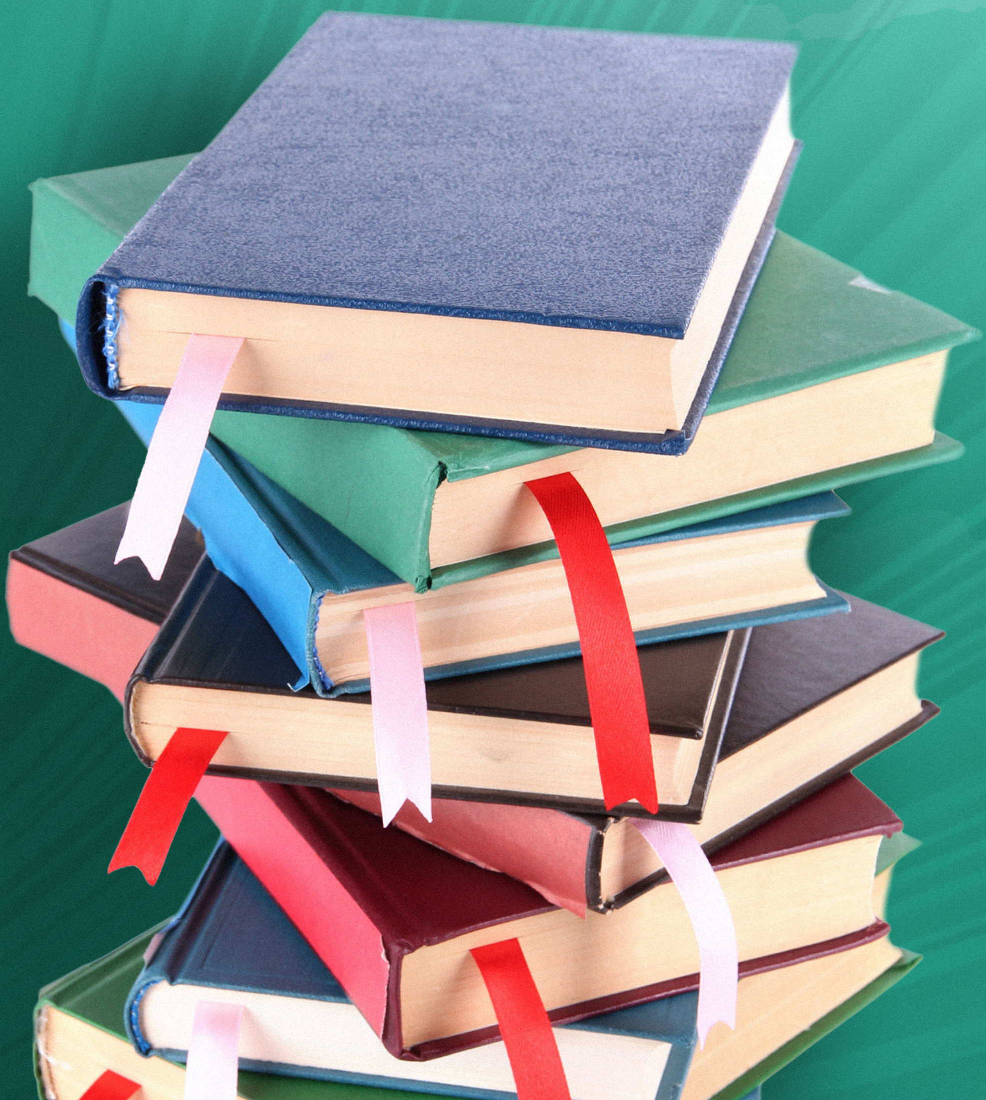
UNEP

UNDP

Empowered lives.
Resilient nations.

The Role of Legal Instruments to Support Green Low-Emission and Climate-Resilient Development

A Guidebook on Assessing, Selecting and Implementing Legal Instruments



The Role of Legal Instruments to Support Green Low-Emission and Climate-Resilient Development

A Guidebook on Assessing, Selecting and Implementing Legal Instruments

AUTHORS

Lal Kurukulasuriya (CERTI)
Rachel Schutte (CERTI)
Caroline Haywood (IDLO)
Laura Rhodes (IDLO)

CO-ORDINATORS

Arkadiy Levintanus (UNEP)
Stephen Gold (UNDP)
Andy Raine (UNDP)
Marie-Claire Cordonier Segger (IDLO)

EDITOR

Jeffrey Stern (Suazion)

DESIGN

Suazion (NY, suazion.com)

Contents

Annexes 49

Boxes

Figures

Tables

Foreword

Climate change is one of the most significant challenges of our time. Its impacts affect all countries and threaten to reverse hard-earned development gains in many parts of the world. Many countries are responding to this challenge by adopting—or planning to adopt—policies and strategies aimed at low-emission and climate-resilient growth. These 'green growth' or 'sustainable development' strategies have emerged in various forms and have been afforded definitions that differ according to their scope of ambition and focus. A common thread is that these strategies seek to enable countries to effectively integrate low-emission and climate-resilient policies into national economic and social priorities and objectives (including the achievement of critical national development goals).

Green, Low-Emission and Climate-Resilient Development Strategies (Green LECRDS) are one such approach being adopted by governments at various levels in pursuit of these objectives. Developed at the national and/or sub-national levels, Green LECRDS are cross-sectoral policy frameworks that provide a vision for inclusive and green low-emission and climate-resilient development. Preparing Green LECRDS involves coordinated planning, assessments of on-the-ground vulnerability scenarios and identification and prioritization of strategic options in order to arrive at a low-emission and climate-resilient development roadmap. Together with key financing partners (such as the Global Environment Facility), the United Nations Development Programme and the United Nations Environment Programme are working with a number of countries on projects and programmes that contribute to the development of Green LECRDS.

> "Legal frameworks will either help or hinder green, low-emission and climate-resilient development; the best policies will be largely ineffective without support from well-designed, clear, coherent, flexible and enforced legislation."

Legal frameworks will either help or hinder green, low-emission and climate-resilient development; the best policies will be largely ineffective without support from well-designed, clear, coherent, flexible and enforced legislation. Effective and enforced legal frameworks are also crucial to securing domestic and international private investment.

In order to assist government decision makers and their advisers address this issue, the United Nations Development Programme and the United Nations Environment Programme (together with the Centre for Environmental Research, Training and Information and the International Development Law Organization), drew on the organizations' collective experience in assessing, selecting and implementing legal instrument to support the implementation of Green LECRDs. The Guidebook aims to empower decision makers to undertake legal reforms by providing a generic process and an accessible toolkit of various options adaptable to country-specific contexts. It also provides select case studies that ground the material in current reality and illustrate possible approaches.

It is our hope that this guidebook will contribute to countries' initiatives to develop and implement green, low-emission and climate-resilient development strategies in their efforts to address urgent climate change challenges.

Bakary Kante
Director, Division of Environmental Law and Conventions
United Nations Environment Programme

Olav Kjørven
Assistant Secretary-General and Director, Bureau for Development Policy
United Nations Development Programme

Introduction

Context and purpose of the Guidebook

The need for countries to transition rapidly to low-emission and climate-resilient development pathways is clear. To facilitate this transition, many countries have adopted (or are planning to adopt), relevant policies and strategies while also seeking to ensure that other development priorities (e.g. health, education, infrastructure, social services) are protected or advanced. Green, Low-Emission and Climate-Resilient Development Strategies (Green LECRDS) are one such approach being adopted by governments in pursuit of these objectives.[1] Developed at the national and/or sub-national levels, Green LECRDS are cross-sectoral policy frameworks that provide a vision for inclusive and green low-emission and climate-resilient development.[2]

“The lack of an adequate legal framework is repeatedly identified as one of the key barriers to private investment in developing countries.”

In any country, legal frameworks will either help or hinder green, low-emission and climate-resilient development. For example, though a government may have a well-designed policy to introduce a feed-in-tariff to address renewable energy investment risks, the policy will not succeed if it is not implemented and supported by legislation (or other appropriate legal instrument) that is clear, coherent, flexible and enforced. Similarly, a government's policies on requiring climate-resilient infrastructure will be materially facilitated if pre-existing legal instruments require infrastructure risk assessments—thus allowing climate change risk assessments to be included in the existing framework.

The lack of an adequate legal framework is repeatedly identified as one of the key barriers to private investment in developing countries. For example, recent private-sector consultations conducted in China and India under the Energy+ Initiative identified regulatory uncertainty as a key barrier to investing in renewable energy and energy efficiency projects across Asia.[3] Ensuring an adequate legal framework is critical—green, low-emission and climate-resilient development can only occur at scale in a country if it is financed predominately by the private sector. The challenge for policy makers, therefore, is to use scarce public resources to catalyse much greater amounts of private capital towards green, low-emission and climate resilient-development investments.

Policy makers can do this by creating the necessary enabling environments for investment risk reduction, utilizing a combination of 'policy de-risking instruments' and 'financial de-risking instruments'. Policy de-risking instruments remove the underlying barriers that are the root causes of risks. Such instruments include policy design, institutional capacity building, and information campaigns. Financial de-risking instruments are those that do not seek to directly address the underlying barriers, but instead

1 Further guidance on Green LECRDS is contained in Annex 1. A number of guidebooks on Green LECRDS are available from the United Nations Development Programme (UNDP) at: http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/climate_strategies/green_lecrds_guidancemanualsandtoolkits/.

2 United Nations Environment Programme (UNEP), 'Guidebook on National Legislation for Adaptation to Climate Change', 2011, pp. 169-178, available at: http://www.unep.org/delc/Portals/119/GUIDEBOOKONNATIONALLEGISLATIONFORADAPTATIONTOCLIMATECHANGE.pdf.

3 Consultations conducted in Guangzhou and New Deli in 2012. UN Secretary-General Ban Ki-moon and Norwegian Prime Minister Jens Stoltenberg launched the Energy+ initiative in October 2011. It has over 40 international partners, including UNDP and UNEP.

transfer the risks that investors face to public actors (e.g. development banks). These instruments include loan guarantees, political risk insurance and public co-investments.[4]

Ensuring an adequate legal framework and supporting regulation/legal instruments (e.g. legislation, statutory instruments and by-laws, codes of conduct, voluntary regulation regimes) will be critical to the success of any policy de-risking instrument designed to achieve green, low-emission and climate-resilient development. This will be the case for both existing and planned policy instruments, and it will also be relevant to successfully implementing financial de-risking instruments.

The purpose of this Guidebook is to provide guidance to government decision makers and their advisers on best practices in designing or modifying legal frameworks and specific legal instruments aimed at effectively supporting green, low-emission and climate-resilient development. In doing so, it provides guidance on how to: **assess** the legal frameworks and instruments required for successful implementation of Green LECRDS; **select** appropriate legal instruments for implementing Green LECRDS; and **implement** the legal instruments that have been selected.

Methodology and structure

The Guidebook adopts a three-step methodology for assessing, selecting and implementing legal frameworks and instruments to best support Green LECRDS. The three steps are:

- Step 1: **Assess** the legal frameworks and instruments required for successful implementation of Green LECRDS.
- Step 2: **Select** appropriate legal instruments for Green LECRDS to undertake a legal reform process.
- Step 3: **Implement**, monitor and adapt legal instruments.

Legal assessment and reform can be a complex and time-consuming exercise. To assist decision makers and their advisers, the guidance is supported by examples from the international community of relevant legal instruments to implement overarching Green LECRDS and/or specific green, low-emission and climate-resilient development policies. In doing so, the Guidebook is structured as follows:

THREE STEPS OF LEGAL ASSESSMENT AND REFORM

1 **ASSESS** the legal frameworks and instruments required for successful implementation of Green LECRDS

2 **SELECT** appropriate legal instruments for Green LECRDS to undertake a legal reform process

3 **IMPLEMENT,** monitor and adapt legal instruments

4 UNDP and Global Environment Facility (GEF), 'Transforming On-Grid Renewable Energy Markets – a Review of UNDP-GEF Support for Feed-in Tariffs and Related Price and Market-Access Instruments', November 2012, available at: http://www.undp.org/content/undp/en/home/librarypage/environment-energy/low_emission_climateresilientdevelopment/transforming-on-grid-renewable-energy-markets/.

Chapter 1 sets out a methodology to guide readers through Step 1 on how to assess a country's current legal framework by developing a compendium of existing laws and regulations relating to a Green LECRDS or particular policy, and by identifying gaps, challenges, barriers and risks, as well as benefits and opportunities to implementing a Green LECRDS legal framework.

Chapter 2 draws from domestic and international best practices to select a suite of legal instruments that address gaps, challenges, barriers and risks inherent to Step 2. The chapter also provides guidance on successfully navigating legal reform processes.

Chapter 3 provides a range of methods for implementing legal reform and integrating appropriate monitoring systems in order to ensure the continued effectiveness of legal instruments to support Green LECRDS in Step 3.

Finally, the Guidebook provides detailed **Annexes**, which outline some overarching Green LECRDS policies and contemporary national legal instruments that countries have adopted to implement Green LECRDS policies.

The Guidebook aims to empower decision makers to undertake legal reforms by providing a generic process and an accessible toolkit of generic options to introduce legal reform in a country-specific manner. It also provides select case studies to ground the material in current reality and to illustrate possible approaches. The Guidebook proposes that decision makers may wish to produce document(s) at the completion of each step that reflect and communicate the outcomes. Draft tables of contents for each document are presented at the end of each chapter; an overview of the three documents that will be (optionally) produced at the end of the process is reflected in Figure A below.

Figure A: **Optional outcomes of the three steps of legal assessment and reform**