



Reducing Emissions from Deforestation and Forest Degradation (REDD):

A Guide for Landowners and
Forest Communities in the Pacific

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The Environmental Defender's Office NSW ('EDO') is a non-profit community legal centre specialising in public interest environmental law. The EDO provides legal advice and representation, engages in policy and law reform, delivers community programs such as community legal education, and provides technical and scientific advice in public interest environmental matters.

The EDO also has an active International Program, providing assistance to community groups and non-government organisations in Papua New Guinea, the Solomon Islands, Fiji and across the South Pacific region. Assistance offered by the EDO includes legal advice and litigation support, policy and law reform support, training and lawyer exchanges, and volunteer placements.

For more information about the EDO, please visit: www.edo.org.au/edonsw

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Disclaimer

This publication is intended to provide general information for landowners and forest communities in the Pacific about 'reducing emissions from deforestation and forest degradation' ('REDD'). While all care has been taken in the preparation of this guide, it is not a substitute for legal advice in individual cases.

Currency

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This book has been printed on 100% recycled paper.

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INTRODUCTION

This booklet is designed to help landowners and forest communities in the Pacific region that are thinking about participating in projects for 'reducing emissions from deforestation and forest degradation' ('REDD'). This is a new and complex type of forest project.

REDD projects aim to stop the clearing of tropical forests ('deforestation') that occurs as a result of logging, agriculture, plantations or other land-use changes, such as mining. It also aims to reduce the 'degradation' of tropical forests, which occurs when the amount of living plant material in a forest is reduced, or the forest is damaged. Forest degradation can occur in a variety of ways, including cutting down certain types of trees in a forest, removing trees to make roads, or by clearing small plots for growing food crops.

The main aim of REDD is to help fight global climate change.

The goal of this booklet is to:

- provide an introduction to the idea of REDD;
- explain the main concepts and practical issues so that you can understand what REDD projects are all about; and
- explain some important legal issues and rights that you should think about if your community is interested in being involved in a REDD project.

I. BACKGROUND INFORMATION

What is climate change?

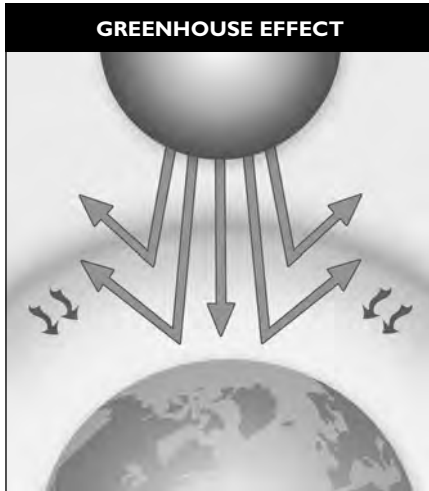
'Climate' is used to describe the long term weather patterns of a particular place, including the amount of rainfall a place normally receives, and the normal temperatures it experiences.

Climate change (sometimes called 'global warming') refers to changes to the earth's climate that result from human activities. The most significant human activity that contributes to climate change is the burning of 'fossil fuels' (such as coal, oil and gas) for energy, for example to provide homes with electricity, and fuel for cars.

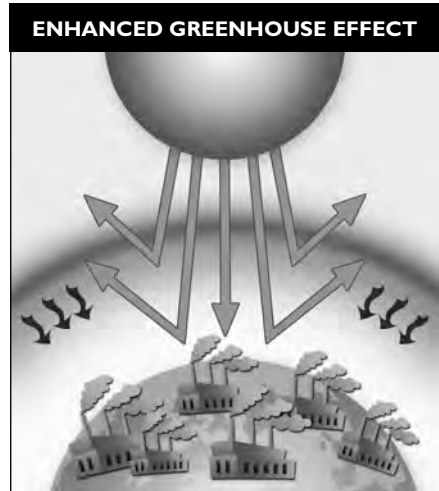
Activities that contribute to climate change create 'greenhouse gases' ('GHG'). These gases occur naturally in the earth's atmosphere, but are now being created at much higher levels (compared to the past) due to human activities. The increase

in GHG means that more of the sun's energy is trapped in the earth's atmosphere, which leads to average global temperatures increasing.

The diagrams below depict how climate change occurs by a process called the 'greenhouse effect':



The Earth is covered by a blanket of gases which allows energy from the sun to reach the Earth's surface, where some of it is converted to heat energy. Most of the heat is re-radiated towards space, and then some is trapped and re-radiated back to the ground by greenhouse gases in the atmosphere. This is a natural effect which maintains the Earth's temperature at the level needed to support life.



Human activities – particularly burning fossil fuels (coal, oil and natural gas), agriculture and land clearing – are generating more greenhouse gases. Greater concentrations of greenhouse gases will trap more heat and raise the Earth's surface temperature.

Increasing temperatures will have complicated impacts on the earth's climate, and different countries and communities will experience different changes. In the Pacific region, changes that are likely to happen include different weather patterns (such as reduced rainfall), more extreme weather events such as storms, and rising sea levels.

These changes to climate will have negative impacts on the environment, as well as create new social, cultural and economic issues for communities. Ecosystems such as coral reefs and wetlands may be damaged, the plant and animal species ('biodiversity') found in particular places will change, freshwater may become less available and coastal erosion will increase. Food supplies may become limited, new health issues may arise and infrastructure such as roads may be damaged more often.

Why is protecting forests important to address climate change?

To understand why forests are so important for addressing climate change, it is necessary to understand that forests store large amounts of carbon. Carbon is stored inside every living thing. In forests, this carbon is stored in the leaves, branches and trunks of trees, as well as in the soil of forests.

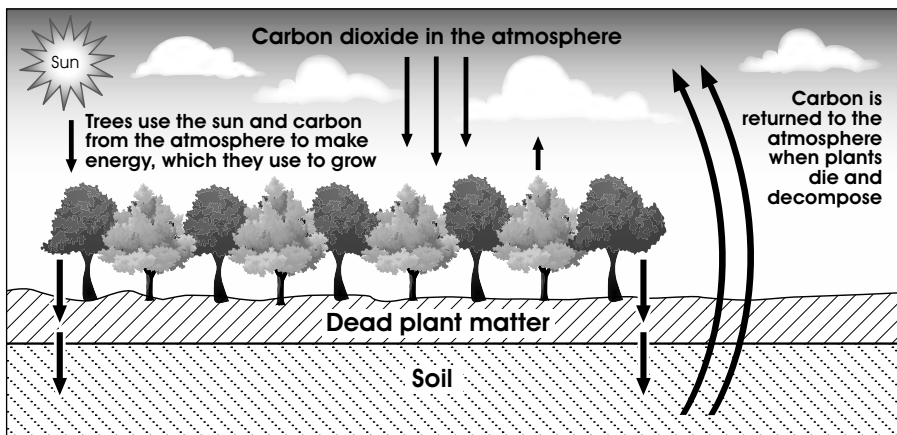
When forests are logged, cleared or damaged ('deforestation' and 'forest degradation'), much of this carbon moves from the trees and soils back into the atmosphere as a gas, called carbon dioxide. Carbon dioxide is one of the main GHG that contribute to climate change. Therefore, clearing forests directly adds large amounts of GHG to the atmosphere, contributing to climate change.

Deforestation causes about 17% of all global human GHG emissions, and most of this is in forested tropical nations in the Pacific, South East Asia, Africa and South America. Therefore, stopping deforestation will significantly reduce the total GHG going into the atmosphere.

Forests also absorb large amounts of carbon dioxide from the atmosphere. They store that carbon in the plants and the soil. Forests therefore help to absorb GHG back from the atmosphere, and so reduce the total amount of GHG emissions in the atmosphere.

So, keeping forests standing is important to fight climate change not only because this will reduce GHG emissions going into the atmosphere, but keeping forests standing will mean that more carbon dioxide, the main GHG, is taken out of the atmosphere and stored in the forest.

The diagram below shows how carbon moves between the trees and soil into the atmosphere.



Finally, it is important to recognise that forests will help forest communities to cope better with future impacts of climate change, because forests capture and store water better than cleared land. They provide protection against extreme weather such as storms. They also protect soil from erosion, keeping coral reefs healthier by reducing the amount of soil being washed into the ocean. These benefits of forests will assist forest communities to protect their livelihoods in the face of a changing climate that may make agriculture, or other activities, more difficult.

2. UNDERSTANDING 'REDD'

What is 'REDD'?

'REDD' stands for 'reducing emissions from deforestation and forest degradation'. It is an idea that has been proposed internationally as a way to reduce GHG emissions in developing countries that have tropical forests, while at the same time providing opportunities for sustainable development and conserving biodiversity.

The concept is for developed countries (like Australia and the United States) to pay developing countries (like Papua New Guinea and Brazil) that have tropical forests to protect and conserve them. The idea is to make forests more valuable left standing, than if logged or cleared.

In addition to funding for stopping deforestation and forest degradation, funding may also be available for activities like conserving forests, sustainably managing forests, and increasing the 'carbon' in forests (for example by planting trees). These extra activities are referred to as 'REDD plus'.

The development of 'REDD' at the international level and national level

Over the past few years, the concept of REDD has been discussed amongst many countries participating in international negotiations about climate change.¹ Because REDD will be very complex to put into practice, at present there is no final agreement, or international system of rules, to guide how REDD will operate. Discussions at the international level are ongoing.

¹ The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol together set out international law on climate change. Under the Kyoto Protocol, developed countries have targets for GHG emissions reductions to be achieved by 2012. Countries are currently negotiating what agreement will be in place after 2012. REDD has been a major part of these discussions.

In the meantime, those countries that will be able to participate in REDD (developing countries with tropical forests) are working on developing their own legislation and policies. In addition, other groups such as non-government organisations (NGOs) and banks are getting started by developing voluntary 'pilot projects'. These pilot projects are 'test' REDD projects, to help people to 'learn by doing'. The experiences gained from pilot projects are also likely to contribute to the development of an international agreement on REDD, as well as help national governments develop their own legislation and policies.

What are carbon offsets and carbon credits?

Many developed countries undertake projects in other countries designed to 'offset' the amount of GHG they emit, under the current international rules governing climate change. Businesses or other organisations may also undertake voluntary projects to reduce GHG emissions. These projects may be renewable energy, energy efficiency, tree planting and, in the future, REDD projects.

The emissions reductions generated by these types of projects can be used as 'offsets' against the GHG emissions of the country or the business. This means that because they have reduced the GHG emitted in another place (through their project), they do not have to reduce their own emissions as much. The emissions reductions from their project are called 'carbon offsets' and are measured in tonnes of 'carbon dioxide equivalent' ('CO₂-e').

Carbon offsets may also be called 'carbon credits'.

1 carbon credit = 1 carbon offset = 1 tonne CO₂ –e

In the case of REDD, carbon offsets are proposed to be created by reducing the rate of deforestation (forests being cleared) and forest degradation (damage to forests that reduces the amount of vegetation). Carbon offsets, or carbon credits will be created by demonstrating a lower rate of deforestation or forest degradation *than would have happened without the project*.

What is carbon trading?

Carbon trading generally refers to buying and selling the carbon credits created from GHG emission reduction projects. This enables countries or businesses to make money from selling carbon credits from their projects, if they do not need those credits to offset (or cancel out) their own emissions.

In developed countries, people are becoming increasingly concerned about climate change. Individuals and businesses are now willing to pay money to compensate for their own GHG emissions from activities such as airline travel, which produces very high GHG emissions.

Purchasing a carbon offset or carbon credit has the effect of providing compensation for an individual's or an organisation's own emissions. As a result, a market now exists for buying and selling carbon credits. This practice is often called carbon trading.

Where REDD projects are set up, the carbon offsets, or carbon credits created by a lower rate of deforestation or forest degradation than would have happened without the project, may be able to be bought and sold on international carbon markets, through 'carbon trading'.

Who provides funding for REDD projects? Why?

Funding of REDD projects is currently occurring on a 'case by case' basis for pilot projects. Upfront funding is needed to help establish pilot projects, because there is no current international agreement that requires developed countries to provide the funding for REDD. Currently, the following organisations may provide funding for REDD:

- The World Bank² and the United Nations³ have both established programs to provide capacity building for those countries who are interested in participating in REDD. They work primarily with governments.
- Some developed country governments, such as Australia, are also providing funding to the governments of developing countries (such as Papua New Guinea), to help them develop their policies and institutions to prepare for REDD.
- Many conservation or environmental NGOs are becoming involved in REDD projects, and may provide some financial support. Conservation NGOs may be interested in REDD because it provides a good opportunity to conserve forests, as well as helping forest communities to find alternative livelihoods to destructive activities like logging.
- Banks and other financial organisations are also interested in REDD, and in some cases are providing funding to set up pilot projects, because it provides them with opportunities to get involved in carbon trading.

Usually, a number of these partners will come together with landowners and forest communities to establish REDD pilot projects, and it is possible that more than one organisation contributes to the funding to help establish a project.

2 The World Bank has established a 'Forest Carbon Partnership Facility'. See: <http://www.forestcarbonpartnership.org/fcp/>

3 The United Nations ('UN') has established the UN-REDD Programme. This is a collaborative programme between the Food and Agriculture Organisation (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). See: <http://www.un-redd.org/>

Who will be involved in a REDD project?

There are likely to be a number of parties involved in any REDD project. They may contribute to the funding of the project, or they may contribute in other ways, such as helping to design and manage the project and provide practical assistance. The landowners and forest communities in and around the project area should be central participants in a project.

Often, an NGO, government body, international organisation or bank will also be involved. Usually, there is more than one of these organisations. Each will have a different role to play in the project. Generally, these organisations will be involved in designing and developing the project, and arranging for the sale of 'carbon credits' generated by the project. They should work together with landowners and forest communities at all stages.

The government, at both national and provincial or local level, is also likely to have some involvement in REDD projects. Governments will be interested as they will have a part in regulating and monitoring REDD projects over the long term and into the future, particularly when an international agreement is eventually made. National governments should be working to develop legislation and policy to guide REDD activities and projects in each country. Governments should also be working together with landowners and forest communities to make sure that landowner and community rights are protected, and that landowners and forest communities benefit the most from REDD.

What is the process to set up a REDD project?

Because there is no international agreement or set of rules that establish how REDD projects must operate, and national governments have not yet passed comprehensive legislation or policies to guide REDD, the only current option for landowners and forest communities wishing to be involved in REDD is to set up a voluntary pilot project. However, in the future this could change if an international system of rules is set up, and national laws are introduced.

If your community is approached about, or is contemplating being involved with a REDD project, there will probably be a number of parties, as discussed above ('the project partners'). These project partners should work together with the landowners and community to develop and establish the project. It is extremely important that the landowners and community be involved in every stage of the project.

The process for setting up a REDD project will be different for each one, depending on the specific local circumstances. However, the following steps are a general guide for the formal steps that may happen:

- The project partners enter into a 'memorandum of understanding' ('MOU'). A MOU is a document that sets out the common intentions and understanding between the project partners. The general aim is to set down in writing that the parties agree to work together to develop a REDD project. It may create legal obligations for those that sign it.
- Depending on how the project will be funded, the project partners may work to develop a 'project design document' ('PDD'). A lot of complex information will have to be determined if this is done. For example, the PDD will set out all the practical aspects of the project, such as the forest area and its boundaries, the proposed activities in that area that will stop deforestation (such as ecotourism projects, ranger employment projects, small-scale business opportunities, and better enforcement of illegal logging), who will monitor and report that the forest is remaining intact, and how this monitoring will be done. At this stage, there should be extensive consultation amongst everyone that is involved, including landowner groups and forest communities, as to how the project will be set up.
- When a PDD is developed, it is usually provided to an organisation that 'certifies' that the project is satisfactory. This means that an independent organisation will read the PDD to check that the project addresses all the necessary technical criteria, as well as meeting certain social criteria. This is an essential step if 'carbon credits' or 'carbon offsets' are going to be sold to support the project, because it is a way to satisfy potential future buyers of carbon offsets that the project is legitimate. The two common standards that are used are 'VCS' ('voluntary carbon standard') and 'CCBS' ('climate, community and biodiversity standards'). It is best to have a project certified under both standards, to ensure that the project is of high quality.
- At some stage in this process, you may be asked to sign an agreement (or contract) between the project partners that will determine the details of the project (such as for how many years the project will operate), as well as the rights and responsibilities of each project partner. For example, it may set out the rights you have to use and access the forest area, and if you are permitted to cut down a limited number of trees for traditional purposes (such as making canoes or building materials for houses). If you or your community or landowner group signs an agreement or contract, it is important to understand that this is a legal document that is binding on those that sign it. This means that if any project partner does not honour their obligations and commitments under the agreement, this could create many problems in the future for the project. You might have to go to Court

to resolve the problem. More information about legal issues is contained in Part 3 of this booklet.

- If the project proceeds, there will be ongoing obligations in relation to the project for many years into the future. These are likely to be included in any agreement or contract that is signed. Ongoing obligations will include adhering to any activities that have been agreed upon to ensure that deforestation does not take place, monitoring of the forest, and reporting of activities under the REDD project, to demonstrate that the project has been successful in stopping deforestation and forest degradation.

If your community is thinking about getting involved in a REDD project, it is very important that you seek independent legal advice as early as possible in this process. This means taking advice from a lawyer who is not working for any of the other project partners, such as the NGOs or financial organisations.

Getting legal advice is very important because it will help you understand your rights and obligations from the very beginning. This will reduce the chance that problems will arise later in time. It is particularly important given that REDD projects will be set up for very long periods of time (for example, for 30 or 50 years), and so it is a serious and long-term commitment that you are making. It is a commitment that will not only affect you and your community, but will also affect your children and grandchildren.

You should also take time to discuss the project with the whole community that will be affected by the project, as people may have different opinions about it. It is important to make sure that everyone understands what is involved, and agrees to go ahead with the project. This means that you should talk with women and youths, as well as the chiefs, elders and community leaders.

The community must also agree on who they think is the best person (or people) to represent them, who should sign any REDD agreement on behalf of the group, and how the benefits of the project will be shared within the community. Without agreement in the community, the REDD project will potentially face big problems later on. This has been a common experience with other kinds of development like logging, where land is communally owned.

What are some of the possible benefits of participating in a REDD project?

The basic idea behind REDD is positive, because developing countries with tropical forests will be paid money to leave forests standing to contribute to global efforts to combat climate change. Landowners and forest communities could have access to an alternative income source, so that they do not have to

do activities such as logging and commercial plantations, which can be harmful to the environment and communities.

Therefore, as well as contributing to global efforts to stop climate change, the participating countries (through their governments, communities, and individuals) will benefit from protecting and conserving the biodiversity of forests. They will also benefit from the positive environmental effects forests have for the communities that live in and around them.

As a result, the income received from REDD projects provides the opportunity for reducing poverty, for promoting sustainable development and for enhancing livelihoods for the forest communities and landowners and more broadly for those countries that participate in REDD.

What are some of the possible risks of participating in a REDD project?

While REDD offers many potential benefits, there are also some potential pitfalls and risks that all participants should be aware of.

If REDD projects are designed and managed badly, there could be a number of negative consequences. Firstly, projects may simply fail to reduce GHG emissions and as a result, the financial payments may not be paid. This would mean that it is unlikely that financial benefits would be received by the project partners.

Further, financial payments and other benefits may not reach landowners and forest communities if corruption is a problem, and government officials or other project partners capture the money that is intended for communities. This would mean that there would be little impact from the project to reduce poverty and enhance livelihoods for the affected landowners and forest communities. If this happens, landowners and forest communities could end up making all the sacrifices, but receiving few benefits.

Another concern is that REDD could lead to human rights violations. This may happen in circumstances where governments and other project partners are eager to gain the financial benefits from REDD and so violate the rights of landowners and forest communities. Human rights violations are already common in relation to use of natural resources, such as logging and mining. For REDD, it could involve actions such as removing traditional rights to own, access or use forests without the consent of the landowners or forest communities, not permitting landowners and forest communities to participate in decision-making processes about the land, or even using physical violence to interfere with these rights in relation to forests. REDD projects may therefore reduce the control that landowners and communities have over their forests.

Another possible problem is that REDD may create conflict amongst landowners and forest communities, and amongst the different groups that are interested in REDD. For example, one landowner group may have different views to another landowner group about whether a REDD project should go ahead, or how the financial benefits created by the project should be shared, and this could create serious conflict. This has been a common experience in relation to other types of development on community land such as logging and mining, and is therefore also a risk for REDD projects.

More broadly, one of the major concerns is that REDD won't make an overall reduction in GHG emissions. As it is a way to create 'carbon offsets,' it may mean that developed countries can simply pay developing countries to create REDD project, and not take any steps to reduce their own GHG emissions (for example by building fewer coal-fired power stations).

3. LEGAL ISSUES AND YOUR RIGHTS

There are many issues that will need to be discussed and resolved to establish a REDD project. Many of these are technical or scientific matters and so will not be discussed in this booklet. These include: how will the carbon in the forest be counted and measured? How will the project be monitored to ensure that GHG emissions are being reduced?

However, many issues that will come up will relate to the rights of landowners and forest communities affected by, or involved with, a REDD project. Questions about your rights arise when considering matters such as:

- How will landowners and forest communities be involved in the project?
- How will landowners and forest communities benefit from the project?
- How will the benefits be shared between the different project partners, and among landowners and forest communities?
- Who will be allowed to represent the community in negotiations?
- Will the project impact on land and forest ownership?
- Will the project allow for changes in the future to ensure that landowners and forest communities continue to receive a fair deal?

This booklet focuses on these kinds of legal issues, as they are the most important for ensuring that a REDD project will benefit landowners and forest communities.

It is also essential to recognise that other parties involved in a REDD project (NGOs, banks, government) may have different points of view and opinions about what the most important issues are, and how they should be resolved. You should keep this in mind when participating in the development of a REDD project, and make sure that things that your community thinks are important are included in the negotiations.

The most important thing to remember is that you should seek independent legal advice as early as possible to discuss your rights, and any legal issues associated with the project. Considering legal issues early is critical, so that there is a clear and secure legal basis on which REDD projects can be negotiated and agreed by all parties. This is the best way to avoid things going wrong in the future, and to avoid conflict and disputes. A list of groups who can provide free legal advice is included at the end of this booklet.

Your right to participate and be consulted, and to give your 'free, prior, and informed consent'

As landowners and forest communities, you should be involved in the development of any REDD project from the very beginning. This means being consulted on and participating in each step in the process of developing the REDD project, and especially about determining issues relating to your legal rights.

It is critical that you (and all affected individuals and groups) are able to give your full 'free, prior and informed' consent in relation to any decision that will affect your legal rights. This means that *before* making a decision about your legal rights, you understand the full extent of those rights and the impacts that the decision you make will have on those rights. It also means that any decision you make in relation to your rights is made freely, without threats or pressure from any person or group.

Where a landowner group or forest community is participating in a REDD project, free, prior and informed consent should be obtained from the whole community, not just from one or two individuals. The landowner group or forest community should agree on who will represent them and who can give consent on behalf of that group. Decision making should also be conducted in accordance with customary processes, where appropriate.

To make sure that free, prior and informed consent is possible, it is important that all people whose rights will be affected by the decision (for example, all members of a landowner group) have access to sufficient and relevant information about the project, and have access to opportunities to learn about all the details. For example, this may involve a series of workshops being conducted so that everyone in the community understands their rights and how the project will impact on them. It is very important to have an independent lawyer or community advocate at these workshops, so that they can give assistance and advice to your community.

These rights are recognised by international law, including through the *United Nations Declaration on the Rights of Indigenous Peoples*.⁴

Your land ownership rights

In many Pacific Island nations (unlike many other countries) most of the land is owned by traditional landowners in accordance with customary laws. Land ownership can be complicated, and is often owned by a tribe communally, but may also be owned by a particular clan or family. Ownership of the land includes ownership of the forests on that land.

Before committing to a REDD project, you should make sure that your community has completed the necessary legal processes to establish customary land ownership, so that it is clear who owns the land and the forests, and that ownership is secure. This may involve going through a process in your local court, to have a decision made about who owns the land and forests in accordance with customary law. This will help to ensure that there are no disputes in the future about ownership, as this could cause problems for your community and for the REDD project.

You must understand your land ownership rights when participating in a REDD project, and think very carefully before agreeing to sign any agreement or contract that gives another person or group rights to your land or forests. In some countries, there are already problems with how the land ownership system operates so that landowner groups do not always receive the rewards that they should when they do agree to 'give away' rights to their land, particularly in relation to logging operations.

There may also be attempts by governments, or people or companies involved in 'carbon trading' to weaken or change the law, or to encourage landowners to

4 A copy can be viewed at: <http://www.un.org/esa/socdev/unpfii/en/drip.html>

'give away' their traditional rights to their land and forests, to other parties (such as to the government or an investor).

Your rights to traditional land and resource ownership are recognised by international law, including through the *United Nations Declaration on the Rights of Indigenous Peoples*. They may also be protected under the national constitution or other national laws in your country.

Therefore, it is very important to be aware of your land ownership rights, to ensure that those rights are clear and have been determined in accordance with the law in your country, and to ensure that you do not give those rights away as a part of the development of a REDD project, without very careful consideration.

It is critical that you seek independent legal advice about how a proposed REDD project will impact on, or interact with, your land and forest ownership rights.

Your rights to the 'carbon' in forests

Another issue that is related to land ownership is working out who owns the 'right to carbon' in relation to a REDD project. 'Carbon rights' are specific legal rights that may be separated from other rights such as the right to the ownership of trees, the right to land ownership, and the right to log trees. Carbon rights determine who can legally buy and sell the 'carbon' that is contained in forests. The holder of this right will be the one who can participate in carbon trading and buy and sell the carbon offsets that the REDD project creates.

Even where landowners have the traditional right to own trees on their land, it will probably be unclear in the laws of your country whether landowners also have the right to buy and sell the carbon in a forest, the 'carbon right'.

This right should be established by national legislation in your country. If it is not established by your country's legislation, the parties to a particular REDD project can agree who will have the rights to buy and sell the carbon offsets created by that specific project.

You should be aware that if landowners do not have the 'carbon rights', they may have less control over the REDD project, and over how the 'carbon' is bought and sold.

It is therefore very important to obtain independent legal advice about carbon rights in your country and in relation to the REDD project, to understand how this issue will affect your rights as landowners or forest communities.

Are there other rights over the land or forest that may conflict with a REDD project?

It is necessary to make sure that there are no other legal rights to the land that will be the site of the REDD project, that will conflict with the project. If this does not happen, there could be problems and conflict in the future because of the different rights. If there are any conflicting rights over the land or resources, these must be addressed and resolved before finalising the REDD project. For example, if there is currently a logging or mining licence over the project site, this will need to be cancelled. In these circumstances, it is highly likely that the government will need to be involved. It may need to pass legislation to remove the conflicting legal rights, or make agreements with logging or mining companies to surrender their licences.

You should discuss these issues with the other project partners, as well as seeking independent legal advice to help you address this issue.

How will the benefits from the project be shared?

One of the key issues for a REDD project will be to decide what the benefits will be, and how the benefits of the project will be shared amongst the different parties involved. The benefits from a REDD project provide the 'compensation' for any income lost as a result of deciding not to clear or log your forest. Put another way, they are like receiving 'rent' payments for the use of your land.

While these benefits may simply be direct money payments to the different project partners (landowners, government, NGOs etc), it is possible that other non-monetary benefits can be included in the project. This is a relevant issue for the landowners and forest communities that are involved in the project, as it may provide a way to ensure that communities benefit as a whole from the project.

For example, the money made by selling the 'carbon offsets' could be agreed to be allocated to community benefits (instead of cash payments to individuals), such as providing jobs for rangers to work on the project, and providing community infrastructure such as building new schools, roads or community centres. If project money is allocated for these kinds of activities, it is likely that your community will be required to provide regular reports on how the money is being spent.

It will also be necessary to determine how the benefits will be shared between the different project partners, which will probably include the landowners and forest communities, the government, and any NGO or other organisation that is involved. There may be legislation in your country that specifies what proportion

of benefits is to be shared to each party. For example, the law might say that landowners are to receive 80%, the Government is to receive 5% and the NGO partner organisation is to receive 15%.

However, as mentioned previously most governments are still working on developing laws and policies about REDD. Therefore, if there is no legislation that sets out how benefit sharing arrangements must be set up for a REDD project, you should ensure that it is clearly set out in a contract or agreement.

You should be consulted from the beginning on these matters, and participate in making the decisions about the sharing of the project benefits. During this process, you should think what would be the best way for your community to spend the anticipated benefits from the project, and who in the community should be able to give consent about these matters on behalf of the community.

You should also carefully think about whether the REDD project will be able to sustain your community, and whether the proposed 'compensation' your community will receive will be enough to support the livelihoods of local community members, including future generations. For example, if the REDD agreement restricts the use of timber for firewood, you will need to be satisfied that the money available is enough for purchasing firewood (or another form of energy) from another place. If the compensation is not sufficient, community members may be forced to look for work elsewhere or leave. As REDD agreements are for long time periods and will affect future generations, you need to think about whether the agreement will enable future generations to receive a fair deal too.

It is important to obtain independent legal advice to help you negotiate about these matters.

Is it possible to continue to have access to the forest?

In general, a REDD project is likely to restrict the use of and access to the forest. You should think about whether your community will want or need to continue to have some access to, and use of, the forest that is part of the REDD project. This could include, for example, rights to continue to gather plants for food or medicinal use or to take a limited number of trees for traditional purposes such as building canoes, or for building traditional houses in your village or community.

If this is an important issue for some or all of the landowners or forest community members involved in the REDD project, it will be important to consider how to include these needs into the REDD project. You should obtain independent legal advice to help you negotiate about this issue.

What if something happens to the forest?

As previously mentioned, a REDD project will restrict the ways that a forest can be used. Most specifically, it will restrict the logging and removal of trees and other kinds of plants from the forest over a long period of time. It will be necessary to monitor the forest over the length of the whole project, to make sure that no trees are being cleared. If the project fails to protect the forest from being logged, it is likely to mean that no financial benefits will be available.

However, there may be circumstances that are beyond human control, and that result in the loss of trees, which could be in breach of any agreement about the REDD project. For example, a wild fire or a landslide could destroy part of the forest.

It is important that the REDD project addresses these possible risks, so that landowners or forest communities are not disadvantaged and do not lose the financial benefits from the project, for something that was not in their control.

You should seek independent legal advice to help ensure that this issue is properly addressed by the REDD project.

How will disputes be resolved?

It is possible that disagreements may arise over the course of a REDD project, especially because they will involve restrictions on the access to and use of a forest over a long period of time (for example, 30 or 50 years). Disputes may arise amongst the different project partners, or even within a landowner group or forest community.

Therefore, a REDD project must establish mechanisms that enable disputes to be resolved in a way that is suitable to local circumstances. You should seek independent legal advice about this issue, to ensure that the REDD project provides ways to resolve disputes in a way that you think is appropriate.

What happens if the government brings in new laws about REDD?

As discussed above, voluntary REDD 'pilot projects' are going ahead even though there are currently no international rules about REDD, and national governments have not yet completed policies or laws that clearly set out how REDD should operate in their country.

However, if governments pass new laws in the future, these may affect or change how the REDD project can operate in the future. For example, the government could bring in a law that defines who owns carbon rights, which could conflict

with an agreement made in relation to a particular REDD project. This is because governments can pass legislation that can make private contracts (or parts of them) invalid. As a result, there will be some risk and uncertainty involved by developing a REDD project before these laws are finalised.

While the government could make assurances that it will honour existing contracts, you should discuss this issue and obtain independent legal advice in relation to a REDD project, before committing to it. Because there is so much uncertainty for the rights of landowners and forest communities without national legislation about REDD (and without any international rules) it may be better to wait until the government has introduced the necessary legislation, before finalising any REDD project. Legal advice will help you to understand current legal situation in your country, and possible future risks.

Getting Independent Legal Advice

REDD projects are very complex, and all the possible legal issues that may arise cannot be covered in this guide. The concept of REDD is also very new around the world, and many projects are speculative. It is therefore very important that you seek independent legal advice and assistance as early as possible in the process of negotiating any form of agreement on REDD.

‘Independent legal advice’ means legal advice from a lawyer or a group of lawyers that are not already connected in any way to the REDD project, and have no interests (such as possible financial benefits) to see a particular outcome. They should be different from the lawyers used by any of the other project partners (such as NGOs or banks). They will advise you impartially so that you will understand both the positive and negative legal implications for you that the project may have.

This is very important in the context of REDD projects, where the interests of the other parties may mean that they do not give all of the information that may be relevant to your interests and needs.

Contact details for public interest environmental law firms in the Pacific region:

The Environmental Defender's Office partners with the following organisations in the Pacific region. If you would like legal advice or further information about REDD in your country, contact one of the following offices:

Solomon Islands

Landowners' Advocacy and Legal Support Unit
Public Solicitor's Office
Email: lalsu@pso.gov.sb

Central office:

Level 1, Placemakers Building,
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Western Province:

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Centre for Environmental Law and Community Rights Inc (CELCOR)

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Environmental Law Centre (ELC)

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This booklet is designed to help landowners and forest communities in the Pacific region that are thinking about participating in projects for 'reducing emissions from deforestation and forest degradation' (REDD). This is a new and complex type of forest project, that aims to stop the clearing and damage to forests that occurs as a result of logging, agriculture, plantations or other land-use changes such as mining. The main aim of REDD is to help fight global climate change.

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