

In partnership with



The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries

*This Policy Brief is an edited extract from a report that analysed the design and implementation issues related to national legal frameworks for reduced emissions from deforestation and forest degradation ("REDD"), broadly defined. The report reviewed existing approaches by developing and developed countries and drew out initial lessons and issues. It is the first stage in a proposed larger project that will, by working with developing and developed countries and supporting institutions, produce a package of "off-the-shelf" legislative tools to assist countries take advantage of a range of possible REDD mechanisms. The package will consist of two main sections: (i) an options paper describing the initial policy decisions that a country will need to make before beginning national implementation, the main options available for each decision, and the implications of each option; and (ii) legislative building blocks that would be adapted by countries to local circumstances. The report was commissioned in conjunction with the UN-REDD Programme as the first stage in UNDP's work on Governance MRV Frameworks under the UN-REDD Programme's International Support Functions.*

## 1 REDD Readiness and the Need for Legal Frameworks

Many developing countries (with the assistance of developed countries, international organizations, civil society, and the private sector) are "getting ready" for REDD. There are many steps to readiness, including:

- Establishing the infrastructure and expertise to collect (through remote-sensing using satellites and through on-the-ground surveying) and analyse terrestrial carbon data.
- Agreeing methods to determine how much carbon is stored in a particular type of landscape and what happens to that carbon under different land uses.

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Based on a report written for the Terrestrial Carbon Group and the UN-REDD Programme by Baker & McKenzie and Covington & Burling, available at:

terrestrialcarbon.org  
un-redd.org

Views in this Policy Brief and the underlying report do not necessarily reflect those of the UN-REDD Programme, FAO, UNDP, or UNEP

The objective of the Terrestrial Carbon Group is for terrestrial carbon (including trees, soil, and peat) to be effectively included in the international response to climate change.

The UN-REDD Programme is a collaboration between FAO, UNDP and UNEP that supports countries to develop capacity to reduce emissions from deforestation and forest degradation (REDD) and to implement a future REDD mechanism in a post-2012 climate regime.

The Terrestrial Carbon Group Project is publishing a series of Policy Briefs to inform the United Nations negotiations on how to include terrestrial carbon in developing nations in the overall climate change solution. We welcome your comments.

For other Policy Briefs, please visit our website:

terrestrialcarbon.org

- Creating and auditing national terrestrial carbon inventories.
- Effectively engaging those who depend on forests and those who depend on deforestation and forest degradation.
- Establishing clear governance frameworks between national and regional governments.
- Engaging local communities and protecting their rights and ensuring their participation in terrestrial carbon.
- Undertaking a transparent process of clarifying rights to ownership and use of land, vegetation and carbon credits under domestic law.
- Establishing credible and transparent systems and institutions to: measure terrestrial carbon; certify, verify and audit project- and national-level outcomes; monitor changes over space and time; produce national terrestrial carbon accounts; facilitate and oversee the stable, long-term disbursement of funds; and coordinate with international institutions.
- Drafting regulations to establish terrestrial carbon registers, exchanges, dispute resolution and enforcement mechanisms, and regulatory oversight.

Many of these steps will require some form of enabling regulation, making legislative interventions potentially a critical element of readiness. Moreover, a coherent, strong and effective regulatory platform is necessary to (i) implement national and sub-national policies and measures, and (ii) stimulate changes in the use of forest and land resources that achieve avoided emissions and increased sequestration.

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## 2 Learning from Early Experience

Early discussions on REDD focused on technical and methodological issues, but attention is now shifting to the design of legal frameworks to support the implementation of an international REDD mechanism within countries. Some countries are starting to consider and design national REDD frameworks. The report on which this policy brief is based provides an overview of such activities in a selection of developing and developed countries, including:

- A review of the legal and policy frameworks that have been implemented or that are under consideration in a selection of developing rainforest countries and a series of detailed case studies. It is important to note that only one country – Indonesia – has passed national legislation that is intended to provide a comprehensive model for REDD activities.
- A detailed overview of the Indonesian legislation to demonstrate some of the key elements of this scheme which is significant because it provides a model for a national approach to policy decisions for a REDD scheme
- A consideration of the issues being considered in other developing countries that support a market based approach to REDD (Guyana, Madagascar and Papua New Guinea) as they prepare policies and legislation to implement REDD
- A review of the alternative market and non-market-based models being put forward by Brazil at both the national and sub-national levels

From a developed country perspective, support for REDD comes through first, the establishment of clear signals to developing countries that they will provide technical and financial assistance to put in place the institutional and technical structures that allow REDD projects to take place, and second, by creating a demand for the REDD credits that may be generated in a developing country. In addition to these two key roles, there are a number of lessons that can be learned from how they are approaching forest carbon in their own jurisdictions (in particular, the models in Australia and New Zealand). For example:

- How to create a tradeable forest carbon product through separating carbon property rights from forest or land rights
- How to manage land tenure and issues related to conflicting interests in land
- How to address issues related to permanence and responding to reversals in forest carbon stocks, for example through the use of buffers and long term forest maintenance obligations

### 3 Conclusions: Key Elements of a Legal Framework for REDD

The approaches of different developing countries to REDD vary considerably (see the table in the Appendix). However, from the countries reviewed in the report, the following overarching elements are important to consider when designing a domestic legal framework for REDD:

<b>Institutions</b>	<ul style="list-style-type: none"> <li>▪ Identify which government department or institution(s) will be responsible for REDD implementation.</li> <li>▪ Ensure institutions are capable of enforcing rights in each jurisdiction.</li> </ul>
<b>Nature of rights or interest in forest / environmental benefits</b>	<ul style="list-style-type: none"> <li>▪ Determine ownership and responsibility for forest resources</li> <li>▪ Determine where the right to carbon and environmental benefits sits (e.g. is it a separate proprietary interest or is it linked to the proprietary interest in the forest or land). If credits are to be created, it is preferable to have a separate carbon right.</li> <li>▪ Clarify who has the original right or interest to the carbon rights or environmental benefits – is it the government or landowner.</li> <li>▪ Determine whether carbon rights can be transferred to third parties.</li> <li>▪ Determine whether carbon rights can be owned by private sector actors (or may only be owned in the first instance by the State).</li> </ul>
<b>Competing Interests</b>	<ul style="list-style-type: none"> <li>▪ Clarify the hierarchy between different types of interests in land and resources.</li> <li>▪ Consider any legislative restrictions on conducting REDD activities in specific forests.</li> <li>▪ Provide a mechanism to resolve competing interests in land and resources.</li> </ul>
<b>Participation</b>	<ul style="list-style-type: none"> <li>▪ Clarify who is eligible to participate in REDD activities.</li> <li>▪ Clarify any restrictions on foreign participation.</li> <li>▪ Determine whether local landowners are required to be participants or otherwise grant consent.</li> </ul>
<b>Relationship Among National / Subnational / Project Level Activities</b>	<ul style="list-style-type: none"> <li>▪ Specify how subnational (i.e., state or province-wide) and/or project-level activities will relate to national baseline crediting, including:               <ul style="list-style-type: none"> <li>▪ What activities will be deemed to have contributed to the achievement of national-level goals;</li> <li>▪ How credits earned at a national level will be allocated to (and as among) subnational or project-level activities; and</li> <li>▪ How (if at all) project participants or participants in subnational activities will be compensated if the failure to obtain credits is the result of under-performance at the national level.</li> </ul> </li> </ul>

Crediting or funding mechanism	<ul style="list-style-type: none"> <li>▪ Determine who will receive payment for maintaining the forest resources (if funding mechanism pursued) e.g. the national government, landowners, project developers.</li> <li>▪ If crediting approach adopted, determine who will be eligible to receive credits from either the international body overseeing REDD, or from another crediting body (e.g. in the voluntary market or from a national government).</li> </ul>
Management of National Pool or Buffer	<ul style="list-style-type: none"> <li>▪ Specify whether credits or area of land should be set aside for the purposes of ensuring long-term maintenance of the carbon stock through a buffer or pool.</li> </ul>
Rights of Forest-Dependent Communities and Indigenous Peoples	<ul style="list-style-type: none"> <li>▪ National legislative frameworks should be consistent with a country's commitment to the UN Declaration on the Rights of Indigenous Peoples.</li> <li>▪ Specify the rights forest-dependent communities and/or indigenous peoples will have:             <ul style="list-style-type: none"> <li>▪ To be consulted in advance of any project-level activity;</li> <li>▪ To give (or withhold) their free prior and informed consent to such activity, and if so on what basis and through what procedure; and</li> <li>▪ To receive a pre-determined share in the economic benefits of REDD payments.</li> </ul> </li> <li>▪ Specify a procedure whereby participants in REDD activities can establish that they have satisfied any applicable requirements with respect to forest-dependent communities and/or indigenous peoples.</li> </ul>
Taxes and State payments	<ul style="list-style-type: none"> <li>▪ Provide clarity on whether payments are required to be made to the national government in the form of taxes or royalties.</li> <li>▪ Consider whether the national government will be eligible to receive a portion of credits from REDD activities to be funnelled into other climate change related activities.</li> </ul>
Powers of responsible institution	<ul style="list-style-type: none"> <li>▪ Provide certainty about the responsible institution governing REDD, including who will be responsible for decision making; will their decisions be reviewable; what types of powers will they have in respect of monitoring and enforcement.</li> </ul>
Definitions	<ul style="list-style-type: none"> <li>▪ Provide clear definitions of key terms such as "forest", "deforestation", "permanence", "crediting" etc, preferably consistent with internationally agreed definitions.</li> </ul>

## Appendix: Overview of Selected Domestic Activities to Support REDD

Country	Status	International Position on REDD	Key institutions	Legal framework to implement REDD domestically	Legal framework to incentivize REDD in developing countries	Engagement in other REDD Initiatives
<b>Australia</b>	Developed	Support REDD market mechanism	Department of Climate Change	N/A	Policy statement that REDD credits may be used in domestic trading scheme if certain international threshold criteria met	Has initiated the Australian International Forest Carbon Initiative and Partnerships with Indonesia and PNG Contributing to WB FCPF
<b>Brazil</b>	Developing	Against REDD market mechanism – prefer funding approach	Brazilian national government	Law on the Management of Public Forests expressly prohibits creation of rights to commercialise credits from forestry concessions. Has established Amazon Fund	N/A	Supported by Norway's Climate and Forest Initiative
<b>Guyana</b>	Developing	Support REDD market mechanism	Forestry Commission	Not yet developed	N/A	Supported by WB FCPF
<b>Indonesia</b>	Developing	Support REDD market mechanism	Ministry of Forestry	Regulation on Procedures for Reducing Emissions from Deforestation and Forest Degradation	N/A	Supported by WB FCPF Supported by UN-REDD Programme Partnering with Australia
<b>Madagascar</b>	Developing	Support REDD market mechanism	Ministry of Environment, Forestry, Water and Tourism	Not yet developed	N/A	Supported by WB FCPF

Country	Status	International Position on REDD	Key institutions	Legal framework to implement REDD domestically	Legal framework to incentivize REDD in developing countries	Engagement in other REDD Initiatives
New Zealand	Developed	Support REDD market mechanism	Ministry for Agriculture and Forestry and Ministry for Environment	N/A	No formal position expressed	unclear
Norway	Developed	Support REDD market mechanism	Ministry for Environment, Section for Climate and Energy	N/A	N/A	Has established the Climate and Forest Initiative Providing bilateral support to rainforest nations including Brazil Contributes to UN-REDD Programme
Papua New Guinea	Developing	Support REDD market mechanism	Office of Climate Change and Environmental Sustainability	Not yet developed	N/A	Supported by WB FCPF Supported by UN-REDD Programme Partnering with Australia
United States	Developed	General support for REDD although position not fully developed	Currently being negotiated, but likely to be at least the US Environmental Protection Agency.	N/A	Draft Bills refer to use of international forest offsets	Draft Bills refer to support for readiness

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