



Case Studies
Group exercises
21 April 2017 9-11 am

General background

All three (fictitious) countries described below are parties to the UNFCCC, the Kyoto Protocol and the Paris Agreement. They have all submitted (I)NDCs.

All three countries are Non-Annex I and developing country Parties. They are also low emitters of greenhouse gases with comparatively lower share of cumulative historical emissions..

Two are Least Developed Countries.

They have all requested advice/support from FAO in implementing the Paris Agreement and are particularly interested to determine what domestic legislative changes may be required.

Instructions

Each group should select a **rapporteur**. The group will have 45 minutes to discuss and prepare to report back using a flipchart. The rapporteur will then present the findings in about 10 minutes.

Each case study presents a set of issues and questions for consideration. In preparing your answers to the questions, please consider:

- Which legal principles and/or relevant provisions under the climate change regime (Paris Agreement, UNFCCC etc) are relevant and applicable?
- Which of FAO's objectives, approaches, strategies, policies, tools and other instruments are relevant, and how should those be incorporated?
- How should the institutional elements be addressed?
- How should substantive elements (both climate and FAO strategic objectives) be balanced and integrated?
 - Climate Objective → mitigation, adaptation, transparency, climate finance, loss & damage
 - FAO Objectives → food security, sustainability, poverty reduction, inclusive food systems, and resilience



Case study Country A

Facilitator: Fabiano de Andrade de Correa, LEGN

Background

Country A is a **developing country with significant forestry sector**. Most of its **GHG emissions result from land use change and forest fires**. It has taken steps to try to address these challenges.

In recent years it has introduced legislation aimed at improving regulatory standards including by combatting corruption and making the legal framework for issuance of logging permits more transparent. It is in the process of negotiating a Voluntary Partnership Agreement with the European Union.

There has also been reform of the laws on land tenure in relation to forests with certain groups granted registered usage rights and some registration of community forests although these do not normally accommodate indigenous title.

There is a **national law on climate change but it is very generally framed and focussed on the energy sector**.

The Department for Energy leads on climate change. The Government recognises that its approach is rather fragmented because of the number of ministries and agencies involved.

There is no binding legal framework for participation in REDD+ although there is departmental guidance. Complaints relating to transactions under REDD+ are directed to the Minister of the Environment. The Minister is concerned about any requirement to introduce legislation as there have been controversies about the operation of REDD+ in the past in the context of land grabbing. He hopes that the legislation curbing media reporting will help resolve this.

Country A's NDC refers to the forestry sector and to the contribution of sustainable forest management in reducing emissions. It notes the increased risks posed by wildfires. It was adopted following a series of workshops with stakeholder groups. The NDC takes into account the Sustainable Development Goals.

Country A has included a project for improving forestry management practices in its NAMA.

Despite the recent regulatory initiatives there are **ongoing concerns about illegal logging and abuses directed at forest dwelling peoples**, allegedly by logging companies with possible collusion by local officials. A proposal to specifically legislate for greater public participation by indigenous peoples, including a statutory requirement for Free Prior Informed Consent in forest areas traditionally used and inhabited by forest dwelling peoples were not passed in the recent regulatory review.

There was a change of Government this year and the new Government has introduced a law restricting the activities of NGOs especially those receiving foreign funding. The law also introduces heavy penalties for those criticising government policy or the activities of multinationals who have been awarded government concessions. A number of forest campaigners have been arrested under the new law.

Issues and questions

The Ministry of Environment has asked FAO's advice on a number of matters:

- 1) The Ministry has asked for advice on whether new legislation is required for the forestry sector in the light of the Paris Agreement. The Ministry has highlighted the following factors:



- The recent law regulating the forestry sector does not expressly refer to climate change;
 - REDD+ policy and actions relating to the adoption of the NAMA and NDC have been adopted under general executive powers supported by Ministry guidance.
- 2) The current Government is wary of increasing public participation in this or other sectors and the Minister wants to know whether Paris requires this and to what extent?
 - 3) The current advisory body on forestry does not include members with specific expertise on climate change issues although the advice of the Country's main university is sought on an informal basis.

There is currently a national climate change commission but it is separate from the Forestry Commission and there is an ongoing dispute as to which body leads on climate change in this sector. The Climate Change Commission reports to the Energy Minister as lead Department and focusses on cleaner energy and the development of renewables.

Would FAO have any advice on how to improve the institutional framework for climate change?

- 4) The current law does not include a legally binding system for MRV for emissions in forestry projects and the Minister wants to know whether Paris requires this? A top down approach is preferred given the current concerns about NGO activity.
- 5) There is no prospect at the present time of including FPIC as a binding requirement of national law but the Minister thinks there may be scope for protecting certain other rights of forest dwelling peoples and wants specific advice on this point.
 - He is prepared to consider aspects of the right to food which are relevant to the forest sector in so far as these are mainly procedural.
 - FPIC is currently only applied where required by third parties in relation to specific projects which they fund. The minister has heard that FPIC is considered to be a co-benefit for REDD+ but is not sure whether this makes it a legal requirement.
- 6) Parts of the forest are being degraded by farmers moving in from other areas because of climate related impacts on water and land productivity. The Minister states that there is legislation on adaptation but is very general: the Minister must make an annual report and take reasonable steps to address impacts. The Minister has limited technical support on issues of displacement and wants to know if the Paris Agreement addresses this issue?
- 7) The Minister is sympathetic to further reform of the law relating to tenure for the benefit of all forest dwelling communities and wants to know if Paris strengthens the case for such reforms. However as a quid pro quo he would like to sell off an area of protected state forest for commercial exploitation, 5% of the revenue from sales would go to community based projects. He wants to know if Paris affects this plan? The NDC did not include this proposal and referred to the continued and enhanced protection of all state protected forests.
- 8) Finally, the Minister wants to review the current reporting requirements in the light of the PA, and wants advice on whether there should be a specific legislative provision for forestry.



Case study Country B

Facilitator: Komkrit (Joe) Onsrithong, LEGN

Background

Country B is a landlocked country with LDC status. It is suffering from prolonged drought leading to desertification but has valuable mineral resources. The political climate is unsettled due in part to tensions arising from land grabbing and the displacement of some communities due to the lowering of the water table. A number of multinationals involved in the extractive industry have been accused of forcing people from their land increasing competition for ever decreasing productive land for growing crops. In some areas of the country there are high levels of malnutrition. An international NGO has accused the government of making inadequate provision for food security in an area of the country in which a minority ethnic group is based.

The rural sectors form the basis for the livelihoods of 75% of the population.

The Government wishes to address food security and is interested in the opportunities which may arise from Paris but is concerned about adopting a right to food approach, fearing that this will increase political tension. It is more attracted by technical approaches including the use of GM crops which are adapted to thrive in dry conditions.

The Government does operate a form of mapping and DRR but none of these policies are underpinned by legislation and the Government has been accused of operating these policies in a discriminatory manner. There is sensitivity about publishing information on adverse impacts of climate change due to civil unrest and suspicion of government plans to relocate communities

Country B has included in its NAPA a proposed project for improved methods of water harvesting and for the establishment of early warning systems relating to both food security and to displacement of people. There is also interest in improving the resilience of livestock in extreme weather conditions, including through further research. It is also seeking support for National Climate Change Observatory on Adaptation Policy

Country B is in the process of developing a NAP with support from FAO. This will replace the NAPA. It will include an emphasis on land rehabilitation and livestock breeding zones in view of the long term pressures exerted by drought and water shortages. There is also a focus on health issues including the impact of climate change on the incidence of malaria and meningitis.

The Country's NDC indicates emissions projections for Business as Usual (BAU) and then unconditional (based on current policies) and conditional (subject to further funding) contributions for mitigation across a number of sectors including agriculture. The NDC was adopted under the National Sustainability Plan. The reference year is 2008 when the last GHG inventory was completed. The agricultural sector is the major emitting sector with emissions from livestock, from the burning of agricultural waste and from land use change and forestry in particular.

Issues and questions

- 1) The Minister for Agriculture wants to know if the Paris Agreement will require the adoption of **any new legislation** or whether any new measures can be adopted in the **form of guidance** for the agricultural sector. She is concerned that although there is a national framework climate change law it does not specifically address agriculture or food security and is overseen by the Environment Ministry with significant input from the Prime Minister's office. Ideally she would like a **distinct legal framework for agriculture** focusing on adaptation and measures to improve resilience.



- 2) One of the key concerns is inter-ministerial coordination and the Minister for Agriculture is seeking advice on the form that this might take and **whether an overarching climate change body is preferable to a body with specific responsibility for climate change in the sectors** for which she is responsible and which would be answerable directly to her. She wants advice on the extent to which **Paris requires access to information** in relation to such a body.
- 3) The Minister for Agriculture wants advice on the extent to which Paris prescribes a **particular process for the adoption of the NDC** for the agriculture sector and whether this will entail **specific legislation**. Under the current arrangements, the NDC can be adopted by Executive Order under the National Plan.
- 4) She is concerned about unrest among the pastoralist community in the context of **public participation** requirements as such processes could become a focus for conflict with farmers.
- 5) She is keen to develop the **legislation on DRR** for the agricultural sector, but is concerned as to whether this will entail the imposition of **absolute duties** on government, in particular in relation to **displacement and food security**. Will individuals be entitled to bring **human rights claim** to domestic and international courts?
- 6) The Minister is seeking advice on whether **additional legislation on transparency** would make the country more attractive to international donors?



Case study country C

Facilitator: Kate Cook, Matrix Chambers

Background

Country C is a coastal state with LDC status. It is at high risk of coastal erosion and some communities have already had to be relocated.

The country has a framework law in place which makes provision for adaptation and DRR but not for relocation as such. This is dealt with under general social protection laws which are not suited to dealing with the relocation of large numbers of people. There is provision for adopting a strategic plan and then Ministries develop sectoral policy in accordance with the plan but the plan does not provide in detail for coastal adaptation or the aquaculture sector.

The coastline has many areas of mangrove but these have become degraded or have been removed to make way for tourist development. Local people use mangrove wood for smoking fish.

Aquaculture is a significant source of income for coastal communities as is the coastal fishery. The country has included the restoration of mangroves in its NAPA as well as the establishment of community based marine resource management. Local NGOs argue that such restoration should be based on an ecosystem approach.

There is an early warning system in place but this is not supported by legislation.

In its NAMA State C has referred to its aim to sequester and store substantial blue carbon through the conservation and restoration of mangroves, thus diminishing greenhouse gasses from entering the atmosphere. The application of sound science in quantifying the country's current and potential carbon sequestering and storage capacity is recognised as very important in this regard.

The country's Constitution protects a number relevant rights including the right to life, to adequate food and the right to a livelihood as well as the right to a decent environment. A number of national NGOs are active in bringing constitutional cases to court and there is an increased interest in climate related litigation.

The country's NDC emphasises the importance of adaptation and reducing vulnerability particularly of its coastal areas. It has not been able to assess emissions from land use and forestry sectors as yet but there are clear co-benefits from the adaptation measures proposed. Flood control and the need for improved early warning systems are highlighted.

Issues and questions

- 1) The Climate Change Commission would like to lead on these issues but the Ministry for Fisheries wishes to supervise all policy in relation to the impacts of climate change on coastal communities and livelihoods to ensure coherence with other policies. Both entities have asked for advice as to whether **Paris indicates a particular model or approach for inter-agency cooperation** and division of responsibility.
- 2) One coastal community is going to the Constitutional Court arguing that the failure to protect their homes from erosion resulting in relocation constitutes a violation of their constitutional rights and they argue that the Paris Agreement **strengthens their claim for damages** against the state. The Minister for Fisheries is seeking advice on this point.



- 3) The Environment Ministry leads on the restoration of **mangroves** and wants to understand whether Paris requires a change in domestic law on this issue. The Minister wants to know what **principles** may need to be enshrined in domestic law and what the implications are for potential legal challenges.

- 4) The Prime Minister announced on ratification that all major decisions relating to climate change would be subject to new **procedures for public participation** and stakeholder involvement and you are asked for guidance on legal approaches to take on this. What are the requirements for transparency under the Paris Agreement?