



Information note

Legal assessment to set up and operationalize a national forest monitoring system

Summary

Countries have made substantial advances in developing and operationalizing their National Forest Monitoring Systems (NFMS), to comply with the measurement, reporting and verification (MRV) framework under the United Nations Framework Convention on Climate Change (UNFCCC), as well as to provide better forest data to effectively support decision-making and domestic policies. Efforts in developing NFMS has been fundamental to increase transparency, and lessons learnt will be useful to implement the enhanced transparency framework (ETF) under the Paris Agreement.

Efforts have also been made to institutionalize their NFMS, in order to enhance country ownership, which is key to its sustainability, and to paving the way for more streamlined use of forest data, data-sharing and transparency.

The Food and Agriculture Organization of the United Nations (FAO) has developed a NFMS assessment tool to facilitate the identification of needs and gaps in order to establish or strengthen a country's NFMS across three complementary themes (FAO, 2020):

- » institutional arrangements,
- » measurement and estimation, and
- » reporting and verification.

In order to support developing countries in moving towards a more solid institutional setting, the FAO has adopted a stepwise approach to guide the development and adoption of a legal instrument aimed at institutionalizing an NFMS (FAO, 2021).

In addition, an NFMS legal assessment matrix to assist countries in assessing and identifying relevant aspects that might be included in an NFMS legal instrument has been developed.



Context

Sustainable forest management requires legally binding arrangements combined with financial resources for staff and data collection, supported with sound structures to enforce legal measures beyond the duration of a single political cycle. In this regard, forest-related institutions with clear mandates can facilitate the task of ensuring the sustainability of an NFMS, increase transparency in forest data, access to financial resources, including REDD+ results-based payments, and adequately inform decision-making processes to reduce deforestation and degradation.

According with the voluntary guidelines on national forest monitoring (FAO 2017), a long-term structure implemented through a permanent institution is at the basis for institutionalizing a NFMS. Efforts should be made to build on existing national institutions and existing national capacities, while keeping in mind that long-term and secured adequate funding is required. To achieve that, defining a legal basis may contribute to the sustainability of an NFMS.



Why legal and institutional arrangements are needed?

The institutionalisation of an NFMS contributes to increased country ownership, which is key to sustainability, and to paving the way for more streamlined and long-term use of information generated in the forest sector.

A robust and institutionalized NFMS can then help to ensure that:

- » National monitoring of forests is considered a fundamental government responsibility, and therefore instills ownership.
- » Transparent and reliable data and information are consistently collected, managed, made permanently available and analyzed over time.
- » Data is stored in a secured physical and digital archival system to be permanently available by users
- » National professional staff are retained, which is a precondition for further development and improvement of the system.
- » The government knows to whom to refer when analysis and specific forest-related information are needed.
- » Information flows between competent entities are clearer and are based on data-sharing and reporting protocols.
- » The expertise and experience developed are stored to create the necessary "institutional memory".
- » A clear governance structure is adopted, defining the roles of the different entities involved in the NFMS and related information systems.

What does the legal assessment matrix consist of?

The NFMS legal assessment matrix might facilitate the identification of legal provisions and gaps related to access to forestry information, by assessing legislation indicating the type of information, sources, modalities and receptors/users of forest data produced by national institutions.

These tasks can be undertaken by the legal teams of the forestry institution, in collaboration with FAO if no resources are available to recruit a legal consultant. It doesn't replace an in-depth legal analysis on the subject matter.

In 2020, the matrix shown below has first been developed to assist the National Forest Conservation Institute (ICF: Instituto Nacional de Conservación y Desarrollo Forestal) of Honduras in carrying out a legal gap analysis and developing a data sharing protocol.

How can a country benefit?

FAO is aiming to strengthen national capacities on forest monitoring through the consolidation of NFMS legal and institutional arrangements at national level, based on a clear division of roles and responsibilities between institutions related to monitoring of forests and land use.

The in-depth legal analysis (Table 1) and the NFMS assessment matrix tool (Table 2) supports the development of an NFMS legal instrument.

Both help to understand what decisions need to be taken at institutional level to operationalize an NFMS, such as defining the roles and functions of the different entities involved in forest data collection, clarify data-sharing conditions, or establishing legal arrangements required to strengthen institutional coordination.

What are the steps to adopt an NFMS legal instrument?

The stepwise approach is based on:

- » systematic gap analysis of the legal framework,
- » development of detailed recommendations for the government, highlighting weaknesses and constraints, and
- » a contribution to the drafting of new laws and regulations.

The table below summarizes a stepwise approach for developing an in-depth legal analysis and drafting an NFMS legal instrument that will support regulating the NFMS (FAO, 2021):

Table 1 Stepwise approach for developing in-depth NFMS legal analysis

Legal review	→ Gap assessment	→ Law-making
1. Legal analysis of the forest and related legal frameworks, focusing on NFMS aspects, including international reporting commitments, and existing normative regarding the use of forest data Current forest > 20 % canopy cover	3. Define the articles to be contained in a decree, agreement or law, which are needed to bridge the gaps and recommend legal reforms.	5. Based on the findings of the validated legal report, draft the NFMS legal instrument.
2. Interview key stakeholders of the different institutions involved in NFMS activities, to have a better understanding of the related challenges and gaps which will be reflected in the final legal report.	4. Identify the most appropriate legal instrument to introduce norms and procedures for the operation of their NFMS aspects, in coordination with relevant institutions.	6. Share the draft legal instrument or the proposal of legal reform with relevant stakeholders to integrate their views in the final version.
		7. Channel the final draft NFMS legal instrument through the appropriate national entity for adoption

Table 2 NFMS legal assessment matrix

Relevant aspects regulated by law that relate to access to information and data-sharing issues	Access to information by users generated by public institutions	Conditions and requirements for sharing (not confidential) data between public institutions (within the same or different institutions)	Conditions and requirements for sharing (confidential) data between public institutions, that might need to be aggregated	Information flow between the institutions that generate environmental/ forest information with identification of roles and responsibilities	Definition of the conditions, modalities and requirements to access environmental / forest information by users
Legal Instruments containing provisions related to data-sharing and access to inform issues					
Constitution	<p>Each cell can be filled by including relevant provisions or articles regulating each single aspect indicated in the column, if no legislation is available, a gap is detected.</p>				
Access to Information law					
Forestry law					
Others					
Observations					

Conclusion

Strengthening human and technical capacities, while creating the conditions to design, implement and evaluate options for improved climate action in the forest sector, will require setting institutional arrangements for collection, analysis and reporting of forest-related data.

To that end, legal expertise can play a valuable role in guiding the design of, and ensuring the sustainability of an NFMS. This will ensure that institutional and legal elements are embedded in the NFMS design, which will in turn help to develop legal instruments for its establishment and implementation.

References

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