

Background Analysis of REDD Regulatory Frameworks

Report prepared for:

The Terrestrial Carbon Group

www.terrestrialcarbon.org

and

UN-REDD
PROGRAMME

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



www.un-redd.org

May, 2009

Executive Summary

Terrestrial carbon, in the form of trees, soil and peat, plays a significant role in the sequestration of greenhouse gases ("GHGs"). The Earth's forests, peatlands and agricultural lands are among the planet's carbon "sinks," regulating the flow of carbon from and into the atmosphere. Conversely, a release of terrestrial carbon (for example, by the destruction of forests or the burning of peatlands) can be a major source of emissions and a driver of increased concentrations of GHG's in the atmosphere. Today, deforestation and forest degradation is the second largest source of human induced GHG emissions, contributing to almost 20% of emissions globally. The United Nations Framework Convention on Climate Change ("UNFCCC") requires all parties to the Convention to take action to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks. The role that land use, land use change and forestry ("LULUCF") activities play in addressing climate change has been exceptionally contentious during the life of the UNFCCC and its Kyoto Protocol, resulting in only limited action being taken to incentivise activities that enhance sinks or reduce deforestation. For the past 4 years, parties have been exploring means to reduce GHG emission from deforestation and forest degradation in developing countries ("REDD"). During the initial discussions on REDD, the focus was on technical and methodological issues associated with considerations of: how to ensure reductions were real, additional and permanent; how to avoid leakage of deforestation both within countries and to other developing countries; and understanding and addressing the drivers of deforestation. As parties begin negotiations on the architecture of a future climate change regime for the period beyond 2012, the discussions around REDD are moving towards consideration of policies and legal frameworks that would support a REDD mechanism at both the international and national level.

The nature and content of an international REDD mechanism is still under consideration, with particular focus on whether that mechanism should be supported by public funding or market driven investment. In our view, both models have their strengths and are likely to be complimentary at different stages of REDD development. There is also continuing discussion on the extent (if any) to which subnational or project-level activities will be credited for REDD purposes, and how (if at all) the forested countries in the developing world will move towards a national "baseline" against which all reductions will be measured. If a national baseline is indeed applied, it will no doubt become a matter for political negotiation under the UNFCCC how that baseline will be set: in particular, whether it will contemplate prior "incremental" reductions in comparison with a business-as-usual scenario, and whether it will require the achievement of zero net deforestation within some specified time. A further open question is whether the scope of the REDD mechanism will be limited to forests or extend to the full LULUCF or AFOLU (agriculture, forestry, and other land use) sectors, and whether it will be limited to avoided emissions or also include new sequestration. Notwithstanding this uncertainty, a number of developed and developing countries, and supporting international institutions, have expressed their strong support for engagement with international and national carbon markets and are taking action to create the enabling environments to support developing countries

address deforestation through the creation of tradeable avoided deforestation credits or REDD credits.

This report provides an overview of the activities that a selection of developed and developing countries are taking to develop policy and legislative frameworks to enable REDD activities to take place. 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 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, developed countries are also able to provide examples of how many of the issues that underpin the establishment of REDD Credits have been addressed. For example, how to create a tradeable forest carbon product through separating carbon property rights from forest or land rights and how to manage land tenure and issues related to conflicting interests in land.

From a developing country perspective, there are a number of steps that need to be taken to prepare for REDD and to put REDD into practice. Initially these steps involve developing capacity to measure, monitor and verify forest carbon stocks and putting in place institutional capacity to support the management of forests over the long-term to maximize carbon volumes. In addition, and at the heart of this report, is the need to clarify from a legal perspective, how developing country governments will create the enabling environment to support the creation of tradeable REDD credits.

To date, only one country has developed a comprehensive domestic legal framework to support REDD. That is Indonesia, which has recently enacted the REDD Regulation which is discussed in detail in section 3.1 of this Report. A number of other developing countries are pursuing REDD policies and have provided support for demonstration projects. The approaches of different developing countries to REDD vary considerably (see Table 2 below). However, from the countries that we have reviewed, we believe that the following overarching elements are important to consider when designing a domestic legal framework for REDD:

TABLE 1 ELEMENTS OF A LEGAL FRAMEWORK FOR REDD

Institutions	<ul style="list-style-type: none"> • Identify which government department or institution(s) will be responsible for REDD implementation. • Ensure institutions are capable of enforcing rights in each jurisdiction.
Nature of rights or interest in forest / environmental benefits	<ul style="list-style-type: none"> • 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. • Clarify who has the original right or interest to the carbon rights or environmental benefits – is it the government or landowner. • Determine whether carbon rights can be transferred to third parties. • Determine whether carbon rights can be owned by private sector actors (or may only be owned in the first instance by the State).
Competing Interests	<ul style="list-style-type: none"> • Clarify the hierarchy between different types of interests in land and

	<p>resources.</p> <ul style="list-style-type: none"> • Consider any legislative restrictions on conducting REDD activities in specific forests. • Provide a mechanism to resolve competing interests in land and resources.
Participation	<ul style="list-style-type: none"> • Clarify who is eligible to participate in REDD activities. • Clarify any restrictions on foreign participation. • Determine whether local landowners are required to be participants or otherwise grant consent.
Relationship Among National / Subnational / Project Level Activities	<ul style="list-style-type: none"> • 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"> What activities will be deemed to have contributed to the achievement of national-level goals; How credits earned at a national level will be allocated to (and as among) subnational or project-level activities; and • 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.
Process for project approval (including standards)	<ul style="list-style-type: none"> • Set out the process for issuing project approval, including: <ul style="list-style-type: none"> Determination of baseline; Criteria for project approval (e.g. reference to standards); Types of plans and reports that need to be submitted, e.g. implementation plans and monitoring plans; and Provide for verification requirements.
Crediting or funding mechanism	<ul style="list-style-type: none"> • Determine who will receive payment for maintaining the forest resources (if funding mechanism pursued) e.g. the national government, landowners, project developers (if the national government, see above under "Relationship Among National / Subnational / Project Level Activities"). • 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).
Management of National Pool or Buffer	<ul style="list-style-type: none"> • 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.
Rights of Forest-Dependent Communities and Indigenous Peoples	<ul style="list-style-type: none"> • Specify what rights (if any) forest-dependent communities and/or indigenous peoples will have: <ul style="list-style-type: none"> to be consulted in advance of any project-level activity; to give (or withhold) their prior consent to such activity, and if so on what basis and through what procedure; and/or to receive a pre-determined share in the economic benefits of REDD crediting. • Specify a procedure whereby participants in REDD activities can establish that they have satisfied any applicable requirements (if any) with respect to forest-dependent communities and/or indigenous peoples.
Taxes and State payments	<ul style="list-style-type: none"> • Provide clarity on whether payments are required to be made to the

	<p>national government in the form of taxes or royalties.</p> <ul style="list-style-type: none"> • 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.
Powers of responsible institution	<ul style="list-style-type: none"> • 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.
Definitions	<ul style="list-style-type: none"> • Provide clear definitions of key terms such as "forest", "deforestation", "permanence", "crediting" etc. preferable consistent with internationally agreed definitions.

Action by developed countries to incentivize REDD needs to be coordinated to be most effective and must also be pursued at the international level. Parties to the UNFCCC are considering REDD in a number of context that include: (i) expanding the existing CDM to cover REDD; (ii) considering avoided deforestation in the context of a sectoral approach to mitigation, (iii) creating a new flexible mechanism for the Kyoto Protocol or in the context of the UNFCCC to support REDD; (iv) considering REDD as an activity for the proposed register of Nationally Appropriate Mitigation Actions ("NAMAs") of developing countries.

In addition, to the elements of domestic law described above, we also believe that developed countries and multi-lateral institutions should consider how best to promote REDD in developing countries and foster the demand for REDD credits through the following:

- Recognition of international REDD credits in domestic and international emissions trading schemes.
- Support for REDD readiness through technology transfer, financial support and capacity building.
- Developing a range of standards that underpin the creation of credible REDD credits from project activities.
- Fostering the harmonisation and inter-operability of standards across developing countries.
- Setting aside a percentage of allowances provided for under domestic trading schemes (or the proceeds of auctioning those allowances) for the purpose of supporting incremental REDD (or REDD "readiness" activities).

Regardless of the structure of an international REDD mechanism, there are a number of elements that underpin that mechanism that have achieved general support from those countries most actively engaged in the REDD negotiations. They include:

- Participation in REDD must be voluntary.
- REDD must respect national sovereignty.
- REDD should be flexible, recognise different national circumstances and enable broad participation.
- Permanence, additionality and leakage should be addressed.

- Long-term sustainable forest management should be promoted.
- Positive incentives need to provide sustainable and long-term flows of funding to stakeholders.
- Support should be provided to establish robust mechanisms to support measurement, monitoring, accounting, reporting and verification.
- If a market based approach is to be used, it must be performance based using ex-post crediting.¹

If a REDD mechanism is included as part of the post-2012 package at Copenhagen, from a legal perspective, it will be important that not only the methodological issues that underpin activities are agreed to with some level of certainty, but also that the legal framework that links international support (either through funding or through access to the international carbon market) to activities in developing countries enables and facilitates REDD without undue complexity and bureaucracy.

¹ FCCC/AWGLCA/2008/16/Rev.1

TABLE 2. OVERVIEW OF 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
Australia	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
Brazil	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
Guyana	Developing	Support REDD market mechanism	Forestry Commission	Not yet developed	N/A	Supported by WB FCPF
Indonesia	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 the UN-REDD Programme Partnering with Australia
Madagascar	Developing	Support REDD market mechanism	Ministry of Environment, Forestry, Water and Tourism	Not yet developed	N/A	Supported by WB FCPF
New Zealand	Developed	Support REDD market mechanism	Ministry for Agriculture and Forestry and Ministry for	N/A	No formal position expressed	unclear

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
			Environment			
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
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 the 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

Table of contents

1. Introduction	3
1.1 Purpose of this Paper	3
1.2 "REDD" in the International Response to Climate Change	3
1.3 REDD Readiness and the Need for Legal Frameworks	5
1.4 Learning from Existing Approaches	5
1.5 Report Structure:	6
2. Introduction to REDD	8
2.1 Background and History to REDD in the UNFCCC	8
2.2 Expectations for Copenhagen	8
2.3 International Support for REDD	9
3. Comparison of REDD Models in Developing Countries	11
3.1 Indonesia	11
3.2 Guyana, Madagascar and Papua New Guinea	14
3.3 Brazil	17
4. Experiences from REDD Projects in Developing Countries	20
4.1 Uncertainty and risk	21
4.2 Assessment and Methodology	25
4.3 Permanence	27
4.4 Enforcement	29
4.5 Managing Stakeholder Expectations	30
4.6 Lessons learned from Developed Countries	30
5. Ensuring Long-Term Support for REDD	34
5.1 Demand Models	34
5.2 Creation of Enabling Frameworks	35
6. Looking Towards a Best Practice Model for REDD Legislation – What Should Developing and Developed Countries Consider?	39
6.1 Institutions that are legitimate, credible and effective	39
6.2 Address Federal and State Laws and Inconsistencies	39
6.3 Eligible Land and Competing Interests	40
6.4 Determining who is an eligible participant	40
6.5 Relationship among national / subnational / project level activities	41
6.6 Project approvals and duration	42
6.7 Nature of rights or interest in carbon / environmental benefits	42
6.8 Crediting or Funding Mechanism	42

6.9	Permanence and Management of National Pool or Buffer	43
6.10	Rights of Forest Dependent Communities and Indigenous Peoples	43
6.11	Taxes and State Payments	44
6.12	Consistency surrounding definition of "forest"	44
6.13	International Support	46

Background and History to REDD in the UNFCCC

REDD country case studies – Developing Countries

REDD case studies – Developed countries

REDD Multilateral and Bilateral Case Studies

Voluntary and other benchmarks and standards

Introduction

Purpose of this Paper

The paper has been written as a high-level strategic analysis to support the design and implementation of national legal frameworks for reduced emissions from deforestation and forest degradation ("REDD"), broadly defined, by analyzing existing approaches by developing and developed countries and the voluntary carbon markets and drawing out lessons and best practices.

The report was commissioned by the Terrestrial Carbon Group in conjunction with the UN-REDD Programme. It contributes to the first stage of UNDP's work on Governance MRV Frameworks under the UN-REDD Programme's International Support Functions. For the Terrestrial Carbon Group, 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:

- An options paper describing the initial policy decisions that a country must make before beginning national implementation, the main options available for each decision, and the implications of each option. Examples of such policy decisions include: the respective roles of national and sub-national governments and communities and how they interact, the role of the private sector, the role of project-level activity, the role of carbon markets, how domestic carbon markets link to international carbon markets, whether or not to include specific provisions to protect biodiversity.
- Legislative building blocks that would be adapted by countries to local circumstances.

"REDD" in the International Response to Climate Change

It is widely accepted that avoiding dangerous climate change will not be possible without better management of the world's terrestrial carbon (including trees, soil, and peat), especially the carbon stored in tropical forests. Management of terrestrial carbon encompasses the agriculture, forestry, and other land use sectors ("AFOLU"), as described by the Intergovernmental Panel on Climate Change. It includes maintaining existing terrestrial carbon (e.g., avoiding deforestation and forest degradation) and creating new terrestrial carbon (eg, afforestation and reforestation).

However, terrestrial carbon, in particular forest carbon, is not coherently part of the international response to climate change. Under the Clean Development Mechanism ("CDM") of the Kyoto Protocol, the creation of new forest carbon through reforestation and afforestation ("A/R") projects in developing nations can be used by developed nations to meet a capped percentage of their Kyoto Protocol emission reduction targets (although the European Union currently does not allow forestry

credits to be used in this way, and to date only two A/R projects have been approved under the Kyoto Protocol). Under the Joint Implementation mechanisms of the Kyoto Protocol there is no restriction on the eligibility of projects in the land use, land use change and forestry (“LULUCF”) sectors under Articles 3.3 and 3.4 of the Kyoto Protocol. However, to date, no LULUCF projects have been developed. Importantly, reducing the business as usual emissions of forest carbon in developing nations is excluded from the Kyoto Protocol. Consequently, there is currently no international legal framework that enables reductions in emissions from deforestation in developing countries to be recognized in the international compliance market under the Kyoto Protocol or under any mandatory emissions trading scheme in a developed country. Developed countries do include the emissions from and sequestration by forests in their national inventories and countries such as Australia and New Zealand are allowing the forestry sector to opt-in to their emissions trading schemes. These steps will provide a useful framework to demonstrate robust means of monitoring, verification and reporting of emissions.

It is expected that governments will agree in Copenhagen in December 2009 to include incentives to better manage some range of terrestrial carbon in developing countries for the purposes of climate change mitigation and adaptation. This could include the reform or replacement of the CDM forestry provisions. At this stage, there is an active debate amongst parties to the UNFCCC about what "scope" (range of terrestrial carbon) those incentives will apply to – options include:

- RED (reduced emissions from deforestation),
- REDD (reduced emissions from deforestation and forest degradation),
- REDD plus (reduced emissions from deforestation and forest degradation plus conservation and sustainable forest management),
- LULUCF (land use, land use change, and forestry),
- AFOLU (agriculture, forestry, and other land use).

It appears that a likely outcome will be an aspiration for AFOLU starting immediately with REDD-plus.² (In this paper, "REDD" is used as shorthand to describe that full range of possible outcomes, but in most cases focuses on reduced emissions from deforestation and forest degradation.)

There is also active debate about whether the incentives should be in the form of offsets that can be used to meet emission reduction obligations in developed countries. This paper focuses on offsets, and in particular how they may be created through a project-based national framework. However, many of the considerations for offset credits apply equally to incentives that do not create offset credits, for example, the conditions that need to be established in order for funding to be provided to support REDD projects. Further consideration will also need to be given to how project based REDD framework may be scaled up to provide a national approach if REDD is included within sectoral mitigation under the post-2012 climate change regime.

² FCCC/AWGLCA/2008/16/Rev.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, domestically and/or in collaboration with other countries and institutions, the technical capability, data and expertise to collect (through remote-sensing using satellites and through on-the-ground surveying) and analyse terrestrial carbon data.
- Agreeing methods (preferably consistent with international frameworks such as the IPCC Guidelines) to determine how much carbon is stored in a particular type of landscape and what happens to that carbon under different land uses.
- 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 resources that achieve avoided emissions and increased sequestration.

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.

Learning from Existing Approaches

The purpose of this paper is to assist those charged with designing legal frameworks to support the implementation of an international REDD mechanism within countries, by:

- Summarizing and analyzing the models, and legislative and institutional approaches, that countries have already implemented or begun implementing on

LULUCF and / or REDD (Australia, Brazil, Guyana, Indonesia, Madagascar, New Zealand, Papua New Guinea, and the USA).

- Describing how such models and approaches are supplemented by multilateral and bilateral initiatives (the World Bank's Forest Carbon Partnership Facility, the UN-REDD Programme, Australia's International Forest Carbon Initiative, and the Norwegian Government's International Climate and Forestry Initiative) and approaches to develop an early voluntary carbon market (Voluntary Carbon Standard ("VCS") and the Carbon, Community and Biodiversity Alliance ("CCBA")).
- Explaining how these models and approaches differ at a practical and philosophical level.
- Distilling the lessons that can be taken from the early models and approaches (including successes and failures), and what action is required going forward to ensure that the models and approaches being adopted will assist in facilitating REDD as envisaged.
- Summarising the legal elements to be considered in implementing national legislation including institutional arrangements and requirements, and the potential key legal barriers that need to be overcome (and some suggested methods to overcome them).

Report Structure:

The Report is structured in six main sections:

- **Part 1**, this introduction.
- **Part 2** provides an overview of the consideration of REDD at an international level, examining its historical background, the progress of the negotiations and the expectations for a possible REDD mechanism under the UNFCCC.
- We note that the impetus behind REDD at an international level has led to a number of countries taking action to facilitate REDD in advance of an international legal framework.
- **Part 3** looks at what has been done from a legal and institutional perspective in developing countries. In this section we: (a) look closely at the only stand alone REDD law in a developing country – that of Indonesia, (b) look at policy initiatives being undertaken by other developing countries that support REDD (Guyana, Madagascar and Papua New Guinea); and then (c) compare these with the national approach adopted by Brazil.
- **Part 4** examines the experiences and lessons learned by project developers trying to develop projects in context of ad hoc and uncertain regulatory frameworks, including key barriers to implementation.
- The long-term success of REDD depends upon ensuring the most profitable /cost effective option for managing the forest resources is based on its carbon value. This involves valuing the forest carbon resource appropriately and ensuring there are incentives, in particular through long-term steady revenue streams to governments and local communities. One of the key roles of developed countries is to create

demand, either through a market or via funding, technology transfer and capacity building. This can be linked to national climate change strategies and targets taken on at the international level i.e. level of ambition is linked to the means available to achieve reductions at least cost.

- **Part 5** looks at the measures being taken by developed countries to support REDD and also the role that institutions, multi-lateral and bilateral partnerships can play to create appropriate enabling frameworks to support REDD.
- **Part 6** then provides an initial overview of the types of matters that need to be addressed when developing REDD legislation in developing countries and draws together our conclusions as to the key considerations for both developing and developed country governments and international institutions when answering the question "what do we need to do from a legal and institutional perspective to support REDD activities in developing countries"?
- An overview of the history and status of international REDD negotiations in the UNFCCC is provided in **Annexure 1**.
- Detailed case studies for the target countries are provided in **Annexure 2** (Developing) and **Annexure 3** (Developed).
- An overview of the main institutional, multilateral and bilateral initiatives to support REDD are set out in **Annexure 4**.
- Examples of the main voluntary standards and support architecture for creating tradeable REDD credits are provided in **Annexure 5**.

Introduction to REDD

Background and History to REDD in the UNFCCC

Avoided deforestation has historically been excluded from the Kyoto Protocol framework due to concerns raised about issues such as permanence and leakage and because of concerns about diverting the focus of mitigation away from reducing emissions from fossil fuel use. As such, there is currently no international law framework which enables reductions in emissions from deforestation to be recognised in the international compliance market.

The Clean Development Mechanism ("CDM") of the Kyoto Protocol does provide for the crediting of project level activities in developing countries which relate to afforestation and reforestation activities ("AR CDM"). The AR CDM is a mechanism to credit carbon sequestration in forests. Within the negotiated modalities and procedures, the options for project developers are varied: the established forests may be managed, harvested and used for agro-forestry, bio-energy, timber production or even urban forestry. These activities may receive CDM credits as small scale and large scale afforestation and reforestation projects. Although more than 1600 CDM projects are registered, those involving AR have encountered barriers to achieving project registration. Project developers, in particular, have encountered difficulties in presenting methodologies and project proposals acceptable to the Executive Board of the CDM because such projects have been unable to establish appropriate additionality and project baselines. As a result of these difficulties, and the exclusion of avoided deforestation and forest conservation measure from the Kyoto framework, the potential to harness significant emissions reductions from tropical forests has not been tapped.

The issue of reducing emissions from deforestation in developing countries has been under consideration by the Subsidiary Body for Scientific and Technological Advice ("SBSTA") established under the UNFCCC since July 2005. These discussions have gathered pace following the adoption of the "Bali Roadmap" at COP 13 and are transitioning from technical and methodological discussions to look to policy approaches and positive incentives on issues relating to emissions from deforestation and forest degradation in developing countries, and consideration of the role of conservation, sustainable forest management and enhancement of forest carbon stocks in developing countries. An overview of the progress and status of the international negotiations is provided in **Annexure 1**.

Expectations for Copenhagen

A number of countries have begun putting forward options for policy approaches to REDD. In March 2009, the Australian Government published a submission that supported the use of market-based mechanisms, and engagement with and involvement of the private sector, as the most effective and sustainable way to address REDD. It suggests that market confidence measures could include participation in an international "confidence buffer" (a "confidence buffer" is an international pool of

credits that can be used as a last resort to make up forest carbon credits when a major anthropogenic event results in non-permanence). The submission also notes that it is not necessary for the international agreement to mandate specific national institutional frameworks for individual Parties. The outcome will, however, need to make provision for the development of independently verifiable technical, methodological and institutional performance specifications that must be met for host countries to participate in the forest carbon market mechanism.

Recently released draft negotiating text for the AWG-LCA sets out some guiding principles to inform policy development for an international approach to REDD in the period beyond 2012 (this is being termed "REDD-Plus"). The draft text recognises the need to develop national REDD plans or implementation strategies covering different phases of implementation; designate national authorities to be responsible for implementation and establish national reference levels having regard to national circumstances.

The means of implementation will vary due to the different national capabilities and the phase of implementation of developing countries. Nevertheless, the draft text identifies a range of options which may be appropriate to support the readiness phase (including a readiness fund, a window within existing Convention funds, the auction of allowances, and limited market access) and the full implementation phase (use of public funds, use of markets, or a combination of both). The text also highlights the need for REDD implementation to be underpinned by procedures for measurement, reporting and verification, in accordance with guidelines developed by the COP.

International Support for REDD

Notwithstanding the fact that agreement has not yet been reached on an international policy approach to REDD, a number of countries and institutions have been carrying out activities aimed to prepare for and demonstrate how REDD activities can contribute to mitigation.

One of the key drivers of implementation has been the commitment by institutions such as the World Bank and United Nations Agencies and countries such as Norway, the UK and Australia to provide funding and capacity building to assist developing countries prepare for REDD. Those initiatives are described further in **Part 5** and **Annexure 4** to this Report.

From the perspective of market participants, bodies such as the International Emissions Trading Association ("IETA") are calling for any REDD mechanism to be market led, with strong incentives for private sector investment across the whole land-use sector, and with the creation of permanent credits that are fully fungible with all other compliance credits in the UN and regional, and domestic trading markets. IETA also recognises the important role that the establishment of enabling environments provide and the importance of continued public sector funding for capacity building, institutional development, and establishing frameworks for monitoring, reporting and verification, during the period between 2009-2013.

Whilst only a small number of pilot projects have been undertaken to date, there are more in the pipeline. By using these pilot projects to demonstrate that robust projects are capable of being undertaken and establishing funds which will provide a market demand for credits from the projects, clear signals can be sent to the international community about the feasibility of REDD. Credible projects need to be underpinned by sound national processes for assessing baselines, conducting verification and monitoring projects over the longer term. The early technical support of institutions on these issues will provide the basis for developing sound national processes.

Comparison of REDD Models in Developing Countries

The growing interest in REDD as part of the international negotiations has led a number of developing countries to take early action to facilitate REDD in advance of an international legal framework being developed. A series of detailed case studies are provided at **Annexure 2**. In this section we review the legal and policy frameworks that have been implemented or that are under consideration in a selection of developing rainforest countries. At the outset, 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. For this reason, we provide 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. We then consider 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. Finally we look at the alternative market and non-market-based models being put forward by Brazil at both the national and sub-national levels.

Indonesia

The Ministry of Forestry is the government ministry responsible for REDD activities in Indonesia. By decree in 2008 a Working Group on Climate Change was established within the Ministry of Forestry. The Working Group has been developing a series of Regulations to support REDD activities.

On 1 May 2009, the Indonesian Minister of Forestry signed the Minister of Forestry Regulation P.30/2009 on Procedures for Reducing Emissions from Deforestation and Forest Degradation ("REDD Regulation"). The REDD Regulation introduces the world's first national legal regime for the implementation of REDD projects, and the issuance and trading of carbon credits in respect of the greenhouse gas reductions such projects generate.

The key features of the REDD Regulation, and their implications for prospective participants in Indonesian REDD projects, are summarized below.

The REDD Regulation provides that the land areas that are eligible for REDD projects are as follows:

- The REDD Regulation lists (exhaustively) the different types of Indonesian forest areas that are eligible to host REDD projects. Several of these are defined by reference to concessions that may be held by private parties in respect of forest areas, for example Wood Forest Product Utilisation Concessions and Ecosystem Restoration Concessions.
- REDD projects may also be undertaken on forested lands that have not been formally designated as forest areas, but are subject to pre-existing land rights (for example agricultural land owned by a private entity for the purposes of developing

an oil palm plantation). However, forested land which is not yet subject to any form of land right or other right has not been included in the REDD Regulation's list of eligible land areas, and so will not be able to be used as an Indonesian REDD project site.

To be eligible to be a REDD project proponent, the REDD Regulation requires that both a national (i.e. Indonesian) entity and an international (i.e. foreign) entity are required to act as the proponents for an Indonesian REDD project. The national entity is defined in the REDD Regulation to be either the relevant concession holder (where the project site is subject to an eligible concession) or where the project site is not subject to such a concession, the entity designated in the REDD Regulation.

The international entity may be a foreign Government, corporation, individual or international organization or charity, and is defined in the REDD Regulation as the party responsible for funding the REDD project. In this way, the REDD Regulation explicitly acknowledges that funding for Indonesian REDD projects will come directly from foreign rather than domestic sources.

So far as the approval and implementation of REDD projects is concerned, the REDD Regulation requires that REDD project proposals, including (among other documents) a REDD implementation plan, be submitted to the Minister of Forestry for approval. The Minister of Forestry forwards proposals to the REDD Commission for assessment, and if the Minister approves the project following its assessment, the proponent will be issued a REDD implementation licence. Upon issuance of this licence, the REDD project shall commence within 90 days, and be implemented by managing the relevant forest in accordance with the approved REDD implementation plan.

The maximum duration of Indonesian REDD projects is initially 30 years. This period may be extended, but the rules governing any such extension are currently unclear. In addition, REDD demonstration activities undertaken pursuant to the separate Minister of Forestry Regulation P.68/2008 on Implementation of Demonstration Activities for Reducing Emission from Deforestation and Forest Degradation ("REDD Demonstration Activities Regulation") may be converted into REDD project activities, provided such demonstration activities meet the requirements of the REDD Regulation.

The REDD Regulation specifically recognizes the following rights of the proponents of Indonesian REDD projects:

- The national entity will be entitled to receive payment from its counterpart international entity in respect of greenhouse gas reductions achieved as a result of the implementation of the REDD project.
- The international entity will be entitled to use the REDD credits it receives for the purposes of compliance by developed countries with their emission reduction obligations.
- REDD project proponents (presumably both national and international entities) will be entitled to trade REDD credits under any post-2012 international carbon trading framework of which REDD forms a part, for the purposes of implementing developed country commitments to reduce greenhouse gas emissions.

The REDD Regulation assumes that an international legal regime imposing emission reduction obligations on developed countries will be in place after 2012 (i.e. a successor or other equivalent regime to the Kyoto Protocol), and that REDD credits from Indonesian REDD projects will be eligible for compliance with such obligations. Although these assumptions align with the provisions in the REDD Regulation governing the transition to international arrangements (see below), whether they will be vindicated in international negotiations and through the enabling legislation of developed countries remains to be seen.

The REDD Regulation has been drafted with a view to aligning the Indonesian REDD regime with any international REDD framework that may emerge from negotiations under the auspices of the UNFCCC. However, prior to the advent of any international REDD framework, the REDD Regulation allows Indonesian REDD activities to be undertaken through:

- REDD demonstration activities (as separately regulated under the REDD Demonstration Activities Regulation);
- transfer of technologies; and
- trading of voluntary emission reduction credits in voluntary carbon markets.

Although the REDD Regulation establishes a clear framework for the implementation of REDD projects in Indonesia, a number of key uncertainties remain. These include:

- Project implementation mechanics: the articles of the REDD Regulation addressing the mechanics for development and implementation of Indonesian REDD projects lack detail, and have the potential to create confusion amongst prospective project developers seeking to assess REDD project opportunities and structure viable projects.
- Bundling: the REDD Regulation provides that where two or more REDD projects are located within a single region, regency or province, the projects may be bundled into a single REDD unit. The REDD Regulation does not, however, clarify the mechanics for such bundling, or how bundling will affect the rights and responsibilities of the various project proponents of the REDD projects comprising the bundle.
- Earlier drafts of the REDD Regulation indicated that the Indonesian Government would be entitled to take up to 30% of REDD credits issued with respect to Indonesian REDD projects, for the purposes of managing its own national and international REDD commitments. However, the REDD Regulation as enacted indicates only that any Governmental levy in respect of REDD project implementation will be addressed in a separate regulation, leaving the quantum of such levy uncertain.

The new REDD Regulation has not yet been tested on demonstration projects. However, Indonesia has been at the forefront of supporting voluntary REDD activities and a number of projects have commenced in the voluntary carbon arena. One such project is a project in the voluntary over the counter market located in the Ulu Masen Ecosystem and province of Nanggroe Aceh Darussalam. The project involves REDD activities on 750,000 hectares of forest, and it is estimated that the activities proposed will reduce deforestation in that area by 85% and prevent 100 million tonnes of CO₂

emissions over 30 years. Further projects which are being supported by bilateral initiatives such as the Australia – Indonesia Forest Carbon Partnership include:

- The Kalimantan Forests and Climate Partnership to which Australia has committed A\$30 million. The partnership trials a market-oriented approach to financing and implementing measures to reduce emissions from forestation and forest degradation in Kalimantan, Indonesia.
- An agreement between Global Eco Rescue and PT Inhutani II under which the two parties collaboratively implement a major avoided deforestation carbon project in East Kalimantan. PT Inhutani II is one of Indonesia's five state-owned forestry companies and holds the exploitation license for various production forests in Malinau.

Guyana, Madagascar and Papua New Guinea

As noted above, there are a number of other developing rainforest nations that are supportive of a market based approach to REDD and which are adopting policies to stimulate activities within their territory.

Guyana

In December 2008, the President of Guyana launched a national "Avoided Deforestation Plan", designed to show that Guyana's forest, if used for agriculture or other economic use, could generate significant economic gains.³ The purpose of the report was to bring attention to the costs associated with forest preservation and to raise awareness for avoided deforestation in Guyana. Guyana has been active in a bilateral capacity with Norway to establish forest protection funding. A joint statement issued by the President and Norway's Prime Minister Jens Stoltenberg in Oslo on February 3, 2009 said that the two countries pledged to establish closer cooperation on climate and forest issues and that Norway is prepared to provide performance-based, "substantial and sustained" compensation for the progress Guyana makes in limiting emissions from deforestation and further decreasing forest degradation.⁴ Crucial components of Guyana's policy will be the creation of low-carbon employment and investment opportunities in Guyana, sustained efforts to avoid deforestation and forest degradation, strengthening open, transparent forest governance, and establishing an international monitoring, reporting, and verification system for Guyana's forests. A financial mechanism run by a reputable international organization will be set up

³ See *Saving the World's Forests Today: Creating Incentives to Avoid Deforestation*, Office of the President, Republic of Guyana, December 2008.

⁴ See Office of the Norwegian Prime Minister, *Joint Statement on Climate and Forest Issues*, ("*Joint Statement*") available at: <http://www.regjeringen.no/en/dep/smk/Whats-new/News/2009/norway-and-guyana-cooperate-to-reduce-gr/joint-statement-on-climate-and-forest-is.html?id=544715>.

through which performance based compensation can be channelled to implement Guyana's low-carbon development strategy.⁵

Guyana has not yet developed legislation to give full effect to the Avoided Deforestation Plan and measures still need to be taken to develop a national approach to assess forest carbon stocks. In this respect, collaboration with the World Bank's Forest Carbon Partnership Facility and the Norwegian government will enable resources to be directed to the technical and methodological work that underpins REDD activities.

In the meantime, project developers seeking to carry out REDD activities in Guyana, have been working within the existing legal frameworks that apply to forestry concessions – the Guyana Forest Law – which enables the Forestry Commission to declare State Forests and then issue express authorisations to private entities (for up to 40 years) to carry out a range of conservation activities. Importantly, the Guyana Forest Law does not, at this time, address the separation of rights to land, forests and the carbon sequestered in the forest. Accordingly, there is the potential for competing claims by government, forest concession holders and Guyana's indigenous people, who occupy a significant portion of the country's forests.

Madagascar

Madagascar may have a much smaller forest area compared with other rainforest nations but it sees the protection of those forest resources and the biodiversity it supports as being critically important. Madagascar has recently adopted a REDD strategy at a sub-national level, the country is also developing methods for estimating reference emission levels and engaging stakeholders to improve forestry governance and ensure transparency in distribution of co-benefits. Implementation of this strategy is being supported by the World Bank's Forest Partnership Facility.

Madagascar has innovative legislation for governance of forest resources, the Gestion Locale Sécurisée ("GELOSE"), which allows for a transfer of some management rights to local communities.⁶ However, this legislation does not, at this stage, address ownership of forest carbon rights. This notwithstanding, the government of Madagascar has recently partnered with The Wildlife Conservation Society ("WCS") to sell more than nine million tons of carbon offsets in the Makira Forest.⁷ The carbon offsets will be marketed and sold by the Madagascar government in private transactions with the aid of the Makira Carbon Company ("MCC") established by WCS. MCC will work in collaboration with Madagascar's Ministry of Environment, Water, Forests, and Tourism to manage the project and market the credits generated on the voluntary market.

⁵ See *Joint Statement*.

⁶ GELOSE was signed into law on September 10, 1996 (Law No. 96-025) and in 1997, the law was incorporated into the national forest policy (Law 97-107 and Decree 97-1200).

⁷ See http://www.wcs.org/353624/wcs_carbonsales.

In addition, Conservation International and the Wildlife Conservation Society are in the process of developing three proposed avoided deforestation carbon projects in Madagascar which will aim to meet the Voluntary Carbon Standard's ("VCS") AFOLU Guidelines.

Papua New Guinea

Papua New Guinea has played a lead role in progressing REDD negotiations. The Papua New Guinea position has consistently pressed for positive incentives to be provided to developing countries to reduce deforestation.

The Office of Climate Change and Environmental Sustainability ("OCCES"), established in 2008,⁸ carries out the Government's climate change and REDD policies and activities. The Government has developed four main work programmes, which are to be carried out by the OCCES: (i) adaptation; (ii) mitigation; (iii) technology; and (iv) financing.

The National Government and OCCES are currently tasked to finalize and implement REDD provisions in Papua New Guinea. Stakeholder consultations on the Government's draft REDD Policy were held in May 2009 and the OCCES has indicated that draft legislation will be made available by October 2009. Our understanding of some of the key elements of the draft REDD Policy and of how initial REDD projects have been negotiated with the Government to date, is that:

- The government will regulate and facilitate the sale of carbon however the right to carbon will stay with the landholder.
- The Government wants to be compensated for loss of revenue from development activities that increase REDD and for greenhouse gas reductions.
- There will be a 2% tax on REDD projects, similar to the share of proceeds under the CDM – which will go into an adaptation fund.
- Existing carbon agreements have split benefits 80:10:10 - 80 to landowner, 10 to company and 10 to payment of monitoring and verification costs. The Government is still yet to confirm they will follow similar benefit sharing ratio, but landowners are pressing for their share not to be reduced.

The OCCES has indicated that approximately 44-50 landowner groups have signed up to voluntary carbon agreements. Projects related to these agreements are still being developed and the details of arrangements, standards applied and the types of credits to be created are not clear. It is expected that these agreements and projects will transition into the regulatory scheme once it is established. However, a critical aspect of those arrangements is whether the Government has been included as a party to the voluntary agreement, as excluding the government could invalidate any existing arrangements.

In the absence of a comprehensive legal framework to support REDD activities, voluntary project developers are working within the existing laws that apply to land

⁸ Formerly known as the Office of Climate Change and Carbon Trading

tenure and forestry. Over 97% of land in Papua New Guinea is held as customary land and the consent of local landowners is required for any interest in land to be divested to a third party. For example, in order for forestry concessions to be granted under the *Forestry Act 1991* and *Forestry Regulation 1998*, a Forest Management Agreement ("FMA") must be entered into between the Papua New Guinea Forest Authority and all the Land Groups that have an interest in the forest. Once that FMA has been entered into, the Forest Authority can grant forest concessions to third parties who can then access the forest and utilise the forest resource (subject to the payment of fees to the Government and the Land Groups).

Early indications from the OCCES are that a similar framework may be adopted to facilitate the granting of interests in forest to be conserved as part of REDD activities. Three important issues arise from this. First, the need to ensure that a project developer is negotiating and obtaining the consent of the appropriate customary landowners. Second, ensuring that existing forest concessions (e.g. to log an area of rainforest) are rendered null and void to ensure the forest resource is not threatened by competing land uses. Third, it is essential that appropriate benefit sharing regimes are put in place to ensure long-term benefits (such as employment) and revenue streams flow back to the customary landholders. Further issues associated with project development more generally are discussed in Part 4 below.

Brazil

At an international level, Brazil has taken the view that any forest and climate regime should be voluntary and must not be used to offset emissions in developed countries. Brazil has not favored markets as a tool for addressing climate change in the REDD context. Instead it has preferred adopting national policies to address deforestation that draw upon international funds.

On March 15, 2004, the Brazilian government released the "Action Plan for the Protection and Control of Deforestation in the Legal Amazon", which has been recently updated (2008) as the "National Plan to Combat Deforestation and Plan to Combat Deforestation at State Level for the Period 2008-2011" ("Deforestation Plan").⁹ The Deforestation Plan contained measures to address many of the root causes of deforestation, including (a) legal enforcement in the Amazon region, and (b) the lack of effective land title procedures and structures. The measures to be implemented include:

- valuation of forest to conserve biodiversity;
- improved forest management, forest plantations and substitution, including the creation of 20 million hectare (ha) of conservation units;
- incentives for sustainable recovery of deforested areas;
- territorial zoning;

⁹ Plan drafted by Permanent Interministerial Working Group to Reduce Deforestation in the Legal Amazon. This is a Federal Government Plan Coordinated by the Office of the Chief of Staff.

- improved monitoring and licensing procedures; and
- decentralized management and partnerships between federal, state and local governments and the establishment of a legal framework for public forest management.

The Brazilian Government recently released its "National Plan on Climate Change" ("National Plan"). The National Plan aims to cut deforestation by 70% over the next decade and signifies the first time Brazil has set a target for reducing deforestation. Under the design of the National Plan, Brazil is seeking sustained reduction in deforestation rates in all Brazilian biomass supported by both national and international "resources" (including any resources obtained by the Amazon Fund discussed below) in order to strengthen environmental enforcement and provide economic support for forest activities in the region. To achieve these benchmarks, the National Plan proposes (among other things) the implementation of public forest registers the use of both domestic and international funds and the implementation of Brazilian biomass satellite monitoring programs aimed at quantifying deforestation.

In August 2008, Brazil established the *Amazon Fund* to receive funds from certain developed countries and the private sector for the specific purpose of forest protection in the Amazon. The fund is based on voluntary contributions from foreign governments and the private sector and the amount available each year hinges on the reduction of deforestation below a rolling 10-year average. Norway is currently entering into an agreement to provide US\$100 million a year to the Amazon Fund.¹⁰ The money from Norway will be "results based, transparent and independently monitored".¹¹ Brazil would like to see its proposal be used for a global model to reduce emissions from deforestation and forest degradation. The Amazon Fund is managed by the Brazilian Development Bank ("BNDES") with a multistakeholder steering committee which includes representatives from local government, national ministries, BNDES, indigenous peoples and civil society - NGOs, industry, farmers.

There is no national federal climate change law in Brazil. However, Brazil provides a patchwork of relevant Federal and State policies, laws and regulations which may impact a REDD project. Recent legal measures designed to improve incentives to encourage sustainable productive activities include the *Law on the Management of Public Forests* which guarantees the allocation of areas to be managed by local communities. This law has also led to the creation of the first Sustainable Forest District to combat illegal deforestation, with another two planned for BR 319 and in the Carajas region.¹² However, the law also contains a provision which expressly provides that it is forbidden to include terms in a forest concession which provide for "the grant of rights to ... commercializ[e] credits derived from avoided emissions of

¹⁰ See "The Government of Norway's International Climate and Forest Initiative", available at: <http://www.regjeringen.no/en/dep/md/Selected-topics/klima/why-a-climate-and-forest-initiative.html?id=526489>.

¹¹ Id.

¹² Available at: http://www.ideflor.pa.gov.br/files/u1/Lei_Federal.pdf

carbon in existing forests".¹³ The Federal law reserves for the national government the right to put any such credits into the markets.

At the State level, Amazonas was the first State in Brazil to approve a law linking the issues of climate change and environmental conservation. *Laws for the State Policy for Climate Change (2007)*, creates fiscal and financial incentives for reducing environmental impacts in Amazonas. The law specifically provides support for the private sector in reducing their greenhouse gas emissions and in offsetting their emissions. State government agencies are also empowered to carry out activities that reduce their greenhouse gas emissions. The law calls for inventories of carbon, protection for forest biodiversity and requires the various economic sectors to identify investments that support clean energy sources and contribute to the stabilization of greenhouse gas levels. The law also creates a labelling system recognizing and certifying the friends of the climate and of the Amazon forest, in order to recognize the efforts of companies that support the state's conservation programs. Another innovation is the creation of the state climate change fund to pay for environmental products and services, including those provided by forest peoples in preserving their environment and reducing deforestation.

The State of Mato Grosso has also recently enacted law dealing with forestry management.¹⁴ The law purports to regulate both title registration with respect to land owner/occupier's under the property registration system, as well as providing a land registry of physical characteristics on the land. The law requires the land holder or occupant to obtain a single environmental permit or license which specifies the conservation rights and obligations attached to the land. However, the law does not determine whether a land owner is entitled to the carbon sequestration rights attached to such activities if the land owner conserves the forest located on such land.

Whilst Brazil is primarily taking national and State level actions to address deforestation, there have also been a few REDD projects developed at the sub-national level. The Juma Reserve REDD Project in Brazil aims to reduce deforestation and to produce carbon credits for sale internationally. This Juma Reserve REDD Project is the first project in the State of Amazonas to be registered under the Climate Community and Biodiversity Alliance ("CCBA") Standard. However, unlike the State policies financed through public funds, this project will rely upon the marketing of carbon credits.

¹³ See *Law on the Management of Public Forests* (Law no. 11.284), Art. 16, par 1.

¹⁴ LEI Nº 8.723, DE 23 DE OUTUBRO DE 2007 - D.O. 23.10.07. "Establishing the Executive Directors of the Fund for Forestry Development of the State of Mato Grosso" August 18, 2008.

Experiences from REDD Projects in Developing Countries

From a project development perspective, REDD is still very much a new and emerging area. The Ecosystem Marketplace's Forest Carbon Portal¹⁵ lists approximately 20 forestry projects being undertaken in developing countries for both the CDM and for the voluntary REDD market.

Of these early projects and activities, many are being driven out of existing bilateral arrangements which are between or involve developed and developing governments or which harness the support of multilateral donors, often on a regional basis and in the context of broader pre-existing aid or trade relations. For example, the Australian Government's REDD initiatives have a strong regional focus with Australia engaged in bilateral collaboration on REDD with Indonesia and Papua New Guinea.

At this stage, there has been only limited private sector involvement in REDD activities in the voluntary market. Only a handful of projects have been undertaken - many using the CCB standard, although more are in the pipeline now that the VCS AFOLU guidelines have been released. The uncertainty surrounding domestic legal frameworks has limited participation by some of the entities that are otherwise participating in the international compliance carbon market, for example, some of the large CDM project developers and aggregators such as EcoSecurities, Camco and Climate Change Capital.

Notwithstanding that only a few entities are engaged with REDD projects at present, the potential scope and range of actors involved in REDD activities is large, as evidenced by the significant interest on the part of developing countries in participating in the work of various funds. The World Bank's Forest Carbon Partnership Facility, for example, has grown since 2008 to now include 37 developing country participants from across the world.

The relatively untested nature of project development, in many cases with only one or two projects being undertaken in any one country, means that it is difficult to identify a common approach to matters such as:

- negotiating access to land, forests and carbon rights;
- recognising indigenous interests;
- ensuring that projects meet minimum standards related to additionality, permanence and enforcement; or
- creating a tradeable carbon credit from the forest resource.

Nevertheless, a few lessons can be drawn from the experiences of some of the early projects.

¹⁵ <http://www.forestcarbonportal.com/inventory.php>

Uncertainty and risk

The first lesson is that there remains a high degree of risk associated with REDD projects, particularly due to domestic law uncertainties and the lack of institutional capacity to support project implementation. The main risks include:

Lack of clear legal frameworks and institutions

None of the REDD projects developed to date have been supported by clear legal frameworks. Instead they have had to navigate issues related to land tenure, forestry concessions and in some instances other environmental approvals and laws related to foreign investment. In addition, uncertainty about the responsibility of different levels of government and inconsistency between national and provincial laws has exacerbated confusion.

Land Tenure

In many instances, there is significant uncertainty about land tenure arrangements. In our experience, some of the key issues that arise include:

- determining ownership and responsibility for forestry resources (which is frequently distributed across different layers of Government);
- clarifying the possible legal interests available to project participants;
- resolving potential conflicts between national, regional and local land laws or governance structures; and
- overcoming any legislative restrictions on conducting avoided deforestation projects in specific forests.¹⁶

Specific land-based investigations are required to identify the physical land area of the project, its legal ownership and any land use constraints. In some developing countries, land title may be very complex, in other cases it can be clearly identified as lying in the hands of private concession holders or the national government. In any event, agreements have had to be entered into with all relevant parties to ensure their commitment to the project and the protection of carbon and other rights.

Brazil has taken some important steps to regularise land tenure arrangements and provide certainty with respect to land title. In 2008 and 2009, the Brazilian government passed new norms to try to define property rights in the region.¹⁷ Brazil

¹⁶ Indonesia, for example, forbids commercial activity in certain classes of forest.

¹⁷ The National Institute for Colonization and Land Reform (Instituto Nacional de Colonização e Reforma Agrária or "Incrá") enacted two rulings (Instruções Normativas – INs) - number 45 and 46 of 2008 – to adapt procedures for landholding regularization. In 2008, the Agrarian Development Ministry (Ministério do Desenvolvimento Agrário – MDA) proposed the *Terra Legal Program* (Legal Land Program), through which it intended to promote landholding regularization for holdings of up to 1,500 hectares in the Amazon in three years. This program was incorporated in Provisional Measure 458/2009 of February 2009.

has also spent considerable time implementing zoning laws around areas which may be eligible for REDD activities in order to address the balance between resource extraction and development activities and REDD activities.¹⁸

Securing clear land tenure is fundamental to ensure the long-term permanence of the forest and carbon sequestered therein. Land earmarked for avoided deforestation projects will not only be under threat from deforestation (e.g. from illegal logging or the exercise of valid logging concessions) but is also often subject to conflicting land claims and rights, and these must be identified and resolved before a project can proceed. Due diligence has, in many instances, been conducted to ensure that the land is free of licences, leases, agreements, development approvals and/or logging concessions that might vest oil, gas, mineral, timber and plantation interests with prior and/or legally enforceable claims or, where such encumbrances exist, that appropriate agreements may be reached with landholders to secure land tenure appropriately. However, bureaucratic practices in many developing countries may make it extremely difficult to access the necessary information.

In circumstances where maintenance of the forest is to be ensured by buying out existing logging concessions, the project developer has had to closely review any obligations or conditions imposed by that permit to ensure their consistency with the project's preservation objectives. Some concessions require their holder to undertake activities that support the concession, but that are wholly inconsistent with the aim of carbon retention. A logging concession, for example, may require its holder to construct roads and timber production mills to service the logging operations. Before acquiring such a concession, a project developer must ensure that any such obligations can be (and are) removed from the permit in order to guarantee the maintenance of carbon stocks. Parties will then need to consider how best to utilise local property law instruments (if they exist at all) or customs to secure continuing land tenure and guarantee permanence.

Indigenous Land Ownership or Interests

Given the on-going role indigenous people are likely to play in the forests themselves, as well as potentially acting as monitors of carbon stocks, consultation with these groups, as well as other stakeholders, is necessary to maintain the legitimacy and transparency of a proposed national or sub national REDD scheme. We have seen some countries adopt measures to directly incorporate indigenous communities in the process through direct contracting. For instance, in Madagascar, the GELOSE law provides for the creation of tripartite negotiated contracts between the state, the municipality and the community residents (the law stipulates that no local resident can be excluded from the association). Madagascar also provides for an expedited and simplified process for transferring forest management rights which require only

¹⁸ Only three States in the Amazon have their ecological-economic zoning approved by state law (Acre, Pará and Rondônia) and Roraima is concluding this process. Of the three that have the law, Pará still needs to detail its macro-zoning – a process that already started in 2009 with a zoning law specifically to the western part of the State (regions along the BR-163 and BR-230 highways).

bilateral agreement between the state and the association. In Papua New Guinea, project developers have been entering into arrangements with recognised land groups, seeking their consent to develop projects on the basis that the landowners receive a portion (up to 80%) of the revenue generated by the project.

In order to provide a stable regulatory basis from which to base investment decisions, a country must have certainty with respect to interests in the title above all else. This necessitates finalizing and settling rights of appeal, customary entitlements and other grounds for the assertion of legal interests in land.

Carbon Property Rights

In addition to identifying where REDD projects can take place, understanding the nature of the legal interest that may be created in carbon and who holds that right underpins the ability of projects to generate REDD credits. Carbon rights are intangible assets that are created by legislative and contractual arrangements. In a small number of countries, clear legislative frameworks have been put in place to provide for their creation and ownership. In Australia, for example, each of the States has passed legislation to create a form of "environmental services right", which landowners may register on title in favour of another party. This right is similar in law to an easement or a covenant, transferring the carbon rights and responsibilities associated with the land to a third party. In Indonesia, legislation has been enacted which authorises provincial and district governments to issue permits for the utilisation of environmental services, called *Izin Usaha Pemanfaatan Jasa Lingkungan (IUPJL)*. IUPJLs entitle their holder to store and absorb carbon and other environmental services in both "production" and "protection" forests, and are granted for a term of at least 30 years. Most developing countries, however, have not yet developed the necessary legal frameworks to address this issue. Establishing appropriate legal frameworks is likely to be key to ensuring the success of the REDD program.

Project participants must also consider whether federal government approval is required to authorise the sale of carbon or other ecosystem services ("Environmental Benefits"). Projects have failed in the past when, following significant time and capital investment, and lengthy negotiations with state governments, the federal government has stepped in to prohibit sale of the Environmental Benefits. In Brazil, some sections of the Federal Government have argued that it cannot allow rights to carbon to be sold internationally, as this will simply result in a lower national baseline, which is a concern if it adopts a post-2012 target. Similarly, in Indonesia the extent to which the Federal Government will approve such projects outside of the REDD process remains unresolved, casting some uncertainty over recent Indonesian transactions. In Papua New Guinea, different levels of government have issued different levels of support to projects and articulated different levels of rights to deal in carbon, resulting in a range of conflicting claims.

Institutions

The institutional framework for REDD activities in developing countries, is generally established through ministries or commissions for forestry which are responsible for regulating and monitoring REDD activities. In addition, some countries are also engaging with REDD at a prime ministerial or presidential level. The political dynamics of host governments influences the institutional structure for REDD, and in some instances, clear delineation between governmental departments has been slow to emerge.

From the perspective of international funders and project developers, the uncertainty about jurisdiction and what consents are necessary within government can lead to confusion, delays and duplication of effort. In addition, where specialized climate change departments have been established, they are often still in the process of recruiting and training staff to develop the capacity to implement REDD activities.

Inconsistency between National and Provincial laws

In many developing countries, forestry regulation, and consequently REDD regulation, comprises a mixture of federal or national and provincial laws and regulations, which are not always consistent.

Both Indonesia and Brazil have grappled with the issue of reconciling federal and state action in the context of REDD. In both cases, action with respect to REDD activities at the sub national level has been constrained by uncertainty surrounding action to be taken at the national level. In the Indonesian Province of Aceh, the local governor has been very supportive of early demonstration projects. However, it is not clear how it will fit in with the national government's new Regulations. In order to facilitate action at both levels it is necessary to undertake a co-ordinated approach to federal and state laws which addresses and supplements existing forest laws (both at the federal and state level) with revised laws which address REDD initiatives. An example of successful scheme in this respect is the Juma Reserve REDD Project, in the Amazonas (Brazil), the first project of its kind to be implemented based upon the creation and approval of the *Laws for the State Policy for Climate Change* (Lei da Política Estadual de Mudanças Climáticas, PEMC-AM) and the *State Protected Areas System* (Sistem Estadual de Unidades de Conservação, SEUC-AM).

A lack of consistency between legislative regimes within a country means that entities that seek to operate across regional jurisdictions must understand and comply with a range of local laws, adding to the complexity and cost of entering into agreements. A consistent national scheme also means that it is easier to trace the entity with an interest in the carbon underpinning each issued credit.

These risks, along with the uncertainty regarding the nature of a REDD mechanism post 2012, are among the main reasons why many traditional carbon market players are not yet engaging in project development.

Foreign ownership or investment restrictions

Land management regulation is the domain of nations, and national governments' views differ widely about the level of participation that should be afforded to foreign corporations. Many nations, such as Brazil, take the view that rainforests are infrastructure assets, which are owned by the nation to provide essential services to its citizens. Whether these assets are better developed and managed by national governments themselves, or by foreign interests with appropriate expertise who receive a regulated return for their services,¹⁹ is a point of great contention. National governments in many developing countries have demonstrated reluctance and, in some cases, adamant opposition to, situations where foreign corporations spend large sums of money in locking up significant areas of forest in order to market the associated carbon benefits.

In some countries, government law and policy actively restricts foreign ownership of land or environmental services rights or permits, or impose conditions on foreign ownership. IUPJLs issued in Indonesia, for example, which give their holder the right to exploit environmental benefits arising from the relevant land, can only be granted to Indonesian nationals or entities (including state-owned entities). Where such restrictions exist, the project developer may need to put in place informed project structures to ensure that the project can succeed.

Going forward, it is likely that Governments will attempt to achieve a synergy between foreign investors and local communities by regulating returns to each, and requiring broad collaboration between the parties in the development of projects.

Assessment and Methodology

The second lesson from a review of early REDD projects is that the credibility of those projects rests upon using robust methodologies and means to assess the anticipated benefits of a project over its lifetime.

Baselines and Additionality

For an avoided deforestation offset to have real value, it must generate emission reductions which are additional to those which would have occurred in the absence of the project. In order to determine whether and to what extent emission reductions are, in fact, "additional", it is generally necessary to set a "baseline" for the project – a hypothetical reference case which represents the volume of GHGs that would have been emitted if the project were not implemented – and to show that the project would not have been viable without the carbon revenues generated.

Setting a baseline is particularly complicated in the context of avoided deforestation projects for a number of reasons, including the difficulties associated with identifying

¹⁹ Similarly to the management of much critical infrastructure around the world, including airports, highways, and water systems.

exact data on deforestation²⁰. Setting an appropriate project baseline involves proving that a given piece of land was due to be deforested. This may be straightforward where logging concessions are in place, and there is clear evidence that those concessions were to be acted upon in the future. However, without objective evidence, baseline setting may involve the significantly more challenging task of putting hard numbers on hypothetical future developments.

The assessment of additionality of each project is of course a practical as well as a legal issue. It will be necessary in each case to examine whether and how the Host Country regulatory framework would allow clearing of the land in question, and to analyse deforestation drivers to prove that the most likely scenario is that the land would be cleared (and the projected extent of such clearing). It may be possible to adopt the CDM additionality tool to frame this argument, as the BioCarbon Fund of the World Bank has done in its recently published *Proposed Methodology for Estimating Reductions of GHG Emissions from Mosaic Deforestation*.²¹

In the voluntary market, baselines and additionality are assessed on a project-by-project basis. Different issues arise if the relevant baseline is to be set at a national level, the favoured approach of many UNFCCC negotiators, though that is not free from criticism.²²

On area where we have seen a number of concerns regarding baselines, methodologies and additionality is where a country has no history of deforestation. Guyana, for example, had two primary problems. First, Guyana's baseline deforestation is low, so there is no measurement for carbon release and therefore no baseline from which to measure carbon stock increases. Second, Guyana had to prove that any reduction in deforestation is "additional" to business as usual, in order to prove that preservation of such stocks could offset existing emissions. In responding to these barriers, Guyana engaged a consultant (McKinsey) to prepare a report which suggested that baseline assumptions should be driven by analysis that assumes rational behavior by countries seeking to maximize economic opportunities for their citizens (an 'economically rational' rate of deforestation). Such baselines can be developed using economic models of expected profits from activities that motivate deforestation (vs. in-country benefits of maintaining the standing forest), and timing and costs required to harvest and convert lands to alternative uses. This is one innovative approach (although by no means non-contentious) to creating a national baseline from which to begin crediting forestry action.

Alternately, countries with a historic rate of deforestation, such as Indonesia or Brazil, face the problem both of preventing existing and historic deforestation and then

²⁰ This is particularly problematic in those countries that have significant issues with illegal logging.

²¹ Proposed Methodology RED-NM-001, viewed online at http://carbonfinance.org/docs/REDD_Mosaic_Methodology.pdf.

²² Streck, Snake Oil for the Mind: National Baselines for Reducing Deforestation by Charlotte Streck, Ecosystem Marketplace 2007, viewed online at http://ecosystemmarketplace.com/pages/article.opinion.php?component_id=5582&component_version_id=8054&language_id=12.

estimating a baseline in order to set a value for the forest carbon stocks (the destruction of which has been avoided). REDD methodologies that rely on historical or stock-based deforestation baselines, may be flawed because they may not reflect current or future pressures on the forest. In addition, historical baselines potentially create perverse incentives by providing a set value to countries that have allowed faster rates of deforestation – as an example, Indonesia could lose a significant portion of unprotected forests by mid-century if such an approach were adopted.

Use of Standards

In our experience, many of the early REDD projects have used the Climate, Community and Biodiversity ("CCB") standard to measure both the carbon sequestered, but also the biodiversity and community benefits that arise when deforestation is avoided. The CCB standard is highly regarded and provides a rigorous test for project developers to meet when describing their projects. One aspect of the CCB standard is that it does not result in the creation of a specific CCB credit. Rather, the standard overlays other project crediting mechanisms (e.g. VCS discussed below).

In the absence of a CCB credit, many project developers seeking to create tradable credits from REDD projects are now looking to the Voluntary Carbon Standard or VCS as an additional or alternative form of project accreditation. Voluntary Carbon Units ("VCUs") issued for VCS approved projects have this tradable characteristic. The Agriculture, Forestry and Other Land Use ("AFOLU ") Guidance developed by the VCS deals with issues related to project boundaries, additionality, permanence, leakage and long-term project risk, thereby providing a sound basis for project development.

Organizations such as Climate Focus and Terra Global Carbon are currently developing a methodology for REDD and a number of research institutions are also carrying out work in this field. Current projects have tended to develop project design documentation on an ad-hoc basis, but with the publication of a widely respected methodological tool, it is likely that many REDD projects will use that tool.

Permanence

The third lesson from early projects is that, if a project is to generate high value credits, it needs to demonstrate that the sequestration is real and permanent.

For any transaction to succeed, buyers will be concerned to ensure that the carbon stock they are purchasing will remain in place. "*Permanence*" refers to the extent to which a carbon sequestration project is able to achieve an absolute and irreversible reduction in the volume of carbon dioxide in the atmosphere. Forest-based projects, by their nature, are subject to a number of natural risks,²³ which impact upon the permanence of emission reductions achieved. This risk is dealt with under the Kyoto

²³ Including biotic, abiotic and anthropogenic risks.

Protocol for afforestation and reforestation CDM projects by creating "temporary" credits, which have a limited life that is subject to the maintenance of the forest.

For a *permanent* forestry credit to be created, there must be some kind of guarantee that the carbon sequestered will continue to be stored by the relevant forest. This may be achieved by:

- imposing a period of mandatory maintenance and introducing legal tools through which to ensure that this is achieved;²⁴
- providing incentives for the activity proponent to ensure permanence (which may be through a staged release of carbon rights, or preventing additional carbon rights from being generated if permanence is not maintained); or
- ensuring that in the event that there is a permanence failure, the system allows for rectification of that permanence failure through sourcing replacement credits or cancelling issued credits.

The compliance-based New Zealand Emissions Trading Scheme does away with the need for mandatory maintenance periods by issuing landholders that opt-in to participate in the scheme a credit for each ton of carbon sequestered, and requiring them to surrender a credit for each ton of carbon lost. It is as yet unclear how permanence will be dealt with under the UNFCCC REDD framework.

Whilst avoided deforestation projects remain in the voluntary market, it is the standard under which the carbon asset is generated that will dictate the permanence requirements, and due diligence will need to be undertaken for each project to assess the likelihood that the forest will be maintained for the period mandated by the standard. In our experience, most buyers and investors will support forestry credits where permanence obligations are clear.

A range of practical measures must be put in place to ensure the permanence of the forest. These include the development and application of:

- comprehensive forest management tools and procedures to ensure that continued preservation and maintenance of the forest is appropriately incentivized and managed;
- risk mitigation, monitoring and enforcement plans which deal with risks presented by illegal trespass, the destruction of trees and the security of the forest;
- action plans to deal with possible force majeure events; and
- physical monitoring systems which can track the continued maintenance of carbon stocks in the forest. Systems generally employed for this purpose include aerospatial surveillance, remote sensing, enhanced communication networks and independent observers.

²⁴ In Australia, for example, the Government-endorsed Greenhouse Friendly carbon offset scheme requires that trees be maintained for a period of 70 years, whilst New South Wales' mandatory Greenhouse Gas Reduction Scheme mandates a 100 year maintenance period for afforestation and reforestation projects. Appropriate measures must also be put in place to ensure that the permanence obligation can be enforced (e.g. penalties for non-compliance)

Most private sector actors are working with these types of tools and building in requirements for long-term monitoring, verification and reporting into the project design and contractual documentation.

Approaches to addressing permanence vary among existing REDD projects. In some instances, the use of long term license arrangements or concessions being granted by host governments for conservation purposes has been the basis for demonstrating that further deforestation will not occur.

However, with the development of the VCS AFOLU Guidelines, we are beginning to see permanence addressed through the use of buffer areas for projects. The VCS approach is to require that projects maintain adequate buffer reserves of non-tradable carbon credits to cover unforeseen losses in carbon. The buffer credits from all projects are held in a single pooled VCS buffer account, to insure against potential future carbon losses. This allows permanent credits to be created at the outset, overcoming many of the issues associated with the replacement of temporary certified emission reductions ("tCERs") under the CDM.

The Australian Government in a submission to the UNFCCC in March 2009 also supported the use of a "confidence buffer" (there described as an international pool of credits that can be used as a last resort to make up forest carbon credits when a major anthropogenic event results in non-permanence). The Australian domestic CPRS also proposes using a buffer system when issuing credits, to mitigate against unplanned releases of carbon.

Under the VCS AFOLU verification and monitoring obligations are also linked to the buffer. For example, a failure to verify at least every five years results in cancellations in the buffer stock. If verification reveals a depletion event (for example, due to fire or harvest) VCUs in the buffer account will be cancelled and the risk profile of the project is likely to be regarded as higher. Therefore more VCUs may be required to be withheld in the buffer account at the next issuance. Conversely, if future verification is undertaken and reveals that the project is being managed well, the project may attain a lower risk rating and require fewer credits to be placed in the buffer at the next issuance of credits.

Enforcement

Ensuring that reforestation projects are maintained or that deforestation on land the subject of a REDD project does not occur will be the primary responsibility of the project developer. Where a project is developed in partnership with government, for example those early projects being undertaken in Indonesia and Amazonas, then State or provincial government resources can also be used to assist in regularly monitoring the forest and preventing illegal logging.

To date, it has been the standards that projects are developed to for the voluntary market that are providing the primary incentive to ensure compliance, as accreditation may be withdrawn or credits will not be issued if a project fails to perform. We are also seeing some developing countries, such as Indonesia include provisions that set out the responsibilities of REDD proponents. However, there are few if any, examples

of sanctions and enforcement provisions in the REDD regulations and policies we have reviewed. To the extent that forestry laws provide mechanisms to enforce a breach of the law, those provisions may be triggered, but only if clearly relevant.

In contrast (as set out below), developed countries such as Australia and New Zealand have developed processes to ensure that, if a project does not perform and sequestration either does not occur or is reversed, then the responsible entity must make good the amount of carbon emitted through the relinquishment or surrender of an equivalent number of permits in their domestic emissions trading schemes.

Managing Stakeholder Expectations

Another key lesson from early projects is the importance of managing the expectations of other stakeholders, particularly local landholders, as a result of the potential delay before credits are issued and can be sold. Landholders in some instances are expecting to see immediate returns from their forests (and often this causes tensions and conflicts amongst them). However, well structured projects are looking at means of demonstrating initial goodwill, but also establishing community trusts or other facilities to ensure that the landowner's share of proceeds are appropriately managed in order to sustain the community over the longer term.

Local experience in forestry management is important to the overall success of a REDD project. In many instances, we have seen project developers, such as investment banks, opt for partnerships involving forestry and conservation branches of government at a local or provincial level, and/or with conservation NGOs already working on the ground.

In addition to local government and NGOs, where forest resources are not owned by the government, or where local communities have a strong connection to the forest for their livelihood, support of local landowners is essential. A number of the early project activities have involved local landowners, in order to overcome certain legal and cultural barriers. This involvement is critical in many States, as land ownership laws may restrict or prohibit foreign ownership of land, necessitating partnership with local actors. Equally, in some States where political power is concentrated locally, approval or authorization of a local authority or leader may be required before a project can proceed. An example of such land ownership restrictions is Papua New Guinea, where 97% of land is held under indigenous tenure and is not transferable. Some of the project developers entering the Papua New Guinea market are working on developing strong relationships with landowners in order to secure exclusive rights over carbon sequestered in their forests.

Lessons learned from Developed Countries

Although Developed countries will ordinarily participate in any REDD mechanism as either a purchaser of credits or through the provision of funding and technical support, there are nevertheless 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 are instructive when considering how to address:

- the creation of underlying carbon property rights in trees; and
- addressing 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.

Carbon Property Rights

In developed countries, there have been some efforts to separate carbon rights from forestry and other land rights in order to create a tradable commodity. This has been the case in most states in Australia and carbon sequestration rights will underpin the inclusion of forestry within the proposed Australian emissions trading scheme or Carbon Pollution Reduction Scheme ("CPRS"). Similarly, in New Zealand, although generally landowners have the ultimate decision to deforest, there are agreements in which land and forest ownership are separated, such as leases, forestry rights and Crown Forestry Licenses.

In Australia, each of the states has passed legislation to create a form of carbon right which landowners may register on title in favor of another party. This right is similar in law to an easement or a covenant, transferring the carbon rights and responsibilities associated with the land to a third party. It is unbundled from other interests in the land. In some states in Australia such rights are 'property interests'. There are clear benefits to requiring that forestry carbon rights be property rights (rather than mere contractual rights) that are clearly unbundled from other underlying land rights. This may be either in the form of a specialized carbon right or in the form of another form of traditional restriction such as an restrictive covenant, conservation covenant, forestry right or *profit a prendre*.

The ability to obtain a property interest in land (as distinct from a contractual right) may grant the owner of the carbon right a stronger title to land, that is more clearly enforceable against future owners of the land (depending on the overall legislative regime in that particular State).

Although Australia has developed 'clear' systems to unbundle carbon rights from other interests in land, land law in Australia is based at the regional (state) level and as such different carbon rights schemes operate in each state and each state scheme accords different rights and obligations. For example in some Australian states carbon rights can be created on crown land, in other states carbon rights can only be created on private land. In some states the carbon rights' holder is granted a contractual right whereas in other states the carbon rights holder obtains a 'property interest' in land.

A lack of consistency between legislative carbon rights regimes within a State means that entities that seek to operate across regional jurisdictions must understand and comply with a range of local laws, adding to the complexity and cost of entering into agreements. A consistent national scheme also means that it is easier to trace the entity with an interest in the carbon underpinning each issued credit.

Permanence and Long-term Maintenance

The use of buffers to address permanence issues in REDD is gaining some support at the international level. The Australian Government in a submission to the UNFCCC in March 2009 on the inclusion of REDD in any successor to the Kyoto Protocol, supported the use of a 'confidence buffer' (there described as an international pool of credits that can be used as a last resort to make up forest carbon credits when a major anthropogenic event results in non-permanence).

The VCS and CCX each require REDD project developers to offer a discount or 'buffer' on the offsets generated by the project activities to guard against reversals in carbon sequestration as a result of losses to the project or under-performance. Such an approach is also proposed by Australia in its CRPS. Using such an approach allows permanent credits to be created at the outset, overcoming many of the issues associated with the replacement risk associated with temporary certified emission reductions ('tCERs') under the Kyoto Protocol's CDM.

In relation to the issue of long-term maintenance, under the proposed Australian CPRS, to be eligible to generate forestry credits, project proponents will need to maintain the forest on the land for 130 years.²⁵

The VCS crediting period for AFOLU projects should be the same as the life of the project, with a minimum of 20 years and a maximum of 100 years. Under the VCS the crediting period chosen will impact on the risk profile of the project and consequently the required buffer – the shorter the period, the higher the risk and the higher the buffer.

The ability to include such time requirements in any overlaying REDD crediting regime would turn on whether there were appropriate land tenure regimes in a particular State. If a State is only issuing concessions for forestry areas for 10 years, then a REDD project will not be able to meet the relevant crediting regime rules.

Where reversals do occur, particularly for reasons that are not associated with natural disturbance, the Australian CPRS proposes that the regulatory authority administering the scheme can issue notices of relinquishment.²⁶ If the requisite number of units is not relinquished by the recognized reforestation entity, then generally the land on which the reforestation project was carried out will become subject to a forest maintenance obligation (to replant or manage land).²⁷ Similarly, in New Zealand, where entities are participating in the NZ-ETS, they are required to surrender units for deforestation.

There is a need for effective penalty provisions in any overlying crediting regime to ensure permanence, however the efficacy of such rules (if established under an international mechanism such as the Kyoto Protocol will be linked to the ability to enforce such requirements) and the ability to impose forest maintenance obligations on a parcel of land is linked to the underlying national tenure rules. Determining the

²⁵ Section 227, *Carbon Pollution Reduction Scheme Bill 2008* (Cth) (forest maintenance obligation).

²⁶ Clauses 232, 233, CPRS Bill

²⁷ Clause 226, CPRS Bill

appropriate entity to relinquish additional credits is also complicated and may create a replacement risk, which may impact on demand for REDD credits. Therefore, while such enforcement mechanisms are suited to domestic emissions trading schemes, they may be less suited to international trade.

Ensuring Long-Term Support for REDD

The REDD Scheme will depend upon the structure of the international demand model and support from developed countries and institutions.

Demand Models

A significant precondition to any policy-based REDD initiative is the creation of demand through financial incentives for the preservation of forests. Without creating demand for the preservation of forest stocks, there are few incentives to prevent deforestation in forest nations. The REDD Scheme will, ultimately, answer to the structure of the international arrangements which are adopted (including any applicable binding commitments which accompany such an international agreement). For instance, if a country adopts a national baseline system for verifying its carbon emissions and provides crediting based on such national baseline, then some provision in law or contract must exist to address circumstances in which the country fails to achieve the appropriate targets notwithstanding that a project achieves the necessary reductions.

Whilst a number of developed countries have expressed support for REDD and the use of market based approaches, to date, Australia is the only country that has provided a clear positive signal that it will consider allowing REDD credits to be used for compliance in its domestic emissions trading scheme. However, there are signals from the emissions trading bills that have been put forward in the US at both a federal and state level that offsets from international REDD projects may be included in their scheme design at the outset.

Australia

In March 2009, the Australian Government made a submission on REDD to the Ad-hoc Working Group on Long-term Cooperative Action ("AWG-LCA") and Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol ("AWG-KP").²⁸ The March 2009 submission built upon an earlier submission by the Australian Government in November 2008. The November 2008 submission can be seen as the first detailed, specific proposal on REDD put forward to the AWG-LCA and AWG-KP.

The March 2009 submission supports the use of market-based mechanisms, and engagement with and involvement of the private sector, as the most effective and sustainable way to address REDD. It suggests that market confidence measures could include participation in an international "confidence buffer" (a "confidence buffer" is an international pool of credits that can be used as a last resort to make up forest

²⁸ See Australian submission to the AWG-LCA, AWG-KP and SBSTA, March 2009, *Reducing Emissions from Deforestation and Forest Degradation in Developing Countries*

carbon credits when a major anthropogenic event results in non-permanence). The submission also notes that it is not necessary for the international agreement to mandate specific national institutional frameworks for individual Parties. The outcome will, however, need to make provision for the development of independently verifiable technical, methodological and institutional performance specifications that must be met for host Parties to participate in the forest carbon market mechanism.

On 4 May 2009 the Australian Government announced that it would commit to reduce Australia's carbon pollution by 25 per cent below 2000 levels by 2020 if the world agrees to an international agreement to stabilize levels of CO₂ equivalent at 450 parts per million or lower by mid century. A pre-requisite to Australia committing to this 25 per cent target includes that the international agreement provide comprehensive coverage of gases, sources and sectors, with the inclusion of REDD.

USA

The United States has recently re-engaged in international climate change discussions. The US has also recently proposed draft legislation which provides for the use of domestic and international forest carbon offsets under US cap and trade legislation.

The United States Congress is currently considering a number of proposals for climate change legislation. Most are built around an economy-wide GHG cap-and-trade scheme. In that context, it is highly likely that some provision will be made for the importation and use of offset credits generated from projects in the developing world. It is possible, although by no means certain, that this will include the broad universe of CDM crediting and the introduction of forestry offsets. But other proposals have been made (e.g., in the context of the "discussion draft" of legislation recently released by the Chairman of the Committee on Energy & Commerce of the United States House of Representatives, Rep. Henry Waxman of California, and the Chairman of the Energy & Environment Subcommittee, Rep. Edward Markey (the "Waxman-Markey Draft")) that would provide for offsets on the basis of a very different, "sector-based" approach. The Waxman-Markey Draft places particular emphasis on the conservation of forests in developing countries, and in fact creates a massive program of support (including, but not limited to, the award of offset credits) for initiatives aimed at reduced emissions from deforestation. However, it is still unclear on the eventual crediting of afforestation and reforestation activities. The U.S. carbon markets are still in a design stage, and it is too soon to tell what type of crediting will eventually be available.

Creation of Enabling Frameworks

Despite the uncertainty around the form of a post-2012 REDD scheme, national governments, institutional actors, NGOs and private philanthropists are beginning to put significant amounts of capital and effort behind the creation of enabling environments to stimulate measures to avoid deforestation in developing countries. The creation of enabling environments involves a number of steps. First, it is important to assist developing countries prepare for participation in a REDD scheme. Second, the international community, whether through funds or markets, can provide a

price signals for protecting forests. Third, experience from world leading professionals in the public and private sector can assist in developing robust frameworks to ensure that the emission reductions and environmental benefits from avoided deforestation are real, additional and permanent. The development of methodologies and standards serve this end. Finally, where developed countries are engaging in market based mechanisms, it will often be through trading infrastructure such as registries which support the efficient functioning of the carbon market. There are a number of initiatives that address these steps, these are reviewed in detail below.

REDD Readiness – funding for technical development and capacity building.

In recent years, many hundreds of millions of dollars have been pledged by donor governments and institutions to assist developing countries prepare for REDD, or otherwise reduce deforestation in their territory. The best known initiative is the World Bank's Forest Carbon Partnership Facility ("FCPF"). The FCPF establishes two funds, a US\$100 million Readiness Fund and a US\$200 million Carbon Fund (discussed below). Under the Readiness mechanism, funding is available to participating developing countries to:

- develop of a national reference scenario for REDD;
- adopt a national REDD strategy: seeking to reduce emissions, and conserve biodiversity and enhance the livelihoods of forest-dependent peoples; and reflecting each country's priorities and constraints;
- design, and where possible, implement, accurate measurement, monitoring and verification systems to enable reporting on emissions from deforestation and forest degradation.

Similarly active in a parallel and complementary mechanism, the UN-REDD Programme, a collaboration of FAO, UNDP and UNEP, is providing funding and technical support towards REDD Readiness. Through “Country Actions” serving nine pilot countries, the Programme assists developing countries to address capacity development, governance, and technical needs to support effective participation in REDD. Working through National Joint Programmes, the Programme emphasizes nationally-owned, nationally-led processes that support the meaningful engagement of all stakeholders, including Indigenous Peoples and other forest-dependent communities. Components of Readiness are similar to those developed by the World Bank, the UN-REDD Programme and the FCPF operating collaboratively in an effort to harmonise operational guidance and donor coordination.

The activities of the UN-REDD Programme also comprise a global component, “International Support Functions”, that works on advancing dialogue and consensus on key REDD methodologies such as MRV stakeholder engagement, benefit-sharing, carbon accounting, multiple benefits and payment mechanisms. The majority of the initial US\$52 million contribution of the Government of Norway to the UN-REDD Programme has been committed - to date to readiness activities.

In addition to the multi-lateral approaches of the World Bank and the UN, a number of governments are also actively engaged in capacity building with developing countries and promoting pilot projects. One example of this is the Australian Government's Global Initiative on Forests and Climate Change which seeks to:

- build technical capacity to assess and monitor forest resources;
- put effective regulatory and law enforcement provisions in place to protect forests;
- promote the sustainable use of forest resources;
- support research into deforestation;
- develop and use technology and systems to help developing countries monitor and assess their forest resources; and
- pilot approaches to providing financial incentives to developing countries.

The Australian Government has entered into a series of bilateral agreements with neighbouring rainforest countries, including the Indonesia-Australia Forest Carbon Partnership and the Papua-New guinea Forest Carbon Partnership (see Annexure 4 for more details). Through these initiatives, Australia is providing technical support for developing national baselines, assisting with the development of methodologies for forest carbon monitoring and measurement and assisting with the development of demonstration projects.

Similarly, the Norwegian government has allocated NOK 3 billion (approximately US\$470 million) per year to reduce emissions from deforestation in developing countries through its Climate and Forest Initiative. The goals of the initiative are to work towards the inclusion of REDD in the new international climate change regime; to take early action to achieve emission reduction; and to promote the conservation of natural forests to maintain their carbon storage capacity. The range of activities that the Initiative is supporting is similar to those outlined for Australia. In addition, Norway is also involved in bilateral arrangements with major rainforest nations, including Brazil and countries in the Congo Basin.

Initial markets for credits or provision of financial incentives

Funding for capacity building is of fundamental importance to preparing for REDD as that preparedness underpins confidence in a REDD mechanism. However, the other area where public funding plays a central role is in creating the early markets for demonstration projects. This may be by either providing funding to national governments that protect their forests or through setting up facilities that will purchase the voluntary (and possibly later compliance) credits generated by demonstration projects.

An example of the former approach is Norway's contribution to the Amazon Fund in Brazil. The Fund provides grants for projects supporting the Brazilian government's efforts to reduce deforestation through its Action Plan in the Amazon.

Similarly, the World Bank FCPF's Carbon Fund will pilot incentive payments for countries that have successfully participated in the REDD readiness mechanism.

Payments will be made based upon contracts whereby the host country is paid for verifiably reducing emissions below a reference scenario.

The voluntary carbon market is also providing incentives to support the development of REDD projects. There are a number of companies that have adopted standards of corporate social responsibility and are seeking to become carbon neutral who wish to use credits from avoided deforestation projects, particularly where they are overlaid with additional benefits for local communities and biodiversity. The recent adoption of the VCS's AFOLU guidance will be an important driver for the development of these early projects, as it enables tradeable credits to be generated under a robust standard (see below).

Standards

Early REDD activities have taken place on an ad hoc, project by project basis and the emission reductions across projects vary considerably. The development of methodologies that provide a consistent approach to project development and standards that establish a benchmark for project performance are of central importance to a REDD mechanism. As Parties in the international negotiations grapple with the best way to design a REDD mechanism, the work being done in the voluntary space by institutions such as the Climate, Community and biodiversity Alliance ("CCBA") and the Voluntary Carbon Standard ("VCS") has enabled early action on REDD.

Registries

Another component to the creation of a market based approach to REDD is putting in place the institutional arrangements at an international level to enable REDD credits to be traded. The main component of that infrastructure is a system of registries which enable credits to be issued, transferred and retired.

If an international mechanism is agreed to for REDD, and that system involves REDD credits being issued by an international body, then it is likely that a registry system similar to that established for the CDM will need to be developed to support the international trade in credits.

In the meantime, in the voluntary market, there are a number of carbon registries that are able to facilitate trading of REDD credits, for example, the California Climate Action Registry, the Chicago Climate Exchange and the VCS Registries (TZ1, APX, Caisse des Depots) to name a few. More information about some of these registries is provided in Annexure 5.

Looking Towards a Best Practice Model for REDD Legislation – What Should Developing and Developed Countries Consider?

Although there is very limited experience to draw upon, we believe that the following elements should be considered by a developing country government when developing legal frameworks for REDD (or a "REDD" Scheme).

Institutions that are legitimate, credible and effective

Critical to the ability to effectively implement land rights regimes, which are themselves critical to a successful REDD Scheme, is the establishment of institutions capable of enforcing rights in each jurisdiction. Unless land-use laws are enforced, a forest law itself is completely ineffective and may result in both intentional and unintentional land use conversion and illegal logging.

Based upon our review of REDD jurisdictions, there is no settled approach to institutional governance of forests -- developed countries tend to use specialized environmental agencies (i.e. Australia, New Zealand) while developing countries use forestry departments. Because the preconditions for REDD implementation require multisectoral cooperation, a holistic approach to the issue of forest management is preferable. For instance, agencies typically responsible for land title may differ from agencies with responsibility for forest management and enforcement, however, there is significant interplay between the two areas in the implementation of REDD. Fundamentally, a holistic approach to governance requires that the relevant REDD institutions are, either through one or several institutions, capable of:

- registering, monitoring and enforcing the transfer of interests in land;
- monitoring and enforcing forest activities both on national and project-by-project level;
- transparent, independent and accountable reporting; and
- regulatory predictability and certainty to mitigate permanence issues with respect to forest carbon stocks.

Address Federal and State Laws and Inconsistencies

There is no single legal prescription which is appropriate given different governing international constitutional structures. Ideally, a single REDD Scheme from a centralized governing authority removes uncertainty with respect to various layers of government regulation and provides comfort to project participants and stakeholders surrounding government action with respect to the REDD project activities. However, a model REDD scheme must address any divisions between federal and state laws and provide for any "gaps" which appear in the legal structure.

In addition, the REDD scheme must fit within the context of existing national and sub national laws. In particular, such laws should compliment and where necessary, and supplement or replace, as necessary, existing:

- forest management laws;
- relevant environmental, labor, and community welfare laws;
- tax, export duties, royalties, fees related to timber harvesting and timber trade; and
- tenure or use rights and export and trade procedures.

Eligible Land and Competing Interests

Uncertainty surrounding land title is the single most significant impediment to effective preconditions for a REDD Scheme. A REDD Scheme must identify eligible and/ or feasible areas of land for REDD activities and address problems of unclear and conflicting land tenure.

There are two separate components to this issue:

- implementing legal certainty surrounding land title; and
- implementing and enforcing existing land title.

General national land-rights and land- use laws must be credible and capable of enforcement in each jurisdiction prior to the creation of a REDD Scheme. Unless general land-use laws are capable of identification and enforcement, the potential for disputes will arise between inconsistent interests, undermining the REDD Scheme.

A REDD Scheme should also clearly articulate those areas of land upon which REDD activities can take place and the types of concessions of licences required to carry out activities. Where a national approach is adopted for REDD, then similar considerations will need to be given to how to determine which forest resources will comprise the national baseline.

The grant of concession and licences should be transparent and accountable and fit with existing land rights regimes. For example, a REDD Scheme should specify if the consent of other governmental departments is required or if there are notice or consultation requirements. This necessitates finalizing and settling rights of appeal, entitlements and other grounds for the assertion of legal interests in land.

In addition, managing competing interest in land will be critically important. A REDD Scheme should, where possible, identify priorities between competing land uses, and provide a mechanism to avoid future conflicts (e.g. requiring prior logging concessions to be cancelled before a REDD project can take place) or to resolve disputes when competition arises.

Determining who is an eligible participant

Developing a clear and preferably a nationally harmonised approach as to which entities are eligible to hold carbon rights and/or have other rights over forested land and forest resources. For example, will foreign owners be able to hold carbon rights

in a forest? Foreign ownership of natural resources is prohibited or restricted in many jurisdictions. Where this is the case, a REDD Scheme should identify whether partnerships with local entities (such as landowner groups and local corporations) is permissible and required.

Relationship among national / subnational / project level activities

How the REDD Scheme is designed depends on the policy direction from the demand side. There is continuing discussion on the extent (if any) to which subnational or project-level activities will be credited for REDD purposes, and how (if at all) the forested countries in the developing world will move towards a national "baseline" against which all reductions will be measured. If a national baseline is indeed applied, it will no doubt become a matter for political negotiation under the UNFCCC. It may be that the international mechanism provides for project level crediting without the need for national baselines (as is currently the case with the CDM). However, this position is by no means clear, and there are strong indications, particularly with respect to the most recent U.S. legislation, that a system of national baselines will be preferred.

Assuming the demand side dictates national baselines, there are two fundamental questions which need to be addressed in this context (1) how does a country address allocation of credits on a national basis? and (2) what actions does a country take to maintain and monitor inventories? In order to establish rules governing REDD projects on a national basis, a country must establish a robust and credible inventory of its existing carbon stocks in forests, either on a national or sub national basis. A REDD Scheme must also specify how subnational (i.e., state or province-wide) and/or project-level activities will relate to national baseline crediting, including how and what activities will be deemed to have contributed to the achievement of national-level goals and 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. A country must also establish a means to measure these stocks as they change over time. Forest inventories are essential tools for management planning and form the baseline for monitoring performance, forest control, and inspection (and have an extensive impact on preventing and halting illegal logging and the associated trade).

Avoided deforestation projects must generate emission reductions which are additional to those which would have occurred in the absence of the project. Without a comprehensive baseline for forest carbon stocks, it is very difficult to attract investment in forest carbon projects with a credible expectation of the verified additionality of avoided emissions to be undertaken in the country. There are two national baseline scenarios which arise in this context. The first relates to countries in which deforestation has not occurred, and the second is countries in which deforestation has occurred.

Despite these barriers, establishing a credible and effective baseline is critical to underpin the effectiveness of any legal regime and to encourage certainty for investors.

Project approvals and duration

Project developers will require certainty as to the procedures, documentation and standards by which RESS activities will be considered and approved. A REDD Scheme should set out the process for issuing project approval, including:

- Determination of baseline;
- Criteria for project approval (e.g. reference to standards);
- Types of plans and reports that need to be submitted, e.g. implementation plans and monitoring plans; and
- Provide for verification requirements.

The VCS and CCB guidance and methodologies for REDD projects are providing useful examples of best practice standards.

In addition, the duration of licences and concessions and the ability to renew those concessions and licences should be clear as these underpin the long-term liability for compliance with obligations under a REDD Scheme.

Nature of rights or interest in carbon / environmental benefits

Clarity over tenure and resource rights in tandem with the carbon asset is critical to prevent dispute between competing stakeholders in the forest. Carbon rights are intangible assets that are created by legislative and contractual arrangements. Clear legislative frameworks should be in place to provide for their creation and ownership. Preferably carbon rights should be property rights that are registered against the land title and bind other interests in the land. This ensures that the carbon right is sufficiently enforceable and secure against the title for the carbon rights holder to participate within any trading scheme and will grant the carbon rights holder with remedies against any inconsistent uses. A REDD Scheme should:

- 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;
- clarify who has the original right or interest to the carbon rights or environmental benefits – is it the government or landowner; and
- determine whether carbon rights can be transferred to third parties.

Crediting or Funding Mechanism

It will be important to determine who will receive payment for maintaining the forest resources (if funding mechanism pursued) e.g. the national government, landowners, project developers (if the national government, see above under "Relationship Among National / Subnational / Project Level Activities").

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).

Permanence and Management of National Pool or Buffer

Forest carbon projects preserve carbon in forest sinks which must remain protected. Accordingly, one of the principal goals of a forest carbon law is to protect the value of the carbon stored in the forests over a period of time. As noted in Parts 4 and 5, there have been a variety of approaches to the issue of permanence, both at the national and sub national levels. These include the use of buffers and the use of temporary crediting mechanisms.

The legal regime must also address a permanence failure, where the system allows for rectification of a permanence failure through directly restoring any losses in the carbon stock or indirectly sourcing replacement credits or cancelling issued credits.

Depending on the national circumstance, it may be desirable for a regulator to require that additional mechanisms such as bonds, guarantees or financial asset tests are implemented.

Rights of Forest Dependent Communities and Indigenous Peoples

It is necessary to determine how communal and indigenous land tenures and rights interact with any REDD Scheme. A REDD Scheme should specify what consents are required from indigenous land holders and who is entitled to participate and how any compensation, entitlements or profits will be distributed.

In particular, a REDD Scheme should address the rights and remedies of indigenous peoples. Indigenous people should be consulted on the development of legal frameworks to ensure that their rights are respected, and where they have a proprietary, equitable or customary interest in land and forest resources, their consent for REDD activities must be obtained in an informed manner. Indigenous people should also be involved in the benefit sharing from REDD activities. The most recent mark-up amendments to the U.S. Waxman-Markey Draft make explicit reference to the rights and interests of "local communities, indigenous peoples, forest-dependent communities". Indeed, the Waxman-Markey Draft requires that the acceptance of credits from forest activities in the US be conditional upon the activities being managed on the basis that these parties are fully consulted as partners in the development of the project and that they share in any profits derived from the credits. Accordingly, a REDD Scheme should specify what rights (if any) forest-dependent communities and/or indigenous peoples will have to be consulted in advance of any project-level activity and to give (or withhold) their prior consent to such activity, and if so on what basis and through what procedure. A REDD Scheme must also specify a procedure whereby participants in REDD activities can establish that they have

satisfied any applicable requirements (if any) with respect to forest-dependent communities and/or indigenous peoples.

Taxes and State Payments

The REDD Scheme should provide clarity on whether payments are required to be made to the national government in the form of taxes or royalties.

Consideration should also be given to whether the national government will be eligible to receive a portion of credits from REDD activities and how it will utilise those credits or the revenue from the sale of those credits (e.g. will revenue be used for other climate change related activities such as adaptation).

Consistency surrounding definition of "forest"

At a legal drafting level, certain countries have encountered problems with consistent terminology in the context of REDD activities. Participants in forest carbon projects continue to point to differences in definitions which create arbitrage risks between projects. For example, the definition of "forest" under the UNFCCC and under existing Indonesian regulation is fundamentally different, the former including tree plantations in the definition and the later excluding such plantations. As a result, it is possible to obtain crediting for forest projects under the UNFCCC which may not be recognized under existing Indonesian law. Without consistency with respect to fundamental concepts, it is possible to imagine a scenario where international incentives ultimately reward countries for forest loss (i.e. under circumstances where national "forest cover" has expanded through the use of plantations).

This issue extends beyond the concept of "forest" and includes such common REDD terms as "permanence", "crediting", "forest degradation" and "deforestation". A model REDD Scheme must incorporate consistency between terms on a national level (and cognizant of international standards) to prevent perverse policy outcomes and to mitigate potential arbitrage risks as between jurisdictions.

TABLE 3. SUMMARY OF KEY ELEMENTS OF A LEGAL FRAMEWORK FOR REDD

Institutions	<ul style="list-style-type: none"> • Identify which government department or institution(s) will be responsible for REDD implementation.
Federal / State Inconsistencies	<ul style="list-style-type: none"> • Clarify where the REDD Scheme fits within the existing hierarchy of national and provincial laws and institutions.
Eligible Land	<ul style="list-style-type: none"> • Identify the land areas upon which REDD activities may occur. • Identify types of concessions with which REDD activities may or may not be compatible. • Determine whether licences or concessions specific to REDD activities need to be established. • Address whether different treatment will apply to State-owned land and privately owned land.
Competing Interests	<ul style="list-style-type: none"> • Clarify the hierarchy between different types of interests in land

<p>Participation</p>	<p>that may be eligible for REDD activities.</p> <ul style="list-style-type: none"> • Provide a mechanism to resolve competing interests in land and resources. • Clarify who is eligible to participate in REDD activities. • Will there be restrictions on foreign participation. • Are local landowners required to be participants or otherwise grant consent.
<p>Relationship Among National / Subnational / Project Level Activities</p>	<ul style="list-style-type: none"> • 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"> What activities will be deemed to have contributed to the achievement of national-level goals; How credits earned at a national level will be allocated to (and as among) subnational or project-level activities; and 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.
<p>Process for project approval (including standards)</p>	<ul style="list-style-type: none"> • Set out the process for issuing project approval, including: <ul style="list-style-type: none"> Determination of baseline; Criteria for project approval (e.g. reference to standards); Types of plans and reports that need to be submitted, e.g. implementation plans and monitoring plans; and Provide for verification requirements.
<p>Duration of project activities</p>	<ul style="list-style-type: none"> • Set out the duration of licences or concessions. • Provide for renewal of extension.
<p>Nature of rights or interest in forest / environmental benefits</p>	<ul style="list-style-type: none"> • 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. • Clarify who has the original right or interest to the carbon rights or environmental benefits – is it the government or landowner. • Determine whether carbon rights can be transferred to third parties. • Determine whether carbon rights can be owned by private sector actors (or may only be owned in the first instance by the State).
<p>Crediting or funding mechanism</p>	<ul style="list-style-type: none"> • Determine who will receive payment for maintaining the forest resources (if funding mechanism pursued) e.g. the national government, landowners, project developers (if the national government, see above under "Relationship Among National / Subnational / Project Level Activities"). • 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).
<p>Management of National Pool or Buffer</p>	<ul style="list-style-type: none"> • 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.

Rights of Forest-Dependent Communities and Indigenous Peoples	<ul style="list-style-type: none"> Specify what rights (if any) forest-dependent communities and/or indigenous peoples will have: <ul style="list-style-type: none"> to be consulted in advance of any project-level activity; to give (or withhold) their prior consent to such activity, and if so on what basis and through what procedure; and/or to receive a pre-determined share in the economic benefits of REDD crediting. Specify a procedure whereby participants in REDD activities can establish that they have satisfied any applicable requirements (if any) with respect to forest-dependent communities and/or indigenous peoples.
Taxes and State payments	<ul style="list-style-type: none"> Provide clarity on whether payments are required to be made to the national government in the form of taxes or royalties. 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.
Powers of responsible institution	<ul style="list-style-type: none"> 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.
Definitions	<ul style="list-style-type: none"> Provide clear definitions of key terms such as "forest", "deforestation", "permanence", "crediting" etc. preferable consistent with internationally agreed definitions

International Support

Developed countries that have established or are in the process of establishing emissions trading schemes should consider recognising REDD credits as being fully fungible with the credits in their own domestic regime.

Developed countries should continue to support, through funding, technology and capacity building, initiatives that assist developing countries prepare for and implement REDD.

Developed countries can also share their experience with establishing systems for carbon sequestration rights, addressing permanence in their own forestry schemes and the means adopted to resolve issues such as competing interests in land and forests and the role of different levels of government.

Background and History to REDD in the UNFCCC

The issue of reducing emissions from deforestation in developing countries ("REDD") was placed on the agenda of the Subsidiary Body for Scientific and Technological Advice ("SBSTA") established under the United Nations Framework Convention on Climate Change ("UNFCCC") in July 2005 by Papua New Guinea.²⁹ Discussions and negotiations have been taking place amongst the Parties to the UNFCCC at each of the subsequent SBSTA meetings. Unfortunately, there has been no resolution as to the treatment of REDD and decisions taken by the Conference of the Parties to the UNFCCC ("COP") have, until recently, focussed on exchanging views and undertaking a programme of work on methodological issues, supported by a series of workshops.

Following the adoption of the "Bali Roadmap" at COP 13 in December 2007 the Ad-hoc Working Group on Long-term Cooperative Action under the Convention ("AWG-LCA") was established. One of the mitigation measures that is being considered by this body is REDD. In this regard, Decision 1/CP 13 includes a reference to policy approaches and positive incentives on issues relating to emissions from deforestation and forest degradation in developing countries, and consideration of the role of conservation, sustainable forest management and enhancement of forest carbon stocks in developing countries.

As part of the programme of work on REDD during 2008, Parties considered how to address outstanding methodological issues. Those issues included:

- assessments of changes in forest cover and associated carbon stocks;
- reference emissions levels;
- means to address non-permanence;
- implications of national and sub-national approaches;
- options for assessing the effectiveness of actions relating to ongoing efforts;
- implications of methodological approaches for indigenous people and local communities;
- implications of different definitions of forest and relevant forest-related activities;
- demonstration activities;
- capacity building;
- technical assistance and transfer of technology; and
- mobilization of resources to support efforts.³⁰

²⁹ Bolivia, Central African Republic, Chile, Congo, Costa Rica, Democratic Republic of the Congo, Dominican Republic, and Nicaragua provided expressions of support.

³⁰ *FCCC/SBSTA/2008/Misc.4 Add.1, Add. 2 and Add.3 and FCCC/SBSTA/2008/L.12*

Discussions in 2008 culminated with parties looking at ways to incentivize REDD activities within the UNFCCC framework. Some of the proposals raised by different countries included:

Brazil	Called for forestry activities to receive financing under the convention.
The EU	Stressed consistency, simplicity, and encouragement of early action and suggested consideration of conservation and enhancement of forest stocks.
India	Suggested that a market approach, incorporating upper and lower ceilings on REDD credits, could be used for carbon stocks that undergo changes, and that a non-market approach could be applied for maintaining baseline stocks.
New Zealand	Observed that there is no technical or methodological impediment to developing a REDD mechanism. A market-based approach is more durable and efficient than a fund. NZ stressed that deforestation will not be curtailed until appropriate financial incentives are in place, and that funding for REDD should not be restricted to Annex I countries.
PNG (Coalition of Rainforest Nations)	Discussed a category-based REDD system that begins with a country-led voluntary stage, focusing on capacity building and demonstration projects, and eventually moves to a market-based approach, while maintaining environmental and market integrity.
Tuvalu	Proposed an international REDD fund that would finance REDD activities without an offset mechanism and suggested several possible arrangements for generating new funds, including: a levy on international aviation and maritime transportation; auctioning of allowances under a cap-and-trade regime for international transportation; a pledged percentage of auctioned national emissions trading allowances; and a percentage of auctioned assigned amount units.

At COP 14 in Poznan in December 2009, REDD was highlighted by a number of Parties as being an important part of the mitigation response to climate change in the AWG-LCA discussions. However, Parties did not specifically discuss the development of policy approaches to REDD at the Poznan meeting, instead leaving them for consideration as part of the post 2012 discussions for 2009.

In the SBSTA discussions, the final decision text recommended methodological guidance, without prejudice to any future decision of the COP, on issues relating to reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.

In this regard, SBSTA noted the importance of the following elements in relation to its programme: (i) promoting the REDD readiness of developing countries; (ii) the need for further mobilization of resources for demonstration activities; (iii) recognizing the need to promote the full and effective participation of indigenous people and local communities, taking into account national circumstances and noting relevant international agreements; (iv) exploring co-benefits in the context of methodological development; and (v) sharing lessons learned and experiences when applying methodological guidance.

As discussions on this issue progress, it is interesting to see the shift to the possible inclusion of sustainable forest management within a REDD mechanism.

Expectations for Copenhagen

A number of countries have begun putting forward options for policy approaches to REDD. In March 2009, the Australian Government published a submission that supported the use of market-based mechanisms, and engagement with and involvement of the private sector, as the most effective and sustainable way to address REDD. It suggests that market confidence measures could include participation in an international "confidence buffer" (a "confidence buffer" is an international pool of credits that can be used as a last resort to make up forest carbon credits when a major anthropogenic event results in non-permanence). The submission also notes that it is not necessary for the international agreement to mandate specific national institutional frameworks for individual Parties. The outcome will, however, need to make provision for the development of independently verifiable technical, methodological and institutional performance specifications that must be met for host Parties to participate in the forest carbon market mechanism.

Recently released draft negotiating text for the AWG-LCA sets out some guiding principles to inform policy development for an international approach to REDD in the period beyond 2012 (this is being termed "REDD-Plus"). The overarching guiding principles build upon those principles developed during the 2008 SBSTA meetings described above. In addition, the draft text recognises the need to develop national REDD plans or implementation strategies covering different phases of implementation; designate national authorities to be responsible for implementation and establish national reference levels having regard to national circumstances.

The means of implementation will vary due to the different national capabilities and the phase of implementation of developing countries. Nevertheless, the draft text identifies a range of options which may be appropriate to support the readiness phase (including a readiness fund, a window within existing Convention funds, the auction of allowances, and limited market access) and the full implementation phase (use of public funds, use of markets, or a combination of both).

REDD implementation needs to be underpinned by procedures for measurement, reporting and verification, in accordance with guidelines developed by the COP. One option to address this is using the Nationally Appropriate Mitigation Action ("NAMA") registry to record the nature of REDD action being taken. Another option is through the development of REDD implementation plans that include information about the support requested, the nature of actions to be supported, and their systems for measurement, verification and reporting of actions and outcomes.

The Draft text also considers means to measure, verify and report on supporting action by Parties providing support to developing countries, which may again involve the NAMA registry or public reporting.

REDD country case studies – Developing Countries

Brazil

Government Activity

In Brazil, 65% of forested area is public land, but the proportion reaches 75% in the Amazon region. As a result, Brazil has the federal jurisdiction to protect a large portion of their forests and promote REDD. So far, Brazil has resisted a market-based system for protecting its forests, preferring direct international financing in the form of pool contributions to protect the Amazon. Brazil does not have a uniform climate change law at the federal level. However, it does have a number of federal and state forest laws (and a small number of state carbon laws) which have had a degree of impact in initiating REDD and forest carbon projects in Brazil. However, the sub-optimal multiple layers of regulation and the uncertainty associated with legal title in the Amazon have prevented Brazil from implementing further REDD projects.

Government Position on REDD in International Negotiations

In 2006, Brazil presented a REDD proposal to the UNFCCC in Nairobi recommending that any forest and climate regime should be voluntary and must not be used to offset emissions in Annex I countries. Brazil has not favored markets as a tool for addressing climate change in the REDD context. In the current UNFCCC, Brazil has been reluctant to adopt any binding quantitative reduction obligations and to resist market mechanisms as a tool for forest protection. The goal has been to preserve a position of no commitments. On deforestation, Brazil is almost alone among those countries with tropical rainforests in refusing any kind of binding, quantitative approach under the climate regime for addressing this problem. Most other rainforest countries are open to some kind of crediting system to channel resources to reducing deforestation. Brazil is open to discuss voluntary measures under the UNFCCC related to incentives for reducing deforestation, and energy-related measures that promote expansion and transfer of Brazilian technologies, especially in the area of biofuels.

Initiatives

On March 15, 2004, the Brazilian government released the "Action Plan for the Protection and Control of Deforestation in the Legal Amazon", which has been recently updated (2008) as the "National Plan to Combat Deforestation and Plan to Combat Deforestation at State Level for the Period 2008-2011" ("Deforestation Plan").³¹ The Deforestation Plan contained measures to address many of the root

³¹ Plan drafted by Permanent Interministerial Working Group to Reduce Deforestation in the Legal Amazon. This is a Federal Government Plan Coordinated by the Office of the Chief of Staff.

causes of deforestation, including (a) legal enforcement in the Amazon region, and (b) the lack of effective land title procedures and structures. The measures to be implemented include valuation of forest to conserve biodiversity; improved forest management, forest plantations and substitution, including the creation of 20 million hectare (ha) of conservation units; incentives for sustainable recovery of deforested areas; territorial zoning; improved monitoring and licensing procedures; and decentralized management and partnerships between federal, state and local governments and the establishment of a legal framework for public forest management. To this point, opinion as to the degree to which this program has been a success has been divided.³²

The Brazilian Government recently released its "National Plan on Climate Change" ("National Plan") at the UNFCCC side event in Poznan, Poland.³³ The National Plan aims to cut deforestation by 70% over the next decade and signifies the first time Brazil has set a target for reducing deforestation.

In August 2008, Brazil established the *Amazon Fund* to receive funds from certain developed countries and the private sector for the specific purpose of forest protection in the Amazon. The fund is based on voluntary contributions from foreign governments and the private sector and the amount available each year hinges on the reduction of deforestation below a rolling 10-year average. Norway is currently entering into an agreement to provide US\$100 million a year to the Amazon Fund.³⁴ The money from Norway will be "results based, transparent and independently

³² According to one study: "Following this Action Plan, data received in June 2005 showed a significant reduction in deforestation in that month, especially in the State of Mato Grosso; they have been used as a demonstration of the effectiveness of DETER. But they appear to result from other factors: police investigations and charges involving corruption related to illegal deforestation, drops in the prices of agricultural commodities, and increased caution on the part of rural investors (the response to the death of Dorothy Stang, a Catholic nun and activist killed by gunmen in Anapu, in the State of Pará, on February 12th; Operation Curupira, carried out by the Federal Police, which arrested more than a hundred loggers, ranchers and federal and state employees involved in a web of corruption that allowed activities contributing to deforestation; and a decline in agricultural commodity prices on the international market, which resulted in a reduction in the area planted with soybean in the current year, a combination of factors largely independent of the government's long term strategy for reducing deforestation." See Global Forest Coalition, *4.1(d) Climate Change and Forests*, REPORT ON INDEPENDENT MONITORING OF THE IMPLEMENTATION OF ARTICLE 4.1(D) OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, March 2006, available at : <http://www.wrm.org.uy/GFC/gfcglobalforest.pdf>.

³³ On 11 December 2008, the Brazilian government organized a side event in Poznan to explain the National Plan on Climate Change and to present the Amazon Fund. The National Plan on Climate Change was launched on 1 December 2008 by president Luiz Inácio Lula da Silva, which includes provision deforestation but excludes the possibility of trading the carbon stored in its forests.

³⁴ See "The Government of Norway's International Climate and Forest Initiative", available at: <http://www.regjeringen.no/en/dep/md/Selected-topics/klima/why-a-climate-and-forest-initiative.html?id=526489>.

monitored".³⁵ Brazil would like to see its proposal be used for a global model to reduce emissions from deforestation and forest degradation. The Amazon Fund is managed by the Brazilian Development Bank ("BNDES") with a multistakeholder steering committee which includes representatives from local government, national ministries, BNDES, indigenous peoples and civil society - NGOs, industry, farmers. WWF has criticized the Amazon Fund, describing it as "short on ambition and detail" and both Greenpeace and WWF point out that even if the fund were to meet its target, it would still result in the deforestation of more than 5,000 square kilometers per year.³⁶

On November 18, 2008, the U.S. states of California, Wisconsin, and Illinois signed MOUs with four Brazilian states (Amazonas, Amapá, Mato Grosso, Pará) and two Indonesian provinces at the Governor's Climate Change Summit in Los Angeles. Although the MOUs provide a foundation for future cooperation on a number of climate policy, financing, technology exchange, and research issue areas, the parties agreed to focus their efforts in 2009 and 2010 on the forest sector, with the overall aim of taking concrete steps toward "[d]eveloping rules to ensure that forest-sector emissions reductions and sequestrations, from activities undertaken at the sub-national level, will be real, measurable, verifiable and permanent, and capable of being recognized in compliance mechanisms of each party's state, provincial, regional, national or international programs such as the State of California's Global Warming Solutions Act (Assembly Bill 32), Midwestern Greenhouse Gas Accord, Western Climate Initiative, Regional Greenhouse Gas Initiative, or other initiatives." This represents the first effort (at any level of governance) to move into what might be called the "proof of concept" stage in the ongoing effort to bring international forest carbon activities into existing and emerging GHG compliance regimes. As such, the effort carries global significance as a signal to other governmental entities and to the broader climate policy community that this is achievable and that there is and will be a meaningful process of transnational cooperation among the MOU states to develop workable frameworks and mechanisms to generate compliance-grade assets from REDD and other forest carbon activities in Brazil and Indonesia and to bring such assets into existing and emerging compliance regimes in the United States (and elsewhere).

Regulatory Provisions

There is no national federal climate change law in Brazil. However, Brazil provides a patchwork of relevant International, Federal and State policies, laws and regulations which may impact a REDD project. At the federal level, the current *Brazilian Forestry Code* dates back to 1965, and provides for the: establishment of permanent preservation areas that are not necessarily covered by native vegetation and the preservation of biodiversity and legal reserves (which are established according to the

³⁵ Id.

³⁶ "WWF knocks Brazil's plan to cut Amazon deforestation", Mongabay.com, December 4, 2008, available at <http://news.mongabay.com/2008/1204-wwf.html>.

percentages of rural property areas in which forests shall be preserved for the purpose of sustainable forest management. This percentage varies between 20% and 80% of the rural properties).

Recent legal measures designed to improve incentives to encourage sustainable productive activities include the Law on the Management of Public Forests (Law no. 11.284), which guarantees the allocation of areas to be managed by local communities. This law has also led to the creation of the First Sustainable Forest District to combat illegal deforestation, with another two planned for BR 319 and in the Carajas region.³⁷ However, the law also contains a provision which expressly provides that it is forbidden to include terms in a forest concession which provide for "the grant of rights to ... commercializ[e] credits derived from avoided emissions of carbon in existing forests".³⁸ The Federal law reserves for the States the right to put any such credits into the markets. This is also consistent with the international position of Brazil.

In 2008 and 2009, the Brazilian government passed new norms to try to define property rights in the region. The National Institute for Colonization and Land Reform (Instituto Nacional de Colonização e Reforma Agrária or "Incra") enacted two rulings (Instruções Normativas - INs) - number 45 and 46 of 2008 – to adapt procedures for landholding regularization.

In 2008, the Agrarian Development Ministry (Ministério do Desenvolvimento Agrário - MDA) proposed the *Terra Legal Program* ("Legal Land Program"), through which it intended to promote landholding regularization for holdings of up to 1,500 hectares in the Amazon in three years.³⁹

At the State level, Amazonas was the first State in Brazil to approve a law linking the issues of climate change and environmental conservation. *Laws for the State Policy for Climate Change* (Lei da Política Estadual de Mudanças Climáticas, PEMC-AM) Law no. 3135 (dated June 5, 2007), created fiscal and financial incentives for reducing environmental impacts in Amazonas. The law specifically provides support for the private sector in reducing their greenhouse gas emissions and in offsetting their emissions. State government agencies are also empowered carry out activities that reduce their greenhouse gas emissions. The law calls for inventories of carbon, protection for forest biodiversity and requires the various economic sectors to identify investments that support clean energy sources and contribute to the stabilization of greenhouse gas levels. The law also creates a labelling system recognizing and certifying the friends of the climate and of the Amazon forest, in order to recognize the efforts of companies that support the state's conservation programs. Another innovation is the creation of the state climate change fund to pay for environmental products and services, including those provided by forest peoples in preserving their environment and reducing deforestation.

³⁷ Available at: http://www.ideflor.pa.gov.br/files/u1/Lei_Federal.pdf

³⁸ See *Law on the Management of Public Forests* (Law no. 11.284), Art. 16, par 1. It should be noted however, that this same law, in Article 16, Paragraph 2 allows commerce of carbon credits from reforestation projects.

³⁹ This program was incorporated in Provisional Measure 458/2009 of February 2009.

The State of Mato Grosso has also recently enacted law dealing with forestry management.⁴⁰ The law purports to regulate both title registration with respect to land owner/occupier's under the property registration system, as well as providing a land registry of physical characteristics on the land. The law requires the land holder or occupant to obtain a single environmental permit or license which specifies the conservation rights and obligations attached to the land. However, the law does not determine whether a land owner is entitled to the carbon sequestration rights attached to such activities if the land owner conserves the forest located on such land.

Private sector activity

The Juma Reserve REDD Project will be the first project of its kind to be implemented since the creation and approval of the *Laws for the State Policy for Climate Change* (Lei da Política Estadual de Mudanças Climáticas, PEMC-AM) and the *State Protected Areas System* (Sistem Estadual de Unidades de Conservação, SEUC-AM). This legislation provides the legal framework necessary to implement these types of projects in the Amazonas. The Juma Reserve REDD Project in Brazil aims to reduce deforestation and to produce carbon credits for sale internationally. This Juma Reserve REDD Project is the first project in the State of Amazonas to be registered under the Climate Community and Biodiversity Alliance ("CCBA") Standard. However, unlike the State policies financed through public funds, this project will rely upon the marketing of carbon credits.

Brazilian NGOs, farmers and indigenous tribes, recently agreed the *Cuiabá Declaration* at the 14th Katoomba Group Meeting, in Mato Grosso. The declaration calls for direct payments for reducing emissions from deforestation and forest degradation (REDD). The two-page document urges Brazil's federal government to reverse its opposition to direct payments from abroad to people and entities that reduce greenhouse gas emissions from REDD, and to involve more stakeholders in the process of forming climate-change policy.

Finally, Brazil has one of the largest movements for land rights in the world.⁴¹ Forest movements in Brazil continue to agitate with respect to their rights to achieve proper recognition for their forest protection and sustainable use practices.⁴² These groups also see REDD funds as a vitally needed source of funding for payment for environmental services schemes.⁴³ This is a crucial issue in terms of poverty reduction, food sovereignty and addressing deforestation.

⁴⁰ LEI Nº 8.723, DE 23 DE OUTUBRO DE 2007 - D.O. 23.10.07. "Establishing the Executive Directors of the Fund for Forestry Development of the State of Mato Grosso" August 18, 2008.

⁴¹ For further information, see <http://www.mst.org.br/mst/home.php>.

⁴² *Manaus Declaration*, Forest Peoples Alliance, April 2008.

⁴³ A. Hall, "*Better REDD than Dead: Paying the People for Environmental Services in Amazonia*", *PHILOSOPHICAL TRANSACTION OF THE ROYAL SOCIETY* 363:1925-1932, 2008.

Guyana

Government activity

Up to 85% of Guyana is covered in tropical forests. A substantial portion of the forest area is under traditional occupation by Guyana's indigenous people. Guyana has supported both direct funding in the form of aid and financial mechanisms to protect its forest. Guyana has sought multilateral support for REDD at the international level. At the national level, it has enacted forest laws to encourage REDD and sustainable forest activities.

Government Position on REDD in International Negotiations

Within the UNFCCC framework as part of the Ad Hoc Working Group on Long-Term Cooperative Actions' ("AWG-LCA"), Guyana has recently called for funding for REDD from a variety of sources including increased official development assistance, auctions of assigned amount units (AAUs), carbon taxes, private sector investment, cap and trade market instruments.⁴⁴ Guyana is also a member of the Coalition for [do global check on this and other names to ensure correct] Rainforest Nations which has sanctioned market-based 'developmental finance' mechanisms, which yield concrete environmental benefits.⁴⁵

In December 2008, the President of Guyana launched a national "Avoided Deforestation Plan", designed to show that Guyana's forest, if used for agriculture or other economic use, could generate significant economic gains.⁴⁶ The purpose of the report was to bring attention to the costs associated with forest preservation and to raise awareness for avoided deforestation in Guyana. Guyana has been active in a bilateral capacity with Norway to establish forest protection funding. A joint statement issued by the President and Norway's Prime Minister Jens Stoltenberg in Oslo on February 3, 2009 said that the two countries pledged to establish closer cooperation on climate and forest issues and that Norway is prepared to provide performance-based, "substantial and sustained" compensation for the progress Guyana makes in limiting emissions from deforestation and further decreasing forest degradation.⁴⁷ Crucial components of Guyana's policy will be the creation of low-carbon employment and investment opportunities in Guyana, sustained efforts to avoid deforestation and forest

⁴⁴ UNFCCC Secretariat Addendum (FCCC/AWGLCA/2009/MISC.1/Add.4) to document FCCC/AWGLCA/2009/MISC.1 and Add.1.3, comprising two further submissions on ideas and proposals on the elements contained in paragraphs 1 of the Bali Action Plan.

⁴⁵ See <http://www.rainforestcoalition.org/eng/>.

⁴⁶ See *Saving the World's Forests Today: Creating Incentives to Avoid Deforestation*, Office of the President, Republic of Guyana, December 2008.

⁴⁷ See Office of the Norwegian Prime Minister, *Joint Statement on Climate and Forest Issues*, ("Joint Statement") available at: <http://www.regjeringen.no/en/dep/smk/Whats-new/News/2009/norway-and-guyana-cooperate-to-reduce-gr/joint-statement-on-climate-and-forest-is.html?id=544715>.

degradation, strengthening open, transparent forest governance, and establishing an international monitoring, reporting, and verification system for Guyana's forests. A financial mechanism run by a reputable international organization will be set up through which performance based compensation can be channelled to implement Guyana's low-carbon development strategy.⁴⁸

Initiatives

At present, a national approach to assess forest carbon stock has not been developed nor implemented in Guyana. However, there are policy guidelines including the "National Forest Plan", which was produced in 2001 in order to address key areas of forest sector development in Guyana. Guyana has also presented a REDD outline to the World Bank Forest Carbon Partnership Facility which was approved in July 2008. Given the past low rates of deforestation the development of baselines is based on modelling "future" deforestation scenarios rather than historical rates. In this way, the Guyana "REDD" concept is an avoided deforestation proposal.

Institutions involved

Guyana Forestry Commission

The Guyana Forestry Commission (the "Commission") is responsible for advising the subject Minister on issues relating to forest policy, forestry laws and regulations. The Commission is also responsible for the administration and management of all State Forest land. The work of the Commission is guided by a Draft National Forest Plan that has been developed to address the forest policy. The Commission develops and monitors standards for forest sector operations, develops and implements forest protection and conservation strategies, oversees forest research and provides support to forest education and training.

Regulatory provisions

At the national level, Guyana recently passed the Forest Bill⁴⁹ ("Guyana Forest Law") designed to address sustainable forest management on a national level.⁵⁰ The Guyana Forest Law provides that the Guyana Forestry Commission (the administrator of the law) (the "Commission") may declare any area of public forest land to be "State Forest".⁵¹ The Commission then prohibits all activities in State forests⁵³ apart from

⁴⁸ See *Joint Statement*.

⁴⁹ Guyana Bill No. [] of 2008.

⁵⁰ The Guyana Forest Law was approved (passed) at the National Assembly (Parliament) on 22nd January 2009.

⁵¹ Guyana Forest Law, s.3(1).

express authorizations in certain categories which grant forest related rights to the holders. The categories provide for: (a) exploratory permits; (b) concessions; (c) use permits; (d) afforestation agreements or (e) community forest management agreements. The concessions are granted to applicants for 40 years. For the purposes of REDD, the Guyana Forest Law requires private parties to sign bilateral "Concession Agreements" which grant rights to carry out forest conservation operations.⁵⁴ The bilateral contract structure also applies to afforestation activities by private parties. Private parties are also required to post a "security bond" for the payment of costs arising through the activities.⁵⁵ The law does not provide the amount of the security bond. Under the Guyana Forest Law, the Commission may also declare forest land on private land to be subject to forest conservation requirements. Importantly, while the Guyana Forest Law does provide for the regulation of forest use and activities, it does not specify who is entitled to any carbon rights associated with the carbon stocks maintained or preserved as a result of the protected activities. However, the law does not specify how rights with respect to environmental assets or benefits (such as carbon property rights or credits) may be dealt with or allocated between competing land interest holders.

In addition to the existing Guyana Forest Law, there is existing legislation governing forest reserves, which reserves are expressly excluded from the operation of the Guyana Forest Law.⁵⁶ Potential new carbon and biodiversity reserves include the Kaieteur National Park Act of 1929 (as amended 1999) which establishes the 63 000 hectare Kaieteur National Park, and the Iwokrama Act (1996) that establishes the 371,000 hectare Iwokrama Programme. In addition to these lands, Amerindian village lands (Guyana's indigenous population), controlled by native inhabitants, are also expressly excluded from certain provisions of the Guyana Forest Law. Protected Areas Legislation is now being drafted to address these areas, with the first round of consultations concluded in March 2008. This legislation will establish the framework for establishment of protected areas which will be part of the national initiative to maintain carbon reserves in areas of high known biodiversity value.

Private sector activity

In March 2008, Canopy Capital, a private investment firm which is related to the alliance known as Global Canopy Programme ("GCP") signed a preliminary agreement with the Iwokrama International Centre for Rainforest Conservation and Development. The agreement provides that Canopy will assist in financing the rainforest protection area for five years in return for "ownership" of forest ecosystem services and a claim in

⁵³ Guyana has an area of 214,970 km of which nearly seventy-five percent is covered with natural vegetation. Of this area, approximately four fifths is classified as State Forests under the jurisdiction of the Guyana Forestry Commission (GFC).

⁵⁴ Guyana Forest Law, s.6(2).

⁵⁵ Guyana Forest Law, s.13(1)

⁵⁶ Guyana Forest Law, s. 3(4)(1)

any future profits, including any carbon rights. As noted above, the area in which this project is being undertaken, the Iwokrama Rainforest, is largely excluded from the operation of the Guyana Forest Law.

Indonesia

Government activity

Central Government

The Indonesian Central Government has a constitutional mandate to manage Indonesia's forests to ensure maximum benefit to the Indonesian people. Thus, forestry regulation is largely an area of Central Government concern in Indonesia. In particular, the Government retains decision making powers in relation to determining areas to be classified as having forest status and changes in the function and status of these areas; and determining the criteria and standards for licensing the utilization of forest areas, including environmental services licensing and utilization and collection of forest products.

The Indonesian Government has participated extensively in international negotiations on REDD. In its submission to the UNFCCC in October 2007 on *issues related to further steps under the Convention related to reducing emissions from deforestation in developing countries: Approaches to stimulate action*, the Indonesian Government proposed a staged process, involving:

- a readiness stage where methodological aspects and the drivers of deforestation can be analyzed and land use scenarios to reduce emissions developed;
- pilot activities starting from 2008; and
- full implementation, allowing the use of market mechanisms, possibly prior to 2012 depending on the readiness of the parties.

The Government recommended the provision of financial resources – noting that readiness activities could require \$1-\$5 million per developing country and pilot activities could require \$1-\$3 billion per year. Cooperation from a range of stakeholders including the private sector would be involved.

Further, the Government recommended that Guidelines should be developed on methodological issues to stimulate early action in countries that are seeking a voluntary national approach to reducing emissions from deforestation. Moreover, a system of credits for reduced emissions from deforestation and degradation accounted for on a national basis during 2008-2012 and creditable in a post-2012 framework could be created by Parties.

The Indonesian Government has recently been involved in bilateral REDD agreements, notably, the Australia-Indonesia Forest Carbon Partnership Agreement, signed in June 2008 (see later discussion).

Provincial and Regional Government

Provincial and Regional Governments have a role in the management of forests once declared. In particular, Provincial Governments have various implementation and

management roles: monitoring and implementing the enforcement of forestry boundaries around conservation, protective and production forests; implementing the allocation of permits for non-timber utilization licenses; and participating with the Central Government in determining the boundaries of forest areas and changes in the function and status of these areas.

The role which has been taken by certain Provincial Government in Indonesia can be seen in the declaration of Governor Irwandi of Aceh Province in April 2007 to put in place a six month logging moratorium in Aceh.

Within the REDD context it is worth noting that a number of regional governments entered into early discussions and even transactions with foreign investment banks and project developers to develop REDD projects and sell the emission reductions (or REDD credits). The validity of such transactions has however been questioned with indications that any such early REDD deals require Central Government approval. The one exception to this may be Aceh, where the semi-autonomous legal nature of that Province has seen Governor Irwandi enter into a deal with Carbon Conservation and Merrill Lynch.

Institutions involved

The Ministry of Forestry is the government ministry responsible for REDD activities in Indonesia. By decree in 2008 a Working Group on Climate Change was established within the Ministry of Forestry. The Ministry has recently been developing REDD regulations which are at this stage still in draft form. The Ministry documents reforestation and greening in Indonesia, and in its Forestry Statistics of Indonesia 2007 report noted that in the period from 2003 to 2007, approximately 955,437 hectares of community forest had been revitalized by the Ministry, and reforestation of degraded forest covered approximately 743,651 hectares for the same period.

Regulatory provisions

In 2008, an initial Ministerial REDD Regulation and Decree were enacted on the *Implementation of Demonstration Activities on Reduction of Emission from Deforestation and Degradation* (No. P.68/Mrnhut-II/2008), the objective of which was to test and develop methodologies, technology and the institution of sustainable forest management in order to reduce carbon emissions through controlling deforestation and forest degradation. The regulation establishes an application and approval procedure for demonstration activities.

A draft REDD Decree was also published in September 2008 which seeks to make the IUPJL – an environmental services concession – the final license base for the granting of REDD concessions. Of note, the draft REDD Decree provides for a minimum 30% retention of credits by the Central Government, stored by the REDD Commission, as a guarantee for the implementation of REDD at the national level. There is now some discussion that this could become a tax on revenues from the sale of credits. A further draft Decree on a *Commission on Reducing Emission from Deforestation and Forest Degradation (REDD Commission)* has also been published and provides that a REDD

Commission is tasked with and responsible for the administration of REDD implementation.

On 1 May 2009, the Indonesian Minister of Forestry signed the Minister of Forestry Regulation P.30/2009 on Procedures for Reducing Emissions from Deforestation and Forest Degradation ("REDD Regulation"). The REDD Regulation introduces the world's first national legal regime for the implementation of REDD projects, and the issuance and trading of carbon credits in respect of the greenhouse gas reductions such projects generate.

The key features of the REDD Regulation, and their implications for prospective participants in Indonesian REDD projects, are summarized below.

The land areas that are eligible for REDD projects are as follows:

- The REDD Regulation lists (exhaustively) the different types of Indonesian forest areas that are eligible to host REDD projects. Several of these are defined by reference to concessions that may be held by private parties in respect of forest areas, for example Wood Forest Product Utilisation Concessions and Ecosystem Restoration Concessions.
- REDD projects may also be undertaken on forested lands that have not been formally designated as forest areas, but are subject to pre-existing land rights (for example agricultural land owned by a private entity for the purposes of developing an oil palm plantation). However, forested land which is not yet subject to any form of land right or other right has not been included in the REDD Regulation's list of eligible land areas, and so will not be able to be used as an Indonesian REDD project site.

To be eligible to be a REDD project proponents, the REDD Regulation requires that both a national (i.e. Indonesian) entity and an international (i.e. foreign) entity are required to act as the proponent for an Indonesian REDD project. The national entity is defined in the REDD Regulation to be either the relevant concession holder, where the project site is subject to an eligible concession; or where the project site is not subject to such a concession, the entity designated in the REDD Regulation.

The international entity may be a foreign Government, corporation, individual or international organization or charity, and is defined in the REDD Regulation as the party responsible for funding the REDD project. In this way, the REDD Regulation explicitly acknowledges that funding for Indonesian REDD projects will come directly from foreign rather than domestic sources.

So far as the approval and implementation of REDD projects, the REDD Regulation requires that REDD project proposals, including (among other documents) a REDD implementation plan, be submitted to the Minister of Forestry for approval. The Minister of Forestry forwards proposals to the REDD Commission for assessment, and if the Minister approves the project following its assessment, the proponent will be issued a REDD implementation licence. Upon issuance of this licence, the REDD project commence within 90 days, and be implemented by managing the relevant forest in accordance with the approved REDD implementation plan.

The maximum duration of Indonesian REDD projects is initially 30 years. This period may be extended, but the rules governing any such extension are currently unclear. In addition, REDD demonstration activities undertaken pursuant to the separate Minister of Forestry Regulation P.68/2008 on Implementation of Demonstration Activities for Reducing Emission from Deforestation and Forest Degradation ("REDD Demonstration Activities Regulation") may be converted into REDD project activities, provided such demonstration activities meet the requirements of the REDD Regulation.

The REDD Regulation specifically recognizes the following rights of the proponents of Indonesian REDD projects:

- The national entity will be entitled to receive payment from its counterpart international entity in respect of greenhouse gas reductions achieved as a result of the implementation of the REDD project.
- The international entity will be entitled to use the REDD credits it receives for the purposes of compliance by developed countries with their emission reduction obligations.
- REDD project proponents (presumably both national and international entities) will be entitled to trade REDD credits under any post-2012 international carbon trading framework of which REDD forms a part, for the purposes of implementing developed country commitments to reduce greenhouse gas emissions.

The REDD Regulation assumes that an international legal regime imposing emission reduction obligations on developed countries will be in place after 2012 (i.e. a successor or other equivalent regime to the Kyoto Protocol), and that REDD credits from Indonesian REDD projects will be eligible for compliance with such obligations. Although these assumptions align with the provisions in the REDD Regulation governing the transition to international arrangements (see below), whether they will be vindicated in international negotiations remains to be seen

The REDD Regulation has been drafted with a view to aligning the Indonesian REDD regime with any international REDD framework that may emerge from negotiations under the auspices of the United Nations Framework Convention on Climate Change ("UNFCCC"). However, prior to the advent of any international REDD framework, the REDD Regulation allows Indonesian REDD activities to be undertaken through:

- REDD demonstration activities (as separately regulated under the REDD Demonstration Activities Regulation);
- transfer of technologies; and
- trading of voluntary emission reduction credits in voluntary carbon markets.

Although the REDD Regulation establishes a clear framework for the implementation of REDD projects in Indonesia, a number of key uncertainties remain. These include:

- Project implementation mechanics: the articles of the REDD Regulation addressing the mechanics for development and implementation of Indonesian REDD projects lack detail, and have the potential to create confusion amongst prospective project developers seeking to assess REDD project opportunities and structure viable projects.

- Bundling: the REDD Regulation provides that where two or more REDD projects are located within a single region, regency or province, the projects may be bundled into a single REDD unit. The REDD Regulation does not, however, clarify the mechanics for such bundling, or how bundling will affect the rights and responsibilities of the various project proponents of the REDD projects comprising the bundle.
- Earlier drafts of the REDD Regulation indicated that the Indonesian Government would be entitled to take up to 30% of REDD credits issued with respect to Indonesian REDD projects, for the purposes of managing its own national and international REDD commitments. However, the REDD Regulation as enacted indicates only that any Governmental levy in respect of REDD project implementation will be addressed in a separate regulation, leaving the quantum of such levy uncertain.

Private sector activity

Private sector involvement in the voluntary market in Indonesia indicates that there is growing private sector interest in Indonesian REDD projects.

One such project, listed on the Forest Carbon Inventory, is a project in the voluntary over the counter market located in the Ulu Masen Ecosystem and province of Nanggroe Aceh Darussalam. The project involves REDD activities on 750,000 hectares of forest, and it is estimated that the activities proposed will reduce deforestation in that area by 85%.

Further projects include:

- The Kalimantan Forests and Climate Partnership to which Australia has committed AU\$30 million. The partnership trials a market-oriented approach to financing and implementing measures to reduce emissions from forestation and forest degradation in Kalimantan, Indonesia.
- An agreement between Global Eco Rescue and PT Inhutani II under which the two parties collaboratively implement a major avoided deforestation carbon project in East Kalimantan. PT Inhutani II is one of Indonesia's five state-owned forestry companies and holds the exploitation license for various production forests in Malinau.

Global investment banks such as Macquarie Bank and JPMorgan, and project development vehicles such as Global Eco Rescue, New Forests Asset Management and SFM, have been taking a keen interest in REDD projects in Indonesia. In many instances, these are being developed jointly with international and local NGOs such as Fauna & Flora International and Conservation International, and with provincial governments.

Madagascar

Government activity

Madagascar's forests may be small in comparison with those in Indonesia or Brazil, but the protection of Madagascar's forests and their biodiversity is regarded as critical. Madagascar has recently adopted a REDD strategy at a subnational level, the country is also developing methods for estimating reference emission levels and engaging stakeholders to improve forestry governance and ensure transparency in distribution of co-benefits.

Negotiations

At the international level, Madagascar is a member of the Coalition of Rainforest Nations which has proposed that carbon markets could be used to give a monetary value to environmental resources and to create funds for sustainable development. In particular, the proposal points to the Kyoto Protocol (or such successor agreement) including mechanisms through which developing countries could reduce emissions by curtailing deforestation.

Regulatory provisions

Madagascar has innovative legislation for governance of forest resources, the Gestion Locale Sécurisée ("GELOSE"), which allows for a transfer of some management rights to local communities.⁵⁷

GELOSE purports to promote better resource management through local level management, rule-setting, and enforcement. The GELOSE law provides for the creation of tripartite negotiated contracts between the State, the municipality and the community residents (the law stipulates that no local resident can be excluded from the association).

Madagascar also provides for an expedited and simplified process for transferring forest management rights which require only bilateral agreement between the State and the association.

Also, Madagascar has recently announced a REDD scheme for expanding areas protected for biodiversity conservation, which is known as the "Durban Vision". This policy emphasizes reserves that allow human settlements and resource use.

⁵⁷ GELOSE was signed into law on September 10, 1996 (Law No. 96-025) and in 1997, the law was incorporated into the national forest policy (Law 97-107 and Decree 97-1200).

Private sector activity

There have also been active voluntary market transactions in Madagascar. The Wildlife Conservation Society ("WCS") and the government of Madagascar recently partnered in the sale of more than nine million tons of carbon offsets in the Makira Forest.⁵⁸ The carbon offsets will be marketed and sold by the Madagascar government in private transactions with the aid of the Makira Carbon Company ("MCC") established by WCS. MCC will work in collaboration with Madagascar's Ministry of Environment, Water, Forests, and Tourism.

In addition, Conservation International and the Wildlife Conservation Society are in the process of developing three proposed avoided deforestation carbon projects in Madagascar which will aim to meet the Voluntary Carbon Standard's ("VCS") AFOLU Guidelines.

Madagascar has also received grant money from the World Bank Forest Carbon Partnership to prepare for future REDD systems.

⁵⁸ See http://www.wcs.org/353624/wcs_carbonsales.

Papua New Guinea

Government activity

There is both National Government and Provincial Government activity in Papua New Guinea in relation to forestry – Papua New Guinea holds approximately 33 million hectares of tropical forests, which fall within various Provinces. Forestry projects have received different levels of support from, and are regulated differently by National and Provincial Governments.

Negotiations

The National Government of Papua New Guinea has been supportive of the inclusion of REDD in international provisions from the outset. In 2005 at the Conference of the Parties in Montreal, Papua New Guinea and Costa Rica, on behalf of the Coalition for Rainforest Nations, proposed that developing countries have access to the carbon market through credits generated from REDD activities. This stimulated the UNFCCC two-year initiative to examine REDD possibilities.

Papua New Guinea, through its Special Envoy on Climate Change, Kevin Conrad, has played a lead role in progressing REDD negotiations. The Papua New Guinea position has consistently pressed for positive incentives to be provided to developing countries to reduce deforestation. This involves the use of market-based mechanisms, support for demonstration projects and credit for early action.

Initiatives

The Prime Ministers of Papua New Guinea and Australia established in March 2008 the Papua New Guinea – Australia Forest Carbon Partnership with the objectives of enabling cooperation on REDD and assisting Papua New Guinea to participate in future international carbon markets. Initial funding under the Partnership is designated for technical and scientific support in general and the design of carbon monitoring and accounting systems for Papua New Guinea.

Institutions involved

The Department of Prime Minister and NEC and the Office of Climate Change and Environmental Sustainability ("OCCES") have both been involved to varying degrees in the development of REDD policy. It would appear that international matters are dealt with in the Department of Prime Minister, while domestic REDD policy is coordinated by the OCCES.

OCCES

The OCCES was first established by the National Government as the Office of Climate Change and Carbon Trading (OCCT) in May 2008 with Dr Theo Yasause appointed as

Executive Director. The OCCES carries out the Government's climate change and REDD policies and activities. The National Government has developed four Main Work Programmes, carried out by the OCCES: adaptation; mitigation; technology; and financing. The National Government and OCCES are currently tasked to finalize and implement REDD provisions in Papua New Guinea.

Forest Authority

In addition, the Papua New Guinea Forest Authority, established in 1993, works towards sustainable forest management in Papua New Guinea. The Forest Authority's mission statement is to "promote the management and wise utilization of the forest resources of Papua New Guinea as a renewable asset for the well-being of present and future generations".

Regulatory provisions

Acts and regulations which relate to forestry and which may impact on REDD include the *Environment Act* 2000; the *Forestry Act* 1991; and the *Forestry Regulations* 1998. The *Forestry Act* 1991 provides for controls in the acquisition and allocation of land for forest development. Papua New Guinea also has National Forest Development Guidelines (1993), which provide guidance on implementation of the Act in particular with respect to sustainable production, forest revenue, review of existing projects, forest resource acquisition and allocation and sustainable development.

Land ownership in Papua New Guinea is a key issue in relation to REDD activities. Land ownership is strictly regulated, with 97% of land being indigenous tenure and not transferable. Papua New Guinea's laws permit the granting of forestry concessions, however, carbon or environmental rights are not recognized. Potentially the Government could create a similar concession for carbon.

Stakeholder consultations on the Government's draft REDD Policy were held in May 2009 and the OCCES has indicated that draft legislation will be made available by October 2009. Our understanding of some of the key elements of the draft REDD Policy and of how initial REDD projects have been negotiated with the Government to date, is that:

- The government will regulate and facilitate the sale of carbon however the right to carbon will stay with the landholder.
- The Government wants to be compensated for loss of revenue from development activities that increase REDD and for greenhouse gas reductions.
- There will be a 2% tax on REDD projects, similar to the share of proceeds under the CDM – which will go into an adaptation fund.
- Existing carbon agreements have split benefits 80:10:10 - 80 to landowner, 10 to company and 10 to payment of monitoring and verification costs. The Government is still yet to confirm they will follow similar benefit sharing ratio, but landowners are pressing for their share not to be reduced.

The OCCES has indicated that approximately 44-50 landowner groups have signed up to voluntary carbon agreements. Projects related to these agreements are still being developed and the details of arrangements, standards applied and the types of credits to be created are not clear. It is expected that these agreements and projects will transition into the regulatory scheme once it is established. However, a critical aspect of those arrangements is whether the Government has been included as a party to the voluntary agreement, as excluding the government could invalidate any existing arrangements.

It is our understanding that the OCCES has engaged lawyers to draft REDD guidelines, but as at the date of this report, to our knowledge these guidelines have not been finalised.

Private sector activity

By decree published in late 2008, only those private sector entities that are registered with the OCCES can participate in REDD projects. We are only aware of a handful of small companies that have achieved this status, and some of the main corporate investors are currently prevented from directly negotiating with landowners. The uncertainty surrounding REDD policy and the appropriate government agencies to negotiate with has meant that many investment banks and other project developers are taking a cautious approach to investment in REDD projects at this stage.

REDD case studies – Developed countries

Australia

Institutions involved

Department of Climate Change

The Department of Climate Change ("DCC") was established in December 2007, as part of the portfolio of Prime Minister and Cabinet. The DCC develops the Australian Government's climate change framework, based on the objectives of reducing Australia's greenhouse gas emissions in the short- and long-term; adapting to the impacts of climate change; and helping to shape a global solution.

AusAID

The Australian Agency for International Development ("AusAID") is an administratively autonomous agency, within the portfolio of Foreign Affairs and Trade. Addressing challenges associated with climate change is a key component of AusAID's development assistance program.

Government Position on REDD in International Negotiations

The Australian Federal Government has in recent years become increasingly engaged in the international negotiations in relation to REDD, and in the development and implementation of various bilateral and regional REDD initiatives.

In March 2009, the Australian Government made a submission on REDD to the Ad-hoc Working Group on Long-term Cooperative Action ("AWG-LCA") and Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol ("AWG-KP").⁵⁹ The March 2009 submission built upon an earlier submission by the Australian Government in November 2008. The November 2008 submission can be seen as the first detailed, specific proposal on REDD put forward to the AWG-LCA and AWG-KP.

The March 2009 submission supports the use of market-based mechanisms, and engagement with and involvement of the private sector, as the most effective and sustainable way to address REDD. It suggests that market confidence measures could include participation in an international "confidence buffer" (a "confidence buffer" is an international pool of credits that can be used as a last resort to make up forest carbon credits when a major anthropogenic event results in non-permanence). The submission also notes that it is not necessary for the international agreement to

⁵⁹ See Australian submission to the AWG-LCA, AWG-KP and SBSTA, March 2009, *Reducing Emissions from Deforestation and Forest Degradation in Developing Countries*

mandate specific national institutional frameworks for individual Parties. The outcome will, however, need to make provision for the development of independently verifiable technical, methodological and institutional performance specifications that must be met for host Parties to participate in the forest carbon market mechanism.

Government Support for REDD Readiness in Developing Countries

As there are presently no internationally accepted methodologies for estimating and crediting abatement from avoided deforestation, Australia is engaged in a number of initiatives to develop such methodologies. The DCC and AusAID jointly administer the Government's International Forest Carbon Initiative. Under this initiative, Australia is investing AU\$200 million to support international efforts on REDD, primarily through regional demonstration activities such as collaborative forest carbon partnerships with Papua New Guinea, established in March 2008, and Indonesia, established in June 2008.⁶⁰

Further, AusAID is collaborating with other donors, including the UK, Germany, Norway on developing climate change initiatives, and on engaging in REDD pilot activity to inform international negotiations. Australia has also engaged in efforts to assist developing countries to develop appropriate monitoring systems with non-governmental entities, in particular through a partnership with the Clinton Climate Initiative.⁶²

Role of Action on REDD in Developing Countries in Domestic Climate Change Response

On 4 May 2009 the Australian Government announced that it would commit to reduce Australia's carbon pollution by 25 per cent below 2000 levels by 2020 if the world agrees to an international agreement to stabilize levels of CO₂ equivalent at 450 parts per million or lower by mid century. A pre-requisite to Australia committing to this 25 per cent target includes that the international agreement provide comprehensive coverage of gases, sources and sectors, with the inclusion of REDD.

Role of Domestic Action on Terrestrial Carbon in Domestic Climate Change Response

Australia can be seen as leading the way globally in the development of legislation that seeks to separate carbon rights on land from other land based property rights, including rights to timber. Each state of Australia (although not the territories) has implemented a scheme to register on title to land the entitlement to take the benefit of the carbon sequestered on that land ("carbon right"). In most cases, this affords the owner of the

⁶⁰ For more information of the International Forest Carbon Initiative see: <http://www.climatechange.gov.au/international/publications/fs-ifci.html>.

⁶¹ For more information see: <http://www.ausaid.gov.au/keyaid/envt.cfm>.

⁶² For more information see: <http://www.ausaid.gov.au/keyaid/envt.cfm>.

carbon right an interest in land that can be dealt with separately from title to the land and enforced against future owners even if the property is sold.

The recognition of carbon rights as separate and distinct land based rights, has allowed Australia to develop a sophisticated market for the trade in carbon rights. Such carbon property rights have underpinned the creation of credits in the voluntary offset market and in one of the world's first mandatory emissions trading schemes – the New South Wales and Australian Capital Territory Greenhouse Gas Abatement Scheme ("GGAS").

GGAS commenced on 1 January 2003 in New South Wales and is still operating (although it is proposed to cease operations when the Australian emissions trading scheme (known as the Carbon Pollution Reduction Scheme) comes into force). Under GGAS afforestation and reforestation projects are eligible to create abatement certificates. The identification of carbon rights as distinct and separate rights is also important to the development of forestry offset credits under the Federal Government's proposed Carbon Pollution Reduction Scheme ("CPRS").

CPRS and REDD credits

Under the CPRS Bill domestic reforestation activities will be eligible to generate tradable offset credits. Presently credits from REDD projects [international or domestic?] will not be recognized for compliance purposes when the CPRS commences in 2011. However, the Australian Government's position on the acceptance of international REDD credits may alter if a post-2012 international agreement under the UNFCCC or Kyoto Protocol is reached which recognizes REDD.

The Government has clearly signalled its intention to pursue linking opportunities with other emissions trading schemes. There is provision in the CPRS Bill allowing the Government to prescribe "non-Kyoto" international emissions units as eligible for surrender under the CPRS. The CPRS Bill also enables the Government to add to the types of Kyoto units that are eligible for surrender.⁶³ These provisions may be used to bring either domestic or international REDD credits into the CPRS.

At present there are no limits on the number of eligible international units that can be used (and the power for the Government to impose any such a limit is unclear on the current drafting of the CPRS Bill). However, there is always the possibility that this provision could be amended if additional types of international units are eligible for surrender in the CPRS.

Although there is presently no recognition of either international REDD credits or an ability to create domestic REDD credits, it is likely that any domestic REDD regime will build on the current forestry requirements in the CPRS Bill. As such, we have included a short discussion of the domestic CPRS forestry provisions.

⁶³ See definition of 'eligible international emissions unit' in section 5 and section 129 of the Bill.

Creation of forestry offsets

The conditions for the creation of offset credits under the CPRS Bill are detailed and include a number of mechanisms to ensure permanence and additionally. Under clause 192 of the proposed CPRS Bill, a recognized reforestation entity will be eligible to apply to the Australian Climate Change Regulatory Authority (the "Authority") for the issue of a Certificate of Reforestation entitling the entity to receive Australian emissions units ("AEUs") for net increases in greenhouse gas removals from an eligible project. In order to obtain a Certificate of Reforestation, an entity must be the holder of a Carbon Sequestration Right in relation to an eligible reforestation project that meets the relevant CPRS requirements, and there must be a net increase in greenhouse gas removals reported resulting from the project.

As noted above, currently the legislative regimes establishing carbon rights only exist at the state level, there is no carbon right's regime in the territories and there is no unified Federal carbon rights legislation. As each state regime is slightly different, so too are the rights and obligations accorded to each carbon right. For example, while some specialized carbon rights are expressed in terms of 'traditional' property rights (New South Wales and South Australia are examples), other carbon rights merely accord the holder with 'contractual' rights (Victoria is one such example). That said, a key benefit of each of these schemes (where they operate) is the ability to register carbon rights on the title to land, creating a transparent regime for entities that seek to deal with the land in the future.

However, as each regime is different (and no regimes exist in the territories) it is not presently clear that all state based carbon rights holders will be eligible to generate AEUs under the CPRS. In such situations, entities that seek to obtain the benefit of the carbon in the land will need to enter into a range of contractual and personal agreements that are unlikely to be registered on title and may not be enforceable against future owners of land.

Consequently, there would be a number of benefits to the Federal Government creating a nationally consistent carbon rights regime, including that it would be easier to trace the entity with an interest in the carbon underpinning each issued AEU and allow greater transparency to those who seek to deal with the land in the future. At present, no nationally consistent scheme is proposed. The benefits of a nationally consistent scheme would also apply to any REDD mechanism.

Permanence

Measures to address permanence risk under the CPRS include that the Authority can issue notices of relinquishment if AEUs have been issued in excess of the unit limit for the project or if the recognized reforestation entity withdraws the project from the CPRS.⁶⁴ If the requisite number of units is not relinquished by the recognized

reforestation entity, then generally the land on which the reforestation project was carried out will become subject to a forest maintenance obligation.⁶⁵

Indigenous issues

Due to the complexity of Australian Indigenous property rights (which are often communal rights), particular issues are raised in relation to any domestic REDD regime. Such complex land rights regimes may present obstacles to identifying single commercial entities that could take on scheme obligations.

Natural resources and planning

So far as the interrelationship of natural resource planning issues and the CPRS, under the CPRS Bill, the Authority issuing AEU's will not have the capacity or power to assess the natural resource management implications (for water or biodiversity) of forest sequestration activities and natural resource management will not be taken into account in assessing whether forests should receive AEU's. Frameworks for natural resource management will continue to operate as separate regulatory regimes and are presently the central mechanism for preventing forest degradation in Australia.

Private sector activity

A number of Australian and international companies and NGOs are exploring market-based opportunities for REDD in Indonesia and Papua New Guinea. These include investment banks (e.g. Macquarie Bank), forestry service providers (e.g. SFM and New Forests Asset Management) and emerging new investment companies (e.g. Climate Roundtable and Climate Change International).

Finally, a number of Australian conservation groups such as WWF (Australia), The Nature Conservancy (Australia) and independent scientific groups such as the Wentworth Group of Concerned Scientists have been actively involved in capacity building around avoided deforestation. In particular, the Wentworth Group supported the work of the Terrestrial Carbon Group.

⁶⁴ Clauses 232, 233, CPRS Bill.

⁶⁵ Clause 226, CPRS Bill.

New Zealand

Government activity

The New Zealand Government has participated actively in recent years in international negotiations on REDD and is taking a leading role with other countries in the development of a possible mechanism to provide economic incentives for the reduction of emissions from deforestation and forest degradation in developing countries.

New Zealand's submissions to the UNFCCC Ad-Hoc Working Group on Long-Term Cooperative Action dated 24 April 2009 include the following statements and recommendations:

- New Zealand considers that the international community via the UNFCCC should develop a comprehensive transparent and robust framework to encourage reductions of emissions from REDD;
- New Zealand considers that this framework could be by way of a new REDD mechanism established under a specific Article of any agreement reach in Copenhagen; and
- Further consideration should be given to how such a mechanism interacts with and/or provides for the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing Countries (REDD+). Its interaction with relevant CDM provisions would also need to be considered.⁶⁶

Institutions involved

Ministry of Agriculture and Forestry

New Zealand's Ministry of Agriculture and Forestry ("MAF") is responsible for developing the Government's REDD policies. Relevantly, the MAF is mandated to: develop, provide and implement policy advice and initiatives on matters affecting the sustainable development of sectors; administer and implement aspects of New Zealand's indigenous forestry legislative framework; manage the Crown's forestry and related assets; and develop and implement aspects of New Zealand's response to climate change.

The MAF's Statement of Intent elaborates that the MAF works in partnership with other sectors – the agricultural, food and forestry sectors – to ensure the operating environment of these sectors supports New Zealand's long-term economic and environmental sustainable development.

The Statement of Intent lists one of the Ministry's major new initiatives as "leading the development and governance of the forestry and agricultural components of the

⁶⁶ See http://unfccc.int/files/kyoto_protocol/application/pdf/newzealandredd270409.pdf

Government's Emissions Trading Scheme". In this regard, the Ministry has conducted a Review and Assessment of Options for Reducing Emissions from Deforestation in Developing Countries.

Ministry for the Environment

The Ministry for the Environment ("MfE") has overall responsibility and coordination of the New Zealand Government's climate change work. In relation to REDD, the MfE works collaboratively with the MFA which has specific policy leadership on climate change issues affecting the land-based sector. The MfE and MFA work collaboratively on issues relating to the *Resource Management Act* 1991, adaptation policy, and in the development of an emissions trading policy, the National Greenhouse Gas Inventory and the Net Position Report on Greenhouse Gases.

Regulatory provisions

An emissions trading scheme (the "NZ ETS") was passed into law under the former Government in September 2008 through amendments to the Climate Change Response Act 2002. However, following the New Zealand General Election of 8 November 2008, the incoming National Government formed a Select Committee to review the NZ ETS legislation. As such, the operation of the NZ ETS is currently on hold. Of the six major sectors that were proposed to be progressively brought into the ETS, domestic forestry was originally proposed to be the first sector with a start date of 1 January 2008.

As currently drafted, the ability of forest to remove CO₂ from the atmosphere is recognised by allocating NZ Units to owners of eligible forest land for each tonne of CO₂ so removed. Conversely participating forest owners will have to account for any deemed emissions when the forest is harvested.

The NZ ETS effectively divides land currently in forest into three categories: land planted in forest pre-1990, land first planted in forest from the beginning of 1990 (post-1989 forest) and indigenous forest.

Similar to the Australian provisions, there is no mechanism currently available to recognize either domestic or international REDD activities under the NZ ETS.

Pre-1990 Forest

Pre-1990 exotic forest will automatically be included within the NZ ETS. Owners of such forest will incur emission obligations if following harvest they convert their forest to a non-forest use instead of replanting (i.e. deforestation).

In relation to deforestation, the starting position is that deforestation occurs on the date any given hectare is cleared. There are some exceptions to this such where the landowner is to convert pre-1990 forest land which was cleared but not deforested prior to the land being transferred or where a forestry right, Crown forestry licence, lease or other agreement has expired. In these cases the deforestation will be taken to

have occurred on the date of the earlier of the transfer of land or expiry/termination of the relevant forestry right/lease/other agreement, in each case, which is inconsistent with the land remaining forest land.

The Government will provide assistance through the free allocation of NZUs to owners of pre-1990 forests who are affected by deforestation requirements. The total amount of assistance to owners of pre-1990 exotic forest during the first commitment period of the Kyoto Protocol (2008–12) will be 21 million units, which is equal to the previously announced deforestation cap. A further 34 million units will be available to owners of pre-1990 exotic forest over the period 2013–20. No further allocations are proposed.

There will be some exemptions from deforestation liability: Owners of 50 hectares or less of pre-1990 forest land will not be included in the NZETS and owners deforesting less than 2 hectares will not have to account for their deemed emissions if exemptions are granted.

Owners of pre-1990 forest will be required to report annually any area that has been deforested. When deforestation occurs, the emissions will be assessed based on New Zealand's international deforestation obligations. The forest owner would be obliged to surrender units to cover this emission. Methodologies for assessing emissions from deforestation will be provided by the administering agency. Registered Carbon Certifiers will be required to assess deforestation emissions.

Post-1989 Forest

Owners of forest planted onto pasture land since 1 January 1990 will be able to elect to enter the NZ ETS. When the forest is harvested there is an immediate deemed emission of CO₂. Owners who enter the scheme will be obliged to take responsibility for the ongoing net changes in the carbon stocks of their forests. They will receive NZUs if those stocks increase as a result of tree growth and will be required to surrender NZUs if those stocks decrease as a result of activities or events such as harvesting or fire.

Under the Act an owner who elects to participate in the NZETS will only be liable to account for deemed emissions up to the amount of NZ Units granted to the forest owner in recognition of the carbon sequestration process. In other words the Government will take on the liability of having to account for the release of carbon accumulated in a forest prior to 1 January 2008 and for which the forest owner does not receive any NZ Units.

Participants with post-1989 forest will be required to submit a carbon stock assessment at the end of the 2008–12 period, but may elect to report more frequently at intervals of not less than one year.

Entitlement to units will be based on a carbon stock assessment certified by a Registered Carbon Certifier. A participant will be entitled to receive one emission unit (NZU) for each tonne of carbon dioxide sequestered in his or her forest, or for subsequent carbon stock assessments. NZUs will be issued for carbon in excess of the previously verified carbon stock.

If a post-1989 forest owner chooses not to participate in the NZ ETS, then Government assumes the benefits and liabilities associated with the carbon sequestration/emission process.

The NZETS envisages that, in most instances, it will be the landowner who will participate in the NZETS, and will be the party subject to the core obligation. However there will be some ability to transfer the obligation where the landowner does not own or control the forest (eg due to the existence of a forestry right or lease).

In relation to any post-1989 forests, where a lease or forestry right exists, the forestry right holder or lessee will be the participant in the NZ ETS entitled to the NZ Units and responsible for liabilities. Under the Act both the landowner and the forestry right holder/lessee must agree to enter into the NZETS. This is designed to provide an opportunity for the landowner and holder/lessee to agree how to share NZ Units and liabilities.

Indigenous

Under the Protocol, Government will have to account for any deforestation of land in indigenous forests pre-1990. Government has decided that indigenous forest should remain outside the NZETS at this point.

Private sector activity

Private sector activity in New Zealand is focused largely on domestic forestry activity.

United States of America

Government activity

The United States has recently re-engaged in international climate change discussions. The US has also recently proposed draft legislation which provides for the use of domestic and international forest carbon offsets under US cap and trade legislation. The US does not have a national forest carbon law, but it does have a number of subnational and project based standards and registries for forest carbon offsets including the Voluntary Carbon Standard, California Climate Action Registry and the Chicago Climate Exchange. The following outline of the US position focuses primarily on recent US cap and trade legislation at the national level, and then on California, the most significant state in the US from the standpoint of advanced REDD readiness.

Negotiations

Despite the fact the US has not ratified the Kyoto Protocol, the US has made it clear that it will participate in climate negotiations in the UNFCCC negotiations in Copenhagen in 2009. However, the US will need to complete its domestic debate surrounding recent congressional action on a national cap-and-trade law prior to agreeing a position on US international commitments. The US continues to maintain that its commitments on climate change are contingent upon comparable action by other nations that are major trading partners and key contributors to global emissions (including India and China).

Initiatives

The United States Congress is currently considering a number of proposals for climate change legislation. Most are built around an economy-wide GHG cap-and-trade scheme. In that context, it is highly likely that some provision will be made for the importation and use of offset credits generated from projects in the developing world. It is possible, although by no means certain, that this will include the broad universe of CDM crediting and the introduction of forestry offsets. But other proposals have been made (e.g., in the context of the "discussion draft" of legislation recently released by the Chairman of the Committee on Energy & Commerce of the United States House of Representatives, Rep. Henry Waxman of California, and the Chairman of the Energy & Environment Subcommittee, Rep. Edward Markey (the "Waxman-Markey Draft")) that would provide for offsets on the basis of a very different, "sector-based" approach. The Waxman-Markey Draft places particular emphasis on the conservation of forests in developing countries, and in fact creates a massive program of support (including, but not limited to, the award of offset credits) for initiatives aimed at reduced emissions from deforestation. The most recent mark-up amendments to the U.S. Waxman-Markey Draft make explicit reference to the rights and interests of "local communities, indigenous peoples, forest-dependent communities". Indeed, the

Waxman-Markey Draft requires that the acceptance of credits from forest activities in the US be conditional upon the activities being managed on the basis that these parties are fully consulted as partners in the development of the project and that they share in any profits derived from the credits.

However, it is still unclear on the eventual crediting of afforestation and reforestation activities. The U.S. carbon markets are still in a design stage, and it is too soon to tell what type of crediting will eventually be available.

California produces roughly 1.4 percent of the world's, and 6.2 percent of the total U.S., greenhouse gases. California is a significant emitter, independent of its status as a state of the United States. As a result, California has been active in signing bilateral REDD agreements, such as the MOU signed by California Governor, Arnold Schwarzenegger, along with the governors of Illinois and Wisconsin, and the governors or emissaries of Amazonas, Pará, Mato Grosso and Amapá states in Brazil and Papua and Aceh provinces in Indonesia. The memorandum pledges that verifiable emissions reductions from REDD initiatives in the Brazilian and Indonesian states could be considered eligible carbon offsets under California's Global Warming Solutions Act (Assembly Bill 32).

Institutions involved

California Air Resources Board ("CARB")

CARB is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.

California Climate Action Registry ("CCAR")

The California Climate Action Registry is a private non-profit organization originally formed by the State of California. The California Registry serves as a voluntary greenhouse gas (GHG) registry to protect and promote early actions to reduce GHG emissions by organizations. The California Registry provides leadership on climate change by developing and promoting credible, accurate, and consistent GHG reporting standards and tools for organizations to measure, monitor, third-party verify and reduce their GHG emissions consistently across industry sectors and geographical borders.

Regulatory provisions

The Regional Greenhouse Gas Initiative ("RGGI") is a scheme by 10 northeastern states, which establishes a cap and trade program for emissions of carbon dioxide from electrical generating plants of 25 megawatts or larger that emit carbon dioxide (CO₂) from the burning of fossil fuels. RGGI provides, as an alternative to the purchase of allowances, for the purchase of pre-qualified, verifiable carbon offsets. Individual emitters can only use offsets in place of a total of 3.3% of their total annual allowance

purchases. The only pre-qualified forestry offset under RGGI at this time is the planting of new trees (or afforestation).

California recently enacted Assembly Bill 32 (formally called the California Global Warming Solutions Act of 2006). The Act establishes a comprehensive program of regulatory and market mechanisms to achieve cost-effective reductions of greenhouse gases (GHG). The Act requires the California Air Resources Board ("CARB") to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020; adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions; and adopt market-based compliance mechanisms meeting specified requirements. The Act makes CARB responsible for monitoring and reducing GHG emissions. The Act authorizes the Governor to invoke a safety valve in the event of extraordinary circumstances, catastrophic events, or the threat of significant economic harm, for up to 12 months at a time.

In regard to REDD, the Act provides that CARB shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.⁶⁷ This mechanism is likely to include the use of forest -based carbon sequestration through the Climate Action Reserve (discussed below).

Private sector activity

US (California) has also established a voluntary program through the Climate Action Reserve to monitor and report emission reductions. The Climate Action Reserve national offsets program establishes regulatory-quality standards for the development, quantification and verification of GHG emissions reduction projects; issues carbon offset credits known as Climate Reserve Tonnes (CRT) generated from such projects; and tracks the transaction of credits over time in a transparent, publicly-accessible system. The first draft update to the protocol was released for public comment in December 2008, and the subsequent public comment period ended in February 2009. The Revised Forest Project Protocol was released on March 24, 2009 and provides for the registration of the following forest project types:

- reforestation
- improved forest management; and
- avoided conversion

In order to be registered with the Reserve, a private entity must enter into a "Project Implementation Agreement" between the Reserve and the landowner which may

⁶⁷ AB 32, s38570(3)(c).

incorporate a conservation easement. The baseline for avoided conversion projects is determined by either:

- analysis which verifies immediate threat of conversion and demonstrates that the site would convert to another use within 5 years of project initiation; or
- assessment of the risk of conversion in the project area with analysis of the likelihood of conversion based on economic, geographic and political factors.

All forest projects are required to establish a "buffer pool" of credits prior to any issuance or crediting of voluntary removals, which credits may be cancelled where there is a reversal in carbon stocks for the project.

REDD Multilateral and Bilateral Case Studies

World Bank Forest Carbon Partnership Facility

The World Bank Forest Carbon Facility (FCPF or Facility) was launched at the 13th session of the Conference of the Parties to the UNFCCC and became operational on 25 June 2008. The Facility's objectives, as set out in its Charter (s 2.1), are:

- To assist Eligible REDD Countries in their efforts to achieve emission reductions from deforestation and/or forest degradation by providing them with financial and technical assistance in building their capacity to benefit from possible future systems of positive incentives for REDD;
- To pilot a performance-based payment system for emission reductions generated from REDD activities, with a view to ensuing equitable sharing and promoting future large scale positive incentives for REDD;
- Within the approach to REDD, to test ways to sustain or enhance livelihoods of local communities and to conserve biodiversity; and
- To disseminate broadly the knowledge gained in the development of the Facility and implementation of readiness plans and emission reductions Programs.

The Facility establishes two funds: a Readiness Fund and a Carbon Fund, which are designed to fund the above objectives. The Facility operates in a market context – emission reductions are generated by the projects, and donor participants include both governments and companies who are in fact investing in the projects.

Readiness Mechanism

Under the Readiness Mechanism and the US\$100 million Readiness Fund, the Facility intends to assist developing tropical and sub-tropical countries to participate in a future, large-scale REDD system through support for various activities, including:

- development of a national reference scenario for REDD;
- adoption of a national REDD strategy: seeking to reduce emissions, and conserve biodiversity and enhance the livelihoods of forest-dependent peoples; and reflecting each country's priorities and constraints;
- design, and where possible, implementation, of accurate measurements, monitoring and verification systems enabling countries to report on emissions from deforestation and forest degradation.

To participate in the Readiness Mechanism, interested countries must submit a Readiness Plan Idea Note (R-PIN) to the Facility, which, once accepted, is followed by a Readiness Plan. Financial support from the Readiness Fund would be in the form of grants which are executed by the REDD country itself, rather than by the Facility.

The Facility's Information Memorandum states that the Facility will seek to coordinate readiness activities with other relevant programs supported by international

organizations and bilateral and multilateral donors. For the Readiness Mechanism, such partnership would facilitate implementation of its recommendations. It is expected national governments of the REDD country participants would play the coordinating role. Regional planning and implementation of activities may also be justified in some cases.

Carbon Finance Mechanism

Under the Carbon Finance Mechanism and the US\$200 million Carbon Fund, the Facility will support approximately five voluntarily selected developing countries which have successfully participated in the readiness mechanism. The Facility will pilot incentive payments for REDD policies and measures in these countries and will remunerate these countries in accordance with negotiated contracts for verifiably reducing emissions beyond the reference scenario, although the Facility itself might also serve as a framework assisting with coordination. The Facility will consider options for testing and financing, based on approaches outlined in countries' REDD strategies, which may include:

- macro policy and legal reforms in forest conservation and management or concerning land-use strategies;
- payments for environmental services;
- the establishment of parks and reserves; and
- the intensification of agriculture.

Participation in the Facility

Initially, the Facility's expected number of developing countries participating was 20. However, in October 2008, the FCPF announced that it aimed to increase its expected number of developing country participants from 20 to 30, with over 40 developing countries having expressed interest in the FCPF. This number has subsequently increased and REDD countries selected currently include: Argentina, Bolivia, Cambodia, Cameroon, the Central African Republic, Chile, Colombia, Costa Rica, the Democratic Republic of Congo, El Salvador, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guatemala, Guyana, Honduras, Indonesia, Kenya, Lao PDR, Liberia, Madagascar, Mexico, Mozambique, Nepal, Nicaragua, Panama, Papua New Guinea, Paraguay, Peru, the Republic of Congo, Suriname, Tanzania, Thailand, Uganda, Vanuatu and Vietnam.

Donor participants include: Australia, Finland, France (through its development agency AFD), Japan, the Netherlands, Norway, Spain, Switzerland, the UK and the USA. Carbon Fund participants include both Governments and companies: the European Commission, Germany, Norway and the Nature Conservancy are currently involved.

In addition, FCPF meetings include observers from international organizations, NGOs, the private sector and other interested parties.

Collaboration with the UN-REDD Programme

In March 2009, at the FCPF's second Participants Committee Meeting, a resolution (Resolution PC/2/2009/3) was passed on *Collaboration between the FCPF and the UN-REDD Programme*. The resolution provides that:

- the Facility Management Team (FMT) of the FCPF and the UN-REDD Programme Secretariat should continue to improve their collaboration in particular by developing and supporting joint REDD readiness activities, with collaboration applying to document templates, review processes, harmonization of operational guidance on consultation and participation, development and use of a joint Roster of Experts, joint scheduling of meetings, and involvement in donor coordination efforts at the country level;
- the FMT and participating UN organizations in the UN-REDD Programme should continue to undertake joint missions, at the request of REDD country governments, in close collaboration with civil society; and
- the FMT will provide a note giving an overview of the issues relevant to collaboration with the UN-REDD Programme at the third Participants Committee Meeting.

UN-REDD Programme

In response to the UNFCCC COP-13 decision⁶⁸, the Food and Agriculture Organization (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) established - *the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries* ("UN-REDD Programme "). A memorandum of understanding ("MOU ") defines the rights and responsibilities of the three agencies in relation to the UN-REDD Programme, and sets out that the UNDP is the Administrative Agent and as such will receive and administer funds in accordance with the MOU.⁶⁹

Programme Outline

As per its statement, “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.”

Its two objectives are sets out in a *Framework Document'*, dated 20 June 2008:

- Assisting developing countries prepare and implement national REDD strategies and mechanisms; and
- Supporting the development of normative solutions and standardized approaches based on sound science for a REDD instrument linked with the UNFCCC.⁷⁰

Activities are divided into Country Actions and International Support Functions. The UN-REDD Programme works closely with REDD actors such as the World Bank’s Forest Carbon Partnership Facility, the UNFCCC Secretariat, the GEF, regional development banks, bilateral donors, research institutions, NGOs and CSOs.⁷¹

Country Actions

The UN-REDD Programme has placed emphasis on supporting the development of nationally-led, nationally-owned REDD strategies. Country actions are implemented with a focus on the needs and priorities as expressed by the nine participating pilot countries. These countries are: in Africa: Democratic Republic of Congo, Tanzania and

⁶⁸ Decision 2/CP.13

⁶⁹ <http://www.undp.org/mdtf/UN-REDD/docs/UN-REDD-MOU.pdf>

⁷⁰ UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries FAO, UNDP, UNEP, Framework Document, 20 June 2008 (herein after referred to as the UN-REDD Framework Document) , p 7

⁷¹ UN-REDD Framework Document, p 5

Zambia; in Asia and the Pacific: Indonesia, Papua New Guinea and Viet Nam and in Latin America and the Caribbean: Bolivia, Panama and Paraguay⁷²

The initial, “Quick Start” actions (until COP-15 in Copenhagen) include:

- Building capacity of developing countries to implement REDD actions to maximize emission reductions and activities towards beneficial outcomes at the national and local levels (including co-benefits);
- Testing a range of activities relevant to the REDD negotiations under the auspices of the UNFCCC, leading up to the Conference of the Parties in 2009, including training of negotiators about REDD;
- Testing preliminary concepts and scenarios for REDD building both knowledge base of successes and failures; and
- Paving the way for long-term engagement of REDD into the carbon market through payment for ecosystem services.

The UN-REDD Programme participates in the initial scoping and alliance-building missions, committing a range of stakeholders from within government agencies, the donor community, civil society and the private sector and supports the formulation of National Joint Programmes.

Approved funding to date

The UN-REDD Programme Policy Board, the governing body of the Programme whose membership includes government officials, donors, Un agencies and representatives of civil society and Indigenous Peoples, has to date approved 18 million of funding for five National Joint Programmes in the Democratic Republic of Congo, Indonesia, Papua New Guinea, Tanzania and Vietnam and activities of the Global Joint Programme (International Support Function):⁷³

COUNTRY	JOINT PROGRAMME NUMBER	JOINT PROGRAMME TITLE	PARTICIPATING UN ORGANIZATION			TOTAL APPROVED BUDGET US DOLLARS
			FAO	UNDP	UNEP	
Democratic Republic of Congo	COG-01	UN-REDD DR Congo Quick Start Programme - Year 1	583,150	925,550	374,500	1,883,200
Indonesia	IDN-01	UN-REDD Indonesia	1,498,000	2,996,000	1,150,250	5,644,250
Papua New Guinea	PNG-01	UN-REDD Programme - PNG Quick Start Initiative	1,016,500	1,568,534	-	2,585,034
Tanzania	TZA-01	UN-REDD Programme	1,498,000	2,568,000	214,000	4,280,000

⁷²[http:// www.un-redd.org](http://www.un-redd.org)

⁷³ See http://www.undp.org/mdtf/UN-REDD/projects_approved.shtml (accessed 25 May 2009)

COUNTRY	JOINT PROGRAMME NUMBER	JOINT PROGRAMME TITLE	PARTICIPATING UN ORGANIZATION			TOTAL APPROVED BUDGET US DOLLARS
			FAO	UNDP	UNEP	
		- Tanzania Quick Start Initiative				
Vietnam	VIE-01	UN-REDD Viet Nam Programme	1,690,814	2,501,128	192,814	4,384,756
International	GLO-01	UN-REDD Programme - International Support Functions	1,927,926	1,890,850	2,854,814	6,673,590
Total Approved			8,214,390	12,450,062	4,786,378	25,450,830

International Support \Functions

Designed to support country efforts and knowledge sharing, the Programme International Support Functions aim to ensure consistency in approaches and economies of scale in the delivery of REDD. Four specific outcomes are:

- Improved guidance on Measuring, Reporting and Verifications (MRV) approaches, that includes consensus and confidence building on principles and guidelines for MRV, in addition to training programmes.
- Increased engagement of stakeholders in the REDD agenda. This is achieved by raising awareness of REDD amongst stakeholders, ensuring Indigenous Peoples representative groups and non-Annex 1 negotiators and decision-makers are informed and engaged.
- Improved analytical and technical framework of social and environmental benefits that maximise the contribution to sustainable development through low carbon development paths.
- Increased confidence in REDD amongst decision makers on the feasibility of methodologies and the implementation of reducing emissions from deforestation and forest degradation.

Australian Partnerships

The former Australian Government launched a Global Initiative on Forests and Climate ("GIFC") in March 2007, which in March 2008 became the International Forest Carbon Initiative ("IFCI"). The GIFC's goals and activities were to:

- build technical capacity to assess and monitor forest resources;
- put effective regulatory and law enforcement provisions in place to protect forests;

- promote the sustainable use of forest resources;
- support research into deforestation;
- develop and use technology and systems to help developing countries monitor and assess their forest resources; and
- pilot approaches to providing financial incentives to developing countries.

Funding was to be used to support projects in selected developing countries, particularly but not exclusively, in the South-East Asia and Pacific regions. The Government sought to work with other like-minded countries and with international organizations including the World Bank and businesses in carrying out this Initiative. The current Government's IFCI, according to the Government's Briefing Note of 2008, has the following overriding objectives:

- increasing international forest carbon monitoring and accounting capacity;
- undertaking practical demonstration activities to show how REDD can be included in a post-2012 global climate change agreement; and
- supporting international efforts to develop market-based approaches to REDD.

Under this Initiative, the Government to date has entered into numerous partnerships, described below.

Indonesia – Australia Forest Carbon Partnership

The Indonesia – Australia Forest Carbon Partnership was announced in June 2008 by the Australian Prime Minister and Indonesian President. Areas of collaboration under the Partnership include policy development and capacity building, technical support for forest carbon monitoring and measurement, and development of incentive-based REDD demonstration activities. The Partnership encompasses the Kalimantan Forests and Climate Partnership and a bilateral package of support for Indonesia on forests and climate, described below.

Kalimantan Forests and Climate Partnership

The Australian Government has committed AU\$30 million to establish the Kalimantan Forests and Climate Partnership ("KFCP"), agreed between the Australian and Indonesian Governments in September 2007. The Partnership is a large-scale REDD demonstration activity for a credible, equitable and effective approach to REDD, including from degradation of peatlands, to inform negotiations for a post-2012 agreement. The initial focus of the Partnership has been on more than 100,000 hectares of degraded and forested peatland in Central Kalimantan. The overall target for funding from all sources over a four year period is AU\$100 million, including potential contributions through existing forest programmes of the Indonesian Government and contributions from other public and private sector sources.

The joint submission of Indonesia and Australia on REDD to the AWG-LCA, AWG-KP and SBSTA from December 2008 reports on initial lessons learned from the KFCP. The submission emphasizes the utility of demonstration activities and the importance of communication of lessons learned in the early stages of REDD policy development.

The project operates in the context of Indonesian forestry law, which grants certain types of forest use rights. This was considered an advantage for the establishment of enforceable legal rights to forestry, as the existing and understood systems within a recognized legal framework could be built upon.

Bilateral package of support to Indonesia on forests and climate

Under this package, the Australian Government is providing AU\$10 million to support Indonesia's forest and climate policy development. In particular, the funding will be used to help develop a national Forest Resource Information System including a national carbon accounting system, and to support the development of an Indonesian policy framework for reducing emissions from deforestation and forest degradation.

Papua New Guinea – Australia Forest Carbon Partnership

In March 2008, the Prime Ministers of Australia and Papua New Guinea agreed to long-term cooperation on REDD through the establishment of this Partnership. Initial areas for collaboration include strategic policy dialogue on climate change and REDD, provision of scientific, technical and analytical support by Australia to develop Papua New Guinea's forest carbon monitoring and measurement system, and participation in global carbon markets. Up to AU\$3 million has been committed by the Australian Government in initial funding.

Research partnership on reducing emissions from deforestation

A research partnership with the Centre for International Forestry Research (CIFOR) in Indonesia of up to AU\$3 million intends to help meet the need for further research on policy and technical issues associated with reducing emissions from deforestation.

Development of concept models for demonstration activities

The Australian Government has committed up to AU\$1.5 million to support international NGOs to develop concept models for demonstration activities to reduce emissions from deforestation.

Partnership with the Clinton Climate Initiative on carbon monitoring

Australia's National Carbon Accounting System (NCAS) will be extended through this Partnership into an international context for the global monitoring of carbon emissions. Outcomes expected to be generated by the Partnership include: development of a web-based tool allowing free and open access to the specialized information needed to integrate forests into carbon markets; investment in local communities to generate employment and wealth opportunities; enhanced data sharing within the international community; improved public awareness on REDD; and, increased uptake of the relevant science and technology.

World Bank Forest Carbon Partnership Facility

Australia has provided funding of AU\$11.7 million to the World Bank's Forest Carbon Partnership Facility, which assists developing countries in their efforts to reduce emissions from deforestation and forest degradation and is piloting incentive payments in select countries. Australia is one of 11 donor country participants in the Facility at this stage. In addition, the Australian Government is contributing AU\$10 million to the World Bank's Forest Investment Program.

Asia Pacific Forestry Skills and Capacity Building Program

This Program provides up to AU\$15.8 million over a four year period to assist countries in the Asia-Pacific region to increase their forest management skills and expertise in order to reduce deforestation and forest degradation. The Program supports activities such as skills-based training, information exchange and the transfer of technology.

Norwegian International Climate and Forestry Initiative

The Norwegian Government's Climate and Forest Initiative was launched during climate change negotiations at Bali in December 2007. The Government announced it was prepared to allocate up to NOK 3 billion per year towards reduction of greenhouse gas emissions from deforestation in developing countries. A project group has been appointed in the Ministry of the Environment, Department for Pollution Control, in the Section for Climate and Energy to implement this Initiative. The group cooperates with the Ministry of Foreign Affairs and other ministries.

The Initiative's goals are as follows:

- to work towards the inclusion of emissions from deforestation and forest degradation in a new international climate regime;
- to take early action to achieve cost-effective and verifiable reductions in greenhouse gas emissions; and
- to promote the conservation of natural forests to maintain their carbon storage capacity.

In achieving these goals, the main elements of the Norwegian Government's Climate and Forest Initiative's strategy are:

- to contribute to the establishment of a credible system for monitoring, assessment, reporting and verification of reductions in emissions from deforestation and forest degradation;
- to contribute to the establishment of a robust, effective and flexible international framework for efforts to reduce deforestation and forest degradation, in particular the Initiative would work towards establishing a national coordinating unit for each forest country preferably at government level, an international support unit for each of these national units headed by the relevant international organization preferred by the recipient country, and a support structure at the international level which would include the organization responsible for quality assurance of monitoring systems and reporting of emission levels;
- to encourage contributions from other countries – Norway seeks to ensure that its initiative acts as a catalyst for other countries;
- to systematically evaluate projects and programmes to determine whether support should be continued, support for REDD efforts will be performance-based, recipient countries selected as partners for the Initiative must have a clear political intention – demonstrated in practice – to reduce deforestation and forest degradation; and
- to engage in capacity building in the recipient country as a matter of priority in the early stages of the Initiative.

Under the Initiative, a range of multilateral and bilateral partnerships and projects have been commenced or will be established in the course of 2009, as listed below.

UN-REDD

Norway has committed to providing full funding, approximately US\$35 million to the first phase of UN-REDD, with the aim of collaborating with other donors at a later stage. Pending results from the first phase, Norway intends to channel further funds to UN-REDD and to use this as a key component of its efforts to reduce emission from deforestation and forest degradation. In later phases, the Norwegian Government's contributions would be channelled to fewer countries.

World Bank Forest Carbon Partnership Facility

The Norwegian Government has at this stage contributed US\$40 million to the World Bank's Forest Carbon Partnership Facility aimed at building capacity for REDD in developing countries and piloting performance-based incentive payments on a small-scale. In addition, Norway is considering contributing to the Forest Investment Program currently being developed by the World Bank.

Congo Basin Forest Fund

The Norwegian Government contributes to regional development banks, and in particular, to the Congo Basin Forest Fund (CBFF), which was established in June 2008 and is hosted by the African Development Bank (AfDB). Norway has committed NOK 500 million to the fund, for the period 2008 to 2010. The CBFF is a multi-donor fund with the objective of taking early action to protect the forests in the Congo Basin region, and invites proposals from, and participation of, governments, civil society, and the private sector to achieve this. The CBFF works with Central African Governments, regional institutions, the Central Africa Forests Commission, technical partners, international donors – such as Norway, NGOs and the private sector.

Bilateral programmes – Brazil

The Norwegian Government intends to engage in bilateral activities only where multilateral initiatives or multi-donor cooperation are also taking place so that capacity building is already in place or is being developed. In the case of Brazil, the Norwegian Government's view is that significant progress has been made at the national level such that Norway can directly provide performance-based support for the implementation of a nationally established strategy.

Norway's funding to the Amazon Fund consists of NOK 100 million in 2008 and NOK 600 million in 2009, with allocations after this period to be linked to performance in reducing deforestation. The Fund provides grants for projects supporting the Brazilian Government's efforts to reduce deforestation through its Action Plan for the Prevention and Control of Deforestation in the Amazon. Norway's contributions to the Fund form part of its wider climate policy cooperation with Brazil, with a formal cooperation agreement having been concluded in September 2008.

Bilateral programmes – Tanzania

Norway provides support to Tanzania on the basis of its extensive cooperation with Tanzania on natural resource management. Norway will provide NOK 500 million towards developing and implementing over a five year period a national REDD strategy in Tanzania. The Norwegian Government will cooperate with other international actors, in particular on capacity building, the design of the strategy, and on the establishment of systems for monitoring and reporting on emissions from deforestation and degradation.

Norwegian and international research institutions and NGOs

The Norwegian Government is supportive of REDD research and development activities, and plans to allocate funds to research and development, and to projects carried out by research institutions and NGOs. Strategic partnerships have already been set up with selected research institutions and NGOs. The Government administers allocations in this area through Norad, the Norwegian Agency for Development Cooperation, which is responsible for reviewing applications for funding not falling within the multilateral or bilateral channels above.

Voluntary and other benchmarks and standards

Voluntary Carbon Standard

The Voluntary Carbon Standard ("VCS") is an international carbon offset standard. It focuses on GHG reduction attributes only and does not require projects to have additional environmental or social benefits (like the CDM). The VCS 2007 is broadly supported by the carbon offset industry (project developers, large offset buyers, verifiers, projects consultants). VCS approved carbon offsets are registered and traded as Voluntary Carbon Units ("VCUs") and represent emissions reductions of 1 metric tonne of CO₂. All project types are allowed under the VCS Programme provided they are supported by an approved VCS methodology or if they are a part of an approved GHG programme. Generally there are two types of project methodologies approved by the VCS: CDM credits; and those additional project categories specifically approved by the VCS.

The VCS includes Agriculture, Forestry and Other Land Uses ("AFOLU") in the list of eligible project activities, which guidelines are published in the "Voluntary Carbon Standard: Guidance for Agriculture, Forestry and Other Land Use Projects" (the "VCS Project Tool"). The VCS Project Tool provides for four categories of potential forest related offset projects:

- *Afforestation, reforestation and revegetation* ("ARR"): The eligible activities in the ARR category consist of establishing, increasing or restoring vegetative cover through the planting, sowing or human-assisted natural regeneration of woody vegetation to increase carbon stocks in woody biomass, and in certain cases, soil,⁷⁴
- *Agricultural Land Management* ("ALM"): The ALM category provides for the issuance of VCUs based upon land use and management activities that have been demonstrated to reduce net greenhouse gas emissions on "cropland"⁷⁵ and "grassland"⁷⁶ by increasing carbon stocks in soils and woody biomass and/or decreasing carbon dioxide emissions from soils eligible for certification;
- *Improved Forest Management* ("IFM"): The IFM category refers to activities implemented on forest lands managed for wood products such as sawtimber, pulpwood, and fuelwood and are included in the IPCC category "forests remaining as forests" (not including activities to reduce emissions from unsanctioned forest degradation); and
- *Reduced Emissions from Deforestation and Degradation* ("REDD"): Activities that reduce the conversion of native or natural forests to non-forest land, which are often coupled with activities that reduce forest degradation and enhance carbon stocks of

⁷⁴ See VCS Project Tool, at p.42.

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degraded and/or secondary forests that would be deforested in absence of the REDD project activity.

The VCS Board may also consider adding new AFOLU project categories (e.g. avoided conversion of non-forest land) as best-practices become defined and robust methodological frameworks are established. The VCS approach for addressing non-permanence requires that projects maintain adequate buffer reserves of non-tradable carbon credits to cover unforeseen losses in carbon stocks. The buffer credits from all projects are held in a single AFOLU Pooled Buffer Account.

California Climate Action Registry

The California Climate Action Registry is a private non-profit organization originally formed by the State of California. The California Registry serves as a voluntary greenhouse gas (GHG) registry to protect and promote early actions to reduce GHG emissions by organizations. The California Registry provides leadership on climate change by developing and promoting credible, accurate, and consistent GHG reporting standards and tools for organizations to measure, monitor, third-party verify and reduce their GHG emissions consistently across industry sectors and geographical borders.

The Forest Project Protocol is the California Registry's guide for the design, implementation and registration of forest projects. The protocol is written for forest project developers who wish to undertake a forest project. Only those forest projects that comply with this protocol may be reported to and verified by the Registry. A forest project must meet a specific set of criteria to be eligible for reporting and verification in the Reserve. Much of these criteria have been required specifically by the California legislature.⁷⁷

The Reserve currently accepts the following types of forest project activities:

- *Conservation-based Forest Management*: Forest projects that are based on the commercial or noncommercial harvest and regeneration of native trees and employs natural forest management practices;
- *Reforestation*: Forest projects that are based on the restoration of native tree cover on lands that were previously forested, but have been out of tree cover for a minimum of ten years; and
- *Conservation*: Forest projects that are based on specific actions to prevent the conversion of native forests to a non-forest use, such as agriculture or other commercial development.

Pursuant to legislation, the Reserve currently accepts only projects that are undertaken in California. The Reserve intends to explore expansion of forest project registration outside of California. In addition, the Reserve specifies that forest projects are not eligible unless they incorporate (a) perpetual easement supporting the project activity; (b) maintain only forest types native to the project area; and (c) are based on natural forest management practices within the project area.

The qualitative characterization of the baseline for this project type must be based on the following:

- the California *Z'berg-Nejedly Forest Practice Act of 1973* (FPA) and the corresponding Maximum Sustained Production "Option C rules" of the *Forest*

⁷⁷ California Senate Bill 812 provides specific legislative guidance for the registration of forest projects in the California Climate Action Registry.

Practice Rules (FPR) of the California Board of Forestry and Fire Protection, which include district, sub-district, and special treatment area rules;

- any other applicable special county-level mandatory forest management laws that would apply to the baseline management practices at the county level;
- at the time of baseline initiation, mandatory land use statutes or regulations must not require the conservation-based forest management to be implemented as the project activity.⁷⁸

In effect, the approach to this baseline characterization is a type of performance standard.

⁷⁸ The Reserve's approach to this baseline characterization presumes that, unless otherwise required by law, a forest management baseline would reflect a management scenario that resulted in harvest and regeneration of trees to the extent permitted by mandatory forest management laws and regulations. Such mandatory laws include the California Z'berg-Nejedly Forest Practice Act of 1973 (FPA) and the corresponding Forest Practice Rules (FPR), specifically the "Option C" Rules, of the California Board of Forestry and Fire Protection. These laws and regulations are highly prescriptive and measurable, as they include requirements such as minimum basal area retention, rotation ages, harvest adjacency restrictions, watercourse buffer widths and sustained yield requirements.

Climate, Community and Biodiversity Alliance

The Climate, Community and Biodiversity Alliance ("CCBA") is a partnership among research institutions, corporations and non-governmental organizations (members). The CCBA is made up of members and advising institutions. The members founded the CCBA and contributed to the development of the CCB Standards. The Climate, Community and Biodiversity Project Design Standards ("CCB Standards") evaluate land-based carbon mitigation projects in the early stages of development. The CCB Standards foster the integration of best-practice and multiple-benefit approaches into project design and evolution. In February 2008 the CCBA began a revision of the CCB Standards. The revision process was completed in December 2008, and the CCB Standards Second Edition was launched on Dec 6, 2008, in Poznan, Poland.

The project proponents must provide a description of the project zone, containing all the following information:

- the location of the project and basic physical parameters (e.g., soil, geology, climate);
- the types and condition of vegetation within the project area;
- the boundaries of the project area and the project zone;
- Current carbon stocks within the project area(s), using stratification by land-use or vegetation type and methods of carbon calculation (such as biomass plots, formulae, default values) from the IPCC's 2006 Guidelines for National GHG Inventories for Agriculture, Forestry and Other Land Use (IPCC 2006 GL for AFOLU) or a more robust and detailed methodology;
- A description of communities located in the project zone, including basic socio-economic and cultural information that describes the social, economic and cultural diversity within communities (wealth, gender, age, ethnicity etc.), identifies specific groups such as Indigenous Peoples and describes any community characteristics; and
- A description of current biodiversity within the project zone (diversity of species and ecosystems) and threats to that biodiversity, using appropriate methodologies, substantiated where possible with appropriate reference material.

Projects must be designed to minimize risks to the expected climate, community and biodiversity benefits and to maintain those benefits beyond the life of the project. According to the CCBA Standards, effective local participation in project design and implementation is key to optimizing multiple benefits, equitably and sustainably.

Chicago Climate Exchange

The Chicago Climate Exchange (CCX) is a voluntary GHG emissions cap-and-trade scheme based in North America. Although participation is voluntary, compliance with emission reduction objectives is legally binding once a member joins. CCX has as part of its cap-and-trade scheme an offset programme with a carbon offset standard. CCX members commit to reduce their emissions by a fixed amount below the established baseline level. Members who cannot achieve the reduction target through cutting their emissions internally can meet their compliance commitment by purchasing emission allowances (called "Carbon Financial Instruments" or "CFIs") through CCX's electronic trading platform from other CCX Members that reduce their emissions beyond the reduction target. Offsets from projects implemented through the CCX offset programme can also be used to comply with reduction targets.

The CCX describes the type of offset projects that are eligible for carbon credits (CFIs on the CCX) in the "CCX Exchange Offsets and Exchange Early Action Credits" (the "CCX Rule Book"). The CCX Rule Book recognizes a number of eligible project types. To the extent relevant, the CCX Rule Book designates Exchange Forestry Offsets ("XFOs"), Exchange Soil Offsets ("XSO") and Exchange Offsets for Electricity Produced from Renewable Energy ("XRE"). All projects proposed for registration with the CCX are subject to approval by the CCX Offsets Committee.

In order to earn CCX Exchange Offsets the project owner of each CCX-eligible project must:

- be a "CCX Offsets Provider" (registered with the CCX);
- register the project with the CCX;
- obtain independent verification of the project by a CCX-approved verifier; and
- periodically report to CCX the status of the project.

Part 9.8.2 of the CCX Rule Book provides for the registration of offsets from Afforestation Projects. Eligible projects are those involving afforestation via plantings initiated on or after January 1, 1990, on forest land that had been degraded or in unforested condition on December 31, 1989. CCX CFIs will be issued to owners of CCX-eligible afforestation projects on the basis of verified documentation reporting the annual increase in carbon stocks in "live tree" and "soil organic carbon" portion of the carbon pool forest (expressed in metric tonnes of carbon dioxide) on eligible sites included in the project during the years 2003 through 2010 (we note the temporal limitation here and will confirm with the CCX that this has been extended beyond 2010). The measurement of annual carbon accumulation must be approved by the CCX Forestry Committee. Assuming the Project has involved jatropha plantings since January 1, 1990 on degraded land, we see no reason why the Project would not meet the minimum requirements for CCX forestry project approval. However, we would need to confirm the 2010 limitation has either been waived or extended.⁷⁹

⁷⁹ CCX also has crediting methodologies based on "fuel switching." Qualifying projects include fuel switching renewable energy generation and energy efficiency that displace fossil fuels. Part 9.12 of the CCX Rule Book further provides that CCX offsets may be issued to legal owners of offsets produced by eligible renewable energy facilities on the basis of electricity produced by such facilities. In order for a project to be eligible, however, it must be from a recognized renewable energy source being either: "solar; wind; ... wood, wood waste, wood derived fuels; agricultural residue and grasses ... ethanol (bioalcohol)". Offsets produced by eligible facilities using renewable fuel along with, or in place of, non-renewable fuel shall determine the amount of eligible offsets based on emissions displaced. Displaced emissions are calculated by multiplying the annual heat input of the renewable fuel by the emission rate per unit of energy of the non-renewable fuel. The application of this methodology to the Project is not without doubt because the specified list of feedstocks for renewable energy appears to be an exclusive list and does not designate biodiesel as a fuel. As we understand it, the use of "wood" or "wood derived fuels" is not intended as a potential fuel stock from the Project. Further, there is some doubt as to whether under the CCX rules, the sale of the renewable fuel to a third party who undertakes the fuel switching activity would qualify the seller of the renewable fuel for carbon credits. On this basis, we do not think the Project is eligible for carbon credits based upon this methodology.

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