



Investing in rural people

## Mexico

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**Basin Approach for Livelihood Sustainability through Adaptation Strategies (BALSAS)**

**Annex 9. Legal due diligence (regulation, taxation and insurance)**

GCF Additional Financing

February 2023

***Details of any government or regulatory approvals, licenses or permits required for implementing and operating the project/programme, the relevant issuing authority, and the date of issuance or expected date of issuance.***

### **Legal and regulatory context of the project**

The implementation of the project is based on the legal provisions established by the donors and borrowers, as well as those defined by the Government of Mexico in accordance with the following:

- 1) **External funding:** it refers to the stipulations of the financing agreements.
- 2) **Federal funding:** it refers to the provisions of:
  - i. Federal Budget and Fiscal Responsibility Law regarding the principles for the execution of public resources:
    - The Chamber of Deputies in the Federal Expenditure Budget may indicate the programmes that must be subject to Operating Rules in order to ensure that the application of public resources is based on the criteria of efficiency, effectiveness, economy, honesty and transparency.
    - Subsidies must be subject to the criteria of objectivity, equity, transparency, publicity, selectivity and temporality, for which the agencies and entities that grant them must observe, among other things, the following:
      - a) identify the target population, both by specific group and by region of the country, federal entity and municipality;
      - b) establish the amounts and percentages based on redistributive criteria that should privilege the lower-income population and seek equity between regions and federal entities, without detriment to efficiency in achieving the objectives;
      - c) ensure that the mechanism of distribution, operation and administration grants equitable access to all social groups and genders;
      - d) guarantee that resources are channeled exclusively to the target population and ensure that the distribution, operation and administration mechanism facilitates the collection of information and the evaluation of the economic and social benefits of their allocation and application; as well as avoiding the allocation of resources for costly and excessive administration;
      - e) incorporate periodic follow-up, supervision and evaluation mechanisms that allow for adjusting the modalities of their operation or deciding on their cancellation; and
      - f) ensure the coordination of actions among agencies and entities, to avoid duplication in the exercise of resources and reduce administrative costs.
  - ii. Federal Expenditure Budget: it indicates the general criteria to which the mechanisms of distribution, operation and administration of these programmes will be subject and establishes that it is the responsibility of the agencies and entities to issue the corresponding mechanisms of the programmes for the granting of subsidies and that these must be widely disseminated to the target population.
  - iii. General Law on Sustainable Forest Development: establishes that CONAFOR aims to develop, promote and encourage productive activities, protection, conservation, restoration, sustainable use, production, marketing and technical forestry education, as well as forestry value chain networks, identified as priority areas for development, and to participate in the formulation of plans and programmes in the implementation of sustainable forest development policy and its instruments.

The mechanism for the distribution, operation and administration of resources must be elaborated in accordance with the instruments in force: Rules of Operation, Guidelines or Special Projects.

## Applicable regulations for the implementation of the Project

The implementation of the project is based on the legal and regulatory framework for the management and conservation of natural resources, specifically for forestry and rural development, as well as those relating to the administration and execution of public resources allocated to it. Therefore, the actions to be supported must be carried out in accordance with this framework, and the laws, regulations and norms that all the participants in the implementation of the Project must be familiar with for their correct application is summarized below.

**Table 1. Legislation applicable to the implementation of the Project**

| LAW  | OBJECTIVE   |
|--|---|
| Ley General de Desarrollo Forestal Sustentable                                   | To regulate and promote the integrated and sustainable management of forest territories, the conservation, protection, restoration, production, management, cultivation, management and exploitation of the country's forest ecosystems and their resources.  |
| Ley General de Cambio Climático  | Guarantee the right to a healthy environment; regulate greenhouse gas emissions and compounds; regulate actions to mitigate and adapt to climate change; reduce the vulnerability of the population and ecosystems to the effects of climate change; promote education and research, technology transfer and dissemination on climate change adaptation and mitigation; establish a basis for consultation with society and promote a transition towards a competitive, sustainable, low-carbon economy that is resilient to extreme hydrometeorological phenomena. |
| Ley Agraria  | Promote the integral and equitable development of the rural sector through the promotion of productive activities and social actions to increase the well-being of the population and their participation at national level.  |
| Ley General del Equilibrio Ecológico y la Protección al Ambiente y su Reglamento | Promote sustainable development and establish the bases for the sustainable use, preservation and, where appropriate, restoration of soil, water and other natural resources, in such a way that economic benefits and the activities of society are compatible with the preservation of ecosystems.  |
| Ley General de Vida Silvestre  | Establish the concurrence of the Federal Government, the State Governments and the Municipalities, within the scope of their respective competences, regarding the conservation and sustainable use of wildlife and its habitat in the territory of the Mexican Republic.   |
| Ley de Aguas Nacionales  | To regulate the exploitation, use or exploitation of national waters, their distribution and control, as well as the preservation of their quantity and quality in order to achieve their integral sustainable development.   |
| Ley de Sociedades de Solidaridad Social  | It regulates the integration and functioning of social solidarity societies constituted collectively by ejidatarios, communal farmers, landless peasants, parvifundistas and people who have the right to work and who allocate part of the product of their work to a social solidarity fund and through which they carry out commercial activities.   |

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|---------------------------------------|--|
| <p>Ley Federal de Sanidad Vegetal</p> | <p>Regulate and promote plant health, as well as the implementation, verification and certification of risk reduction systems for physical, chemical and microbiological contamination in the primary production of vegetables. Promote and monitor the observance of the applicable legal provisions; diagnose and prevent the spread and introduction of plant pests, their products or by-products that represent a phytosanitary risk; as well as establish phytosanitary measures</p> |
|---------------------------------------|--|

| LAW   | OBJECTIVE   |
|---|---|
|   | and regulate the effectiveness of phytosanitary inputs and integrated control methods.  |
| Ley General de Sociedades Cooperativas  | To regulate the constitution, organisation, operation and termination of Co-operative Societies and their Organisations into which they are freely grouped, as well as the rights of the Members.   |
| Ley Orgánica de la Administración Pública Federal   | It establishes the bases for the organisation of the Federal Public Administration, both centralised and parastatal.  |
| Ley General para la Igualdad entre Hombres y Mujeres  | Regulate and guarantee equal opportunities and equal treatment between women and men, propose institutional guidelines and mechanisms to guide the nation towards the fulfilment of substantive equality in the public and private spheres, promoting the empowerment of women and the fight against any discrimination based on sex.   |
| Ley Federal de las Entidades Paraestatales  | Regulate the organisation, functioning and control of the parastatal entities of the Federal Public Administration.   |
| Ley de Ingresos de la Federación  | It contains the concepts under which financial resources may be raised to cover the federation's expenditure during a fiscal year.  |
| Ley General de Turismo  | Establish the bases for the policy, planning and programming of tourism activity throughout the national territory, under criteria of social benefit, sustainability, competitiveness and balanced development of the States, Municipalities and Mexico City, in the short, medium and long term.   |
| Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público y su Reglamento                   | To regulate acquisitions, leasing of movable goods and provision of services of any nature, carried out by the Federal Public Administration, both centralised and parastatal.  |
| Ley Federal de Presupuesto y Responsabilidad Hacendaria y su Reglamento                               | Regulate the programming, budgeting, approval, exercise, control and evaluation of federal public revenues and expenditures.  |
| Estatuto Orgánico de la Comisión Nacional Forestal  | Establish the basic organisational structure of the National Forestry Commission, as well as the organisational bases, the powers and functions corresponding to the different administrative units that comprise it and the replacements for cases of temporary absences of public servants.   |
| Políticas, bases y lineamientos en materia de adquisiciones, arrendamientos y servicios de la CONAFOR | Establish the mechanisms of the various contracting procedures that ensure compliance with the applicable regulations in force, and that contracting adheres to the criteria of efficiency, effectiveness, economy, transparency and honesty, ensuring the best conditions available to this Entity, in terms of price, quality, volume, financing, opportunity and other circumstances that allow the efficient application of public resources for the fulfilment of the Agency's goals, programmes and objectives. |
| Clasificador por Objeto del Gasto para la Administración Pública Federal.                             | Budgetary instrument that, in accordance with a generic nature and preserving the basic structure (chapter, concept and generic item), allows for the orderly, systematic and homogeneous recording of personal services; materials and supplies; general services; transfers, subsidies and other aid; movable and immovable property; public investment; financial investment; participations and contributions; public debt, among others.   |

## Official forestry and environmental standards

In addition to the applicable legislation, Official Standards are considered to ensure responsible use of forest and natural resources in general, which are listed in the following table:

**Table 2. Environmental and natural resources regulations**

| STANDARD  | OBJECTIVE  | PUBLICATION          |
|---|--|----------------------|
| <b>Mexican Official Standards for Biodiversity (flora and fauna),<br/>Species at Risk of Extinction</b> |  |                      |
| NOM-059-<br>SEMARNAT-2010   | Environmental protection - Mexican native species of wild flora and fauna - Categories of risk and specifications for their inclusion, exclusion or change - List of species at risk.                | 30-<br>December-2010 |
| NOM-060-<br>SEMARNAT-1994   | Establishes specifications to mitigate adverse effects on soils and water bodies caused by forest harvesting.  | 13-May-1994          |
| NOM-061-<br>SEMARNAT-1994   | Establishes the specifications to mitigate the adverse effects caused to wild flora and fauna by forest harvesting.  | 13-May-1994          |
| NOM-126-<br>SEMARNAT-2000   | Establishes the specifications for carrying out scientific collection activities of biological material of species of wild flora and fauna and other biological resources in the national territory. | 20-March-2001        |

| STANDARD  | OBJECTIVE  | PUBLICATION      |
|---|--|------------------|
| <b>Natural Resources (REC NAT) Normas Oficiales Mexicanas de Productos Forestales (Mexican Official Standards on Forest Products)</b> |  |                  |
| NOM-026-SEMARNAT-1996   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of pine resin.   | 30-May-1996      |
| NOM-027-SEMARNAT-1996   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of topsoil.  | 5-June-1996      |
| NOM-028-SEMARNAT-1996   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of roots and rhizomes of forest vegetation.  | 24-June-1996     |
| NOM-005-SEMARNAT-1997   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of bark, stems and whole plants of forest vegetation.                                      | 20-May-1997      |
| NOM-006-SEMARNAT-1997   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of palm leaves.  | 28-May-1997      |
| NOM-007-SEMARNAT-1997   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of branches, leaves or stalks, flowers, fruits and seeds.                                  | 30-May-1997      |
| NOM-010-SEMARNAT-1996   | Establishes the procedures, criteria and specifications for the harvesting, transport and storage of mushrooms.  | 28-May-1996      |
| NOM-012-SEMARNAT-1996   | Establishes the procedures, criteria and specifications for the use of firewood for domestic use.  | 26-June-1996     |
| NOM-015-SEMARNAT/SAGA RPA-20077   | Establishes the technical specifications for methods of fire use on forest land and agricultural land.   | 16-January-2009  |
| NOM-018-SEMARNAT-1999   | Establishes the procedures, criteria and technical and administrative specifications for the sustainable harvesting of <i>candelilla</i> grass, transport and storage of the <i>cerote</i> . | 27-October-1999  |
| NOM-020-SEMARNAT-2001   | Establishes the procedures and guidelines to be observed for the rehabilitation, improvement and conservation of forest grazing lands.   | 10-December-2001 |

### Subsidiary Agreements

For the channelling of the GCF proceeds, IFAD will enter into the following subsidiary agreements:

i) one Subsidiary Agreement (through amending IFAD's existing Loan Agreement) with the Ministry of Finance ("HACIENDA"), which will act as the Executing Entity ("EE1") for the GCF Loans (the "Subsidiary Loan Agreement"). HACIENDA will subsequently amend its existing Mandate and Implementation Agreement relating to the existing IFAD Loan Agreement) to assign: a) Nacional Financiera, S.N.C., Banca de Desarrollo ("NAFIN") to act as Intermediary on behalf of the Federal Government, which will serve as the Executing Entity ("EE2") and the fiduciary of the Project loans b) The National Forestry Commission ("CONAFOR") to act as the executing entity for the project, serving as the Executing Entity ("EE3") with overall responsibility for project execution and coordination. By designated authority from HACIENDA, NAFIN will channel funds through the Treasury of the Federation ("TESOFE") within HACIENDA to CONAFOR upon request. NAFIN will administer the GCF

Loans but neither NAFIN nor HACIENDA will execute any specific activities.

ii) one Subsidiary Agreement with CONAFOR for the GCF Grant (the "Subsidiary Grant Agreement"). CONAFOR will create a sub-account in the Fondo Forestal Mexicano ("FFM") to manage the GCF Grant.

The Subsidiary Loan Agreement, the Mandate and Implementation Agreement and the Subsidiary Grant Agreement are the Subsidiary Agreements. Under the Subsidiary Agreements, CONAFOR will undertake all operational responsibility for the implementation of the Project in the country.

As the GCF grant proceeds will be directly channelled from IFAD to CONAFOR without passing through HACIENDA or NAFIN, HACIENDA has provided to CONAFOR a no objection letter that serves as endorsement letter for the Subsidiary Grant Agreement. No additional approvals, licences, or permits are required for project implementation as all terms and conditions are included in the Subsidiary Agreements.

### **Mandate and Implementation Contract**

For the administration of the financing, as well as for the execution of the Project, HACIENDA, NAFIN and CONAFOR will sign a Mandate and Execution Contract for the Project, in which the participation of each institution is specified and their responsibilities and obligations in the execution of the Project are described.

HACIENDA grants the mandate to the Financial Agent, Nafin, to carry out the administration of the GCF Loans, as well as the supervision of the execution of the Project derived from the Financing Agreement of the GCF Loans. CONAFOR is granted the mandate to execute the project.

### **Land**

### **ownership**

Giving proof of legal ownership or holding of land rights that allow implementation of activities is a requirement to apply for the incentive schemes in line with chapter 4 of the Rules of Operation. The Rules of Operation also specify which documents serve as proof of legal ownership or holding of land rights in chapter 4, article 17 (see Annex 2.a Feasibility Study of the FP, Chapter 6).

### ***Describe applicable taxes (or exemptions thereof) and foreign exchange regulations related to the project/programme.***

### **Taxes**

In the case of Mexico, tax exemption does not apply; however, in CONAFOR's operations with IFAD and the World Bank, in agreement with the Government of Mexico, it has been established that financing resources can be used to pay taxes. It should be noted that taxes apply to the purchase of goods and payment of services, while the resources destined to support the beneficiaries of the project are not subject to the payment of taxes. The budget includes the payment of taxes.

No taxes are applicable for fund transfers between GCF and IFAD, between IFAD and EEs and between EEs and beneficiaries.

Disbursements to Executing Entities will be in US Dollars (USD). Executing Entities will make non-USD payments for services, goods and transfers to beneficiaries.



## **Exchange rate**

The Subsidiary Agreements are the means by which the government via the Ministry of Finance (HACIENDA) accepts the inflow of funds in the **currency** as determined (USD). The execution of the GCF loans is included in the annual national budget approval processes. For the grant it is confirmed that the execution of the funds is in the mandate of CONAFOR through the Fondo Forestal Mexicano (FFM). There are no approvals, licenses or permits required.

The activities of the project are pre-financed with resources from CONAFOR's budget in Mexican pesos, so the exchange rate applies:

- in the generation of reports according to the data published by Banxico (Banco de México is one of the autonomous constitutional bodies of Mexico with Central Bank functions), in the annual financial statements, the data of 31 December of the corresponding year is used, and for other reports the data of the last day of the month prior to the generation of the report is applied;
- in the payment of each disbursement request, which applies the value of the date on which the transaction is made, the request submitted in Mexican pesos and paid in the currency of the financing.

## ***Details of any insurance policies or requirements related to the project/programme.***

### **Insurance**

It is mandatory for all state entities to insure their assets and protect state patrimony, guaranteeing and safeguarding the state's patrimonial resources, on the occasion of their acquisition, use and operation, by means of the contracting of insurance policies.