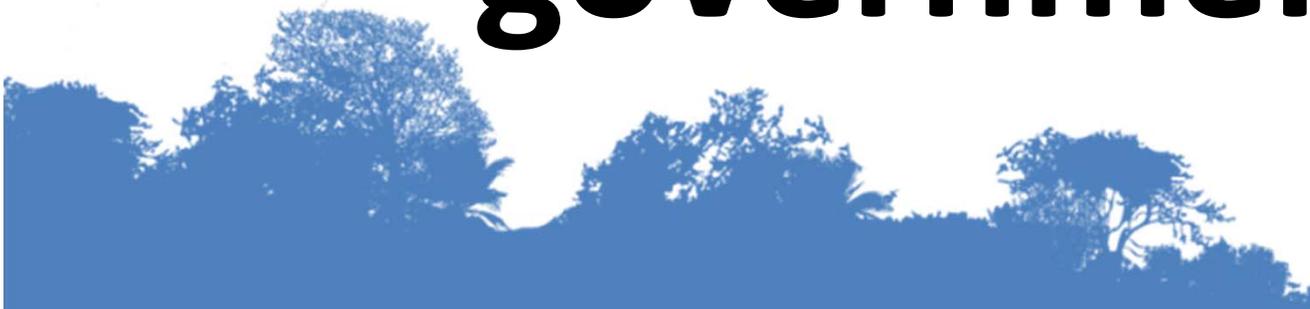
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Introduction to Governance and its importance for REDD+

# **Governance is more than just government**



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## Introduction to Governance and its importance for REDD+

**Governance** encompasses the interaction of laws and other norms, institutions, and processes in a society.

**Management** is an activity carried out under laws, by institutions, and through processes.



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# Introduction to Governance and its importance for REDD+

## GOVERNANCE encompasses:

- ***who*** has the **power to make decisions** that affect natural resources and natural resource users and ***how*** those decisions are made
- ***who*** has the **power and responsibility to implement those decisions** and ***how*** those decisions are implemented
- ***who*** is held **accountable**, and ***how***, for implementation.



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# Introduction to Governance and its importance for REDD+

## GOVERNANCE for REDD+

**Governance for REDD-plus - making and implementing decisions – takes place at multiple levels:**

- **Global/international**
- **National**
- **Sub-national – state/province; local**



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# Introduction to Governance and its importance for REDD+

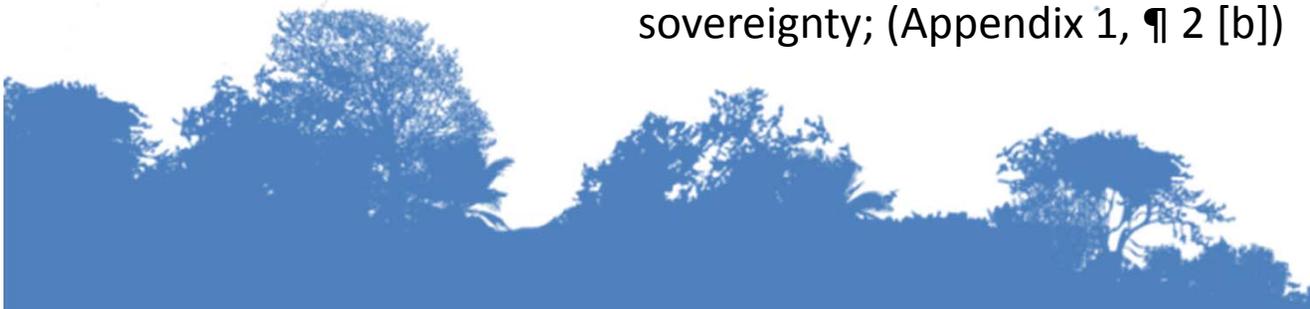
In 13 UNFCCC Decisions, from Bali to Warsaw, National Governance is only mentioned in one!

**Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention**

... Requests developing country Parties ... to address, *inter alia*, the drivers of deforestation and forest degradation, land tenure issues, **forest governance issues**, gender considerations ... ensuring the full and effective participation of relevant stakeholders, *inter alia* indigenous peoples and local communities (¶ 72)

When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:

... Transparent and effective national **forest governance structures**, taking into account national legislation and sovereignty; (Appendix 1, ¶ 2 [b])



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## Introduction to Governance and its importance for REDD+

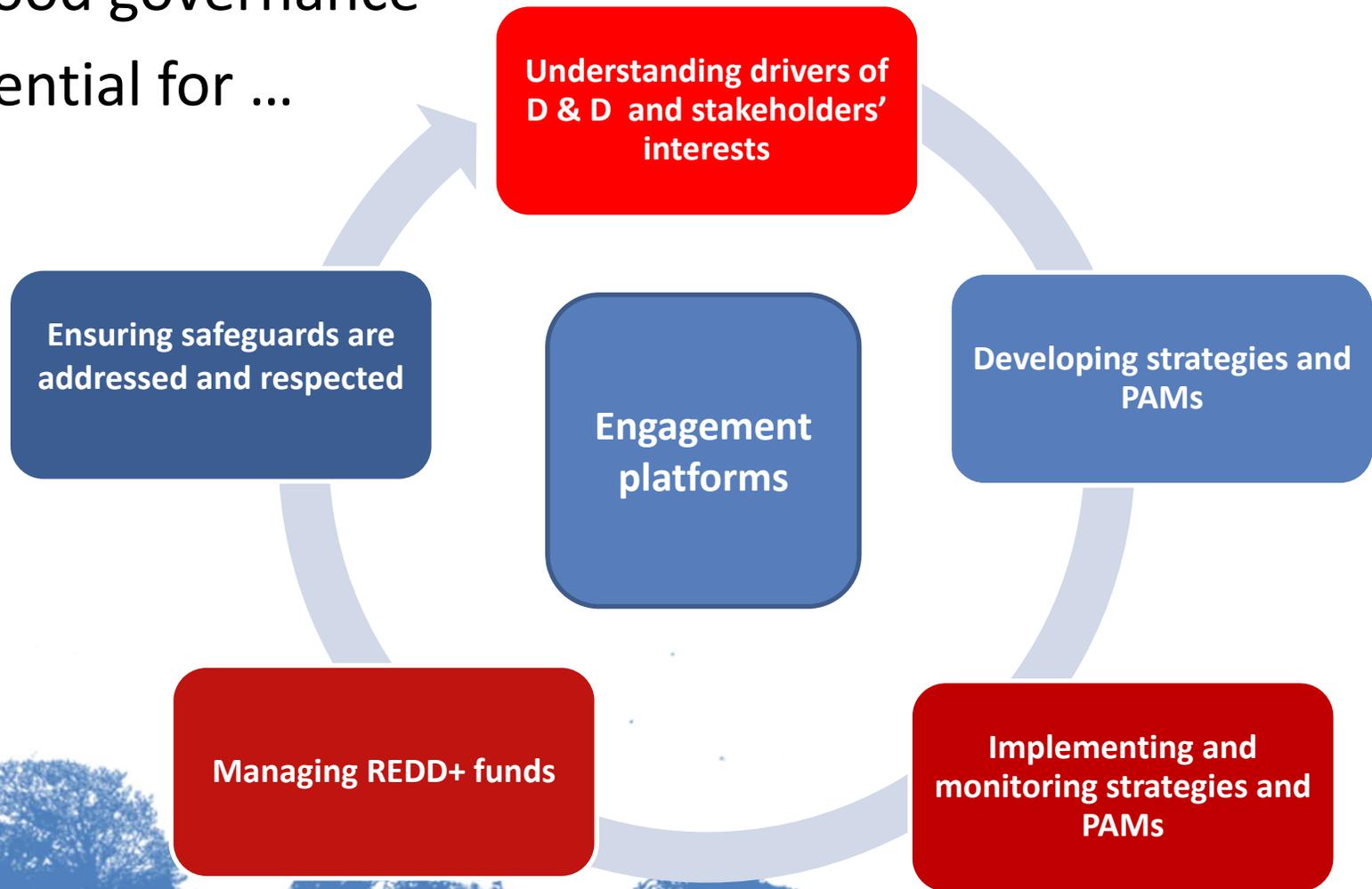
All other references to governance (2/CP.17, 1/CP.18, 10/CP.19) deal with issues of international governance – how the REDD+ mechanism will be administered



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So ... little or no guidance from the UNFCCC

But good governance  
is essential for ...



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## First Group Exercise: What is Governance and what are the key principles of governance?

- In assigned groups, please self-select a reporter!
- Task A: Review the different definitions of Governance. Which one best captures the meaning of governance, and why? (Can also identify up to two “runners-up”)
- Task B: Review the list of principles of good governance. Which three do you think are most important, and why?
- Prepare a report describing your selections, and outlining your reasons for selection



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## Second information session

# The Principles of Good Governance for REDD+



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## Governance Definitions

There are many – no one is “correct”!

See hand-out to match definition to source

Here is one proposal for an integrated definition,  
developed by 6 countries affected by the 2004 tsunami

*Governance is the interaction of statutory and customary laws and formal and informal rules, institutions, and processes through which a society exercises powers and responsibilities to make and implement decisions affecting natural resources and natural resource users and to hold decision-makers, implementers, and natural resource users accountable.*



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# Principles of Governance

Participation/  
Inclusiveness

Rule of law

Transparency/  
Accountability

Respect for  
rights

Performance/  
Effectiveness

Equity

Capacity

Etc...

# Transparency and accountability



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## Transparency and accountability: **Why ?**

Ensuring transparency and accountability risks and opportunities when designing and managing REDD+ funds has shown to

- decrease the risks of conflicts; and
- increase donors' confidence, and hence fund capitalization.



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Transparency and accountability: Good governance practices

Start with an **understanding of transparency and accountability enabling context** of a particular country (legislation, audit agencies, freedom of information...)

Transparency measures

- a clear set of minimum fiduciary standards; and
- financial accounts, donor contributions and expenditures are made publically available in a timely and accessible manner.



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Transparency and accountability: Good governance practices

## Decisions to govern REDD+ Funds (examples)

- Meetings are open to observers;
- Balance of power between donor and recipient countries in the decision-making process; and
- Clear guidelines on conflicts on interest in Fund by-laws.



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## Transparency and accountability: Good governance practices

### Oversight, complaints and redress

- Responsibilities for managing and monitoring corruption risks are clear and provided capacities.
- An official independent investigative body provides clear oversight over financial management and deals with allegations of fraud, misuse and other corrupt practices.
- Internal and external independent financial, performance and impact audits are regularly conducted.
- Preventive systems are emphasized and sanctions are coherently applied.



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## Transparency and accountability: Country examples

- **DRC** has integrated in the Operational Manual of its National REDD+ Fund a number of measures related to **proactive information disclosure, detection, reporting and sanction of misuses.**
- **Brazil's Amazon Fund**
  - **strong financial management capacities.**
  - Civil society representatives, federal and state representatives are active in the Fund **Multi-stakeholder Guidance Committee.**
- The Congo Basin Forest Fund allows **sub-national and local entities direct access to funds.**

# Respect for Rights



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## Respect for Rights

- Rights to land and resources are an element of good management, even in the absence of REDD+.
- Clarity on rights will facilitate early, effective, and sustainable action on REDD+.
- Problems arise through lack of formal recognition of customary rights.



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## Recognition of Customary Rights

- 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.
- Statutory law should be aligned with customary practices to avoid potential conflicts over land that could interfere with REDD+.



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# Recognition of Customary Rights

- Engagement of customary land owners is required to ensure the successful implementation of REDD+ at the local level.
- Effective and equitable local property rights of men and women are needed to identify beneficiaries of REDD+ revenues.
  - Women's and customary rights to forests and land resources need to be recognized to guarantee an equitable distribution of REDD+ benefits.



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## Respect for Rights – Captured by Cancun safeguards

### Two elements to a country approach to safeguards :

1. policies, laws and regulations (PLRs) that clarify the objectives and requirements to address the specific risks and benefits of REDD+ in the country

**Example for safeguard a): a national development strategy**

**Example for safeguard b): a national law on freedom of information**

2. a safeguard information system (SIS) that collects and provides information on how safeguards are being addressed and respected

**Example: governance indicators , and associated data, developed through a participatory governance assessment or a corruption risk assessment**



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## Respect for Rights – Captured by Cancun safeguards

Cancun safeguards related to governance:

- a. Policy alignment (national & international)
- b. Forest governance (transparency & effectiveness)
- c. Knowledge and rights of indigenous peoples & local communities
- d. Full and effective participation of relevant stakeholders, in particular IP & local communities  
(In addition, gender considerations)



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# Carbon Rights

- **Carbon Rights:** Who has rights to carbon resources, for how long, and what conditions?
- **Is there a need for defining carbon ownership?**
  - Yes, if a project-based approach to REDD+ is adopted, including trading of credits; e.g., voluntary carbon markets
- **For REDD+ under the UNFCCC:**
  - Countries are rewarded not for carbon but for emissions reductions and removals
  - Reporting and receipt of revenues occurs at the national level, so “ownership” is clear
  - Assessing emission reductions at a scale corresponding with land ownership is prohibitively expensive

# Participation / Inclusiveness



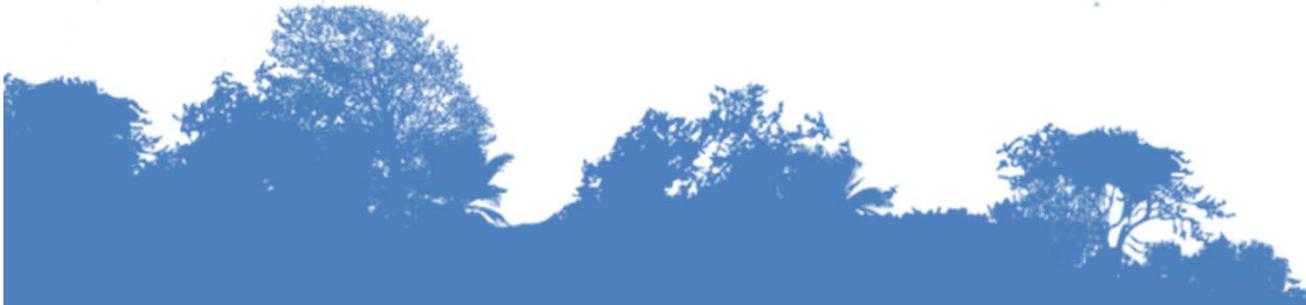
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# Participation / Inclusiveness: Who ?

Engagement of stakeholders cuts across all principles

Stakeholder engagement platforms can be, for example:

- A roundtable of private sector companies (e.g. Indonesia Palm oil)
- An multi-stakeholder expert body (Ex: Indonesia PGA experts)
- A Task Force between two or more ministries (Ex: Cambodia National REDD+ Task Force)
- An Advisory group of civil society and Indigenous peoples (Ex: Cambodia REDD+ Consultation group)
- A donor roundtable
- Provincial working groups (Vietnam and Indonesia) – well balanced in terms of whose interests they represent (government, private sector, academia, civil society, local communities and indigenous peoples)



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# Participation / Inclusiveness: How ?

Established platforms are preferable to ad-hoc consultations

- Foster trust
- More sustainable

Example: The Indonesia PGA Expert Panel

- Active in guiding the collection of governance data
- Formulates recommendations that have led to 22 new regulations
- Provide guidance on an evaluation of the online forest permit system
- Provide advice on how to evaluate the multi-door approach to enforcing forest crimes
- All decisions made by PGA Expert Panel is done in consultation with larger provincial and national working groups
- The Expert Panel and working groups are well-balanced in terms of who they represent (government, private sector, civil society, local communities, indigenous peoples etc.)



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## Participation / Inclusiveness: Public Participation

Public participation is one of the most widely recognized principles of sustainable development and should be applied to REDD+ development and implementation at all levels to promote participatory policy and law development.

Participatory processes facilitate institutional cooperation in terms of sharing relevant information before a decision affecting indigenous peoples, forest-dependent communities is made, and building on their capacities and knowledge concerning REDD+ and forest law.



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## Participation / Inclusiveness: Public Participation

Participation is a key approach to address tenure-related issues, identify land uses in areas selected for REDD+ projects and 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 the participatory rights of forest-dependent communities.



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## Participation / Inclusiveness: Effective and Inclusive National Governance Systems for REDD+

Governance interventions that governments and national stakeholders have identified as priorities include:

- Stakeholder consultation and participation in REDD+ planning and implementation;
- Cross-sectoral coordination in REDD+ planning and implementation; and
- Legislative review towards reform & enforcement.



# Performance/Effectiveness and Equity



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# Performance/Effectiveness and Equity

## RELATIONSHIP BETWEEN GOVERNANCE & EQUITY

“Equity” does not mean “equal”.

“Equity” means “fair”.

Equity is the result of participation,  
transparency, accountability and the rule of  
law.



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## Performance/Effectiveness and Equity

UNFCCC approach to promote effectiveness is through incentives:

Cancun Safeguards text:

“... the following safeguards should be promoted and supported:

(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.**



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# Performance/Effectiveness and Equity: Benefit Sharing

## **Mechanisms to ensure equitable distribution of benefits between various types of stakeholders:**

- Critical to incentivize the behavioural change that will address drivers
- REDD+ benefits: cash payments, no-interest loans, capacity-building, services, goods, or tax credits
- Key: authority over the land, whether vulnerable groups are involved

## **Existing PLRs must be considered**

- Existing national income distribution to communities based on revenue-generating activities (e.g. community forestry programmes)
- Links with tenure security: (i) elite capture, (ii) payment allocation, (iii) tenure reform efforts



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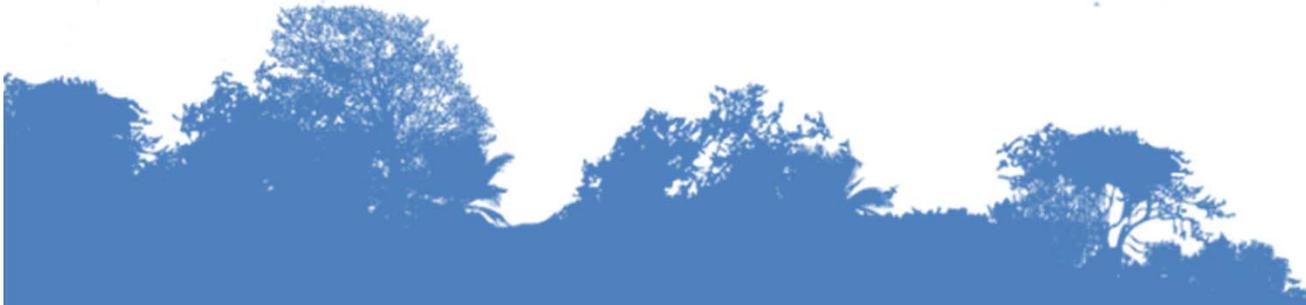
# Performance/Effectiveness and Equity: Benefit Sharing

## Necessary legal actions

- Benefit-sharing systems should be: (i) transparent, (ii) adequate, (iii) flexible, (iv) equitable, (v) efficient
- Clear and mutually-agreed authority
- Concerns and interests of each stakeholder group must be mapped and addressed
- FPIC of stakeholders
- Ensure dispute settlement grievance and redress mechanisms are in place

## Indonesia: 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



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## Performance/Effectiveness and Equity: Incentives for Private & Public Investments

Political and land tenure issues constitute the major risks for foreign operators willing to invest in REDD+:

- Updated legal frameworks, including foreign investment laws, will crucially reduce risks to both public and private investors
- Adoption of fiscal incentives, such as tax exemptions or low interest loans, can also promote REDD+ and attract investment

Before legislative reforms are enacted, knowledge gaps and technical legal issues relevant to REDD+ should be clarified to avoid inconsistencies between national laws and international provisions.



# Rule of Law and Legal Preparedness



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# Rule of Law and Legal Preparedness

## Key Legal Issues

- Drivers of deforestation and forest degradation
- Harmonization of terminology
- Gaps/overlaps between sectoral laws
- Safeguards
- Clarification of Tenure Rights
- Conflict resolution
- Law enforcement



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## Rule of Law and Legal Preparedness: Drivers

### **Legal frameworks can institutionalize policies and actions that:**

- Create financial incentives to address drivers
- Support monitoring and law enforcement capacity
- Enable cross-sectoral policies and commitments

### **Example: Nepal**

- Conflicts between the Forest Act (1993) and the Local Self Governance Act (LSGA, 1999) have led to negative environmental consequences including deforestation and forest degradation. The LSGA gives certain rights to local governments to prepare and implement forest management plans and impose various taxes on forest products whereas the Forest Act invests such rights to the District Forest Officers (DFO) and local communities (source: Nepal's study on drivers)



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## Rule of Law and Legal Preparedness: Definitions and Harmonization

**Definitions** of forests, forest conservation, trees, deforestation, ecosystem services, can affect the achievement of REDD+ goals

**Harmonization** of REDD+ Relevant Terminology may be necessary;

- Legal inconsistencies: different legal instruments may have different definitions, undermining the Rule of Law
- Legislators may adapt existing definitions or include new ones in national laws



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# Rule of Law and Legal Preparedness: Definitions and Harmonization

## **Example: Myanmar**

- Within MOECA, Forest Department defines land with trees outside the legal forest estate as “Public Forest Land”; Ag. Dept. defines the same land as “Vacant, Fallow and Virgin Land ”

## **Example: Indonesia**

- Need to harmonise the definition of tenure rights within various laws such as the Forestry Law, Basic Agrarian Law and Regional Autonomy Law.
- Decision of the Constitutional Court (2013) that the word “state’s” should be removed in the definition of indigenous forests, thereby distinguishing between state forests and indigenous forests. Also that the definition of forests as only including state and title forests was unconstitutional

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## Rule of Law and Legal Preparedness: Sectoral Laws

- Assessment of **gaps, conflicts and overlaps between sectorial laws** is a crucial step
- **National and sub-national legislation** should be **harmonized** to acknowledge **IPs and community rights** and **secure carbon benefits**
- Essential to ensure REDD+ activities are coordinated with **inter-sectoral planning**
- Harmonized and stable legal frameworks and clear tenure systems can **reduce administrative costs of REDD+ implementation** and **attract investment**



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# Rule of Law and Legal Preparedness: Sectoral Laws

## Example: Viet Nam

Contradiction issue between mining and forestry planning: an inter-institutional process will be engaged between the Viet Nam Administration of Forestry (VNFOREST), which sits under the Ministry of Agriculture and Rural Development (MARD), the Ministry of Planning and Investment and local authorities to integrate REDD+ in social economic development planning at different levels



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# Rule of Law and Legal Preparedness: Legal implications of land and forest tenure

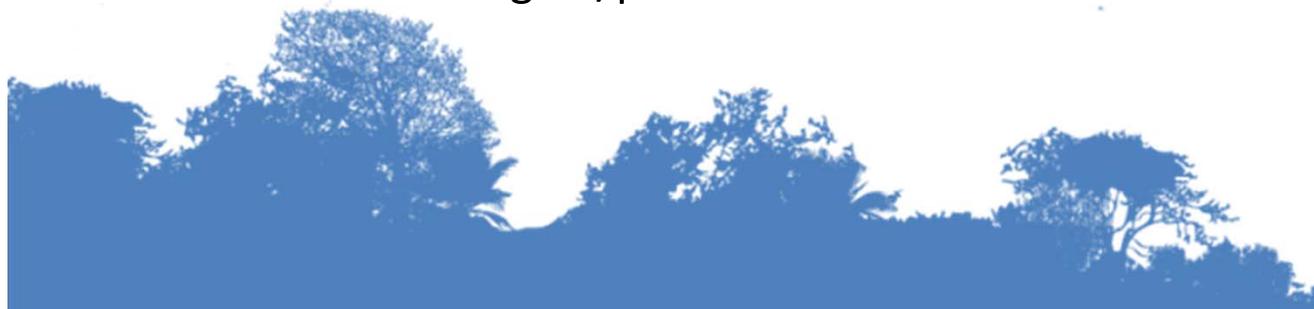
- Ensuring consistency between various tenure regimes
  - Recognition of customary rights
    - Ivory Coast: Tenure Decree (1971)
  - Legal definitions and typology of lands on which REDD+ activities will take place
    - Honduras: reforms to solve land categorization conflicts between the Law on Forestry, Protected Areas and Wildlife, the Agrarian Reform Law and the Law on the Protection of the Coffee Activity
  - Legal reforms of the administrative processes to secure tenure
    - Compliance procedures, e.g. Rules for tenure certificates
    - Legal provisions on conflict management modalities (c.f. conflict resolution)
    - Empowerment of marginalized groups (cf. stakeholders engagement)
  - Harmonize tenure legislation and land use planning
- Implications for benefit-sharing modalities and investment attractiveness



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# Rule of Law and Legal Preparedness: Conflict resolution

- Formal recognition of existing mechanisms
  - May require changes to statutes of dispute settlement institutions (e.g. courts, arbitration, customary dispute settlement modalities, etc.)
    - Revision by CONAFOR (Mexico's National Forest Commission) of its complaint processes to extend it to REDD+ activities and to be consistent with current best practice
  - Resolution modality specific to conflict type
    - Land conflicts to be dealt with by the Land Commission
    - Contractual issues to be resolved under existing judicial system
- Creation of a new mechanism
  - Specialized courts: New statutes and expertise to be built
  - Grievance (redress) mechanism: for alleged minor or non-systematic violations of rights/policies



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## Rule of Law and Legal Preparedness: Institutional arrangements & law enforcement

- Institutional arrangements affect legislation and regulation related to institutional coordination for REDD+
  - Viet Nam/Lao PDR: Forest agencies responsible for administrative fines (minor infractions); major crimes the responsibility of the prosecution service, but no incentives to act
- Law enforcement
  - Strengthening institutional mandates and capacities is key



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## Second Group Exercise: Principles and components of “good governance” – how do they interact?

### Components of governance

- **Laws and other norms**
- **Institutions**
- **Processes**



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## Second Group Exercise: Principles and components of “good governance” – how do they interact?

- In assigned groups, please select a reporter!
- Review your three key principles of good governance
- Consider the three components of governance
- Analyze how these interact
- Identify the constraints in your country to effective interaction of principles and components
- Prepare a presentation to report back



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Third information session

# The Components of Governance for REDD+



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# The Components of Governance for REDD+

## Components of governance

- **Laws and other norms**
- **Institutions**
- **Processes**



## The Components of Governance for REDD+: Interaction with principles

	Transparency accountability	Participation	Rule of Law	Respect for Rights	Performance
<b>Laws and other norms</b> WHO and HOW Formal/statutory Informal/customary/trad'l					
<b>Institutions</b> WHO and HOW Formal/statutory; Informal/customary /traditional Gov't, private sector, CSO					
<b>Processes</b> WHO and HOW Formal/statutory Informal/customary /traditional					

## The Components of Governance for REDD+: Interaction with principles

	Transparency accountability	Participation	Rule of Law	Respect for Rights	Performance
<b>Laws and other norms</b> WHO and HOW Formal/statutory Informal/customary/trad'l					
<b>Institutions</b> WHO and HOW Formal/statutory; Informal/customary /traditional Gov't, private sector, CSO					
<b>Processes</b> WHO and HOW Formal/statutory Informal/customary /traditional					

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# The Components of Governance for REDD+: Governance Gaps & Needs

## Governance Assessments:

- Diagnostic tools to analyze and obtain credible information.
- Tools to mobilize public opinion, create demand for accountability, and ensure leadership of government in strengthening governance outcomes.



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## The Components of Governance for REDD+

# Participatory Governance Assessments (PGA)

### What is the PGA?

- An inclusive process with a view to produce robust and credible governance information
- Includes government, civil society, academia and private sector actors
- A first step towards improving governance weaknesses and build further on strengths/ enabling conditions



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## The Components of Governance for REDD+

### How is the PGA relevant from a country perspective?

- To highlight shortcomings and relatively low performance for strategic action
- Provides robust governance information and evidence which can feed into and support government's policy-making, planning and strategies at national and sub-national levels
- As a basis and starting point for policy reform
- As comprehensive governance data which can feed into parts of the national Safeguards Information System, which Indonesia in turn will report back to UNFCCC
- To track progress or regression (if updated regularly) to allow for adjustments/reorientation



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# The Components of Governance for REDD+

## PGA pilots

- **Indonesia:**  
launched its first report in 2013, and the second report is due early 2015
- **Vietnam:**  
launched its first report September 2014 at provincial level, national launch will be November 2014
- **Nigeria:**  
plan to launch their first PGA report Q4 2014



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# The Components of Governance for REDD+

## Preliminary results from the PGA work in Indonesia

Findings and recommendations from the PGA report in Indonesia have until now **informed policy-making and initiated changes** in governance systems and structures already.

### Examples:

- 21 regulations are passed to address gaps found and mitigate corruption risks
- Sanctions are developed to avoid corrupt practices by government officials
- PGA framework used as REDD+ Agency's own monitoring tool of the entire REDD+ process in Indonesia
- Set of sanctions for public officials to encourage non-corrupt practices



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## Third Group Exercise: Developing a plan of action on governance

- In assigned groups, please select a reporter!
- Review your three key principles of good governance and interactions with the three components of governance
- Discuss how to prepare an action plan to address the constraints in your country to these interactions
- Prepare a presentation to report back



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# Expected Learning Outcomes

This module will provide an overview of good governance for REDD+. In particular you will:

Understand what is “governance”, “good governance”, and the importance for REDD+ implementation

Understand the principles of credible and inclusive national governance for REDD+ implementation;

Understand how principles of good governance interact with the three components of governance

Be able to develop an action plan to identify and address weaknesses in governance for REDD+ in your country

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# Debrief and Review

What is “governance”, and the importance for REDD+?

- Multiple definitions
- Cancun safeguard (b)

Principles of good governance

- Open ended, but include transparency, accountability, rule of law, performance, respect for rights ...

Interaction of principles with three components of governance

- Analysis of interactions can identify key areas for action

Developing action plan

- Governance assessments ...

