



Photo: Andrew Zelemen

How can REDD+ promote and support social safeguards in national laws?

A comparative look at the integration of social safeguards into the laws of Ghana, Liberia and the Republic of Congo.

Executive summary



This publication has been funded with UK aid from the UK government. The information contained in this document is the sole responsibility of its and does not necessarily reflect the UK government's official policies.



The climate challenge

In tropical forested countries, the climate challenge is set against the backdrop of national laws to protect, restore and manage the use of forests. International climate and forest initiatives, including REDD+ (Reducing Emissions from Deforestation and forest Degradation), contribute to strengthening national laws to improve forest governance. One area of particular focus for REDD+ is the promotion of social and environmental safeguards to be considered when undertaking REDD+ activities ('the Cancun safeguards').¹ These safeguards aim to guarantee the environmental objectives of REDD+, while avoiding negative social outcomes and promoting co-benefits for people, biodiversity and climate.

In this briefing, ClientEarth compares how the laws of Ghana, Liberia and the Republic of Congo (RoC) promote and support three REDD+ safeguards – b), c) and d) – related to social protections:

- b)** Transparent and effective national forest governance structures, taking into account national legislation and sovereignty.
- c)** Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples.
- d)** The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision.

Within safeguard c) on the rights of local communities and indigenous peoples (LCIPs), we focus on two specific rights – land tenure rights and benefit sharing.

In considering the extent to which REDD+ social safeguards are integrated into national laws and governance systems, the briefing also identifies gaps that the REDD+ process may be well placed to address. We offer recommendations based on lessons learned from Ghana, Liberia and RoC, for other countries of West and Central Africa who are considering how to embed REDD+ safeguards into their national laws.

A summary of national approaches to integrate REDD+ social safeguards into law is available in the **Table** on the back cover.

For the full briefing, visit:
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What is REDD+?

REDD+ is an international mechanism, established under the United Nations Framework Convention on Climate Change (UNFCCC), which aims to offer financial incentives to developing countries to reduce deforestation and forest degradation.

The aims of REDD+ are:

- Reducing emissions from deforestation and forest degradation,
- Sustainable management of forests,
- Conservation of forest carbon stocks, and
- Enhancement of forest carbon.

1. Participation

Inclusive, active multi-stakeholder participation is a prerequisite for equitable and effective REDD+. Recommendations from the experiences of Ghana, Liberia and RoC:

- National laws should provide for inclusive stakeholder participation so that all stakeholders are able to input their views and meaningfully contribute to decision-making on REDD+ projects and law and policy reform.
- Environmental Impact Assessment (EIA) laws can offer a 'good practice' example of how to integrate the practical specificities of public consultation on project-level decision-making into law. Given the relative novelty of REDD+, EIA legislation is not always clear about whether REDD+ projects fall within its remit; amending the relevant legislation to explicitly include REDD+ projects will clarify this point.
- Joint decision-making or free, prior and informed consent (FPIC) are perhaps the most powerful forms of participation. It is critical for national laws to enshrine joint decision-making and/or FPIC in order to ensure higher participation in REDD+. Here, the Land Rights Act in Liberia and the Indigenous Peoples Law in RoC offer inspiration, although they include few details on the process that should be followed for FPIC to be granted.
- It is the mandate of government to affirm and facilitate participation of the public in policy-making processes. On a project level, the right to public participation should be integrated into law, which must clarify the roles and responsibilities of the private sector and civil society, to ensure consistency across projects.

2. Transparency

Transparency is at the core of good governance and is based on accountable, documented and public decision-making processes that follow pre-determined rules. Recommendations from the experiences of Ghana, Liberia and RoC:

- The law should establish a process of documented decision-making, with established rules that all public decision-makers must follow.
- Public information about government decisions should be accessible, including by non-governmental organisations (NGOs) and forest-dependent LCIPs. Only if NGOs and LCIPs are able to determine how a decision was made can they seek to hold the decision-maker to account for any inconsistencies in the process.
- Transparent forest governance can be best achieved through clear legal and institutional arrangements. For example, the Liberian Freedom of Information Act offers an overarching and clear expression of rights to information.
- Where the constitution recognises the right to information and/or when an overarching law on access to information exists, translating this high-level principle into transparent forest governance structures requires decision-makers to implement and enforce mechanisms throughout the stages of forest classification, allocation, and management.

3. Local Community and Indigenous Peoples' Land Rights

A clear land rights regime is crucial for REDD+ projects to have a secure and legal basis, to identify and gain the consent of land rights' holders, and determine who may be eligible for REDD+ benefits. Recommendations from the experiences of Ghana, Liberia and RoC:

- LCIP's land tenure rights should be formally recognised in and protected by law. Land tenure rights are not limited to full ownership and can be based on any combination of a bundle of overlapping rights including access, use, management, exclusion, transfer, and alienation rights. Where LCIPs do not have full ownership of forest land, they may still have other rights to that land, which should also be formally recognised in and protected by law.

- There are many ways for countries to approach legal clarification of land tenure rights, from a completely new Land Law to tailored law reform of existing laws. Governments should consider the most appropriate option in the country context.
- LCIPs should be part of the decision-making process for any REDD+ project affecting land and forest resources that they use and manage. Furthermore, where their land tenure rights are recognised, this should also result in LCIPs being granted the right to give their FPIC for a REDD+ project affecting them.

4. Benefit sharing

Equitable sharing of benefits (financial or otherwise) derived from REDD+ projects is crucial for incentivising the behaviour changes required for improved forest management. Recommendations from the experiences of Ghana, Liberia and RoC:

- In the design of REDD+ benefit-sharing mechanisms, land rights and carbon rights must be considered, particularly in countries where these regimes do not recognise all stakeholders.
- Where REDD+ benefit-sharing mechanisms are based on principles created in policy, these principles should be anchored in national law, to ensure they are enforceable and consistently applied across all REDD+ projects.
- Enshrining REDD+ benefit-sharing principles in law constitutes an opportunity to build on already existing sectoral mechanisms and to address their weaknesses. In this way, REDD+ benefit sharing can be mutually beneficial: REDD+ learns lessons from existing mechanisms and constitutes an avenue to consolidate and strengthen benefit-sharing across sectors.



Photo: Benjamin Ichou

Table: Summary of national approaches to integrate REDD+ social safeguards into law

	Republic of Congo	Liberia	Ghana
Participation	<ul style="list-style-type: none"> The draft Forest Code makes explicit reference to participation of LCIPs in REDD+, although it is yet to be passed by Parliament. The Indigenous Peoples Law requires IPs to be consulted in a culturally appropriate manner in policy-making or prior to project decisions, to obtain their FPIC. 	<ul style="list-style-type: none"> Forest laws and policies establish a broad principle of participatory forest policy-making, including requirement for stakeholder inputs to be considered and integrated into regulations. The Land Rights Act includes FPIC as a legally binding obligation for any “interference with or use of” customary lands. 	<ul style="list-style-type: none"> The Constitution and the Forest and Wildlife Policy 2012 establish a broad principle of participatory forest and wildlife policy-making. EIA laws and regulations establish more detailed public participation requirements.
Transparency	<ul style="list-style-type: none"> The Indigenous Peoples Law recognises IPs’ right to information on projects affecting them, including potential REDD+ projects; but it is hardly applied in practice. The draft Forest Code broadens the scope of mechanisms aiming to ensure access to information compared to the current law. It provides for the creation of REDD+ registers accessible to the public. 	<ul style="list-style-type: none"> Liberia’s forestry laws include mention of access to information. However, these laws are limited to the logging sector and fail to incorporate REDD+. Liberia’s Freedom of Information Law, however progressive, is not implemented in practice. 	<ul style="list-style-type: none"> The recently adopted L.I.2254 sets forth transparency rules for the forestry sector. However, its scope is limited to the sustainable management of forests and logging and fails to clearly incorporate REDD+.
Land tenure rights	<ul style="list-style-type: none"> The new Land Law makes it difficult for LCIPs’ land rights to be recognised and formally secured. The new Land Law contradicts the Indigenous Peoples Law regarding ownership of land rights, and particularly forest land rights. The latter should be considered as an exception to the Land Law. 	<ul style="list-style-type: none"> The new Land Rights Act gives legal recognition and protection to customary land ownership. However, it will need considerable time and political will to be effectively implemented. Liberia still has to deal with the previous granting of overlapping rights and lack of a land cadastre. 	<ul style="list-style-type: none"> REDD+ is situated within a legal framework that does not offer tenant farmers or local communities land ownership and only few tree tenure rights. This means these key stakeholders stand to receive few benefits, such as payments for protection or nurturing of trees.
Benefit sharing	<ul style="list-style-type: none"> Congo has adopted broad REDD+ benefit-sharing principles that are to be adapted to each REDD+ project. This leaves significant discretion to REDD+ projects. Benefit sharing is legislated in the forestry sector. Local development funds operate in a multi-stakeholder framework in which logging companies finance LCIPs’ projects. Their scope is being extended in the new draft Forest Code. 	<ul style="list-style-type: none"> Liberia’s REDD+ Strategy stipulates that REDD+ benefit sharing will build on and integrate the numerous mechanisms existing across other land-use sectors, including the forestry sector. The relatively progressive benefit-sharing mechanisms in the forestry sector suffer, however, from legal and political gaps hindering their full implementation. 	<ul style="list-style-type: none"> A national REDD+ benefit-sharing mechanism has not yet been agreed upon, although the Ghana Cocoa Forest REDD+ Project is pioneering with a project-level mechanism. Benefit-sharing mechanisms in the logging sector demonstrate the need to integrate all relevant stakeholders, to achieve behaviour change. This includes particularly LCIPs and tenant farmers.