

DEVELOPING FORESTRY AND LAND USE POLICY IN THE CONTEXT OF CLIMATE CHANGE



Embarking on policy reform in a complex environment

To formulate policy that can be successfully implemented in meeting the needs of multiple stakeholders, governments must adopt procedures that facilitate awareness raising and consultation based on sound analysis of relevant information. Through this process, realistic and appropriate policies can be crafted with inputs and buy-in from the diverse stakeholders whose interests are to be served and whose support is essential in moving forward.

Across Asia, forestry and land use policies have often been formulated according to international agendas with little attention paid to domestic needs and capacity constraints. This has often resulted in policies that are only implemented in pilot areas or not at all. With demands on land and forests growing, the impacts of climate change on national economies will increase unless policy is put in place to effectively steer the agriculture, forestry and other land use (AFOLU) sector towards sustainability.

Reform of forestry and land use policy offers the opportunity to build resilience against climate change and associated environmental shocks, support climate change mitigation and improve local level forest and land management.

Policy amendments may also serve to underpin establishment of frameworks to finance and account for emission reduction from the AFOLU sector.

Policy making for forestry and land use in the context of climate change requires understanding of new information in a number of areas:

- How forestry and land use can contribute to climate change mitigation
- How climate change will impact forestry and land use and how landscapes can be adapted to improve resilience
- How management needs to be altered to maintain the health and vitality of forests and agricultural production systems in the face of climate change
- How international and domestic mechanisms will function to support climate change related action

Understanding in these areas and integration with existing knowledge of the sector is essential for effective policy formulation. However, this is only likely to be achieved through a consultative process involving a broad range of stakeholders including civil society representatives, government officials, community members, the private sector and technical experts.

In the following sections a four-step process aimed at formulating and implementing effective policy is described, as outlined in the figure on the right.

1. Agenda Setting

- Identify issues & considerations
- Key expert inputs
- Stakeholder engagement



2. Develop Policy

- Consultation paper
- Public comment
- Proposal
- Public Comment
- Final Policy



4. Review Policy

- Monitoring & Evaluation
- Reform



3. Implement Policy

- Action Plan(s)
- Legislation
- Regulation(s)



Climate change and the AFOLU sector in Asia

AFOLU contributes around a quarter of global greenhouse gas (GHG) emissions and in ASEAN Member States this figure rises to 58%.¹ Climate change is expected to increase temperature and the frequency and intensity of severe precipitation, and possibly the intensity and/or duration of drought.² Future increases in monsoon related precipitation extremes are anticipated across Asia, potentially resulting in increased incidence of floods and landslides.³

¹ IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. IPCC, Geneva, Switzerland.

² IPCC 2013 Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

³ Stocker, T.F. et al. (2013) Technical Summary. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

1 AGENDA SETTING

In setting the course for the policy process, expert guidance is sought on the issues to be addressed before a plan is developed to build ownership and understanding among key stakeholders, officials and the public.

1.1 Know the situation

Before beginning a policy reform, a baseline assessment is essential. The assessment should include information on forest and land resources, trends driving change in these resources, key actors and stakeholders involved and an overview of gaps between existing policy goals and the desired situation. Recent studies can be compiled and summarized but if sufficient information is not available, primary data gathering will be necessary.

1.2 Identify the issues

The impetus for policy reform will determine the main thrust of the policy agenda. Depending on other issues identified through the baseline assessment, a decision can be made as to whether a new or revised policy is needed, or if the implementation and/or enforcement of existing policies needs to be improved.

Assuming a new or revised policy is necessary, an agenda needs to be set. The agenda should include the policy's likely goals and scope, the time requirements for formulation and a course of action for the reform process.

The policy agenda should take into account national development goals, international commitment, interactions with other sectors and their policy goals, and human and financial capacity. In addition, the agenda may consider champions to support the reform process including government and non-government agencies and international organizations.

1.3 Seek expert guidance

To evaluate and revise the provisional policy agenda, an exploratory committee can be formed consisting of a balanced sample of top policy

and technical experts from government, private sector, academia, social and environmental groups and development partners.

The size of the committee should be large enough to include expertise in relevant technical areas and to represent the main interest groups but not so large as to make scheduling a challenge. If the exploratory committee develops trust among stakeholders, this initial group could continue as the policy formulation committee or task force.

1.4 Engage stakeholders

To initiate consultation and facilitate transparency during the policy reform process, procedures for engaging stakeholders at key intervals should be developed and made public. Top political leaders should also be engaged to ensure that they are aware of, and support, the policy formulation process. In designing the engagement process, key considerations include:

- 1) Form, e.g., consultation, workshop and/or survey
- 2) Timing
- 3) Media usage, e.g., electronic, newspaper, TV, radio, etc.
- 4) Stakeholder groups to include
- 5) Capacity-building to inform stakeholders of policy options as necessary

Documentation of outcomes and responses is essential in recording and communicating the results of the engagement process and ensuring that inputs are duly dealt with.



Environmental issues and the public interest

Policy reforms in forestry - and movement away from forest clearance and uncontrolled timber extraction in particular - have often originated from rising awareness of environmental issues that a country or jurisdiction needs to address. This impetus can come from a variety of sources, most notably from environmental shocks.

Catastrophes such as floods and landslides have often brought environmental problems to public attention and become rallying cries for policy reform. Impetus can also develop more slowly as awareness of habitat destruction and loss of environmental services rises.

In some cases policy reforms have attracted criticism for their potentially negative socio-economic impacts on rural communities. As such, technical reasoning used in justifying policy amendments must be scientifically based and the potential socio-economic impacts on rural livelihoods must be fully understood and mitigated. Without support from local communities forestry and land use policies face a high risk of failure.

Climate change is likely to increase the frequency and severity of extreme weather events and the floods and droughts seen in the region in recent years may already be indicating the first signs of a changing climate.



2 POLICY DEVELOPMENT

Following initiation of dialogue between government and stakeholders, policy formulation can begin. Core requirements for a balanced policy formulation process include a group of responsible representatives selected to run the process and a framework for conveying information and decisions to a broad audience.

2.1 Establish a policy formulation committee

The policy formulation committee should include a high-level steering committee and a task force including implementers and those impacted by the policy. Engaging a broad range of stakeholders from the beginning, including civil society representatives, the private sector and technical experts, is important to capture all expectations and to avoid revisions and disruptions.

2.2 Outline the draft policy

Building on the baseline assessment, expert input and stakeholder dialogue described in Step 1, policy makers identify and analyze measures and mechanisms to address the key issues set out in the policy agenda.

Through this process a policy statement is set together with:

- 1) measurable goals, such as the proportion of timber or agricultural commodity production to be certified, or the forest cover target
- 2) a logical framework to conceptually link goals and activities
- 3) a conceptualized monitoring and evaluation (M&E) framework including performance indicators
- 4) an outline for a review process (see step 4.1 below)

The draft policy is then released for initial consultation.

2.3 Develop an initial policy proposal

After initial consultation with relevant government entities, experts and the public, the policy formulation committee can develop a policy proposal aimed at stimulating discussion. Such a proposal generally consists of a rationale, main issues to be addressed, and preliminary options for actions to be adopted, as outlined in the box opposite.

Development of the proposal is followed by circulation to key stakeholders and the general public. Particular attention should be given to consultations at the local level as rural communities are often those most affected by forestry and land use policy reform and are among the most vulnerable. Following receipt of oral and written comments, the government responds by further explaining the policy rationale and adjusting the proposal.

2.4 Develop a refined policy proposal

After responding to comments and revising the proposal, the policy formulation committee can recommend to ministers and cabinet the best options among those highlighted in the proposal. With high-level approval, the committee can then develop a refined proposal including these options.

The refined proposal is then widely circulated as a statement of policy together with any proposed legislative changes for further debate by stakeholders, cabinet and/or parliament and eventual endorsement.

During this process, government should ensure the following:

- that fair notice is given to all concerned parties
- that an adequate period for comment is allowed
- that all punctual comments are considered
- that responses to comments are provided

Where relevant, the proposal should be modified to reflect important comments that improve the policy in light of its original goals. On the basis of the endorsed proposal the policy itself is developed and endorsed by the relevant authorities.

Key considerations in policy development

- Ambitiousness should be balanced with attainability. Policies are only as good as their implementation, so policymakers should avoid developing overly complicated documents and ensure that capacity and resources are likely to be sufficient to achieve the stated policy goals.
- Policy development is an iterative process whereby existing policies and laws are revised to bring them in line with new initiatives and the new initiatives themselves eventually reach maturity and are replaced.
- Concise, plainspoken and well organized policy documents are best as they enable stakeholders to better understand and respond to proposals. Long, technical policies either confuse or are shelved and forgotten.
- Policies focused on outcomes provide flexibility in how goals are achieved thus enabling adaptation to changing circumstances and averting the need for frequent revision.
- Off-the-rack policies do not fit. Though ideas from other countries may be helpful, it is not advisable to import policy or legal models even if they have worked well as each country has unique circumstances and capabilities.



Actions for mitigating emissions from forests

- *Incentives, e.g. payments for carbon emissions reductions and removals, subsidies for sustainable production, certification schemes for deforestation free products.*
- *Disincentives, e.g. logging bans, land use planning, fines for forest clearing, support for protected areas.*
- *Enabling environment, e.g. institutional strengthening, information dissemination, research and development.*



3 POLICY IMPLEMENTATION

Policy goals in forestry and land management have often been missed due to insufficient adoption of legislative provisions and lack of strategy development. Adoption of overly top-down approaches to implementation combined with scarcity of human and financial resources has also been a major impediment.

Recently, global commodity producers and other private actors have begun seeking a role in implementing sustainability targets compliant with international norms and standards. Given that incentives for sustainable land management have often been limited, such developments are encouraged. The role of government in this context is to create a policy environment in which desirable outcomes are facilitated rather than to act as direct implementers.

Many countries are also adopting non-binding strategies rather than nationally-binding legislation to address climate change and in such cases creating a conducive environment for implementation is paramount in ensuring that policy goals are achieved.¹

3.1 Develop Monitoring and Evaluation Plan

The monitoring and evaluation framework should be designed during the early stages of policy implementation to capture an initial baseline of relevant variables and establish a decision-making framework relevant to future programs.

The policy review process (see Section 8) should be a practical learning exercise rather than a series of boxes to check in progress reports, as is often the case.² Policymakers should also consider a policy's proposed lifespan and set the monitoring and evaluation framework accordingly.

Devolution and decentralization in policy implementation

In many instances, global trends towards devolution and decentralization as a means to increase inclusion of resource managers in decision-making have helped improve equity and reduce human resource constraints. However, centrally-made decisions can allow for greater transparency and prevent powerful interests and local industries from wielding undue influence at the field level. Centralized decision-making may also allow greater voice for civil society organizations and watchdog groups. Therefore, it is important for a balance to be struck that ensures public participation but with sufficient central-level oversight to avoid rules being undermined.

3.2 Develop Action Plan(s)

An overall action plan or road map (i.e., a concise summary of all priority issues and actions to be taken) is essential to guide the rollout of the forestry or land use policy and may contain individual strategies to achieve a specific outcomes within fixed time periods.³ The action plan should define actions and activities, as well as the key actors and their roles and responsibilities.

Creative means of attaining policy goals should be considered as a way of reducing reliance on legislative and administrative approaches to policy implementation, which often fail to gain traction. Alternative approaches are especially important where government enforcement capacity is weak. Policy tools such as subsidies, preferential loans, environmental taxes and permits, education and information campaigns, labelling and training, and public-private partnerships are options that might be considered.⁴

Human and financial resources for policy implementation should also be identified with special attention given to incentivizing private action and leveraging private financing. The action plan should be circulated among stakeholders through meetings, workshops, and mass media with comments taken into account and revisions being made as appropriate.

3.3 Develop Legislation

To the extent that the overall policy initiative is to be carried out through executive action the policy documents already described (policies, action plans, and strategies) may be sufficient. As government policies are usually only binding on the executive branch, however, the forestry and land use policy will generally need to be reinforced by legislation to have broader effect.

Where policy implementation requires a change in forest users' rights and responsibilities, augmentation of executive agency powers (e.g., to monitor forestland) or changes in institutional arrangements, passage of laws and/or implementing regulations are also generally required.

As with policy development, inputs from experts and key stakeholders will be important in ensuring the legislation addresses the issues in an equitable fashion and in keeping with agreed environmental principles. To keep legislation accessible and understandable, the following three tenets are recommended:

- 1) **low-volume:** keep language simple and text concise
- 2) **high-quality:** address political, legal and social objectives efficiently, within scope of legal authority, and in keeping with principles
- 3) **simple:** no more complex than necessary to attain goals⁵

However, as legislation can be difficult to pass and requires significant time and political capital, alternatives or interim arrangements may be considered, such as:

- 1) Non-binding documents (e.g., strategies, memoranda of understanding), and binding documents (e.g., executive agreements, and other statutory instruments not requiring parliamentary approval)
- 2) Regulations or decrees (see 3.4 below) can enact policies building on the existing legislative framework
- 3) Memoranda of Understanding and other public-private agreements, e.g., between groups of forest users or owners and the forestry agency
- 4) Delegation of regulatory powers to organizations given public or quasi-public powers
- 5) Contractual arrangements between the state and private citizens or groups

3.4 Develop Regulations and Implementing Protocol

Legislation or the legislative alternatives described above set out general goals, rights and responsibilities and in combination with the selected range of actions, activities and policy tools can be used in working towards the policy goals. However, legislation usually lacks sufficient detail to be implemented directly.

Agencies therefore generally need to develop regulations to facilitate implementation of policy at the field level. Regulations provide specific details on how legislative objectives will be met. For example, where legislation may provide authority to manage forests sustainably, a regulation might state the percentage of forest that may be converted per hectare of public or private land.⁶

Jurisdictions facing capacity constraints and difficulties in implementation or enforcement may choose to develop more precise legislative rules at the central level where decisions are less likely to be co-opted by powerful local interests.⁷ However, this will need to be balanced with the necessity for local-level participation in implementation, policy review and revision so that social demands or changing environmental conditions are adequately accommodated. Similar to policy development, it is in agencies' interests to develop regulations consultatively, allowing adequate time for comment, and explaining why a given regulatory option was chosen.

Agency authorization of environmental and natural resource-related activities, by license, permit or certification, is one of the most widely-utilized means of implementing regulations, and allows agencies to define legal levels to meet legislative goals (e.g., licenses for timber harvest and/or exports based on annual allowable cut).

Regulatory frameworks can also support investment in sustainable land use and sustainable forest and agricultural product supply chains (e.g., by aligning institutions and resources accordingly to promote sustainable activities and/or by removing subsidies from unsustainable activities).

After drafting enabling regulations, more detailed plans, procedures and protocols are often needed to ensure the agency and regulated entities meet legislative and regulatory requirements.

Legislation at different levels

Sectoral legislation generally works best when built on the principles and objectives contained in crosscutting framework laws. If kept simple, umbrella legislation can remain intact while more detailed implementing legislation and regulations are adjusted in response to changing environmental and socio-economic circumstances. In most countries, environmental framework laws can be revised to incorporate climate, forest and land issues.

¹Navroz K. Dubash, Markus Hagemann, Niklas Höhne & Prabhat Upadhyaya (2013). Developments in national climate change mitigation legislation and strategy, *Climate Policy*, 13:6, 649-664, at 661-662.

²See, e.g., International Finance Corporation (IFC). 2008. Better regulation for growth: regulatory governance in developing countries. Better Regulation for Growth. Investment Climate Advisory Service/World Bank Group: Washington DC, at 33.

³Strategies can include a range of planning documents from stand-alone documents or concise statements, but have the common feature of clarifying action on an action.

⁴See, e.g., OECD, Better Regulation in Europe: France 2010, 115-116.

⁵See "When laws become too complex," UK Cabinet Office, Office of the Parliamentary Counsel. URL: <https://www.gov.uk/government/publications/when-laws-become-too-complex/when-laws-become-too-complex>

⁶See generally, "Legislation, Regulation & Implementation," U.S. Environmental Protection Agency: Air Quality Management Online Portal, URL: http://www.epa.gov/airquality/aqportal/management/reg_imp.htm

⁷See Faure, et al., Bucking the Kuznets Curve: Designing Effective Environmental Regulation in Developing Countries. *Virginia Journal of International Law*, 51(1): 95-156 (2010) p. 147 URL: <http://www.vjil.org/assets/pdfs/vol51/issue1/Faure-et-al.pdf>

4 POLICY REVIEW

Policy review is indispensable in guaranteeing that government actions are addressing the issues that the policy sought to tackle. Review entails measuring and monitoring according to the goals and performance indicators established during the policy formulation process. Review is followed by adjustment, revision or annulment of policies as appropriate.

In many cases, systems for effective monitoring and evaluating (M&E) policy implementation are inadequate or completely lacking. Analysis of information can also be severely lacking, especially where policy goals and performance indicators are ill-defined.

Without effective M&E, the policy process may be doomed to rounds of fruitless adjustment based on political whims or reaction to inadequately understood events. A review process should be called for by the initial policy and established in the subsequent legislation to ensure this phase is implemented.

4.1 Monitoring, Evaluation and Subsequent Reforms

The first two elements in policy review are monitoring and evaluation. Monitoring and evaluation should cover program implementation; socio-economic impacts on different groups; environmental impacts; and assessment of performance indicators related to the policy goals. Monitoring can be informed by data from established measurement, reporting and verification (MRV) systems but should be guided by the policy's own objectives and logical framework rather than those of particular projects and programs.

Based on monitoring and evaluation findings, reforms may need to be instituted to maintain movement towards stated policy targets and respond to changing conditions. As the most technical and adaptable legal instrument in the policy chain, it is important to mandate periodic review of agency regulations, including a public comment phase and subsequent updating according to findings.