



Practical guide on law reforms in the forest sector

With lessons from Côte d'Ivoire, Ghana,
Liberia and the Republic of Congo

Authors

This Guide was developed by **Nathalie Faure**, **Tanja Venisnik** and **Benjamin Ichou**. It benefited immensely from the contributions, the comments and the case studies produced by **Clement Akapame**, **Inès Gady Mvoukani**, **Lucia DS Gbala**, **Sagie F Kamara**, **J Awia Vankan** and **Raphael Kouamé Kra**.

Contacts

Tanja Venisnik

Law and Policy Advisor

Email tvenisnik@clientearth.org**Tel** +44(0)20 3030 5931**Benjamin Ichou**

Law and Policy Advisor

Email bichou@clientearth.org**Tel** +44(0)20 3030 5953www.clientearth.org

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

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Acronyms

CRL	Community Rights Law with Respect to Forest Lands, Liberia
CSO	Civil society organisation
EU	European Union
EU-FLEGT	European Union's Forest Law Enforcement, Governance and Trade Action Plan
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, prior and informed consent
LWG	Legal working group
NDCs	Nationally Determined Contributions
NFRL	National Forestry Reform Law, Liberia
PGDF	Sustainable Forest Management Platform (Plateforme pour la Gestion Durable des Forêts), Republic of Congo
REDD+	Reducing Emissions from Deforestation and forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries
VPA	Voluntary Partnership Agreement

Glossary

The following glossary is a non-exhaustive collection of definitions for key terms used in this guide. It is particularly important as different terms may refer to similar concepts in different jurisdictions.

Legal framework: In this guide, we generally use the terms 'legislation' or 'legal framework' to encompass all normative instruments dealing with a specific thematic area. This can include for example all the laws and decrees governing forests, agriculture or natural resources. Sometimes, the term 'law' is used as a synonym for legal framework.

Law: 'Law' refers to a set of rules laying down the key principles and generally adopted by a parliament. In that context, laws are further regulated in decrees.

Synonyms to law include:

- **Primary legislation:** Commonly used in common law countries as a synonym for law.
- **Act; statute; legislative instrument:** A text voted by parliament, mostly in common law countries.
- **Code:** A consolidated collection of norms dealing with the same topic. Codes are common in civil law countries and sometimes include both legislative and regulatory chapters.
- **Ordinance:** A law adopted by the government following a special procedure under which the parliament agrees for the government to legislate on its behalf.

In this guide, 'law' is also used as a synonym for legal framework.

Regulation: Regulations are a set of norms detailing the rules provided in laws. Regulations are generally adopted by administrative bodies.

Synonyms for regulations include:

- **Subsidiary legislation; secondary legislation; statutory instrument (SI)** are terms commonly used in common law countries
- **Decree:** Type of regulation commonly adopted in civil law jurisdictions to implement a law.
- **Order:** Type of regulation commonly adopted in civil law jurisdictions to implement a decree.

Provision: One of the items regulated by a law or regulation. It is commonly referred to as an article (in civil law countries) or a section (in common law countries). Provisions are usually grouped thematically into categories, for example as chapters, titles or books.

Bill: In common law countries, while it is being discussed by parliament, a draft law is referred to as a bill.

Amendment: An amendment is a modification made to a legislative or regulatory provision.

Non-normative instruments: Non-normative instruments complement legal frameworks although they are not binding. They can either consist of documents providing a political vision such as a Non-normative instruments: Non-normative instruments complement legal frameworks although they are not binding. They can either consist of documents providing a political vision such as a master plan, policy or strategy, or provide details to facilitate the legal framework's implementation, such as guidelines.

Introduction

Background

Over the past few decades, there has been an increasing recognition of the crucial role played by forests, particularly in terms of climate protection. This has led to a wave of laws governing the forest sector to be revised, particularly in tropical and subtropical countries. These reform processes seek to address new national challenges for improved protection and management of forests. They also consider the international commitments taken by governments such as those enshrined in the European Union's Forest Law Enforcement, Governance and Trade (EU-FLEGT) Action Plan, REDD+ processes (reducing emissions from deforestation and forest degradation, and fostering conservation, sustainable forest management, and enhancing forest carbon stocks) or those found in the Nationally Determined Contributions (NDCs) within the Paris Agreement framework. These processes and their efficiency will rely on the existence of a robust and fit-for-purpose legal framework.

Objective

If legal reforms are a condition for any change to happen, implementation of the law is key for this change to materialise. Good legal reforms are therefore a critical first step in the process of making real and long-lasting change. ClientEarth has been working alongside national civil society organisations (CSOs) and partners in West Africa (Ghana, Liberia and Côte d'Ivoire) and Central Africa (Republic of Congo and Gabon¹) to help improve forest governance by supporting current legal reform initiatives in the forest sector. This guide offers reflections around our experience with these reforms as a way to share our learning. We hope that it will be used to support and inform stakeholders engaged in legal reforms in the forest sector in the Congo basin, West Africa. Countries in Latin America and the Asia-Pacific region currently involved in legal reforms can also harness this experience.

This guide is not intended to be exhaustive. Instead, it presents our perspective on the key aspects of carrying out a legal reform process. It provides reflections on qualitative law-making processes – such as the useful checklist of dos and don'ts of law reforms found in **Table 1** – including both aspects related to planning and executing a law reform. It also includes a few principles and tools relating to drafting legal texts.



¹ ClientEarth worked in Gabon in 2011–2017, in particular on legal reforms. However, at the time of writing, ClientEarth is not regularly active in the country.

Who should use this guide?

This guide is primarily aimed at governments, civil society and other stakeholders engaged in legal reforms in the forest sector, such as donors funding these reforms. The guide covers legal reforms in the forest sector, including creating and revising legislative instruments (laws), and subsidiary legislation (implementing texts or regulations). It mainly focuses on the reform process run by the administration before the formal adoption of legal texts by state institutions, whether the parliament, the council of ministers or another body, according to the legal provisions in question. When we refer to 'legal reforms' and the 'legal reform process' in this guide, we therefore focus on those early stages where the legal review or design is planned and carried out and where civil society and other actors may have an opportunity to formally engage.

Why are legal reforms necessary? Why focus on the reform process?

Legal reforms are a key focus as they allow for the modification of rules and conditions framing the use of forests, as well as the rights and obligations of different stakeholders. Reforms are necessary whenever there is a change in situation or a shift in priorities. They are also an opportunity to reflect local practices and may be the result of:

- **A specific change in situation or practices:** For example, recognising independent forest monitoring by civil society or a new wildlife or timber species which needs protecting.
- **New national and international commitments:** For example, recognising new commitments to combat deforestation or illegal timber harvesting through processes such as REDD+² or Voluntary Partnership Agreements (VPAs).³
- **A need to further recognise the rights of different stakeholders:** For example, acknowledging the free, prior and informed consent (FPIC) of local communities and indigenous peoples, which allows them to give or withhold consent to a project that may affect them or their territories.
- **A need for clearer rules on the use of forest areas:** For example, when a new type of forest area is created, such as agroforestry areas or community forests.

To ensure that high-quality laws are drafted and can be easily implemented, it is crucial to understand the challenges of legal reform processes, as well as the key requirements for the smooth conduct of these processes. A clear understanding of the laws and their wide dissemination are also crucial to the successful enforcement of the law in practice. It is also important to think about what can be reasonably achieved through the law reform process and to communicate this to stakeholders. This will help to avoid raising expectations and help stakeholders focus on strategic changes to achieve.

Structure of the guide

The guide consists of the following sections:

Section 1 outlines the key steps in designing and carrying out a quality law reform process, including the first steps to undertake before it begins and the importance of identifying who should participate.

Section 2 then describes how to ensure meaningful and effective stakeholder participation, including civil society organisations.

Sections 3 and 4 look at how to design and draft clear and coherent laws to ensure that new laws are both valid and consistent.

Section 5 includes a series of short case studies which present lessons learnt from West and Central Africa.

The **conclusion** provides a useful checklist of key dos and don'ts to consider when beginning any legal reform process.

² 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 emissions from deforestation and forest degradation

³ Voluntary Partnership Agreements are bilateral legally binding trade agreements between the European Union and voluntary timber-producing countries outside the EU.



1. How to design and carry out a quality reform process

To carry out a widely accepted and qualitative reform process, it is important to focus on the reform planning stages (**Section 1.1**), as well as the stages of the reform itself (**Section 1.2**). We also suggest thinking about learning through action or an iterative reform process (**Section 1.3**).

1.1 What are the steps prior to the reform?

Carrying out a qualitative reform process requires appropriate planning with a clear vision and a realistic timeline outlining the various steps. These include developing a methodology for consulting the relevant stakeholders (see also **Section 3** on participation). The following sections outline key issues which should be identified, clarified or put in place prior to consultation.

The existence of a clear forest policy

The vision of the forest sector is generally outlined in a national strategic forest policy document. This lays out the sector's direction and priorities for the years to come. It is essential that a clear and coherent forest policy is developed or revised before starting the reform process or drafting legal texts. As stressed by the Food and Agriculture Organization of the United Nations (FAO), the law is only an instrument for implementing a determined strategy.⁴

The key objectives of the reform

Why is this reform being carried out and why is it necessary? What are the objectives of the reform? Once the forest policy has been clarified, the vision, objectives and specific priorities of the legal reform should be identified. This must be done in a strategic way and should be in line with the direction of the policy. It is key to ensuring that legal amendments will be tailored and responsive to the outcome sought by carrying out the reform, rather than being drawn by wider political or economic considerations, which may shift.

The principles with which the reform must comply

It is crucial to identify the principles that will guide this reform, such as transparency, inclusive stakeholder participation or gender sensitivity. These aspects should be reflected by drawing up a timeline and methodology on how these principles will be adhered to during the reform process in practice.

The stages and conditions prescribed by the Constitution and/or law for drafting the legal text

Generally, a country's Constitution – and sometimes other legal texts such as acts or the statutes of parliament – will provide the conditions for law drafting, in particular with regard to the institution or person proposing the law or regulatory texts (government or parliament), depending on the hierarchical level of the text in question. These provisions also stipulate to which body these texts will be submitted (such as a National Assembly, legislature, Senate or Council of Ministers). In some countries, there is also a specific timeframe (number of days) for enacting regulatory texts once a new law (or act) is adopted, as well as a deadline for the adoption of texts by parliament. For example, in Ghana it takes 21 parliamentary sitting days for a regulatory text to be adopted after it is introduced by parliament. Finally, certain pieces of legislation foresee the enactment of further regulations or rules in a certain timeframe.

A preliminary analysis of the existing legal framework and its implications for reform

This analysis seeks to identify and gather not only the norms that may be impacted by the reform (in the forest sector but also elsewhere), but also identify norms of higher hierarchical value than the law, which will have to be considered in the context of the reform, such as the articles of the Constitution or international treaties.

⁴ FAO (2005).

A contextual analysis and legal gap analysis

Contextual analysis is a method of studying a text and its cultural, social, economic or political context while a legal gap analysis is used to examine a specific law to find gaps that may need to be addressed. You would be required to carry out such analyses to determine the outline of the reform, and in particular key provisions and chapters that will deserve particular attention during the reform process. Carrying out a contextual analysis will enable you to take stock of the current context in which the reform is set out (such as new guidelines given by specific ministries or political changes to implement). Analysing legal loopholes is crucial for identifying existing gaps in legislation before starting the reform process, and therefore which strategic elements to focus on. Such legal analysis should consider the current forest legislation and must highlight:

- the potential inconsistencies between forest legislation and legislation in other sectors which impact on forestry activities (for example, relating to land, agriculture, mining or people's rights), and
- the strengths and weaknesses of forestry legislation.

The analysis should also highlight why it is important to address these gaps, what practical issues must be addressed and, where possible, how to do so. This will help to ensure that loopholes are not overlooked as complex legal inconsistencies, but will prompt action for change instead (see also **Box 1**).

Box 1 How analysis helped reform the Forest Code in Côte d'Ivoire

In the Côte d'Ivoire, a legal working group (LWG) was established as part of the forestry legal reform. The LWG is a multi-stakeholder group that was set up in the context of an FAO-funded project to support the Ministry of Water and Forests to develop implementing decrees to the Forest Code relevant to FLEGT and REDD+ processes. The LWG analysed the 2014 Forest Code and noted inconsistencies with the legislation of other sectors such as the environment, agriculture, rural land and mining. This analysis contributed to the development of a new Forest Code in 2019.

Identifying stakeholders

Who are the main stakeholders of the reform? When identifying stakeholders, it is important to consider the different groups affected by or interested in the reform (such as local populations, civil society or the private sector) as well as the various institutions that will be responsible for its implementation (different ministries, public enterprises or other relevant committees or institutions). It is important to take the time, before starting the reform, to carefully identify the categories of people who will be invited to participate and at what level (national, regional, local). The list of individuals or groups to consult can then be refined as the people to be consulted can vary depending on the proposed texts. It will therefore be helpful to draw up a list of people/groups to consult based on the thematic areas of the draft laws. It is also possible that certain laws, due to their technical nature or the theme they address, will not require consultation with all stakeholders. On the contrary, texts that will directly or indirectly impact access to forest resources for stakeholders must be subject to a wide consultation.

Developing a clear and reasonable timeline, including a period for public participation

A successful legal reform is based on a coordinated, realistic timeline that ensures identified stakeholders can participate. As such, the reform agenda must be established jointly with all stakeholders. It should consider the complexity of the law(s) to be revised as well as contextual considerations for conducting the consultations at different levels (see **Table 2**). As law reforms can take a long time, it is essential to be realistic about what can be achieved within the timeframe of the process to keep stakeholders engaged. Setting the reform's agenda should not be solely driven by budgetary constraints. However, those constraints should be considered to ensure that the proposed reform is still practically feasible and realistic. One element that can influence the reform timeline is when governments are in the election cycle and may be less inclined to carry out ambitious reforms. A change in government during the reform process can also impact on timelines.

1.2 What are the key steps of the legal reform process?

The stages of the reform must be clearly set out on a timeline, which must include the different activities to be carried out, the deadlines assigned to each activity, and the people involved or in charge of it. The proposed timetable must be adapted to the reform in question, including:

- the number of texts to be drafted which will involve consultation with stakeholders,
- the time required by the forestry administration for their internal consultation, and
- the complexity of the proposed law(s).

In addition, the proposed period is to be assessed in accordance with the methodology that will be adopted (such as whether consultation at central and local level are carried out simultaneously or not, the number of stakeholders involved or the number of government agencies and other bodies working on draft texts).

Finally, there are also budgetary and time constraints, which will have to be considered when developing the timeline.

Apart from possible formal deadlines for drafting the law or promulgating it, the timeline and key stages in the reform process are not necessarily prescribed by law. It is therefore incumbent on the forestry ministry to develop a timeline that is adapted to the specific reform, in collaboration with the stakeholders. Involving the various stakeholders when developing the timeline and methodology has the advantage of enabling them to be actively engaged and to be more effective from the start of the process. It also helps build consensus around the modalities of the reform process and can avoid conflicts or disputes that sometimes occur when scheduling is not sufficiently participative.

Example of a reform timeline

Table 1 provides a timeline example that was proposed by Ivorian civil society organisations to conduct the reform of the texts implementing the Forest Code in Côte d'Ivoire. It may serve as an example and should be adapted. Depending on the instrument being reformed and the complexity of the reforms proposed, the duration of the law reform process may vary greatly. It is important stakeholders understand those elements, and manage their expectations accordingly, before participating in the reform process.

Table 1 Example of a reform timeline for the Côte d'Ivoire Forest Code

Stages	Estimated time to be allocated
Defining a framework for the intervention and participation of stakeholders, which may include: <ul style="list-style-type: none"> • Jointly setting out the terms for participation and representation of communities, civil society and the private sector • Creation of a multi-stakeholder committee for the development of implementing texts (stakeholder representatives) • Identifying/listing texts to be developed, drafting the consultation schedule and identifying stakeholders on the basis of these texts 	1 month minimum
Drafting first texts (Draft 1) and disseminating to stakeholders	From 1 to 6 months ⁵
First consultation period: Consultations on Draft 1 in the field and preparation and dissemination of written contributions from the various stakeholders plus consultation workshop(s) at the central level	2 or 3 months (technical and logistical preparation and field mission)
Revising the texts drawn up on the basis of the contributions made (Draft 2), summary of contributions drafted and sent to stakeholders	1 to 3 months
Second consultation period: Consultations on Draft 2 done at the central level with representatives of local populations consulted in the field	1 month
Revising the texts drawn up on the basis of the contributions made (Draft 3), summary of contributions drafted and sent to stakeholders	1 to 3 months
Validation of implementing texts: Presentation of draft texts and clear explanation of the contributions made. National validation workshop on Draft 3 texts	3 days (or more depending on the number of texts) if done through a workshop; a few weeks if field missions are planned
Review of the process and evaluation of the methodology used and the involvement of stakeholders in the drafting of the texts	One-day workshop

⁵ This will depend on the number of texts and the proposed methodology for developing them.

1.3 How to strengthen the reform process using an iterative approach

To be truly participatory, the reform methodology must ensure a bottom-up, flexible but also iterative approach that allows laws to be revised periodically. This helps to ensure that laws reflect changes in the practices and needs of local populations.

The implementation of the iterative process is particularly desirable when introducing a new approach or a new regulatory model. It is important to test the new legal framework to determine its applicability on

the ground and whether it meets the needs of the local communities affected by this framework. Feedback from the field, supported by pilot projects, will identify challenges with enforcing laws and legal provisions. These should then be adapted to better meet the requirements of the local context.

Learning from experience can help refine the legal framework through periodic reviews drawing on the experiences of local stakeholders. It is therefore useful to consider the law review process as a cycle rather than as linear, where the last stage of the process (evaluating texts) is used to enrich the next review of the legal framework (**Figure 1**).

Figure 1 The cycle of law making



Box 2 Checklist before beginning a reform process

- ✓ What is the basis for the reform?
A change in policy, in practice or other?
- ✓ Is there a clear forest policy defining the priorities of the forest sector for the coming years?
Has this policy been disseminated?
- ✓ Are the objectives of the reform clear? Are they documented and shared with stakeholders?
- ✓ Have the principles framing the reform been clearly established?
- ✓ What are the stages and conditions laid down by law for the preparation of texts? In particular, who initiated the text and to which body will this text be submitted? Is there a specific deadline for developing or validating the text?
- ✓ Has a contextual analysis been conducted? Has an analysis of legal loopholes and inconsistencies been conducted? On this basis, are the specific priorities of the reform clearly established?
- ✓ Has additional research been gathered or conducted (such as scientific reports) to substantiate and help with the changes needed in the law?
- ✓ Have the stakeholders who should be involved in the legal reform been identified? Are they sufficiently trained and informed to participate in the reform?
- ✓ Has a clear and reasonable timeline been put in place? Was it established in collaboration with stakeholders? Is there consensus over it? Does it allow sufficient time for meaningful participation by the identified stakeholders?



2 How to ensure stakeholder participation in the reform process

As outlined in **Section 1**, the full and effective participation of stakeholders is a crucial aspect of a successful legal reform process. There are different types of participation, but full and effective participation⁶ goes beyond simple access to information or consultation. It is about ensuring active engagement through dialogue and partnership between stakeholders.⁷ Here, we explore who should participate, why this participation is important and how it can be guaranteed.

2.1. Who should participate?

As discussed earlier, there are multiple stakeholders involved in developing legal texts. They may include ministries and other government agencies operating in a sector affected by the reform, civil society, local communities and indigenous populations, the private sector, development partners or experts and other resource persons who may be called upon.

At government level, a multi-sectoral approach is also important as it will allow for inter-ministerial coordination throughout the reform process. This can also be important to ensure that reforms are successfully passed, which is more likely if they have broad support from related agencies. The reform should involve several stakeholders as well as the Ministry of Forests, including other relevant sectoral administrations (such as environment, tourism, economy, land planning, finance, land affairs, agriculture, mining) as well as development partners.

Finally, the legal drafting must be led by a team of technicians and with the involvement of the stakeholders. It should include legal experts who are sufficiently informed of the legal constraints. This can facilitate the adoption of a realistic timeline which provides sufficient time for producing quality legal texts. Legal experts should also work in conjunction with other relevant experts, such as foresters, conservationists, sociologists and other specialists who have knowledge of the context and can help refine proposed changes to be made.

2.2. Why is participation important?

Stakeholder participation is essential to ensure that the outcomes of the law reform process are equitable, coherent and empowering and that the new laws are implemented effectively.

Adapting texts to the context to ensure they are equitable and consensual

The participation of all stakeholders affected by forestry decisions in the legal reform process, including local communities and indigenous peoples, is essential for developing a clear and comprehensive legal framework which takes into account the institutional and local needs and contexts as well as the rights of the communities affected. It allows stakeholders to better take ownership of the process so that the regulations adopted after the reform reflect all of their contributions and are, therefore, more equitable and consensual. It also ensures the laws can be practically feasible and functional in their relevant context.

Ensuring texts are coherent and harmonised through government coordination

Legal reforms require strong government commitment. Only the will and political action reflected in the collaboration and coordination of all branches of government and the other stakeholders involved will lead to coherent reform.

Preventing conflict and building long-term consensus

Stakeholder participation is also important from the point of view of preventing or resolving conflicts of interest between local communities and the private sector or with the administration. This can have an impact after the adoption of the laws but also when it comes to establishing dialogue between the various stakeholders in the forest sector.

Empowering civil society and communities

The participatory process contributes to the empowerment of civil society and local communities since it enables them to become credible partners in the development of laws and policies, despite (at times) the negative perceptions of the government or its reluctance to include external actors. Legislative changes proposed and the broader process can also gain wider credibility if it is clear that key stakeholders

⁶ See for example Arnstein's (1969) ladder of citizen participation.

⁷ Satyal (2017).

and communities have been consulted and have provided input. Finally, reforms that are representative of electorates should also be more attractive to governments. Building the capacity of civil society and communities is therefore important to strengthen their voice, their leadership and their credibility vis-à-vis members of government and the private sector, which are often better equipped at being heard.

Proper implementation of the texts

Without participation, the implementation of the laws could risk being compromised. People may not be willing to follow laws they do not understand and on which they have not been consulted. This can lead to frequent amendments to the law, requiring additional financial, human and technical resources.

2.3. How to ensure effective stakeholder participation

A few key principles can help guide governments and their partners to ensure quality multi-stakeholder participation in legal reforms (see also **Box 3**).

Use the principle of transparency as a starting point for participation.

To enable effective and informed participation, it is important to ensure that stakeholders have access to legal information. In doing so, legal training should be provided to the various stakeholders. It is also important that legal texts and other key information enabling stakeholder participation are publicly available or sent to stakeholders.

Ensure continuous participation

Stakeholders of the legal reform process should be actively involved in developing the consultation methodology (identifying stakeholders, designing the reform timeline, establishing the working methodology). Once jointly adopted, the stages of the process and the timeline must be communicated with sufficient notice to allow stakeholders to organise themselves and prepare their contributions. Participation can be facilitated by organising regular working groups or by other means (see **Section 4** for examples).

Consultations with all stakeholders should then take place throughout the process (from the start and right up to and including legislative debates in parliament for laws, or submission to the government for regulatory

texts). It is not good practice to solicit contributions from stakeholders during the final stages of the consultation or to invite them to approve documents during national or regional workshops or within a timeframe that does not allow them to participate in an informed manner, such as the day before a workshop.

Use simple and clear language

Draft legal texts should be drawn up using clear and accessible language. If stakeholders cannot easily understand a draft law due to its overly technical and legalistic terms, they will not be able to comment appropriately or participate in the process meaningfully. We recommend the use of tools such as graphics, visuals, concrete examples and illustrations to explain texts. In addition, ministries should draft and disseminate a document which clearly explains each legislative or regulatory text to stakeholders. This will give stakeholders an idea of the spirit of the text and help improve their understanding of it. NGOs and other experts can also help to simplify and explain legal concepts to stakeholders to help facilitate their participation, by presenting to them the broad issues and questions and then incorporating stakeholder concerns into legal language in the texts.

Find the right format to share drafts and other information about the reform and share them in a timely manner

Draft legal texts and associated documents should be published or shared with stakeholders in a timely manner and in a format that facilitates effective consultation. Providing stakeholders with a template, for example in a table format, to enable them to add their suggestions and concerns is a good way to collect comments and amendments to the legal text. It also allows those processing these propositions to do it more easily. The revised drafts should clearly show where revisions have been made or comments added, with the wording modified and eventually additional explanations. Moreover, local communities who do not have access to electronic technologies should be provided with paper versions of the texts. Finally, there are also often many complex issues to deal with in a law review. To avoid it becoming overwhelming, those seeking inputs can highlight specific issues for comment or particular areas within consultation documents that require a response. This can help stakeholders to focus on and respond to pertinent issues more quickly and easily.

Choose the right channels of communication

It is useful to use several channels of communication, such as national newspapers, radio, internet and television to ensure the dissemination of information relating to the reform to a wide range of stakeholders and to the general public. In the West and Central African context (and relevant in other contexts also) the agency in charge of conducting the reform must consider how it will consult marginalised groups in an effective and culturally appropriate way, including women, migrants and nomadic or indigenous populations who will be particularly affected by the forest reform.

Leave sufficient time to prepare contributions

Stakeholders should be given sufficient time to examine the proposals and submit their comments. The time allotted will also depend on the type of document, its length and the complexity of the topic. It is also good practice to extend deadlines if few comments are received.

- **Provide feedback:** It is essential for the government to provide feedback to stakeholders on whether or not their contributions have been considered and why. It ensures that stakeholder contributions are discussed appropriately, not just accepted or rejected. This builds trust and fosters a spirit of collaboration.
- **Organise consultations at the national and local level:** Consultations should also take place at the local level. Consultations organised exclusively in a capital city do not generally allow the voices of local communities to be sufficiently heard. Consultations should not be limited to workshops or to collecting written comments from stakeholders. It is useful to organise meetings with each stakeholder group to collect their comments and incorporate them, prior to conducting discussions within the framework of a workshop. Ideally, these meetings should be led by a facilitator who can reconcile the various positions.
- **Respect the 'rules of the game':** It is important not to unilaterally change the rules of the stakeholder consultation process, including deadlines. If the methodology of the process has to be changed due to unforeseen circumstances, changes should be adopted in a participatory manner. The same principle applies to the rereading of validated texts. Once validated by all stakeholders, the texts should not undergo further modifications without renewing the consultation process.
- **Establish stakeholder participation as standard practice:** Stakeholder participation in legal reforms is best ensured if it is prescribed by the regulatory framework, whether binding or not (laws, policies or guidelines). This is done by establishing a systematically structured process to include stakeholders in the process of launching, adopting and implementing legal frameworks.
- **Evaluate the participation process:** To collect lessons learnt and improve future consultations, it is essential to conduct an evaluation of the process once it is over. This evaluation will enable the government to identify the strengths and weaknesses of the process and therefore improve the quality of the next reform.

2.4. The effective participation of civil society

When working with civil society organisations, some special considerations and conditions must be met to ensure their effective participation:

- Take into account the fact that 'civil society' is multifaceted and may include various groups with diverse interests, such as conservation NGOs, human rights NGOs, platforms, academia or individuals.
- The rules around the establishment and functioning of civil society organisations and their platforms should be flexible enough to allow citizens to associate and create structures through which they can intervene in the reform process. For example, overly complex association formation rules sometimes incur high costs that can ultimately limit the number of NGOs that are established.
- Civil society platforms should be accessible to all, including for example women or young people. Appropriate mechanisms should be available to enable them to participate fully. For example, a platform's charter that recognises the role and strength of women and young people's participation and actively promotes this is more likely to attract these groups. Similarly, a law reform process that openly encourages women to take part can increase women's leadership and representation.
- Civil society representatives should be democratically elected by civil society members and have a specific mandate to represent them, including the obligation to consult them and provide regular feedback.

Box 3 Checklist for conducting reforms

- ☒ Are the stakeholders who should be involved in the legal reform sufficiently trained and informed to participate?
- ☒ Has a mechanism ensuring inter-ministerial coordination been put in place?
- ☒ Has a team of technicians been formed who are sufficiently informed of the legal constraints?
- ☒ Are the legal rules on the establishment and functioning of civil society organisations and their platforms flexible enough to allow citizens to form the structures through which they can participate in the reform?
- ☒ Have rules for the democratic election of civil society representatives been put in place?
- ☒ Have you ensured the direct participation of local communities and indigenous populations including marginalised members such as women, young people or the elderly?
- ☒ Is the continued participation of all stakeholders guaranteed? Have the stakeholders been involved in developing the consultation methodology as well as all other stages of the process?
- ☒ Have the draft legal texts been drawn up using clear and accessible language?
- ☒ Have the draft texts (including tools to facilitate their understanding and other explanatory documents) been prepared and shared with the stakeholders with sufficient notice?
- ☒ Have stakeholders had enough time to familiarise themselves with the proposals and to submit their comments and contributions?
- ☒ Was there any feedback on whether their contributions were considered or not and why?
- ☒ Were the consultations also organised outside of the capital city? Were they organised with each stakeholder group to collect their specific comments?
- ☒ What lessons can be learnt from the reform process? How will they be used to better plan the next reform?

The importance of participation



Although we present the conditions for participation in the form of a checklist, participation is more than a box-ticking exercise. It requires time, money, careful planning, organisation, coordination, and most importantly, meaningful stakeholder participation.

However, it is important to emphasise that civil society organisations themselves should remain active throughout the process.

For example, they should:

- organise debates and forums,
- communicate with their members via networks,
- prepare legal analyses,
- develop strategies for advocacy,
- collaborate with the media and
- organise meetings with government (ministries) and parliamentarians.

3 How to design clear and coherent laws

Legal provisions can be designed in accordance with the procedural and substantive rules specific to the legal system of each country. The rules applicable in common law countries differ, for example, from those in civil law countries.⁸

Some jurisdictions also adopt guidance to facilitate the drafting of legal texts.⁹ Here, we offer some advice for drafting quality reforms, both on aspects relating to compliance with the rules guiding law making, as well as aspects relating to legal drafting techniques. These tips should help to ensure that new laws are both effective and consistent (see also our practical advice on drafting laws listed in **Box 4** in **Section 5**).



3.1. Select the appropriate legal level and compliance between laws

All legal systems are organised hierarchically. This means that any law or regulation must comply with a higher standard. National sources of law are organised as follows:

- At the top of the legal hierarchy, the **Constitution** includes rules for the functioning of institutions but also fundamental rights and freedoms.
- **International sources of law**, in particular international treaties, are considered to be an integral part of internal law by certain states.¹⁰ In such states, they have a higher value than laws as soon as they are ratified. In others they must be transposed into domestic law by enabling acts.
- **Laws** constitute a level below the Constitution and must therefore comply with it as well as with ratified international law. They contain the general principles applicable in a particular field and are further ruled by regulatory provisions.
- **Regulations** (such as rules, decrees, orders and directives) provide for the procedures and mechanisms for implementing laws and specify the principles laid down by them. A law may indicate the enactment of an implementing text to specify the content of the rule. However, an explicit reference in the law is not necessary for the enactment of such a text.
- **Guidelines** and other technical documents provide useful guidance to ensure the proper implementation of the texts listed above. Although usually not binding, they provide a comprehensive understanding of the legal framework. Their drafting should therefore be conducted just as carefully.

The interconnections between these elements in the law hierarchy must be considered to ensure the compliance of a law or regulation with a higher standard.¹¹

For legal provisions of the same value in the hierarchy of laws, rules exist in case of conflict. They apply in particular to sectoral laws which may have an impact on forest regulations, such as land, agricultural or mining law. On the one hand, any new rule will repeal an older rule. On the other hand, a special rule, including an older one, will continue to apply despite the adoption of a new general rule. Proposed law reforms should therefore consider the broader legal frameworks, and not only the law being revised or created, and how the proposed changes interact with existing laws.

3.2. Identify the right area of responsibility

The person responsible for drafting a legal provision must also carefully check whether its subject matter falls within their area of responsibility, particularly in the case of a law or regulation. This area of responsibility may be provided for in the Constitution or in laws organising the administration. A law could be invalidated during a review of validity if the body adopting it was not competent to do so.

3.3. Follow the correct law enactment procedures

Generally, a legal provision comes into force when it is signed, and possibly countersigned, by the relevant authorities and after it has been published in an official bulletin. In the case of a law, this happens after it has been promulgated (officially announced). It is therefore important to ensure that these procedures have been complied with, but also that they are formally visible and are reflected in the texts, for example by means of the signatures and countersignatures required on the last page of the legal texts. In their absence, the norm may be invalid and therefore not legally enforceable.

⁸ 'Legal systems in countries around the world generally fall into one of two main categories: common law systems and civil law systems [...] The main difference [...] is that in common law countries, case law – in the form of published judicial opinions – is of primary importance, whereas in civil law systems, codified statutes predominate' (Syam 2014). Legal drafting rules and techniques vary according to countries' legal system.

⁹ For example, in the United Kingdom the Office of the Parliamentary Counsel produced a drafting guidance. In France, a legislative guide was produced. In Switzerland, the Council of States proposed technical legislative principles.

¹⁰ In such states, international treaties have automatic effect and do not need an additional national act to enter into force.

¹¹ For example, in the area of community forestry ClientEarth offers guidance on the types of provisions that should be developed in legislative or regulatory texts. See ClientEarth (2019: 54–55).



4 How to write good laws

The quality of a law is measured by its ease of implementation. The smooth application of a provision can be assisted by ensuring that the content is appropriate and that the structure of the text is clear, and by using certain law-drafting techniques (see also **Box 4**).

4.1. The law's content and level of detail

All legal provisions, regardless of their level in the law hierarchy, must have a legal function. They must create rules which clearly provide for rights or obligations and which unambiguously determine the relationships between individuals, and with goods or resources in a given space.

Furthermore, a legal provision must be written in a general and impersonal manner. It establishes a rule which applies to all members of a group according to predefined criteria in a predictable manner. For example, a law on the protection of indigenous peoples must be drafted so that it can apply to any indigenous person regardless of the indigenous group of which they are a member. Simultaneously, the provision needs to preserve a certain level of flexibility to allow the rule to be applied to different situations. However, it cannot discriminate or disadvantage certain groups, so it is important it is drafted carefully.

We also recommend using declarative words with care such as 'may' or 'and/or' as they are likely to create legal uncertainty. Their use introduces a discretionary element to the power, right or function that may undermine the certainty with which individuals or communities can rely on the provision as a source of rights or obligation. It is also important to ensure the law functions as intended, and therefore use these words with caution. Similarly, the word 'including' can be used but with caution. It is useful, in particular, to highlight the importance of taking a certain group into account and clarify the application of the law to that group, for example 'including vulnerable people' or 'including women'.

Explicit references to other legal provisions which may be subject to amendment should also be avoided if law consolidations are not regularly undertaken.

Finally, you must consider the effectiveness of laws by reflecting on the sanctions associated with the rules it lays down, the level of these sanctions, the procedures

for checks and any difficulties that the judiciary may encounter in settling disputes or ensuring compliance with the law.

4.2. The structure of a legal text

In each jurisdiction, law makers must comply with country specificities when structuring laws. However, it is useful to consider some key best practices for drafting legal texts which can apply across the board.

All laws are made up of articles or sections. It is good practice to present one idea (function, power, right or obligation) per article. The most complex articles can be divided into paragraphs. When a law covers a plethora of themes, it may be necessary to group the articles into sections, subsections and paragraphs. The sections can themselves be grouped into chapters, then into titles and finally into books in order to facilitate reading and to highlight the logic of the text.

It is advisable to arrange the articles starting with the general articles laying out the principles and definitions. This makes it easier to read the following thematically organised articles. For example, a forest code creating different 'forest domains' can highlight these elements in the structure of the text with a first chapter on the classification of domains, then specific sections on each area and their legal regime, objective and possible use etc.

4.3. Techniques to ensure legal continuity between old and new texts

Replacing an old legal provision with a new one may require some time for duty-bearers to adjust. Various legal mechanisms can, however, allow a smooth transition of rules over time. The first mechanism consists in setting the date when the law enters into force: the new law may begin to have legal effects as of its publication or be deferred to allow for the drafting of regulations supplementing the legal framework. A second mechanism consists in precisely identifying the previous provisions repealed by the new legal provision. In that context, generic articulations which often generate legal uncertainty, for example wording such as 'all contrary provisions are repealed' must be avoided. Finally, a third measure consists of drafting transitional provisions aimed at drawing links between the formulation of old and new obligations for all situations in progress at the time the new law enters into force.

Box 4 Practical advice on drafting laws

- Comply with all existing law-making standards applicable in your jurisdiction.
- Make sure that the authority wishing to adopt the provisions is authorised to do so.
- Make sure that the new rule complies with the higher-value rules in the hierarchy of norms.
- Check that the new rule fits into the legal system without conflicting with provisions of equal value, including other sectoral legislation.
- Make a point of ensuring that the law respects all the formal structuring rules.
- Take care to ensure that the structure of the law and its articles allow for easy reading and understanding. Opt for short and direct wording.
- Make sure that the provision is general, clear and precise and creates rights and obligations or specific functions. Get straight to the point and avoid unnecessarily complex terms.
- Do not overlook the importance of the measures allowing the enforcement of the rule, including the identification of effective, proportionate and dissuasive sanctions.
- Pay attention to the possible need for transitional measures between existing and new rules, such as a delayed entry into force.



5 Lessons from Central and West Africa on legal reforms in the forest sector

Carrying out legal reforms in the forest sector in Côte d'Ivoire, Ghana, Liberia and the Republic of Congo has offered us valuable insights and lessons into the law reform process that can be broadly applied to other law reform efforts. This section presents reflections on the successes and challenges of these processes, in order to inspire other stakeholders involved in this type of reform.

1. Strengthening the permits regime for granting timber rights in Ghana **Clement Akapame**

The story

The need to clean up the timber permits regime in Ghana goes back to 2009. Civil society organisations (CSOs) successfully advocated for legal reform of the forest legislation after identifying a gap in the current laws in relation to permits. In 2013, CSO actors working in the forestry sector identified a legal loophole in the Timber Resources Management Act 2002 (Act 547) that was being used as the basis for issuing so-called 'special permits': a category of permits for timber concessions that was being abused. CSOs identified the following sources of legal uncertainty in these permits:

- The permit allocation process was opaque and was not ratified by parliament as required by the Constitution.
- It was incongruent with the legal logic of the Timber Resources Management Act and possibly in breach of the Constitution.
- The permits were not recognised as a legal source of timber under the negotiated legality definition in Ghana's VPA with the EU.

The government proposed an administrative reform in the form of non-binding guidelines to fix these issues. CSOs opposed this proposal and successfully called for a legally binding regulation.



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The strategy

The strategy established a multi-stakeholder engagement for the legal reform process involving government, industry and civil society. Joint participatory meetings were held to decide on the issues for reform. Each stakeholder had specific issues that they wanted the regulation to address:

- CSOs wanted provisions to strengthen the negotiations and implementation of social responsibility agreements, a type of benefit-sharing contract between communities and timber operators, and access to information provisions.
- Industry wanted modifications on provisions regarding the payment of timber rights fees.
- The government wanted to use the process of law reform as a means to resolve underlying issues with the existing rules for granting timber permits and to comply with the terms of the VPA.

As a result, the Timber Resources Management and Legality Licensing Regulation 2017 (LI 2254) was passed in record time, even taking into account national elections and subsequent changes to the government during this period. This speed was possible because all stakeholders had been actively engaged in the process both during the informal and formal law-making processes involving national NGOs and the government.

Results

The Timber Resources Management and Legality Licensing Regulation 2017 (LI 2254) has now become the basis for cleaning up the permit regime in Ghana. Timber companies have been offered a process by which they can convert their old (now illegal permits) into legal permits. For its part, the CSO legal working group supports the enforcement and implementation of the new regulation. This shows that when all stakeholders are actively engaged in the process of law making, regulations and laws can be passed more efficiently and with the backing of all.

2. In the Republic of Congo, civil society mobilises and builds capacity of parliamentarians Inès Gady Mvoukani

The story

The Sustainable Forest Management Platform (Plateforme pour la Gestion Durable des Forêts or PGDF) brings together 60 Congolese civil society organisations. Since 2012, the PGDF has actively participated in various stages of forest legislation reform. Its legal working group (LWG) is composed of various experts from civil society, especially legal experts, but also forest engineers and environmentalists. The LWG produced a series of legal analyses, inputs and recommendations on the successive versions of the draft forest law and its implementing texts produced by the Ministry of Forestry. However, there were some obstacles to effective participation due to a lack of transparency, often tight consultation schedules and numerous re-readings of the preliminary draft law even after its validation by all stakeholders in 2014.

The strategy

In February 2017 – while the draft law was still being re-read at the Ministry of Forestry – CSOs were concerned about the level of their contributions taken into account by the government. They began to advocate with Congolese parliamentarians. Initially, this emerging collaboration lobbied members of Parliament on the priority issues identified by CSOs in relation to the rights of local communities and indigenous populations and sustainable forest management. CSOs then conducted advocacy activities on specific draft provisions framing community forestry, free, prior and informed consent (FPIC), and on benefit sharing and forest conversion.

As such, the following activities were organised with parliamentarians and their technical staff from the Environment and Sustainable Development Committee of the National Assembly and the Senate's Health, Social Affairs, Family, Gender and Sustainable Development Committee:

- an awareness-raising round table in February 2017, on the framing of deforestation and community forestry by the draft law,
- a follow-up workshop on the provisions of the draft law concerning community forestry, deforestation and benefit sharing in January 2018, and
- the establishment of a permanent follow-up committee composed of four representatives appointed by the presidents of the two parliamentary committees and members of the LWG, meeting to exchange information on the progress of the adoption of the law after its transmission to parliament in April 2019, and to present civil society's contributions and recommendations.

As the process advanced, the Ministry of Forestry included the concept of 'production sharing' into the draft law and withdrew FPIC. These setbacks reinforced the importance of stakeholders' advocacy work, particularly of private-sector organisations. This is how a parliamentary round table came to be organised in June 2019, bringing together parliamentarians and their technical staff, the private sector and civil society. This joint advocacy activity led the Senate's Finance and Economy Committee (also in charge of examining the draft law) to consult with the Ministry of Forestry and other stakeholders, including CSOs, about the provisions still pending.

Results

At the time of publication, the Forest Code was adopted by both houses of Parliament but is pending promulgation and official publication. However, according to available information, civil society's targeted and structured advocacy with members of parliament seems to have contributed to the following improvements of the provisions of the law compared to the current Forest Code:

- FPIC is recognised as a principle of forest governance;
- Local communities and indigenous peoples are granted management rights of so-called 'community forests';
- The concession-granting procedure is conducted in a multistakeholder setting;
- Forest management plans must be adopted with the participation of local communities and indigenous peoples;

- Rules are introduced to govern the conversion of forests to another use;
- Independent forest monitoring is legally recognised; and
- A carbon ownership regime is introduced.

These improvements seem to be the result of civil society's effort to organise regular rather than ad hoc activities with parliamentarians, to direct activities towards parliamentarians who are members of targeted committees, and to work closely with their staff responsible for advising them on legal and environmental matters. Parliamentarians have played a key role in responding to the issues identified by stakeholders and urging the Ministry of Forestry to clarify the basis of its legislative proposals. This fruitful collaboration between civil society and the legislator could also have long-term effects by extending to other reforms to come and allowing the adoption of standards more aligned with international standards for the sustainable management of natural resources.

3. Gender inclusion and the Land Rights Act: women's rights to own and manage customary land in Liberia **Lucia DS Gbala, Sagie F Kamara and J Awia Vankan**

The story

Prior to the passage of the Land Rights Act in Liberia, securing individual land tenure for customary land was a challenge for community members in rural areas, especially women. Customary practices meant that land was inherited through clan-based male lineages. Women mostly lacked control in decision-making over allocation and use of customary land, including the inheritance of customary land. Many saw this practice to be contrary to the provision of Article 22 of the 1986 Constitution of Liberia, which provides that 'every person [Liberian citizens] shall have the right to own property alone as well as in association with others'.

Meanwhile, others maintained that the customary practice of denying women decision-making rights, ownership and possession of land was consistent with the Constitution, as it recognises customary practices and tradition. They argued that Article 22 of the 1986 Constitution applies only to private land ownership and not customary land, since the state had not at the time relinquished the title of customary land to communities or community members.

Generally, titles to land in Liberia must be traced to the State through the issuance of deeds. The following are ways through which anyone could acquire title to a parcel of land:

- By purchasing land from the government of Liberia or through a chain of titles linked to the original owner who purchased the land from the government
- Passage of title by inheritance through a will or testamentary
- Passage of title through the devolution of estates and right of inheritance under customary marriage, or
- Passage of title through statutory provision on succession to real and personal property by next of kin(s) in the event of intestacy.

The individual tenure security for customary land posed more problems for girls and women in customary families. For instance, over the years, community members (mostly men) have invested in planting long-term crops on customary land which their families will eventually inherit from them. In practice, a daughter's rights to inherit crops on these

lands have been subordinated to male relatives such as brothers and, in some instances, uncles. Often, the rights of wives to inherit those lands have also been contingent on a wife's willingness to remain with the deceased husband's family and remarry one of his brothers or another male relative.

Results

Eventually, given the nature of ownership and usage of customary land by community members, Liberian laws recognised the importance of having communities manage forest resources on customary land through the passage of the National Forestry Reform Law (NFRL) in 2006 and the Community Rights Law with Respect to Forest Lands (CRL) of 2009. These laws also recognise the right of women to have a say in the management of community forest resources. **Section 4.2** of the NFRL requires that the Forest Development Authority should 'ensure that the interests of women and youth are fairly represented' on the national Forestry Management Advisory Committee, while the CRL and CRL regulations require that 'at least one woman' representative is included in community forest management bodies (CFMBs).

Civil society organisations provided input on The Land Rights Act (LRA) of 2018 contributing to go one step further. This act gives rights of ownership of customary land to communities that have used and possessed the land for customary or sociocultural purposes for a minimum period of 50 years, and recognises the rights of women in the management and use of customary land. Article 34.3 provides that *'all community members [...] have equal rights to use and management of community land regardless of age, gender, ethnicity, religion and disability'*.



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4. In Côte d'Ivoire, a legal working group and a technical committee facilitate multi-stakeholder participation in law reform

Raphael Kouamé Kra

The story

As part of the law reform initiated in 2016, Côte d'Ivoire's Ministry of Forests started drafting new decrees to implement the 2014 Forest Code. This was prior to drafting from scratch a new law and regulations from 2018 onwards. A new Forest Code was adopted in 2019, and work on implementing decrees is still ongoing.

Civil society organisations forming part of the Ivorian Observatory for the Sustainable Management of Natural Resources (OI-REN) have actively taken part in the reform. They established a technical committee (similar to a legal working group) to discuss legal and advocacy issues. The technical committee is a group meeting regularly to develop legal amendments that was set up by OI-REN to work on the legal reform process.

The strategy

The technical committee works on CSO contributions to draft decrees developed by the Ministry of Forests. Sometimes it also takes the initiative on drafting provisions and decrees, for example on independent monitoring, benefit sharing or community participation in forest management. However, the process has not always been transparent. For example, in 2016–2017 the ministry failed to communicate the methodology and timeline to all stakeholders. As a result, OI-REN had to advocate for better stakeholder participation through public letters to and meetings with the ministry.

In April 2019, the draft law was to be submitted to parliament. CSOs considered that they were unable to conduct any further advocacy work with the Ministry of Forests. Instead, they organised a workshop with a commission of the National



Assembly in April 2019 to discuss concerns over decrees considered as a priority by the CSOs.

To voice its concerns, OI-REN also works with a multi-stakeholder legal working group comprised of representatives from the administration, civil society and the private sector. It links REDD+ and FLEGT-VPA processes and was created with a memorandum of understanding between the Ministry of Forests and FAO from 2016. Between 2016–2017, the legal working group drafted seven texts related to REDD+ and FLEGT-VPAs that were discussed during regional workshops.

In 2018–2019, the legal working group was approached by the Ministry of Forests to assist in the adoption of a new Forest Code. The legal working group set out to develop ten new implementing decrees, to support the drafting of other decrees and the development of the legality grid.

Results

On the one hand, the technical committee allowed CSOs to make constructive contributions to the reform process. Several key concerns have been reflected within the new Forest Code and its draft implemented decrees. Advocacy also had a positive effect on the reform process, including the organisation of a validation workshop. Collaborating with MPs has meant they can be strategic partners with CSOs within future reforms. However, building this partnership between CSOs and MPs was difficult. To be sustainable, it will require a memorandum of understanding.

On the other hand, the creation of the legal working group constitutes a success as it provides technical assistance to stakeholders involved in the reform process. The LWG convenes individuals from diverse backgrounds working on forest governance, and consulting with their own organisation to collect points of views on the topics of discussion. It provides a unique interface between the Ministry of Forests and other stakeholders, by relaying information between them about the reform process. The main challenge which remains to overcome is how to coordinate its work plan with the ministry's.

Conclusion

While there is no unique formula for successfully carrying out legal reform initiatives, key trends emerge from countries' legislative experiences. These trends show that legal reforms are a prerequisite to improved forest governance. Coupled with law implementation, law reform is key to preserve forests and improve livelihoods. Having a high-quality legal reform process is therefore a critical first step. However, carrying out a legal reform is a long and painstaking process. Sound planning, around realistic deadlines, is crucial to successful reform.

Legal reforms need to be organised in advance, with a clear timeline and clear objectives. They should allow for the participation of all relevant stakeholders, in a way that is inclusive, open and transparent. Laws produced as a result of the reform need to be clear, simple and coherent, and they must clearly identify the rights and obligations of actors engaged in the forest sector. They must also consider the current legal context, in order to avoid contradictions with regulations governing other related sectors. Finally, laws and regulations must recognise strong rights for local communities and include the necessary safeguards to uphold them.



Table 2 provides a checklist of dos and don'ts to consider when conducting a law reform.

Table 2 The dos and don'ts of law reforms in the forest sector	
Don'ts	Dos
<input checked="" type="checkbox"/> Don't begin without considering the best way to approach the reform	<input checked="" type="checkbox"/> Do develop a participatory reform methodology and timeline in advance
<input checked="" type="checkbox"/> Don't conduct the reform without clear objectives	<input checked="" type="checkbox"/> Do use the vision laid out in a recent forest policy as the axis for the reform process
<input checked="" type="checkbox"/> Don't begin without identifying the rules the reform must abide by	<input checked="" type="checkbox"/> Do understand the law-making process and apply it to the reform
<input checked="" type="checkbox"/> Don't begin without analysing the strengths and weaknesses of the existing legal framework	<input checked="" type="checkbox"/> Do analyse the existing legal framework and identify any implications for the reform
<input checked="" type="checkbox"/> Don't undertake the reform without making it public	<input checked="" type="checkbox"/> Do ensure that each step of the reform is conducted in a transparent fashion
<input checked="" type="checkbox"/> Don't design a rushed reform timeline that does not allow stakeholders to participate	<input checked="" type="checkbox"/> Do ensure the timeline is clear and reasonable, and allows for meaningful public participation
<input checked="" type="checkbox"/> Don't exclude any stakeholders or consult only a few to avoid lengthy debates on the reform	<input checked="" type="checkbox"/> Do identify all relevant stakeholders and consult them throughout the reform, including national and local civil society organisations and local populations. Adapt the format to allow everyone's participation and to reach a large audience, including at the local level.
<input checked="" type="checkbox"/> Don't only consider the interests of the forest administration	<input checked="" type="checkbox"/> Do consult other sectoral administrations to ensure a coordinated approach
<input checked="" type="checkbox"/> Don't begin without considering the costs involved	<input checked="" type="checkbox"/> Do allocate a sufficient budget to conduct the reform
<input checked="" type="checkbox"/> Don't designate only one person at ministerial level to drive the reform	<input checked="" type="checkbox"/> Do facilitate a bottom-up process that reflects the practices and needs of the local population
<input checked="" type="checkbox"/> Don't ignore how the reform will fit in the wider legal framework	<input checked="" type="checkbox"/> Do ensure the law under revision is compliant with higher provisions in the law hierarchy and considers sectoral laws
<input checked="" type="checkbox"/> Avoid drafting provisions that are too generic	<input checked="" type="checkbox"/> Do carefully consider the wording of any legal provision to ensure it fulfils a legal function
<input checked="" type="checkbox"/> Don't structure the law by drafting articles in an illogical and scattered order	<input checked="" type="checkbox"/> Do structure the law so that it is more easily understandable
<input checked="" type="checkbox"/> Don't ignore lessons learnt from the reform that could inform future processes	<input checked="" type="checkbox"/> Do integrate monitoring and evaluation tools into the reform process to learn lessons for future reforms



References

Arnstein, SR (1969) 'A ladder of citizen participation.' Journal of the American Planning Association 35(4), <https://bit.ly/2xa2Lcy>

ClientEarth (2019) 'Communities at the heart of forest management: how can the law make a difference?' ClientEarth, <https://pubs.iied.org/G04396>

FAO (2005) 'Rationalizing the policy and legal environment.' Best practices for improving law compliance in the forest sector, FAO Forestry Paper 145, www.fao.org/3/a0146e/a0146e00.htm

Satyal, P (2017) 'Assessing civil society participation in REDD+ and FLEGT: case study analysis of Cameroon, Ghana, Liberia and the Republic of Congo. University of East Anglia, <https://bit.ly/2XccREt>

Syam, P (2014) 'What is the difference between common law and civil law?' School of Law, Washington University in St Louis, <https://bit.ly/2RgMMjP>

Contacts

Tanja Venisnik

Law and Policy Advisor

Email tvenisnik@clientearth.org

Tel +44(0)20 3030 5931

Benjamin Ichou

Law and Policy Advisor

Email bichou@clientearth.org

Tel +44(0)20 3030 5953

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ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.

Beijing

2-506 Kunsha Center
No.16 Xinyuanli
Chaoyang District
Beijing 100027
China

Berlin

Albrechtstraße 22
10117 Berlin
Germany

Brussels

60 Rue du Trône (3rd floor)
Box 111050
Ixelles
Brussels

London

Fieldworks
274 Richmond Road
Martello St Entrance
London E8 3QW

Madrid

García de Paredes
76 duplicado
1º Dcha
28010 Madrid
Spain

New York

401 Park Ave S Fl 10
New York
NY 10016
USA

Warsaw

Zurawia 45
(staircase B, 2nd floor)
00-680 Warsaw
Poland

www.clientearth.org

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