

## Strengthening the REDD Text

*All reasonable efforts have been made in providing the following information. However due to the circumstances and the timeframes involved, these materials have been prepared for informational purposes only and are not legal advice. Transmission of the information is not intended to create, and receipt does not constitute, a lawyer-client relationship. To the extent permitted by law any liability (including without limitation for negligence or for any damages of any kind) for the legal analysis is excluded.*

---

### Background

1. The text for the proposed REDD-plus mechanism under the 1992 United Nations Framework Convention on Climate Change has recently developed as follows:
  - 15 December 2009 – draft REDD text as at the end of COP 15;<sup>1</sup>
  - 11 February 2010 – draft REDD text as amended by the AWG-LCA;<sup>2</sup>
  - 17 May 2010 – Advance Version of the REDD text for Bonn II (“**Advance Version**”).<sup>3</sup>
2. This briefing note identifies policy areas which are unresolved and suggests language to strengthen the Advance Version text. The policy issues are:
  - whether developing country Parties should be permitted the option of adopting a sub-national approach to REDD;
  - whether the REDD activities of developing country Parties should be subject to international monitoring, reporting and verification;
  - whether the social and environmental safeguards in paragraph 2 should be subject to international monitoring, reporting and verification;
  - whether to allow market-based approaches to REDD (i.e. trading); and
  - how activities under the REDD-plus mechanism will relate to REDD activities under NAMAs.
3. The Advance Version text also has four major omissions, listed below. For each of the omissions, this briefing note suggests possible language that would improve substantive aspects of the issues as well as the legal strength of the text regarding these issues. The omissions are:
  - no quantitative goal for the amount of emission reductions expected from the REDD-plus mechanism;
  - no reference to the need for fair and equitable benefit-sharing;
  - no provision for the conservation and protection of peat soils; and
  - no institutional arrangements.
4. Although there are many areas of the Advance Version text which could be strengthened and improved, (for example, the text fails to expressly recognise the right of indigenous peoples to free, prior and informed consent (FPIC)), this note recognises that the negotiations relating to these issues have largely already been resolved one way or another, and that it is unrealistic that such issues will be revisited at this late stage. This briefing note therefore focuses on those issues which appear, from the Advanced Version of the text, to remain “live”.

---

<sup>1</sup> FCCC/AWGLCA/2009/L.7/Add.6.

<sup>2</sup> FCCC/CP/2010/2.

<sup>3</sup> FCCC/AWGLCA/2010/6.

## Should sub-national approaches to REDD be permitted (Para 5)?

### *Background information*

5. A sub-national approach to REDD could include REDD activities which occur at a provincial, district, or even project-level. The fact that the term ‘sub-national approaches’ is used to refer to both government level and project-level activities is somewhat unhelpful, as there are critical differences between district or provincial level activities which can relatively easily be incorporated into national systems, and project-level activities which cannot.
6. The arguments against sub-national approaches include the following:
  - Sub-national approaches are generally opposed because of the concern that they may lead to leakage within national boundaries. Once a REDD activity is in place, deforestation may simply shift from one district or province to another with no overall reduction in the national deforestation rate. It should be noted that under the Advance Version text, countries are required to promote and support actions to prevent leakage (also called displacement of emissions) as one of the listed environmental safeguards: see para 2(g) of the safeguards.
  - Sub-national approaches which permit the creation of project-based REDD credits may encourage the hasty development of projects before proper environmental and social safeguards are in place to regulate those projects.
7. It has been suggested that large corporations are pressing for the option of a sub-national approach to be adopted in the REDD-plus mechanism in the hope that it might generate a large body of cheap REDD credits which can then be used for offsetting.
8. During the Copenhagen negotiations there appear to be two main countries that supported retaining the option of a sub-national approach to REDD. These were the US and Colombia.
9. The arguments in support of sub-national approaches are as follows:
  - It would allow a faster start-up for REDD in some developing countries which currently have pilot projects or provincial governmental support for REDD. For example, in some countries, provincial governments are moving ahead with REDD faster than their national government counterparts. There is an argument that these provinces should not be prevented from participating in a REDD mechanism because their national government is failing to act as quickly as they are.
    - An example of early provincial sub-national action is the Governors’ Climate and Forests Taskforce which is a collaboration between the Governors of 14 states and provinces including California, Illinois, Wisconsin, Aceh (Indonesia) and Papua (Indonesia), and governors in Brazil. The Governors’ Taskforce includes support for project-based activities such as the REDD-style demonstration project in Ulu Masen, in Aceh, Indonesia.
  - Countries which have ungovernable areas or provinces should not be precluded from participating in a REDD mechanism because they are unable to implement a national approach. For example, in Colombia much of its forested areas are under the control of the Revolutionary Armed Forces of Colombia (FARC), which the national government cannot govern effectively. Nevertheless, while ungovernable areas may be a problem for some countries, this does not address the problem of leakage which may still occur if a REDD scheme is introduced into the governable province and deforestation shifts further into the ungovernable province.

10. The fact that there are strong arguments both for and against a sub-national approach suggests that some sort of compromise will be considered in the course of negotiations.

*Advance Version text*

11. The Advance Version text contains several references to “sub-national approaches” or “sub-national strategies”. These can be found in the following paragraphs: 5, 7, and 8 (although this is not square bracketed), and 14 (also not square bracketed).
12. The most critical paragraph in the Advance Version text on sub-national approaches is paragraph 5 which requires developing country Parties to develop:
- (a) *“A national strategy or action plan [and, if appropriate, a sub-national strategy] [, as part of their low-carbon emission strategies ...];*
  - (b) *A national forest reference emission level and/or forest reference level, or if appropriate, sub-national forest reference emissions level[s] and/or forest reference level[s], taking into account decision 4/CP.15 and any further elaboration of those provisions agreed by the Conference of the Parties;...*
  - (c) *A robust and transparent national forest monitoring system for the monitoring and reporting of the activities ... with, as appropriate sub-national monitoring and reporting as an optional interim measure,\* in accordance with the provisions contained in decision 4/CP.15...”.*
13. The problem with sub-paragraph (a) is the risk that a sub-national strategy may lead to leakage. With regard to sub-paragraph (b), the problem with allowing sub-national forest reference emission levels is that provinces with high deforestation levels may be used as the reference point, thus artificially raising the amount of reduced deforestation which a country claims compared to the actual national rate of reduced deforestation. With regard to sub-paragraph (c), again, allowing forest monitoring and reporting on a sub-national basis presents a real threat that leakage to other districts or provinces may occur. Footnote 2 in paragraph 5(c) attempts to address this problem by still requiring the monitoring and reporting of emissions displacement at the national level, and this footnote must be retained if the AWG-LCA allows a sub-national approach in sub-paragraph 5(c).

*Does the SBSTA decision resolve the issue?*

14. Some may argue that decision 4/CP.15 (the “SBSTA decision”), which contains methodological guidance for REDD-plus activities, already endorses the notion of sub-national approaches.
15. Sub-paragraph 1(d) of the SBSTA decision reads as follows:

*“1. Requests developing country Parties, on the basis of work conducted on the methodological issues set out in decision 2/CP.13 ... and without prejudging any further relevant decisions of the Conference of the Parties, in particular those relating to measurement and reporting:*

*(a) – (c) ...*

*(d) To establish, according to national circumstances and capabilities, robust and transparent national forest monitoring systems and, if appropriate, sub-national systems as part of national monitoring systems that:...(a) Use a combination of remote sensing and ground-based forest carbon inventory approaches...”.*

---

\* “Including monitoring and reporting of emissions displacement at the national level.” [Note: this footnote is taken from the Advance Version text itself and is not the author’s footnote].

16. Thus, although the SBSTA decision allows sub-national monitoring systems to be developed, they must still be part of a national monitoring system. Furthermore, the reservation in the chapeau to paragraph 1 of the SBSTA decision, namely, that the decision should not prejudice any further decisions of the COP, means that the sub-national issue remains to be resolved in the Advance Version text.
17. Finally, paragraph 7 of the Advance Version text also contains a square-bracketed reference to “sub-national strategies”. The paragraph “[r]equests developing country Parties, when developing and implementing their national strategies or action plan, [or sub-national strategies] to address, inter alia, drivers of deforestation and forest degradation...”. Paragraph 7 goes hand-in-hand with sub-paragraph 5(a): if the reference to sub-national strategies is removed from or retained in sub-paragraph 5(c) then it should also be removed from or retained in paragraph 7.

#### *Interim sub-national approach*

18. If a sub-national approach is permitted under the REDD-plus mechanism, policy makers may wish to consider putting in place a process to ensure the carbon effectiveness of such an approach (i.e. its environmental integrity), and a process which requires the developing country Party to outline how it proposes to move towards a national strategy for REDD.
19. With this objective in mind, and if developing country Parties agree to the option of adopting a sub-national approach to REDD, those Parties may want to consider inserting the following conditions into the text to protect their position:
- that a sub-national approach only be accepted as an interim approach, with the over-arching objective of moving to a national approach as soon as is practicable;
  - that project-level activities be excluded;
  - that forest emission monitoring and reporting take place on a national basis; and
  - that an independent REDD assessment be conducted which establishes that a sub-national strategy is necessary on an interim basis and is carbon effective (e.g. the question of national leakage has been addressed).
20. For the purpose of conducting an independent REDD assessment, the REDD-plus mechanism could establish a Consultative Group of Experts which would have to assess the following policy issues, on which we offer no view:
- whether the sub-national approach is carbon effective, i.e.:
    - how will the issue of national leakage will be addressed? and
    - which level of government will bear the liability for reversals (loss of permanence)?
  - whether an interim sub-national approach is the only feasible option for that country having regard to the cost efficiency of a sub-national approach compared to a national approach which assesses:
    - the cost of MRV at both levels;
    - the cost of implementing REDD policies and core legislation at both levels; and
    - opportunity cost of REDD activities compared to agriculture and timber revenues at both scales;

- any equity implications of the sub-national approach (e.g. for land tenure and benefit sharing); and
- the country's proposed path and timeline for it to transition its sub-national approach into a permanent national REDD strategy or action plan.

21. The Consultative Group of Experts (CGE) could be established under guidance of the proposed REDD Board (see paragraphs 81 and 82 below on Institutional framework), or alternatively under a SBSTA guided process.

#### *Drafting suggestions*

22. Although sub-national approaches to REDD represent a risk of emissions leakage, the practical reality of the manner in which REDD has and is developing in many provinces around the world suggests that the approach should not be abandoned, but rather, a compromise should be sought. The compromise suggested in this note is to accept a sub-national approach, subject to the condition that it be interim and be supported by an independent assessment.

23. If this objective is desired, the following amendments could be inserted in the Advance Version text:

- In paragraph 5 – insert the following provisions:
  - (a) *A national strategy or action plan [and, if appropriate, **an interim** sub-national\* strategy] [as part of their low carbon emission strategies and in accordance with provisions for enhanced action on mitigation and to insert a footnote to the following effect “*
  - (b) *A national forest reference emission level and/or forest reference level, or if appropriate, **an interim** sub-national forest reference emission level[s] and/or forest reference level[s], taking into account ...*
  - (c) *[no change to text in Advance Version]*

**Footnote: \*The term “sub-national” in this paragraph refers to provincial-level activities, and does not include project-level activities”.**

- Insert paragraph 5 bis:
 

**“Decides that a developing country Party will be permitted to adopt a sub-national approach subject to the following conditions:**

  - (a) That the approach be an interim approach, with the overall objective of moving to a national approach as soon as practicable;**
  - (b) That forest monitoring and reporting take place on a national basis**
  - (c) That the sub-national strategy does not constitute a project-level approach; and**
  - (d) That the sub-national strategy be subject to an independent REDD assessment conducted and approved by the Consultative Group of Experts.”**
- In paragraph 7 – to retain the reference to “or sub-national strategies”.

#### **Monitoring, reporting and verification (Paras 5(c) and para 8)**

##### *Background information*

24. A key issue which remains unresolved in the Advance Version text is whether REDD activities should be monitored, reported and verified domestically by Parties in accordance with national procedures, or whether verification should involve an independent review under the UNFCCC

framework. “Verification” generally refers to the process of independently checking the accuracy and reliability of reported information or the procedures used to generate information<sup>4</sup>, although the term is occasionally used differently in international law<sup>5</sup>.

25. Some countries are concerned that if independent verification is required that this will mean that UNFCCC inspectors can enter their country to verify their claimed reductions, thus breaching their national sovereignty. Indeed, this is already the case for developing countries which have ratified the Kyoto Protocol and which participate in the CDM mechanism. These Parties are subject to specific provisions that allow the verification of information through independent organizations called “designated operating entities”, which are accredited by the CDM Executive Board.
26. Therefore, the position at present is that the Parties have not reached agreement on whether external verification of REDD-plus results will be required (unless the REDD activities receive international support as a NAMA – in which case they must be subject to international verification: see discussion in paragraphs 30 – 34 below).

*Advance Version text*

27. The provisions of the Advance Version text which deal with MRV are:

- Paragraph 5(c) which contains a provision requiring developing countries to establish a “[robust and transparent national forest monitoring system for the monitoring and reporting of (REDD) activities...]). This entire paragraph remains square bracketed.
- Paragraph 8, which endorses a three-staged approach to REDD starting with the development of national strategies, moving to implementation, and evolving into result-based actions. However, the paragraph still contains square brackets at the end of the paragraph as follows: “... and evolving into result-based actions [that shall be fully measured, reported and verified];...”; and
- Paragraph 10, which requests SBSTA to develop modalities for MRV.

28. The Subsidiary Body for Scientific and Technological Advice (SBSTA) is usually the body which deals with technical issues surrounding REDD, such as how a country actually measures the carbon stored in a forest. When it comes to the more detailed aspects of MRV, the Advance Version text leaves a lot of work for SBSTA to do into the future. However, the issue as to whether MRV should be required at all is essentially a political one which should be addressed in the text of the REDD decision itself.

29. For REDD to be effective, the REDD-plus mechanism must have a system in place which ensures that the reductions in deforestation which are claimed by a Party are valid. The provisions of the Advance Version text imposing MRV obligations are crucial in this respect and should be retained so that the text makes it clear that MRV is a core part of the REDD mechanism – whilst still leaving the details as to how MRV is to be done to SBSTA.

---

<sup>4</sup> UNEP (2007), at 22, which provides: “Verification is a process undertaken to test the accuracy of data or information provided by a Party to the MEA Secretariat. The process is undertaken by a third party, such as the Secretariat or an NGO, or by them in combination with other Parties to the treaty.”

<sup>5</sup> For example, Article 19 of the Basel Convention, entitled “verification,” is not about the verification of data, but rather establishes a procedure for individual states can initiate actions when it believes another state has violated the Convention.

*Copenhagen Accord, NAMAs and REDD*

30. The Copenhagen Accord contains some provisions relating to MRV which have implications for REDD. Under the provisions of the Copenhagen Accord, developing countries can nominate nationally appropriate mitigation actions (NAMAs) for which they seek international support (e.g. through finance, technology or capacity-building assistance). If the nominated activity actually receives international support, then it must be subject to international measurement, reporting and verification in accordance with any guidelines which the COP may adopt (see Copenhagen Accord, paragraph 5, last sentence).
31. It follows that if a country nominates REDD activities as a NAMA for which it seeks and obtains international support, then those REDD activities will be subject to the requirement for international MRV.
32. The Advance Version text shows that there is still uncertainty as to how MRV obligations for REDD-plus activities will fit with the obligation to undertake MRV for internationally supported NAMAs under the Copenhagen Accord.
33. Paragraph 10 of the Advance Version text:

*“10. Requests the SBSTA, at its [xx] session, to develop, as necessary, modalities for [measuring, reporting and verifying] anthropogenic forest-related emissions by sources ... [and consistent with any guidance for measuring, reporting and verification of nationally appropriate mitigation actions by developing country Parties agreed by the Conference of the Parties]...”*

34. If the policy objective is to avoid confusion and duplication of MRV obligations, then the text should ensure that any modality for MRV which the SBSTA may develop, is consistent with any MRV requirements which may be stipulated by the COP for NAMAs. To achieve this, the text in square brackets of paragraph 10 relating to NAMAs (as underlined above) should be kept.

*Drafting suggestions*

35. If the policy objective is to secure effective MRV as a core part of any REDD mechanism and, then the following drafting amendments should be made:
- Paragraph 5(c) – (the whole of which is presently square-bracketed), be retained (excluding the option of sub-national monitoring and reporting);
  - Paragraph 8 – retain the words “that shall be fully measured, reported and verified” which are presently square-bracketed; and
  - Paragraph 10 – retain the following two references to MRV (both of which are currently square-bracketed):
    - “[measuring, reporting and verifying]”, and
    - “[, and consistent with any guidance for measuring, reporting and verification of nationally appropriate mitigation actions by developing country Parties agreed by the Conference of the Parties],...”

## MRV for social and environmental safeguards

### *Background information*

36. The Advance Version text contains a list (in paragraph 2) of social and environmental safeguards for REDD-plus activities which must be “promoted and supported”. However, the Parties have not reached agreement as to whether, or how, compliance with these safeguards will be monitored, reported, and verified (the proposed obligations are still square-bracketed).
37. This is an important issue. Concerns have already arisen in one country which has introduced REDD regulations regarding the failure of those regulations to recognise customary land tenure in areas which can be used for REDD activities: see Annex A which contains a case study from Indonesia. This case study demonstrates the importance of including MRV for safeguards in the text establishing the REDD-plus mechanism.

### *Inclusion of a “Special procedures” provision for MRV*

38. One option for MRV would be to include a “Special procedures” provision, following the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. In this regard, it is noted that paragraph 2 (a) of the REDD Advance Version text could clearly establish as safeguard, the promotion and support of actions that complement or are consistent with the objectives of relevant international conventions and agreements.
39. In this context, the UN Human Rights Council offers an interesting model for MRV of specifically social safeguards: The Office of the High Commissioner for Human Rights provides these mechanisms with policy, research and logistical support for the discharge of their mandates.
40. Special procedures’ mandates usually call on mandate holders to examine, **monitor**, advise and publicly **report** on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Various activities are undertaken by special procedures, inter alia conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.
41. Special procedures are either an individual (called “Special Rapporteur”, “Special Representative of the Secretary-General” or “Independent Expert”) or a working group. The mandates of the **special procedures** are established and defined by the resolution creating them. The independent status of the mandate-holders is crucial in order to be able to fulfil their functions in all impartiality.

### *Advance Version text*

42. The provisions of the Advance Version text which relate to MRV for safeguards are:
- Para 5(c) which contains a requirement that developing country Parties monitor, review and verify that they have complied with the safeguards listed in paragraph 2 of the text. However, this obligation is still square bracketed and will only be secured if the square brackets are removed and the words retained.
  - Para 11 provides as follows:

“11. *[Requests the SBSTA to develop at its [xx] session, modalities for measuring, reporting and verifying the support provided by developed country Parties to support the implementation of safeguards ...]*”.

- Paragraph 12 which provides:

“12. *[Requests that the promotion and implementation of all activities referred to in paragraphs 3, 5, 7 and 8 above, including consideration of the safeguards referred to in paragraph 2 above, and early action, be supported in accordance with ~~paragraph 1(b) above and~~ relevant provisions agreed by the Conference of the Parties including...]*”.

43. Whilst the whole of paragraph 12 remains square-bracketed, the legal strength of the paragraph in relation to environmental and social safeguards is maintained by the words “including consideration of the safeguards referred to in paragraph 2 above” (as underlined above).

44. Conversely, the strength of the paragraph is weakened by the words in paragraph 12 “paragraph 1(b) above and” (note: these are currently square-bracketed). This is a reference to the safeguard that developing country Parties must have “Transparent and effective national forest governance structures, taking into account national legislation and sovereignty.” There is a concern that by including the cross-reference to paragraph 1(b) countries whose land tenure and forest governance systems fail to recognise or respect customary land tenure will seek to rely on those systems to justify the manner in which they implement their REDD obligations.

#### *Drafting suggestions*

45. In order to be effective, the environmental and social safeguards listed in paragraph 2 must be subject to MRV. To achieve this, one could:

- Paragraph 5(c) – retain the words “and the safeguards referred to in paragraph 2 above”, which are currently square-bracketed;
- Paragraph 11 – retain the whole of paragraph 11, (which is currently square-bracketed), so that the manner in which developed countries will support the implementation of safeguards is subject to MRV;
- Paragraph 12 – retain the reference to safeguards in the chapeau to paragraph 12 *but* delete the reference to the words “paragraph 1(b) above and”.
- Paragraph 14 – insert the words in bold/underline:

*“Requests the [Subsidiary Body for Scientific and Technological Advice] to develop modalities **and special procedures** for the promotion and implementation of the development of national strategies or action plans, policies\_and measures and capacity-building, the implementation of national policies and measures, and national\_strategies or action plans and, as appropriate, sub-national strategies, that could involve further capacity building, technology transfer and results-based demonstration activities, by its [xx] session, for adoption\_by the Conference of the Parties at its [xx] session.”*

**Should market-based approaches be permitted (Para 12)?***Background information*

46. The issue of whether the REDD mechanism should provide financial incentives for market-based activities is very contentious.

47. The arguments against allowing market-based approaches for REDD include the following:

- Concerns that developing country might not have the time to put the necessary social and environmental safeguards in place before market-based trading begins, particularly if trading is allowed in the early stages of development of the REDD mechanism. For example, the Advance Version text proposes a three-phased approach proposed to the development of national REDD systems (see paragraph 8). Many commentators argue that market-based trading should not be permitted until a country enters Phase 3, i.e. its forest monitoring and regulatory systems are in place and operating effectively.
- There is concern that private investors may place pressure on governments to allow the generation of market-based credits without first fully addressing the environmental and social impacts of REDD projects.
- REDD credits which are sold into the compliance market could be used as offsets by developed countries to avoid making more expensive cuts in their own emissions. This problem is exacerbated by the absence of stringent targets for developed countries. An exclusive fund-based REDD mechanism would close this loophole by not generating REDD credits which can be used as offsets.
- Given that it appears that the credits are likely to be received by national governments rather than sub-national or private entities under the proposed REDD-plus mechanism (although this is not yet decided), it will be necessary to ensure that transparent and efficient benefit-sharing mechanisms are in place before market-based activities commence and those credits are on sold into the market. The concern to ensure the transparent, fair and equitable distribution of benefits, in circumstances where forest governance is often poor, is a concern which affects both private investors and indigenous peoples/local communities. Unless land tenure and benefit-sharing issues are resolved by national governments before trading commences there is a risk that market trading could increase social conflict.
- The risk that allowing forest carbon to be traded may lead to a crash in the price of carbon affecting mandatory markets prices such as the CDM if REDD credits flood the market.

48. The arguments in support of allowing market-based approaches to REDD include:

- The potential of a market-based approach to mobilise significant revenue from private finance into the REDD market, (although this would be subject to sufficient demand being generated for purchasing REDD credits through the imposition of national or international compliance obligations, which are yet to be established); and
- Enhancing the cost-effectiveness of mitigation activities by allowing the market to choose the least-cost alternative for mitigation through the trading mechanism.

*Phased-approach, result-based actions and trading*

49. Paragraph 8 of the text establishes the scene in which REDD activities will take place. It establishes a three-phased approach for the development of REDD as follows:

- Phase 1 - the establishment of national plans;
- Phase 2 - the implementation of those plans; and
- Phase 3 - “result-based actions”, i.e. an actual reduction in carbon emissions which can be measured and verified.

50. The Parties have not yet agreed what sort of “result-based actions” will be permissible under Phase 3, and how developing country Parties will be paid for them. For example, should the result-based actions be REDD activities which are undertaken by governments for which they are paid from an international fund? Should they be market-based activities which involve trading credits and the private sector? Or should they be a combination of both?

51. Many commentators argue that trading should not be permitted until countries have reached Phase 3 and can demonstrate that they have proper national systems in place to ensure the integrity of a market based approach.

*Advance Version text*

52. Para 12(b) of the Advance Version text attempts to answer the question of what sort of “result-based actions” will be permissible. The paragraph has had a new provision inserted into it (although still in square brackets) which now lists market-based actions as a standalone activity which could receive financial incentives under the draft decision. It should be noted that this new provision is not linked to the requirement that the market activities be “result-based”, i.e. a requirement that they must generate carbon reductions which can be both measured and verified.

53. Paragraph 12 currently reads:

*“12. Requests that the promotion and implementation of all (REDD) activities...be supported in accordance with ... relevant provisions agreed by the Conference of the Parties including:*

*(a) ....*

*(b) Provision for various approaches, including opportunities for using market (sic)<sup>6</sup>, to enhance the cost-effectiveness of, and to promote, mitigation actions] ...”.*

54. This new provision (which is underlined) appears to have been inserted in response to the Copenhagen Accord. Paragraph 7 of the Accord provides: “We decide to pursue various approaches, including opportunities to use markets ... to promote mitigation activities.”

55. The issue of financing for mitigation actions and, in particular, whether the UNFCCC framework should embrace market-based approaches, is also being addressed in another chapter of the Advance Version text: see Advance Version text, Chapter VIII on “Various approaches, including

---

<sup>6</sup> Note: there is a typographical error in the draft text which refers only to “market” but is probably intended to refer to “market-based approaches”.

opportunities for using markets, to enhance the cost-effectiveness of, and to promote, mitigation actions”, paragraph 5 on “Market-based approaches”.

### *Drafting suggestions*

56. If the policy objective is to ensure that market based approaches (assuming that such an approach is agreed at all) are result-based, the following amendments should be made in relation to the Advance Version text:

- In paragraph 12 – delete the reference to markets (as noted in the strikethrough below):

*“12. Requests that the promotion and implementation of all (REDD) activities...be supported in accordance with ... relevant provisions agreed by the Conference of the Parties including:*

*(a) [Provisions for enhanced action on the provision of financial resources and investment];*

*(b) ~~Provision for various approaches, including opportunities for using market (sic), to enhance the cost-effectiveness of, and to promote, mitigation actions]~~ [for result-based actions a flexible combination of funds and market-based sources subject to modalities to be agreed by the Conference of the Parties at its [xx] session];*

*(c) ...”.*

- BUT, in paragraph 12 – if the deletion suggested above is not agreed, to insert a provision in sub-paragraph 12(b) which reads:

*“12(b) [Provisions for various approaches, including opportunities for using market-based approaches **which are result-based and to commence in the final phase noted in paragraph 8**, to enhance the cost-effectiveness of, and to promote, mitigation actions] and [for result-based actions a flexible combination of funds and market-based sources subject to modalities to be agreed by the Conference of the Parties at its [xx] session]”.*

## **REDD-plus and NAMAs**

### *Background information*

57. There is ongoing uncertainty as to how REDD-plus activities will fit with nationally appropriate mitigation actions (NAMAs). Developing country Parties can nominate their NAMAs under the Copenhagen Accord. With regard to REDD, it is not clear whether REDD activities will be considered to be the same activities or different activities. For example, when it comes to seeking international assistance to finance REDD activities, will a developing country need to choose between participating in the REDD-plus mechanism or following the NAMA process?

58. This uncertainty is reflected in the Advance Version of the text which currently reads:

*“1. Affirms that the implementation of activities referred to in paragraph 3 below:*

*(a) – (h)*

*(i) Be [integrated into nationally appropriate mitigation actions] [developed within the context of a low greenhouse gas emission strategy];”.*

59. Arguments in support of a common REDD process or methodology include:

- The need to avoid the duplication or multiplication of processes for REDD which may increase complexity and the cost of compliance for developing countries;
- The need to ensure that REDD activities under NAMAs are subject to the same, rigorous processes for MRV and safeguards as for REDD activities under the REDD-plus mechanism.
- The need to avoid the potential for countries to choose either the REDD-plus approach or the NAMA route depending on which is likely to present the easiest process with the fewest safeguards, thus allowing the lowest common denominator to govern the activity.

60. However, it is also important that the draft REDD text is sufficiently flexible so that NAMAs are able to include REDD-plus components under the REDD-plus mechanism, but that developing country can seek additional assistance to that which might be provided to them under the REDD-plus mechanism. For example, a NAMA package of actions might include some activities that are eligible for REDD-plus and some that are not, or a country may seek to supplement the financial incentives it receives under the REDD-plus mechanism by also seeking support for the same action as a NAMA. Care must be taken to ensure that double-counting (or double-payment) is avoided where this occurs. In any event, care must be taken to ensure that the emission reductions for REDD activities under NAMAs remain real that and the minimum social and environmental safeguards as set out in the Advance Version text are met.

#### *Drafting suggestion*

61. This note does not provide any drafting suggestions on this issue. It may be appropriate for further advice to be sought as the negotiations on this issue develop in Bonn.

#### **Omission: Quantitative goal in Preamble**

#### *Background information*

62. The Preamble of the Advance Version text does not include a quantitative goal. It currently reads:

*“[Affirming (... for any quantitative goal to be inserted or moved elsewhere)]”*

63. The purpose of stating a quantitative goal in the Preamble is to “set the scene” by establishing the overall objective of the REDD-plus mechanism.

64. The argument against setting a quantitative goal it is that REDD activities are intended to be voluntary (as stated in the Advance Version text, paragraph 1(c)), and some developing countries are concerned that a target may be used to compel them to participate in REDD. However it should be noted that the preamble to a treaty is generally considered not to be binding but rather is used to guide the interpretation of a treaty, if required.

#### *Drafting history*

65. In terms of the drafting history, the draft REDD decision AWG-LCA, item 3, dated 15 December 2009 contained a reference to a quantitative goals and listed three possible options. However, by the conclusion of COP 15, the quantitative goal had been placed in square brackets, which is where it remains. This was apparently done because it was hoped that there would be a legally binding agreement as an outcome of Copenhagen and it was thought that the goal for reducing

emissions from deforestation and forest degradation may appear elsewhere. Given that this has not occurred, and that the Parties are likely to reach agreement on a REDD-plus mechanism well before any agreement on an overarching legally binding agreement, it might now be appropriate to re-insert a quantified goal for REDD.

### *Examples of quantitative goals*

66. Various quantitative goals have been proposed. Examples include:

- *“Affirming that all Parties shall collectively aim to reduce emissions and increase removals by halting and reversing in forest cover and carbon loss in developing countries”<sup>7</sup>*
  - Note: the problem with this definition is that it only addresses deforestation and does not extend to forest degradation.
- *“All Parties should collectively aim to reduce gross emissions from the forest sector in developing countries by ending deforestation and degradation of natural forests and related emissions, by 2020.”<sup>8</sup>*
  - Note: this is a more comprehensive goal as it addresses both deforestation and forest degradation.
- *“Affirming that all Parties shall collectively aim to reduce emissions and increase removals by halting and reversing forest cover and carbon loss from deforestation and forest degradation in developing countries by 2030, and by reducing gross deforestation and forest degradation in developing countries by at least 50 per cent of current levels by 2020...”<sup>9</sup>*
- *All Parties shall collectively aim to reduce greenhouse gas emissions from deforestation and forest degradation of natural forests in developing countries, with the objective of stopping deforestation and degradation of natural forests and related emissions completely, by 2020.<sup>10</sup>*

67. For a goal which extends to the conservation of existing carbon stocks, the enhancement of carbon stocks, and the sustainable management of forests, an additional objective is:

- *All Parties shall collectively aim to conserve existing natural and modified natural forests by 2020, ceasing conversion and instead restoring degraded natural forest. In addition, all parties should undertake the sustainable management of forests and enhance forest carbon stocks.<sup>11</sup>*

### *Drafting suggestions*

68. It is essentially a policy issue as to which quantitative goal is adopted in the REDD-plus mechanism, and therefore this note does not recommend any specific quantitative goal.

69. Nevertheless, it is suggested that as a matter of principle, the draft REDD text should include in its Preamble a quantitative goal in order to identify the overall policy objective of the REDD-plus mechanism and to provide guidance as to how the decision should be legally interpreted in the future.

<sup>7</sup> This goal was cited in the draft REDD text, AWG-LCA 8, item 3, 15 December 2009 @ 9:00, Option 1.

<sup>8</sup> This goal has been advocated by the Ecosystems Climate Alliance (ECA).

<sup>9</sup> This goal was cited in the draft REDD text, AWG-LCA 8, item 3, 15 December 2009 @ 9:00, Option 2.

<sup>10</sup> This goal has been advocated by the CAN REDD group.

<sup>11</sup> Again, this goal has been advocated by the CAN REDD group.

## Omission: Benefit-sharing arrangements

### Background information

70. The Advance Version text is silent on the question of how REDD revenues will be shared. This may be explained in part by the fact that as yet there is no agreement on the type, source, or system of financing for REDD-plus making it difficult to establish a clear method for distributing any eventual benefits.
71. It is anticipated that, if financial incentives are paid directly to national governments, then benefit-sharing arrangements may need to be put in place which address how the benefits of REDD activities will be shared with those who are participating in, or will be affected, the REDD activities. These may include: sub-national levels of government (provincial, district and local government); indigenous peoples and local communities; project-developers, carbon brokers and non-government organisations (e.g. for social development programs).
72. Parties could therefore consider whether the Advance Version text should require developing country Parties to ensure that they have in place a fair and equitable system to guide the distribution of REDD benefits as part of their REDD national strategies or action plans. This requirement could be included as one of the safeguards under paragraph 2 of the REDD-plus mechanism.

### Drafting suggestions

73. If this objective is desired, the following insertions could be made in the Advance Version text:
- In paragraph 2 – insert the words (in bold/underlined):
 

“2. Further affirms that when undertaking activities referred to in paragraph 3 below, the following safeguards should be promoted and supported:

(a) – (g)

**(h) Actions to ensure the fair and equitable sharing of benefits.**”
  - In paragraph 7 – insert the words (in bold/underlined)
 

“7. Requests developing country Parties, when developing and implementing their national strategies or action plan, [or sub-national strategies] to address, inter alia, drivers of deforestation and forest degradation, land tenure issues, forest governance issues, **fair and equitable benefit-sharing arrangements**, gender considerations and the safeguards identified in paragraph 2 above, ensuring the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities;”

## Omission: Protection and conservation peat soils

### Background information

74. The Advance Version of the draft text does not contain any provision for protecting, conserving and restoring the world’s peat soils, which account for 6 percent of all global CO<sub>2</sub> emissions. Peat soils are a central part of many countries’ plans to reduce their emissions.

*Drafting suggestions*

75. If the Parties consider that peat lands should also be protected under the Advance Version text, the text should refer to all five carbon pools named by the IPCC (2006) to calculate Land Use and Forestry emissions, including organic *soil carbon*. This will enable “positive incentives” for maintaining forests with high soil carbon stocks such as peat lands:

76. If this objective is desired, then the following amendments should be inserted in paragraph 3:

“3. *Decides that developing country Parties should contribute to mitigation actions in the forest sector by undertaking the following activities:*

*(a) Reducing emissions from deforestation;*

*(b) Reducing emissions from forest degradation;*

*(c) Conservation of forest **and organic carbon** stocks;*

*(d) Sustainable management of forest;*

*(e) Enhancement of forest **and organic carbon** stocks;”*

**Omission: Institutional framework***Background information*

77. The Advance Version text does not contain any provisions regarding the institutional arrangements, compliance, enforcement or dispute resolution mechanisms for the proposed REDD-plus mechanism. However, institutional arrangements are central to its effectiveness.

78. The history of the REDD negotiating text on institutional arrangements is as follows:

- Non-paper No 39 from Barcelona contained some provisions (paragraphs 19 – 21) regarding institutional arrangements.
- In the next draft text (AWG-LCA 8, Item 3, 11 December 2009), paragraph 12 contained the provision “Agrees that the implementation of actions resulting from this decision [shall] [should] be supported in accordance with any provision of financial resources and institutional arrangements agreed by the Conference of the Parties...”.
- Draft text AWG-LCA, Item 3, 15 December 2009, paragraph 12 (d) proposed “[Establishing the REDD plus Committee and the REDD plus Fund under the authority and guidance of the [xx] governing body as provided in decision -/CP.15]
- Draft text 15 December 2009 (as at the end of COP 15) contained no provisions on institutional arrangements.
- Advance Version text contains no provisions on institutional arrangements.

79. Given the recent multiplication and fragmentation of REDD funding and development programmes (the UN-REDD Programme, World Bank’s Forest Carbon Partnership Facility, the Oslo-Paris Partnership, etc – not to mention the growing number of bilateral arrangements),

Parties may wish to consider the need for a centralised body to coordinate, manage and guide the implementation of the proposed REDD-plus mechanism under the UNFCCC framework.

*Proposal: REDD Board*

80. One option might be to establish a REDD Board which could have responsibility for, inter alia:

- coordinating the delivery of REDD programmes and financing, through a Secretariat;
- reviewing national action plans;
- managing, coordinating and operating the financing of REDD activities, including determining access to funding;
- supervising the monitoring, reporting and verification of REDD-plus activities; and
- ensuring the compliance of Parties with the requirements of the REDD-plus mechanism.

81. Who would sit on the REDD Board is a political question, but it would seem sensible for representation to be along the lines of representation on the Adaptation Fund Board, while also ensuring the representation of local and indigenous peoples.

*Drafting suggestion*

82. If this is a policy objective, a single umbrella body should be established. An institutional framework would assist to reduce conflicts and enhance coordination between different international or regional REDD-plus initiatives and to facilitate the cooperation and implementation at the national level.

83. To achieve this, the following provision could be inserted into the Advance Version text:

*“15. Decides to establish a REDD Board to guide the development and implementation of the REDD-plus mechanism, which will operate under the authority and guidance of the Conference of the Parties, the procedures for which will be agreed by the Conference of the Parties.”*

*16. Decides to establish [to request the REDD Board to establish/to request SBSTA to develop the modalities for] a Consultative Group of Experts to advise the REDD Board on technical matters under this decision.”*

84. This is a very simple, straightforward suggestion which recognises the difficulty of introducing new provisions at this late stage in the negotiations.

## **Annex A: Case study: Committee on the Elimination of all Forms of Racial Discrimination expresses concern over REDD regulations in Indonesia**

Indonesia is the first country to introduce a national legislative framework for REDD activities. The main law regulating REDD activities in Indonesia is the *Regulation on Procedures for the Implementation of REDD (30/2009)*.<sup>12</sup> This Regulation sets out a process for the application, assessment, approval and issue of credits for REDD projects.

The REDD Regulation has been the subject of some criticism. The Regulation adopts the same forestry definitions as those in the *1999 Forestry Law*,<sup>13</sup> which perpetuate the deficiencies in the *1999 Forestry Law* which fail to recognize customary land ownership claims over land located in the State forest zone. The Regulation also fails to establish any process or requirement to ensure the consultation and participation of indigenous peoples and local communities in the REDD development process. Nor does the regulation recognise the right to free, prior and informed consent of indigenous and local communities with the consequence that the Minister for Forestry is able to approve a REDD project in the absence of consent.

In response to a letter of complaint from a coalition of Indonesian non-government organisations (FPP, Sawit Watch, AMAN and others),<sup>14</sup> the UN Committee for the Elimination of Racial Discrimination, established under the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, expressed concerns about the *Regulation on Implementation Procedures for REDD (30/2009)* in a letter to the UN Ambassador for Indonesia dated 13 March 2009. In its letter, the Chairperson of the Committee outlined the Committee's concerns about the failure of the Government of Indonesia to recognise the rights of indigenous people under both its forestry laws, and more recently, under its new REDD regulations.

In particular, the CERD Committee noted:

*"...the Committee has received information according to which Indonesia continues to lack any effective legal means to recognize, secure and protect indigenous peoples' rights to their lands, territories and resources. For instance, it seems that Indonesia's 2008 'Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation' reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to indigenous peoples in forests."*<sup>15</sup>

On 29 July 2009, the NGO coalition sent a follow-up request to CERD asking for further consideration of Indonesia's REDD Regulations.<sup>16</sup>

On 28 September 2009, the Chairperson of the Committee wrote again to Indonesia's UN Ambassador, reiterating the Committee's concerns that the property rights of indigenous people were not appropriately taken into account in the formulation of the REDD Regulation, and expressing concern that indigenous peoples' rights to their lands, territories and resources may not be sufficiently protected under the Regulation.<sup>17</sup> The Committee asked for a reply by 30 November 2009.

The Government of Indonesia has not yet responded to the Committee.

In March 2010, the Government of Indonesia announced that it was reviewing its REDD Regulations with a view to consolidating the three regulations and making them clearer and simpler.

<sup>12</sup> Decree (PerMenHut) P.30/Menhut-II/2009, came into force on 1 May 2009.

<sup>13</sup> Article 1(3) provides "State forest is forest on land unencumbered by proprietary rights"; and Article 1(5) provides "Customary forest is state forest within an area of customary community [tenure]": *Regulation on Implementation Procedures for REDD (30/2009)*.

<sup>14</sup> [http://www.forestpeoples.org/documents/asia\\_pacific/indonesia\\_cerd\\_follow\\_up\\_feb09\\_eng.pdf](http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_follow_up_feb09_eng.pdf)

<sup>15</sup> Letter dated 13 March 2009 from the Chairperson of the Committee for the Elimination of Racial Discrimination to the UN Ambassador for Indonesia: [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia130309.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf).

<sup>16</sup> [http://www.forestpeoples.org/documents/law\\_hr/cerd\\_indonesia\\_urgent\\_action\\_jul09\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/cerd_indonesia_urgent_action_jul09_eng.pdf).

<sup>17</sup> [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia28092009.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia28092009.pdf)

### **Other references**

*REDD-plus after Copenhagen: what does it mean on the ground?*, REDD-Net COP 15 Briefing, by Allison Bleaney, Leo Peskett, David Mwayafu,  
[http://www.recoftc.org/site/fileadmin/docs/publications/The\\_Grey\\_Zone/2010/COP15Briefing.pdf](http://www.recoftc.org/site/fileadmin/docs/publications/The_Grey_Zone/2010/COP15Briefing.pdf)

*REDD+ 2010 Moving Forward for People and Forests*, RECOFTC,  
[http://recoftc.org/site/fileadmin/docs/publications/The\\_Grey\\_Zone/2010/REDD\\_2010\\_MovingFINAL.pdf](http://recoftc.org/site/fileadmin/docs/publications/The_Grey_Zone/2010/REDD_2010_MovingFINAL.pdf)

*Taking Stock of Copenhagen: Outcomes on REDD+ and Rights, Forest Peoples Programme*, by Francesco Martone, Jan 2010  
[http://www.forestpeoples.org/documents/ifi\\_igo/redd\\_cop15\\_copenhagen\\_review\\_jan10\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/redd_cop15_copenhagen_review_jan10_eng.pdf)

*Bonn climate talks, from Trading Carbon*, published by Point Carbon News, May 2010.  
[http://www.pointcarbon.com/polopoly\\_fs/1.1445928!Bonn\\_Climate\\_Talks.pdf](http://www.pointcarbon.com/polopoly_fs/1.1445928!Bonn_Climate_Talks.pdf)