



Agriculture and natural resources governance: legal tools for inclusive and sustainable transformation



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Sustainability imperatives that yield benefits across economic, social and environmental goals have transformed models of national governance, businesses and individual behaviour. As the macro-level architecture for sustainable development, national legal frameworks provide an opportunity to shift towards inclusive agrifood systems and extractives sectors that embrace all three pillars of sustainability: economic growth, social inclusion and equity, and environmental protection.

Recognizing that legislation forms the backbone of sustainable governance arrangements, this Brief synthesizes the key regulatory mechanisms and tools to promote, facilitate and ensure the three interconnected facets of sustainable development. This brief offers a macro-level view of the linkages and connections among the three pillars.

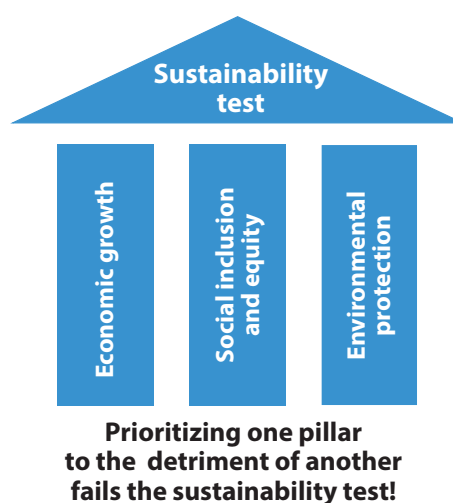
This brief is based on the joint publication *Legislative approaches to sustainable agriculture and natural resources governance* by the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP) of 2020. This publication spans a number of sectors: land, water resources, capture fisheries and aquaculture, petroleum, mining, forestry and agriculture and rural development, and brings together legislative principles, models and concepts that cut across these sectors.



Legislating for sustainable development

1. Sustainability

The Sustainable Development Goals (SDGs) frame sustainable development as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*” Development must therefore achieve equilibrium among three interlinked, interdependent and core foundations: economic growth, social inclusion and equity, and environmental protection. Policies and regulatory frameworks that prioritize one of these pillars to the detriment of another fail the sustainability test. Thus, any solutions to address challenges in one aspect must consider the impact upon all three.



2. Systems-thinking to inform natural resources legislation

Sustainability does not merely involve a balancing of static components. Rather, it is a perspective that sees the three pillars in flux, interacting and interdependent. This warrants a systems approach that looks at the processes and linkages between the pillars in order to select specific measures that achieve desired regulatory outcomes. To add to the complexity, governance itself is a dynamic system of rules, processes and institutions designed and implemented at multiple levels (supranational, national/federal, state/province and local/municipal levels). Additionally, formal statutory legislation may operate alongside other legal systems, including, for instance, indigenous legal systems or other legal traditions whose norms and rules are derived from their own customs, practices and traditions. In no other sphere is the duality between statutory law and customary law/practices more visible than for natural resources governance.

Sustainability is a perspective that sees the three pillars in flux, interacting and interdependent

On the other hand, legislation itself is a static instrument, often standing for decades, whether by design or owing to the difficulty in approving new laws or making changes to existing ones. Thus, for legislators, the challenge is creating a set of rules that is robust and flexible enough to stand

for years while the elements to be regulated, and the evidence-base for the underpinning policies, are dynamic and constantly evolving.

Sound legislative drafting strategies can mitigate the disadvantages of this static nature. The strategic use of enabling provisions in a primary law (depending on the jurisdiction and legal system) allows more technical and procedural aspects to be relegated to secondary legislation or even planning instruments – both of which are easier to modify. Also, if adequately circumscribed, decision-making criteria and procedures offer leeway and guidance to regulators to make the best sustainability decision that the circumstances require.

Considerations in selecting a legal instrument: a balancing act



3. Recognizing interconnections during legislative reform

At the national level, legislative reform in one sector involves conducting a gap assessment of all the applicable legislation (across various sectors) as well as carrying out institutional assessments and stakeholder mapping. These assessments enable an understanding of existing policy and technical gaps, contradictory provisions, and overlaps in institutional mandates. Legislation stock-taking and review will include all types of legislation (primary and subsidiary) at all vertical levels (federal/state where applicable), as well as ‘horizontal’ linkages with other sectors.

During this process, the impacts on the three pillars (economic, environmental, social) may be understood within a specific sector as well as potentially across related sectors. This allows for a holistic view of the legal framework before zeroing in on the constituent aspects to be regulated within a sector. For example, reforms in the mining sector require consideration of the three pillars within the sector, therefore, they may also have impacts on the environment broadly, agriculture or labour rights. Petroleum production rights may impact rights relating to land or marine areas and related agricultural, forestry or fishing rights.

Guiding concepts and principles

Legislation for sustainable agriculture and natural resources management may be anchored through internationally-recognized guiding principles and concepts that can be utilized across jurisdictions and all types of legal systems. Moreover, these principles and models cut across, and should be applied in, all natural resources sectors.

Stakeholder participation: a fundamental for design and implementation

Stakeholder participation weighs competing interests under the three pillars of sustainable development, ensures that legislation reflects national realities, and facilitates widespread compliance. Within the text of a law, various regulatory mechanisms apply the stakeholder participation principle; these include **periodic consultation on the lighter end of the scale, inclusion in decision-making bodies as a common option, and on the other end of the scale, direct co-management of resources.**

Laws may set out procedural rights, including the right to access relevant information and adequate time to review and respond to proposals for policy, planning and legislation.

For community management of resources, legislation may grant responsibility and power to local structures or local communities. Laws establish what constitutes the community and outline its resource management responsibilities as well as those of the competent authority.

Human rights-based approaches

The human rights-based approach implies that the values, principles and goals of human rights govern the field in question. It considers the possible disproportionate impact of legislative reforms on certain segments of the population. For instance, women and men may be impacted differently across sectors. Temporary special measures may be necessary to redress existing inequalities, for example, through enabling provisions that facilitate women's access to land, finance and services.

Targeting certain demographics: "Leave No One Behind"

"Leave No One Behind" is a fundamental tenet of the 2030 Agenda and the Sustainable Development Goals. Smallholders, rural communities and indigenous groups require special attention in order to allow them to overcome constraints such as access to markets and financial services. Legislative provisions on specialized credit and loans can help finance a range of (low-impact) inputs or provide capital for equipment and infrastructure upgrades. Smallholders may receive preferential access to certain forest, mining or fishing areas. Legislation may target rural youth for training in legislation for training, education and mentorship to increase their access to decent work and entrepreneurship opportunities.

In addition to the numerous human rights treaties that address different aspects of non-discrimination, civil, cultural, economic, political and social rights, many international guidelines (i.e. non-legally binding) are available to help shape relevant national law provisions.

Environmental paradigms recognizing all three pillars

Certain environmental models and themes cut across all three pillars. These themes may attract distinct provisions in sectoral laws or may be contained in a cross-cutting and self-standing law.

- The **ecosystems approach**, a common feature of forestry, water and fisheries legislation, recognizes that ecosystem management is also a social process. This approach frames governance of the ecosystem as a holistic, natural unit rather than the different elements that comprise it.
- In the fisheries sector, the **blue growth concept** seeks to address the sector's environmental, social and economic challenges and externalities.
- **Agroecology** involves the application of ecological factors to optimize interactions between plants, animals, humans and the environment, while considering social dimensions for a sustainable and fair food system.

Tools and mechanisms in legislation for sustainable development

1. Impact assessments

Regulatory Impact Assessment

Regulatory impact assessments (RIAs) are a useful tool for applying a systems approach to legislative reform by identifying economic, social and environmental impacts contemporaneously. The RIAs are used to identify the most efficient, effective (and ultimately sustainable) regulatory approach to address a challenge (including non-regulatory alternatives). By examining the costs and benefits of different options, RIA processes highlight unintended consequences and trade-offs, indicate risks and offer associated mitigation strategies. In the identification of risks and regulatory solutions, additional weight can be given to criteria such as poverty reduction or gender-sensitive approaches, thereby minimizing negative impacts on, or yielding greater benefits to, certain stakeholders or priority issues.

As part of the RIA process, evaluating outcomes and measuring the impacts of legislation helps to identify negative or positive intended and unintended impacts, which can then provide implementation data for future RIAs; this evidence-based process ultimately leads to better law making.

Environmental and Social Impact Assessments

Environmental and Social Impact Assessments (ESIA) are mechanisms to determine the effects of a particular activity identified in legislation, at all phases of the activity (including post-closure), on the environment and the local and national community. An EIA or SIA or ESIA are common pre-conditions for the issuance of permits or authorizations for certain – often larger scale – activities.

Legislative provisions should stipulate when these impact assessments are required and should also establish the key elements to be addressed in reports. Common EIA/SIA elements include: identifying the beneficial and negative impacts; listing of the key risk together with proposed mitigation options; and evaluating cumulative effects and broader impacts at all stages of the activity.

Impact assessments

A systems approach is inherent in impact assessment processes as these tools can be used to identify beneficial and negative impacts, risks and mitigation strategies and to develop appropriate evaluation mechanisms.

2. Regulatory coherence

Coherence of regulatory frameworks (policies, laws and institutions) is important for resources management within and across sectors. For example, agricultural production has implications for, and is impacted by, the frameworks for the environment, land rights, health (of humans, animals, plants), trade and the economy. Water management impacts frameworks for agriculture, trade and

industry, energy and the environment. A conversion from forest land use to non-forest uses or vice versa must give regard to the network of land rights and the rights of forest-dwelling communities.

Planning

The setting of requirements and parameters in legislation for the development of master plans and local plans for resource management promotes regulatory coherence among sectors. Plans enable specific actions and measures to be taken in alignment with the classification of the particular resource (water, forestry, fishery, etc.) and objectives of the management area. Planning instruments are used to deploy mechanisms for integrated management of resources, which is akin to the ecosystem approach outlined earlier. For example, planning for integrated water resources management (IWRM) recognizes that natural resource boundaries and administrative boundaries do not necessarily coincide. Instead, IWRM provides a framework at the watershed, basin or catchment level that positions the water sector as the prism for multisectoral analysis and consideration.

Land use or resource classification changes

Legislation may enable the conservation and protection of resources by prescribing when changes in land use are permitted for environmental protection objectives. Classifications or land use designations endow certain protections to an area with corresponding responsibilities and management objectives. For example, for a land use or a forest category or classification change, it may be useful to have the flexibility to be able to change use in order to: (i) set up afforestation and reforestation activities in areas previously designated for other uses; (ii) de-incentivize deforestation, such as stimulating second-generation biofuels using plant and tree waste; or (iii) favour conservation of soil or nearby water bodies, etc.

Decision-making or advisory bodies

For the purposes of cross-sectoral coordination and cooperation, legislation may set up multistakeholder bodies with an executive mandate (specific regulatory tasks and functions) or with an advisory mandate (for consultations, information dissemination and exchange, etc.). These entities can enable multi-level governance that pools resources and technical capacities at various vertical (administrative) levels and across horizontal (sectoral) entities, in addition to bringing together a range of stakeholders (individuals, communities, companies). Broad representation in such bodies takes into account gender, racial, socio-economic, geographic or other factors to enable equitable stakeholder participation. These multisectoral and multidisciplinary bodies enable sector-specific needs to be highlighted in different types of forums, thus favouring holistic and integrated management of resources.

3. Respecting, protecting and safeguarding access to resources

Legislation sets out who or which groups (an individual, a collective entity, a community, a company or a vessel) can access a particular resource, the quantity or scope of access, and the requirements or conditions relating to such access. Certain rights over natural resources such as fishing areas, water or land may be enshrined and protected by law (or even national Constitutions). Beyond these protected rights, prospecting, access or use rights may be regulated through permits, licences and concessions. Access involves striking a balance between harvesting, production or use rights on the one hand (e.g. for commercial production or harvesting, or use for livelihood, food, etc.) and conserving the resource on the other. It also includes balancing the

needs of different types of users. Depending on the type of access, the location (e.g. Indigenous Peoples' lands), and the specific type or classification of resource, authorization may be granted on the basis of existing rights/quotas or possibly involving the free prior informed consent (FPIC) mechanism, which reverts the authority for granting access to the indigenous communities themselves. Regulating access may involve granting preferential access to certain groups. Legislation may offer guaranteed allocation to certain areas, for example, to small-scale fishers or artisanal and small-scale miners.

Legal provisions on procedural aspects that contribute to transparency and accountability are fairly standard across all sectors regarding application procedures and decision-making processes.

Access to resources

Regulating access to resources considers the scope of different types of use rights, the varying needs of a range of stakeholders and, in both cases, the protection of the resource itself (and the environment more broadly).

4. Protecting labour rights

Legislative provisions for occupational safety and worker protection vary according to types and specific characteristics of the work involved in the agricultural, mining and petroleum sectors. Informality may dominate depending on the sector or jurisdiction, but this invariably undermines the right to decent employment as well as health and safety. Relevant provisions may be found in sector-specific laws that outline the rights of workers in the specific resource context (fishing at sea, mining, etc.) and the duty of employers in that sector to ensure these rights are respected and protected. Alternatively, general or specific provisions may be included in a country's labour laws. Certain protections are applicable across sectors, such as capping work hours, establishing minimum wages that provide an adequate living, or stipulating a general duty to ensure decent working conditions.



5. Benefit sharing

Various mechanisms can be used to share the benefits arising from the use of natural resources. Fiscal and non-fiscal benefits enable payments to be distributed equitably for the general benefit of the country and specifically for the local community. The most diverse examples are found in the extractive sectors legislation (forestry, petroleum and mining). Legislation typically establishes the key elements of benefit-sharing arrangements, which include: an identification of the source of the benefit, an identification of the provider and recipient of the benefit, a stipulated minimum benefit, and the mechanisms for disbursement, management and monitoring. Legislation may set out frameworks for community development agreements. Provisions on transparent financial management, public reporting and accountability systems should be stipulated in the law.

Examples of fiscal benefits	Examples of non-fiscal benefits
<ul style="list-style-type: none"> • Royalties • Sales tax • Land rent • Signing bonus • Production bonus • Other types of income generated from the use of resource 	<ul style="list-style-type: none"> • Mandatory domestic/local procurement of prescribed materials, services or partnerships • Mandatory employment of a prescribed percentage of local citizens • Community development initiatives (e.g. education, public health services, transfer of science and technology skills and equipment, improvement of transport infrastructure, and other services for the community)

6. Fiscal incentives to protect resources and enable sustainable development

Payments for ecosystem services

Payments for Ecosystem Services (PES), also known as Remuneration of Positive Externalities (RPE), is a market mechanism that offers fiscal (or other socio-economic benefits) to incentivize managers and users of a resource towards the continued or improved provision of ecosystem services provided by the resource. This mechanism is used widely in the forestry, land, water and fisheries sectors and encourages investment in the protection of the resource. Legislation should establish the qualifications to receive remunerations, the methods to track and price specific resource management actions, and the means of disbursing payments. However, successful PES schemes are contingent on broader contextual factors such as: national laws governing contracts, land tenure arrangements and clear property or use rights, and the government's capacity to monitor and inventory natural resources.

Tax rebates and technology incentives

Legislation may encourage the rational use of natural resources through incentives such as: tax reductions or exemptions, credit, or cash rebates for individuals or enterprises that carry out prescribed measures to protect resources. Alternatively, incentives such as credit or cash rebates may be used to encourage the adoption of particular types of (sustainable) technologies or materials over other types (e.g. technologies that enable low-impact inputs, encourage recycling and reduce energy use). Incentives may be used to boost smallholder or local community production initiatives. In some jurisdictions, economic incentives such as credits, bonds and trusts have been used to undercut the profit gap between illegal operations and sustainable forest management activities.

Fiscal incentives

Legislation may set out arrangements for tax breaks, cash rebates or payments for undertaking prescribed actions (such as certain management practices or the use of certain technologies or materials) to protect natural resources.

7. Certification

Certification and labelling systems may be based on legal (mandatory) requirements or may be used for branding and quality purposes that contribute to (private and non-mandatory) business sustainability standards. Mandatory schemes can apply to prescribed: (i) geographic areas in a country; (ii) types of resources (e.g. type of forest); (iii) types of producers; or (iv) types of products (e.g. fish harvested in a certain manner). Organic agricultural production legislation sets out a framework for practices that are verified by certification bodies and allow for the use of specific labelling and marks to demonstrate compliance with sustainable production practices.

8. Protecting natural resources

Protected areas

Ecological protection zones and protected areas can be established in legislation to preserve either special uses (such as water for drinking or parks for recreation) or environmental protection of certain ecologically important or sensitive areas (e.g. watersheds). Legislation typically prohibits or restricts activities and pollution of different kinds in or around the area. Areas designated for certain purposes, such as refuges, reserves and protected areas, should be made in the highest-level legislation to avoid easy policy reversals achieved by less-scrutinized subsidiary instruments. Indigenous Peoples are significantly affected by environmental degradation of the resources on which they depend for their livelihoods and cultural heritage. Laws should protect their collective rights, safeguard traditional knowledge (and regulate access to such knowledge), and harness local practices that are climate-smart, resilient and sustainable. At the same time, where local practices are inconsistent with sustainable resource management, laws may sometimes place restrictions on community rights, specifically for protected areas.

Genetic resources

Common mechanisms found in laws to preserve genetic resources include: comprehensive national inventories of genetic resources based on standardized technical protocols; ex situ conservation of crops, animals and forests; and germplasm storage and conservation. Genetic resources for agriculture are conserved by listing existing and endangered species (often found in Schedules or similar instruments for easy modification) and by setting out measures to preserve the diversity of both plant and animal species (i.e. to prevent extinction as well as to increase quality and productivity). As an illustration of protective measures, provisions to protect aquatic animal stocks include preventing the introduction of invasive species and minimizing the spread of disease among fish stocks, including from aquaculture to wild stocks.

Key messages

- Sustainability is achieved by paying equal attention to social, environmental and economic factors, i.e. the “three pillars of sustainability”: prioritizing one pillar to the detriment of another fails the sustainability test.
- Legislative reform processes should apply a systems-thinking approach and recognize interconnections among the three pillars within a sector and across sectors.
- Legislation is static, while the systems involved are constantly in flux: law-making must allow for flexibility and changing realities while providing legal certainty and clarity.
- Implementing a human rights-based approach to legal reform ensures that no one is left behind, puts people at the centre of governance processes, and accelerates the achievement of SDGs.
- Impact assessments help identify risks as well as opportunities to maximize convergence between economic growth, social inclusion and equity, and environmental protection.
- Key mechanisms, processes and tools to support sustainability through legislation include:
 - Impact assessments
 - Planning instruments
 - Establishing appropriate stakeholder participation bodies
 - Clearly defining (and safeguarding) rights of access to a resource while conserving the resource base
 - Protecting labour rights
 - Benefit sharing
 - Offering fiscal incentives for prescribed management practices or the use of prescribed technologies and materials
 - Establishing certification schemes that attest to sustainable production, extraction or harvesting
 - Designating areas for specific uses and objectives (e.g. protected areas)
 - *In situ* and *ex situ* conservation of genetic resources

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